

REPORT

OF THE TASK FORCE ON MEDIA LAW REFORM

JANUARY, 2000

INTRODUCTIONS

On 16th June 1999, a meeting of representatives from media and legal institutions was held in Lusaka to consider the formation of a Task Force with mandate to review the pieces of legislation, which impede press freedom. The meeting was organised by the Ministry of Information and Broadcasting Services, and was attended by representatives from:

1. Law Association of Zambia
2. Legal Resources Foundation
3. Ministry of Information and Broadcasting Services
4. Ministry of Legal Affairs
5. National Agricultural Information Service
6. Permanent Human Rights Commission
7. Press Association of Zambia
8. Times of Zambia
9. University of Zambia (Department of Mass Communication); and
10. Zambia Daily Mail
11. Zambia Information Services
12. Zambia Institute of Mass Communication
13. Zambia National Broadcasting Corporation
14. Zambia News Agency

The meeting regretted the fact that Government had not responded to the recommendations presented to the Ministry by the Media Reform Committee in September 1993. Also of concern to the meeting was the absence of the Zambia Independent Media Association (ZIMA). The meeting was informed that an invitation had been extended to ZIMA unfortunately, ZIMA had chosen to set conditions for their participation.

The meeting also noted that a lot of time had passed since the report was presented in 1993. It was

therefore the view of the meeting that a Task Force be constituted to review afresh laws which impede press freedom. The meeting also resolved that every effort should be made to persuade ZIMA to be part of the process.

The Task Force, which finally did the work comprised:

1. Mr. John Sangwa: Legal Resource Foundation (Chairman)
2. Mr. Michael M Daka: Zambia Institute of Mass Communication (Secretary)
3. Mr. David Simpson: Zambia Independent Media Association (Member)
4. Mr. Lavu Mulimba: Permanent Human Rights Commission (Member)
5. Mrs. Daisy Ng'ambi: Press Association of Zambia (Member)
6. Mr. Mumba Malila: Law Association of Zambia (Member) and
7. Mr. Patrick Nkama: Freelance Journalist (Member)
8. Mr. Heartcold Chisuta: Ministry of Information and Broadcasting Services (Member)

The Task Force took some time to meet. Representations were made to ZIMA and the importance of them being part of the exercise was explained. After several representations by the Chairman of the Task Force the ZIMA accepted to take part in the exercise and joined the Task Force.

The Task Force sought the involvement of the Ministry of Legal Affairs, which responded by sending officers to attend the meetings of the Task Force.

At its first meeting the Task Force determined how it was to proceed with its work. It was the view of the Task Force that, although the core of the exercise was

to identify laws, which impede freedom of the press and other media, there are other non-legal constraints, which needed to be resolved. The Task Force was of the view that the removal of the legislation and other non-legal factors, which impede media freedom, may not necessarily lead to the creation of an environment in which the media is free. Additional pieces of legislation and new administrative arrangements needed to be introduced.

In the light of these observations the Task Force carried out its mandate in three broad groups. The First Group focussed on the relationship between the Ministry of Information and Broadcasting Services and the public and private media. It examined issues such as administrative arrangements, media policy, ownership, media councils and matters related to literacy and community media.

The second group examined non-legal and non-administrative constraints to the media in Zambia such as ethics, training, financing, taxation and import duties.

The Third Group examined the laws¹, on the statute books and identified those that impede freedom of the press and other media. This Group also examined other possible pieces of legislation, which may be introduced to enhance freedom of the press and other media.

The Task Force held several meetings at ZAMCOM. The findings and recommendations of the three working groups were examined in detail during a workshop held at Ibis Gardens in Chisamba from 29th to 31st October

¹ Laws in this case included both statutes and constitutional provisions.

1999. The findings and recommendations of the Task Force are presented in this report.

In its work the Task Force took into account the earlier report prepared by the Media Reform Committee and presented to Government in September of 1993, and other reports and documents generated on the media in Zambia over the years.

As the work of the Task Force went on attendance by some of the members became somewhat erratic. For instance Mr. Leonard Kantumoya from the Department of Mass Communication was part of the initial Task Force, but stopped attending the meetings. The Task Force was forced to bring Mr. Patrick Nkama on board due to his many years of experience as a journalist.

The fact that this part of the Report has been written is proof that the responsibility entrusted to the Task Force has been discharged, after enduring many long hours in meetings. It is also proof of the commitment of the members of the Task Force to this noble and important national task.

Members of the Task Force received no monetary remuneration for their involvement in this exercise, but they will be adequately remunerated, in manner that money cannot, if steps are taken by the Government, without any further delay, to implement the recommendations contained in this report. On the other hand members of the Task Force will be sad and the time spent on the report wasted if this Report meets the same fate as that of 1993.

PART 1.

THE MINISTRY OF INFORMATION AND BROADCASTING SERVICES
AND PUBLIC AND PRIVATE MEDIA

In this section the Task Force examined the impact of the Government, through the Ministry of Information and Broadcasting Services, in the media industry.

1.1 PRINT MEDIA

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) There are two government owned newspapers publishing companies: The Times Printpak Limited which publishes the *Times of Zambia* and its Sunday edition, the *Sunday Times* of Zambia and the Zambia Daily Mail Limited which publishes the *Zambia Daily Mail* and two other weeklies, the *Financial Mail* and the *Sunday Mail*.
- (ii) In the 1970s a consortium of churches opened a media centre for publishing books and producing broadcasting material. They also launched the *National Mirror*, which is still being published.
- (iii) The endorsement of a plural and democratic political arrangement in early 1990s saw an increase in privately owned newspapers. The first of these was the *Weekly Post*, which is now a daily newspaper known as *The Post*. It was followed by publications like *The Sun*, *Crime News*, later renamed *The Confidential*, *The Chronicle* and the *Financial Gnome*.

- (iv) Most of these private newspapers have collapsed largely due to financial difficulties. Those still in regular production are *The Post*, *The National Mirror*, *The Monitor*.
- (v) The combined circulation of the three daily newspapers² and weeklies is estimated at less than 100,000 copies nationwide in a country with a population of around 10 million people.
- (vi) All the newspapers are distributed along the line of rail and only a few copies are sent to the provincial centres where they arrive very late.
- (vii) All the newspapers are published in English hence their circulation is limited only to those who can read the English language.
- (viii) Attempts to service the rural areas have been made through the Zambia Information Services (ZIS), a department of the Ministry of Information and Broadcasting Services, which publishes six vernacular language newspapers.
- (ix) These are published in Lusaka for the rural areas and their production is erratic and the content is generally stale.
- (x) Country wide news coverage is carried out by the Zambia News Agency (ZANA), another department of the Ministry of Information and Broadcasting Services. ZANA also receives foreign news for distribution to local subscribers.
- (xi) Members of the Board of Times Printpak Limited and Zambia daily Mail Limited are appointed by the

² Times of Zambia, Zambia Daily and The Post

Minister of Information and Broadcasting Services on behalf of Government as the principal shareholder.

- (xii) Although Times Printpak Limited and Zambia Daily Mail Limited are private limited companies in which the Government is the major shareholder, they are not run as proper business enterprises. The government does not receive anything from the two companies in the form of dividends.
- (xiii) The two companies do not make or declare any profits and continue to rely on government funding to remain in operation.
- (xiv) The continued Government financial support to Times Printpak Limited and Zambia Daily Mail Limited has created serious distortions in the media industry. Whereas private newspaper companies need to operate on sound business lines and make sound business decision in order to remain in business, there is no such pressure on Government owned newspaper companies.
- (xv) This has in turn affected the quality of news reporting in the Zambia. Newspapers published by government owned companies publish stories that are often pro-government and private newspapers often carry anti-government stories.

(b) Recommendations

- (i) Government owned media organisations: Times Printpak Limited and Zambia Daily Limited should be run in the service of the public and should operate as good commercial enterprises.
- (ii) Times Printpak Limited and Zambia Daily Mail Limited should be fully commercialised and should meet their

own financial requirements like any other private limited companies.

- (iii) They must combine, profit and social responsibility considerations in their operations.
- (iv) Zambia News Agency (ZANA) and Zambia Information Service (ZIS) should be run in the service of the public.
- (v) The Articles of Association of Times Printpak Limited and Zambia Daily Mail Limited should be amended to provide for the majority of the board members to be nominees of institutions such as the Zambia Institute of Chartered Accountants (ZICA), Law Association of Zambia (LAZ), Bankers Association of Zambia (BAZ), Zambia Independent Media Association (ZIMA) and Press Association of Zambia (PAZA).
- (vi) The responsibility for appointing chief executive should be left to the Board.
- (vii) The terms of office of Board Members should be staggered from one to three years to ensure continuity.
- (viii) Board members should serve for a specified period of time not exceeding two terms.

1.2 BROADCASTING

In the area of broadcasting the Task Force made the following findings:

- (i) The main forms of broadcasting in Zambia are radio, and terrestrial and satellite television. Radio and television broadcasts are largely concentrated along the line of rail. Radio is the more widespread medium of communication in the country than television.
- (ii) The Government, until the liberalisation of the airwaves in 1995, dominated the broadcasting industry, since its inception. Two radio stations owned by religious organisations, Radio Christian Voice in Lusaka and Radio Icengelo in Kitwe and a private commercial station, Radio Phoenix in Lusaka, now supplement the state-run Zambia National Broadcasting Corporation (ZNBC).
- (iii) At provincial level, several community radio stations are beginning test transmissions or have applied for licences in various parts of the country. Radio Christian Voice has put up or is in the process of putting up additional transmitters to extend its signals to other parts of the country.
- (iv) Terrestrial transmitters belonging to Multi-Choice, a subsidiary of a South African pay-television company, M-Net and Cable Satellite Technologies (CASAT), a local firm, are now used to relay international satellite services to an ever wider audience in Lusaka and beyond.

- (v) Other television programming comes from local re-broadcasts of American Trinity Broadcasting Network (TBN) material.
- (vi) The Zambia National Broadcasting Corporation is controlled by the Government through a Board that is appointed by the Minister of Information and Broadcasting Services.
- (vii) The quality of broadcasts by ZNBC is very poor and this is confined to the line of rail and this is due to a number of constraints, the major being financial.

(b) Recommendations

The Task Force accordingly recommends:

- (i) The ZNBC should be fully commercialised. It should not receive financial support from Government except in exceptional circumstances and this must be through a direct allocation from Parliament.
- (ii) The Zambia National Broadcasting Services Act should be amended to provide for the majority of the board members to be nominees of institutions such as the Zambia Institute of Chartered Accountants (ZICA), Law Association of Zambia (LAZ), Bankers Association of Zambia (BAZ), Zambia Independent Media Association (ZIMA) and Press Association of Zambia (PAZA).
- (iii) The responsibility for appointing chief executive should be left to the Board.
- (iv) The terms of office of Board Members should be staggered from one to three years to ensure continuity.

- (v) Board members should serve for a specified period of time not exceeding two terms.

1.3 MEDIA POLICY

Findings and recommendations:

(a) Findings:

The Task Force finds that:

The Ministry of Information and Broadcasting Services is currently developing an Information and Media Policy.

(b) Recommendations:

The Task Force recommends that:

The Policy must be designed to promote and facilitate the growth of a sustainable media industry capable of enhancing free flow of information, freedom of the press and of other media.

1.4 RELATIONSHIP BETWEEN PUBLIC AND PRIVATE MEDIA

Findings and Recommendations:

(a) Findings

The Task Force finds that:

- (i) There is polarisation between the government and private media institutions. The government-owned media are seen as too compliant while the private media are viewed as too critical of government.
- (ii) The division has led to the establishment of two main media organisations, the Zambia Independent Media Association (ZIMA) and the Press Association

of Zambia (PAZA), representing employees in private and government media institutions respectively.

- (iii) This polarization does not favour the development of the media industry in Zambia in terms of the quality of the information that is made available for consumption by the general public.
- (iv) However, in certain circumstances, there has been co-operation between ZIMA and PAZA, especially in instances where press freedom Zambia has been under threat

(b) Recommendations

The Task Force recommends:

- (i) The two main media organisations ZIMA and PAZA should work together and formulate a single Code of Ethics.
- (ii) ZIMA and PAZA should work towards the creation of a single media council with jurisdiction over professional and ethical matters affecting their members with a single code of ethics.
- (iii) The council should have authority to hear and determine complaints from the public against any media institution.
- (iv) The Council should be voluntary and not statutory and should comprise independent minded eminent persons in society.

1.4 LITERACY AND COMMUNITY MEDIA

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) The Zambia Information Service (ZIS) is currently responsible for printing newspapers in vernacular languages. These papers appear irregularly because of lack of funds to sustain production. Even when they are published, the newspapers are transported at great costs to provincial centres.
- (ii) Although the cover price of the newspapers is kept low to ensure that they are affordable, due to erratic publishing, people in the rural areas are denied information on important matters such as agriculture, health, environment and major developments in their respective areas and the country at large.
- (iii) Poor reception of broadcast signals in most outlying areas means that people cannot tune in to Radio or Television Zambia. For example, Siavonga, a tourist destination, which is about two and half-hours drive from Lusaka hardly receives clear local radio signals. In the circumstances, the people tune in to Zimbabwe radio and often times, television.

(b) Recommendations

The Task Force recommends that:

The government should encourage the establishment of community media, and locally owned and run local presses to produce vernacular newspapers, through incentives such as tax concessions, credit facilities, etc.

PART TWO

2.0 OTHER CONSTRAINTS TO THE MEDIA INDUSTRY

The Task Force noted that in addition to constraints in the form of laws, which impede freedom of the press and other media, there are problems, which need to be identified and addressed if there has to be serious improvement in the media industry in Zambia. There relate to training, taxation and the allocation of advertisements from Government.

2.1 TRAINING

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) Zambia offers journalism and mass communication training at four different levels. The Africa Literature Centre in Kitwe offers a one-year diploma course in journalism
- (ii) The Evelyn Hone College in Lusaka provides a three-year diploma course in journalism.
- (iii) The University of Zambia runs A four-year degree course in mass communication and two masters degree courses in mass communication and development communication.
- (iv) The Zambia Institute of Mass Communication (ZAMCOM) provides in-service training through short practical courses and workshops.

- (v) Although Zambia has numerous media training institutions, the training offered is not geared towards meeting the needs of the media industry.

(b) Recommendations

The Task Force recommends that:

- (i) The standards of journalism practice should be improved through intensive training in specialised areas.
- (ii) media literacy be introduced in schools as part of extra-curriculum activities to raise awareness on the role and operations of media;
- (iii) media training institutions to invest more in training of trainers;
- (iv) Media training institutions should constantly review their curricula to meet the changing demands of the media industry in Zambia
- (v) Media training institutions should include human rights education in their programmes, especially the right to know, the right to development, the right to demand public accountability from elected leaders and the right to quality services from public officers free from corruption.

2.2 TAXATION AND IMPORT DUTIES

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) About ninety-nine percent of inputs into newspaper production are imported.

- (ii) The prices of the inputs are on the increase whenever the value of the Kwacha depreciates against international currencies.
- (iii) The situation is worsened by high taxes and duties imposed on inputs.
- (iv) The high cost of inputs has led to increases in the cover price of many publications
- (v) The buying power of an average Zambian has considerably declined over the years
- (vi) On the other hand the incomes of institutions in the print media have declined in real terms to reduction in circulation.
- (vii) The consequence of these factors is that many people in the country cannot afford to buy the newspapers hence have no access to information. The worst affected are those in rural areas.

(b) Recommendations:

- (i) Inputs for the media industry be gradually exempted from tax duty.
- (ii) VAT on advertising be reduced to increase the advertising base.
- (iii) VAT be removed on all educational material and programmes.
- (iv) Company tax for companies involved in the media industry be reduced to encourage investment in the sector.

2.3 GOVERNMENT'S ATTITUDE TOWARDS PRIVATE MEDIA INSTITUTIONS

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) Although Government has liberalised the media industry, it is still a key player in the allocation and distribution of resources to the sector.
- (ii) There has been an unfair allocation and distribution of these resources. For example advertising revenue constitutes a major source of income, but the Government directs all its advertisements to government-owned media institutions.
- (iii) Private media institutions rarely receive advertisements from the Government and Government-related institutions.
- (iv) Government has also denied private newspapers companies critical revenue by discontinuing the purchase of their newspapers.

(b) Recommendations:

The Task Force recommends that:

- (i) Government should abandon its practice of withholding advertisement from private media, but should instead equitably distribute advertisements to all media institutions.
- (ii) Government should abandon its boycott of newspapers printed by private media institutions.
- (iii) The Government should fund the provision of simple printing presses and broadcasting equipment for community media, possibly through an organisation similar to Khula Enterprise Finance Limited

established by the South African Government as an intermediary to solicit and channel funds to small-scale enterprises.

- (iv) Government should provide computers in every school in Zambia in order to enhance literacy and the right to know.
- (v) Government should implement the terms of the Florence Agreement on importation of printed materials, which Zambia has ratified.

PART THREE

3.0 LAW REFORM

The Task Force took time to consider the Constitution of Zambia to determine the extent to which it hinders or furthers freedom of the press and other media. The Task Force also examined other laws on the statute books, which have a bearing on the media to determine their impact on freedom of expression and media freedom in particular. In considering these issues the Task Force took into account the Report of the Media Reform Committee of 1993. The Task Force went to consider other pieces of legislation, necessary to consolidate the freedom of the press and other media.

I. Article 20

This Article provides for freedom of expression.

Finding and Recommendations

(a) Findings

The Task Force finds that:

- (i) Although freedom of expression is expressly guaranteed under Article 20 of the Constitution it is limited by statutes which authorise things to be done, which are reasonably required in the interest of defence, public safety, public order or public morality, or public health.
- (ii) These grounds are broad and vague to the point that virtually any decision to detract from the guaranteed freedom can be justified.

(iii) The Constitution does not expressly guarantee press freedom although there have been representations for such express provision.

(b) Recommendations

The Task Force accordingly recommends that:

- (i) The Constitution must guarantee the freedom of the press and other media in clear and unambiguous terms
- (ii) freedom of the press and other media should not extend to propaganda for war, incitement of imminent violence, advocacy of hatred that is based on race, ethnicity, gender or religion
- (iii) Any restriction on freedom of the press and other media must be prescribed by law. That law must be accessible, unambiguous, drawn narrowly and with precision so as to enable the individuals to foresee whether a particular action is unlawful
- (iv) The law should provide for adequate safeguards against abuse, including prompt, full and effective scrutiny of the validity of the restrictions by an independent court or tribunal.

II. Article 87(2)

This Article empowers the National Assembly to assume the same powers, privileges, and immunities enjoyed by the British Parliament.

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) Article 87(2) has conferred upon the Zambia National Assembly the powers, immunities and privileges enjoyed by the House of Commons in the United Kingdom.
- (ii) The Act of Parliament then in force was the National Assembly (Powers and Privileges) Act. This Act did not and does not authorise or empower the National Assembly to send anyone to jail.
- (iii) The intention behind the introduction of this provision is not in furtherance of the press freedom. It arose out of a confrontation between the media and the National Assembly.
- (iv) The constitutional provision before the Constitutional amendment of 1996, provided that the National Assembly and its members shall have such privileges and immunities as may be prescribed by an Act of Parliament.
- (v) Although the House of Commons can send people to jail for contempt and the courts cannot interfere with the decision this situation is a product of the history of the conflict between the judiciary

and the Parliament in the United Kingdom. There is no such history in Zambia. Furthermore it is well over fifty years now since the House of Commons ever exercised this power.

- (vi) In real terms Article 87(2) has no effect. It does confer upon the National Assembly the powers, privileges and immunities enjoyed by the House of Commons, but these are subject to other provisions of the Constitution.
- (vii) Article 13 of the Constitution guarantees the right to liberty and does not recognise the limitation of liberty on account of an order of the National Assembly.

(b) Recommendations

The Task Force recommends that:

Although in real terms Article 87(2) has no effect, for the avoidance of doubt it must be repealed.

3.2 LEGAL CONSTRIANTS

The Task Force noted that there are a number of statutes on the statute books, which directly and indirectly hinder the press freedom and ultimately the very survival of media institutions. The single most oppressive piece of legislation in this area is the Penal Code. Other inhibiting provisions are strewn in various pieces of legislation.

The Task Force also observed that the colonial government, which introduced most of the oppressive legal provisions, was undemocratic. The post-independence government was no better. Until 1963 press freedom or more generally freedom of expression was not guaranteed to the people of Northern

Rhodesia. It was assured for the first time through the Northern Rhodesia (Constitution) Order in Council, 1963, which conferred internal self-rule to the territory. This was just a few months before full independence was conferred upon the Territory. Although it was guaranteed there were broad situations in which the freedom could be derogated from. This meant that every piece of legislation was constitutional until declared otherwise by the Court.

Secondly, after independence no steps have been taken by the post-independence governments to review the laws and eliminate those, which are not in line with the new constitutional order. The laws have remained in place even after 1991, when a new democratic order was endorsed.

I. THE PENAL CODE

In order to understand the impact of the Penal Code on freedom of the press and that of other media the Task Force took time to examine the origin of the Penal Code. The Code was introduced in 1930; six years after the British Government took direct administration of Northern Rhodesia. It was drafted in the Legal Department of the Colonial Office under the direction of the Secretary of State for Colonies. Its preparation was undertaken in pursuance of a decision to replace in East African Dependencies the Indian Penal Code, which was in force there, by a Code based on English law. The Code was uplifted from Nigeria, where a Code of English Criminal Law had been in operation by 1930, for fourteen years.

The volume of English Law and English Statutory Law dealing with criminal matters had by then become so enormous that it was quite impossible to place it at

the disposal of an up-country magistrate when called upon to deal with criminal offences. The code was therefore, a substitute, a comprehensive compilation, setting out briefly the more important principles, likely to be involved in criminal matters. The intention was to place in the hands of those officers who discharge judicial functions, in a consolidated form, the statutory provisions then in force in England on criminal matters. The reasoning was that with a code such officers were less likely to overlook a principle, act on a decision which is no longer law, or to follow a statute, which unknown to them, has been repealed.

The Task Force noted that it was important to understand the history of the code because some of the offences it creates do not and have never existed in the United Kingdom, a country whose criminal law it sought to consolidate. Some of the offences still in the code have been abolished in England. The European Court of Human Rights has questioned some of them.

1. Prohibition of Certain Publications and Offences in Respect of Prohibited Publications Section 53, 54 and 55.

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) Section 53 of the Penal Code confers powers upon the President, to declare a publication or series of publications to be prohibited publication, if in his opinion such publication or series of publications published either within or outside

the country are contrary to public interest. The power to make such a declaration is vested in him in his absolute discretion.

- (ii) The publication becomes prohibited once it is published in the Gazette or any local newspaper. The President may prohibit a specific publication, series of publications or all publications or series of publications. He can also prohibit publication published by a specified person or group of persons or association.
- (iii) If the prohibited publication is a periodical, unless the order by the President provides otherwise, the ban will apply to all subsequent issues of the publication. Where the publication banned is described by name, the ban will extend to that publication even if the name is changed. The prohibition also extends to the translation of the prohibited publication.
- (iv) The consequence of the prohibition under section 53 is that importation, possession, publication, sell, distribution or reproduction of any such publication becomes illegal.
- (v) Once convicted one can be liable to serve up to two years imprisonment, or pay a fine, or to both fine and imprisonment.
- (vi) Section 53 was not part of the original penal code. It was introduced in 1935 and has ever since been amended to result into its current state.
- (vii) The introduction of this provision was founded on the belief that Africans needed to be introduced

to the ways of the white settlers. It was therefore the responsibility of the settlers to decide what was in their best interest by controlling their access to publications.

- (viii) The existence of this provision, after independence, represents an attempt to perpetuate the thinking of the time. The only difference is that in place of the Governor, it is now up to the President to determine what is good for the Zambians to read.
- (ix) The provisions are vague and over-broad; hence it is impossible to predict what kind of publication is likely to be prohibited. The only control on the exercise of this power is the President's determination of what is in the public interest.
- (x) Section 62 of the Code defines public interest as the interest of defence, public safety, public order, public morality or public health, phrases, which are incapable of definite meaning.
- (xi) Most of the publications, prohibited by the colonial government between 1930 and 1964, were critical of the government. This included publications, which encouraged the consciousness of the citizens of the Territory.
- (xii) Such provisions have never existed in the English criminal law.

(b) Recommendations

The Task Force accordingly recommends that

Sections 53, 54 and 55 must be repealed.

2. Offences in respect of Seditious Practices Sections 57, 58, 59, 60 and 61

In its report published in September 1993 the Media Reform Committee recommended the repeal of the above provisions. Historically the said provisions were introduced in the 1930 Penal Code, but they have been refined over the years. The object of the law on sedition in Zambia is the same as that in the United Kingdom.

Findings and Recommendations

(a) Findings

The Task Force finds that:

(b) Whereas the importance of press freedom is well known and established, there is on the other hand need to ensure that freedom is used in a responsible manner. The law on sedition helps to achieve this goal. There is however need to improve on some of the provisions. There is always danger that the law on sedition, although intended to safeguard the general welfare of the Republic and protect legally established institutions, can be abused.

(c) The definitions of what constitutes seditious intentions are broad and a number of legitimate actions can, on their face, be seditious. It is up to the court to determine whether indeed what has been published is seditious or not.

(d) The impact on the accused may be serious financially as well as on his morale as a journalist. Furthermore, there is no guarantee that once a person has been charged with sedition

he can be granted bail. Usually matters of sedition are political and Judges are called upon to determine the interests of an individual vis-à-vis those of government. Very often it is easier to find the scale of justice tilt in favour of Government.

- (e) It is also not unusual for judicial officers to abdicate their responsibilities and reason as though they represent or were part of the executive branch of government, and not independent arbiters and guarantors of the rights and freedom embodied in the Constitution.

(b) Recommendations

The Task Force accordingly recommends that:

- (a) Section 58 of the Penal, which provides that no prosecution under section 57 can be initiated without the consent of the Director of Public Prosecutions, should be repealed. Instead no prosecution for sedition can be instituted without the leave of the High Court. The prosecution must include the actual arrest on charges of sedition.
- (b) For a judge to grant leave he must be satisfied that there is a clear prima facie case. Second, that the seditious matter is so serious that it is necessary to institute criminal proceedings and that public interest requires the institution of criminal proceedings.

3. Publications of false news with intent to cause fear and alarm to the public Section 67

This provision was never part of the Penal code. Section 67 deals with the offence of publication of false news with intent to cause fear and alarm to the Public. It was introduced in 1938. There is no similar provision in the United Kingdom. The publication whether oral or in writing or otherwise of any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is a crime. Knowledge of the falsity of the rumour, report or statement is a necessary ingredient of the crime.

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (a) Section 67 is unfair and a hindrance to press freedom as there is no legal obligation on the part of those who hold public office to provide information or confirm any information that is sought by a journalist.
- (b) There are people within the media that are capable of fabricating stories, which can cause great harm to the people and the country as a whole.

(b) Recommendations

The Task Force accordingly recommends that Section 67 be repealed.

4. Defamation of the President Section 69 and Sections 68 and 70

In the past few years since 1991, a number of journalists have been arrested and charged for

violating the provisions of section 69. It is an offence under this provision for anyone with intent to bring the President into hatred, ridicule, or contempt to publish any defamatory matter insulting of the President. The insulting matter may be in writing, print, or word of mouth or in any other form or manner. Upon conviction one may be sentenced to prison for a term not exceeding three years. There is no provision for a fine.

Findings and Recommendations

(a) Findings:

The Task Force finds that:

- (i) Section 69 was introduced soon after independence in 1965. It was introduced together with Section 68, which makes it an offence to insult the national anthem, and section 70, which makes the expression or showing of hatred, ridicule, or contempt of people on account of race, tribe, place of origin or colour an offence.
- (ii) Sections 68 and 70 were introduced at the time when it was necessary to promote national unity.
- (iii) The unifying intent is evident in relation to section 68 and 70, but it is not apparent in section 69.
- (iv) If the intention of Section 69 is to protect the institution of President as opposed to the person occupying the office, this is catered for under the sedition law under Sections 57, 58, 59, 60, and 61.
- (v) There is a distinction between the office of President and the person occupying the office.

This law seeks to protect the person as opposed to the institution.

- (vi) The President under the constitutional arrangement, which has been in place since independence, is not above politics. For a titular President who is seen as a symbol of national unity, section 69 may find some support, but not for an executive President.
- (vii) The constitutional order allows for competition to the office of President. Invariably this will require and will entail criticism of the incumbent President, which may extend to examination of his personal character. It is likely that the person occupying the office of President may be brought into contempt or ridicule.
- (viii) On the other hand the nature of the political process will require the person occupying the office of President to convince the electorate that he is a better candidate than his challengers. That may mean them too being brought into contempt or ridicule. It cannot be in conformity with the ideals of democracy to criminalise what may be said about the President.
- (ix) The very fact that the President's conduct or actions may be a subject of ridicule is a restraint on the President and may help to keep his conduct within the law. It may compel him to be sensitive to the moods of the people and use his authority wisely.

(b) Recommendations

The Task Force accordingly recommends that:

- (i) If the gains that have been made in the past few years in democratising Zambia, are to be consolidated, and an open and free society created, Section 69 must be repealed.
- (ii) Sections 68 and 70 of the Penal Code should be retained.

5. Defamation of Foreign Princes Section 71

This provision was part of the original provision of Penal Code. Although it is part of the penal Code in Zambia, there is no similar provision under British criminal law. It is an offence for any person, without justification or excuse as would be sufficient in the case of defamation of a private person, to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb the peace and friendship between Zambia and the country to which such prince, potentate, ambassador or dignitary belongs.

Findings and recommendations:

(a) Findings:

The Task Force finds that:

- (i) The logic behind this provision is difficult to appreciate.
- (ii) The criminal ingredient appears to be the intent to disturb the peace and friendship between Zambia and the country represented by such prince, potentate, ambassador or dignitary.
- (iii) These concerns can be taken care of under the law on sedition. If this offence was made part of the

sedition acts, an accused person will at least have the benefit of the allegations investigated before the prosecution can be initiated.

- (iv) In this way he will be protected from the possible abuse of these provisions. Otherwise this provision must be repealed.

(b) Recommendations

The Task Force accordingly recommends that the said provisions be repealed.

6. Prohibition on Taking photographs in Court Section 117

Section 117 prohibits the taking of photographs in Court or making of any sketch or portrait of any person being a Judge of the Court or juror or a witness in any proceedings before the court whether civil or criminal. Where such photograph, portrait or sketch has been made contrary to the provisions of the said section it is an offence to publish any such photograph, portrait, sketch.

Findings and Recommendations

(a) Findings:

The Task Force accordingly finds that:

- (i) The said provision was never part of the original Code. It was introduced in 1957.
- (ii) There is no similar offence under English criminal law.
- (iii) There are times when the matters before the Court are of such a serious nature or of great concern to the public that the public may be interested

in following closely. This provision undermines the people's right to be informed or to know what is going on.

- (iv) By this provision the live coverage of proceedings is also prohibited.
- (v) Institutions such as the courts are new to an average Zambian. They are part of the legacy of colonial rule. The people have never had the opportunity, like with many other institutions of government, to identify with or relate to them. To most Zambians these institutions are foreign and remote and have nothing to do with their day to day lives.
- (vi) Section 117 only helps to remove the judiciary even far away from the people. The courts are presented, through this provision, as sacred institutions to be revered.
- (vii) In reality everything possible need to be done in Zambia to allow people identify themselves with these institutions.
- (viii) These institutions exist for the people and not the people for the institutions. They provide the only civil way of resolving disputes without undermining the very foundation of the people's existence.
- (ix) The Judges already enjoy enormous powers, sufficient to deal with any matter, which may arise through authorising the taking of photographs in courts. But to make a blanket prohibition is not in furtherance of any known cause.

(x) If it is to maintain the integrity and standing of judicial institutions, such standing is won through the quality of the work done by such institutions and not through oppressive legal provisions.

(b) Recommendations

The Task Force accordingly recommends the repeal of this section. The issues prohibited under section 117 should be left to the presiding judges to determine whether there is need to prohibit the taking of pictures or not. This must depend upon the nature of the case in issue.

7. Obscene Matters or Things Section 177

Section 177 makes it an offence to deal in any obscene matters. This provision was part of the original text of the Code. From 1930 the said provisions have undergone serious changes. It is an offence now for any person to make, produce or have in possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other object tending to corrupt morals. It is equally an offence for anyone to import, convey or export or cause to be imported conveyed or exported any such matters or things, or in any manner whatsoever or put them into circulation. It is an offence to carry on or take part in any business, whether public or private, concerned with any obscene matter to distribute or exhibit any of them publicly or make a business of lending any of them.

The said section also makes it an offence to advertise in order to assist the circulation of, or

make known where any obscene matter may be bought. It is also an offence under the said section to publicly exhibit any indecent show or performance or any show or performance tending to corrupt morals. If found guilty, one is liable for to a five-year term of imprisonment or to a fine. Once one is convicted the court may order that the obscene matter be confiscated or destroyed. The Court may on application by a public prosecutor, order the destruction of any obscene matter whether any person was convicted or not.

Findings and Recommendations

(a) Findings

The Task Force accordingly finds that:

- (i) The section does not define what is "obscene"; neither does it shed light on the import of the phrase "tending to corrupt morals".
- (ii) This has been left to the court to determine according to the exigencies of the time.
- (iii) It is not therefore possible for one to determine in advance what is obscene.
- (iv) The provision hinders legitimate expression.
- (v) The said section does not provide any defences. If one has in his possession or has produced material, which has been found to be obscene, one is guilty of the offence.
- (vi) The reason for the production of the material or the purpose they intend to serve is irrelevant as a defence.

- (vii) There is need to control the making and distribution of obscene publication. However, there is need to allow the making or importation of materials, obscene though they may be, that are in the public good: materials that are in the interest of science, literature, art or learning or of other objects of general concern.
- (viii) In the case of film or soundtrack that it is in the interest of drama or any other art or of literature or learning.

(b) Recommendations

The Task Force accordingly recommends that:

- (i) Section 177 should be amended to provide the definition of "obscene material"
- (ii) Section 177 should be amended to include the definition of "tending to corrupt morals".
- (iii) Section 177 should be amended to allow the making or importation of materials; obscene though they may be, which are in the interest of science, literature, art or learning or of other objects of general concern.
- (iv) Section 177 should be amended to allow the making or importation of obscene films or soundtrack that it is in the interest of drama or any other art or of literature or learning.

8. Criminal Defamation Sections 191 to 198

Criminal defamation was part of the original Penal Code. The original provisions have been modified, but the intent of the law remains the same. It is an offence to unlawfully print, write, publish, paint,

by effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, any defamatory matter concerning another, with intent to defame that other person.

Findings and Recommendations

(a) Findings

The Task Force finds that the original justification for the creation of the offence, namely the prevention of breaches of peace has ceased to apply and the reputations of individuals can adequately be protected by the civil law of defamation.

(b) Recommendations:

The Task Force accordingly recommends the repeal of Sections 191 to 198.

II. THE STATE SECURITY ACT

The Act seeks to make better provision relating to State security and the offences of sabotage and espionage.

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) The State Security Act has a serious impact freedom of the press and other media.
- (ii) There is need to limit access to certain information concerning the operations of government. This need must be balanced against the right of those in the media to have access to information and that of the public to know.

- (iii) The whole exercise of governance is a matter of balancing the interest of the government and those of the people. Government has the responsibility to manage the affairs of government for the common good of all and secure the greatest happiness of the greatest number of the people.
- (iv) The government left alone without scrutiny may work to the detriment of the very people it is supposed to serve and the people given unfettered liberty may destroy the very foundation of government.
- (v) Access to information about what government is doing is necessary to keep government in check, but the provisions of the State Security Act makes this goal impossible to achieve.
- (vi) The biggest problem is that there are very high chances that the law can be abused. The only way to tell whether there has been a violation of the provisions of the Act or not is after trial has been conducted and the Court has rendered its judgment. This could be after several years.
- (vii) Under the Zambia criminal system every accused person is entitled to bail except where the charge is one of murder, treason, misprision of treason, treason-felony, aggravated robbery or any other offence carrying a possible mandatory capital penalty.
- (viii) Ordinarily a person charged with a criminal offence is entitled to bail. However, a person charged with an offence under the State Security Act cannot be admitted to bail either pending trial or pending appeal if the Director of Public

Prosecution certifies, under Section 123(4) of the Criminal Procedure Code, that it is likely that the safety or interests of the Republic would be prejudiced if bail is granted.

- (ix) It is possible for a journalist charged with an offence under the State Security Act to spend years in jail, before his guilt or innocence can be established. This can have very serious impact on the person involved.
- (x) The consequence is a serious hindrance to press freedom. It is not easy, given the way the various provisions of the Act have been drafted, to tell for certain activities that amount to offences under the Act. There is no way of knowing in advance materials that are classified or unclassified, until one is, arrested, charged, tried and judgment of the court delivered.
- (xi) On the other hand it is not possible for one to predict what will happen to him in the event that he is charged with an offence under the State Security Act. The best option is therefore not to report or do anything, which in the lay person's determination would be in conflict with the said legislation.
- (xii) A conviction for an offence under the State Security Act carries a sentence of between 5 to 25 years.

(b) Recommendations

The Task Force accordingly recommends that:

- (i) Given the gravity of the penalties under the State Security Act, there is need to redraft the

Act in a language that is easy to understand even for people without legal training.

- (ii) In drafting a new State Security Act the ***Johannesburg Principles on National Security, Freedom of Expression and Access to Information*** must be considered.
- (iii) Section 123(4) must be repealed, so that any person charged with the offence should be entitled to bail.
- (iv) If the admission to bail is likely to prejudice safety or security of the Republic the matter must be left to the court to decide. The burden must, however, rest upon the Prosecution to convince the Court that the admission of the accused person to bail will prejudice the interests and security of the Republic.
- (v) Before any arrest and prosecution under the State Security Act can be made leave of the Court must be obtained from the High Court. The prosecution must establish a prima facie case against the prospective accused person.
- (vi) They must prove that there has been violation of the provisions of the State Security Act and that the violation or breach has resulted in damage and that it is in the security interest of the Republic for criminal proceedings to be instituted.

III. PROTECTED PLACES ACT

The said Act is one of the statutes that were identified by the Media Reform Committee as a hindrance to press freedom, hence in need of repeal.

The Act must be read together with the State Security Act.

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) The said Act provides the mechanism for establishing protected places and their protection.
- (ii) The offences are created under sections 6 and 7 of the State Security Act.
- (iii) There is need to protect certain installations, but this need must be balanced against the right of the public to know.

(b) Recommendations

The Task Force accordingly recommends:

- (i) the Act be repealed and another one put in its place
- (ii) The recommendations made in relation to the State Security should be taken into account in drafting the new Act.

IV. NATIONAL ASSEMBLY (POWERS AND PRIVILEGES) ACT

This is another statute identified by the Media Reform Committee as a hindrance to press freedom. The complaint has arisen, bearing in mind the relationship between the media and the National Assembly, on attempts by the latter to maintain its dignity in the conduct of its business.

Findings and Recommendations

(a) Findings:

The Task Force finds that:

- (i) The problem with the National Assembly (Powers and Privileges) Act does not relate to what it provides, but what the National Assembly believes it has the power to do.
- (ii) The National Assembly wants to enjoy the same powers, immunities and privileges that the British Parliament enjoys. Hence there has been a tendency by the National Assembly to ignore the provisions of the Act.
- (iii) The Act provides in section 19 the actions, which amount to contempt of the House. Section 25 lists conducts, which are offences under the Act. This is in addition to other provisions, which criminalise other activities.
- (iv) The problem has risen where a person other than a Member of the House has done something which in the opinion of the House amounts to contempt. Section 28(3) provides that any such person, not being a Member of the House, may be ordered by the Speaker, once a resolution has been made by the Assembly, to appear before the House. Once the person has complied with the order he will be reprimanded at the Bar of the House.
- (v) Failure to attend the Assembly when called to do so is an offence under section 24. Where the conduct of person constitute an offence under the Act the speaker must present information on the nature of the offence to the Director of

Prosecutions who has the power under the Constitution to decide whether to commence criminal proceedings against a person or not.

- (vi) The National Assembly has opted to act contrary to the provisions of the National Assembly (Powers and Privileges) Act. It has assumed powers it does not have, such as the power to send a contemner to jail for a specified or unspecified period of time.
- (vii) The provisions of the National Assembly (Powers and Privileges) Act are adequate to protect the dignity of the House and the freedom of the media.
- (viii) The power to reprimand anyone who is not a member for conduct which, in the opinion of the House, amounts to contempt is perfectly in order. But for the House to assume the power to send people to jail for contempt or breach of any other provisions of the Act undermines the concept and spirit of separation of powers, which is the foundation of the Constitution.
- (ix) The National Assembly acting together with the President has a definite role to play: to enact laws. It is the duty of the Courts to interpret the law and for the executive branch of government to enforce the law as interpreted by the Courts. The National Assembly is not a Court, hence cannot deprive a person of his liberty by sending him to jail. Only the Court can do that under Article 13(b) of the Constitution.
- (x) In the event of an offence under the Act it is only proper that the matter is referred to the Director of Prosecution, who should determine

whether to prosecute the person involved or not, as opposed to the Assembly itself, which has interest in the matter.

- (xi) This will be in line with the idea of rule of law and separation of powers.
- (xii) The need for press freedom has to be balanced against the interests of the House to protect its dignity. The National Assembly (Powers and Privileges) Act, as it stands, provides that balance. This position will be enhanced by the wisdom that must be displayed by the Assembly in the conduct of its business.

(b) Recommendations

The Task Force accordingly recommends that steps must, be taken to cause Members of Parliament should conduct themselves according to the provisions of the Act.

V. PRINTED PUBLICATIONS ACT

The Media Reform Committee of 1993, recommended the repeal of this Act, but they did not specify the provisions of the Act, which undermine media freedom. The Act is fair and liberal enough to promote press freedom. Section 5 of the Act is an important provision. It requires the registration of a newspaper with the Director of the National Archives, before it is printed or caused to be printed. The full names and places of abode of every person who is or is to be proprietor, editor, printer, or publisher of such newspaper must be indicated on the appropriate form. Also required is the description of the premises where the newspaper will be published.

Every alteration in these details must be reported to the Director.

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) This information required under the Act is important to those who have been aggrieved by what has been published in the newspaper and want to commence legal proceedings.
- (ii) Some newspapers do not give details of the publishers or other officers. Section 5 addresses this concern.

(b) Recommendation

The Task Force accordingly recommends that the Printed Publications Act should be retained.

VI THEATRES AND CINEMATOGRAPHY ACT

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) The Media Reform Committee of 1993 identified the Theatres and Cinematography Exhibition Act as a piece of legislation which must be reviewed.
- (ii) In particular they recommended the abolition of the Film Censorship Board created under section 7 of the Act.
- (iii) The reasons for its repeal were never advanced in the report.

- (iv) With the advances made in technology especially the rise of satellite television the Board has become redundant.

(b) Recommendations

The Task Force accordingly recommends that a Film Classification Board should replace the Film and Censorship Board.

ZAMBIA NATIONAL BROADCASTING CORPORATION ACT

The said Act was enacted in 1987. It creates the Zambia National Broadcasting Corporation and defines its functions. It also provides for the control, regulation and licensing of broadcasting and diffusion services.

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) the Zambia National Broadcasting Corporation is constituted under section 3 of the Zambia National Broadcasting Act,
- (ii) The Act confers a monopoly in broadcasting upon the Zambia National Broadcasting Corporation. Other institutions cannot provide the broadcasting and diffusion services without a licence, which is given by the Minister.
- (iii) The control of the Zambia National Broadcasting Corporation is vested in the Board of Directors of the Corporation who are appointed by the Minister.

- (iv) In effect the control of the Zambia National Broadcasting Corporation is vested in the Government.
- (v) The same Act also provides for the mechanism for the award of licence in broadcasting and diffusion services
- (vi) the idea of commercialising the Zambia National Broadcasting Corporation was being considered by the Government
- (vii) The acceptance of democracy entails acceptance of plurality of ideas and diversity in the media industry.
- (viii) The arrangement contained in the said Act does further this democracy principle.

(b) Recommendations:

The Task Force accordingly recommends:

- (i) the creation of an Independent Broadcasting Authority with the responsibility to regulate Broadcasting Services in Zambia,
- (ii) The control of the Zambia National Broadcasting Corporation should be vested in an independent Board accountable to an Independent Broadcasting Authority.
- (iii) A new legislation separate from the Zambia National Broadcasting Corporation Act be promulgated to provide for licensing and allocation of frequencies.

VII. RADIO COMMUNICATIONS ACT

The Radio Communications Act is a new piece of legislation. It came into force on 3 June 1994, and it is yet to be tested. But some problems have been identified in relation to licensing.

Findings and Recommendations

(a) Findings

- (i) For instance the Communications Authority, established under the Act, has set a fee of US\$40,000 for a B3 licence for Internet service providers.
- (ii) In addition the Authority must receive 5% of the yearly gross turn over.
- (iii) These are extreme conditions for granting a licence. They do not favour competition among Internet service providers.
- (iv) The Internet service is dominated by ZAMNET, which enjoys a virtual monopoly.
- (v) The ZAMNET charges can at best be described as extortion. They are extraordinarily high in comparison to developed countries, where people's buying power is far much greater than in Zambia.
- (vi) For one to secure connection with ZAMNET he has to pay a connection fee of over US\$ 50, whereas in the United Kingdom, for instance, connection to the Internet is often free.
- (vii) In addition one has to pay a monthly charge of over US\$25 for 20 hours of connection time to the Internet. In the UK one pays £4 per month only.

(viii) Whereas the Zambia National Broadcasting Services Act provides for the mechanism for securing broadcasting diffusion service licences, the Radio Communications Act provides for the allocation of frequencies

(b) Recommendations

The Task Force accordingly recommends that:

- (i) Measures should be put in place to ensure that the licensing conditions favour local entrepreneurs who want to venture into this area of business.
- (ii) The licensing conditions must be flexible and encourage competition among Internet Service Providers, which will ultimately benefit the people.
- (iii) The repeal of the Radio Communications Act. In its place a new Act of Parliament must be formulated, which must provide for the existence of an Independent Broadcasting Authority with power to issue licences and allocate frequencies.

VIII. DEFAMATION ACT

It was the opinion of the Media Reform Committee that this legislation needs substantial revision, but no specific areas were identified. The said Act came into effect on 27 November 1957.

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) The purpose of the law was to amend the common law position of the law on libel, other than criminal libel and slander.
- (ii) It sought to amend case law on defamation as it had developed up to 1957.
- (iii) There have been some important developments in the area of defamation in other jurisdictions, which are of benefit to Zambia.
- (iv) The stereotyped defences to a defamation action (e.g. truth, fair comment, privileged occasion, etc) do not necessarily provide adequate protection for the freedom of the media.

(b) Recommendations

The Task Force accordingly recommends that the Act must be amended to recognise that:

- (i) Freedom of expression including media freedom constitutes one of the essential foundations of a democratic society.
- (ii) There is no closed list of defences excluding unlawfulness and the court is entitled to recognise new situations in which a defendant's conduct in publishing defamatory matter is lawful.
- (iii) Courts must accept that the media have the right, and indeed a vital function to inform the public about every aspect of public, political, social and economic activity and thus to contribute to the formation of public opinion.
- (iv) The law should recognise the defence of qualified privileged occasion available to the media, on

the basis of their duty to inform and the public's right to be informed.

- (v) The central issue in a defamation case must be whether the publication was unlawful and this unlawfulness must be determined in terms of the criterion of reasonableness or unreasonableness
- (vi) This unreasonableness test must accommodate the publication of some falsity in limited circumstance. However, falsity must be an important factor in deciding the legality of the publication.
- (vii) A test of the reasonableness of the publication, nevertheless, must demand a high degree of circumspection on the part of editors and editorial staff.
- (viii) This test must include factors such as the time and manner of the publication, the 'status' or degree of public concern in the information, its political importance, the tone of the publication, the reliability of its source, the steps taken to verify the information and whether the person referred to has been given an opportunity to verify, comment on or reply to the allegation(s).
- (ix) The need to publish before establishing the truth in a positive manner must be a factor to be considered in determining the overall lawfulness of the publication. In some special cases the urgency of publishing matter of burning public concern may be crucial.

- (x) The defendant must bear a full onus of proving a defence excluding unlawfulness on a preponderance of probabilities

IX MINISTERIAL AND PARLIAMENTARY CODE OF CONDUCT

The Parliamentary and Ministerial Code of Conduct Act was introduced after 1991.

Findings and Recommendations

(a) Findings

The Task Force accordingly finds that:

- (i) The Act establishes the code of conduct for Members of Parliament including those that are Ministers or Deputy Ministers, in line with the provisions of Articles 71 and 52 of the Constitution.
- (ii) Section 13(2) of the Act empowers Members of Parliament to lay complaints before the Chief Justice, where there has been a report in the media alleging directly or by implication that the Member concerned has breached the Code of Conduct and ask that the allegation be investigated.
- (iii) The Chief Justice will notify the President and the Speaker of the National Assembly of the complaint and appoint a tribunal to investigate the allegations.
- (iv) The tribunal must submit its report on the findings to the Speaker, the President and the Member involved within forty-five days from the date of appointment.

- (v) The Speaker is under obligation to submit the report before the National Assembly. In its findings the Tribunal may make such recommendations as to the administrative actions, criminal proceedings or further actions that may be necessary against the parties involved.
- (vi) Section 13(2) was not part of the original Bill presented before Parliament. When it was introduced there was an outcry from the media,
- (vii) The provision was seen as another attempt to introduce legislation oppressive of the media.
- (viii) The provisions are progressive. They provide an inexpensive and speedy way of addressing grievances between Members of the House and the media.
- (ix) It is settled that the media must be free, but this freedom must be exercised with the interest of others in mind. The provisions impose an obligation upon the media to be accurate in their reporting and not publish sensational and unsubstantiated allegations.
- (x) For most Members of Parliament a finding of the Tribunal that the allegations made in the publication were unfounded is sufficient to clear their names. Most of them are not interested in going through the painful and labourious process of litigation.
- (xi) The Tribunal can only recommend criminal prosecution of the media personnel involved if the allegation made are unsubstantiated, but it cannot itself mete out any criminal sanctions or any form of punishment.

(xii) This is an important development that must be encouraged in view of the fact that the normal judicial proceedings, criminal or civil, take time and are expensive to pursue.

(b) Recommendations

The Task Force accordingly recommends that the section 13(2) be retained.

X CONTEMPT OF COURT (MISCELLANEOUS PROVISIONS) ACT

It was the view of the Media Reform Committee of 1993 that this Act must be repealed in that it restricted the amount of information and or comments journalists can publish about the courts

Findings and Recommendations

(a) Findings

The Task Force finds that:

- (i) The power to punish for contempt is part of the inherent jurisdiction of the courts.
- (ii) Even in the absence of this Act the courts still enjoy the powers to punish for contempt.
- (iii) The Act seeks to amend the law of contempt the way that it has evolved at common law. It has gone further to list acts that amount to contempt and those that do not.
- (iv) This is meant to provide clarity and inform the people well in advance as to the conduct which amount to contempt, instead of having such issues left to the exclusive determination of the courts. The need for freedom must be weighed against the need for judicial institutions to

perform their functions correctly and independently.

- (v) It is essential to the maintenance, and indeed to the very existence, of the legal system of any State that the court should have ample powers to enforce its orders and to protect itself from abuse of its procedure.

(b) Recommendations

The Task Force accordingly recommends that the said Act be retained in its current form.

3.3 NEW LEGISLATION

(a) Findings

The Task Force noted that all the legal provisions, which relate to the media, are negative in effect. There are no laws, which seek to assist people in the media industry in the performance of their functions

(b) Recommendations

The Task accordingly recommends that:

- (i) A Freedom of Information Act be enacted in Zambia
- (ii) The enactment of a piece of legislation creating an Independent Broadcasting Authority.
- (iii) These pieces of legislation should be products of consensus between Government and all other stakeholders.