



Decriminalisation of Laws Limiting Freedom of Expression in Africa: Zambia Executive Summary

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EXECUTIVE SUMMARY: ZAMBIA

1. INTRODUCTION

This report into the use of laws that criminalise freedom of expression in Zambia is one of six country research projects into the impact of these laws conducted by the University of Pretoria on behalf of the Freedom of Expression Rapporteur of the African Commission on Human and Peoples Rights. The objective of the study is to assess whether or not the existence of such laws does limit freedom of expression in practice – and if so, the impact these laws have on this.

1.1 KEY FINDINGS

- There are several legislative provisions dating mainly from the colonial era that criminalise freedom of expression. These include provisions which outlaw, among other things, publication of false news with the intent of causing fear and alarm, defamation of the president and publication of seditious information.
- The laws, in particular those relating to criminal defamation, have been regularly used since 1991 when multi-party democracy was re-introduced. Media organisations, civil society entities and opposition politicians are the most often targeted by these laws. Criminal libel laws have further created challenges in the media as they are often sued under these for substantial amounts.
- This is despite numerous commitments made by different government leaders to reform the laws in response to campaigns linked to this. The current ruling party, the Patriotic Front, for example, pledged in its election manifesto to reform the legislative environment for media but has since election in 2011 not yet fulfilled promises.
- Active campaigns involving, among others, media organisations and legal bodies, have however had some success over the years – and, for example, thwarted attempts to introduce a statutory media regulation body to set and adjudicate on journalistic ethics and standards.
- An access to information law has been mooted for some time and a Bill prepared by government, but it has as yet not been promulgated. Many of those interviewed said that such a law was essential and should replace some of the other outdated security related laws.

2. BACKGROUND

2.1 COUNTRY FACTS

Zambia won its independence from Britain in October 1964. In 1972, following eight years of multi-party politics, a change in the constitution turned the country into a one party Marxist-Leninist state under the United National Independence Party (UNIP). This changed again in 1991 when multi-party elections were held. The Movement for Multiparty Democracy (MMD) won these first elections and another four subsequent polls but lost to the Patriotic Front (PF) after 20 years in power in 2011.

The 1991 transition included the liberalisation of the economy – resulting in the introduction of a range of independent media outlets.

Zambia has a population of just over 13m. The country is divided into ten provinces. English is the official language, and there are seven other national languages. There are however 73 different languages and dialects spoken in the country.

Since the reintroduction of multi-party democracy in 1991, the Constitution of Zambia has been officially reviewed a number of times. Most recently, current President Michael Sata appointed a technical committee chaired by a retired chief justice to review the Constitution which was submitted to the government following widespread consultation in June 2013 for its consideration. By July 2014 a final draft constitution had not as yet been made public and thus, while it is believed that it will contain new provisions on freedom of expression, this could not be verified.

The existing Constitution does protect freedom of expression. Article 20(1) states that a person “shall not be hindered in the enjoyment of freedom of expression” including the right to hold opinions and receive and impart ideas and information without interference. Article 20(2) stipulates that “subject to the provisions of this Constitution a law shall not make any provision that derogates from freedom of the press”.

This right is limited by Article 20(3) which protects among other things the “interests of defence, public, safety, public order, public morality or public health”.

2.2 OVERVIEW OF MEDIA

There are four major daily newspapers published in Zambia – two of which are state owned. Two of the three regularly published weekly newspapers are owned by the state. In addition there are another 12 newspapers and monthly journals.

There are 71 licensed radio services including four public services (three general and one educational) broadcast by the Zambian National Broadcasting Corporation (ZNBC). There are a range of other commercial services, religious stations and community licensees broadcasting to a particular community, town or region. There are also a growing number of internet publications and blogs, predominantly based in the capital Lusaka. Access to the internet is though limited (about 7 per cent of the population) but is growing with an increase in the number of smartphones.

There are 15 licensed television services (including subscription and free-to-air channels). The public broadcaster (ZNBC) broadcasts two television services.

Regulation of journalism ethics in the media has been a contested issue in the country. There is a self-regulatory body, the Zambia Media Council (ZAMEC), set up finally in 2013 by a range of media organisations the Press Association of Zambia (PAZA) and the Media Institute of Southern Africa Zambia Chapter (MISA-Zambia). At the time of finalising the report however ZAMEC was not yet fully operational due to a number of financial, procedural and legal technicalities. Government however has indicated that it believes a statutory regulatory council compelling all media to subscribe to a code would be preferable. ZAMEC membership is voluntary. Media and other advocacy organisations have however over the years thwarted several attempts by government to establish such a statutory regulatory bod .

2.3 LAWS THAT IMPACT ON FREEDOM OF EXPRESSION

Many of the laws that criminalise freedom of expression predate independence and thus were initially introduced to suppress resistance to colonialism. The table below summarises key legislation.

Offence/Provision	Detail	Law	Penalties
Prohibition of publications which are contrary to the public interest	Gives the President absolute discretion to prohibit publications which are contrary to the public interest. It is an offence to import, sell or possess a prohibited publication	Sections 53(1), 54, The Penal Code, 1931	For distribution of a prohibited publication: Two years imprisonment for first offence, three years thereafter and/or a fine of US\$900. For possession of a prohibited publication: One year imprisonment for first offence, two years thereafter and fine of up to US\$450.
Uttering seditious words or printing, publishing, selling distributing or reproducing seditious publications	The term sedition is broadly defined to include among other things, advocating the unlawful overthrow of government, "bring into hatred or contempt or to excite disaffection" against government or the administration of law in Zambia, raising discontent among the people of Zambia, promote feelings of ill will to any community or class of people, to incite resistance or disobedience to any law.	Section 60, Penal Code, 1931	First offence: seven years and/or fine of US\$1 800. Possession of seditious publication - first offence two years imprisonment and fine of up to US\$900. Second offence 5 year imprisonment
Publication of false news with intent to cause fear and alarm	Any person who publishes a statement likely to cause fear or alarm or to disturb the public peace "knowing or having reason to believe" the statement is false is guilty of a misdemeanour. The clause says it is not sufficient to argue that the accused did not know the statement was false without showing that they took reasonable steps to verify it.	Section 67, Penal Code 1931	Three years imprisonment
Defamation	The Penal Code provides for criminal prosecution for defaming a person. Other laws in Zambia provide for civil defamation	Sections 191-198, Penal Code 1931	Compensatory and exemplary damages
Defamation of the President	It is an offence to publish defamatory or insulting matter with "the intention to bring the President into hatred, ridicule or contempt". Other clauses in the Republican Constitution however protect the President from civil or criminal suits.	Section 69, and section 43 Penal Code 1931	No more than three years imprisonment
Defamation of foreign princes, dignitaries or ambassadors	It is an offence to publish anything which might "degrade, revile or expose to hatred or contempt" a foreign dignitary "with intent to disturb peace and friendship" between Zambia and the country of origin of the dignitary	Section 71, Penal Code 1931	
Criticism of Parliament or members of Parliament	It is an offence to, among other things, <ul style="list-style-type: none"> • publish any "false or scandalous libel" about the National Assembly or to "wilfully" misrepresent proceedings in parliament; • create or join in any disturbance which is likely to interrupt proceedings in parliament • publish any libel about any member of 	Section 25, National Assembly (Powers and Privileges Act), 1956	Imprisonment of up to 12 months "with or without hard labour" and/or fine of up to US\$1 500

	parliament regarding his/her "character or conduct as a member".		
Registration of newspapers	Provides for registration of newspapers	Printed Publications Act	One month imprisonment and/or US\$180
Sedition and/or possession of classified information or information about "protected places"	Allows for members of the public to be charged with sedition for publishing information that could endanger the state in times of war. The law also prohibits possession or distribution of classified information. The grounds for classification are vague.	State Security Act, 1969	15-20 years imprisonment for sedition

Other laws that include provisions that potentially criminalise freedom of expression and information include:

- The Public Order Act which requires that police give permission for gatherings and processions prior to them being held.
- The Preservation of Public Security Act which makes provision for the President to prohibit publication of any information which might be damaging to public security when a state of war has been declared and to detain people without trial during such a period.

3. LAWS IN PRACTICE

3.1 SUMMARY OF KEY CASES CHALLENGING THE LAWS

The constitutionality of many of the provisions highlighted in the table above has been challenged in court in cases related to charges under these laws. In almost all such cases the courts have decided that the provisions do not conflict with the Constitution. Where relevant, these cases are highlighted in 3.2 below.

There has been one specific petition on the constitutionality of legislative provisions on the basis of the right to freedom of expression. In November 2012, the Law Association of Zambia (LAZ) filed a petition in the Lusaka High Court to have sections of the Public Order Act giving police the right to deny permission for gatherings declared null and void. The Association argued that they violated the rights to freedom of assembly, speech and expression. The case was dismissed and the judge stated that he did not believe the provisions violated the constitution. LAZ has appealed this decision in the Supreme Court.¹

3.2 SUMMARY OF KEY CASES WHERE LAW HAS BEEN USED

As many of the laws were introduced under colonialism, precedents in some instances date back to that era. In this summary, however, only more recent cases are highlighted. The full research report provides detailed information on previous cases.

- In 1996, then President Frederick Chiluba banned an edition of the Post newspaper under clauses of the Penal Code giving the head of state the power to declare that a publication is not in the public interest. The paper's offices and the homes of several staff members were searched following this. Three senior staff members were arrested and detained for 48 hours and later charged under the State Security Act with being in possession of a prohibited publication and with classified information. The reason for

¹ The Appeal was still pending as of July 2014

the banning was that the newspaper had published information about a government plan on constitutional reform. They were acquitted of all charges in 1997 after the judge found that the state had not proved that the journalists had knowledge that the material was covered by the State Security Act.

- In 1999, 13 staff members from The Post newspaper were charged with espionage under the State Security Act for a story questioning the capacity of the Zambian army. The editor in chief of the paper in their defence stated that the information on weaknesses in the military was available on the internet. They were eventually acquitted of charges in 2001 as the judge found that there was no evidence of espionage or that the publication of the information was prejudicial to the country.
- In 2012, an opposition politician was charged with publication of false news after asserting that members of the ruling party were being trained by Sudanese militia. The papers which published his statement were not charged. The accused appealed to the High Court on the grounds that the provisions of the Penal Code dealing with publication of false news were unconstitutional but the High Court rejected his application for appeal. In June 2014 the case was still ongoing as the accused had launched further applications relating to the constitutionality of the provision.
- In July 2013 a freelance journalist and a former lecturer in journalism at a College were arrested and charged under the Penal Code with seditious practices and being in possession of seditious material with the intention of publishing it. The case was ongoing as of July 2014.
- Between 2012 and 2013 at least eight cases of defaming the President were lodged. In three of these cases, the accused, who were ordinary citizens, were sentenced to between three to six months imprisonment with hard labour.

In addition, there have been an increasing number of criminal defamation suits lodged against newspapers in recent years – with complainants requesting up to US\$800 000 in damages.

3.3 ADVOCACY INITIATIVES IN THE COUNTRY

There is a long history of initiatives to reform media related laws in Zambia.

In 1992, after the transition from a one-party state to a multi-party democracy, the then Minister of Information and Broadcasting organised a national seminar on media and democracy resulting in the establishment of a Media Reform Committee (MRC), including, among others, members from the private and public media, the Law Association of Zambia (LAZ), government, university media departments and civil society organisations. The MRC was charged with reviewing the state of the media with the aim of advancing press freedom. It made several recommendations on reform however these were generally not acted on by government.

Some of the members of the MRC met in 1999 to consider the lack of action by government and established a task team to review all legal provisions that impeded freedom of the media. A report on media law reform was finalised in 2000. Again, however, the majority of recommendations were ignored, though, after pressure and the drafting of private member Bills together with members of parliament, Government in 2002 introduced the Independent Broadcasting Authority Bill to establish an independent regulator and the Zambia National

Broadcasting Corporation Amendment Bill to transform the state broadcaster into a public broadcaster. The two Bills were adopted and made law, however a third Bill, the Freedom of Information Bill, was withdrawn after being introduced in Parliament and has yet to be enacted.

However, while the new laws provided for parliamentary appointments of Boards of the IBA and ZNBC, following public nominations and recommendations by an appointment committee, these appointments had not been finalised by July 2014. The process was halted initially by the then Minister who stated that she did not accept all recommendations from the committee. This was challenged by media organisations, but the court decided on appeal that the Minister had the right to refuse to accept the suggestions by the Committee. The laws were subsequently changed by Parliament to give the Minister sole responsibility for appointments.

Lawyers and media organisations have also used the courts to challenge other attempts by government to encroach on media freedom. In 1996, for example, PAZA successfully challenged in court a Bill to introduce a statutory media organisation - the Media Association of Zambia (MAZ). MAZ among other things would have made registration of journalists compulsory. The judge in the case ruled that the government's decision was contrary to freedom of expression related clauses in the Constitution.

Media organisations together with lawyers and human rights activists again squashed a government attempt to introduce a statutory media body in 1997 when the then Minister of Information and Broadcasting Services was forced to withdraw a Media Council of Zambia Bill following mass protests against this.

While the Patriotic Front before winning the 2011 elections promised in its manifesto to open up the media more and ensure greater independence of state owned media, the party has been accused of being slow to act on these promises now that it is in power. The Zambian Law Development Commission has however highlighted laws that need to be reformed in order to meet constitutional commitments to freedom of expression and information and media organisations have begun working on ensuring that such amendments are enacted.

4. IMPACT OF LAWS

Eleven people from a range of organisations and institutions were interviewed for the research. Unfortunately, representatives of the judiciary, police, Movement for Multiparty Democracy, the United Party for National Development declined to participate. Wherever possible however this was remedied by interviewing former members of, for example, the police – and in this instance a former Inspector General's views were sought in order to ensure different perspectives are reflected as far as possible.

A full list of interviewees is provided in an Appendix to this summary.

4.1 EXPERIENCES OF LAWS

All of those interviewed were familiar with the different provisions and most stated that they should be reformed or annulled. There was also widespread support for the promulgation of an access to information law, as promised by government. A representative of the ruling party was the only person to state unequivocally that he did not believe there was a need to amend any of the laws.

Almost all interviewees identified clauses of the Penal Code dealing with defamation of the president as particularly problematic, along with clauses of the Code relating to sedition and false news and parts of the State Security Act. Some, such as the Foundation for Democratic Process, also cited the Public Order Act as needing revision in order to bring it in line with African treaties and protocols, stating that it had been used to stop protests and public gatherings critical of government and highlighting that opposition leaders had been arrested under the Act for addressing informal gatherings. The Media Institute of Southern Africa – Zambia added that the Societies Act, requiring registration of non-governmental organisations, also impacted on freedom of expression as organisations critical of government were often threatened with closure under this law. The representative from MISA interviewed said that, for example, an online newspaper, *Zambian Watchdog*, had been threatened with closure under the Societies Act for not complying with provisions.

Interviewees said that media organisations and journalists, opposition politicians and civil society organisations were the most vulnerable to being charged under the laws.

A number of those interviewed have faced charges under the different pieces of legislation.

The Foundation for Democratic Process, for example, was being sued at the time of the interview for allegedly defaming the President in 2011 after asking in a statement why one of the ruling party MPs had been appointed as it seemed he was disqualified in terms of the Constitution as he had reportedly previously been declared bankrupt. The case was not concluded as of July 2014.

The Catholic Media Services highlighted how they had been victims of the State Security Act in 2012 when filming for a video documentary on the decline of industries in Zambia. One of the factories that was not operational that they visited to get footage for the documentary fell under the Ministry of Defence and was therefore they were told considered a “protected place”. Those filming the factory were “roughed up” by paramilitary police and were made to delete the footage of the factory or face losing their camera.

Many of those interviewed stated that they were very cautious about what they said or published due to the laws and concerns about being charged. The then executive of the Catholic Media Services (which has established a range of community radio services and a television channel) said that community radio in particular was very vulnerable as they did not have the resources to fight charges and could not afford to pay damages for defamation if awarded. He said these stations were frequently threatened with closure because of running discussion programmes where government or the President was criticised. This he stated tended to result in them being very cautious about the programming and news they carried.

The media and publicity director of the Patriotic Front, however, disagreed, stating that his party allowed people to air their views freely and had since winning the election in 2011 given licences to new radio and television services and increased the reach of others to increase access to media. He argued that freedom of expression has to be exercised responsibly and the laws ensured this. He said that the suing for criminal defamation by President of a number of people or institutions was evidence that no one is above the law, and he was exercising his rights as a citizen. He noted however that the party leader, Michael Sata had dropped a number of defamation cases on being appointed President.

A former inspector general of the police services, agreed in some ways with the representative from the Patriotic Front by arguing that the problems were generally in the implementation of the laws rather than the laws per se. He said though that he thought they should be reformed to limit such abuse. With reference to the Public Order Act, he said that when he was in the police force, he had not seen the need to block or cancel any processions or gatherings, though politicians sometimes interfered in the decisions of the police. He said the object of the Act was to ensure safety of the public and in his view this meant monitoring by the police of any gatherings rather than outlawing these. He said that in his experience even when participants in demonstrations might try to provoke the police to arrest them, it was far better to speak to those involved and defuse the situation rather than take a hard line.

Heads of state owned media companies also agreed on the need to reform the laws. The managing director of Times-Printpak Zambia Ltd, for example, noted that Penal Code clauses on sedition and on defamation of the President could result in criticism being stifled as they are vague.

He stated that he had himself faced problems with the laws in 2006 when he was managing editor of the Zambia Daily Mail. The paper had regularly updated the election results as they were released by the electoral commission. The first results in showed an early lead by two parties though the Movement for Multiparty Democracy eventually won the election. He was accused by his Board of running false news as the paper had noted in early editions that the two opposition parties were leading early on. While the Board eventually accepted his argument that he had merely published results issued by the electoral commission, the government had asked for him to be removed from his position and his contract was prematurely terminated. He had initially suffered financial challenges as no benefits or retrenchment fees were paid, but he challenged and won this in court.

The managing director of the Daily Mail at the time of the research (June 2013) highlighted that the company had also faced charges in 2012 under the National Assembly (Powers and Privileges) Act after writing an editorial criticising the behaviour of an opposition MP who had brought a chicken into parliament. He and another member of staff were summoned to the parliamentary committee on privileges and he was subsequently publicly chastised in the legislature for being in breach of parliamentary privilege. He was chastised and made to publicly apologise to the MP and to Parliament. Since then the paper has been careful not to criticise MPs.

4.2 GENERAL VIEWS ON THE LAWS

Almost all of those interviewed said the laws needed to be reformed, and an access to information law promulgated. It was noted repeatedly that many of the clauses were vague, which exacerbated the concerns relating to their impact on freedom of expression as it allowed them to be abused and interpreted broadly. It was emphasised that the laws have been used over the years to silence criticism and dissenting voices and thus severely inhibited freedom of expression and therefore democracy itself.

Concern was also raised about the imbalance in the laws – for example, it was highlighted that the President was protected from prosecution by the law and thus could not be sued but could sue others. In relation to this, it was also noted by some interviewees that the law did not

distinguish between the office of the President and the office bearer and thus allowed the President to lay charges of defamation even in instances of misconduct.

5. RECOMMENDATIONS

Since the liberalisation of the country and the media sector in 1991, reform of laws rooted in the colonial era which limit freedom of expression has been on the agenda. There has, however, been limited actual progress on reforming these and introducing new laws to reinforce this right (including an access to information law and rules to promote independence of state owned media and regulation) – despite the fact that members of government have made commitments to act on these areas.

The research makes the following key recommendations, among others:

- The campaigns to reform the laws and promulgate new laws to promote freedom of expression should be intensified. In particular, advocacy and awareness raising among a broad sector of society is important to ensure widespread support and understanding for the campaign. This should include a range of different human rights sectors, the Zambian Law Development Commission and people within government and the legislature. There are several initiatives – including the constitutional reform process – which should be considered in this.
- Alongside this, the African Commission and Freedom of Expression Rapporteur, together with other such continental and international bodies, should initiate discussions within the government and ruling party on the research and the campaign. This should focus on ensuring compliance with African protocols and standards.

Possible Quotes to include in layout and design

“While the Public Order Act does not restrict the president, vice president, ministers and deputy ministers, others need to get clearance, which means that the law in effect is not providing for divergent views to be freely expressed or else speakers of other views are to be caged. This law is only good for dictators and one-party states not a multiparty democracy like Zambia.” McDonald Chipenzi, executive director, Foundation for Democratic Process

“It is not right to equate an opinion to a criminal act – which offence should stay as a civil offence”, Father Paul Samasumo, Catholic Media Services

Interviewees

Executive Director, Foundation for Democratic Process, Macdonald Chipenzi

Executive Director, Transparency International Zambia, Goodwell Lungu

Media and Publicity Director, Patriotic Front, Chanda Mfula

Executive Director, Catholic Media Services, Paul Samasumo

Lawyer and former Inspector General of Zambia Police Service, Zunga Siakalima

Managing Director, Times-Printpak Zambia Limited, Godfrey Malama

Managing Director, Zambia Daily Mail Limited, Isaac Chipampe

Information and Research Officer, Media Institute of Southern Africa – Zambia, Jane Chirwa Da Silva

Retired journalist and formerly employed at Zambian News and Information Service, Augustine Phiri

Director, Zambian Institute of Advanced Legal Education and former director, Human Rights Commission, Enoch Mulembe

Senior research officer, Zambia Law Development Commission, Sam Mwapela