

# SO THIS IS DEMOCRACY?

State of media  
freedom in  
Southern Africa 2017



OFF

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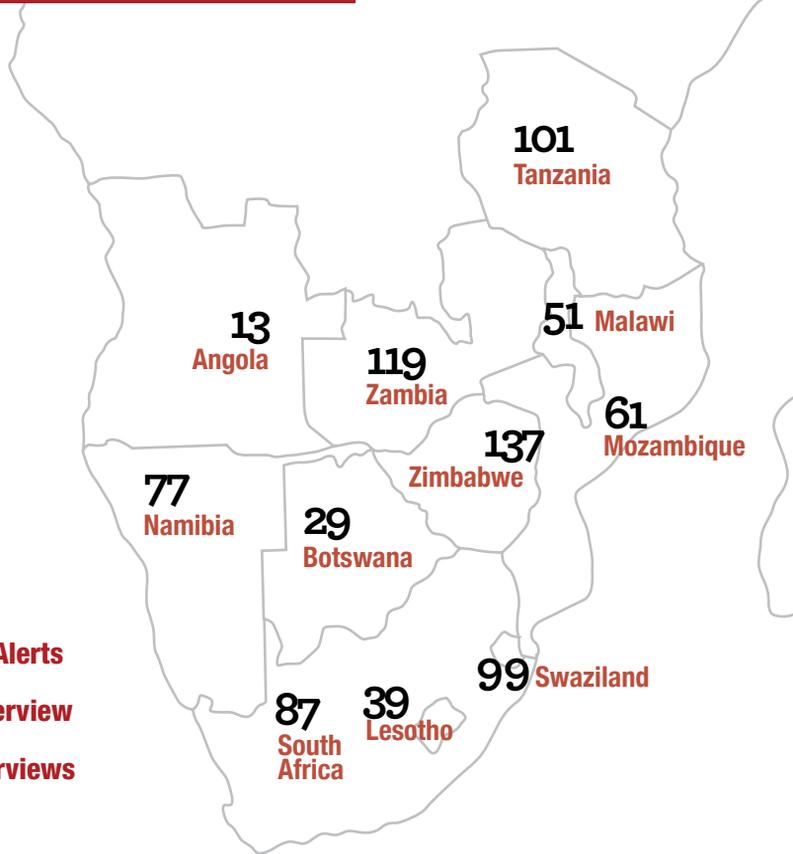
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# MISA alerts

Throughout the year, MISA issues media alerts in the following 11 categories:



## ASSAULTED

This includes any incident where journalists are physically assaulted, tortured, or wounded during the course of their work. The statistic refers to the number of media workers involved.



## BOMBED

This includes incidents where a journalist's home or the office of a media house/outlet/organisation is sabotaged through bombing, arson, vandalism or theft. The statistic given is for the number of media workers or media organisations involved.



## CENSORED

This covers incidents where information is prevented from being communicated. For example, issuing a gagging order, forcing editorial changes, using legislation like interdicts and court orders to stop information from being published, shutting down or suspending production and confiscating equipment or materials. The statistic given is for the number of media workers or media organisations involved.



## DETAINED

This refers to an incident where a media worker is imprisoned or detained. It can be legal or illegal and includes being sentenced to a gaol term or being detained without charge or incommunicado, held for preventative reasons, or arrested. The statistic given is for the number of media workers involved.



## EXPELLED

This includes incidents where journalists are expelled from, prevented from entering or leaving (such as by denying visas, work papers or accreditation), and / or generally inhibited from moving freely in a country or certain areas to perform their work. The statistic given is for the number of media workers involved.



## KILLED OR MISSING

This tops the list in terms of severity, and there is no need to explain why. Included under this category are incidents where journalists have been killed, kidnapped or gone missing in circumstances that suggest a link to their work or role as a journalist. The statistic given is for the number of media workers involved.



## LEGISLATED

This relates to all aspects of the legislative process and the application of common law. It includes instances where official proposals are made for new laws, legislation is passed, laws are amended or struck down either in Parliament or by the courts, and civil litigation is instituted against media. The statistic given is for the number of incidents reported.



## SENTENCED

This is when a judgement is handed down against a media worker involving either a prison term or a fine. The statistic given is for the number of media workers involved.



## THREATENED

This involves a threat from a public official, death threat, various forms of harassment (such as veiled warnings, threats of action, interference in editorial processes, cyber attacks, raids and forcibly occupying a home or office), or journalists being questioned or interrogated on their sources. The statistic given is for the number of media workers or media organisations involved.



## VICTORY

This includes immediate victories for media workers or organisations including being released unconditionally, having charges dropped, winning or avoiding civil litigation, overturning gagging orders and being acquitted of criminal charges. This category also includes incidents that advance media freedom, access to information or freedom of expression in general. For example, favourable policy statements, media friendly laws or policies and favourable and precedent-setting court judgements. The statistic given is for the number of incidents reported.



## VIOLATION OF PUBLIC FoE\*

This category includes incidents that affect freedom of expression (FoE) or speech in general, and do not necessarily involve media workers or organisations. For example, cases of sedition against members of the public, general curbs on free speech and access to information, violations of the right to freedom of assembly and protest, restrictions on artistic or academic freedom and restrictions on access to public media. The statistic given is for the number of incidents reported.



## NOTEWORTHY DEVELOPMENT

Other developments during the year under review worth mentioning are listed under 'noteworthy development'.

\*Freedom of expression





# REGIONAL OVERVIEW

Regional Overview 2017  
by MISA



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MISA's appropriately selected theme for 2017 – **'lights out on democracy'** – provides an ideal framework to interrogate the democratic

project in southern Africa. A closer look reveals an environment for media and citizenry that is highly volatile, hotly contested and often under pressure. A landscape where the insidious and subtle erosion of free speech rights is compounded both by the media's struggle for economic survival and its relevance to citizens who all too easily disown their media and the critical role it plays in keeping power to account.

Tanzania and Zambia stand out as democracies gone amok.

The Zambian political and social landscape was peppered with incidents ranging from the death of a student from Copperbelt University who was injured by police during a protest, to the bombing of a privately-owned media house in Lusaka and the declaration of a state of emergency following a spate of arson attacks on public installations.

President John Magufuli's crack down on all criticism and dissent is both subtle and overt and weighted against popular political and economic reforms. This makes it difficult for advocates to navigate the terrain of harnessing support to fight for fundamental rights when Magufuli's fiscal policy decisions reflect the strengthening of an economic sector. Citizens and stakeholders overlook infringements on freedom of expression and media freedoms. His shrewd skill in crafting law under the guise of regulation is in fact constricting the space for

opinions and in essence is creating a police state. Opposition politicians and journalists including the exiled Ansbert Ngurumo and the still-missing Azory Gwanda are on a growing list of the dead, disappeared and detained.

Across several borders in Zimbabwe, a major political shift with the removal of former President Mugabe in a November 2017 'intervention' by Zimbabwe's defence forces has so emboldened security forces - not only in Zimbabwe – that there is a legitimate concern for the abuse of power or lack of accountability on the part of the security forces. Supposed actions in the public interest or national security increasingly appear to be motivated by personal gain and consolidation of power in the securocrat.

## FREE EXPRESSION ONLINE

The inclination by African governments to shut down the internet or suspend social media sites and messaging apps continued in 2017. Whilst fewer internet shutdowns were recorded in 2017 as compared to 2016 (twelve instances of intentional internet or mobile network disruptions in nine countries in 2017, compared to eleven in 2016 ), Quartz Africa suggests that in 2017 governments either did so more frequently or over longer periods of time.

Internet shutdowns impede human rights such as freedom of expression and assembly, access to information and political rights. They also come at a huge cost to African economies. It is estimated that these digital interruptions came at a cost of nearly US Dollar 11 million last year.

Breaches to internet freedom thrive and flourish when there is no coordinated citizen and active society response. Digital rights activists warn that full-blown

internet shutdowns for instance do not just happen – they usually have been preceded by erstwhile “routine” acts such like mandatory SIM card registrations, without the corresponding legislation to protect citizens’ data . There are at least nine (9) southern African countries where mandatory SIM card registrations are required – Botswana, Democratic Republic of the Congo, Mauritius, Mozambique, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe – and legislation to that effect is looming in the rest.



**Under the guise of ensuring protection of citizens from computer related crimes, numerous governments across southern Africa either tabled or enacted legislation to regulate online content. In most instances such laws were poorly conceived, often violating citizens’ privacy and criminalising free speech.**

## LAWS, LAWS AND MORE LAWS

Under the guise of ensuring protection of citizens from computer related crimes, numerous governments across southern Africa either tabled or enacted legislation to regulate online content. In most instances such laws were poorly conceived, often violating citizens’ privacy and criminalising free speech. For example, Tanzania tabled the Electronic and Postal Communications (Online Content) Regulations 2017 that called for the registration of blogs and online forums, some of whom were already being stifled and battling the government in court.

Analysts predict that South Africa’s 2017 Cybercrimes and Cyber Security Bill is likely to lead to further deterioration in media freedom. The draft affords opportunity for repressive implementation, as well as enhanced investigative and surveillance powers for security agents. Angola’s Social Communication Legislative Package – a suite of five laws – among others provides for statutory regulation and criminalises free speech, and thus presents a serious threat to free expression and access to information.

MISA Zimbabwe has protested the government’s proposed merging of three cyber bills into one bill as the grouping of fundamental rights such as the right to privacy, access to information with consumer rights and cyber security into one piece of legislation, has the potential of undermining the protection of those rights. Namibia could learn from this experience. Local activists are campaigning for the separation of electronic transactions concerns from cybercrime elements in the country’s proposed Electronic Transactions and Cybercrime Bill.

## JOURNALIST SAFETY

Whilst southern Africa recorded fewer incidents of attacks against journalists in 2017, reports indicate a steep increase in the brutality of those attacks. Many such attacks emanated from successful anti-media campaigns by populist political and social leaders. Campaigns designed to sow distrust of mainstream media culminated in physical violence especially against journalists covering street protests or demonstrations.

## STRENGTHENING NORMS AND STANDARDS

The Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR), Lawrence Mute, in November 2017 indicated that he would prioritise the revision and/or expansion of the ACHPR's Declaration of Principles on Freedom of Expression in Africa, 2002. The main objective of the Declaration is to elaborate on the scope and content of Article 9 of the African Charter, which guarantees the right to information and freedom of expression, and it has been acknowledged that over time major pertinent issues have emerged, which are either not covered at all or are covered insufficiently in the Declaration.

Civil society groups have called for the inclusion of emerging internet rights and access to information in the proposed revision of the Declaration.

## NOT ALL IS LOST

Namibia hosted its inaugural internet governance forum in September 2017. Efforts to promote multi-stakeholder policy-making in Information and Communication Technology (ICTs) are bearing fruit.

Malawi's access to information law was promulgated in January 2017, over twelve years after it was introduced. The law facilitates access to information about elected officials and government institutions.

The change of guard in South Africa ushered in President Cyril Ramaphosa who appears more committed to an open society than former President Zuma. Looming threats of a statutory Media Appeals Tribunal which would inevitably usurp the self-regulatory functions of the Press Council appear to have been abated.



# ANGOLA

National Overview by  
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**T**he historic struggle between the media and the government in Angola has for a long time been primarily driven by the constant need to obstruct inspection and hinder transparency, because the disclosure of any ill in Angola would uncover someone profiting handsomely from it, directly or indirectly. A well-articulated system of patronage has hitherto ensured that the system is cohesive and defended against accusations of corruption, counting on support from the government, the judiciary, the military and the business sector. This institutionalised architecture of corruption at the highest levels poses the biggest threat to meaningful change with the helm in the hands of its new president, João Lourenço.

Against this background, a key development in Portugal brings welcome relief in the form of a ruling by the Lisbon Appeals Court, to the effect that Portugal can now investigate funds belonging to Angolan elites, regardless of whether or not such funds are the subject of a court case in Angola. Before this ruling, Portugal could investigate only cases where the funds were already the subject of an investigation in Angola. The new ruling however, states that as long as funds entering Portugal raise suspicion, then Portuguese authorities can look into their provenance and how they were obtained.

Just before the general elections in August 2017, the Sindicato de Jornalistas Angolanos (SJA) criticised public media for being partial in its analysis programmes, with guests that overwhelmingly favoured the People's Movement for the Liberation of Angola (MPLA)

position. The daily *Jornal de Angola* was spared, with SJA Secretary-General Cândido Teixeira citing its “exemplary performance”. ONG Handeka, an NGO created recently, monitored electoral coverage from 23-27 July 2017 and found that the state media favoured the MPLA. On the other hand, the former National Union for the Total Independence of Angola (UNITA) radio transformed into *Rádio Despertar*, was accused of being biased in favour of UNITA.



The historic struggle between the media and the government in Angola has for a long time been primarily driven by the constant need to obstruct inspection and hinder transparency, because the disclosure of any ill in Angola would uncover someone profiting handsomely from it, directly or indirectly.

On a lighter note, a refugee journalist from the Democratic Republic of the Congo (DRC), Roger Kamako, who arrived in Angola in April 2017, is working as a journalist at a UNICEF-created community radio station at a refugee camp in Dundo, far north-eastern Angola – just a few kilometres from the border with the DRC. He broadcasts health and hygiene information provided by NGOs, as well as requests from fellow refugees trying to locate lost relatives.

## FREEDOM OF EXPRESSION

The jury is still out on where Angola stands on freedom of expression. This is primarily due to the staggering number of radical changes introduced in the last quarter of the year by President João Lourenço, the effects of which have yet to be felt and analysed. For a better picture, please consult the section ‘Looking Forward to 2018’.

## BROADCASTING

October is ‘radio month’ in Angola in memory of the first visit by the first president of Angola to the studios of the national radio broadcaster in 1977. According to Angolan journalists, the new Press Law (the ‘mother’ law for the entire media sector), Law No. 1/17, is a step backwards, as it takes away hard-won conquests already enshrined in earlier legislation and fails to uphold the Windhoek Declaration regarding the national obligation to promote the media. Speaking at an event in the scope of radio month, a civil society activist voiced his disappointment at the new laws for the media sector approved early in 2016, which again failed to provide for community radio. He said there were no community radio stations in Angola in the true sense of the word; those that existed were mere extensions of the national radio. The SJA also felt strongly

about the issue, stating that municipal radio stations created by the national radio are not community radio stations.



“Only with freedom of expression and press freedom could the country move towards a true democracy – in as much as these are rights that are enshrined in the Constitution of the Republic of Angola, and which must be upheld by all.”

*President João Lourenço*

## ACCESS TO INFORMATION

Angola has had access to information (ATI) legislation from as far back as 2002, in fact, it was the first country in Africa to adopt an ATI law. In 2017, two additional laws were added, the Protection of Information Systems and Networks Law and the General Law on Archives, the latter being an instrument to preserve and enhancing the historical, cultural, documentary and archival heritage of the country, including documents abroad as long as they are considered property of or belonging to the Angolan State.

## MEDIA AND ELECTIONS

The 2017 general elections held in August saw the much-awaited changing of the guard at the highest level of government, with João Lourenço occupying the number one slot on the MPLA party list, taking over from José Eduardo dos Santos, who was at the helm of the party and the country for almost 40 years.

The MPLA won the elections with a reduced majority, with enough votes for 150 seats in the 220-seat assembly. Its long-standing foe, UNITA, conquered 51 seats. This represents a drop of almost 11% for the MPLA and an 8% gain for UNITA. Despite this significant reversal, opposition parties challenged the results, claiming that the vote at provincial level had been tallied in only three provinces. A few days later, UNITA claimed electoral fraud and appealed to the Constitutional Court, presenting seven key elements for the Court to deliberate on. The Court dismissed the case, saying that the evidence presented did not prove there were any irregularities or biases in the electoral process. The elections were monitored by more than three thousand national and international observers.

The biggest qualm from the media and the wider civil society was that the National Elections Commission (CNE) is not a truly independent body, despite the parameters set out in Law 12/12 of 13 April 2012. As a case in point, civil society feels strongly about the fact that voter registration is done by the Ministry of Territorial Administration (MAT), and not CNE. The former minister in charge of MAT and the voters' roll – is today the country's deputy head of state.

## JOURNALIST SAFETY

By and large, journalists in Angola enjoy relative safety in the exercise of their profession. In Angola, the weapons of choice used against journalists are the courts, doing the bidding of the politically powerful whenever they see grounds for legal action for defamation.



“The changes taking place in the new political cycle are what was promised during the electoral campaign. The changes will be founded on a society that regained its moral compass, with a serious fight against corruption and other practices detrimental to the public interest, to ensure the end of impunity and the opening of opportunities for all.”

*Victor Silva, Jornal de Angola*

## FREEDOM OF EXPRESSION ONLINE

Despite the new batch of laws to regulate the media sector and the creation of the Media Regulatory Authority (Entidade Reguladora da Comunicação Social) with powers to monitor web content, and taking into account the holding of general elections, there are no records of any action on the part of government against any user, no websites were blocked and no-one was asked to take down content.

## LOOKING FORWARD TO 2018

The next few months will be telling for the long-term prospects of the new president, with some saying that he is going too far, others that he dare not go too far. As it is, in November 2017 – three months after taking over the reins – João Lourenço relieved Isabel dos Santos, daughter of the former president, as head of Sonangol. On the same day, João Lourenço cancelled the contracts between the public broadcaster and the privately-owned firms Westside and Semba Comunicações, belonging to Tchizé and José Paulino dos Santos, also children of the former president, which in practice ran the broadcaster's *TPA2* and *TPA International* channels.

Public media journalists welcomed the news and the return to being managed by career journalists. Later in the month, Filomeno dos Santos, head of the Sovereign Fund, was removed from direct control of the Fund and made to report to the Secretary of State for the Budget and Public Investment, who in turn reports to the Minister of Finances. The Sovereign Fund is estimated at \$5 billion and accusations of irregularities abound.

Still in November, João Lourenço appointed new boards and directors to

all public media houses (national radio and television broadcasters, news agency and national daily newspaper). He stated on the occasion that only with freedom of expression and press freedom could the country move towards a true democracy, in as much as these are rights that are enshrined in the Constitution of the Republic of Angola, and which must be upheld by all. He said the media should allow more space for the voice of the public. This echoed the sentiments expressed by the new Minister of Social Communication (Media), João Melo, who in October defended that for the sake of credibility, public media outlets needed to practice balanced, pluralist, diversified, pragmatic and contextualised journalism and not a journalism that was bureaucratic and administrative.

In a clear sign of change, the new head of *Jornal de Angola*, Victor Silva, in his first editorial for the paper, and referring to the removal of Isabel dos Santos as head of Sonangol, said that the changes taking place in the new political cycle were what had been promised during the electoral campaign. The changes would be founded on a society that regained its moral compass, with a serious fight against corruption and other practices detrimental to the public interest, to ensure the end of impunity and the opening of opportunities for all. Silva added that changes were almost always aimed at bringing in new dynamics and should not be seen as mere substitutions of faces and names. Concerning Isabel dos Santos's exit from Sonangol, he stated that as a politically exposed person (PEP), she was an obstacle to development; during her tenure, the company's indebtedness had worsened and there had been complications in terms of relations with foreign operators as Sonangol was struggling to secure financing.

## English

In December, the new president relieved Attorney-General João Maria de Sousa of his duties, a job he had held for a decade. João Maria de Sousa is no stranger to the media fraternity, having been the focus of a number of investigative pieces by activist and journalist Rafael Marques that resulted in a number of long-running court battles. The latest of these is still running its course, a case in which Rafael Marques and Mariano Brás are accused of *crimen injuria* against a public authority and insulting an institution of sovereignty. Journalist Eduardo Gito began a campaign for the immediate abolition of the two co-accused. Also in December, João Lourenço restructured the boards of a number of public enterprises in other sectors.

Lourenço has taken other steps towards reform, including granting a temporary amnesty to rich Angolans willing to repatriate their fortunes from abroad. He threatened to take legal action against those who won't comply. Nobody knows exactly how much money the elite is hiding outside the country, but Angolan economists have estimated the amount of money outside the country at \$28 billion, which amounts to more than the country's international reserves.

All in all, there is plenty of evidence to suggest that Angola can look forward to positive change, especially in terms of media freedom and freedom of expression. As a case in point, in November, Luaty Beirão, the activist who in 2015 was arrested and sentenced to jail together with 14 others in Luanda after organising a reading of an adaptation of American academic Gene Sharp's 1993 book *From Dictatorship to Democracy: A Conceptual Framework for Liberation* launched a book recounting his ordeal in prison. In an interview, Beirão said that one could "see more freedom". The

book launch was held at a hotel in Luanda and went off without any hitch.

# ANGOLA MEDIA FREEDOM VIOLATIONS AND VICTORIES



## February 2017 DETAINED

Journalist Nsimba Jorge, a correspondent for *AFP (Agence France Presse)* in Angola, who was detained outside the Hospital of Uíge (northern Angola) after having collected testimonies from some of the victims of an accident that caused around two dozen deaths at the local stadium the day before. The authorities alleged at the time that the journalist was not authorised to report at the hospital.



Service in Luanda in December. However, since then the charge has been changed to “crimes against the security of the State”. Journalist Mariano Brás of *O Crime* newspaper is a co-accused for republishing the subject of the *Maka Angola* website, with the accusations against the former Attorney General.



## April 2017 CENSORED

Journalist Carlos Alberto of *LAC* radio station in Luanda was dismissed. The director of the radio station would not offer any reasons for the dismissal. However, Alberto says he is convinced that it has to do with the fact that he never complimented the MPLA on anything they had done.



## June 2017 VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

Security forces violently dispersed a peaceful demonstration organised by the Lunda Tchokwe Protectorate Movement in Lunda Norte, killing a passer-by, wounding 13 people and arresting 70 demonstrators. The Movement is fighting for autonomy, an end to the persecution and arbitrary arrest of members of their organisation as well as the release of political prisoners.



## June 2017 CENSORED

Angolan journalist Rafael Marques was formally charged with a crime against state security for alleged offenses against the President of the Republic and the former Attorney General João Maria de Sousa. At issue is an article that was published on the website *Maka Angola* in October 2016, in which Marques denounced the private business activities of the former AG, in violation of the Constitution, with the consent of the Head of State, José Eduardo dos Santos. Marques was heard at the Criminal Investigation

## July 2017 VICTORY

The Constitutional Court declared unconstitutional the Non-Governmental Organisation Presidential Decree of March 2015, which sought to monitor the registration and financial support of NGOs. In declaring it unconstitutional, the Court stated the approval should have been done through the National Assembly. The Decree empowered the Public Prosecutor's Office to suspend the activities of national and international NGOs on suspicion of money laundering, or illegal or harmful acts against “Angola's sovereignty and integ-

...rity". There there were widespread fears that these offences would be interpreted over-broadly in practice, resulting in a crackdown on civil society.

private and public media. Until the end of the reporting period of the present publication, 31 December 2017, the boycott was still in place.



### **August 2017** **ASSAULTED**

Journalist Vicente Salgueiro of *Rádio Ecclésia* was assaulted while reporting on a smell coming from Sonangol's logistics base, which had caused a number of cases of fainting.



### **December 2017** **CENSORED**

The generators of *Rádio Ecclésia* in Malanje were utterly vandalised, not only with the removal of key components, but also the destruction of wiring and pipes. The motive for the act of vandalism is not known.



### **September 2017** **DETAINED**

Journalist Pedro Teca denounced having been detained by the authorities during the investiture ceremony of the new President of Angola, despite being accredited to cover the event. Teca, who was in the service of the Angolan newspaper *Folha 8*, was taken by members of the protocol unit at the ceremony while inside the venue with other media professionals at the António Agostinho Neto Memorial. No reasons were offered for this detention. Teca is a known member of the group of young Angolans known as "revús" (revolutionaries), critics of José Eduardo dos Santos.



### **December 2017** **CENSORED**

A number of individuals described by journalists as 'strangers' accompanied by a policeman entered the press room at the National Assembly and confiscated the material that the cameraman of *TV Zimbo* had recorded. The incident drove the SJA to organise a boycott of Parliamentary proceedings that was widely supported by both

**A** luta histórica entre a comunicação social e o governo em Angola há muito tempo é impulsionada pela constante necessidade de obstruir a fiscalização e impedir a transparência, porque invariavelmente a revelação de qualquer podre em Angola revelaria alguém a lucrar directa ou indirectamente. Um sistema de clientelismo bem articulado assegurou até agora que o sistema é coeso e praticamente defendido contra acusações de corrupção, contando com apoio suficiente no governo, no judiciário, nos militares e no sector empresarial. Esta arquitectura institucionalizada de corrupção ao mais alto nível representa a maior ameaça a possíveis mudanças significativas com o leme nas mãos do novo presidente, João Lourenço

Neste contexto, um importante evento em Portugal pode representar um certo auxílio, sob a forma de um acórdão do Tribunal da Relação de Lisboa, no sentido de Portugal poder investigar fundos pertencentes a elites angolanas, independentemente de haver ou não processo-crime em andamento em Angola. Antes da decisão, Portugal podia investigar apenas nos casos em que os fundos já eram alvo de uma investigação em Angola. O novo acórdão afirma que, desde que os fundos entrem em Portugal e levarem suspeitas, as autoridades portuguesas podem averiguar a sua proveniência e como foram conseguidos.

Pouco antes das eleições gerais de Agosto do ano passado, o Sindicato de Jornalistas Angolanos (SJA) criticou os órgãos de comunicação públicos por serem parciais nos seus programas de análise, com convidados que pre-

dominantemente favoreciam a posição do Movimento Popular de Libertação de Angola (MPLA). O diário Jornal de Angola foi poupado, com o secretário-geral do SJA, Cândido Teixeira, a citar o seu “desempenho exemplar”. A recém-criada ONG Handeka monitorizou a cobertura eleitoral entre 23 e 27 de Julho e concluiu que os órgãos de comunicação estatais favoreceram o MPLA. Por outro lado, a antiga estação de rádio da União Nacional para a Independência Total de Angola (UNITA), transformada na Rádio Despertar, foi acusada de ser tendenciosa a favor da UNITA.



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## Português

Num tom menos sério, um jornalista refugiado da República Democrática do Congo (RDC), Roger Kamako, que chegou a Angola em Abril de 2017, trabalha como jornalista numa estação de rádio comunitária criada pela UNICEF num campo de refugiados no Dundo, no extremo nordeste de Angola, a poucos quilómetros da fronteira com a RDC. Transmite informações de saúde e higiene disponibilizadas pelas ONG, bem como solicitações de outros refugiados que tentam localizar parentes desencontrados.

### LIBERDADE DE EXPRESSÃO

É cedo para poder formar um juízo sobre a situação de Angola em termos de liberdade de expressão. Isto deve-se principalmente ao número impressionante de mudanças radicais introduzidas no último trimestre do ano pelo Presidente João Lourenço, cujos efeitos ainda não foram sentidos e examinados. Para uma análise mais aprofundada, consulte a secção sobre Perspectivas para 2018.

### RADIODIFUSÃO

Outubro é ‘mês da rádio’ em Angola, comemorando a primeira visita do primeiro presidente de Angola aos estúdios da emissora nacional de rádio em 1977. Segundo os jornalistas angolanos, a nova Lei de Imprensa (a lei ‘mãe’ para toda a comunicação social), Lei 1/17, é um retrocesso, pois anula ganhos conquistados com grande esforço, já consagrados em diplomas anteriores e não cumpre a Declaração de Windhoek no que diz respeito à obrigação do Estado de promover os meios de comunicação. Falando num evento no âmbito do mês da rádio, um activista da sociedade civil manifestou a sua decepção com a nova série de leis para o sector de comunicação social aprovadas no início de 2016, que mais uma vez ignoram as rádios comunitárias. O activista é da opinião que não existem estações de rádio

comunitárias em Angola no verdadeiro sentido da palavra; as que existiam são meras extensões da rádio nacional. O SJA também se preocupa muito com a questão, acrescentando que as estações de rádio municipais criadas pela rádio nacional não são estações de rádio comunitárias.

### ACESSO À INFORMAÇÃO

Angola já tem legislação sobre o acesso à informação desde 2002, na verdade, o primeiro país em África. Em 2017, foram acrescentadas outras duas leis, a Lei de Protecção de Sistemas e Redes de Informação e a Lei Geral de Arquivos, esta última, um instrumento para preservar e valorizar o património histórico, cultural, documental e arquivístico do país, incluindo documentos no exterior, desde que sejam considerados propriedade ou pertencentes ao Estado angolano.

### COMUNICAÇÃO SOCIAL E ELEIÇÕES

As eleições gerais de 2017, realizadas em Agosto, testemunharam a tão esperada mudança da guarda no mais alto nível de governo, com João Lourenço a assumir o primeiro lugar na lista do MPLA, substituindo José Eduardo dos Santos, que estava à frente do partido e do país há quase 40 anos. O MPLA ganhou as eleições com uma maioria reduzida, com votos suficientes para 150 lugares na assembleia de 220 lugares. A UNITA, opositores de longa data, conquistou 51 assentos. Isto representa uma queda de quase 11% para o MPLA e um ganho de 8% para a UNITA. Não obstante esta reversão significativa, os partidos da oposição contestaram os resultados, alegando que os votos a nível provincial foram apurados em apenas três províncias. A UNITA reclamou ter havido fraude eleitoral e recorreu ao Tribunal Constitucional, onde apresentou sete elementos principais para o tribunal estudar. O tribunal rejeitou o processo, afirmando que as provas apresentadas

não provavam que houvesse quaisquer irregularidades ou imparcialidade no processo eleitoral. As eleições foram monitorizadas por mais de três mil observadores nacionais e internacionais.

O maior receio da comunicação social e da sociedade civil é o facto de que a comissão nacional de eleições (CNE) não é um órgão verdadeiramente independente, apesar dos parâmetros estabelecidos na lei, a Lei 12/12 de 13 de Abril de 2012. A título de exemplo, a sociedade civil reclamou que o recenseamento eleitoral é feito pelo Ministério da Administração do Território (MAT), e não pela CNE. O ex-ministro encarregado do MAT – e dos cadernos eleitorais – é hoje o vice-presidente do país.

## SEGURANÇA DE JORNALISTAS

De um modo geral, os jornalistas em Angola gozam de relativa segurança no exercício da sua profissão. A arma de escolha em Angola usada contra jornalistas são os tribunais, às ordens dos politicamente poderosos sempre que estes vêem motivos para mover uma acção judicial por difamação.

## LIBERDADE DE EXPRESSÃO ONLINE

Apesar do novo pacote de leis para reger o sector de comunicação social e a criação da Autoridade Reguladora com poderes para monitorizar o conteúdo da web, e se levarmos em conta a realização de eleições gerais, não há registos de qualquer acção judicial por parte do governo contra qualquer utilizador, nenhum site foi bloqueado e ninguém recebeu instruções para excluir algum conteúdo.



**“Só com liberdade de expressão e de imprensa o país poderá caminhar para a verdadeira democracia, na medida em que são direitos consagrados na Constituição da República de Angola, e devem ser respeitados por todos”**

*President João Lourenço*

## PERSPECTIVAS PARA 2018

Os próximos meses serão reveladores das perspectivas de longo prazo do novo presidente, com alguns a dizer que está a ir longe demais, outros que não ousa ir longe demais. De qualquer modo, em Novembro – três meses depois de assumir as rédeas – João Lourenço exonerou Isabel dos Santos, filha do ex-presidente, do cargo de presidente do conselho da Sonangol. No mesmo dia, João Lourenço cancelou os contratos entre Westside a emissora pública e a e Semba Comunicações, pertencentes a Tchizé e José Paulino dos Santos, também filhos do

ex-presidente, que na prática controlavam os canais TPA2 e TPA Internacional da emissora pública. Os jornalistas dos órgãos da comunicação social pública receberam com agrado a notícia e o retorno a uma gestão por jornalistas de carreira. No final do mês, Filomeno dos Santos, presidente do Conselho de Administração do Fundo Soberano, foi afastado do controlo directo do fundo e subordinado ao Secretário de Estado do Orçamento e Investimento Público, que por sua vez subordinado ao Ministro das Finanças. O fundo soberano é estimado em 5 mil milhões de dólares e abundam acusações de irregularidades.

Ainda em Novembro, João Lourenço nomeou novos quadros e directores em todos os órgãos de comunicação públicos (emissoras nacionais de rádio e televisão, agência noticiosa, jornal diário nacional), altura em que afirmou que só com liberdade de expressão e de imprensa o país poderá caminhar para a verdadeira democracia, na medida em que são direitos consagrados na Constituição da República de Angola, e devem ser respeitados por todos. Disse ainda que a comunicação social deve dar mais voz ao cidadão. Esta mensagem lembra uma declaração do novo ministro da Comunicação Social, João Melo, que em Outubro defendeu que, para aumentar a credibilidade, os órgãos públicos da Comunicação Social devem praticar um jornalismo equilibrado, pluralista, diversificado, pragmático e contextualizado; não um jornalismo burocrático e administrativo. Numa indicação clara de que as coisas estão a mudar, o novo chefe do Jornal de Angola, Víctor Silva, no seu primeiro editorial do jornal, referindo-se à destituição de Isabel dos Santos como chefe da Sonangol, disse que “o novo ciclo político, afinal, não tem feito mais do que foi prometido durante a campanha eleitoral com acento

na moralização da sociedade através do combate à corrupção, do fim da impunidade e da abertura de oportunidades iguais para todos”. Silva acrescentou que as mudanças quase sempre visam trazer novas dinâmicas e não devem ser vistas como meras substituições de figuras e nomes. Sobre a saída de Isabel dos Santos da Sonangol, disse que, como pessoa politicamente exposta (PEP), ela era um obstáculo ao desenvolvimento; durante o seu mandato, o endividamento da empresa havia piorado e as relações com operadores estrangeiros eram complicadas; a petrolífera nacional não conseguia os financiamentos externos necessários.

Em Dezembro, o novo presidente exonerou o procurador-geral João Maria de Sousa das suas funções, cargo que ocupou por uma década. João Maria de Sousa não é desconhecido da classe jornalística, tendo sido alvo de várias peças de investigação do jornalista activista Rafael Marques, resultando em várias batalhas judiciais de longa duração. A mais recente destas está ainda a decorrer, em que Rafael Marques e Mariano Brás são acusados de injúria contra uma autoridade pública de insultarem uma instituição de soberania. O jornalista Eduardo Gito iniciou uma campanha pela imediata absolvição dos dois co-acusados. Também em Dezembro, João Lourenço reestruturou as directorias de várias empresas públicas em outros sectores.

Lourenço deu outros passos em direcção à reforma, inclusive concedendo uma amnistia temporária a angolanos ricos dispostos a repatriar suas fortunas escondidas no exterior. E ameaçou tomar medidas legais contra aqueles que não cumprem. Ninguém sabe exactamente quanto dinheiro a elite tem fora do país, mas economistas angolanos estimaram

em US\$ 28 mil milhões, o que equivale a mais do que as reservas internacionais do país.

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**“O novo ciclo político, afinal, não tem feito mais do que foi prometido durante a campanha eleitoral com acento na moralização da sociedade através do combate à corrupção, do fim da impunidade e da abertura de oportunidades iguais para todos”**

*Victor Silva, Jornal de Angola*

Em suma, há bastantes sinais de que as coisas parecem estar a caminhar bem para Angola e especialmente para a liberdade dos meios de comunicação e a liberdade de expressão. A título de exemplo, em Novembro, Luaty Beirão, activista que juntamente com outras 14 pessoas foi detido e condenado em 2015, em Luanda, após organizar a leitura da adaptação do livro de 1993 do académico americano Gene Sharp, “Da Ditadura à Democracia: Uma estrutura

conceitual para a libertação” lançou um livro a contar sua provação na prisão. Em entrevista, Beirão disse que se pode “ver mais liberdade”. O lançamento do livro foi realizado num hotel em Luanda e decorreu sem qualquer problema.

# VIOLAÇÕES DA LIBERDADE DE IMPRENSA & VITÓRIAS EM 2017



## Fevereiro DETIDO

O jornalista Nsimba Jorge, correspondente da Agence France Presse em Angola, que foi detido em frente ao Hospital do Uíge (norte de Angola) após ter recolhido depoimentos de algumas das vítimas do acidente que causou cerca de duas dezenas de mortes no estádio local no dia anterior. As autoridades alegaram que na altura o jornalista não tinha autorização para fazer a reportagem no hospital.



## Abril CENSURADO

O jornalista Carlos Alberto, da rádio LAC, em Luanda, foi demitido. O director da estação de rádio não apresentou quaisquer razões para a demissão. No entanto, Alberto diz estar convencido de que tem a ver com o facto de nunca ter elogiado o MPLA por nada que tenha feito.



## Junho CENSURADO

O jornalista angolano Rafael Marques foi formalmente acusado de um crime contra a segurança do Estado por alegadas ofensas contra o Presidente da República e o antigo Procurador-Geral João Maria de Sousa. Em causa está um artigo publicado no site Maka Angola em Outubro de 2016, no qual Marques denunciou actividades privadas de negócios do antigo Procurador-Geral, em violação da Constituição, com o consentimento do chefe de Estado, José Eduardo dos



Santos. Marques foi ouvido pelo Serviço de Investigação Criminal em Luanda, em Dezembro. No entanto, desde então, a acusação mudou para “crimes contra a segurança do Estado”. O jornalista Mariano Brás, do jornal O Crime, é co-acusado por republicar no seu jornal o tema do site Maka Angola, com as acusações contra o ex-procurador-geral.



## Junho VIOLAÇÕES DA LIBERDADE DE EXPRESSÃO PÚBLICA

Forças de segurança dispersaram violentamente uma manifestação pacífica organizada pelo movimento Protectorado Lunda Tchokwe na Lunda Norte, deixando 1 morto, ferindo 13 pessoas e prendendo 70 manifestantes. O movimento luta pela autonomia, pelo fim da perseguição e detenção arbitrária de membros da sua organização e pela libertação de presos políticos.



## Julho VITÓRIA

O Tribunal Constitucional declarou inconstitucional o Decreto Presidencial que regula a actividade das Organizações Não Governamentais, de Março de 2015. O decreto visa monitorizar o registo e apoio financeiro das ONG. Ao declarar que é inconstitucional, o tribunal declarou que a aprovação deveria ter sido feita através da Assembleia Nacional. O decreto autorizava o Ministério Público a suspender as actividades de ONG nacionais e internacionais por suspeita de lavagem de dinheiro,



ou actos ilegais ou prejudiciais contra a “soberania e integridade de Angola”. Receava-se que as infracções fossem interpretadas de acordo com condições definidas de forma muito vaga, o que resultaria em repressão da sociedade civil.



## **Agosto** **AGREDIDO**

O jornalista Vicente Salgueiro, da Rádio Ecclésia, foi agredido quando fazia a cobertura de um cheiro proveniente da base logística da Sonangol, que tinha causado vários casos de desmaio.



## **Setembro** **DETIDO**

O jornalista Pedro Teca disse ter sido detido pelas autoridades durante a cerimónia de investidura do novo presidente de Angola, apesar de estar acreditado para cobrir o evento. Teca, que estava ao serviço do jornal Folha 8, foi retirado por elementos da unidade de protocolo, no interior do recinto, onde se encontrava com outros profissionais da comunicação social no Memorial António Agostinho Neto. Nenhuma razão foi apresentada para a detenção. Teca é um membro conhecido do grupo de jovens angolanos conhecidos por “revús” (revolucionários), críticos de José Eduardo dos Santos.



## **Dezembro** **CENSURADO**

Vários indivíduos descritos por jornalistas como “estranhos” acompanhados por um polícia entraram na sala de imprensa da assembleia nacional e confiscaram o material que o repórter de imagem da TV Zimbo havia gravado. O

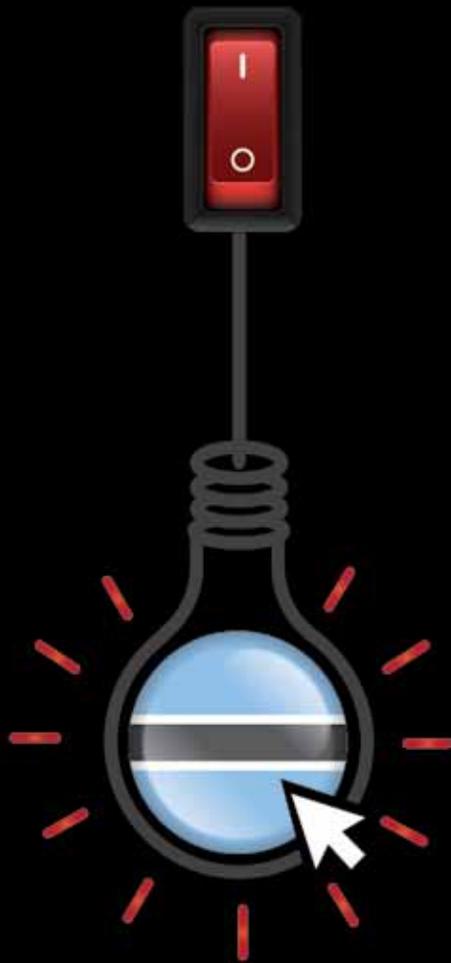
incidente levou o SJA a organizar um boicote das sessões parlamentares, amplamente apoiado por meios de comunicação privados e públicos. Até ao final do período em análise, 31 de Dezembro de 2017, o boicote ainda estava em vigor.



## **Dezembro** **CENSURADO**

Os geradores da Rádio Ecclésia em Malanje foram totalmente vandalizados, não apenas com a remoção de peças importantes, mas também com a destruição de fios e tubos. O motivo é desconhecido.





# BOTSWANA

National Overview 2017  
by MISA Botswana

**I**n the eyes of many—within Africa and beyond—Botswana is a glowing example of good governance, development and economic prosperity. It has changed its national political leadership in a manner that has attracted minimal controversy and criticism.

While the Botswana Democratic Party (BDP) is the dominant political party that has enjoyed power since independence in 1966, the country's leadership has surreptitiously changed a trend that many hail as the hallmark of democracy

The role model façade is also understandable when you consider the socio-economic performance of this mostly desert southern African country. It has remained largely stable, without the upheavals that mark most sub-Saharan African countries. Its economy, anchored on diamonds, is still performing well in comparison to the majority of countries across the continent.

For this and other reasons, it is tempting to hail Botswana as a democratic role model. Its successive governments have made remarkable political statements regarding African misrule. Botswana bravely stood out and loudly rapped former Zimbabwean president, Robert Mugabe, for holding onto power for too long and ruling with an iron fist in the process. It has also condemned the tendency on the continent to create political strife by resisting handing over the reins of power.

But in calling out leaders in the region for tenaciously hanging onto power, Botswana's President General Ian Khama failed to see the irony of his bluntness. Those with more discerning eyes and ears question the gap between Botswana's reputation and the reality on the

ground vis a vis democracy and good governance.

"A scratch beneath the surface of this much vaunted success story will reveal, not the much touted liberal democracy, but a top-down presidentialism, an emasculated parliament, and corruption and massive poverty in the midst of plenty."<sup>1</sup>

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In recent years, the reputation Botswana has been graced with, does not match reality and the transgressions against media freedom, freedom of expression and access to information have been more difficult to ignore.

## FREEDOM OF EXPRESSION

In recent years, the reputation Botswana has been graced with, does not match reality and the transgressions against media freedom, freedom of expression and access to information have been more difficult to ignore.

<sup>1</sup> *Botswana at 50: democratic deficit, elite corruption and poverty in the midst of plenty* – Monageng Mogalakwe and Francis Nyamnjoh

At the 69th World News Media Congress and the 24th World Editors Forum in Durban, South Africa in June 2017 the Board of the World Association of Newspapers and News Publishers (WAN-IFRA) issued a statement calling for solidarity with “the Botswana press in the wake of attacks and the hardening government stance against independent, free media.”

Reference was made to the on-going campaign by the Botswana government to attack and “intimidate the press as a means of silencing criticism and marginalising opposition voices.” Mention was also made of the “assault on the media through security agencies under the pretext of national security, nationalism and patriotism, as well as the dearth of political will to introduce legislative reform that would enable access to information and protection of journalists’ rights.”

From the onset President Khama has been clear about his disdain for the media.

In his speech at a graduation ceremony at the then Botswana Institute of Administration and Commerce (when he was still Vice-President), he admitted to the audience, made up mainly of students and their parents, that he did not read local newspapers because - according to him - their reportage dwelt on the negative.

During one of his first speeches as the incoming President, he referred to the 4Ds that were part of his election manifesto - democracy, discipline, dignity and development. As he added the fifth D – discipline - he went on to mention the deficiencies of the media. He highlighted the social problems in society that needed to be addressed as a nation and made reference to the use of abusive language in public discourse and

defamation, slander and purportedly false statements in the media.

The gradual shrinking of media freedom, freedom of expression and lack of access to information was subtle and languid and comes down to the concentration of power in the Executive.

But the first chink in the armour of good governance can be traced back to when President Khama established the Directorate of Intelligence and Security Services (DISS) in 2008 through the passing of the Intelligence and Security Services Act, 2007. Even before its enactment, the Bill was dogged with controversy as opposition members walked out of Parliament during its debate.

When President Khama transferred oversight authority of DISS and the Directorate on Corruption and Economic Crime (DCEC) from the Ministry of Justice, Defence and Security to the Office of the President it raised issues about the consolidation of power in the executive branch.

The manner in which the two entities have operated over ensuing years endorses the perception that these agencies were created “to protect members of the Botswana Democratic Party (BDP) elite to protect their own partisan interests.”<sup>2</sup> Furthermore, instead of acting as separate entities, the two agencies seem to have acted in concert to suppress some of the high profile cases involving political elites.

The suppression of information surrounding some of these cases has been a contentious and sticky point between the State and the media. Investigations by journalists into some of these cases

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<sup>2</sup> *A Critical Evaluation of the Intelligence Oversight Regime in Botswana* - Lesego Tsholofelo

has resulted in intimidation, threats and litigation.

On 19 April, the Court of Appeal upheld an earlier decision by the High Court and turned down the application of a teacher who had challenged his dismissal from employment on the grounds that it violated his constitutional right to freedom of expression.

The teacher was dismissed after he published an opinion piece in a newspaper in May 2011 on the country's political situation, following a national strike by public sector employees. In February 2012, a disciplinary hearing had found the teacher guilty of contravening section 34(a) of the Public Service Act.<sup>3</sup>

From the onset President Khama has been clear about his disdain for the media.

It is against this background that 2015, as the year that spelt doom for MISA Botswana in terms of funds and funding, cast a long shadow of apathy among media practitioners, much to the joy of the enemies of freedom of expression.

## PRINT MEDIA

One of the most prominent cases in 2017 was that of the popularly known 'Sedition Case' against the editor of the *Sunday Standard* newspaper, Outsa Mokone. He was first arrested in September 2014 on charges of sedition arising from a story carried in the newspaper's edition of 13 August 2014 titled 'President hit in car accident while driving alone at night.' The story also carried a statement by government spokesman Jeff Ramsay denying that the President had been in the car but confirming that a presidential vehicle was involved. The

case dragged on through the courts and was still pending at the end of 2017.

It has been reported that before Mokone was arrested, the Attorney General had issued a letter labelled "Top Secret" demanding that the *Sunday Standard* retract the story and publish an apology in its next edition or criminal proceedings would be instituted against the newspaper, its editor and the journalist under whose name the article had appeared.

The newspaper was given five days within which to retract and apologise for the story, but the police had already obtained a warrant of arrest against Mokone on the day that the demand for the retraction and the apology had been requested. Mokone was arrested on 8 September upon his return from South Africa where he had gone to visit his family.

Mokone's lawyers subsequently sought their client's release before the High Court where proceedings gave rise to constitutional issues on three grounds that 1. Mokone had been unlawfully arrested. 2. He had been denied access to his lawyers during his detention. 3. As a criminal offence, sedition violated Section 12 of the Constitution of Botswana that protects freedom of expression, and by extension, of the media.

The difficulty with this matter is that while it was certainly the most positive turn of events since 2014, Mokone's could be a temporary respite in that he gained his escape only on the technical grounds that the Penal Code required the State to charge him within six months and was unlikely to proceed with the matter because the stipulated period had lapsed.

Significantly, the court did not deal with the crucial matter of whether se-

<sup>3</sup> Amnesty International Report 2017/2018

dition laws violate the Constitution. It also found that the Station Commander had not been unreasonable when he refused the lawyers access to Mokone when they returned from buying him food. The court therefore dismissed the claim that legal representation was refused on the basis that although access to his lawyers was delayed (by no less than 24 hours, according to Mokone) he was nonetheless granted permission to see them. Pointedly, the court agreed with the uncontested evidence of the Commissioner of Police that the *Sunday Standard* story was defamatory.



**The gradual shrinking of media freedom, freedom of expression and lack of access to information was subtle and languid and comes down to the conflation of power in the Executive.**

In this saga, not least significant is the fact that the author of the story, Edgar Tsimane, remains in exile in South Africa where he has been granted temporary asylum.

It is for these reasons that in the opinion of a lawyer who works closely with MISA Botswana, the judgment of Justice Brand of the Court of Appeal, which was

delivered on 2 February this year, constitutes “an injudicious and unwarranted attack on the *Sunday Standard* and its Editor Outsia Mokone”.

As only the second person to be prosecuted under sedition laws in the history of Botswana (the first was a *Radio Botswana* journalist named Samuel Mbaiwa in the 1980s), there is an assumption that the authorities’ harassment of Mokone is politically motivated. The charges followed the *Sunday Standard’s* involvement in a number of investigative articles revealing the government’s complicity in corrupt activities.

Quoting Mokone, the *Civics State of Civil Society Report 2018* clarifies:

A lot of money had been siphoned off through the Intelligence Services. They simply do not have to account for it. They were giving tenders to themselves and friends and family. We ran a number of stories. Around the same time the Directorate on Corruption and Economic Crime (DCEC) was investigating the head of the Intelligence and we were able to get hold of the docket and started running the investigation. The DCEC went to court to stop us (...).

In a separate incident, the Organised Crime and Corruption Reporting (OCCRP) project in March 2017 in a statement detail how the Botswana Intelligence Service “briefly detained three journalists as they were heading to one of President Ian Khama’s private residences to determine whether or not he was using public funds for renovations”.

The journalists - Ntibinyane Ntibinyane, Joel Konopo and Kaombona Kanani - were following the lead on a story that the president was using military and

state funds to renovate his private estate. During their brief detention, the journalists' phones were confiscated. And the security agents also searched and seized the journalists' equipment, including cameras. The journalists reported that the intelligence operatives threatened them, stating that if the journalists returned to the president's residence, "we will not negotiate; we will shoot you on sight".

“One of the most prominent cases in 2017 was that of the popularly known ‘Sedition Case’ against the editor of the *Sunday Standard* newspaper, Outsa Mokone.

## BROADCASTING

### Positive

In the year under review, the most significantly positive development for broadcasting was an Ombudsman's report of August 2017 that recognised long-held complaints by a broad section of society that both state-owned *Radio Botswana* and *Botswana Television* were extremely skewed and exceptionally partial to the ruling Botswana Democratic Party

in their coverage of political parties and issues. The report is notable in that the content reflects the first official acknowledgement of this discrepancy that is par for the course for this far reaching medium. The report was followed by the lodging of complaints with the Ombudsman by the opposition Botswana Congress Party.

### Negative

However, the practice continues unabated and it is by design that this is so primarily because in Botswana, state media are departments under the Ministry of State President and are run directly from the Office of the President.

Another negative state of affairs that still obtained in the year past was BOCRA, the regressive Botswana Communications Regulatory Authority that repealed the Broadcasting Act of 1998. The law is regressive in that it omits provision for a public broadcasting service to which *Radio Botswana* and *Btv* would belong, as well as community radio stations that would allow for diversity.

With regard to community radio stations, the government has pushed the notion that these would encourage tribalism and presents the Rwanda genocide of the 1990s as an example.

The reality is that present-day Rwanda is pushing through with advances in every aspect of life and enjoys a plurality of community radio stations.

Under BOCRA, the minister appoints the CEO and the board of the regulatory body but also has the authority to overturn decisions of the board. For the government, BOCRA's most far-reaching achievement must be how the law removes both *Radio Botswana* and *Btv*

from any obligation of common sense and fair play, especially in matters of contest among political parties.

## Fired

One of the more blatant setbacks for free speech in broadcasting occurred when popular *Gabz FM* anchor Reginald Richardson and his producer Keikantse Shumba were fired by the radio station's management under duress from the BDP government early in the year under review.

Their firing followed the airing of the secret recording of a conversation between leading members of the ruling party 'poaching' from the opposition Botswana Congress Party with promises of considerable largesse. Their exit from the airwaves was the culmination of years of an acrimonious stance adopted by the government towards the station, especially a popular interactive call-in morning programme run by the two that was often scrambled by suspected agents of Botswana's notorious secret service, the Directorate of Intelligence and Security Services (DISS).

## ACCESS TO INFORMATION

The Government of Botswana has a raft of laws that it can tap into to impede free flow of information or use to punish 'errant' journalists in the event that information deemed 'protected' by these laws was published. The unwanted laws include the National Security Act, the Media Practitioners Act 1998, the Sedition Act, the Protected Areas Act and the Cybercrimes and Computer Related Act 2007, as well as the laws establishing the DISS and the Directorate on Corruption and Economic Crimes.

While the Media Practitioners Act (MPA) remains in abeyance because the Law

Society of Botswana has ignored a requirement to second three of its members to a committee prescribed under this Act, the law hangs like an albatross on the neck of the body politic of media workers.



The Government of Botswana has a raft of laws that it can tap into to impede free flow of information or use to punish 'errant' journalists in the event that information deemed 'protected' by these laws was published.

Its most obnoxious incursion into media freedom is found in Section 6 where it sought to have journalists registered by an Executive Committee. The law also seeks to enforce the right of reply that should be published not later than two subsequent editions after the 'offending' article and to the same degree of prominence as the original article.

The difficulty with this is that it takes away the Editor's authority and autonomy to decide what to publish, when to publish it and where to place it in the newspaper. This is an invaluable right

that cannot be seized. But the essential criticism of this law is that while the National Assembly reigns supreme in the enactment of laws for the peace, order and governance of the country, the National Assembly could never hold supreme in flouting the Constitution of the republic.

To underscore this point, attorney Gosego Lekgowe wrote in an analysis of the law published in *Mmegi* in March 2009 that although civil liberties are not ranked in the country's Constitution, it is widely understood in Botswana that media freedom is among "the most precious of all protected freedoms (because) it lies at the very foundation of a democratic society and must be jealously guarded by the courts". He emphasized the point that unhindered expression of opinion is the mark of democracy "even if those opinions disturb and offend".

Another contentious requirement of the MPA's concerns professionalism of journalism. In his analysis of the MPA attorney Lekgowe concludes that the MPA seeks to impose professionalism in order to restrict access to journalism and maintain a stranglehold on journalists. "Parliament does not have a constitutional mandate to impel professionalism on journalists," Legowe wrote. "Only a court wrapped with executive-minded judges (would) hold otherwise."

While deployment of public relations officers to all departments of state was hailed as a welcome development several years ago, there is a serious snag in that these characters act more like 'public prevention officers' because they are either too ignorant to be of any use or impede access to people with the information sought. At best, they demand written questions even though complying is no guarantee that

the questions will be answered. The result is that in the continued absence of freedom of information legislation, the right to know is compromised because nothing can be done to compel PROs to act appropriately.

## LOOKING FORWARD TO 2018

This is difficult to assess. The next president, who will assume office on 1 April this year, has the appearance of a liberal and has been consulting robustly with stakeholders, including the trade unions. However, this could be misleading because Vice President Mokgweetsi Masisi has also been at the forefront of marginalising the political opposition by almost any means necessary. He has also been heard in leaked secret recordings plotting against the private media. Even so, the large body of opinion is that his should be a much better administration, if only because all he will have to do is reverse some of his predecessor's insufferable policies.

# BOTSWANA MEDIA FREEDOM VIOLATIONS AND VICTORIES



## **8 March 2017** **THREATENED AND DETAINED**

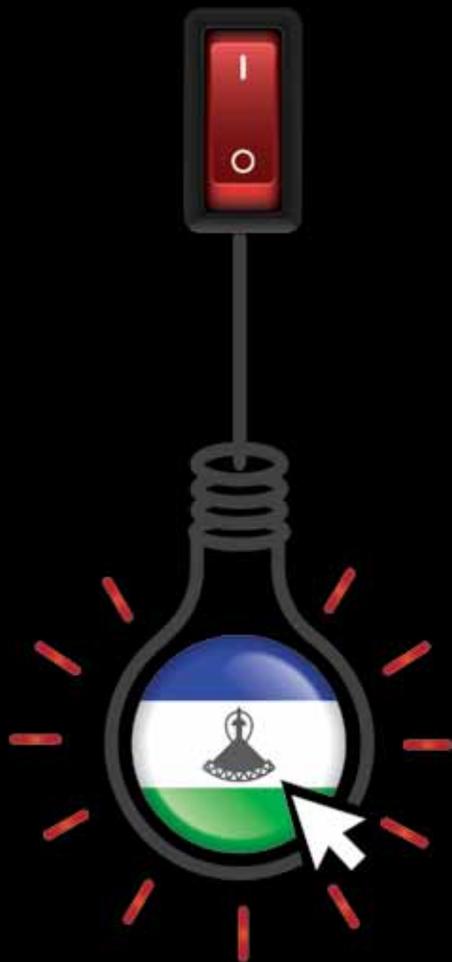
INK journalists Joel Konopo, Ntibinyane Ntibinyane and Kaomboni Kanani were accosted, harassed and briefly detained by an armed patrol of the Botswana Defence Force near Mosu Village in the Central District where President Ian Khama was having a holiday home built allegedly at taxpayers' expense. Their notebooks and cameras were seized. Upon being released, they were told never again to set foot in the area.



## **July 2017** **VIOLATIONS OF PUBLIC FREEDOM OF EXPRESSION**

An incident that occurred within the Botswana Democratic Party involved the Member of Parliament for Tati East who is also a member of the Central Committee of the BDP, Samson Moyo Guma. Guma shared his frustrations about the BDP with a Central Committee WhatsApp group some time during the last quarter of 2017. He commented that the current BDP government was the most unresponsive and the worst since Independence. He also questioned the propriety of one of President's Khama's secretaries sitting in on meetings of the Central Committee. President Khama was offended by these comments and ordered Guma to explain what he meant by them in writing.





# LESOTHO

National Overview 2017  
by MISA Lesotho

## OVERVIEW

**A**t the top of the agenda on Kingdom Lesotho's bid to stabilise the country's political environment is the National Legal Reforms programme rollout. The initiative was initially recommended by a Southern Africa Development Community (SADC) commission of inquiry into circumstances that led to the killing of former Lesotho Defence Force (LDF) commander Lt General Maaparankoe Mahao in 2015.

The project's results thus far included a road map and national consultation on the National Reforms Commission Bill, which was set to guide the reforms process in the country that was regarded as unstable and a threat to the region's peace and economic development.

The reforms project was being implemented under the watchful eye of the SADC Military Preventive Mission in the kingdom of Lesotho (SAPMIL). It was hoped that the project would not be threatened by elements within the LDF who had committed crimes against humanity during the tenure of office of the two coalition governments between the years 2012 to 2017. To date it is evident that the possibility of military rebellion was averted. Indicators in this regard include the arrest of the former LDF commander Lt. General Tlali Kennedy Kamoli together with some soldiers who were under his command, while on the other hand certain army personnel he had locked up for the alleged mutiny against him were released by the new coalition government.

While the reforms project was being rolled out, some leaders of the opposition remained in exile in neighbouring South Africa. These leaders, Mothejoa Metsing of the Lesotho Congress for Democracy (LCD) together with his Secretary General Ts'eliso Mokhosi, and Mathibeli Mokhothu, a Parliamentary head of the Democratic Congress (DC) were on record for insisting that they would not return home.

In some quarters, the absence of these leaders was regarded as a blow to the reforms project as it would then fail to pass the test of inclusivity. In response to this, the government, backed by civil society organisations (CSOs) was negotiating the safe return of these exiled political leaders.

MISA Lesotho regards the initiative as an opportunity to realise long-awaited media reforms but it came as a disappointment that the road map excluded media. In response MISA Lesotho worked to organise the media sector in order to actively lobby and advocate for the inclusion of media reforms in the national reforms project as recommended by SADC.

The media has had to operate in this politically unstable environment and has not fared well. Journalists have been physically attacked, namely the editor of *Lesotho Times*, Lloyd Mutungamiri, was shot and injured while his colleague, Keiso Mohloboli, is in exile in South Africa. Blogger and University lecturer Mafa Sejanamane was also shot at, but was not injured.

## FREEDOM OF EXPRESSION

Freedom of expression in the kingdom of Lesotho has been severely hampered by tumultuous events over the last few years.

The general elections in June 2017 may have heralded new beginnings for a country dealing with political instability which resulted in Lesotho heading for the polls for the third time in five years. The election came close on the heels of Democratic Congress (DC) Prime Minister Pakalitha Mosisili losing a no-confidence motion in March, partially because his cumbersome 7 party coalition had slowly disintegrated due to infighting less than two years after him taking office. This was the second coalition failure in three years.

The disintegration of two successive coalition governments coupled with political violence at the highest levels of political insecurity as a consequence of internal factional contestation within the armed forces and tension between the police and army have had an impact on the country's landscape.

While freedom of expression is sluggishly being restored, it has been a challenging period, in particular for the media sector.

According to an Amnesty International Report 2017/18, Nkoale Oetsi Tsoana, a journalist with *Moeletsi Oa Basotho*, received death threats from Lesotho Congress for Democracy (LCD) supporters in August while he covered the Directorate on Corruption and Economic Offences' investigation into corruption allegations against LCD leader and former Deputy Prime Minister Mothetjoa Metsing.

The same day, Palo Mohlotsane, a *PC-FM* radio journalist, received threats from the Deputy Leader and members of the LCD after he covered the same story.

Nthakoana Ngatane, *South African Broadcasting Corporation* correspondent, received repeated online death

threats from June onwards, after she reported on possible motives for the killing of Lipolelo Thabane. On 16 June crowds gathered outside *MoAfrica FM* radio station's offices and threatened the owner, Sebonomoea Ramainoane, after the station implicated Prime Minister Thabane in the killing of his wife.



**The general elections in June 2017 may have heralded new beginnings for a country dealing with political instability which resulted in Lesotho heading for the polls for the third time in five years.**

On 8 September the Maseru Magistrate Court ordered Sebonomoea Ramainoane, also the station's editor-in-chief, to release to the Lesotho Mounted Police Service (LMPS) the station's audio recordings of interviews aired between 28 August and 6 September. On 13 September, the authorities closed the station for 72 hours and on 15 September detained Sebonomoea Ramainoane for several hours. On 25 September, the Lesotho High Court cancelled the Magistrate Court's order.

On 29 August, exiled investigative journalist Keiso Mohloboli received online

death threats for comments she posted on social media about human rights violations in Lesotho. She had received similar threats on 10 June.

On 13 December, five members of the LDF went on trial for the attempted murder of the *Lesotho Times* editor Lloyd Mutungamiri in July 2016. He suffered near fatal gunshot wounds after being attacked outside his home in Maseru. The shooting followed his newspaper's publication of an article claiming that the outgoing LDF head was to receive an exit package of USD3.5 million.



Owing to the vibrancy and influence of radio stations in reporting and agenda-setting, coupled with political polarisation in the country, elections were a very trying time for the broadcast sector in Lesotho.

Freedom of expression in Lesotho has been steadily exercised through conventional and new media as well as by demonstrations on the part of civic and political groups on a range of policy issues. In the year under review, mostly social media and radio stations have exercised their freedom of speech country-

wide. There were however at least two defamation cases regarding statements made on the radio stations *Ts'enofo FM* and *MoAfrika FM*.

The first case was against President of Youth League of the Alliance for Democrats (DC) political party Thuso Litjubo. In September, 2017 the high court of Lesotho cleared him of the charges following a series of postponements since January, 2017, on the grounds that "what Litjubo is alleged to have said did not constitute a criminal offence." Litjubo had been accused of defaming Maseru Urban Assistant Commissioner of Police (ACP) Motlatsi Mapola.

In a separate case, the owner of *MoAfrika FM* radio Ratabane Sebonomoea Ramainoane was ordered by police to release copies to them of a certain news bulletin containing defamatory allegations. However on 29 September 2017 the High of Court of Lesotho nullified an order by the Magistrates Court compelling the accused to release the copies of the news bulletin in question.

## PRINT MEDIA

Print media developments in Lesotho have seen the migration from print-only to online versions of all major weeklies of the country. *Public Eye*, *Lesotho Times*, *The Post* and *Moeletsi Oa Basotho* all have a digital version. Lesotho still does not have a daily newspaper, and most papers in circulation are published on Tuesdays, Thursdays, Fridays and Sundays. On the alternate days there is a deficit of current news.

On a positive note, Lesotho has seen one weekly tabloid focusing on news within the capital city, Maseru. The newspaper, published in English, is called *Metro* and it has been in circulation since December 2017.

## BROADCASTING

The only government-run weekly newspaper, *Lesotho Today*, was closed in February, 2017 by order of the then Minister of Communications, Science and Technology, Serialong Qoo. The minister, who was appointed in the dying moments of the 7 political party coalition led by Dr. Pakalitha Mosisili seemed to see it as his main duty to silence any media house which appeared to be un-supportive of the second coalition government.

The then ministry's Principal Secretary Ts'eliso Khomari was on record saying that *Lesotho Today* was not reporting government stories in a fair manner. His statement was taken as a criticism that the newspaper was providing partisan coverage in favour of the opposition political parties at that time, especially the All Basotho Convention (ABC), led by Dr. Thomas Motsoahae Thabane, who got the prime ministership post following the 3 June 2017 national assembly elections. *Lesotho Today* was still not in circulation by the end of 2017 although the staff continues being paid their salaries.

On a negative note for the year in review, police questioned newspaper reporter Billy Ntaote, then of the *Lesotho Times* newspaper. In January 2017 he had published an article where he interviewed a member of an opposition political party. The police had requested he provide them with a statement regarding the article. However, Ntaote had referred the police to his editor who in turn had asked for a written request. This incident appeared to be an intimidatory step against the reporter, though for unknown reasons the police did not pursue the matter further.

Owing to the vibrancy and influence of radio stations in reporting and agenda-setting that was mainly manifested through phone-in facilities on many talk shows, coupled with political polarisation in the country, elections were a very trying time for the broadcast sector in Lesotho.

With clear indication that Lesotho would forgo the third snap elections within a five-year parliamentary period, the then ruling 7 party coalition government, out of panic and desperation in the year under review, forced the closure of two radio stations. The *People's Choice FM* and *Ts'enolo FM* were closed two days ahead of the World Radio Day commemoration on 23 February.

In an attempt to compel the government to allow the stations back on air, MISA Lesotho boycotted the commemoration. The decision was taken as a result of what was viewed as an act of betrayal by the government after talks geared towards the reconnection of the radio stations to Lesotho National Broadcasting Service (LNBS). During the talks, government promised to reconnect the radio stations, however, the promise was not fulfilled even after *People's Choice FM* won a Lesotho High Court order to this effect.

The day was however, commemorated later, on the 28 February, 2017 when the two radio stations were once again back on air.

On 11 August 2017 transmission services for *MoAfrika FM* were terminated - from LNBS transmitters rented by most private radio stations to widen their coverage. The government attributed the closure to non-payment of LNBS transmitter rental fees by the radio station.

Despite the fact that numerous other radio stations have also failed to pay their rental fees for transmission, only *MoAfrika* was penalised. Secondly, LNBS officials had issued demand for the money owed on the afternoon of 11 August insisting that the payment be settled the same day. *MoAfrika's* attempt to pay the fees owed was thwarted by the fact that in terms of its arrangements with the bank, it could only pay in batches, and not the whole amount in one go.

In trying to resolve the issue, MISA Lesotho teamed up with other CSOs to write a joint letter to the Minister at the time - Chief Joang Molapo, requesting that *MoAfrika* be reconnected with immediate effect and both parties start talks leading to a mutual arrangement regarding payment to avoid any damage to Lesotho's democratic rule. Only one meeting took place as a result, in the presence of MISA Lesotho and Christian Council of Lesotho.

The political programmes radio presenter, Rets'epile Maloi, of *Ts'enolo FM*, a private radio station, was summoned for questioning by a panel of four Lesotho Mounted Police Service officers immediately after his morning programme on 9 March 2017. The interrogation, which took more than two hours, was convened, according to the explanation given to him by the police, to discuss concerns which arose from conduct on his programme, *Fika Le Mohala*, which aired on weekdays from 6am to 10am.

Some of the concerns raised included a segment on the programme where guests with different political standpoints are called in at the same time to debate burning issues. This according to the police had the potential to spark violence among the general public.

Police also pointed out that callers to *Fika Le Mohala* abuse the Speech Withdrawal<sup>1</sup> Principle by phoning in and being abusive. While they were later being told to withdraw the remarks, the message had already been aired. The police warned Maloi that it would be the last time he was called in to talk about the content and conduct of his programme.

On 8 August, 2017 *People's Choice FM* presenter Palo Mohlotsane and a *Moeletsi Oa Basotho* newspaper reporter were threatened by supporters of the LCD who tried to stop them from covering the appearance of the party's leader, Mothejoa Metsing, before the Directorate on Corruption and Economic Offences (DCEO). In an attempt to address the issue, MISA Lesotho wrote LCD a letter expressing their concern about the incident, while also encouraging the party to embark on talks with the two media houses to resolve the issue before it escalated and placed the lives of the two journalists in danger. However, LCD dismissed the letter, saying that MISA Lesotho had been biased by taking the side of the journalists.

On a positive note, the government of Lesotho announced in December 2017 that it had rescinded its moratorium on issuance of broadcast licenses that was put in place two years earlier. The news was received with jubilation as a call for applications for radio stations licenses was issued.

This move will allow the MISA Lesotho project, "Access to Information Through Establishment of Community Radio Stations" get three community radio stations on air by mid 2018. The morato-

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<sup>1</sup> In Lesotho, in case a person utters words found to be unsuitable for radio, the person is asked to withdraw such words. If in agreement the person will then state: "I withdraw my words."

rium, which was purported to have been issued to allow for a review of broadcasting law, had been viewed by MISA Lesotho as a ploy by the government to hinder the project. It was expected that the suspension of the moratorium would enable an additional three communities of Quthing, Semonkong and Mokhotlong radio stations to go on air.

Another progressive development was the announcement by the government of the adoption of an interim Broadcasting Code of 2017, pending cabinet sanction of the code to repeal the Broadcasting Rules of 2004. The announcement was made in August 2017 and MISA Lesotho saw this as a bid to ensure legislation was in step with global standards. The new policy is also expected to protect consumers while at the same time guarding the interests of the broadcasting sector in Lesotho.

## ACCESS TO INFORMATION

MISA Lesotho's advocacy campaign on the passing of the Access and Receipt of Information Bill of 2000, saw some hope in the National Legal Reforms project, as SADC had categorically called for media and information reforms. The reforms project began with drawing up a bill to establish the National Reforms Commission.

While the reforms are an opportunity to accelerate positive results after MISA Lesotho's long advocacy campaign, the big challenge would be the degree of cooperation and unity among media houses and individual journalists in Lesotho. Characterised by political polarisation, the media in Lesotho could lose out on opportunities presented by the reforms project if they are unable to find common ground.

The Editors Forum established in 2014 was dysfunctional and similarly the Journalists Union of Lesotho. Both organisations lack clearly defined programmes and were not operating in accordance with the guiding principles acknowledged by CSOs allowing for positive changes in the sector they were established to protect and advance as development agents.



On a positive note, the government of Lesotho announced in December 2017 that it had rescinded its moratorium on issuance of broadcast licenses that was put in place two years earlier.

Challenges of poor governance in MISA Lesotho were also evident since March 2017 when it elected a board that lacked leadership and corporate governance skills. The organisation's National Governing Council (NGC) was rocked by scandals ranging from:

- The Deputy Chairperson and Deputy Secretary General of the NGC leading a group of 12 out of 42 participants to boycott a workshop held by MISA due to their discontent

with the fact that no per diems were budgeted for the workshop.

- Conflict of interest among NGC members – in fact a grouping of some of the members had formed an advocacy organisation that capitalised on gaps in MISA Lesotho programming.
- A demand for sitting allowances for unconstitutional meetings held without collaboration with or knowledge of the secretariat.

By acting in this manner the NGC placed MISA Lesotho at risk and the organisation was therefore not likely to get support in driving the media reforms agenda.

Despite these challenges, MISA Lesotho was still pursuing a legal transformation agenda through its clearly articulated project on media reform that is likely to get support for better implementation. Among the project's objectives were organisational development and establishment of media leadership forums to actively participate in the reforms project with a clearer focus on the sectors priorities in Lesotho.

## **MEDIA AND ELECTIONS**

### **Multi-media Elections Reporting**

To contribute to peaceful national assembly elections held in June 2017, MISA Lesotho rolled out an innovative project on multi-media elections reporting. The project focused on the training of 30 journalists in producing content for diverse social media platforms and simultaneous live broadcast of the elections. The ultimate result of the project was simultaneous broadcast of electoral process that connected 12 radio stations.

The broadcast was coordinated and facilitated by MISA Lesotho through their broadcasting studio providing updates from all ten districts of the country through live reports compiled by teams of three journalists per district. This ground breaking innovative project supported by OSISA, included posting of video and articles on a portal [www.misa.org.ls](http://www.misa.org.ls) (now linked to [www.lesotho.misa.org](http://www.lesotho.misa.org)). Observer missions and other interested parties credited the project for its contribution to transparency in the electoral process thereby assisting with the acceptance of the results through professional and credible reporting.



**The media sector saluted the eventual arrest of the soldiers who allegedly shot *Lesotho Times* editor, Lloyd Mutungamiri in 2016. The arrest was viewed as an attempt by government to end impunity in Lesotho.**

## JOURNALIST SAFETY

The media sector saluted the eventual arrest of the soldiers who allegedly shot *Lesotho Times* editor, Lloyd Mutungamiri in 2016. His attackers had remained free as the second coalition government was not interested in taking legal action against members of the army involved in criminal activities. They were eventually arrested towards the end of 2017. At the time of writing, the suspects were still remanded in custody with their case set to be heard during 2018. The arrest was viewed as an attempt by government to end impunity in Lesotho.

Generally, journalists in Lesotho are at risk when they come up against the Lesotho Defence Force (LDF).

In May, Motsamai John Talla, a well-known presenter of the *People's Choice FM* based in Maseru was followed by a suspicious vehicle which was later found to be driven by members of the LDF. Upon realising he was followed, Talla sought refuge at the Thetsane Police Station and posted the incident on Facebook. At the police station, the LDF members claimed that they were simply eager to meet Talla as he was such a well known presenter in Maseru.

In a separate incident, two presenters of *Motjotli FM* – a community radio station of the Thaba-Tseka district – were arrested by the district police for allegedly calling a police's wife "mosali" (woman) on air.

In the latter part of the year, one of the two reporters was re-arrested for allegedly grabbing a girl and stealing her money. However, during their interrogation the police kept telling him that radio presenters were arrogant and big-headed. The presenter was physically assaulted and released without charge.

Another incident which involved Palo Mohlotsane and Nkoale Ts'oana of *People's Choice FM* and *Moeletsi Oa Basotho* newspaper, was reported earlier in the broadcast section of this report.

## FREEDOM OF EXPRESSION ONLINE

### WhatsApp, Facebook and Websites

While WhatsApp is used by civic groups as a platform for organised communication, Facebook still led as the most vibrant online platform for exchange of ideas and information as well as a forum for debate. The platform places pressure on the government, as some groups, like Count Down to Election, carry information from well-placed sources in the government of Lesotho. Facebook in Lesotho is a useful and effective platform for publishing serious assertions, which often turn out to be factual. It had thus become very strategic in influencing the political agenda of the 2017 national assembly elections.

In the year under review Facebook has seen a number of advertising groups in Lesotho. Most of the groups are run by youth and vigorous business marketing was pushed out on these platforms. Some of them have proved to have reached as many as 30 000 people which is considered enough of a customer base to conduct a viable business in Lesotho.

Websites were less popular due to poor content generation. Most websites in Lesotho are not functional as they merely carry information relating to organisations' names and business background in general terms but there were no updates on day-to-day operations. Government websites were similarly neglected.

## LOOKING FORWARD TO 2018

The year 2018 is likely to see the reforms agenda topping most of the headlines in Lesotho. This is largely because Lesotho's instability is evident and most citizens are hopeful the reforms will help the country redefine its agenda for development while globally positioning itself for active participation in various initiatives aiming at improving people's lives.

While the reforms project provides hope for Lesotho, much will depend on the organisational abilities of societal groups to work towards achieving peace and stability as important elements for development. Political polarisation remains the primary challenge. The media plays a very active role in this regard and this makes the sector top of the reforms agenda, although the state and other actors do not necessarily regard this as a priority.

Most contested issues in Lesotho are fuelled by the media, especially content on radio stations. The year 2017 saw most radio stations openly aligning themselves with either congress or nationalism ideologies. This was the case as the country headed towards the national assembly elections and it would continue even beyond. It was hoped that the reforms would address this conduct of the media, as it was potentially divisive and dangerous to development in Lesotho.

# LESOTHO MEDIA FREEDOM VIOLATIONS AND VICTORIES



**9 February 2017**

**CENSORED**

Four days ahead of the commemoration of the World Radio Day on 13 February 2017, the government of Lesotho cut the broadcasting signals of two local radio stations, *Ts'eno FM* (104.6MHz) and *People's Choice FM* (95.6 MHz).

According to the Principal Secretary (PS) of the Ministry of Communications, Science and Technology, Ts'eliso Khomari, the radio stations were taken off the air for alleged defamatory content about the country's Prime Minister, Bethuel Mosisili, and Deputy Prime Minister, Mothejoa Metsing.



**1 March 2017**

**CENSORED**

During a vote of no confidence against Prime Minister Pakalitha Mosisili in Parliament, the media was moved out from the press gallery. According to journalists, a police officer ordered them to the public gallery, arguing that media accreditation issued exceeded the press gallery's capacity.



**10 MARCH 2017**

**THREATENED**

*Ts'eno FM*, a private radio station in Lesotho, saw its political programmes radio presenter, Rets'epile Maloi, brought in for questioning by a panel of four officers from Lesotho Mounted Police Service immediately after his morning programme on 9 March 2017. The questioning which took more than 2 hours, was convened, according to the explanation given to him by the police, to discuss concerns arising from the conduct on his programme, *Fika Le Mohala*.

The concerns raised included a segment on his programme where guests with different political standpoints were called in to debate burning issues. These arguments, according to the police, could incite violence among the general public.

Police also pointed out that the listeners of *Fika Le Mohala* abused the Speech Withdrawal Principle by phoning in and deliberately abusing free speech and they were asked to withdraw the comments only after such messages had already been aired.



**13 February 2017**

**NOTEWORTHY DEVELOPMENT  
BOYCOTT**

MISA Lesotho boycotted the World Radio Day commemoration on Monday, 13 February 2017. This decision was taken in support of *Ts'eno FM* and *People's Choice FM* which were temporarily taken off air by government in the previous week.

MISA Lesotho is of the firm belief that the commemoration should reflect the Lesotho Government's commitment to the day's aspiration as set out by UNESCO. The government's decision to defy the Court order to re-connect *People's Choice FM* to LNBS antennas was seen by MISA Lesotho as a clear indication of the government's intention to suppress freedom of the media and undermine the rule of law in Lesotho.



**28 April 2017**

**CENSORED**

The government of Lesotho closed down its only weekly newspaper, *Lentsoe La Basotho* (*Lesotho Today*). According to a newspaper report from *The Post*, the Principal Secretary (PS) of Communications, Science and Technology, Tseliso Khomari, accused the paper's journalists of publishing stories favouring the opposition.



**5 May 2017**

**CENSORED**

*People's Choice FM* was taken off Lesotho National Broadcasting Service's transmitters. The radio was off-air for an entire weekend. However, *People's Choice FM* managed to buy its own transmitter link and went back on air.



**10 August 2017**

**THREATENED**

Lesotho Congress for Democracy (LCD) members allegedly threatened two journalists, Palo Mohlotsoane of *People's Choice FM* and NkoaleTs'oane of *Moeletsi Oa Basotho*, at the premises of the Directorate on Corruption and Economic Offences (DCEO) on 8 August 2017. The LCD denied the allegations in a response to queries made by MISA Lesotho, the LCD gave details of the incident and denied allegations of the attack.

The police warned Maloi that it would be the last time he is called in to talk about the content and conduct of his programme.



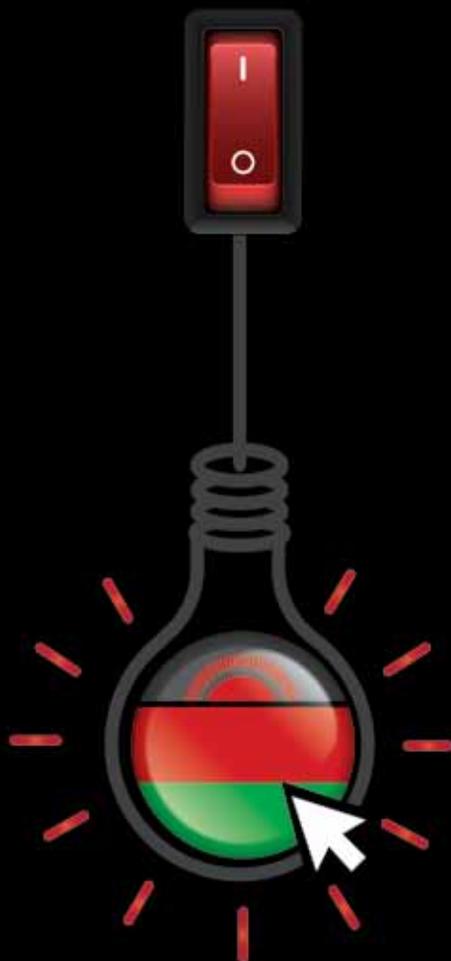
**17 August 2017**

**VICTORY**

*MoAfrica FM* resumed broadcasting after the High Court ordered the Lesotho National Broadcasting Services (LNBS) to lift the suspension it had imposed on the radio station a week earlier.

The LNBS had suspended the operations of *MoAfrica FM* on the grounds that the radio station owed the regulating body M100 000 (US\$8074).

The Lesotho Communications Authority suspended a moratorium on issues of broadcasting licenses, a development which would see the MISA Lesotho project on "Access to Information Through Establishment of Community Radio Stations" fully implemented. This means that three community stations will be on air by mid-2018 in Semonkong in the Maseru district, Outhing and Mokhotlong districts.



# MALAWI

National Overview 2017  
by MISA Malawi

## NATIONAL OVERVIEW

**I**n 2017, the Malawi media established itself as a key player in the fight against corruption and the country's democratisation process. Despite a hostile political environment and economic strangulation, the media managed to hold duty bearers accountable and expose corruption, social injustices, abuse of power and public resources as well as demand political democracy and fiscal prudence.

The media was central in exposing the infamous Maizegate which saw the Anti-Corruption Bureau (ACB) arrest former Minister of Agriculture and ruling Democratic Progressive Party (DPP) political heavyweight George Chabonda for alleged abuse of power in the procurement of maize from Zambia. The media was also central in exposing a US\$74 million Electricity Supply Corporation of Malawi (ESCOM) plan to procure generators without following procurement procedures. Overall, the media provided forums for citizens to freely voice their policy preferences, suggest solutions to national or community problems, and debate a diversity of issues, which included access to information, gender-based violence, power outage, water development projects, sanitation, climate change and the environment.

However, the media operating environment in 2017 remained risky, exploitative and retrogressive. Members of the media were physically assaulted when covering public functions such as demonstrations. Practitioners received anonymous threats for carrying stories critical of the state or the ruling elite. Media practitioners were barred from covering public functions at both the district and national level, including coverage of

proceedings of a conference on implementation of the country's public sector reforms. Barring reporters from covering public functions was one of the major problems for the Malawi media in 2017. This was however happening at a time when the country's President Professor Peter Mutharika had just assented to the Access to Information Act (2016) confirming his government's commitment to promoting the right to information.

**“** Despite a hostile political environment and economic strangulation, the media managed to hold duty bearers accountable and expose corruption, social injustices, abuse of power and public resources as well as demand political democracy and fiscal prudence. **”**

This review looks at the Malawi media operating environment in 2017 with distinct focus on media-government relationship, Constitutional rights and legislative environment, access to infor-

mation, state of broadcasting and digital migration.

## FREEDOM OF EXPRESSION

### Media-government relationship

In 2017, the relationship between the media and civil society on one hand and government and government functionaries on the other could best be described as a cat and mouse affair and one of a blame game, which clearly reflects ‘the dynamics of power in politics.’<sup>1</sup>

The ruling DPP and government generally viewed the media and civil society leaders as corrupt and enemies of the state.

The blame game started in January when Providence Industrial Mission (PIM) president and overseer reverend Patrick Makondetsa accused the media of “derailing the country’s development because of negative reporting.” Makondetsa was speaking during the commemoration of the life of PIM’s founder and freedom fighter Reverend John Chilembwe at PIM headquarters in Chiradzulo, southern Malawi, where President Mutharika was in attendance. Makondetsa argued that negative reporting was promoting disrespect for leaders and scaring away potential investors.

Mutharika himself has, on a number of occasions, accused the media of negative reporting and “receiving bribes to publish stories.” Speaking during the elevation ceremony of Traditional Authority (T/A) Ngolongoliwa at Chonde in Thyolo District, southern Malawi on Sunday, 28 May, President Mutharika attacked the media for publishing stories that come out “because they [the report-

ers] have been bribed.” Several months later, on his return from the United Nations General Assembly (UNGA) in October, the President told journalists to report positive stories about Malawi and not dwell on negative issues, which he said were tarnishing the country’s image. The media on its part called on the President to provide evidence of the corruption in the media, and argued that he had become “accustomed” to criticising the media for playing its watchdog role.

Apart from criticising the media for publishing negative stories, MISA Malawi received reports that government had gone further, by withholding advertising from media houses deemed critical of the state. Several media outlets deemed pro-opposition or critical of the ruling DPP confided in MISA Malawi that government had stopped giving them adverts, a development that could potentially cripple the outlets concerned. The private media survives on advertising and government is the biggest advertiser in the country. Withholding government advertising is a deliberate attempt to stifle critical voices.

### Constitutional Rights and Legislative Environment

Malawi has one of the best Constitutions in the region with clear and independent provisions of freedom of expression – Section 35, media freedom – Section 36 and access to information in Section 37. The country, however, has over a dozen archaic, anti-press laws that negate these Constitutional guarantees. As noted in our past reports, some of these laws include the Official Secrets Act (1913), the Printed Publications Act (1947) and the Censorship and Control of Entertainments Act (1968) as well as the Protected Flags, Emblems and Names Act, which past administrations have applied to silence critics. The Pro-

<sup>1</sup> See *So This is Democracy*, Malawi Chapter review, 2011.

tected Flags, Emblems and Names Act still quotes a fine in Pound Sterling (1000 Pounds, about MK660, 000) and not Malawi kwacha, an element that supports the argument that this law is archaic and needs to be reviewed, 54 years after independence.

As argued in past reports, the presence of draconian laws in the country's statutes is a cause for concern because they have a chilling effect on both journalists and civil society actors.

## Defamation

Cases of defamation have over the years crippled many media outlets in Malawi. Most of these cases are rarely publicised and have been resolved behind the scenes through alternative dispute resolution, which requires that any civil case registered with the court is examined for determination on whether it can be resolved through dialogue and negotiation. Most media owners and managers in the country regard this process less costly, speedy, informal, friendly and flexible than the usual court process.

In 2017 however, at least one defamation case against the media was publicised. It all started with a court order by the Agricultural Development and Marketing Corporation (ADMARC) on 29 December 2016 stopping Times Group from publishing stories on the Maizegate. Times Group challenged the injunction but barely two weeks later the Malawi Revenue Authority (MRA) closed Times Group over unpaid taxes. MISA Malawi issued a statement arguing that the closure of Times Group was ill-timed, could easily be construed as an attempt by government to stop the media house from further publication of the Maizegate stories specifically, and silence critical voices generally. The MISA Chapter argued that the issue of unpaid

taxes could have easily been resolved through mutual business negotiations.

But on 2 February 2017, Maravi Post claimed that then Minister of Agriculture George Chabonda had sued Times Group for defamation because of an article published in the Malawi News of 28 January to 3 February 2017 titled "Defiant Chabonda." Quoting court documents from Chabonda's lawyers, M and M Global Consultants, Maravi Post claimed Chabonda had sued Times Group because "...the title of the story was defamatory as in simple terms it means to offer resistance to something or challenge something...the publication was intended to portray an appalling image of Chabonda and attacking his character as a public official as well as an individual."

More reports surfaced on 13 February 2017 that Chabonda had sued Times Group including editors George Kasakula, Innocent Chitosi, Arnold Munthali and reporter Alick Ponje for defamation over articles on Maizegate. Kasakula argued the Times Group was ready to defend the articles in court. Chabonda was later arrested by the Anti-Corruption Bureau for alleged abuse of office in the MK26 billion Maizegate scandal in his capacity as Minister of Agriculture. The defamation case remains in court.

## BROADCASTING

### State of Broadcasting and Digital Migration

The broadcasting sector continues to grow with the rolling out of new license holders. Radio Lilanguka, which was licensed in 2016, began operating on 27 November 2017, Love FM went on air on 27 March 2017, and Chisomo in February 2017, bringing the total of operational community broadcasters to 40.

The growth in the sector has increased sources of information for the citizenry. Unfortunately, only few outlets have the financial means to sustain their operations, let alone roll out.



**The amendment of the Communications Act (1998) was a key milestone in the push for transformation of MBC from state control to a public service broadcaster and government's continued interference with MBC programming is retrogressive and regrettable.**

MISA Malawi has secured funding from the Open Society Initiative for Southern Africa (OSISA) to promote access to information through community radio. Among others, the funding will help build capacity of community broadcasters in participatory programming, management and resource mobilisation as one way of ensuring sustainable community broadcasting.

Securing a broadcasting license is one thing and rolling out and sustaining operations, especially within a geographical community, is another.

Nonetheless, the growth in the sector is important as it demonstrates government's commitment and willingness to strengthen the broadcasting industry given the country's literacy levels and limited penetration and circulation of the print media.

Regrettably, the country's public broadcaster, Malawi Broadcasting Corporation (MBC) radio station and television continue to operate as a propaganda tool for the party in power. This is regrettable as MBC had managed to register commendable progress during the 2014 Tripartite elections by developing content that was largely based on public interest and professionalism. MBC has always supported the party in power with over 99 percent content in favour of the state but a media monitoring project of the 2014 elections noted that "... compared with the bias demonstrated by the state media towards the ruling party in 2009, this time round the bias was slightly less... a development that can only be welcomed."

This was however not the case during the 2017 by-elections in which the ruling DPP performed poorly. MBC angered most stakeholders for not broadcasting results of the by-elections and no reasons were given.

As a public broadcaster MBC has a mandate to fairly cover elections, including announcement of results regardless of the faction of the winning candidates.

Different governments have come and gone with promises that they would loosen government grip on the MBC. The current administration is no excep-

tion. What is clear, however, is that it is easy to promise change but next to impossible for those in power to walk the talk and let go of the public broadcaster.

The amended Communications Act (2016), which subjects all presidential appointments of MBC and Malawi Communications Regulatory Authority (MACRA) boards to national assembly screening, became effective on 1 June 2017, but most critics, including MISA Malawi, doubt the new law will change how MBC has been operating if its conduct during the 2017 by-elections is anything to go by. The amendment of the Communications Act (1998) was a key milestone in the push for transformation of MBC from state control to a public service broadcaster and government's continued interference with MBC programming is retrogressive and regrettable.

### Digital Migration

Malawi is making commendable progress as far as digital migration is concerned. At the time of writing this report, the Digital Broadcasting Network Limited Company was completing work on a transmitter in Dowa District, central Malawi, to increase signal distribution and coverage from 70-90% of the country. Signal distribution stood at 48% of the total population before the migration from analogue to digital. As stated in our 2016 report, however, awareness is still a challenge as most Malawians do not understand what digital migration means for the country.

2016. Many people argued that Mutharika would not sign the Act, considering the various instances over the past few years, when government had tried to derail and block the process both in and outside the National Assembly. Mutharika's signing of the Act concluded a process that started in 2004 and pushed the country into the limelight as one of the few countries on the African continent with an access to information law.



**Deliberate attempts to strangle the media, delay in implementation of the Access to Information Act, impunity of the ruling elite, existence of old and new draconian laws and low media penetration in the country, remain major challenges, which require strategic planning and persistent monitoring in 2018.**

## ACCESS TO INFORMATION

President Peter Mutharika surprised many critics when he, on 10 February 2017, assented to the Access to Information (ATI) Act which the National Assembly had passed on 5 December

Part 1, Section 1 of the Act however states that the law would become effective on a date appointed by the Minister and published in the gazette. The Minister of Information and Communication Technology, Nicholas Dausi, was yet to set a date for the implementation of the Act as at 31 December 2017, casting doubt on government's commitment to the promotion of access to information as indicated in the 2014 ruling DPP manifesto.

It is important to note that MISA Malawi made ATI a campaign issue during the 2014 Tripartite Elections and capitalised on the presidential debates to get commitments from candidates to enact legislation on ATI once in power. The DPP committed in its manifesto to ensure that Malawi has ATI legislation. Section 180 of the DPP manifesto reads: "We recognize that access to information is a major challenge... In this regard, the DPP government will pass and implement the Access to Information Bill."

Although one would argue that the DPP has lived up to its campaign promise, MISA Malawi believes that the process does not end with enactment but effective implementation and enjoyment of that right by all Malawians. This however, does not seem to be the case looking at a number of developments in 2017.

Firstly, the oversight body, the Malawi Human Rights Commission (MHRC), does not have resources to effectively undertake its oversight mandate. The MHRC cannot effectively operate without the necessary support and resources for effective implementation of the ATI Act. In the 2017/2018 national budget, no funds were allocated for preparatory work that MHRC had to undertake in readiness of implementation of the law. More surprising was the fact that during the Parliamentary Budget Review meet-

ing, the Commission's budget was cut to MK166, 000,000 (US\$227, 397.27) from MK185,000,000 (US\$253,424.66). There is need to support and build the capacity of the Commission to effectively discharge its duties.

Secondly, the Chapter received several reports of public bodies and individuals banning the media from covering public deliberations and functions at the time the President had assented to the ATI Act. For example, in mid September 2017, the Chapter received reports that the Phalombe District Council in southern Malawi had banned reporters from covering Council proceedings. Just one month earlier, in August, officials from the Office of the President and Cabinet (OPC) had also banned the media from covering the public-sector reform meetings which were taking place at the Bingu International Conference Centre. On 17 July, MISA Malawi issued a statement condemning the assault of MBC journalists by prison warders at Maula Central Prison. The prison warders assaulted and barred reporter Patrick Dambula and cameraman Hastings Khombo from covering a strike the warders had been holding since 14 July to force government to revise their salaries.

MISA Malawi also issued another statement on 21 July over reports that the media had been barred from covering the infamous Maizagate case involving former Minister of Agriculture George Chaponda.

Barring reporters from public functions is unconstitutional and retrogressive for Malawi and happened at a time the country had just enacted legislation on ATI. MISA Malawi believes such developments are an infringement on the right to know and demonstrate the urgency with which the country needs implementation of the ATI Act. These

developments show the urgent need for the Minister responsible to set a date for the law to become effective.

Section 37 of the Malawi Constitution clearly provides for the right of access to information. The provision is however not sufficient to ensure easy access as several factors, including an unresponsive/willing public sector and high levels of illiteracy amidst other issues combine to limit the citizenry from enjoying this right. Implementation of the ATI Act will help address some of these shortfalls as it, among others, calls for civic education and proactive disclosure on the part of information holders. The law also sets clear penalties for failure to comply with its provisions.

## FREEDOM OF EXPRESSION ONLINE

Unfortunately, in 2017, government proceeded to implement the Electronic Transactions and Cyber Security Act (2016), despite concerns from MISA and other stakeholders that the new legislation has broad provisions that can be abused to limit Constitutional guarantees on media freedom and freedom of expression. One of the controversial parts of the legislation concerns control of online expression.

The law provides government with a tool to police and restrict online communication with broad provisions open to abuse. MISA Malawi has been critical of the new legislation and tried to engage the National Assembly to revisit the provisions but failed.

The Act provides that online communication may be restricted in order to “promote human dignity and pluralism in the expression of thoughts and opinions”, “protect public order and national security”, “facilitate technical restrictions” and “enhance compliance

with the requirements of any other written law.”

MISA Malawi believes that these clauses are broad and fail to provide a clear framework of what amounts to human dignity, public order and national security or technical restrictions. In addition, the wording “enhance compliance with the requirements of any other written law” complicates matters as the country has maintained several colonial laws that criminalize free speech and contradict Constitutional provisions on media freedom and freedom of expression.

## LOOKING FORWARD TO 2018

The developments in the Malawi media in 2017 can only be looked at as milestones in the development of a mature media democracy. The media showed resilience in troubled times and continued to undertake their noble task of informing Malawians and holding those in power accountable. The media continue to actively participate in nation building even under hostile political and economic strangulation. The advocacy and resolve to defend media freedom are clearly influencing development of positive policy reforms evident in the enactment of the access to information legislation and review of the Communications Act.

Deliberate attempts to strangle the media, delay in implementation of the Access to Information Act, impunity of the ruling elite, existence of old and new draconian laws and low media penetration in the country, remain major challenges, which require strategic planning and persistent monitoring in 2018.

# MALAWI MEDIA FREEDOM VIOLATIONS AND VICTORIES 2017



**13 January 2017**

## **CENSORED**

### **Malawi Revenue Authority closes Times Group over taxes**

The Malawi Revenue Authority (MRA) has closed Blantyre Printing and Publishing Company (Times Group) offices over unpaid taxes. The closure of Times Group comes less than a week after the Agricultural Development and Marketing Corporation (ADMARC) sought an injunction restraining the media outlet from publishing stories on Maizegate – exposure of the scandal of alleged irregular procurement of maize from neighbouring Zambia.



**15 January 2017**

## **THREATENED**

### **Religious leader attacks media**

Providence Industrial Mission (PIM) president and general overseer the reverend Patrick Makondetsa on Sunday, 15 January, attacked the media for alleged negative reporting.

Makondetsa attacked the media in his sermon at PIM headquarters in Chiladzulo, southern Malawi, where President Peter Mutharika led Malawians in commemorating the life of PIMs founder and freedom fighter the Reverend John Chilembwe.

Makondetsa argued that the media's reporting was derailing Malawi's development.



**10 February 2017**

## **VICTORY**

### **President Mutharika approves ATI Act**

President Peter Mutharika has signed the Access to Information

(ATI) Act, casting Malawi into the spotlight as one of the few countries on the African continent with legislation on access to information.

Malawi Members of Parliament passed the Act on Wednesday, 14 December 2016, after a heated debate that went into the night.

President Mutharika was largely seen as an obstacle in the push for legislation on ATI. His approval of the legislation has silenced many critics including MISA Malawi who considered as mere politics his campaign promise to enact the long awaited legislation once elected into office.



**13 February 2017**

## **LEGISLATED**

### **Minister sues Times Group for defamation**

Minister of Agriculture and Food Security George Chaponda has sued Malawi's publishing giant Times Group for defamation in conjunction with a series of Maizegate stories the media house has been publishing.

Chaponda is suing Times Group editor in-chief George Kasakula, The Daily Times editor Innocent Chitosi and his assistant Madaliso Musa, Sunday Times editor Chachacha Munthali and reporter Alick Ponje. Blantyre Newspapers Limited – publishers of the Daily Times, Malawi News and Sunday Times, published extensive irregularities around the procurement of maize from Zambia. Chaponda is claiming damages for alleged false and malicious articles by Times Group.



**28 May 2017**

**THREATENED**

**Mutharika calls the media 'corrupt'**

President Peter Mutharika on Sunday, 28 May, alleged that the media in Malawi is corrupt as stories are published after the writers have been bribed.

In reaction to the allegations, the Media and Communications Committee of Parliament has asked President Peter Mutharika to produce evidence that the Malawi media is corrupt. Media and Communications Committee chairperson Sam Kawale is quoted in the Daily Times issue of Tuesday, 30 May, as saying the President should come out in the open and prove to Malawians that the local media was corrupt. Kawale said the President's remarks could mislead Malawians who may lose trust in the local media.



**17 July 2017**

**ASSAULTED**

**Prison wardens assault journalists**

Malawi prison wardens on Monday, 17 July 2017 assaulted MBC journalists for covering an ongoing strike by the prison wardens. Prison wardens at Maula in Lilongwe manhandled reporter Patrick Dambula and cameraman Hastings Khombo who had gone to the prison to cover the strike. In an interview with MISA Malawi Dambula said that they failed to do their story because of the hostile atmosphere at the prison.



**20 July 2017**

**CENSORED**

**Journalists barred from covering Chaponda case**

Democratic Progressive Party (DPP) supporters insulted and barred journalists who wanted to cover the court case involving



Minister of Agriculture and Food Security George Chaponda when he appeared for his bail application before the Blantyre Magistrates Court in Blantyre on Thursday, 21 July 2017.

Chaponda is accused of abuse of office in the procurement of maize from Zambia. Chaponda, who is ruling DPP vice president for the south, was arrested by the Anti-Corruption Bureau (ACB) on Wednesday, 19 July 2017.

**22 August 2017**

**CENSORED**

**Journalists barred from covering Public Sector Reforms conference**

The Public Service Reforms Management Unit (PSRMU) in the office of the President and Cabinet on Tuesday, 22 August, barred journalists from covering a conference on the implementation of the public sector reforms.

An official from PSRMU ordered journalists out of a meeting that was taking place at Sunbird Capital Hotel in Lilongwe. The Nation Newspaper on 23 August 2017 reported that the unit's chief director Seodi White had also refused to grant The Nation Newspaper an interview to clarify a number of issues White had raised in her presentation during the conference arguing that the Nation Newspaper was bent on having her fired.



**21 September 2017**

**CENSORED**

**Journalists barred from covering council meetings**

The Public Service Reforms Management Unit (PSRMU) in the office of the President and Cabinet on Tuesday, 22 August, barred journalists from cover



# MOZAMBIQUE

National Overview 2017  
by MISA Mozambique

## CONTEXT

Since the resumption of armed conflict in 2012, after 20 years of peace (1992-2012), the freedom of expression environment has become a source of concern, with obvious signs of attempts to silence critical minds through threats and armed attacks (such as the attempts on the lives of academics Gille Cistac in 2015, and José Macuane in 2016) and several political assassinations of both members of the opposition and elements of the ruling party. There is no data on the number of opposition and ruling party politicians assassinated during the armed conflict, but organisations monitoring the human rights situation in Mozambique estimate that it is in the dozens of citizens.<sup>1</sup>

Although the environment continues to be characterised by fear among politicians and critics, especially among opponents of the government of the day, in 2017 there was a slight improvement compared to the previous year. Among 'critical minds', there were a few sporadic cases, one of which was the entry of an armed individual into the room where a debate was taking place in the Youth Parliament, a national non-governmental organisation, where he began to threaten organisers, speakers and par-

<sup>1</sup> Various,

<https://www.dn.pt/mundo/interior/ha-graves-abusos-de-direitos-humanos-contra-civis-5556944.html>;

<https://www.jn.pt/mundo/interior/vala-comum-com-120-cadaveres-em-mocambique-5148681.html>;

<https://www.dn.pt/mundo/interior/ha-graves-abusos-de-direitos-humanos-contra-civis-5556944.html>

[https://photos.state.gov/libraries/mozambique/328666/portuguese\\_pdf/2014\\_human\\_rights\\_mozambique\\_pt.pdf](https://photos.state.gov/libraries/mozambique/328666/portuguese_pdf/2014_human_rights_mozambique_pt.pdf).

ticipants before being removed from the room. The second case occurred during another civil society debate challenging the parliamentary legalisation of the 'hidden debts'<sup>2</sup>. At the time, the organisers mobilised a petition to kick off a process to request an analysis of the constitutionality of the act. Several members of the group of organisers began receiving threats from unknown individuals.

If the environment was slightly better for critics and opposition politicians, the same could not be said of the press. Contrary to the previous year, more than 20 cases of press freedom violations were reported in 2017.

A difficult year is expected for the media in 2018, given that it is the beginning of an electoral cycle.



The number of opposition and ruling party politicians assassinated during the armed conflict, is in the dozens of citizens.

<sup>2</sup> The issue of hidden debts was triggered in the first half of 2016, when, from the international press, it became known that, during the mandate of former President Armando Guebuza, the country contracted a loan in absentia without the knowledge of the National Assembly. Approximately US \$ 1,500 million for investments in the maritime safety sector and in companies engaged in the exploitation of mineral resources.

## PRINT MEDIA

One of the positive aspects of the print media in 2017 had to do with the fact that although the environment remained tense, there were still pockets of newspapers and journalists who challenged the environment of fear.

Among the negative aspects, Mozambique continued to be characterised by a high number of journalists who violated ethical standards in the exercise of their profession. This situation was exploited by some sectors to initiate attacks against the media.<sup>3</sup>

The year 2017 was not among the best in Mozambique, given the high volume of press freedom threats reported by MISA Mozambique.

## ACCESS TO INFORMATION

In 2017, the government and MISA began a process of training journalists and public officials in key positions – most of them managers and those responsible for updating websites – in the process of making information available to the public. The aim was to guarantee that some 70% of public officials in the sectors dealing with the provision of information, were armed with relevant knowledge and changed practices in relation to citizens in the sphere of the right to information.

One of the expected results was a high degree of government response to requests for information and/or proactive disclosure of information, ensuring a response to more than 60% of citizens' requests for information.

3 MISA Moçambique e CEC. "Análise de Questões Éticas na Imprensa Escrita em Moçambique 2016". Maputo, Abril de 2017.

At present the scenario tends to be changeable. The MISA Mozambique *Transparency Assessment* (2017) revealed that from 2016 to 2017 there has not been considerable progress, be it in the availability of information through websites, or in the way public or private organisations were restructuring to accommodate the process of receiving requests for information. In the 2017 edition, there was a slight improvement in the response to requests for information, although these were unsatisfactory, since they only responded to the requests but failed to provide the information. Contrary to the previous year (2016) when only one institution responded, in 2017 at least three institutions responded to the requests.<sup>4</sup>



**Mozambique**  
continued to be characterised by a high number of journalists who violated ethical standards in the exercise of their profession.

4 MISA Moçambique. "Moçambique: Avaliação da Transparência 2017". Maputo, Setembro de 2017. Disponível em <http://www.misa.org.mz/index.php/publicacoes/relatorios/direito-a-informacao-1/85-avaliacao-de-transparencia-misa-2017/file>.

Institutions still did not have organisational structures that allowed for a more flexible and simplified exchange of information with the public. For example, although many had web pages, they did not contain relevant information for citizens, and also, few had a regular update routine, which meant that they were not relevant to the flow of and access to information.

### MEDIA AND ELECTIONS

In the year under review, Mozambique began an electoral cycle (municipal elections in 2018 and general elections in 2019). The electoral periods have proven to be troubled moments for media houses. First, because in these periods the press, including journalists themselves, are often controlled and silenced by the ruling party, through funds from state institutions, both in advertising and in other forms of financing. Second, there is always a tendency to threaten journalists and their relatively independent media houses and to lump them together with the opposition and with the 'hand of outsiders' just because they do not appear to be in agreement with the incumbent political party.

### JOURNALIST SAFETY

In the year 2017, more than 20 cases of violations of press freedom were recorded, most of which consisted of threats and intimidation, confiscation of work equipment and assaults.

During the reporting period, four cases of assault and two cases of confiscation of work equipment and several cases of threats and intimidation were reported (see below section on violations and victories).

### FREEDOM OF EXPRESSION ONLINE

As of January 2017, Mozambique had a law on electronic transactions. Although not directly, this law was seen by many as an instrument to control and intimidate critics, as it provides for criminal accountability of people who circulate offensive messages.<sup>5</sup> Article 18(d) of the Electronic Transactions Act (Law 3/2017, of 9 January) establishes that it is the responsibility of the intermediary provider to "identify users who transmit or store data with offensive content, using the communication service with unidentified sender".

According to this law, all information presented in the form of electronic messages has a probative value for the purposes of holding the authors accountable. The law has not yet been regulated, hence the types of content that are considered offensive have not yet been defined.

Even with the law having come into effect, its impact has not yet been felt. Social networks, namely Facebook, WhatsApp, Twitter, Instagram and others, remain the main personal means of communication and the instruments of social mobilisation in Mozambique. There is to date no publicly known record of citizens being held criminally accountable for circulating electronic messages deemed to be offensive.

The law can have a chilling effect since the flow of messages becomes heavily monitored for the purposes of holding

<sup>5</sup> Ver @Verdade (2014), acessível em <http://www.verdade.co.mz/destaques/democracia/45220-governo-quer-criminalizar-smss-e-e-mails-insultuosos> e Global Voices (2016), disponível em <https://pt.globalvoices.org/2016/11/30/mocambique-internautas-desconfiam-do-verdadeiro-proposito-da-nova-lei-sobre-transacoes-eletronicas/>

# Mozambique

its authors accountable, which can create an environment of fear among citizens.



The law on electronic transactions was seen by many as an instrument to control and intimidate critics, as it provides for criminal accountability of people who circulate offensive messages.

members of the Frelimo party in Quelimane, in Zambézia province, while covering the session of the provincial committee of the same party;

- (3) unknown individuals stole work equipment from a *Miramar* journalist at his house in the city of Tete;
- (4) an independent newspaper, *Horizonte*, was evicted from its facilities in Cabo de Delgado and its employees were hired by a newspaper of the Municipal Council of Pemba, capital of the province.

## LOOKING AHEAD TO 2018

As mentioned above, the year 2018, due to the electoral cycle that begins, could be difficult for the media. For example, between January and February of this year, four cases of violations of press freedom have been reported, namely:

- (1) threats and intimidation against *Radio Encontro*, belonging to the Catholic Church, based in the city of Nampula, coming from 'high-profile people' during the coverage of the midterm elections in the municipality of Nampula;
- (2) the equipment of the *Diário da Zambézia* journalist was confiscated by

# MOZAMBIQUE MEDIA FREEDOM VIOLATIONS AND VICTORIES

The year that ended was characterised more by a high number of violations of press freedom and a few victories won. Likewise, MISA had to intervene in a number of cases, providing legal support to journalists and their respective media houses.



## February 2017 THREATENED

An official of the Beira Municipal Council, by the name of Archanjo, attempted to prevent the work of a journalist from the *Diário de Moçambique* who was reporting on a road accident; threatening the journalist in the following terms: “You are very worried about calling an ambulance, but ask for two, because the other one will be for you. You’d better get away from here, otherwise you’ll regret it.”



## March 2017 THREATENED

The editor of the newspaper *@Verdade*, Adérito Caldeira was summoned by the Attorney General’s Office to provide a statement on a case that he knew nothing about. The Deputy Prosecutor asked him to present the documents that served as the source of information for the article in question.



## 7 April 2017 DETAINED

Detention of journalist Estácio Valoi in the city of Pemba, Cabo Delgado, while taking photographs of a group of people on the occasion of Mozambican Women’s Day, 7 April.



## April 2017 VICTORY

A victory for freedom of the press, with MISA and Daviz Simango agreeing to withdraw the case against the newspaper *Diário de*



*Moçambique*, after the intervention of the local MISA office.



## 12 May 2017 ASSAULTED

Journalist attacked by presidential guard in Nampula. The MISA Mozambique office in Nampula learned with justifiable concern of the attack against journalist Arlindo Chissale of the community radio and television station of Nacala Porto, carried out by a security agent of the President of the Republic in Nacala Velha. At the time of the aggression – which took place on 12 May – Arlindo Chissale was reporting on and taking photographs of the presidential visit, using his mobile phone.



## May 2017 THREATENED

*Nacala Porto Community Radio* journalist Abdul Age was threatened by members of the Nacala Sports Club management for allegedly publishing a news item about the non-payment of two months’ salaries to players.



## June 2017 CENSORED

Prohibition of coverage of the trial of the ‘Chinese Bank’ case, a problematic decision. MISA Mozambique received with justifiable concern information that, at the request of the defendants’ lawyer, Flávio Menete, now a member of the Bar Association, *Televisão de Moçambique* had been prohibited from covering the court pro-

ceedings of the so-called 'Chinese Bank' case, related to a financial association known as the Chinese Bank, which allegedly operated illegally in the city of Maputo.



### June 2017

#### EXPELLED

Journalists from *Chimoio Community Television* (TVC) were chased out by the governor. The journalists were prevented from joining the delegation travelling for the purposes of the verification of the withdrawal of government forces.



### June 2017

#### THREATENED

The councillor for Infrastructure, Urbanisation and Construction at Quelimane Municipal Council, Yassin Calú, threatened and embargoed the construction of a building on a piece of land belonging to a newspaper in retaliation for the newspaper's report on signs of corruption in the sector under the authority of the councilman.



### July 2017

#### EXPELLED

Two journalists, including André Catueira of the *Lusa Agency* and Benedito Cobrissua of the weekly *Zambeze*, were barred from joining the armed forces delegation monitoring the withdrawal of the government forces from Gorongosa, areas surrounding the refuge of Renamo leader Afonso Dhlakama.



### July 2017

#### ASSAULTED

Two journalists from the *Magazine Independente*, namely Abanês Ndanda and António Nhangumbe, reporter and trainee reporter respectively, were assaulted by Maputo provincial government security agents, with the knowledge of the Communications Office of the

institution, when they were photographing the building, which is not prohibited by law. The journalists' equipment was forcibly taken away (a camera from which the memory card was removed for the purpose of deleting the images taken), on the grounds that lack of authorisation infringed the image rights of that institution.



### 19 July 2017

#### THREATENED

Aparício de Nascimento, editor of the newspaper *Malacha*, published in the city of Tete, was summoned by the local police, to be heard by the provincial commander and his respective chief of operations. The hearing took place the following day, 20 July. The newspaper was summoned in the wake of an article reporting that a police officer had shot and killed an innocent young man.



### July 2017

#### THREATENED

The FMO website (<http://www.fmo.org.mz/>) was attacked by hackers after organising the collection of signatures and submitting a request to the Constitutional Council for review of the constitutionality of parliament's act of legalisation of hidden debts. On the website one could read "this site was hacked by Pri Nce". In the background appeared a drawn image of a bloodied person and with the caption "Property of Pri Nce".



### July 2017

#### VICTORY

With legal support from MISA, the weekly *Magazine Independente* and its respective editor were acquitted in a lawsuit filed by the former Regional Director of the Mozambican Tax Authority, Cristiano Arcanjo Dengo, in which

they were accused of slander and defamation.



### September 2017

#### ASSAULTED

Journalist Luciano da Conceição in Inhambane was attacked when he tried to gather information about an alleged strike by students of a health training institute. His camera, notepad, and telephone were violently taken from him, and he was held hostage. His release was only possible with the intervention of the police. The medical diagnosis concluded that the assault had resulted in bruises on his hand.



### December 2017

#### CENSORED

Police in Nacala seized the equipment of the *Nacala* Community Radio journalist, consisting of tape recorder and two mobile phones, while covering the death of a police officer shot by a colleague in Nacala-A-Velha, Nampula.



### September 2017

#### CENSORED

Mozambican Information Agency (AIM) journalist, Anacleto Mercedes, was forced to leave the hall where Filipe Nyusi, President of the ruling party and of the Republic, delivered the opening address of the XI Congress in the city of Matola. He was taken to the police station next to the Frelimo Party Central School, where he was subjected to interrogation to explain why he was recording the president's speech.



### October 2017

#### THREATENED

Journalists from *Morrumbene* community radio station in Inhambane province were threatened with death by the district police commander, after reporting cases of robbery by a gang that allegedly

included a member of the Police of the Republic of Mozambique, attached to the district command. The journalists had to seek refuge outside the town for a few days.



### December 2017

#### THREATENED

The journalist and editorial director of the *Ikweli* newspaper, published in Nampula, Aunício Silva, was threatened with death by an unknown man, who pointed a pistol at him, saying that the *Ikweli* newspaper was undermining the image of the president of the Mozambique Democratic Movement (MDM), Daviz Simango, as well as the party candidate in the municipal midterm elections on 24 January.



### October 2017

#### THREATENED

A journalist of *Radio Quelimane FM* was sued for reporting, during a sports programme, that the president of the Club of the Port of Quelimane owed salaries to the driver of the club; the president of the club had been contacted twice to give his version, in vain, as he refused to give any clarification.

## INTRODUÇÃO

**D**esde o reinício de conflito armado em 2012, após 20 anos de paz (1992-2012), o ambiente da liberdade de expressão tornou-se preocupante com sinais evidentes de tentativas de silenciamento de mentes críticas, através de ameaças e ataques armados (como os atentados contra os académicos Gille Cistac em 2015, e José Macuane em 2016) e de vários assassinatos políticos, tanto da oposição, como de elementos do partido no poder. Não há dados sobre o número de políticos da oposição e do partido no poder assassinados durante o conflito armado, mas as organizações que monitorizam a situação dos direitos humanos em Moçambique estimam que chegue a dezenas de cidadãos<sup>1</sup>.

Embora o ambiente continue a ser caracterizado pelo medo instalado entre políticos e críticos, sobretudo entre opositores do governo do dia, em 2017 registou-se uma ligeira melhoria quando comparado com o ano anterior. Entre ‘mentes críticas’, foram registados alguns casos esporádicos, um dos quais foi a entrada de um indivíduo armado na sala onde decorria um debate do Parlamento Juvenil, uma organização não-governamental nacional, onde começou a proferir ameaças contra organizadores, oradores e participantes antes de ser retirado da sala. O segundo

caso ocorreu durante um outro debate organizado pela sociedade civil que contestava o facto de o parlamento ter legalizado as ‘dívidas ocultas’<sup>2</sup>. Na altura, os organizadores mobilizaram assinaturas para iniciar um processo de pedido de fiscalização de constitucionalidade do acto. Vários membros do grupo de organizadores começaram a receber ameaças de indivíduos desconhecidos.



**O número de políticos da oposição e do partido no poder assassinados durante o conflito armado ... estima-se que chegue a dezenas de cidadãos.**

Se o ambiente foi ligeiramente melhor para os críticos e políticos da oposição, o mesmo já não se pode dizer da imprensa. Contrariamente ao ano anterior, em 2017 foram notificados mais de 20 casos de atentado à liberdade de imprensa.

<sup>1</sup> Disponíveis em:

<https://www.dn.pt/mundo/interior/ha-graves-abusos-de-direitos-humanos-contra-civis-5556944.html>;

<https://www.jn.pt/mundo/interior/vala-comum-com-120-cadaveres-em-mocambique-5148681.html>;

<https://www.dn.pt/mundo/interior/ha-graves-abusos-de-direitos-humanos-contra-civis-5556944.html>

<sup>2</sup> A questão das dívidas ocultas foi despoletada no primeiro semestre de 2016, quando, a partir da imprensa internacional, se tomou conhecimento de que, durante o mandato do ex-presidente da República, Armando Guebuza, o país contraiu um empréstimo à revelia da Assembleia da República, no valor de aproximadamente mil e quinhentos milhões de dólares para investimentos no sector de segurança marítima e nas empresas ligadas à exploração de recursos minerais.

Perspectiva-se um ano de 2018 difícil para a comunicação social, dado ser o início de um ciclo eleitoral.

### COMUNICAÇÃO SOCIAL ESCRITA

Um dos aspectos positivos registados na imprensa escrita em 2017 está relacionado com o facto de, embora o ambiente continuar tenso, ainda haver focos de jornais e jornalistas que desafiam o ambiente de medo.

Entre os aspectos negativos, Moçambique continua a ser caracterizado pelo número elevado de jornalistas que violam normas éticas no exercício da sua profissão. Esta situação é explorada por alguns sectores para iniciar ataques contra a comunicação social<sup>3</sup>.

O ano de 2017 não foi dos melhores em Moçambique, dado o volume elevado de casos de ameaça à liberdade de imprensa divulgados pelo MISA Moçambique.



**Moçambique continua a ser caracterizado pelo número elevado de jornalistas que violam normas éticas no exercício da sua profissão.**

<sup>3</sup> MISA Moçambique e CEC. “Análise de Questões Éticas na Imprensa Escrita em Moçambique 2016”. Maputo, Abril de 2017.

### ACESSO À INFORMAÇÃO

Em 2017, o Governo e o MISA iniciaram um processo de formação de jornalistas e funcionários públicos em posições-chave – a maioria gestores e responsáveis pela actualização dos websites – no processo da disponibilização de informação ao público. O objectivo era garantir um nível de 70% dos funcionários públicos, nos sectores que lidam com a disponibilização da informação, com relevante conhecimento e práticas modificadas na relação com os cidadãos no quadro do direito à informação.

Um dos resultados esperados é o elevado nível de resposta do governo nos pedidos de informação e/ou na disponibilização proactiva de informação, garantindo resposta a mais de 60% dos pedidos de informação dos cidadãos.

Actualmente o cenário tende a mudar. O estudo do MISA Moçambique (2017) sobre instituições Abertas e Fechadas revela que de 2016 para 2017 não houve uma evolução considerável, seja na disponibilização da informação através de *websites*, como na forma como as organizações públicas ou privadas se estão a estruturar para acomodar a recepção de pedidos de informação. Na edição do ano 2017, notou-se uma ligeira melhoria na resposta de pedidos de informação, embora respostas não satisfatórias, dado que apenas responderam os pedidos, mas sem disponibilizar a informação. Contrariamente ao ano anterior (2016) em que apenas uma instituição respondera, em 2017 pelo menos três instituições responderam aos pedidos<sup>4</sup>.

<sup>4</sup> MISA Moçambique. “Moçambique: Avaliação da Transparência 2017”. Maputo, Setembro de 2017. Disponível em <http://www.misa.org.mz/index.php/publicacoes/relatorios/direito-a-informacao-1/85-avaliacao-de-transparencia-misa-2017/file>.

# Moçambique

As instituições continuam sem dispor de uma arquitectura organizacional que permita uma troca mais flexível e simplificada da informação com os cidadãos. Por exemplo, embora muitas disponham de páginas web, estas não contêm informação relevante para o cidadão, e mais, poucas gozam de uma rotina de actualização, o que faz com que não sejam pertinentes para a circulação e acesso à informação.

## MEDIA E ELEIÇÕES

No ano em análise, Moçambique inicia um ciclo eleitoral (eleições autárquicas em 2018 e gerais em 2019). Os períodos eleitorais têm-se revelado momentos conturbados para os órgãos de comunicação social. Primeiro, porque nestes períodos a imprensa, incluindo os próprios jornalistas, são muitas vezes controlados e silenciados pelo partido no poder, através de fundos provenientes de instituições do Estado, quer na publicidade, assim como em outras formas de financiamentos. Segundo, há sempre uma tendência de ameaçar jornalistas e os respectivos órgãos de informação relativamente independentes e de os conotar com a oposição e com ‘a mão externa’ só porque não se revelam alinhados ao poder político vigente.

## SEGURANÇA DE JORNALISTAS

Durante o ano de 2017, foram registados mais de 20 casos de violação da liberdade de imprensa, a maioria dos quais constituídos por ameaças e intimidações, confisco de equipamentos de trabalho e agressões.

No período em análise foram registados quatro casos de agressões e dois casos de confisco de equipamento de trabalho e diversos casos de ameaças e intimidações (ver a secção sobre Violações de Liberdade e Vitórias)



O número de políticos da oposição e do partido no poder assassinados durante o conflito armado ... estima-se que chegue a dezenas de cidadãos.

## LIBERDADE DE EXPRESSÃO NAS REDES ELECTRÓNICAS

Moçambique dispõe desde Janeiro de 2017 de uma Lei sobre Transacções Electrónicas. Embora não seja de forma directa, esta lei é vista por muitos como um instrumento para controlar e intimidar as mentes críticas, dado que prevê responsabilizar criminalmente pessoas que circulam mensagens ofensivas<sup>5</sup>. Com efeito, a alínea d) do artigo 18, da Lei das Transacções Electrónicas (Lei n.º3/2017, de 9 de Janeiro), estabelece que cabe ao provedor intermediário, “identificar os utilizadores que transmitem ou armazenem dados com conteúdos ofensivos, usando o serviço de comunicação com remetente não identificado”.

<sup>5</sup> Ver @Verdade (2014), acessível em <http://www.verdade.co.mz/destaques/democracia/45220-governo-quer-criminalizar-smss-e-e-mails-insultuosos> e Global Voices (2016), disponível em <https://pt.globalvoices.org/2016/11/30/mocambique-internautas-desconfiam-do-verdadeiro-proposito-da-nova-lei-sobre-transacoes-eletronicas/>

## Português

De acordo com a mesma lei, toda a informação apresentada sob forma de mensagens electrónicas goza de força probatória para efeitos de responsabilização dos autores. A lei ainda não foi regulamentada, daí que ainda não foram definidos os tipos de conteúdo que são considerados ofensivos.

“

**“Lei sobre Transacções Electrónicas ... é vista por muitos como um instrumento para controlar e intimidar as mentes críticas, dado que prevê responsabilizar criminalmente pessoas que circulam mensagens ofensivas”.**

Mesmo que a lei tenha entrado em vigor, o seu impacto ainda não é sentido. As redes sociais, nomeadamente o Facebook, WhatsApp, Twitter, Instagram entre outras, continuam a ser os principais meios de comunicação entre pessoas e instrumentos de mobilização social em Moçambique. Ainda não houve registo publicamente conhecido de cidadãos

que tenham sido responsabilizados criminalmente por circularem mensagens electrónicas consideradas ofensivas.

Efectivamente, a lei pode ter efeitos intimidatórios dado que a circulação das mensagens passa a ser fortemente controlada para o efeito de responsabilização dos seus autores, o que pode criar entre os cidadãos um certo ambiente de medo.

### PERSPECTIVAS PARA 2018

Conforme foi referido acima, o ano 2018, devido ao ciclo eleitoral que inicia, poderá ser difícil para a comunicação social. A título de exemplo, entre Janeiro e Fevereiro do ano em curso já foram divulgados quatro casos de violação da liberdade de imprensa, nomeadamente: (1) ameaças e intimidações à Rádio Encontro, pertencente à Igreja Católica, com sede na cidade de Nampula, vindas de ‘altas figuras’ durante a cobertura das eleições intercalares no município de Nampula; (2) o equipamento do jornalista do Diário da Zambézia foi confiscado por membros do partido Frelimo em Quelimane, província da Zambézia, quando fazia a cobertura da sessão do comité provincial do mesmo partido; (3) indivíduos desconhecidos furtaram equipamento de trabalho do jornalista da Miramar em sua casa na cidade de Tete; (4) um jornal independente (Horizonte) foi despejado das suas instalações em Cabo de Delgado e os seus funcionários foram contratados por um jornal do Conselho Municipal de Pemba, capital da província.

# VIOLAÇÕES DE LIBERDADE DOS MEIOS DE COMUNICAÇÃO SOCIAL & VITÓRIAS EM 2017

O ano que terminou foi fértil em casos de violação da liberdade de imprensa e de vitórias conquistadas. Igualmente, o MISA teve de intervir em vários casos, providenciando apoio jurídico a jornalistas e os respectivos órgãos de informação. Ao longo do ano de 2017 foram registados mais de 20 casos de violação das liberdades de imprensa e de expressão. Eis os casos registados:



## **Fevereiro** **AMEAÇADO**

Um funcionário do Conselho Municipal da Beira, que responde pelo nome de Arcanjo, tentou impedir a actividade de um jornalista do Diário de Moçambique que cobria um acidente de viação, tendo ainda ameaçado o jornalista nos seguintes termos: “Estás muito preocupado em ligar para ambulância, mas pede para virem duas, porque a outra será para ti. É melhor te afastares daqui, senão vais-te arrender”.



## **Março** **AMEAÇADO**

O editor do jornal @Verdade, Adérito Caldeira foi notificado pela Procuradoria-Geral da República para prestar declarações sobre uma processo cuja natureza desconhecia. O Procurador-Geral Adjunto pediu que apresentasse os documentos que serviram de fonte de informação do artigo em causa.



## **7 de Abril** **DETIDO**

Detenção do jornalista Estácio Valoi na cidade de Pemba, Cabo Delgado, quando tirava fotografias de um grupo de pessoas por ocasião do Dia da Mulher Moçambicana, 7 de Abril.



## **Abril** **VITÓRIA**

Uma Vitória para a liberdade de imprensa em que o MISA e Daviz Simango acordam a extinção do



processo contra o jornal Diário de Moçambique, após a intervenção do núcleo local do MISA.

## **12 de Maio** **AGREDIDO**

Jornalista agredido pela guarda presidencial em Nampula. O núcleo do MISA Moçambique em Nampula tomou conhecimento, com justificada preocupação, da agressão ao jornalista Arlindo Chissale, da Rádio e Televisão Comunitária de Nacala Porto, protagonizada por uma agente de segurança do Presidente da República em Nacala Velha. Na altura da agressão – ocorrida no dia 12 de Maio – Arlindo Chissale encontrava-se a fazer a cobertura jornalística e fotográfica da visita presidencial, usando o telemóvel.



## **Maio** **AMEAÇADO**

O jornalista da Rádio Comunitária de Nacala Porto, Abdul Age, foi ameaçado por membros da direcção do Clube Desportivo de Nacala por alegadamente ter publicado uma notícia sobre o não-pagamento de dois meses de salários aos jogadores.



## **Junho** **CENSURADO**

Proibição de cobertura do julgamento do caso ‘Banco Chinês’, uma decisão problemática. O MISA Moçambique recebeu, com justificada preocupação, informação de que, a pedido do advogado dos réus, Flávio Me-

nete, actual bastonário da Ordem dos Advogados, a Televisão de Moçambique tinha sido proibida de fazer a cobertura do julgamento do caso 'Banco Chinês', relacionado com uma associação financeira conhecida por Banco Chinês, que supostamente funcionava ilegalmente na cidade de Maputo.

## **Junho** **CENSURADO**

Jornalistas da Televisão Comunitária de Chimoio (TVC) foram expulsos pelo governador. Os jornalistas foram impedidos de integrar a comitiva que se deslocava para a verificação da retirada das Forças Governamentais.

## **Junho** **AMEAÇADO**

O vereador para a área de Infraestruturas, Urbanização e Construção no Conselho Municipal de Quelimane, Yassin Calú, ameaçou e embargou a obra da construção de um edifício no espaço pertencente ao jornal em retaliação à denúncia feita pelo jornal sobre indícios de corrupção no sector sobre a alçada do vereador.

## **Julho** **CENSURADO**

Dois jornalistas, nomeadamente André Catueira, da Agência Lusa, e Benedito Cobrissua, do semanário Zambeze, foram impedidos de integrar a comitiva organizada pelas forças armadas para a verificação de retirada das forças governamentais da Gorongosa, zonas de cerco ao líder da Renamo, Afonso Dhlakama.

## **Julho** **CENSURADO**

Dois jornalistas do jornal Magazine Independente, nomeadamente Abanês Ndanda e António Nhangumbe, repórter e repórter

estagiário respectivamente, foram agredidos por agentes da segurança do Governo da Província de Maputo com o conhecimento do Gabinete de Comunicação daquela instituição governamental, quando se encontravam a fotografar o edifício, o que não é proibido pela lei. O equipamento dos jornalistas foi tirado à força (máquina fotográfica de onde foi retirado o cartão de memória para efeitos de eliminação das imagens colhidas), sob pretexto de que a falta de autorização feria os direitos de imagem daquela instituição.

## **20 de Julho** **AMEAÇADO**

Aparício de Nascimento, editor do jornal Malacha, publicado na cidade de Tete, foi notificado pela polícia local, para ser ouvido pelo comandante provincial e o seu respectivo chefe de operações. A audição teve lugar no dia seguinte, 20 de Julho. O jornal foi notificado na sequência de um artigo que noticiava que um agente da polícia teria morto, a tiro, um jovem inocente.

## **Julho** **AMEAÇADO**

O website do FMO (<http://www.fmo.org.mz/>) sofreu um ataque de *hackers* após ter organizado a recolha das assinaturas e ter apresentado junto do Conselho Constitucional um pedido de fiscalização da constitucionalidade do acto de legalização das dívidas ocultas pelo parlamento. No website podia-se ler (em inglês) "este site foi invadido por Pri Nce". No fundo do website aparece numa imagem desenhada de uma pessoa ensanguentada e com a legenda "Propriedade de Pri Nce".



## Julho VITÓRIA

Com apoio jurídico do MISA, o semanário Magazine Independente e o seu respectivo editor foram ilibados num processo movido pelo ex-director Regional Norte, da Autoridade Tributária de Moçambique, Cristiano Arcanjo Dengo, em que eram acusados de calúnia e difamação.



## Setembro AGREDIDO

O jornalista Luciano da Conceição em Inhambane foi agredido quando tentava recolher informações sobre uma suposta greve dos estudantes de um instituto de formação de saúde. Foram-lhe arrancados a máquina fotográfica, bloco de notas e o telefone e foi mantido refém. A sua libertação só foi possível com a intervenção da polícia. O diagnóstico médico concluiu que a agressão resultou em contusões na mão.



## Dezembro CENSURADO

A polícia em Nacala confiscou o equipamento do jornalista da Rádio Comunitária de Nacala, constituído por gravador e dois telemóveis, quando fazia a cobertura da morte a tiro de um agente da polícia por um colega em Nacala-A-Velha, na província de Nampula.



## Setembro CENSURADO

Jornalista da Agência de Informação de Moçambique (AIM), Anacleto Mercedes, foi forçado a abandonar o salão onde Filipe Nyusi, Presidente do partido no poder e da República proferia o discurso de abertura do XI Congresso, na cidade da Matola. Foi conduzido ao posto policial junto à Escola Central do Partido Frelimo, onde foi submetido a um interrogatório



## Outubro AMEAÇADO

Jornalistas da rádio comunitária Millennium em Morrumbene, na província de Inhambane, foram ameaçados de morte pela comandante distrital da polícia, após terem denunciado casos de roubos protagonizados por uma quadrilha que alegadamente integrava um agente da Polícia da República de Moçambique (PRM), afecto ao comando distrital. Os jornalistas tiveram de se refugiar fora da cidade, mas regressaram após alguns dias.



## Dezembro AMEAÇADO

O jornalista e director editorial do jornal *Ikweli*, publicado em Nampula, Aunício Silva, foi ameaçado de morte por um desconhecido, que lhe apontou uma pistola, afirmando que o jornal *Ikweli* estava a prejudicar a imagem do presidente do Movimento Democrático de Moçambique (MDM), Daviz Simango, assim como do candidato do partido nas eleições intercalares municipais de 24 de Janeiro.



## Outubro AMEAÇADO

Um jornalista da Rádio Quelimane FM foi processado por ter publicado, durante o programa de desporto, uma reportagem que noticiava que o Presidente do Clube do Porto de Quelimane devia salários ao motorista do clube, tendo, o presidente do clube, sido contactado duas vezes para dar a sua versão, sem sucesso dado que negava prestar qualquer esclarecimento.





# NAMIBIA

National Overview  
2017 by MISA

## NATIONAL OVERVIEW

**N**amibia continues to enjoy its status as the highest ranked country in sub-Saharan Africa on the 2017 World Press Freedom Index compiled by Reporters Without Borders (RSF). Globally, it has moved down from 17 to 24 out of 180 countries which may be attributed to the fact that Namibia still has no freedom of information law to guarantee citizens and the media access to public information.

The Public Service Act of 1995, which is the current legislation in place, makes it difficult to access information held by the state, as it restricts public servants from disclosing public information that should in fact be available.

Prior to coming into office President Hage Geingob always assured the sector of his commitment towards media freedom. In a speech at the investor's conference in New York in September 2016 the president said,

"As a former freedom fighter, press freedom is one of the things we fought for. Even when I was prime minister the first time, I used to assure one of the stalwart editors in Namibia that government would never compromise on the freedom of the press. Therefore, we will not rein in on the freedoms of the press."

These sentiments contradict the behaviour of certain members of the political leadership of the country who have berated the media in recent months, causing ripples on the surface of a seemingly smooth and conducive media environment.

President Hage Geingob's stance is more difficult to fathom. While he is seen as a

strong advocate of media freedom, he has on some occasions been critical of the media.

Overall, the socio-political context remains conducive for free expression in general, and media freedom in particular.

## FREEDOM OF EXPRESSION

Unlike other countries on the African continent, Namibia once again had no incidents of assault, imprisonment, murder or threats in relation to freedom of expression in 2017. Media practitioners continued to have the freedom to investigate and report on public interest issues. Citizens were able to freely express themselves on issues that directly or indirectly affect them on social and mainstream media platforms.

However, it would be remiss if mention was not made of political leaders inclination, and in particular President Hage Geingob's consistent questioning of the media and civil society's credibility and mandate.

Back in 2016, an article published in *The Namibian* on 20 August quoted information minister Tjekero Tweya saying the Ministry of Information and Communication Technology (MICT) will drive the agenda to create a statutory body "as a matter of urgency to ensure that the media is held responsible in the event that they abuse their power to report, write and broadcast, and make themselves guilty of defamation and slander of people's character in public, and get away with murder. This tendency must come to an end."

According to *The Namibian* the minister had, on earlier occasions, explained that he was planning the establishment of a regulatory body tasked to "regulate and punish the media".

However only weeks later, Tweya was said to have stated that he will no longer make comments on media regulation and the possibility of punishment of journalists, the *Windhoek Observer* reported on 15 September 2016. According to the article, this was in reaction to a press briefing President Geingob held during which he “warned his ministers”, explaining that it is not government policy to control the media.

There was a hope that in 2017 verbal attacks issued against the media by the Geingob administration would cease, but unfortunately they did not. This, despite the fact that the president was keynote speaker at the official 2017 World Press Freedom Day commemoration, where he, on behalf of government, re-committed to protecting and supporting media freedom. At the occasion, President Geingob also launched the Editors’ Forum of Namibia (EFN) revised Code of Ethics.

During a SWAPO Party star rally in March, Geingob reportedly directed criticism towards the media and civil society, accusing them of making concerted efforts to paint a picture of a government unable to uphold democracy and freedom in the country, reported *The Namibian* on 13 March 2017. The president further criticised journalists aged between 40 and 50 for wanting to be “guardians of freedom” while at the same time these “kingpins” had not been involved in the country’s liberation struggle.

Taking another swipe at civil society during the rally, Geingob is quoted in the *Namibian Sun* to have said that “they are failed politicians who want to come [in] from the back door now. Civil society wants to come in; why do we have elections then?”

Free expression advocates were in a conundrum in terms of how to address the current situation where political leaders used public meetings, attended by ordinary citizens, to attack the media and civil society. Not only did this contradict government policy, but it created mistrust of the two sectors that are critical for the democracy project.



Free expression advocates were in a conundrum in terms of how to address the current situation where political leaders used public meetings, attended by ordinary citizens, to attack the media and civil society.

It further entrenched an existing culture of fear of victimisation among citizens, in particular those working in the public sector. If teachers or administrators want to express themselves on governance, politics and Namibian society in general, they should be able to do so without fearing backlash or name-calling from the president and his team. Rights to free expression should not exist on pa-

per only, but Namibians have to live and revel in them.

A 2008 article published in *The Namibian* quoted former Prime Minister Hage Geingob warning journalists to “tell the truth and nothing but the truth”, adding that “the press is there to report positively on events”. Herein lay the problem - the Geingob administration wanted ‘sunshine journalism’, meaning the media must only report on positive developments and to create an image that all was well in the Land of the Brave.

Along the same lines, during a media briefing on Cabinet decisions in April 2017 Tweya cautioned media houses to report positive developments instead of focusing on negative or non-factual stories, according to a *New Era* article.

This, while all was not well in what is known as the ‘Land of the Brave’.

The country experienced high rates of violence against women and children, corruption, poverty, alcohol and drug abuse. Recent budget cuts had left schools, hospitals and clinics short on staff, medication, medical equipment, textbooks, stationery, cleaning materials and toilet paper. Were the media supposed to ignore all this and only report on yet another speech made by a minister at the opening of a workshop or conference?

In a landmark 1996 High Court case (*Fantasy Enterprises v Minister of Home Affairs, 1996*), the judgement stated that “the need to jealously protect the right to freedom of speech and expression and the value thereof in a democratic society has been stated and restated over many decades in many jurisdictions all over the world.” The High Court judge further argued that the concept of freedom of speech and expression is “not limited in

content to that which can be regarded as pleasing, inoffensive or indifferent, but extends also to that which disturb, offend or shock.”

In addition to the socio-economic challenges faced by ordinary citizens, the media and civil society began to face crippling financial decline.

Due to Namibia being labelled a middle-income country seen against the background of the global economic slowdown; the country was no longer the darling of the international donor community. At least two civil society organisations had closed down annually over the last three years.

Social media had become the preferred source of news for many, which resulted in a decrease in newspaper sales. Print was trying to find ways to gain revenue from their online versions, but this was still in its infancy stages and it is not yet known if this would succeed in enhancing their financial sustainability.

News stories of underachievement, corruption, nepotism or failure of government policies remain vital in pointing out where the nation needs attention - for directing, assisting efforts towards achievement of national goals. Perhaps, as Tawana Kupe suggests, media (party, government or private) need to find some sort of common ground - “a balance between an affirmation of positive developments ... and highlighting those tensions that signal that all is not well.”

## PROFESSIONAL STANDARDS

The media would be the first to admit that it is not perfect, hence the commitment to consistently improving and strengthening the self-regulatory system. During the year under review, the Editors’ Forum of Namibia (EFN) appointed

John Nakuta, a well-respected human rights lawyer and academic, as the new Media Ombudsman. Nakuta took over from Clement Daniels who had been appointed in 2009. Media Complaints and Media Appeals committees consisting of a diverse group of professionals to support the work of the Media Ombudsman's office were also established.

“**Social media had become the preferred source of news for many, which resulted in a decrease in newspaper sales. Print was trying to find ways to gain revenue from their online versions, but this was still in its infancy stages and it is not yet known if this would succeed in enhancing their financial sustainability.**”

Through the formation of a strategic partnership with the Namibia Media Trust (NMT), the EFN launched a revised Code of Ethics and Conduct for

Namibian print, broadcast and online media. The revised code was launched by President Hage Geingob at a belated celebration of World Press Freedom Day in Namibia on 10 May 2017.

NMT Executive Chairperson Gwen Lister said the Code held the potential of breaking ground in Africa in terms of forming the basis of a unique form of co-regulation of the fourth estate, which had the legal backing of the law. Dani Booysen, the Secretary General of the EFN, added that the purpose of revamping the Code of Ethics was to reinforce effective complaint procedures and penalties, accentuate the protection of whistle-blowers and to address ethical considerations across print, broadcast and online media categories.

The self-regulatory system is effective only when the public make use of the accountability measures in place. This includes direct communication with the media house in question or laying a complaint with the Media Ombudsman.

On the occasion of WPF 2017 the NMT issued a statement to say that the global outlook was depressing, and that “much more needs to be done to consolidate freedom of the media in many parts of the world, because without it, free expression was compromised too”.

The NMT noted that the celebration of 3 May each year as WPF had come in response to a call by African journalists who had gathered in the Namibian capital in 1991 to craft the historic Windhoek Declaration on a Free, Independent and Pluralistic Media.

While Namibia remained first in Africa, according to the RSF, with an improved score, it had nevertheless slipped down in the rankings, from 17th in 2016 to 24th position in 2017.

This was due in part to the brief detention of two visiting international journalists and confiscation of their equipment, as well as ongoing threats to regulate the media. In a disturbing development, a Cabinet memorandum had been issued to direct government advertising and information primarily to state-owned media.

The NMT, which had provided assistance to the EFN to redraft the Code of Ethics and Conduct, commended this initiative to strengthen regulation and enhance journalistic professionalism.

While membership of the EFN was voluntarily, the NMT called on all media to join up and commit themselves to adherence to the Code in order to maintain high standards in Namibian journalism on all platforms.

While to many it is undeniable that the quality of journalism has deteriorated over the last few years, this is not unique to Namibia, rather, it is a global occurrence that can be ascribed to a number of factors.

In Namibia's case, it can be argued that the journalism training institutions do not provide a sufficient number of graduates to staff newsrooms. When they do, some media houses unfortunately do not provide graduates with in-house training and mentorship by senior journalists. Modern-day journalism is even more deadline driven and stressful than that of yesteryear.

Social media has both negatives and positives. On the one hand it has elevated citizen journalism to a whole new level, but on the down side, it has heralded the arrival of 'fake news' as it is termed, which have combined to place undue pressure on mainstream media to break the news. In doing so, they fail

to do proper verification of information and at times fail the objectivity test. Some media houses went as far as to publish press statements word for word.

In November, life-threatening violence was sparked at a Katutura home when a live-caller announced on the *Otjiherero* radio station that the occupant had children's body parts in his refrigerator. This unverified information spread fast on social media, and within two hours hundreds of people were in front of the home demanding that the occupant hand himself over. Riot police dispersed the crowd with teargas and rubber bullets. Roadblocks and traffic jams added to the chaos.

These were challenges that have to be urgently addressed by the media sector. Stakeholders and citizens must hold the media accountable at all times, which is one of the best ways to improve their professionalism and ethics. Further, the media and stakeholders must provide media and information literacy (MIL) and Digital Literacy. MIL and digital literacy have become critical skills required in this information age where fake news is spread across media platforms as truth.

## ACCESS TO INFORMATION

Renowned for its high degree of media freedom and equally lauded for the explicit guarantee of media freedom and freedom of expression enshrined in Chapter 3 of the Constitution, Namibia's downfall is the absence of a similar constitutional provision of access to information.

It should be mentioned here that in 2016 civil society organisations, under the umbrella of the Access to Information (ACTION) Namibia Coalition, worked with MICT to design an Access to In-

formation Bill using the African Union's Model Law on Access to Information as the basis. However, since that time, the draft bill languished in the halls of state and by end 2017 it was unclear whether or when the bill would make an appearance on the parliamentary agenda.

Good governance and freedom of expression cannot be fully realised without access to information. This is a fact that government itself has acknowledged. In 1998 government committed itself to passing, what was then called, a Freedom of Information Act. But 20 years later an Access to Information (ATI) BILL is still not part of the legislative framework of the country.

In his 2017 budget speech, the Minister of Information, Communication and Technology, Tjekero Tweya, assured the public that the ATI Bill, along with the reviewed National Information Policy "will see the light of the day before the end of 2017/18 Financial Year." This did not happen.

Cabinet referred the draft bill, formulated through the multistakeholder process, back to the MICT, because it was of the opinion that the bill lacked input by government security agencies. The MICT was thus compelled back to the drawing board to hold consultative meetings with the various agencies in government that deal with national security such as the Ministry of Safety and Security, which included the Namibian Police, as well as the Central Intelligence Service.

Tweya announced that he would table the Electronic Transactions and Cybercrime (ETC) Bill in Parliament in February, but it was withdrawn shortly thereafter. The second draft was not a hugely improved version of the first, according to the Institute for Public Policy Research (IPPR), as it still contained provi-

sions that would allow for the violation of privacy and contained language that could easily be used to repress freedom of expression on the internet.

The ICT ministry was at the time incorporating the input by the public and stakeholders. It was unclear when in 2018 the bill would be tabled.

The Data Protection Bill was also placed on the backburner until the ETC Bill was finalised. One of the recommendations being considered by the Ministry is for data protection to be a policy that supports the ETC Bill.

The Broadband Policy suffered the same fate as that of the ETC Bill. The lack of public and stakeholder consultation resulted in a draft policy that, as described by the ACTION Coalition and IPPR, "comes across more as a statement of intent rather than an actual policy statement".

The main critique was that the implementation provisions lacked adequate timeframes, priorities and that specific actions were poorly articulated. They also criticised the lack of consultation that preceded the drafting of the policy. The MICT withdrew the policy and conducted two public consultative meetings, and invited written input. As with the ETC Bill, it was expected to be formalised in 2018.

After intense lobbying by civil society, government removed the problematic Section 52 from the Whistleblower Protection Bill. The clause stated that a whistleblower's protection could be withdrawn if they were critical of government policy when making a disclosure. The Witness Protection Act and the Whistleblower Protection Act were then subsequently passed by Parliament.

The IPPR in collaboration with the International Budget Partnership (IBP) conducted the 2017 Open Budget Survey for which Namibia received a score of 50, beating the global average of 42. The survey used 109 equally weighted indicators to measure budget transparency. The indicators assessed whether government availed eight key budget documents to the public online in a timely manner and whether these documents presented budget information in a comprehensive and useful way.

In terms of transparency, the survey report noted that since 2015 Namibia had increased the availability of budget information by publishing the Mid-Year Review online. There has however been a decrease in the availability of budget information because the Citizen's Budget was not published online in a timely manner. Government also failed to produce an Audit Report and a Pre-Budget Statement. It further found that In-Year reports only contained scant budget information that lacked detailed information on critical topics such as expenditure by classification, or revenue by category or source.

Namibia scored zero for public participation because government provided the public with no opportunities to engage in budget processes. The global average score was twelve. For budget oversight, the country scored 33, which was classified as weak. They found that the Legislature provided weak oversight during the budget planning and implementation stages of the budget cycle.

MISA's annual *Transparency Assessment*, and the IPPR's *Access Denied* report, reconfirmed the lack of access to information, which should be in the public domain.

The *Transparency Assessment* assessed eight public institutions' accessibility and responsiveness to the public's demand for information. Of the eight institutions surveyed, only six had fully functional websites. Although all institutions had designated officials for information dissemination, the majority of institutions had a delayed response.



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*Access Denied* assessed the response of 100 public institutions, private companies, and civil society organisations to information request letters. However, only 20% of all requests were responded to.

There was at least one positive development in regard to good governance when Namibia became signatory to the African Peer Review Mechanism (APRM).

The APRM promotes transparent, accountable and participatory governance. It further presented governments with an opportunity to open up the policy-making process to non-state actors and citizens. It also encourages countries to sign, ratify and implement African and international codes and standards that promote and strengthen good governance.

While Namibia continued to maintain a diverse, plural and relatively free and independent media sector, state-owned media, in particular the Namibian Broadcasting Corporation's (NBC) current affairs and news units, however, have little freedom to broadcast information that was critical of government. Self-censorship in the state-owned media sector remained a problem. Most commercial radio stations avoided covering current affairs and instead provided news clips published by local newspapers. Encouragingly, talk-radio is thriving on NBC and community radio stations. The voices of women and children however remained minimal. Radio stations needed to find ways to encourage interaction by these groups.

The internet was profoundly and wonderfully expanding the free expression environment in Namibia. In response to that, the Namibia Internet Governance Forum (NamIGF) and the Internet Society of Namibia (ISOC) were launched towards the end of the year. These multi-stakeholder platforms aimed to engage on internet related issues, building the capacity of stakeholders, and contributing to policy development.

These positive developments were however soured when at the ruling SWAPO party's congress in November, delegates put forward a resolution for the establishment of a ministry of cybersecurity. This was a huge cause of concern but fortunately the resolution was not formally adopted. Considering the tone of the two drafts of the ETC Bill, which perpetuated censoring and surveillance, one could expect a similar tone if such a ministry was set up.

In conclusion, activists call on government to become an ally of civil society and the media in building a strong and vibrant democratic dispensation. The weakening of these two sectors does not bode well for Namibia's democracy. If government is committed to strengthening free expression and democracy overall, it should work with civil society and media to weather the storm and find new ways to ensure sustainability, vibrancy and proficiency.

Very importantly, citizens should not leave the task of civic action to civil society and the media only. Active engagement in social economic and political matters is urgently needed. Freedom of expression is seen to be increasingly under threat; and citizens should not wait until it is too late.

# NAMIBIA MEDIA FREEDOM VIOLATIONS AND VICTORIES



## 10 May 2017 VICTORY

A revised Code of Ethics and Conduct for Namibian print, broadcast and online media was launched by President Hage Geingob at a belated celebration of World Press Freedom Day in Namibia on 10 May 2017. The Namibian Code is the first co-regulatory framework in Africa and is one of the most progressive frameworks in the world. At the launch the president guaranteed that as long as he is head of state “the freedom of the press is guaranteed.”



## November 2017 THREATENED

A proposal was made at the SWAPO elective congress to create a cyber security ministry to control information on social media, hacking, and monitor illicit financial flows. The resolution was not adopted at the congress, it was nevertheless tabled and deferred to an extraordinary congress, which is likely to take place in 2018.



## 6 October 2017 LEGISLATED

The Whistleblower Protection Act and the Witness Protection Act were signed into law. Both instruments are aimed at strengthening anti-corruption efforts in the country. Prior to the adoption of the law, civil society successfully lobbied for the removal of Section 52 of the Act, which stated that a whistleblower’s protection could be withdrawn if the person was critical of government policy when making a disclosure.



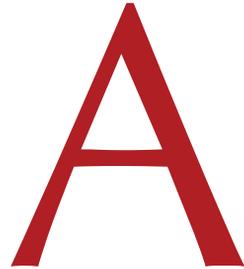
## December 2017 VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

Then Attorney-General Shacky Shanghala filed a lawsuit in the High Court against activist Job Amupanda who he accused of defamation over several comments made on social media, during the 2017 Attorney Generals’ symposium in Doha, Qatar, where Amupanda was in attendance.



# SOUTH AFRICA

National Overview 2017  
by Raymond Louw,  
Veteran Journalist and  
Media Freedom Activist



Although South Africa's Constitution protects freedom of expression and media freedom, the country labours under an assessment by the New York-

based Freedom House that the nation and its media are only "partly free". The extent of the decline from the status of "free" which it had enjoyed after the African National Congress (ANC) took over from the apartheid government in 1994, was spelled out by the World Association of Newspapers and News Publishers (WAN-IFRA) at a conference in Durban on 7 June 2017.

The Board of WAN-IFRA expressed concern that a decade after the Declaration of Table Mountain was adopted by the World Editors' Forum Conference in Cape Town in 2007, conditions for media freedom in South Africa had deteriorated, with the government considering a range of measures that would intimidate the press, promote self-censorship and silence criticism.

The country's political and social atmosphere was described as being "toxic" by an official of the Eastern Cape African National Congress (ANC), the national ruling party, with faction-fighting in the ANC and the main opposition party, the Democratic Alliance; the prevalence of fake news especially in social media and the heavy stench of corruption and state capture by private individuals, politicians, state officials and corporate interests.

The depth and breadth of state capture – defined as the looting of state resources by politically-connected individuals - is widely acknowledged. The friendship of President Jacob Zuma and the business association of his son Duduzane with a wealthy Indian immigrant family, the Guptas, resulted in them being accused of state capture with the tacit approval of Zuma. They were accused of influencing presidential appointments, of having knowledge of cabinet appointments before they were officially announced and even offering cabinet posts to ANC MPs.

A few weeks before the year ended, former investigative reporter Jacques Pauw published a blockbuster of a book exposing criminal and corrupt conduct that he says brought South Africa to the brink of a mafia state. The book, entitled *The President's Keepers, Those Keeping Zuma in Power and Out of Prison*, confirmed much of what had been published in newspapers and was rapidly sold out, resulting in an urgent reprint.

### PRINT MEDIA

The print media had a tough year with attacks by police on journalists covering protests, obstruction by the police of journalists and photographers at crime and accident scenes - in the process flouting their own Standing Order 156 which regulates their conduct in public treatment of the media and at crime scenes - as well as threats made to journalists on assignment by demonstrators and members of the public.

There were demonstrations and pickets outside journalists' homes, death threats levelled at Siphso Masondo of *City Press*, former SABC journalist Vuyo Mvoko and *Sunday Times*' Mzilikazi wa Afrika; theft of mobile phones and equipment while on assignment, with photographers the

# South Africa

frequent victims, and obfuscation by government officials and business people when requests for information were made.

Concerns continued to be raised about the low compliance with South Africa's Promotion of Access to Information Act (PAIA), with denial of 46% and 67% of requests by the public and private sector respectively.

WAN-IFRA expressed mounting concern over what it described as the suffocation of independent and critical media through the Government Communication and Information System's withdrawal of advertising spending, and the opaque allocation processes for state financial resources to media.



**The print media had a tough year with attacks by police on journalists covering protests, obstruction by the police of journalists and photographers at crime and accident scenes.**

The media, especially the daily and weekly newspapers, have performed a sterling service for the country in publicising stories about state capture, corruption, abuse of power and questionable conduct of politicians and officials.

Print investigative reporters have excelled in unearthing much of this information and gaining access to and publicising the contents of correspondence in leaked emails - the so-called secret Gupta emails - which revealed details of the corrupt activity. In the course of the year, criticism of Zuma's indiscretions and poor governance mounted and the calls on him to resign or be dismissed became more strident.

The trend in declining print media circulations over the last few years continued in 2017 and was reflected in the latest Audit Bureau of Circulation figures for Quarter 4 (Q4). Losses were incurred "across the board" in the newspaper category, with a 2.1% drop from Q3 2017 and 5.1% from the previous year. The dailies showed a 17% drop on 2016, although there were some small individual gains.

Magazines presented a gloomy picture with an 8.1% decline over Q3, and a further nasty 16.6% decline over the previous year. The ABC reported that "significant declines" occurred in the custom sector, but that the consumer magazines suffered too with only some showing marginal increases.

The losses were attributed largely to the onslaught of the internet, social media in particular, and led to a further decline in advertising revenue with knock-on effects on the financial viability of publications and consequent cuts in expenditure on news-gathering and staffing.

The most dramatic result of the decline in advertising revenue together with the effects of the country's weak economy, was the closure by the Tiso Blackstar publishing house of the print edition of *The Times*, the sister daily publication of the *Sunday Times* which was launched in 2007. It closed in December and was

to be replaced by a digital-only online publication. In addition staff were re-trenched.

On the positive side, complaints by the public to the Press Council and its Press Ombudsman that publications contravened the Press Code totalled 499, 37 fewer than the 536 received in 2016 and 92 fewer than the 591 received in 2015. The Public Advocate, the official who initially deals with complaints, dismissed 199, noted that 39 were withdrawn and 145 sent to the ombudsman who made 137 findings, in which he too dismissed a number of grievances.

Among the findings of the Press Ombudsman against the media was a strongly-worded order on the *Huffington Post South Africa*, launched in 2016 by the Media24 publishing house, to apologise to the public for publishing a "racist and sexist" blog titled *Could It Be Time To Deny White Men The Franchise?* that was viewed as inciting hate speech.

Ombud Johan Retief said the paper had violated numerous sections of the Press Code and had "contributed to the erosion of public trust in the media". He also found that the *Huffington Post* had accepted without checking that the blog was written by a supposed feminist researcher Shelley Garland. It later emerged that Garland was a pseudonym for Centre for Development and Enterprise researcher Marius Roodt, who said he had done so because he wanted to make a point about lack of fact-checking in the media and the fact that, in his view, white voices were being drowned out. Editor Verashni Pillay resigned after the scathing ruling of the Ombud, but later appealed the finding.

On 22 August, the Appeals Panel of the Press Council chaired by Judge Bernard Ngoepe upheld the appeal by the former

editor-in-chief, and set aside Retief's ruling. On the specific matter related to hate speech and unfair discrimination, the judge said that for an article to constitute hate speech, it needs to not only advocate hatred but also incite to cause harm. "It could well be that the piece irritated or annoyed some people; but to classify it as a hate speech would be too huge a jump," said Ngoepe. The Ombud did not deal with Roodt's subterfuge.

## BROADCASTING

The year began with a series of positive developments indicating that the *South African Broadcasting Corporation (SABC)* was headed for conversion into a genuine public broadcaster. A parliamentary ad hoc committee had conducted hearings into the SABC, which started late in 2016 and ended early in 2017.

The institution was subjected to systematic, sustained and well-researched scrutiny on a wide range of key aspects that had led to it being labelled an organisation in the clutch of an unprofessional clique who used it to pursue questionable interests. These activities, which included improper editorial instruction and censorship, contributed to the SABC's losses of approximately R1 billion in 2016/17. The committee had heavily criticised then Communications Minister, Faith Muthambi.

The SABC board, which had countenanced these activities was dismissed and replaced first by an interim and then a full-term board which drastically cut the losses and showed clear signs of wanting to be accountable.

The minister who succeeded Muthambi, Mmamoloko Kubayi-Ngubane, the third minister in 2017, according to the SOS Support Public Broadcasting Coalition,

appeared eager to serve the factional interests of President Jacob Zuma and also seemed deeply compromised by the new board's expressed desire to implement the SABC's public service mandate.



**The media, especially the daily and weekly newspapers, have performed a sterling service for the country in publicising stories about state capture, corruption, abuse of power and questionable conduct of politicians and officials.**

She entered an appeal against the 17 October 2017 ground-breaking Gauteng (Pretoria) High Court judgement preventing her as minister from appointing and firing members of the SABC board. This judgement resulted in the board having court-sanctioned freedom to appoint its top executives, a right it had not enjoyed for more than a decade. The SOS Coalition also noted that the board and the Parliamentary Portfolio Committee on Communications were seeking closer cooperation with it on that mandate.

Despite the inclusion in the board of several members with close ties to the ruling ANC party, it was seen to be operating in a united and independent manner. It removed from office the two top officials responsible for “the clique” and pursued through the courts the repayment of certain funds by them to help offset the R1 billion loss. It appointed four top executives and the appointment of the Group Chief Executive Officer and Chief Financial Officer were expected to follow. The board ceased to apply the editorial code adopted by the previous board, reverted to the code of 2004, and began a process of widespread public consultation to update itself in order to embrace the best principles of a free media.

But the board was also grappling with a number of other issues which included:

- The corporate behaviour of Multichoice, the main subscription TV service provider;
- Questionable negotiations between the SABC and Multichoice over the former's supply of its archive material to Multichoice;
- A contract between Multichoice and the professionally deficient *ANN7* TV news programme; and
- An approach to the Independent Communications Authority of South Africa (ICASA) to reverse its regulation requiring the SABC to supply three of its free-to-air channels to Multichoice's DSTV service free of charge.

It argued that it was *ultra vires* the Electronic Communications Act which requires these channels to be carried “at commercially negotiated rates”. The financial consequences of bringing the

regulations in line with the legislation are likely to have significant impact on the financial health of the public broadcaster.

Public disclosure of the minutes of the negotiations between SABC and Multichoice, and revelations about Multichoice's contract with ANN7, put severe pressure on Multichoice to change its corporate behaviour. The key institution this brought into focus was ICASA. It is ICASA which should enforce rules of editorial professionalism on ANN7 and it appeared not to have done so.

The SOS Coalition complained that the Communications Minister continued to delay in making a decision about set top box (STB) encryption and inter-operability, thereby stalling digital migration to the point that South Africa may be facing the collapse of digital terrestrial television (DTT) as envisaged, and where it may have to consider alternatives such as migrating directly to broadband and/or satellite.

The SOS Coalition has misgivings about the future. It says that as much as there are encouraging signs, the battle for the heart and soul of the public broadcaster, with its key information provision and education mandates, is expected to heat up as the country heads towards its 2019 national and provincial government elections.

## ACCESS TO INFORMATION

The South African National Editors' Forum (Sanef) protested angrily at the security measures implemented by Parliamentary officials and security personnel during President Jacob Zuma's State of The Nation address in February 2017. Journalists were impeded in doing their work, especially when some parliamentarians were dramatically ejected for

having disrupted proceedings.

A heavy security presence set up by members of the police, Defence Force and State Security Agency - which included heavily armed military police - was intimidating. Journalists were prevented from doing their jobs despite assurances given to the media that they would not be obstructed, and civilian clothed police officers prevented photographers and journalists from freely moving through parliamentary corridors. Journalists based in Parliament's media offices were obstructed from leaving and returning to their offices as a line of riot police blocked off the access road.

Police also attempted to prevent photographers from capturing scenes in the precinct. Sanef noted that security measures, including the greater role played by the State Security Agency, appear to have increased year-on-year since 2015.

## Cybercrimes and Cyber Security Bill

Raising concern on the WAN-IFRA board at its June 2017 conference in Durban as likely to lead to a further deterioration in media freedom, were legal issues in the Cybercrimes and Cyber Security Bill before the South African Parliament. The draft includes vague language that affords an opportunity for repressive implementation, as well as enhanced investigative and surveillance powers for security agents.

The Bill also establishes "reasonable suspicion" for use of encryption, and empowers officials to obtain decryption keys to "search for, access or seize" articles pursuant to a search warrant. The board also denounced other features of the Bill, including "an assault on digital privacy", which remains central to

# South Africa

the basic tenets of media freedom, and that it may also “reverse burden of proof requirements, which would force journalists to prove their innocence”. It also includes “regulations that would criminalise certain use of social media”.

WAN-IFRA also drew attention to other prospective legislation that may be used to further erode press freedom in South Africa, notably, the draft Prevention and Combating of Hate Crimes and Hate Speech Bill, which would criminalise “bringing contempt and ridicule” to figures of authority; and the Film and Publications Board Amendment Bill, which broadens state power to censor content.

The Board welcomed the commitment by the governing African National Congress, to decriminalise defamation, and urged it to fast-track legislation to effect this as a matter of urgency. WAN-IFRA pointed out that this would be in line with the 2010 resolution by the African Commission on Human and Peoples’ Rights, which states: “Criminal defamation laws constitute a serious interference with freedom of expression and impede the role of the media as a watchdog, preventing journalists and media practitioners [from] practising their profession without fear and in good faith.” Journalists expressed concern that the ANC may not implement its promise because some ANC leaders had second thoughts about the outcome of the repeal of the law.

## JOURNALIST SAFETY

Suna Venter, a current affairs journalist and producer for the South African Broadcasting Corporation (SABC), who together with seven of her broadcasting colleagues became known as the “SABC Eight” after being unlawfully suspended and later fired for publicly disagreeing with orders not to cover

anti-government and anti-media censorship protests outside the broadcaster’s Cape Town offices, died suddenly on June 29 at the age of 32 from what was described as “broken heart syndrome”, stress cardiomyopathy, as a result of the trauma she endured.

“Concerns were expressed about the potential for censorship in two Bills being processed through Parliament, namely the Cybercrimes and Cyber Security Bill and the Prevention and Combating of Hate Crimes and Hate Speech Bill.

She had received death threats, been assaulted, shot at and had her apartment broken into several times. Her car’s brakes were tampered with and the tyres slashed.

Foeta Krige, Venter’s senior producer at SABC for eight years and also a member of the SABC 8, said he had received death threats on 13 or 14 occasions. Other members of the SABC 8 also received death threats.

On the day of her death, radical Black Land First (BLF) activists picketed the Johannesburg home of Peter Bruce – Tiso Blackstar publishing group's editor-at-large and assaulted *Business Day* editor Tim Cohen and a former *Business Day* journalist Karima Brown who had visited the house to ensure Bruce had suffered no harm. On July 17, BLF activists assaulted journalist Micah Reddy, a member of the amaBhungane<sup>1</sup> Centre for Investigative Journalism, and 10 days later threatened him again at another media event which BLF disrupted.

Meanwhile, Sanef had obtained an interdict against BLF and its founder, Andile Mngxitama, at the South Gauteng High Court in Johannesburg, requiring them to stop harassing, intimidating, assaulting and threatening eleven senior journalists, editors and commentators who had been targeted for their reporting on state capture.

BLF later threatened more editors and journalists with similar protests at their homes, despite having complied with the court order by issuing a statement on 11 July that the group did not condone its members intimidating, assaulting and limiting peoples' freedom and carrying out other conduct about which there had been complaints.

On 11 February 2017, Orlando Pirates soccer fans, angry at the 6-0 winning streak by their Sundowns opponents at Loftus Versfeld Stadium in Pretoria, rioted and vandalised the stadium, injuring scores of people, including two photographers. The rioters invaded the pitch, tampered with TV cables and interrupted the live broadcast of the match. The *Daily Sun's* Themba Makofane was hit on the foot with a blunt object as he took photographs of fans ripping plastic stadium

seats from the stands which they then hurled onto the field. Fans snatched his wallet with R400 (approx. USD 33) and a spare camera from his bag but returned them when he pleaded with them. BackpagePix<sup>2's</sup> Sydney Mahlangu was struck by a metal object the fans had ripped from the advertising billboards surrounding the field. His laptop, which he used to download, edit and transmit images from the stadium, was stolen. Makofane said that "the situation was so scary, the police started running for cover like the rest of us."



**South Africa's political scene underwent a dramatic change in February 2018 with the resignation of President Jacob Zuma in response to calls for him to step down from ANC, Opposition members and the public, followed by the election of Cyril Ramaphosa as the new President.**

<sup>1</sup> AmaBhungane is isiZulu for 'dung beetles'.

<sup>2</sup> A media syndication agency based in South Africa

## FREEDOM OF EXPRESSION ONLINE

South Africa's digital media environment was generally free and open. A culture of diverse and active free expression existed online and is protected by the Constitution which provides for everyone having the right to freedom of expression which specifically includes freedom of the press and other media and the freedom to receive or impart information or ideas. ICT development, however, continues to be constrained as a result of an earlier government decision to divide the communications portfolio into two departments. Concerns were expressed about the potential for censorship in two Bills being processed through Parliament, namely the Cybercrimes and Cyber Security Bill and the Prevention and Combating of Hate Crimes and Hate Speech Bill.

The Cybercrimes and Cyber Security Bill has an important role in combating cybercrime which resulted in South Africa having the third highest number of cybercrime victims in the world, but some of the provisions criminalise what many would regard as unexceptional online behaviour. The Hate Crimes Bill expands the definition of hate speech so that some legitimate expressions are criminalised. It also plans to monitor electronic forms of communication and this, together with proposed amendments to the Film and Publications Act, has the potential to stifle legitimate expression. The urge to regulate social media and blogs is strong and this, seen together with the other legislation referred to, has the potential to adversely affect the country's internet freedom.

## LOOKING FORWARD TO 2018

Media freedom faces an uncertain future in 2018 with the pending legislation on the Cybercrimes and Cyber Security Bill and the restrictions contained in the Prevention and Combating of Hate Crimes and Hate Speech Bill raising concerns.

But South Africa's political scene underwent a dramatic change in February 2018 with the resignation of President Jacob Zuma in response to calls for him to step down from the ANC, Opposition members and the public, followed by the election of Cyril Ramaphosa as the new President. Ramaphosa is seen as more liberal than Zuma and may take an interest in the effects the two Bills will have on freedom of expression and perhaps reduce their restrictive impact. He is much more attuned to an open society than Zuma was and some members of the ANC who have been calling for Parliament to consider the desirability of introducing a statutory Media Appeals Tribunal which would inevitably usurp the self regulatory functions of the Press Council and exercise unwanted controls over the print media.

# SOUTH AFRICA MEDIA FREEDOM VIOLATIONS AND VICTORIES



## 10 January 2017 KILLED OR MISSING

South African photojournalist Shiraz Mohamed, was kidnapped in northern Syria by unidentified armed men as he tried to leave the country in the company of members of the South African charity Gift of the Givers. Amid fears for his safety, attempts are still being made to have him freed.



## 23 February 2017 THREATENED

Two members of the SA Police visited the offices of the *Mail and Guardian* newspaper in Johannesburg on what they described as an investigation of a complaint by the Public Protector. They requested a statement from journalist Philip de Wet on the source of a “leaked” draft report by the Public Protector on a questionable apartheid era state financial bail-out, that has become known as the Absa-Bankcorp matter. Sanef protested, reiterating that the confidentiality of sources was not only sacrosanct but the cornerstone of the ability of whistleblowers to expose corruption and other malfeasance in the public interest.



## 24 February 2017 ASSAULTED

SABC journalists reported attacks by demonstrators taking part in protests in Pretoria. They were robbed of their mobile phones and equipment.



## 8 April 2017 CENSORED

Freelance photojournalist Jacob Mawela complained of intimidation attempts by security officials of the Gauteng Member of Executive Council, Lebogang Maile. Mawela was covering the Township Entrepreneurship Awards at Carnival City when he was accosted by the security officials for having focused his camera on the MEC. He was ordered to either pack up his photographic equipment and leave or be physically removed from the venue.



## 7 May 2017 ASSAULTED

SABC journalists covering public protests in Vuwani, Limpopo, were physically attacked. One cameraperson was assaulted and three vehicles belonging to the public broadcaster were damaged.



## 8 May 2017 ASSAULTED

Protestors and farmers in Coligny attacked and chased away journalists who were covering the violence that erupted in the aftermath of a court decision. Photographic equipment belonging to journalists from various media houses was also damaged. The Minister of Police, Fikile Mbalula, condemned the attacks.





### **3 October 2017** **THREATENED**

SABC correspondent in Lesotho, Nthakoana Ngatane, had to flee the country following numerous threats on her life. This was the latest in a series of incidents of violence and intimidation against journalists in the landlocked country. Due to the deteriorating security situation in Lesotho, the safety of journalists in the country is under threat and therefore imperils press freedom. Sanef offered its support to Ngatane and issued a protest to the Lesotho government.



### **14 November 2017** **CENSORED**

Journalists in KwaZulu Natal expressed concern about plans by the eThekweni (formerly Durban) Municipal Council to introduce new Rules of Order which would deny access by reporters to some meetings; and/or restrict the use of electronic equipment in filing stories. Sanef called on the council to drop the plan because the contemplated restrictions would be an unconstitutional infringement of media freedom, thus illegal, and would restrict the public's right to know about developments that affect their lives. The issue has been deferred to the next council meeting.



### **18 October 2017** **NOTEWORTHY DEVELOPMENT** **COMMEMORATION**

Sanef commemorated the 40th anniversary of Black Wednesday the day, October 19, in 1977 when the apartheid government in an attempt to gag the media, banned scores of newspapers aligned with the black consciousness movement, along with 19 pro-democracy organisations, and arrested a number of prominent journalists. Black Wednesday triggered years of resistance to the government on the issue of media freedom and stoked Sanef's fight for media freedom in South Africa and across the continent. Sanef commemorated Black Wednesday by launching its new identity and a Media Freedom Campaign.





# SWAZILAND

National Overview 2017  
by MISA Swaziland

## FREEDOM OF EXPRESSION

**A**s far as the media in the Kingdom of Swaziland are concerned, 2017 can be described as a mixed bag. Feelings about media developments were conflicted due to government's propensity to take one step forward and two steps backward.

One of the major steps in the right direction was the strengthening of the voice of media practitioners. After years of pulling in different directions, eight media bodies banded together to form the Swaziland Media Consortium (SMC) on 15 May 2017. This became the first media consortium joining other groups under the Coordinating Assembly of Non-governmental Organisations (CANGO). SMC defines itself as a united front and catalyst for protecting the rights to freedoms of expression and media in an inclusive society.

Members are MISA-Swaziland, Swaziland National Association of Journalists (SNAJ), Swaziland Press Club (SPC), National Association of Development Programme Producers (NADPP), Swaziland Independent Film and Television Producers Association (SIFTPA), Swaziland Community Multimedia Network (SCMN), Media Workers' Union of Swaziland (MWUS) and Arterial Network Swaziland (ANS). The relationship between SMC and CANGO is governed by a Memorandum of Understanding (MOU).

The SMC was introduced to the Minister of Information, Communication and Technology, Dumisani Ndlangamandla, on 27 May who welcomed the move

and encouraged the Director of the Information and Media Development Unit to work closely with the SMC on media issues. The director updated the SMC on progress on the amalgamation of the Swaziland Broadcasting Bill 2016 and the Swaziland Broadcasting Corporation Bill of 2016 into one Swaziland Broadcasting Bill, as well as the redrafting of the Freedom of Information and Protection of Privacy Bill 2007. Another development was the announcement of the development of a Swaziland Broadcasting and Media Policy. The Minister also stressed the urgent need to address media development issues, access to information and dropping standards of journalism. The ICT Ministry assured SMC that its doors were open to discuss media issues.

**Feelings about media developments were conflicted due to government's propensity to take one step forward and two steps backward.**

Yet again the media fraternity hosted the World Press Freedom Day (WPFDD) on 3 May 2017. Fifty people came together to celebrate the principles of freedom of expression; evaluate the state of media freedom and pay tribute to the courageous journalists. In a country known for intolerance of dissenters, 3 May has

## PRINT MEDIA

become an important day for activists and citizens. It provides them with a platform to debate media issues guided by the WPFDF theme.

Swazis enjoyed their right to free speech on this day. They openly criticised media capture by the state and powerful individuals. Editors and journalists interacted with the public and explained the media's role. Police did not come to harass those who attended the gathering.

Gearing up to transform the media environment, the Information and Media Development Unit addressed the absence of a broadcasting and media policy by hosting a three-day Broadcasting and Media Policy *Indaba*. South African regulatory media and film bodies came to share their experiences with local media players and stakeholders. After the three-day conference, the ICT minister requested the participants to elect members to the Swaziland Broadcasting and Media Policy Technical Committee. Its task was to compile a broadcasting and media policy and MISA Swaziland was included in the newly formed Swaziland Broadcasting and Media Policy Technical Committee.

MISA Swaziland's efforts to promote freedom of expression and media diversity had paid off in the year under review.

A new mobile network operator, Swazi Mobile, was launched in July 2017. This was welcomed by cellphone users as it ended the 19-year-monopoly of Swazi MTN. Users enjoyed cheaper call rates as a result of the competition in the telcoms industry.

The year saw the revival of two weekly newspapers and new entrants into the print sector. Publishers of the *Swazi Mirror* and *Ingwazi News* re-launched their publications. *Swaziland Newsweek* newspaper and *Zion Magazine* were launched, and this increased the number of newspapers in the country to nine and magazines to three. Swazi citizens now had multiple media platforms which was a positive move towards diversity and plurality.

But inasmuch as there were positive developments, there were also setbacks. Against the media's role of advancing peaceful, just and inclusive societies, the editor of *Independent News* published an inflammatory commentary, seen to be stirring up hatred against the lesbian, gay, bisexual, transgender and intersex (LGBTI) community. He called for the 'hanging' of the LGBTI members on cultural and moral grounds. To address this LGBTI issue, MISA Swaziland sought funding to conduct research on media's portrayal of the LGBTIs. This in turn was to pave way for the Gay and Lesbian Alliance Against Defamation (GLAAD) Media Reference Guide. However, this media research did not materialise because of financial constraints.

The managing editor of *Swaziland Shopping* published serious allegations of corruption among editors themselves. He alleged that a businessman had captured the editors. He also accused the current crop of journalists of revealing their sources in exchange for bribes. He claimed that the same businessman had hired a hitman to silence him for his exposé.

In the wake of these allegations, MISA Swaziland asked the Swaziland Editors' Forum (SEF) to investigate the damaging allegations published by one of their members. SEF promised to do so, but later reported that their efforts were futile because the member refused to cooperate. Quoted in the *Sunday Observer*, 17 December 2017, the SEF Secretary, Jabu Matsebula said: "As members of the Forum, we are concerned that some of the articles published in *Swaziland Shopping* failed to meet our ethics standards".



Swazis enjoyed their right to free speech on this day. They openly criticised media capture by the state and powerful individuals.

Things came to a head when the same managing editor, perhaps due to poor understanding of media law and the Section 24 (3) of the Swazi Constitution, implicated the same businessman in a plot to kill the king. The ICT ministry then jumped into action and used the newspaper's failure to comply with the Books and Newspapers Act of 1963 to shut down his newspaper. As an interested party, MISA Swaziland requested an audience with him to cross-check the facts, which he deemed unnecessary. On the heels of this, police in turn

wanted to question him about the alleged plot to kill the king, but as the net was closing, he skipped the country to South Africa.

## BROADCASTING

Cognisant of the absence of a clearly defined Swaziland Broadcasting and Media Policy, the Ministry of ICT's Information and Media Development Unit set out to find a solution. Its first step was to organise a three-day Swaziland Broadcasting and Media Policy *Indaba*. Swaziland tapped into experiences of the South African regulatory media and film bodies such as Independent Communications Authority of South Africa (ICASA), South African Broadcasting Corporation (SABC) and others. At the end of the three-day conference, Acting Principal Secretary in the ICT Ministry requested the participants to elect "knowledgeable" members to the Swaziland Broadcasting and Media Policy Technical Committee.

In the runup to the 2018 elections, MISA Swaziland hosted a workshop for the community radio initiators. It introduced the Guidelines on Media Coverage of Elections in the SADC Region. Members of the SCMN participated in the workshop. They included the University of Swaziland, Lubombo Community, Ngwempisi Community, Matsanjeni South Community, Sidvashini Community and Seventh Day Adventist Community. MISA Swaziland reminded them to celebrate international media days such as World Radio Day, WPF, *International Day on Universal Access to Information*, and the Day to End Impunity Against Journalists. The workshop promised to celebrate World Radio Day on 13 February 2018 and they adopted the Guidelines, making a promise to abide by them in the coming elections.

In the year under review, the management of the state broadcasters perfected state media capture. In between the programmes and news-bulletin, public information officers working at the radio channel played SiSwati interludes extolling the benefits of living in a monarchy and featured songs portraying the king as the most benevolent ruler. There is a clear perception that dissenting voices cannot be aired in the state-controlled broadcaster. Its slogan, *Voice of the Nation*, rings hollow as long as Members of Parliament and citizens are still banned from making use of state radio.

## ACCESS TO INFORMATION

With respect to access to information (ATI), the Information and Media Development Unit had engaged a Commonwealth consultant to redraft the Freedom of Information and Protection of Privacy Bill 2007. A decade later, accessing information remained difficult in the kingdom. Worse still, the Freedom of Information and Protection of Privacy Bill was never enacted but left to gather dust on the shelves.

There was no political will to promulgate ATI legislation even before the dissolution of Parliament for the 2018 national elections. Swazi citizens continue to be deprived of critical information through lack of legislated access to public information, the lifeblood of national development. This state of affairs is in gross violation of Section 24 of the Constitution which states that a person has the 'freedom to receive ideas and information.' MISA Swaziland ran an ATI campaign in a strong bid to push for the passage of the Freedom of Information and Protection of Privacy Bill into law.

Results of the 2017 *MISA Transparency Assessment* were no different from the previous years. There was still reluc-

tance among the officials to release information in the custody of public institutions to information seekers. Worse, there were no clear lines of communication. Government ministries had hired information officers who were paid for doing nothing because they were not empowered to respond to queries. Only the Principal Secretaries in the ministries were authorised to give responses. Unfortunately, they had little time for information seekers.

All this further underscored the urgent need for the promulgation of the ATI law to force the public institutions to release information to information seekers timeously.



There is a clear perception that dissenting voices cannot be aired in the state-controlled broadcaster. Its slogan, *Voice of the Nation*, rings hollow as long as Members of Parliament and citizens are still banned from making use of state radio.

## JOURNALIST SAFETY

In the run-up to the September 2018 elections, MISA Swaziland had introduced to partners and media stakeholders the Guidelines on Media Coverage of Elections in the SADC Region. It hosted four separate workshops for the Elections and Boundaries Commission (EBC), including commissioners, editors, journalists, community radio champions and civil society actors. The Guidelines address the concerns raised by the election observers about the failures of the media to ensure free, fair and transparent elections.

The targeted groups welcomed the Guidelines on Media Coverage of Elections. They adopted them, save for few sections which did not apply to a no-party state like Swaziland. MISA Swaziland was tasked to facilitate a meeting between the media and the EBC to discuss the issues affecting the media coverage of the electoral process.

MISA Swaziland also announced its Media Elections Monitoring Project (MEMP) which would commence in January 2018. This project seeks to promote equitable and ethical journalism in the coverage of elections which remains a contentious subject in Swaziland.

It also seeks to advocate for the licensing of community radio and the transforming of the state broadcaster into a public service broadcaster and sets out to train journalists in the coverage of elections. It was agreed that MISA would monitor the print and broadcast media and findings would be disseminated to SEF and SNAJ on a quarterly basis. The two media bodies pledged their support to MEMP. The Swaziland Community Multimedia Network (SCMN) looked forward to the training of their volunteers so that they would be prepared once the community broadcasting licences are issued.

The Mpolenjeni community on the outskirts of Mbabane defended a *Channel Swazi* TV reporter who was attacked by a mob. He was covering a story of demolition of property in the area. Other community members intervened and ensured that he was able to continue to do his work. He was able to shoot and conduct interviews with the victims.

This was seen as testimony to the positive results of the media literacy campaign within the Swazi society. Slowly but surely, citizens are beginning to appreciate and understand the media's role and benefits of access to information. They have also developed an appreciation for the fact that any attack on media practitioners directly violates their constitutional right to receive information without interference.

Claims of death threats by the managing editor of *Swaziland Shopping* unsettled the media fraternity. The managing editor, who doubled as a private investigator, alleged that a businessman and soccer administrator wanted him dead. He claimed these threats had been triggered by his investigation. But he had also tarred the other editors with the same brush of corruption, accusing them of being in the pocket of corrupt individuals. His questionable ethical conduct led MISA Swaziland to ask SEF to put its house in order. However, the SEF reported back that the editor in question was uncooperative and that he refused to account for allegations he had made against fellow editors.

On the heels of these incidents, the ICT ministry rejected an application for registration filed by *Swaziland Shopping*. In a letter dated 12 December 2017, Acting Principal Secretary in the ministry stated that the Managing Editor of *Swa-*

*ziland Shopping* had failed to meet the legal registration requirements stated in Section 5 (2) of the Books and Newspapers Act of 1963. Neither had he submitted the required documents after the application review meeting had requested him to do so. MISA Swaziland invited him to a meeting to get his side of the story, but he resisted, and as police prepared to question him, he finally fled to South Africa.

The period under review was marred only by the controversy surrounding the closure of *Swaziland Shopping*. If the Acting Principal Secretary's grounds for rejecting its application for registration were anything to go by, MISA Swaziland said it did not condone any form of lawlessness or corrupt practices in the media sector. If the newspaper owner's allegations about the police plotting to kill him were to be proven true, MISA Swaziland, which advocates for the safety and protection of journalists, would condemn it in the strongest terms.

## FREEDOM OF EXPRESSION ONLINE

A second Swazi-owned mobile network operator, Swazi Mobile started its operations in July 2017. This ended the mobile telephony monopoly of Swazi MTN, which has been the sole service mobile service provider for 19 years. Since the launch of Swazi Mobile, citizens have reaped the benefits synonymous with a competitive telecommunications sector.

The Swaziland Communications Commission (SCCOM) issued a directive to the mobile telephony company to reduce their tariffs and MTN Swaziland had reduced theirs by 30 per cent. MTN had also introduced free talk time on Sundays for its customers. Communication has been made easy and affordable for everyone in Swaziland.

## LOOKING FORWARD TO 2018

All the negative media developments have reversed the gains made in the areas of freedom of expression and media diversity. Going forward, filling the vacancies of SCCOM senior positions will bring stability and also give direction to the regulator for it to fulfil its regulatory mandate. The ICT Ministry is expected to speed up the promulgation of the two pieces of legislation namely the Swaziland Broadcasting and Freedom of Information and Protection of Privacy Acts before the dissolution of parliament in 2018. The former seeks to introduce the three-tier system of broadcasting. The latter seeks to provide for access to information. The Swaziland Broadcasting and Media Policy will also help to level an uneven playing field in the media sector.

# SWAZILAND MEDIA FREEDOM VIOLATIONS AND VICTORIES



## 26 July 2017 LEGISLATED

Dr Futhi Dlamini instituted a US\$200 000 defamation lawsuit against the *Observer*. He was awarded a reduced amount of US\$20 000 by the High Court of Swaziland.



## 4-11 August 2017 THREATENED

Martin Dlamini, owner and managing editor of *Swaziland Shopping* newspaper, confirmed death threats from Mbabane businessman Victor Gamedze who sent former Member of Parliament Robert Magongo to warn the managing editor against writing negative articles about the businessman.



## 4-11 August 2017 NOTEWORTHY DEVELOPMENT CALL TO REGULATE

Martin Dlamini, the owner and managing editor of *Swaziland Shopping* newspaper, called for a statutory regulatory body to regulate the media in Swaziland. He felt that it would uproot corruption allegedly rife amongst the editors. This was despite the existence of a self-regulatory body known as Media Complaints Commission of Swaziland (MCCS) set up in 2011.



## 11 November 2017 SENTENCED

The *Weekend Observer* lost a defamation lawsuit case brought to the High Court by South Africa-based gospel artist, Siphso Makhabane, for a story published on the weekend of 20-21 January 2007. Judge Mumcy Dlamini awarded



him US\$30,000 as compensation but the newspaper appealed the judgment.



## 13 December 2017 CENSORED

The Ministry of Information, Communications and Technology (ICT) issued Martin Dlamini, owner and managing editor of *Swaziland Shopping*, with a letter ordering him to discontinue the newspaper's operations with immediate effect.



## 16 December 2017 CENSORED

Bheki Gama, Acting Principal Secretary in the ICT Ministry, issued a stern warning to shops and vendors who were in breach of the Books and Newspapers Act No. 20 of 1963, to stop selling published copies of the banned *Swaziland Shopping* newspaper or face the consequences.



## 31 December 2017 THREATENED

Martin Dlamini, the owner and managing editor of *Swaziland Shopping* newspaper fled the country to South Africa. He claimed that the police, who wanted him for questioning about his story of a businessman plotting to kill the king, were allegedly only up to killing him in the cells.



# TANZANIA

National Overview 2017  
by MISA Tanzania

**T**anzania is repeatedly held up as an example of a functioning democracy with President John Magufuli being described as the symbol of good leadership. He is constantly lauded for reducing excessive government spending, working on improvements in service delivery and his strong focus on the country's economic growth - qualities that tick all the boxes when judging the merits of good leadership on the African continent.

For these reasons minimal attention is being paid to the alleged clampdown on media freedom, the shrinking of the freedom of expression space and the crackdown on human rights defenders and opposition members.

The 2017 World Press Freedom Index compiled by Reporters Without Borders ranked Tanzania 83 out of 180 countries – a climb down from a ranking of 71 in 2016. This outlook is supported by CIVICUS, a global alliance of civil society organisations, which has placed Tanzania on a list of countries to monitor along with Cambodia, Cameroon, Honduras and Poland. During an audience with the United Nations High Commissioner for Human Rights, CIVICUS warned that restrictions on civic space are “often a bellwether for further violations of human rights and allow states to act with impunity.”

This concern may be warranted when judging the actions of the current administration during the course of 2017 which was marked by newspaper suspensions, punitive fines for the broad-

casting sector, harassment of, and threats and assaults against journalists, missing journalists and arbitrary arrests of political opponents and human rights defenders.

The autonomy of the state broadcaster continues being compromised through political and commercial interference. Unprofessional media conduct has led to a gap between outcomes of news reporting and those at the centre of it. The inadequate, and in some cases lack of sustainable media initiatives, has resulted in some media houses struggling, and payment of salaries to media staff being delayed.



### The Media Services

Act grants authorities sweeping powers “to prevent or put obstacles to the publication of any content that endangers national security or public safety”, thereby replacing self-regulation of the media with government regulation.

With all this happening in Tanzania, critics are uncertain whether the country, from a media freedom perspective, is moving in the right direction.

On a positive note, 2017 saw over 110 journalists in Mwanza, Mara, Geita, Simiyu, Manyara, Arusha, Kilimanjaro and Kigoma being steered through the array of new media laws in a bid to deepen their understanding of the media legal regime. The media training was aimed at providing them with protection against legal battles they are facing.

A number of journalists enrolled in universities and colleges to meet the professional requirements of the law, as stipulated in the Media Services Act of 2016 and the Media Services Regulations of 2017, requiring, at the very minimum, a diploma to qualify for registration as a practicing journalist.

Fostering free, independent and pluralistic media in print, broadcast and online is essential if media development has to have a meaning. It is in this respect that MISA Tanzania will enhance freedom of expression, and thus contribute to peace, sustainability, poverty eradication and human rights in Tanzania.

## FREEDOM OF EXPRESSION

Freedom of expression, which is guaranteed in the Tanzanian Constitution, has been undermined by the enactment of the Media Services Act (MSA) 2016, the National Security Act (2016), the Statistics Act (2015), and the Cybercrimes Act (2015), all of which severely curtail media freedoms and access to information.

The MSA grants authorities sweeping powers “to prevent or put obstacles to the publication of any content that endangers national security or public safety”, thereby replacing self-regulation of

the media with government regulation.

Critics argue that this array of restrictive legislation is coupled with President Magufuli’s outspoken stance against any form of negative criticism, whether it is from citizens or from the media.

The president used the podium during the swearing in of the Minister of Information, Dr Harrison Mwakyembe, to issue a warning to the media fraternity: “I would like to tell media owners - be careful, watch it. If you think you have that kind of freedom, [it is] not to that extent.” According to a Reuters report he ordered Mwakyembe “to clamp down on media organizations that publish or broadcast material deemed to incite unrest, saying his government would not allow a few individuals to destabilize east Africa’s second-biggest economy (...).”

The Tanzania Human Rights Defenders Coalition (THRDC) recorded nationwide violations against 46 human rights defenders ranging from arrests to malicious prosecutions, forced disappearances, threats, intimidation, torture and decriminalisation of expression.

Artist Ibrahim Musa alias Roma Mkatoiki and 3 fellow artists Moni, Bello and Emma were kidnapped from a recording studio in Dar es Salaam and went missing for two days before they were found at Oyster Bay Police Station. The results of the investigation into their torture and abduction have never been released and neither has the police issued a statement on the progress of the investigation.

Hip-hop artist Emanuel Elibariki alias Nay wa Mitego was arrested by the police in the Morogoro region for allegedly releasing a song that insults the president. Ney wa Mitego’s song questioned freedom of expression in Tanzania. He

was later released on the order of President Magufuli who allowed the song to be played in the media.

## PRINT MEDIA

There was an onslaught against the media throughout 2017 in the form of warnings and suspensions, most of which fell under the 2016 Media Services Act.

During June 2017, the Minister of Information, Sports and Culture, Dr Harrison Mwakymbe imposed a 24 months ban on *Mawio's* print edition and articles posted online that linked two former presidents (Benjamin Mkapa and Jakaya Kikwete) to reports related to an investigation into allegations of misconduct in the mining sector.

Publishers of *Mawio* were accused of contravening a presidential directive that was being issued at the same time that the newspaper was published and distributed. The minister's statement cited Section 55 of the Media Services Act, which allows the minister to "prohibit or otherwise sanction the publication of any content that jeopardizes national security or public safety."

In September Director of Information Services, Dr Hassan Abbas announced the 2 years suspension of a weekly tabloid, *MwanaHalisi*, under Section 50 of the Media Services Act, which allows authorities to shut down media organisations that publish 'seditious publications'. The ban was based on an article which authorities considered an insult to the president. Abbas further stated the newspaper had been warned many times for its content which authorities deemed "seditious".

Just ten days after suspending *MwanaHalisi*, another popular weekly tabloid *Raia Mwema* including its online ver-

sion, suffered the same fate and was banned for 90 days for publishing an article supposedly insulting the president. The government, according to the statement issued, insisted that the paper was entitled to fair comment; however the analysis had contained many unfounded quotes implicating the president.

Four weeks later, a daily tabloid *Tanzania Daima* suffered a similar fate. A 90 days ban was issued for publishing a story that misquoted the Minister of Health and allegedly misled the public. Both the offline and online versions were suspended.

During the period under review, publications were pushed to re-register in order to comply with the requirements of the Media Services Act. By 31 December 2017 a total of 168 publications including newspapers, journals and magazines had been registered.

## BROADCASTING

On 2 January 2018, the Tanzania Communications Regulatory Authority (TCRA) fined five television stations each between Tshs 7.5 million (USD 3375) and Tshs 15 million (USD 6750) for "offensive and unethical" broadcasting. The five TV stations, - namely *Azam Two TV*, *Independent Television (ITV)*, *Channel 10*, *Star TV* and *East African TV (EATV)* - aired a press statement issued by the Legal Human Rights Centre (LHRC) on 30 November. In its statement the LHRC alleged that human rights violations took place during the ward councillors' by-elections on 26 November 2017.

Throughout the year *Clouds FM* was on the receiving end of most warnings and fines by authorities.

In July 2017, the presenter of the '*Najua*

*Wajua* allegedly used vulgar and offensive language during ‘family time’, i.e. daytime, while knowing that it was contrary to the Broadcasting Services (Contents) Regulations, 2005. As a result the radio management was fined Tshs 5 million (USD 2250) for the mishap.

“**There was an onslaught against the media throughout 2017 in the form of warnings and suspensions, most of which fell under the 2016 Media Services Act.**”

Several months later, during its renowned afternoon programme *XXL*, a presenter recorded and aired an audio recording of an off the record conversation with the mother of a prominent model, Hamisa Mobbeto and himself without the mother’s consent. The radio station was fined Tshs 2 million (USD 900)

In the same month during its *Jahazi* programme on the *Mastori ya Tow*’ segment, a *Clouds FM* presenter, Ephraim Kibonde, discussed personal (sexual) relationships between prominent artist, Diamond Platnumz and well-known model, Hamisa Mobbeto. The manner in which this was discussed violated the Content Act of 2005 which stipulates

that every licensee shall ensure that the programme and its presentation uphold national values. Subsequently, the TCRA ordered the radio station to pay Tshs 5 million (USD 2250).

The TCRA ordered Clouds Media Group to pay a total fine of Tshs 12 million (USD 5400) for contravening broadcast regulations.

2017 also saw the drafting of new broadcast regulations. By the end of the year there were about 26 licensed TV stations and 123 licensed radio stations.

## ACCESS TO INFORMATION

Access to quality and timely information by everyone, and most importantly to the rural population, is crucial in facilitating informed dialogue, monitoring and evaluation of development issues at the local level and to enhance governance and accountability for improved delivery of services and implementation of projects.

Society’s access and right to information on government budgets and accounts, particularly at local level, is often considered a necessary condition for good governance. Without basic information on public revenues and expenditures people cannot hold their elected leaders and executive officers to account.

Studies on access to information conducted in 2017 showed that there was an improvement in service delivery and access to information in some of the public offices, especially in the local government as opposed to central government. However, it was found that the culture of secrecy is still embedded in public officials, especially in the central government.

Different studies conducted by the Media Institute of Southern Africa (MISA) Tanzania Chapter in partnership with the Collaboration on International ICT Policy for East and Southern Africa (CI-PESA) found widespread laxity among officials in handling and processing information requests, poor customer care services, lack of knowledge of the Access to Information Act and reluctance of government officials to share public information, among others. These access to information surveys, which used journalists as researchers, assessed the responsiveness of local government authorities (LGAs) and central government offices in Tanzania to citizens' information requests.

Although government enacted the Access to Information Act 2016, the minister responsible is yet to prepare regulations for effective operationalisation of the law.

## JOURNALIST SAFETY

The year 2017 was a very trying one for journalist safety in Tanzania.

According to Anna Pinoni, the wife of journalist Azory Gwanda, her husband was picked up by 4 people in a white Landcruiser on the morning of 21 November. He has not been seen since. The abduction of the Mwananchi Communication Limited Correspondent Azory Gwanda was the hallmark of press freedom violations in 2017. Whether Gwanda was abducted for work related or personal issues is unknown. No official report has been issued by the authorities on whether there are any investigations to find him or his abductors.

In February 2017, two journalists in Arusha were arraigned at USA River Police Station. Bahati Chume, a freelancer based in Kilimanjaro and Dorine Alois

who is a reporter at *Sunrise Radio* in Arusha were arrested while following up a story in the Arumeru district for allegedly failing to introduce themselves to the authorities. District authorities denied their involvement in the ordering of the arrest.



Different studies found widespread laxity among officials in handling and processing information requests, poor customer care services, lack of knowledge of the Access to Information Act and reluctance of government officials to share public information, among others.

In March 2017, the Regional Commissioner for Dar es Salaam, Paul Makonda, accompanied by police officers, allegedly raided the Clouds Media Group (CMG) studios forcing staff on duty to

air a video whose content would undermine the reputation of a popular local pastor. Staff refused to air the videos for which they were allegedly threatened to be arrested without due process of law.

In April *ITV* reporter Kassim Sonyo was beaten and injured by a club owner after reporting on an incident where children were injured following a Disco Toto rampage in Handeni District on the eve of Eid ul Fitr. The club owner is said to be a former Permanent Secretary in one of the ministries of the Tanzania government. During the interview with MISA Tanzania investigators, Sonyo said he had decided not to take the matter further and press charges, but did not disclose his reasons for making this choice.

During the same month, *Mwananchi* correspondent in Handeni District, Rajab Athumani got into trouble with authorities after breaking a story of people who died after they ate poisonous mushrooms. The authorities never wanted the story to get out because it would have revealed that there is hunger in the area, especially after president Magufuli had instructed all regional and district commissioners to make sure that hunger was a story of the past in their areas. Athumani was questioned by the police, had his work equipment including his mobile phone taken for several days and was instructed to delete any information concerning that story under supervision of the police.

Masked men, suspected to be policemen armed with pistols, disrupted a press conference in Dar es Salaam in April, held by leaders of a faction of the Civic United Front (CUF) supporting the party secretary general, Maalim Seif Shariff Hamad. Journalists at the press conference were also assaulted.

In a rather inexplicable incident two

months later, 23 people, including 10 journalists, were arrested in Arusha. The journalists were covering a gathering where the Tanzania Association of Managers and Owners of non-Governmental Schools and Colleges were presenting a donation of Tshs 18 million (USD 8100) to Lucky Vincent School. The donation was a gift to the bereaved families of the children who had died in a road accident. The arrested persons were later released with the explanation that they were wrongly arrested following the order of the Regional Commissioner for Arusha, Mrisho Gambo.

## FREEDOM OF EXPRESSION ONLINE

Freedom of expression online was one of the major areas of controversy in 2017.

Since the Cybercrimes Act became operational over two years ago, Section 16 of the Act which prohibits publication of false information, has been used as the main agent of arrests for online users. The Act prohibits citizens or agencies from obtaining computer data protected against unauthorised access without permission. It empowers police or law enforcement officers to storm the premises of a news agency and confiscate a computer system or device and computer data if law enforcement officials believe that such information can be used as evidence to prove that an offence has been committed. The police are equally given the right to search devices such as cell phones, laptops or computers if they believe these gadgets contain information that can be used as evidence to prove a crime has been committed.

According to the CIVICUS Alliance report on the state of civil society: "On 15th November 2017, the Kisutu Resident Magistrate's Court in Dar Es Salaam sentenced Bob Chacha Wangwe

to 1,5 years in prison or a fine of five million Tsh (2,215 USD) on charges of “publication of false information” under the 2015 Cybercrimes Act. The charges stemmed from comments on Facebook regarding the procedural issues during the 2015 elections in Zanzibar. Chacha Wangwe is the Director of the Law Department of the Tanzania Students’ Networking Programme.”

Analysts have pointed out that the provision of Section 16 violates international freedom of expression standards. They further state that it makes the work of journalist covering current developments unreasonably dangerous; for example when breaking news, facts are often difficult to verify. Moreover it is often debatable what the truth is of a particular matter and the state should trust citizens to be capable of reaching their own conclusions.

Over 20 cybercrime cases were recorded in 2017. With over 20 million smartphone users in the country, most of which are ignorant to the contents of the Cybercrimes Act, the number of victims of this law keeps on increasing.

The year 2017 saw proposed new online content regulations which impose heavy fines and jail terms on bloggers and online platforms for public debate and whistleblowing, including the hugely popular Jamii Forums, and whose adoption would therefore be devastating.

The Electronic and Postal Communications (Online Content) Regulations, 2018, were adopted in September 2017, restrict online freedom. According to the regulations, social media users and online content producers are held liable for materials deemed “indecent, obscene, hate speech, extreme violence or material that will offend or incite others, cause annoyance, threaten

harm or evil, encourage or incite crime, or lead to public disorder”. Those found guilty face a fine of 5 million Tanzanian shillings (USD2, 300), a minimum of 12 months in jail, or both.

The Electronic and Postal Communications (Online Content) Regulations, 2017, passed in September, curtailed online freedom. The regulations shall apply to online content including:- (a) application services licensees; (b) bloggers; (c) internet cafes; (d) online content hosts; (e) online forums; (f) online radio or television; (g) social media; (h) subscribers and users of online content; and (i) any other related online content.

Online content providers are prohibited to publish, amongst others, indecent or obscene content, hate speech, and content defined broadly as that which “causes annoyance, threatens harm or evil, encourages or incites crime, or leads to public disorder”, and “content that may threaten national security or public health and safety”. Those convicted under the Act are liable to a fine of a minimum of Tshs 5 million (USD2250) or a minimum of 12 months imprisonment, or both.

Towards the end of 2016, police raided the offices of the website Jamii Forums and arrested the co-founder Maxence Melo under the Cybercrimes Act and the Electronic and Postal Communications Act. He was charged for refusing to disclose personal information of contributors to his social media platform who allegedly disclosed sensitive information and for “managing a domain not registered in Tanzania”. His refusal to comply with police requests has come at a price, with his case continuously being rescheduled. At the time of compiling this report, the case had not yet been resolved. Jamii Forums is one of the most popular online whistleblow-

ing and discussion platforms in Tanzania where members reveal details about suspected corrupt officials or participate in political dialogues.



**Since the Cybercrimes Act became operational over two years ago, Section 16 of the Act which prohibits publication of false information, has been used as the main agent of arrests for online users.**

On 30 January 2017 the TCRA directed *AYO TV*, *Global TV*, and *Michuzi TV* to cease online broadcasting as the authority was still in the process of preparing regulations for digital television. Regulations were set to be established in 2018.

According to Section 13(1) of the Electronic and Postal Communications Act (Cap 306), Tanzania's laws require online content providers to obtain a licence from the TCRA. The stations requested permission to continue providing their services while waiting for the regulations to be put into place.

## LOOKING FORWARD TO 2018

A new media legal framework is an important move forward and a big step in the harmonisation of the Tanzanian regulatory framework. It offers a good basis for long awaited reforms in the media sector and other related sectors. Tanzania has recently witnessed the enactment of new laws related to the practices of journalism in Tanzania. These laws, among others, include the Access to Information Act, 2016; the Statistics Act, 2015; the Cybercrime Act, 2015; and the Media Services Act, 2016.

These laws have brought many challenges such as hefty registration fees, threats of deregistration of media outlets, and ownership and co-funding complications in the media sector. These challenges illustrate that a lot needs to be done in terms of training, awareness raising and mental (and sometimes physical) support to victims of freedom of expression violations. The public can only get relevant information when the media is free to operate.

# TANZANIA MEDIA FREEDOM VIOLATIONS AND VICTORIES



## 15 February 2017 CENSORED

The Tanzania Communications Regulatory Authority (TCRA) ordered three online television stations, *Michuzi TV*, *AYO TV* and *Global TV*, to stop online broadcasting as the authority was still preparing regulations for digital television.



## April 2017 THREATENED

Rajab Athumani, correspondent for *Mwananchi* and *The Citizen* in Handeni District was harassed and threatened by public officials for reporting on villagers who died after eating poisonous mushrooms.



## March 2017 DETAINED

Chibura Makorongo, a journalist human rights defender based in Shinyanga was charged with the offence of assaulting a civilian causing bodily harm contrary to section 241 of the Penal Code [CAP 16].



## April 2017 VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

Hip-hop Artist Ibrahim Musa alias Roma Mkatoliki and three other artists were abducted and tortured and found two days later. Roma is known for his critical lyrics commenting on politics and social issues.



## 23 March 2017 ASSAULTED

Former Minister of Information Nape Nnauye was allegedly attacked by state officials displaying a gun in their attempt to prevent him from addressing a press conference. The minister had just been fired and, according to him, intended to thank the media fraternity for having worked with him and share the reasons that might have led to his demise.



## May 2017 VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

Hip-hop artist Emanuel Elibariki alias Nay waMitego was arrested by the police in Morogoro region for allegedly releasing a song insulting the President.



## April 2017 ASSAULTED

TV Journalist Kassim Sonyo was physically attacked by a club owner, for a story he aired about young people being hospitalised after a stampede at the nightclub.



## June 2017 CENSORED

Government banned *Mawio* newspaper for 24 months on charges of inciting violence and threatening national security.



## 12 July 2017 VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

Two human rights defenders, namely Bibiana Mushi and Nic-





odemus Ngelela Luhende, were arrested in Kishapu District following the order of the District Commissioner for Kishapu.



**7 September 2017**  
**VIOLATION OF PUBLIC FREEDOM OF EXPRESSION**



Prominent Member of Parliament and considered a somewhat controversial lawyer Honourable Tundu Antipas Lissu was shot by unknown assailants and severely injured.



**19 September 2017**  
**CENSORED**



Government suspended publication and distribution of probably the most controversial weekly tabloid in the country, *MwanaHalisi* for a 24-month period.



**29 September 2017**  
**CENSORED**



Popular weekly tabloid *Raia Mweema* including its online version was suspended for 90 days for publishing an article allegedly tarnishing the image of the president.



**24 October 2017**  
**CENSORED**



Daily tabloid *Tanzania Daima* was also issued with a 90-day suspension issued for publishing a false story 'aimed at misleading the public'. Both offline and online versions were suspended.



**October 2017**  
**VIOLATION OF PUBLIC FREEDOM OF EXPRESSION**



Human rights activist and lawyer Onesmo Ole Ngurumwa was summoned and interrogated twice by Immigration Officers from Kinondoni about his nationality.



**November 2017**  
**VIOLATION OF PUBLIC FREEDOM OF EXPRESSION**



Human rights defender and social media activist Bob Chacha Wangwe was charged and convicted under Section 16 of the Cybercrimes Act, sentenced to one and a half years in prison and given the option of paying a fine.



**22 November 2017**  
**DETAINED**



Tanzania Communications Regulatory Authority (TCRA) ordered the radio station, Clouds FM, to pay a fine of Tshs 12 million (USD 5400) for contravening broadcast content regulations.



**5 December 2017**  
**KILLED OR MISSING**



Azory Gwanda, a Mwananchi Communication Ltd Correspondent was reported missing. His whereabouts are still unknown.

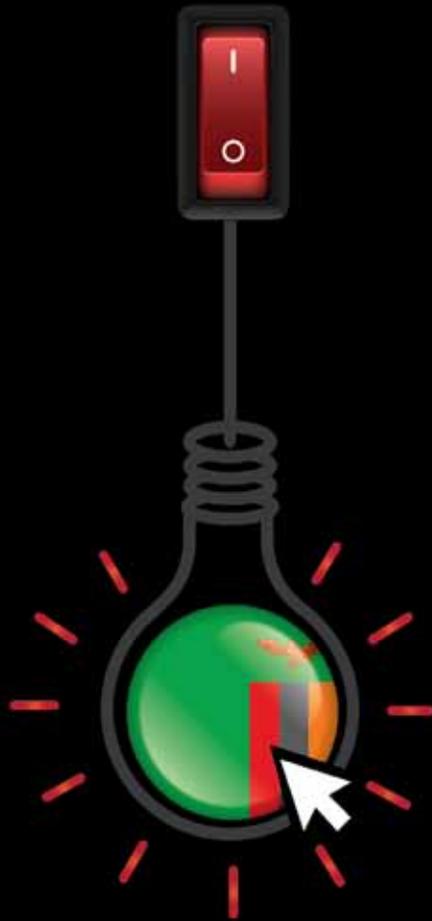


**30 December 2017**  
**DETAINED**



The Tanzania Communications Regulatory Authority (TCRA) fined Star Media for charging customers for local channels which are supposed to be accessible at no cost. The service provider was fined Tshs 100 million (USD 45000) for this violation.





# ZAMBIA

National Overview 2017  
by MISA Zambia

## NATIONAL OVERVIEW

The year under review was briddled with numerous tumultuous events. The Zambian political and social landscape was peppered with incidents ranging from the death of a student from Copperbelt University who was injured by police during a protest, to the bombing of a privately-owned media house in Lusaka and the declaration of a state of emergency following a spate of arson attacks on public installations.

Hostility and suspicion towards the State in 2017 continued, based on antagonism built up during the 2016 general elections, the closure of *The Post* and the disputed election results by the leader of the main opposition party.

Media freedom came under the glare of the spotlight in June 2016, with the closure of *The Post* - one of the oldest privately-owned dailies in Zambia - due to a dispute with the Zambian Revenue Authority. This was seen by critics as a move to eradicate an alternative critical voice ahead of the crucial election process of voting.

Soon after the elections, Hakainde Hichilema, leader of the opposition United Party for National Development (UPND) disputed the results, refused to recognise Edgar Chagwa Lungu as President and subsequently petitioned the Constitutional Court to nullify the results on procedural grounds. The lack of recognition of the elected President was seen, by some, as the cause of the opposition leader's motorcade refusing to give way to the presidential motorcade in 2017

when both leaders headed to a traditional ceremony called Kuomoka in the western province. This resulted in Mr Hichilema being charged with treason for threatening the life of the President<sup>1</sup>.

During the period under review, a spate of arsons - one of which burned down the main market in Lusaka throwing hundreds of micro and small entrepreneurs into poverty-led President Lungu to declare a "Threatened State of Public Emergency" based on Article 31 of the Constitution, which lasted for 3 months. It was said to be an effort to tighten security within the country which had experienced electricity power lines burnt in suspected acts of sabotage, plunging sections of the Copperbelt province, including a football stadium, into darkness. While it was assumed that the state of emergency would hinder freedom of expression, freedom of movement and association, it was not so, because life continued as usual. Instead the provisions gave security wings legal capacity to effect arrests and carry out searches without much paper work to avoid loss of time in curbing acts of suspected sabotage of public installations. Based on the declaration, the acts of arson fizzled out. However traders grappled with their reduced assets and had to continue trading in the market despite the absence of a roof, amidst downpours and with minimal capital, as they were not able to recover from the loss caused by the fire.

The glimmer of hope on the horizon was the birth of *News Diggers!* newspaper; which hit the streets on 18 December 2017 and was established by former staff members of the defunct *The Post*. *News Diggers!* started out as an online

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<sup>1</sup> <http://www.bbc.com/news/av/world-africa-39583817/how-road-rage-led-to-treason-charge-in-zambia>

publication in December 2016 and eventually went to print in December 2017.

On yet another positive side, Zambia's anticipation for digital migration was finally sated. This has undoubtedly contributed to diversity in the form of an alternative nationwide voice to the government-controlled *Zambia National Broadcasting Corporation (ZNBC)*. Due to digital migration several television stations have taken on national coverage even though most are aired under various subscription bouquets offered by TopStar and some private signal carriers such as *Kwese, Muvi TV* and *GOtv*.

“**The year under review was a difficult year for Zambian media with an increasingly high volume of violations as the year progressed and a dramatically changed landscape following the closure in late 2016, of *The Post* - the country's oldest and most aggressive privately owned daily newspaper.**”

## FREEDOM OF EXPRESSION

The year under review was a difficult year for Zambian media with an increasingly high volume of violations as the year progressed and a dramatically changed landscape following the closure in late 2016, of *The Post* - the country's oldest and most aggressive privately owned daily newspaper.

While the contention with *The Post* over unpaid taxes was explained as an administrative issue, there were those who regarded it as a move by the State of shutting down a critical voice. During its 26-year history on the Zambian media landscape it earned the reputation of being independent and fiercely critical of the government and ruling party. During its time *The Post* stirred the resentment of successive governments for exposing corruption and abuses of power. This often led to the arrest and charging of *The Post* journalists, with the newspaper's founder and editor, Fred M'membe often in the firing line. He was briefly arrested for contempt in 2010, when he published an article critical of a case against one of the paper's employees<sup>2</sup>. Immediately upon the closure of *The Post*, a new paper - *The Mast* hit the streets in 2016.

On 28 April, Hakainde Hichilema's wife, Mutinta, was threatened with arrest after she reported the police's use of excessive force as they sought to arrest her husband. No charges had been brought against the police in connection with the incident by the end of the year. On 15 August, the Director of Public Prosecutions withdrew all charges against Hakainde Hichilema and the other UPND members in what was said to be an act in the public interest. Suf-

<sup>2</sup> Democracy Under Threat in Zambia, Rafael Friedman - *The Zambian Observer*

face to say that in 2017 something close to what transpired in Zambia seemed to have occurred in the United States of America as reported by the Washington Examiner. The publication reported that “an Oregon man who threatened on social media to kill former President Barack Obama and shoot FBI agents was sentenced Friday to 63 months in federal prison”<sup>3</sup>.



**What started as a pipe dream for many in Zambia was finally achieved in 2017. On 1 October 2017, Zambia switched over from analogue to digital broadcasting in most parts of the country without any hitch.**

During another incident in April, police stopped a UPND political rally in Kanyama Township in the capital, Lusaka, on “security” grounds. Although the UPND had notified the police in advance of the rally, they unlawfully dispersed the rally, shooting 20-year-old Stephen Kalipa, one of the protesters. He died later from gunshot wounds at the hospital. An

<sup>3</sup> <https://www.washingtonexaminer.com/man-who-threatened-obamas-life-on-social-media-sentenced-to-63-months-in-federal-prison>

investigation was opened, but no one had been arrested in connection with the incident by the end of the year. The police claimed that he died of knife stab wounds at the hands of an unidentified assailant.

On 23 June, police arrested senior UPND officials on charges of unlawful assembly alleging that they held a press briefing at the UPND’s secretariat offices without obtaining prior authorisation.

On 24 August, police dispersed a prayer meeting convened to welcome Hakainde Hichilema’s release from Mukobeko Maximum Security Prison in Kabwe – the city where he had been held for four months on charges of treason.

On 29 September, police arrested six human rights defenders who gathered outside Parliament and protested peacefully against the government’s purchase of 42 fire engines, at a cost of US\$42 million. The cost was being protested because it was strongly suspected of being inflated. The protesters who were beaten during the protest by members of the ruling Patriotic Front were charged with refusing to obey police orders.

## **BROADCASTING**

### **Policy and Statutory Framework**

The media in Zambia operates under the auspices of the Ministry of Information and Broadcasting Services and is also guided by occasional policy pronouncements and/or changes under existing legislation or statutory instruments. During the year, there was a proposal to amend a provision in both, the Independent Broadcasting Authority Act and Zambia National Broadcasting Corporation Acts. The amendment was passed by Parliament during its sitting in the fourth quarter of 2018 and subsequently

assented to by the Republican President on 19 December 2018.

## Amendment to ZNBC and IBA Acts

Towards the end of the year, the then Minister of Information and Broadcasting Services, Kampamba Mulenga presented the second amendment to the *Zambia National Broadcasting Corporation (ZNBC)* which sought to:

- Repeal provisions relating to the imposition and collection of the television levy;
- Review the appointment of television levy inspectors under the Act, and
- Delete definitions, provisions relating to the imposition and collection of the television levy.<sup>4</sup>

During the same period the Minister presented the Independent Broadcasting Authority (IBA) (Amendment) Bill outlining the procedures for the payment and collection of television levy.<sup>5</sup> The proposed amendments sought to shift the responsibility of collecting the television levy from the corporation – ZNBC to the IBA.

Minister of Finance, Felix Mutati proposed this change in the collection of the television levy from the existing system of ZNBC collecting the levy through monthly electricity bills or through the purchase of power units from the Zambia Electricity Supply Corporation (ZESCO). The Minister also proposed an increase in the monthly television levy from K3 (US\$0.3) to K5 (US\$0.51). Ac-

4 The Zambia National Broadcasting Corporation (Amendment) Bill 2017, No. 18 dated 27 November 2017

5 The Independent Broadcasting Authority (Amendment) Bill 2017, No. 19 dated 27 November 2017

ording to the Minister this would enable the public broadcaster to improve coverage across a wider subscriber base.

In a submission to the parliamentary committee on information and broadcasting, the general secretary of the Zambia National Union of Broadcasters and other Information Disseminators (ZUBID), Andrew Mpandamwike presented the organisations strong opposition to the amendments. According to a news report, he pointed out that the Independent Broadcasting Authority was a regulator and could not combine its role with that of being a fund manager, let alone a funder of ZNBC’s public mandate. He added that his union perceived the proposed amendment as a mechanism to fund operations of the IBA, which was not a player in the public broadcasting service, a mandate placed on ZNBC through an Act of Parliament.

According to the Minister of Information and Broadcasting Services, Ms Mulenga, quarterly reports on funds raised would be communicated to members of the public, introducing an element of accountability to the tax payers. The Minister’s view essentially was that the amendments were meant to institute some measures of control on the use of the collected television levy.

Despite objections by civil society organisations which included MISA Zambia, the two Bills were subsequently passed by Parliament.

Further objections were raised through a petition by 100 unionised employees together with members of management at ZNBC. They signed a petition against the decision to shift the responsibility of collecting TV levy from the corporation to IBA. The campaigners also submitted a petition to the office of the Clerk of the National Assembly proposing a fur-

ther adjustment of the TV levy from the recently revised K5 (US\$0.51) to K10 (US\$1).

## Digital Migration

What started as a pipe dream for many in Zambia was finally achieved in 2017. On 1 October 2017, Zambia switched over from analogue to digital broadcasting in most parts of the country without any hitch.

The country was then informed that the follow through of the second and third phases of the digital migration project would continue with the construction of six provincial broadcasting stations in Chipata, Chinsali, Kabwe, Kasama, Mansa and Mongu. The Minister of Information and Broadcasting Services, Ms Kampamba Mulenga informed Parliament that these provincial broadcasting stations would help boost local content production and employment creation. Just two days after appraising Parliament, Mulenga expressed her concern about the stalled construction of two television broadcasting stations in Choma and Solwezi specifically because government had allocated an additional K30 million (about US\$ 3 million) towards payment of arrears owed to contractors and to ensure the construction was fast-tracked.

## PRINT MEDIA

In July 2017, two petrol bombs were thrown into the offices of the *Daily Nation* newspaper owned by Richard Sakala. Management at the newspaper said there were attempts to set the building that houses the newspaper on fire. The attack took place a few days after the biggest market in Lusaka was set ablaze.

## **The Post Newspapers Limited is liquidated**

Following the placement of *The Post* Newspapers under compulsory liquidation in November 2016 by the Lusaka High Court and the appointment of Lewis Moshosho of Lewis Nathan Advocates as provisional liquidator in respect of all the assets of the company – the newspaper was taken off the streets and the company was closed down. The issues with *The Post* started unravelling in June 2016 and as 2017 came to a close, the matter was still before the courts.

## **News Diggers! is Born**

*News Diggers!* started out as an online publication by former *The Post* employees and transitioned into a 12 paged-paper sent out on Mondays, Wednesdays and Fridays. On 18 December 2017 the paper put out its first print version which goes out on the streets from Monday to Friday only.

The year under review saw one of Zambia's public newspapers; *Zambia Daily Mail* announcing a plan to reduce its staff complement under what the company termed the "voluntary separation scheme". The justification for this, according to management, was to enable the company meet staff costs.

## **Daily Mail Set To Go on Air**

In an interesting twist, the *Zambia Daily Mail* Limited (one of the public newspapers in Zambia) called for qualified consultants to undertake a feasibility study to set up a radio station. According to the press advertisement, the objective of the feasibility study was to provide a roadmap on how to proceed with the establishment of a radio station that would enhance the company's commercial and financial viability.

While the *Zambia Daily Mail Limited* showed interest in expanding to radio, Lusaka-based *Muvi TV* resolved their economic challenges by decreasing staff salaries by 75 percent and reducing the number of working days for staff. This decision to reduce salaries and working days was made following a visit by Zambia Revenue Authority officials over alleged unpaid taxes.

## ACCESS TO INFORMATION

The stickiest point on the political and media landscape is undoubtedly the absence of an access to information act in Zambia to date.

Freedom of the press and freedom of expression should be granted in a democracy like Zambia. To gain full potential as regards to the exercise of these freedoms, enactment of the Access to Information (ATI) Bill into law should be a must.

Enactment of the ATI Bill into law has been promised since 2002 and successive governments have campaigned on the premise of enacting the legislation but they have all not lived to their promises; and yet again, the Patriotic Front government have followed suit. This hope was renewed when the Justice Minister Given Lubinda reported at the 2017 Universal Periodic Review that the draft ATI legislation was finally ready for public scrutiny and would be tabled in Parliament for enactment.

By the end of the year however, this renewed energy and hope for finally having ATI come to fruition was dashed as no step had been taken by government to fulfill its earlier promise.

## JOURNALIST SAFETY

A number of major occurrences during the year 2017 point to the need to guarantee safety of journalists in Zambia. While the incidents may not include death, there were incidents that are cause for concern.



Enactment of the ATI Bill into law has been promised since 2002 and successive governments have campaigned on the premise of enacting the legislation but they have all not lived to their promises; and yet again, the Patriotic Front government have followed suit.

In March of 2017, reports of a violent attack on journalists by United Party for National Development (UPND) supporters, at the party's press briefing at its secretariat incensed MISA Zambia. In a statement MISA Zambia condemned the attacks on Silumesi Malumo of *Radio*

*Phoenix and Priscilla Banda of Millennium Radio.*

The most severe incident was the petrol bombing of *The Daily Nation* on 10 July 2017.

A month later *Muchinga FM Radio* in Chinsali District in the Northern province of Zambia, received threats from a few Patriotic Front supporters after it featured Dr Chishimba Kamwili on a programme which attracted a lot of attention and resulted in robust interaction with listeners. Subsequently, towards the end of the year, suspected PF sympathisers attacked Lusaka 5FM radio for also inviting Dr Kamwili to feature on its '*Burning Issue*' radio programme. The programme could not take place because of the violence and damage to cars of guests to the station and some of the window panes of the 5FM Radio station.

## FREEDOM OF EXPRESSION ONLINE

While Zambia does not have specific legislation to address defamation online, there are several existing pieces of legislation that protect the character of an institution or individual.

Not satisfied with the current provisions, the State felt it needed to enact legislation to specifically deal with defamation. On several occasions, government authorities and the Minister of Communication and Transport, Brian Mushimba alluded to intentions by the state to enact such laws. Reports published by the *Lusaka Times* on 3 February 2017 under the headline "ZICTA to revise ICT Act of 2009 to deal with Cyber Bullying and Online Defamation" indicated government plans for such laws.

Through its monitoring of the situation MISA Zambia learnt that the Zambia

Information and Communications Technology Authority (ZICTA) was in the process of revising pieces of legislation in the ICTs sector to incorporate provisions that address lacunas within the ICT Act of 2009 and the Electronic and Communication Transaction Act of 2009. ZICTA public relations officer Hanford Chaaba said that once revised, the legislations would be able to capture issues such as cyber-bullying and online defamation which would effectively enhance the protection of consumers using ICTs<sup>6</sup>.

A report published on World Press Freedom Day in 2017 headlined "Government to take the Cyber Crime bill to Parliament" indicated the Minister of Transport and Communications, Brian Mushimba's intention to present legislation to Parliament which included the Cyber Security Bill, Data Protection Bill, and e-Commerce Bill. These bills, which were initially segregated into 5 bills, have to be discussed by Cabinet before they are taken to Parliament.

Throughout the year, several citizens were charged under insult laws.

A doctor from the western province of Zambia faced charges defaming the President through Facebook. Dr. Kwalela Kafunya was eventually convicted and sentenced to 3 years imprisonment by the Mongu Magistrate court on 10 January, 2018 for defaming the President, by written threats and giving false information.

In a separate incident Edward Makayi, an engineering student from DMI Eugene University in Lusaka was arrested in July, for allegedly defaming the President, Cabinet ministers, other senior

<sup>6</sup> <https://www.lusakatimes.com/2017/02/03/zicta-revise-ict-act-2009-deal-cyber-bullying-online-defamation/> checked on 14 December 2017

government and Patriotic Front officials through postings on his Facebook page.

## LOOKING FORWARD TO 2018

The year 2018 seems gloomy as wrangles within the ruling party appear to deepen with continued fallout of key party officials who held ministerial positions. Levels of intolerance to dissenting views also seem high among political party supporters. However, political parties and security wings are paying heed to calls to address violence among their party supporters and for police to curb the harassment. This presents an opportunity in 2018 for MISA Zambia and other media advocates to intensify calls to uphold freedom of expression and media freedom.

Further the open rebuke by Vice President, Inonge Wina of her political party supporters for harassing an opposition Member of Parliament at a State function is a strong point, MISA Zambia wishes to leverage this commitment by engaging political players like the Vice President in resolving conflict and disciplining their supporters.

However, the deepening economic woes of state owned media - *Times of Zambia*, *Zambia Daily Mail* and *Zambia National Broadcasting Corporation (ZNBC)* casts a dark shadow for 2018. It is critical for the media to build their capacity to stay afloat and for the State to allow them to operate as commercial entities. With the continued empty promises on ATI, 2018 may not be so different. However, continued engagement and advocacy will continue.

# ZAMBIA MEDIA FREEDOM VIOLATIONS AND VICTORIES



## 7 February 2017 LEGISLATED

*GOtv* Zambia sues *ZNBC* and digital service provider TopStar over alleged blocking of some free to air channels carried by it.

*GOtv* had requested the High Court that *ZNBC* be restricted from disconnecting their services and from continuing to encrypt the signal transmitted by free-to-air content providers. *GOtv* further asked the Court to declare the operation of public signal distribution network by TopStar illegal and unlawful. Later that year *GOtv* agreed to settle the matter outside court.



## 20 February 2017 LEGISLATED

Mutinta Mazoka M'membe, Oracle media proprietor and publisher of *The Mast* newspaper, was granted bail of K3,000 (US\$310) after she pleaded not guilty to a charge of obstructing police officers carrying out their duty. Mazoka M'membe was summoned to answer to a complaint of contempt of court for allegedly tearing a search warrant on 15 February 2017, when armed police raided her and her husband's house.



## 15 February 2017 THREATENED

The Lusaka Magistrates Court signed an arrest warrant for *The Post* newspaper proprietor Fred M'membe. Subsequently, armed police officers raided M'membe's house to arrest him. Some media outlets alleged that the police initially refused to produce the search warrant they carried, others claimed that the police did so upon their arrival at the house. M'membe's wife, Mutinta Mazoka M'membe, was later taken to the police station for allegedly tearing up the search warrant upon being denied entry into her residence. Some sources claimed that police assaulted Mutinta and tore her dress in the presence of passersby.



## 25 February 2017 THREATENED

Police and other state operatives in plain clothes raided the premises where *The Mast* newsroom was believed to be operating from. It turned out that the staff did not operate from these premises.



## 7 March 2017 LEGISLATED

A case was brought against the director of *Komboni Radio*, Lesa Kasoma who was alleged to have assaulted a police officer, Simon Chisanga, on 5 October 2016. However the media reports refuted the allegations made by police and instead reported: "...the police officers who had been guarding the radio station after its closure brutalised Kasoma who had gone to the radio station to inform the police officers of government's resolve to lift the suspension of the broadcasting license," after a

month long closure. In 2016 the Independent Broadcasting Authority suspended the broadcasting license for *Komboni Radio* for alleged professional misconduct.



### **28 March 2017** **ASSAULTED**

Suspected political party supporters allegedly assault two journalists, Silumesi Malumo from *Radio Phoenix* and Prisca Banda of Millennium Radio, at the United Party for National Development (UPND) secretariat after police prohibited a press conference scheduled that day.



### **29 March 2017** **THREATENED**

Armed police were deployed at ZNBC to stop the continuance of a sit-in by employees which had started four days earlier over delayed salaries.



### **2 May 2017** **VICTORY**

Ahead of World Press Freedom Day, the Minister of Information and Broadcasting Services, Kampamba Mulenga, said government remained committed to a free, independent and professional media in deepening the country's democracy and development. She added that the Patriotic Front administration will continue creating a conducive environment for the media to flourish.



### **29 May 2017** **CENSORED**

The Judiciary banned the media from taking photographs in courts and using explicit language in their reportage. In a statement released on 29 May, the Judiciary

said it was concerned that some journalists from different sections of the media and public had been taking photographs and videos of proceedings inside the court rooms.



### **24 June 2017** **VICTORY**

In the continued pursuit and fight to sustain press freedom, MISA Zambia intervened to save 29 radio stations from facing the Independent Broadcasting Authority's wrath. MISA Zambia engaged IBA in finding a solution to the issue surrounding the 29 radio stations that were at risk of losing their operating licenses due to non-payment of operational fees to the authority. Research on this issue suggests that some of these radio stations has already paid their operational fees and some media expert suggest that these could be the radio stations offering different views to those in support of the party and its government.



### **9 July 2017** **BOMBED**

The Lusaka premises of privately owned newspaper *The Daily Nation* were petrol bombed. Only one of the three petrol bombs that were thrown into the premises by an attacker exploded, resulting in a blaze a few metres from the offices' main entrance. There were no injuries to staff or damage to property recorded. Minister of Information and Broadcasting Services, Mulenga Kampamba condemned the attack as an evil act carried out to silence the newspaper. He cited the *Daily Nation* as a credible newspaper that speaks for the voiceless and which the public rely on for information.



## LEGISLATED July - November 2017

Former *The Post* journalist Abel Mboози, brought a case against Fred M'membe who is the managing director of *The Post Newspapers* (In liquidation) for allegedly impersonating an officer of The Post, disobeying lawful orders, failure to deliver properties and concealing of properties and prevention of the production of books or papers affecting or relating to the property or affairs of *the Post Newspaper Limited* contrary to the laws of Zambia.

M'membe allegedly committed these offences between November 2016 and February 2017.

### July

Fred M'membe appeared in the Lusaka Magistrates' Court on the above charges and pleaded not guilty.

### 4 September

The case was called for commencement of trial before principal resident magistrate David Simusamba. Private prosecutor Robson Malipenga however informed the court that his client Mboози was unwell and unable to make it to court. The trial was adjourned to 18 September.

### 18 September

Private prosecutor Malipenga asked to adjourn the trial to 3 October on the grounds that he had "just received instructions, which he first needed to look at".

### 3 October

The case failed to continue once more, due to the absence of the prosecution team and their witness – complainant - Abel Mboози. Later in October Malipenga's law firm applied before the principal resident magistrate for the matter to be adjourned because Malipenga

was not available as he was attending to his sick mother in Ndola.

### November

Magistrate Simusamba acquitted M'membe after Mboози withdrew the case citing lack of legal fees and a desire for peace.



## 25 July 2017 VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

Police reportedly detained Edward Makayi, a student of the DMI St Eugene University in Lusaka, in connection with the publication of defamatory statements on his Facebook page which he created under the name Royson Edwards. Police Spokesperson Esther Katongo said the defamatory remarks posted between April and July 2017 were targeted at President Lungu, Home Affairs Minister - Stephen Kampyongo, Minister of Agriculture - Dora Siliya, Inspector General of Police, Kakoma Kanganja and others. He appeared in court on later that month charged with defamation of the President under Section 59 of Cap 87 of the Laws of Zambia. Makayi was granted bail after appearing in court.



## 2 August 2017 VICTORY

Special Assistant to the President for Press and Public Relations, Amos Chanda said *The Mast* newspaper reporters were free to cover presidential assignments as long as they complied with State House security requirements.



## 9 August 2017 LEGISLATED

The Lusaka High Court has set aside an injunction that ordered ZNBC and TopStar Communica-

tion to immediately restore the free to air services on *GOtv* Broadcasting Zambia Limited Platforms. In this matter *GOtv* Broadcasting, Central African Media Network Limited and *GOtv* Zambia Limited sued the Attorney General, Top-Star Communication Limited and *ZNBC*.

The Plaintiffs wanted the court to restrain the defendants from interfering with the Plaintiffs' digital terrestrial television services thereby disrupting *GOtv* Services.

When she delivered her ruling, High Court Judge Getrude Chawatama said the digital migration programme was started by government and not *ZNBC* and Top-Star Communication Limited. As a result, the court can therefore not issue an injunction affecting *ZNBC* and TopStar, only on the Attorney General who represents the government. Considering this development, she had no powers to issue an injunction against the Attorney General as the law does not provide for such powers.

She pointed out that the complaint by the plaintiffs regarding the loss of business, can be atoned for by damages, if the plaintiffs succeed at trial in the main matter.

### 13 August 2017

#### CENSORED

The Young African Leaders Initiative (YALI) alleged that the judiciary had restricted the number of journalists and lawyers attending Hichilema's High Court appearance at the beginning of his trial. One of Hichilema's lawyer's, Gilbert Phiri is alleged to have been barred from being part of the proceedings after criticising the process on his Facebook page.



### 16 August 2017

#### THREATENED

Muchinga FM of Chinsali District in the Northern province of Zambia, a rural community radio station, received threats from some PF cadres after it featured Dr Chishimba Kambwili on its Red Carpet programme. After the airing of the episode Muchinga FM station manager Martin Phiri, was summoned for questioning by Muchinga Province Police Commissioner, Patriotic Front (PF) Regional Office and the District Commissioner for Shiwangandu District.



### 1 September 2017

#### THREATENED

*Prime TV* managing director Gerald Shawa went into hiding after being served with a court order to release video footage of an alleged plot to *blow up government installations*. Mr Shawa was served with a court order by police at his offices as part of their investigation into acts of sabotage. According to *Daily Nation* sources, Mr Shawa sneaked out of the office on the pretext of calling his lawyers and disappeared, leaving police officers waiting at his offices and switched off his phone.



### 19 September 2017

#### VICTORY

Information and Broadcasting Permanent Secretary, Godfrey Malama expressed his approval of the progress made to renovate *ZNBC Studio's* by TopStar ahead of the switch to digital migration on October 1, 2017. Mr Malama says the state of the art equipment being installed will ensure that there is a smooth transition from analogue to digital transmission. He called on members of staff at *ZNBC* to also improve and ensure quality content for the viewers.



## 20 September 2017

### VICTORY

Minister of Information and Broadcasting Services, Kampamba Mulenga, urged government departments and private firms that owe public media houses for advertising and other services to start liquidating the debt to enhance financial sustainability of the institutions. In an interview, Mulenga said government departments and private companies owe public media houses a lot of money in advertisement, which is affecting their operations. She said government departments and private companies should start liquidating the debt to improve the cash flow of public media houses.



## 22 September 2017

### VICTORY

Minister of Information and Broadcasting, Kampamba Mulenga confirmed that the Access to Information Bill will be presented to Parliament for enactment as soon as the cabinet approval process is complete. The Minister noted: "there were 13 pieces of legislation that would impede on the implementation of the access to information bill. These pieces of legislation will have to be amended by the ministry of justice" and the government remained committed to ensuring that the pieces of legislation were worked on as soon as possible.



## 25 September 2017

### HARASSED

*Muvi TV* journalist Oswald Yambani was harassed by traffic officers who allegedly pepper sprayed and beat the journalist in their offices.



## 6 October 2017

### LEGISLATED

The IBA summoned *Prime TV* CEO Gerald Shawa for alleged non-compliance in broadcasting services according to Section 29(2) of the IBA Act. The IBA letter to *Prime TV* cited Section 29 (2) of the IBA Act which provides that "where a broadcasting license does not comply with this Act or with the conditions of the broadcasting license, the Authority shall notify the broadcasting licensee of the measures that the broadcasting licensee should undertake, within a specified period, to comply with the conditions of this Act or broadcasting license." It was not clarified in the letter in how far *Prime TV* failed to comply with the Act. Shawa was furthermore asked to submit recordings of three programmes before the licensing committee.



## 7 October 2017

### THREATENED

In a statement released to the media on 7 October, Information Minister Kampamba Mulenga said that government is currently looking at enforcing laws against cyber-crime, including online falsehoods. She warned individuals who were writing false stories on social media that it was considered a criminal offence to write and publish fake news both offline and online. Ms Kampamba's statement came after a fake online article headlined; 'Minister wupports arresting of men who dump women after a year of dating'.



## 19 October 2017

### CENSORED

Zambia Information Communication Technologies (ZICTA) confiscated a transmitter from *Vision Community Radio Macha* after



they failed to pay a K3,000 (US\$ 310) penalty for operating the station without a frequency license.

## 2 November LEGISLATED

The Independent Broadcasting Authority (IBA) has been sued by Lusaka entrepreneur Golden Malama for failing to give him a frequency after successfully applying for, and being granted a license to broadcast *ACTS Television*, a Christian channel in Lusaka's Matero Township.

Malama sued IBA together with two other communication regulatory companies, the Zambia Information Technology Authority (ZICTA) and Top Star Communication Company Limited in the High Court of Zambia, for not effecting specific performance on agreement that *ACTS Television* starts broadcasting.

The Plaintiff said *ACTS Television* was supposed to start broadcasting on 1 January 2017 but that Top Star Communication Company Limited, the signal carrier, notified him via mobile phone short message (SMS) that it shall refund him the total sum of K22,500 (US\$2,325) signal charge he had paid.

## 7 November 2017 VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

United Party for National Development (UPND) leader Hakainde Hichilema challenged *Zambia National Broadcasting Corporation (ZNBC)* to give him a platform to feature according to the *Lusaka Times*. Hichilema wondered why the PF complained about him being featured by international media, especially when *ZNBC* was failing to provide him a platform to air his views.

## 10 November 2017 CENSORED

Debating the budget line for the Ministry of Information, Monze Central UPND parliamentarian Jack Mwiimbu lamented that the opposition had been blacked out by the *Daily Mail*, *Times of Zambia* and *ZNBC*, adding that for that, reason the PF should fund their propaganda wings themselves.

## 11 November 2017 VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

Lunte PF Member of Parliament Mutotwe Kafwaya told Parliament that *ZNBC* belonged only to those in government because opposition political parties would waste the national broadcaster's airtime talking about presidential petitions which do not exist. He further stated that *ZNBC* should not be allowed to air any views from the opposition.

## 15 November 2017 NOTEWORTHY DEVELOPMENT SUSPENDED

The *Zambia National Broadcasting Corporation (ZNBC)* suspended staff member Mr Misheck Moyo for attending church services in Mufulira at the same time as Roan Member of Parliament, Mr Chishimba Kambwili. Mr Moyo who confirmed his suspension referred all queries to *ZNBC* management but mentioned that he was a congregant at St Lawrence Catholic Church where Mr Kambwili and the National Democratic Congress leadership attended service on the material Sunday.

Mr Moyo's suspension letter indicated that he had brought the name of *ZNBC* into disrepute following the attendance of a church service where the NDC officials were.



**16 November 2017**

**VICTORY**

Former journalist of *The Post*, Abel Mboози withdrew his case against Fred M'membe – owner of *The Post* (now closed). The withdrawal of the case prompted principal resident magistrate David Simusamba to acquit M'membe of the impersonation charges laid against him by Mboози.



**17 November 2017**

**THREATENED**

The Editor-in-Chief of *The Mast*, Joan Chirwa, was summoned by the Zambia Police. According to sources, she was expected to appear before the Criminal Investigations Department "for the purpose of police inquiries".



**17 November 2017**

**VICTORY**

The Zambian government is constructing 98 communication towers in Luapula Province at a cost of US\$29.4 million aimed at closing the digital gap that exists between urban and rural areas by providing improved access to internet and mobile phone services.



**18 November 2017**

**VIOLATION OF PUBLIC FREEDOM OF EXPRESSION**

United Party for National Development (UPND) cadres allegedly threatened to "sort out" ActionAid country Director Nalucha Ziba and the communications Officers Helen Mwale on suspicion that they are inciting Government to arrest opposition leader Hakainde Hichilema over alleged tax avoidance. The *Zambia Daily Mail* quoted Mwale as having said that cadres also accused Action Aid of having been bought by President Lungu



and his special assistant for Press and Public Relations Amos Chanda, to speak against Mr Hichilema.



**21 November 2017**  
**VIOLATION OF PUBLIC FREEDOM OF EXPRESSION**

The Times of Zambia reported that police in Lusaka were actively investigating expelled Roan Patriotic Front (PF) Member of Parliament, Chishimba Kambwili, on allegations that he had defamed President Edgar Lungu. This followed a report by New Congress Party (NCP) president Peter Chanda to Lusaka Woodlands Police station that Dr Chishimba Kambwili defamed the President of Zambia according to a story published in *The Mast*.

Defamation of the President is a crime in Zambia and one can be imprisoned up to a jail term of 3 years and is found in section 69 of the Penal Code.



**25 November 2017**  
**VICTORY**

Chief Justice Ireen Mambilima asked High Court judge Sunday Nkonde to be recused from presiding over *The Post Newspaper Limited* liquidation case. Her request followed the Judicial Complaints Commission finding a prima facie case against Judge Nkonde in a complaint of bias and professional misconduct lodged by journalist Dr Fred M'membe owner of *The Post Newspapers Limited*.



**26 November 2017**  
**THREATENED**

Luapula Province Minister, Nickson Chilangwa, threatened to close down *K-FM Radio* of Mansa if it continued to feature people that criticize government on its radio programmes. The threats



came after the radio station carried a news item that quoted Dr Chishimba Kambwili criticizing the Patriotic Front government and labelling them as corrupt.

## 2 December 2017

### THREATENED

A reporter from *Radio Liseli* was summoned by the police in Mongu for discussing the province's teacher recruitment process, alleging that the majority of teachers come from other areas.



other Information Disseminators (ZUBID) Secretary General, Andrew Mpandamwike, the employees, the petition demanded information on how the Independent Broadcasting Authority (IBA) was going to combine the role of regulating the broadcast media as well as that of the being a fund manager for the corporation. The union also wanted to know how the IBA would allocate the money collected through the TV levy, to ZNBC.

## 11 December 2017

### VICTORY

A report published in *New Vision* indicated that the District Development Committee (DDCC) in Chadiza District in the Eastern Province had recommended the construction of the first ever radio station in the area at a cost of about K260,000 (US\$26,826).



### FREEDOM OF EXPRESSION

## 7 December 2017

A report published in *The Mast* on 7 December 2017, said that some opposition members of parliament expressed mixed reactions over proposals to amend the ZNBC Act and the IBA Act. Debating the policy statement which a few parliamentarians supported the proposal to remove the responsibility of the TV levy collection from ZNBC. This is despite the fact that the IBA is a broadcast media regulator. During the debate they also expressed their displeasure with the ZNBC and reallocating that role to the IBA content.



## 14 December 2017

### VICTORY

*Zambia National Broadcasting Corporation (ZNBC)* granted UPND president Hakainde Hichilema, a chance to feature on its Sunday Interview programme on December 17 following the party's request.



## 8 December 2017

A report published on *News Diggers* Facebook page indicated that over 100 unionised employees at the *Zambia National Broadcasting Corporation (ZNBC)* along with some management members had signed a petition against the decision to shift the responsibility of collecting TV levy from the corporation to IBA. The employees submitted a petition to the office of the Clerk of the National Assembly proposing a further adjustment of the TV levy from the recently revised K5 to K10. Quoting Zambia Union of Broadcasters and



## 14 December 2017

### VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

The Zambia Association of Musicians (ZAM) disapproved Pilato's latest song 'Koswe Mumpoto', calling it an abuse of freedom of expression through music. In a statement ZAM president Njoya Tembo, stated that while his association encouraged its members and all artists to continue exercising their right to comment on social and political matters, Pilato's song was "meant to demean the

Head of State and President of Zambia.” He added that although Pilato was not a member of ZAM, his association found the song politically vindictive, judgmental and one that fostered character assassination, political hostility and division in the country. Reacting to the song which had already gone viral on social media platforms, Central Province PF youth’s chairperson Moses Chilando branded the song insulting, provocative, degrading and outside the province of one’s entitlement to freedom of expression.

### 14 December 2017 LEGISLATED

A report in *The Mast* alleged that National Democratic Congress consultant and expelled PF Roan Member of Parliament Chishimba Kambwili had sued the *Daily Nation* and its proprietor Richard Sakala in the Lusaka High Court for defamation. Quoting a statement of claim filed in the principal registry on 11 December, Kambwili stated that the *Daily Nation* newspaper number 1778 of 26 September 2017 and issue number 1784 of 3 October 2017 published false and malicious articles captioned “Kambwili Implicated in US\$4m Mongu Stadium Deal” and “Kambwili Arrest Ordeal”.

### 17 December 2017 THREATENED

PF cadres stormed the premises of 5FM radio station in Lusaka during the airing of a radio programme featuring NDC Consultant and PF Roan MP Chishimba Kambwili. The cadres are said to have smashed cars and deflated tyres of vehicles belonging to the NDC officials.



### 18 December 2017 VICTORY

The online news publication *News Diggers!* went to print on 18 December, providing citizens with an additional national newspaper.



### 18 December 2017 VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

During an interview satirical singer Chama Fumba aka Pilato said he received threatening phone calls, messages and videos on a daily basis, for the song he released on 11 December dubbed *Koswe mumpoto*. According to the artist, even though the song was not targeted at the ruling Patriotic Front, it seemingly annoyed the ruling party’s leaders and its members.



# ZIMBABWE

National Overview 2017  
by MISA Zimbabwe

## INTRODUCTION

In his inauguration speech on 24 November 2017 following the ouster of former Zimbabwean leader Robert Mugabe, President Emmerson Mnangagwa said he would ensure the pillars of democracy were strengthened and respected in Zimbabwe.

At face value, these remarks can be interpreted as a realisation that during his 37-year hold on power, former President Mugabe, failed to strengthen the pillars of democracy. This was despite the coming into existence of the much-acclaimed 2013 Constitution which was expected to usher in a new democratic dispensation in Zimbabwe.

In so saying, President Mnangagwa was on target, given that as the year came to a close, laws such as the inaccurately named Access to Information and Protection of Privacy Act (AIPPA), used to license and regulate the media; the Official Secrets Act (OSA), which would broadly embargo information held by public bodies; and the Broadcasting Services Act (BSA) threatening to hinder free establishment of private radio stations, remained entrenched in the country's statutes.

Other restrictive laws include the Public Order and Security Act, Censorship and Entertainment Controls Act (CECA) and the Criminal Law (Codification and Reform) Act. These should also be viewed against the government's accelerated efforts to introduce the cybercrimes law, generally perceived as designed to curb free speech online.

The above-mentioned laws are seen as essentially curtailing citizens' rights to freedom of assembly and association,

protest and petition, including the right to freedom of conscience, as provided for by Sections 58, 59 and 60 of the Constitution, as well as contravening Sections 61 and 62 which protect the right to free expression, media freedom and access to information.



The government demonstrated its determination to close the democratic space through a slew of threats to clamp down on, among other repressive measures, social media and those who are alleged to abuse it.

## FREEDOM OF EXPRESSION

While section 62 of the Constitution explicitly provides for the right to access public information and urges the enactment of a requisite law to give effect to the enjoyment of this right, the widely hindering AIPPA remains firmly entrenched in the statutes.

# Zimbabwe

In fact, the government demonstrated its determination to close the democratic space through a slew of threats to clamp down on, among other repressive measures, social media and those who are alleged to abuse it.

This came at a time as government ramped up its drive to enact the Cybercrimes and Security Bill, which culminated in the establishment of such ministry late in 2017. Named the Ministry of Cybercrimes, Threat Detection and Mitigation, its lifespan was short-lived as its responsibilities were incorporated into that of Information and Communication Technology (ICT) upon President Mnangagwa's ascension to power.

In a press statement issued on 24 September 2017, then Minister of Home Affairs, Dr Ignatius Chombo, made clear government's intentions in that regard. He accused the press and social media of spreading alarm and despondency warning that government would take "decisive action to deal a telling blow" to the perpetrators of such 'crimes'.

The minister's statement was seen as a blatant threat against the exercise of freedom of expression on the part of both citizens and the media as provided for in Sections 61 and 62 of the Zimbabwean Constitution.

## PRINT MEDIA

As the print media struggled for survival and solutions against the background of unfolding technological advances, compounded by dwindling advertising revenue in an unfavourable economic environment, it also came under the spotlight following accusations of its capture, particularly in the context of the ruling Zanu PF succession fights.

Both the public and private media were accused of being factional, biased and partisan in their coverage of the Zanu PF succession story. Though unsubstantiated, there were also accusations that some journalists were in the pockets of high-ranking politicians, businesspersons and prominent church leaders.

During a meeting convened by MISA Zimbabwe and the Zimbabwe National Editors Forum (ZINEF) on 9 September 2017 in Zimbabwe's second city of Bulawayo, journalists in attendance acknowledged there were, among them, journalists working in cahoots with politicians across the political divide to the detriment of media professionalism.

They maintained 'media capture' in the form of interference with editorial independence by government officials especially in the public-owned media.

The 'capture' was not only restricted to public media but was also evident in the private media where certain journalists were accused of being under the control of influential politicians. Concerns were expressed about appointments of editors along political lines, some of them without journalism experience, which was also contributing to the lowering of standards as well as erosion of ethical practice and conduct.

Other journalists were seen to be 'moles' for political and business gurus, making it difficult for colleagues to work on sensitive stories without risk of being spied on and reported to either corporate or business paymasters.

Media capture also came in the form of intimidation by big corporates threatening withdrawal of advertising revenue in the event of what they perceived as negative publicity.

On the worrying issue of corruption in the media, they attributed this to poor working conditions and low salaries.

Amidst a range of issues the meeting recommended:

- MISA and ZINEF should convene a national indaba/meeting to discuss the negative state of affairs with the view to coming up with solutions to free up the media and reinforce media professionalism and accountability.
- Media houses should be encouraged to have an in-house press ombudsman to instill ethical conduct and practice in newsrooms.
- There was need for a strong union and a compulsory media employment council that sets standards of recruitment, working conditions and salaries for the media sector as a way of countering corruption in the media.
- Findings and recommendations from the Information Media Panel of Inquiry (IMPI) process should be implemented.
- Revival of the Mass Media Trust to protect the editorial independence of public owned newspapers from political interference.
- Internal life-style audits of editors and journalists by their employers/publishers where corruption is suspected.

## BROADCASTING

The broadcasting sector largely remained constricted despite the licensing of eight provincial urban-based commercial radio stations by the Broadcast-

ing Authority of Zimbabwe (BAZ) in March 2015.

This was in addition to the licensing of the first-ever national commercial stations, *Star FM* and *ZiFM Stereo*.

As of December 2017, the government was still to license a single community radio station, let alone a privately-owned television channel, even 16 years after enactment of the BSA, which provided for community radio. Government continued to prevaricate on the licensing of community radio stations, but in 2016 said this would be done upon completion of the digitisation process, with preference being given to rural communities.

However, in 2017, the ministry's permanent secretary, George Charamba, was to bizarrely claim that the government had in fact licensed community radio stations, in apparent reference to the afore-mentioned commercial radio outlets. Community radio stations by definition are not for commercial profit and the Broadcasting Authority of Zimbabwe has never called for applications for community radio stations, let alone licensing one, as provided for in terms of the BSA.

*The Zimbabwe Broadcasting Corporation (ZBC)*, which is supposed to be a public broadcaster, firmly remained in the clutches of the state and continued with its partisan coverage to the exclusion of diverse views and opinions.

This was despite assertions to the contrary by then Minister of Media, Information and Broadcasting Services, Christopher Mushowe, relating to *ZBC's* impartiality.

Mushowe was responding to questions raised by parliamentarians on 2 August 2017 related to ZBC's programming and licence fees. Harare West MP, Jessie Majome, asked the minister whether it was ZBC's editorial policy to 'favour' the ruling Zanu PF against other political parties. In his response, the minister deferred the question by saying Zimbabwe's opposition political parties should inform the public broadcaster when they had events that needed coverage. He maintained that the ZBC was ready to cover 'any worthy' activities of the opposition and that this was in fact already happening.

However, in contrast to the then Minister's statement, ZBC's partisanship and biased coverage has been well-documented. Reports by civil society organisations such as Media Monitors Zimbabwe (formerly Media Monitoring Project of Zimbabwe), and the Zimbabwe Election Support Network, attest to ZBC's inequitable and biased coverage of political parties, especially during elections.

Observations made by the Constitutional Court in July 2016 when it affirmed the legality of ZBC licence fees, were also telling in that regard. The court stressed the need for ZBC to be impartial and afford fair opportunity for presentation of divergent views and dissenting opinions.

Several reports, including those by relevant Parliamentary Portfolio Committees; even the ministry's very own sanctioned IMPI, Zimbabwe Electoral Commission's 2013 report and elections observer missions, repeatedly pointed out ZBC's deficiencies as a public broadcaster due to its political capture and abuse by the ruling party and government.



As the print media struggled for survival and solutions against the background of unfolding technological advances, compounded by dwindling advertising revenue in an unfavourable economic environment, it also came under the spotlight following accusations of its capture, particularly in the context of the ruling Zanu PF succession fights.

Without its transformation, ZBC as currently constituted, cannot objectively and impartially evaluate the 'worthiness' of activities of opposition political parties to determine coverage, as was posited by the minister.

The ZBC, nevertheless, has statutory obligations to exercise editorial discretion and judgments in the public interest.

This should include creatively covering political parties instead of waiting for notification of their activities. This would ensure desired balance in the coverage of political parties.

## ACCESS TO INFORMATION

In its 2017 Q3 (third quarter) Report, the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ), reported an increase in Zimbabwe's mobile penetration rate from 97% in Q2 to 100.5% in Q3.

POTRAZ attributed this to an increase in mobile subscriptions which had risen to 13,799,648 when compared with 13,311,223 during the previous quarter. However, the Minister of ICT, Supa Mandiwanzira, said while the penetration had hit the 95% mark, the statistics might be misleading as far as mobile penetration was concerned. He said this could be so because a number of people had two or three mobile lines each.

With an estimated population of 13 million, the statistics could mean that almost every citizen had a mobile phone. This came at a time when the minister was on record saying a suitable pricing model for the country would be arrived at following the conclusion of a survey which was undertaken by POTRAZ. The survey was conducted to establish the cost of landing bandwidth in the country by mobile network operators.

In January 2017, the minister issued a directive for the suspension of an increase in mobile network voice and data charges following a public outcry. While this step was commendable in the context of citizens' right to communicate and share information more affordably, according to Research ICT Africa, Zimbabwe's data charges remain the third

highest on the continent. The cheapest monthly 1 GB data package in the country is set at \$30.

As the prices of internet-enabled smartphones steadily dropped, more Zimbabweans were connecting to the internet via these mobile devices. This was reflected in the quarterly reports published by POTRAZ over the past two years.

As mentioned earlier in this report, these developments came at a time of spirited efforts by government to enact cyber-crime laws.

In a country with high voice-call rates, coupled with a political environment where freedom of association is sometimes restricted, social media provided affordable and relatively safe platforms for Zimbabweans with similar interests to "meet and share their views". This has significantly improved the flow and accessibility of information in the country.

Unfortunately some of the information shared by citizens also impacts governance issues, including important ones such as management of the current economic crisis.

For example, towards the end of September 2017, Zimbabwe experienced sporadic price increases, which citizens documented and shared on social media. The statements released by government after that spell of price increases blamed inaccurate social media posts for causing panic buying which had in turn led to opportunistic retailers hiking their retail prices.

## MEDIA AND ELECTIONS

Envisaged reforms became even more critical ahead of the 2018 elections to entrench citizens rights to freedom of assembly, association, access to information and free expression.

“We fully reaffirm our membership to the family of nations and express our commitment to playing our part in regional and international organisations and arrangements in order to make our modest contribution towards a prosperous and peaceful world order,” said President Mnangagwa in his inauguration speech.



While there was a marked decline in the number of cases involving media violations during the period under review compared to the previous year, the severity of the nature of the violations was cause of great concern.

The first step towards commitment to regional and international organisations and arrangements, should be through

the ratification of instruments such as the African Charter on Democracy, Elections and Governance (ACDEG)<sup>1</sup>, which came into force on 15 February 2012.

Five years after, Zimbabwe was still to sign, let alone ratify this Charter. A total of 45 African countries had signed the Charter, of which 30 had since deposited their accession/ratification instruments, but not Zimbabwe.

Southern Africa Development Countries (SADC) countries that had either signed or ratified the instrument include, among others, Zambia, Swaziland, Namibia, South Africa, Mozambique, Malawi, Mauritius and Lesotho. In fact, Zimbabwe, Botswana and Tanzania were the only three countries that were still to sign or ratify the Charter as of November 2017.

The pillars of democracy cannot be strengthened through failure to comply and domesticate regional and continental instruments such as the ACDEG, added to the continued existence of repressive laws such as the Access to Information and Protection of Privacy Act (AIPPA) and Broadcasting Services Act (BSA), among others.

These laws impinge on citizens' right to freedom of expression and free flow of information which is critical in shaping a new democratic dispensation.

As the 2018 elections draw closer, transformation of the Zimbabwe Broadcasting Corporation (ZBC) to ensure equal and equitable access by political parties and the majority of Zimbabweans regardless of their political affiliations, is of imperative urgency.

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<sup>1</sup> At the time of writing, Zimbabwe had not signed the ACDEG. President Mnangagwa signed the Charter on 21 March 2018

Transformation of ZBC from a state-controlled entity into a truly independent public broadcaster is urgent given its strong bias and partisanship towards Zanu PF, which is afforded more airtime when compared to other political parties. This would also entail the repeal of the Broadcasting Services Act.

President Mnangagwa should also ensure the safety and security of journalists conducting their lawful professional duties. Above all, he should be accessible to the media as it fulfills its watchdog role and to ensure that he fosters transparency and accountability.

## JOURNALIST SAFETY

While there was a marked decline in the number of cases involving media violations during the period under review compared to the previous year, the severity of the nature of the violations was cause of great concern.

A total of 6 journalists were unlawfully arrested or detained in 2017 compared to 23 journalists the previous year. This marked a decline of almost 74% (73.9%).

In 2017, MISA Zimbabwe recorded the specific assault of 8 journalists during the course of their duties compared to the 12 recorded in 2016.

The majority of the assaults on journalists on duty were perpetrated by the police, apart from three cases which involved army personnel and ruling Zanu PF youth. This was indeed worrying as this came against the backdrop of the September 2016 meeting between the police and a media delegation led by MISA Zimbabwe when police undertook to ensure the security and safety of journalists.

Worried by these wanton acts of lawlessness on the part of the police, Harare-based journalists led by MISA Zimbabwe Chairperson, Kumbirai Mafunda, on 28 July 2017 marched to Harare Central Police Station protesting the assault by the police of three colleagues employed by the privately-owned *NewsDay* daily newspaper.

The Harare-based journalists marched to the police station from the Ambassador Hotel through the central business district following the assault on 27 July 2017 of journalists Obey Manayiti, Shepherd Tozvireva, Abigail Mutsikidze, and their driver, Raphael Phiri. Manayiti sustained a bruised lip and swollen eye while Tozvireva and Phiri were also roughed up by the plain clothes police.

Upon arrival at the police station, the journalists requested to meet the officer-in-charge. Journalists Blessed Mhlanga and Philemon Jambaya, representing their colleagues, then held a meeting with Inspector Ziburubudu in the presence of MISA Zimbabwe Legal Officer, Farai Nhende. They expressed their joint concern about cases of continued harassment and assault of journalists on duty by the police.

On 29 September 2017, journalists Mugove Tafirenyika and Brighton Goko who work for the privately owned *Daily News*, sustained serious injuries after being assaulted by the police while covering demonstrations in Harare's central business district.

Other cases involve the manhandling of *NewsDay* senior reporter Richard Chidza by ruling Zanu PF youths who shoved and slapped him at the end of a press conference in Harare on 19 October 2017 demanding that he reveal the source of a story regarding analleged

# Zimbabwe

fallout within the youth league's leadership ranks.

On 1 September 2016, freelance photojournalist Crispin Ndlovu was admitted to a private hospital in Zimbabwe's second city of Bulawayo after he was reportedly attacked and arrested by members of the anti-riot police on 31 August 2016. According to media reports, Ndlovu was arrested while taking pictures of the police as they allegedly assaulted Alfred Dzirutwe, spokesperson of the Bulawayo Youths Arise during protests against President Mugabe's leadership and rising unemployment.

Meanwhile, MISA Zimbabwe agreed to work with the police and other security arms of the state to secure a safe media environment ahead of the 2018 elections following yet another meeting with the police in December 2017. The first such meeting was held in September 2016.

The Zimbabwe Republic Police and representatives of media organisations led by MISA Zimbabwe Trustee, Cris Chinaka, on 20 December 2017 met in Harare and agreed on a raft of actions to secure a safe and conducive working environment for journalists. The police delegation was led by Police Spokesperson Senior Assistant Commissioner Charity Charamba.

The proposed resolutions and action plans were aimed at improving the professional working relationship between the media and the police through agreed-upon work plans and timeframes for ease of monitoring of progress.

## FREEDOM OF EXPRESSION ONLINE

In his address during the opening of the 5th Session of the 8th Parliament, Presi-

dent Robert Mugabe, before his removal from office, expressed hope that Parliament would debate and finalise the three cyber law related Bills, Zimbabwe had been working on since mid-2013.

With that in mind, the government created the Ministry of Cybersecurity, Mitigation and Threat Detection. At face value, such actions give the impression that the Zimbabwean government was taking serious measures to combat potential cyber threats.



If past trends were anything to go by, there was high probability that the proposed cyber crimes and cyber security laws would be selectively applied through various state institutions to persecute any dissenting voices in online spaces.

Government efforts in combating online criminal activity had resulted in the passing of the National ICT Policy, the National Cyber Security Policy (both in 2016), and the updating of the draft Cy-

bercrimes and Cybersecurity Bill, which is currently in its third draft. On paper, these policies are aimed at fighting cybercrime in Zimbabwe in a manner which also purports to promote fundamental rights enshrined in the Constitution.

For example, the main focus of the Cybercrime and Cybersecurity Bill was to consolidate cyber-related offences with due regard to the Constitution's Declaration of Rights as well as the public and national interest. Furthermore, the Cybersecurity Committee to be established once this draft Bill was gazetted into law, was mandated to produce annual reports on how national cybersecurity initiatives/activities impact on fundamental rights such as the right to privacy and freedom of expression.

However, as Zimbabwe inched closer to the 2018 general elections, a gap was emerging between the proposed cybersecurity policies and the government's actual intentions. One example of this discrepancy came in the wake of remarks by presidential spokesperson George Charamba in clarifying the role of the ministry on 10 October 2017.

Charamba was quoted saying:

... ndiyo riva redu kubata makonzo aya anoita mischief using cyber space [this is the trap to catch mischievous mice]...This is coming against the background of the abuse that we saw not too far back on social media, where the social media then causes some kind of excitement to the country, not on the basis of fact, but generation of copy which is in fact calculated to trigger a sense of panic in the economy, and that in itself suggests that it is indeed a major threat to State security.

Charamba also revealed how former president Mugabe had drawn lessons on controlling cyberspace from countries such as Russia, China and "the Koreans." This was a chilling admission given the notoriety of the three countries for clamping down on online rights and freedoms, with China going as far as setting up its own parallel internet network separate from that of the rest of the globe.

While officially opening the Nkulumane Community Information Centre in Bulawayo on 4 November 2017 President Mugabe said:

We have set up the Cyber Security Ministry to build our own cyber systems to defend ourselves from cybercrime. We are aware that there are some people who use the internet to fight us and implement what they say is regime change.

This is not a first, actually some nations are at an advanced stage in controlling this social media, which is why we thought that Minister Chinamasa as a lawyer can help in controlling our cyber space.

In revealing the dual purpose of the Ministry of Cybersecurity in preventing abuse of social media and protecting the State's interests, there was no reference to the actual cyber crimes or cyber security threats faced by Zimbabwe.

Summarily, these remarks escalated free expression on social media to a cybersecurity threat which government took seriously enough to warrant the creation of the responsible ministry.

Martha O'Donovan, an American citizen working with Magamba Network Trust, a social media network, was in

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November 2017 arrested and charged with subversion and insulting the president through a tweet in which she allegedly called then president Mugabe a “sick man”.

Martha’s arrest served as a warning on how closely state authorities were monitoring statements made through social media. She was charged under Section 33 (2) of the existing Criminal Law (Codification and Reform) Act [Chapter 9:23] which criminalised statements which undermined the authority of the president.

During the same month, members of the Criminal Investigations Department raided the Magamba offices and confiscated desktops and laptops.

O’Donovan spent seven days at Chikurubi Maximum Prison in Harare before being granted bail by the High Court. The offence carried a maximum sentence of 20 years imprisonment. If past trends were anything to go by, there was high probability that the proposed cyber crimes and cyber security laws would be selectively applied through various state institutions to persecute any dissenting voices in online spaces.

This happened against the background of constitutional guarantees that citizens have the right to freely express themselves online and offline while the media has the right to truthfully report and inform the nation on events as they unfold without fear and undue hindrances.

## LOOKING FORWARD TO 2018

The government should urgently implement the long overdue media reforms by aligning restrictive laws such as AIPPA, BSA, POSA and sections of the Criminal Law (Codification and Reform) Act (CODE) as provided for in terms of the

Constitution’s Chapter 4 Bill of Rights as well as the findings and recommendations of the Information and Media Panel of Inquiry (IMPI) report.

The 666-page report released on 18 March 2015, recommended the repeal of laws such as the Access to Information and Protection of Privacy Act (AIPPA), Criminal Law (Codification and Reform) Act, Broadcasting Services Act (BSA), Censorship and Entertainment Controls Act (CECA), Official Secrets Act (OSA) and Copyright and Neighbouring Rights Act.

Fundamentally, Zimbabwe should sign and ratify the ACDEG which promotes the consolidation of democratic governance and human rights in Africa through adoption of the Charter’s relevant clauses into domestic law and policies ahead of the 2018 elections

# ZIMBABWE MEDIA FREEDOM VIOLATIONS AND VICTORIES



**3 March 2017**

**ARRESTED**

*News Day* editor Wisdom Mdzungairi and reporter Richard Chidza, charged with insulting or undermining the president following publication of a story pertaining to President Robert Mugabe's health.



**24 March 2017**

**THREATENED**

Then Zanu PF political commissar and Minister of Local Government, Saviour Kasukuwere, charged at a reporter from *The Herald*, accusing the paper of pursuing a factional agenda during a field day at Mount Darwin in Mashonaland Central Province.



**20 June 2017**

**ARRESTED**

*News Day* editor Wisdom Mdzungairi and reporter Everson Mushava, questioned by police in Harare following publication of a story arising from a press conference held by former Zanu PF Mashonaland Central youth leader where he allegedly urged war veterans to push President Robert Mugabe out of office.



**22 June 2017**

**ARRESTED**

Freelance journalists Garikai Chaunza and Frank Chikowore, arrested by the police while covering the invasion of Lesbury Farm in Manicaland Province.



**27 July 2017**

**ARRESTED**

*News Day* journalists Obey Manayiti, Shepherd Tozvireva and their driver Raphael Phiri, were assaulted by police on their way to Harare Central Police Station after taking pictures of skirmishes between police and members of the public in Harare's central business district.



**24 September 2017**

**THREATENED**

Then Home Affairs Minister Ignatius Chombo, threatened "decisive action to deal a telling blow" against the press and social media for spreading alarm and despondency about the socio-economic and political environment.



**27 September 2017**

**THREATENED**

Ministers Chinamasa, Mike Bimha and Chris Mushowe threatened to tighten control on social media, claiming it was the cause of shortages of basic commodities and bank notes in Zimbabwe.



**29 September 2017**

**ASSAULTED**

*Daily News* journalists Mugove Tafirenyika and Brighton Goko sustained serious injuries after being assaulted by the police while covering demonstrations in Harare's central business district.





## 2 October 2017

### ARRESTED

*News Day* reporter Kenneth Nyangani; arrested in the eastern border town of Mutare and charged with criminal nuisance after writing a story which alleged that First Lady Grace Mugabe donated second-hand underwear.



## 5 October 2017

### CENSORED

Then Vice President Emmerson Mnangagwa's security detail barred the private media from covering a briefing he had convened at his Ministry of Justice offices in Harare.



## 19 October 2017

### ASSAULTED

*News Day* senior reporter Richard Chidza, assaulted and threatened by Zanu PF youths who demanded he reveal the source of a story regarding an alleged fallout within the youth league's leadership ranks.



## 3 November 2017

### VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

Martha O'Donovan of Magamba Network social media outlet; arrested in Harare for allegedly insulting President Robert Mugabe as a "selfish and sick man" in a tweet that allegedly included a photo illustration of him with a catheter.



## 14 November 2017

### ASSAULTED

Journalists Columbus Mavhunga and Garikai Fadzai, severely assaulted at Army Headquarters in Harare where they turned up for what was supposed to have been a scheduled conference. The two were treated and discharged from a private hospital after sustaining serious injuries.



## 14 November 2017

### VIOLATION OF PUBLIC FREEDOM OF EXPRESSION

Members of the Criminal Investigations Department seized computers belonging to the social media outlet in connection with a case against its employee, Martha O'Donovan, arrested for insulting then President Mugabe.



## 15 November 2017

### ASSAULTED

Some ZBC staffers were reportedly assaulted at ZBC Pockets Hill headquarters in Harare when army personnel stormed the station to announce the military intervention which subsequently led to President Robert Mugabe's resignation.



# About MISA

Making southern Africa a more conducive environment for media freedom

Over the past 25 years, the Media Institute of Southern Africa (MISA) has been the primary advocate for media freedom and freedom of expression in southern Africa, issuing alerts on media freedom violations, condemnations of killings, assaults, criminal charges and other forms of unjustified attacks on journalists, including restrictions on access to information.

The research and analysis that makes up *So This Is Democracy?* is based on this daily monitoring and other research gathered in the 11 Southern Africa Development Community (SADC) countries where MISA operates through Chapter offices.

MISA's work focuses on making sustainable, lasting changes to the media landscape in the southern Africa region that will make our countries safer places for journalists to work and more conducive for media freedom and freedom of expression.

MISA's activities and programmes include:

- Advocating for changes to restrictive laws
- Advocating for development of positive legislation, such as access to information laws;
- Publishing media violation alerts;
- Researching and publishing reports on media violations and the state of the media environment in southern African countries; and
- Training, workshops and publications.

How to report a media freedom violation or victory

## What to report:

Journalists and Free Expression activists who are:

- Assaulted;
- Arrested;
- Censored;
- Denied credentials;
- Harassed;
- Kidnapped;
- Killed;
- Missing;
- Threatened;
- Wrongfully expelled;
- Wounded; and/or
- Wrongfully sued for libel or defamation.

News organisations that are:

- Attacked or illegally searched;
- Censored;
- Closed by force;
- Raided, where editions are confiscated or transmissions are jammed or have materials confiscated or damaged; and / or
- Wrongfully sued for libel or defamation.

## What to include in your report:

To complete an accurate and relevant alert, please provide:

- The names of the journalists and news organisations involved;
- The date and circumstances of the incident; and
- Detailed background information.

Send your report to [info@misa.org](mailto:info@misa.org)

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# Appendices

Windhoek Declaration

Africa Charter on Broadcasting

Declaration of Principles on Freedom of  
Expression in Africa

Declaration of Table Mountain

African Platform on Access to  
Information

Guidelines on Media Coverage of  
Elections in the SADC region

African Declaration on Internet Rights  
and Freedoms

# Windhoek Declaration

*Declarations on Promoting Independent and Pluralistic Media - 3 May 1991*

*Endorsed by the General Conference at its twenty-sixth session - 1991*

We the participants in the United Nations/United Nations Educational, Scientific and Cultural Organization Seminar on Promoting an Independent and Pluralistic African Press, held in Windhoek, Namibia, from 29 April to 3 May 1991,

Recalling the Universal Declaration of Human Rights,

Recalling General Assembly resolution 59(I) of 14 December 1946 stating that freedom of information is a fundamental human right, and General Assembly resolution 45/76 A of 11 December 1990 on information in the service of humanity,

Recalling resolution 25C/104 of the General Conference of UNESCO of 1989 in which the main focus is the promotion of “the free flow of ideas by word and image at international as well as national levels”,

Noting with appreciation the statements made by the United Nations Under-Secretary-General for Public Information and the Assistant Director-General for Communication, Information and Informatics of UNESCO at the opening of the Seminar,

Expressing our sincere appreciation to the United Nations and UNESCO for organizing the Seminar,

Expressing also our sincere appreciation to all the intergovernmental, governmental and nongovernmental bodies and organizations, in particular the United Nations Development Programme (UNDP), which contributed to the United Nations/UNESCO effort to organize the

Seminar,

Expressing our gratitude to the Government and people of the Republic of Namibia for their kind hospitality which facilitated the success of the Seminar,

Declare that:

1. Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.
2. By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.
3. By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community.
4. The welcome changes that an increasing number of African States are now undergoing towards multiparty democracies provide the climate in which an independent and pluralistic press can emerge.
5. The worldwide trend towards democracy and freedom of information and expression is a fundamental contribution to the fulfilment of human aspirations.
6. In Africa today, despite the positive developments in some countries, in many countries journalists, editors and publish-

ers are victims of repression—they are murdered, arrested, detained and censored, and are restricted by economic and political pressures such as restrictions on newsprint, licensing systems which restrict the opportunity to publish, visa restrictions which prevent the free movement of journalists, restrictions on the exchange of news and information, and limitations on the circulation of newspapers within countries and across national borders. In some countries, one-party States control the totality of information.

7. Today, at least 17 journalists, editors or publishers are in African prisons, and 48 African journalists were killed in the exercise of their profession between 1969 and 1990.
8. The General Assembly of the United Nations should include in the agenda of its next session an item on the declaration of censorship as a grave violation of human rights falling within the purview of the Commission on Human Rights.
9. African States should be encouraged to provide constitutional guarantees of freedom of the press and freedom of association.
10. To encourage and consolidate the positive changes taking place in Africa, and to counter the negative ones, the international community—specifically, international organizations (governmental as well as nongovernmental), development agencies and professional associations—should as a matter of priority direct funding support towards the development and establishment of nongovernmental newspapers, magazines and periodicals that reflect the society as a whole and the different points of view within the communities they serve.
11. All funding should aim to encourage pluralism as well as independence. As a

consequence, the public media should be funded only where authorities guarantee a constitutional and effective freedom of information and expression and the independence of the press.

12. To assist in the preservation of the freedoms enumerated above, the establishment of truly independent, representative associations, syndicates or trade unions of journalists, and associations of editors and publishers, is a matter of priority in all the countries of Africa where such bodies do not now exist.
13. The national media and labour relations laws of African countries should be drafted in such a way as to ensure that such representative associations can exist and fulfil their important tasks in defence of press freedom.
14. As a sign of good faith, African Governments that have jailed journalists for their professional activities should free them immediately. Journalists who have had to leave their countries should be free to return to resume their professional activities.
15. Cooperation between publishers within Africa, and between publishers of the North and South (for example through the principle of twinning), should be encouraged and supported.
16. As a matter of urgency, the United Nations and UNESCO, and particularly the International Programme for the Development of Communication (IPDC), should initiate detailed research, in cooperation with governmental (especially UNDP) and nongovernmental donor agencies, relevant nongovernmental organizations and professional associations, into the following specific areas:
  - a. identification of economic barriers to the establishment of news media outlets, including restrictive import du-

- ties, tariffs and quotas for such things as newsprint, printing equipment, and typesetting and word processing machinery, and taxes on the sale of newspapers, as a prelude to their removal;
- b. training of journalists and managers and the availability of professional training institutions and courses;
  - c. legal barriers to the recognition and effective operation of trade unions or associations of journalists, editors and publishers;
  - d. a register of available funding from development and other agencies, the conditions attaching to the release of such funds, and the methods of applying for them;
  - e. the state of press freedom, country by country, in Africa.
17. In view of the importance of radio and television in the field of news and information, the United Nations and UNESCO are invited to recommend to the General Assembly and the General Conference the convening of a similar seminar of journalists and managers of radio and television services in Africa, to explore the possibility of applying similar concepts of independence and pluralism to those media.
18. The international community should contribute to the achievement and implementation of the initiatives and projects set out in the annex to this Declaration.
19. This Declaration should be presented by the SecretaryGeneral of the United Nations to the United Nations General Assembly, and by the DirectorGeneral of UNESCO to the General Conference of UNESCO.

# Africa Charter on Broadcasting

*There have been significant gains in media freedom in Africa since the adoption of the Windhoek Declaration on Promoting an Independent and Pluralistic African Press in 1991. However, the declaration focused primarily on the promotion of the print media and was silent on issues such as broadcasting liberalisation and the globalisation of the communications industry. These issues have far reaching social and economic implications for media freedom and threaten to jeopardize the production of media that reflects Africa's rich cultural diversity.*

*A representative group of African media practitioners sought to address these concerns at a UNESCO conference called to celebrate the 10th anniversary of the original Windhoek Declaration. The result was the African Charter on Broadcasting, which serves as a modern blueprint for policies and laws determining the future of broadcasting and information technology in Africa.*

**W**e the Participants of Windhoek+10 Declare that:

Acknowledging the enduring relevance and importance of the Windhoek Declaration to the protection and promotion of freedom of expression and of the media;

Noting that freedom of expression includes the right to communicate and access to means of communication;

Mindful of the fact that the Windhoek Declaration focuses on the print media and recalling Paragraph 17 of the Windhoek Declaration, which recommended that a similar seminar be convened to address the need for independence and pluralism in radio and television broadcasting;

Acknowledging the enduring relevance and importance of the Windhoek Declaration to the protection and promotion of freedom of expres-

sion and of the media;

Noting that freedom of expression includes the right to communicate and access to means of communication;

Mindful of the fact that the Windhoek Declaration focuses on the print media and recalling Paragraph 17 of the Windhoek Declaration, which recommended that a similar seminar be convened to address the need for independence and pluralism in radio and television broadcasting;

Recognising that the political, economic and technological environment in which the Windhoek Declaration was adopted has changed significantly and that there is a need to complement and expand upon the original Declaration;

Aware of the existence of serious barriers to free, independent and pluralistic broadcasting and to the right to communicate through broadcasting in Africa;

Cognisant of the fact that for the vast majority of the peoples of Africa, the broadcast media remains the main source of public communication and information;

Recalling the fact that the frequency spectrum is a public resource which must be managed in the public interest.

## Part One

### GENERAL REGULATORY ISSUES

1. The legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas, as well as a three-tier system for broadcasting: public service, commercial and community.

2. All formal powers in the areas of broadcast and telecommunications regulation should be exercised by public authorities which are protected against interference, particularly of a political or economic nature, by, among other things, an appointments process for members which is open, transparent, involves the participation of civil society, and is not controlled by any particular political party.
3. Decision-making processes about the overall allocation of the frequency spectrum should be open and participatory, and ensure that a fair proportion of the spectrum is allocated to broadcasting uses.
4. The frequencies allocated to broadcasting should be shared equitably among the three tiers of broadcasting.
5. Licensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria which include promoting media diversity in ownership and content.
6. Broadcasters should be required to promote and develop local content, which should be defined to include African content, including through the introduction of minimum quotas.
7. States should promote an economic environment that facilitates the development of independent production and diversity in broadcasting.
8. The development of appropriate technology for the reception of broadcasting signals should be promoted.

## Part Two

### PUBLIC SERVICE BROADCASTING

1. All State and government controlled broadcasters should be transformed into public service broadcasters, that are ac-

countable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one-sided reporting and programming in regard to religion, political belief, culture, race and gender.

2. Public service broadcasters should, like broadcasting and telecommunications regulators, be governed by bodies which are protected against interference.
3. The public service mandate of public service broadcasters should be clearly defined.
4. The editorial independence of public service broadcasters should be guaranteed.
5. Public service broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets.
6. Without detracting from editorial control over news and current affairs content and in order to promote the development of independent productions and to enhance diversity in programming, public service broadcasters should be required to broadcast minimum quotas of material by independent producers.
7. The transmission infrastructure used by public service broadcasters should be made accessible to all broadcasters under reasonable and non-discriminatory terms.

## PART Three

### COMMUNITY BROADCASTING

1. Community broadcasting is broadcasting which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit.
2. There should be a clear recognition, including by the international community,

of the difference between decentralised public broadcasting and community broadcasting.

3. The right of community broadcasters to have access to the Internet, for the benefit of their respective communities, should be promoted.

## **PART Four**

### TELECOMMUNICATIONS AND CONVERGENCE

1. The right to communicate includes access to telephones, email, Internet and other telecommunications systems, including through the promotion of community-controlled information communication technology centres.
2. Telecommunications law and policy should promote the goal of universal service and access, including through access clauses in privatisation and liberalisation processes, and proactive measures by the State.
3. The international community and African governments should mobilise resources for funding research to keep abreast of the rapidly changing media and technology landscape in Africa.
4. African governments should promote the development of online media and African content, including through the formulation of non-restrictive policies on new information and communications technologies.
5. Training of media practitioners in electronic communication, research and publishing skills needs to be supported and expanded, in order to promote access to, and dissemination of, global information.

## **PART Five**

### IMPLEMENTATION

1. UNESCO should distribute the African Charter on Broadcasting as broadly as

possible, including to stakeholders and the general public, both in Africa and worldwide.

2. Media organizations and civil society in Africa are encouraged to use the Charter as a lobbying tool and as their starting point in the development of national and regional broadcasting policies. To this end media organisations and civil society are encouraged to initiate public awareness campaigns, to form coalitions on broadcasting reform, to formulate broad casting policies, to develop specific models for regulatory bodies and public service broadcasting, and to lobby relevant official actors.
3. All debates about broad casting should take into account the needs of the commercial broadcasting sector.
4. UNESCO should undertake an audit of the Charter every five years, given the pace of development in the broadcasting field.
5. UNESCO should raise with member governments the importance of broadcast productions being given special status and recognised as cultural goods under the World Trade Organization rules.
6. UNESCO should take measures to promote the inclusion of the theme of media, communications and development in an appropriate manner during the UN Summit on the Information Society in 2003.

# Declaration of Principles on Freedom of Expression

## Preamble

Reaffirming the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;

Reaffirming Article 9 of the African Charter on Human and Peoples' Rights;

Desiring to promote the free flow of information and ideas and greater respect for freedom of expression;

Convinced that respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy;

Convinced that laws and customs that repress freedom of expression are a disservice to society;

Recalling that freedom of expression is a fundamental human right guaranteed by the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as other international documents and national constitutions;

Considering the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy;

Aware of the particular importance of the broadcast media in Africa, given its capacity to reach

a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy;

Noting that oral traditions, which are rooted in African cultures, lend themselves particularly well to radio broadcasting;

Noting the important contribution that can be made to the realisation of the right to freedom of expression by new information and communication technologies;

Mindful of the evolving human rights and human development environment in Africa, especially in light of the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, the principles of the Constitutive Act of the African Union, 2000, as well as the significance of the human rights and good governance provisions in the New Partnership for Africa's Development (NEPAD); and

Recognising the need to ensure the right of freedom of expression in Africa, the African Commission on Human and Peoples' Rights declares that:

## I The Guarantee of Freedom of Expression

1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
2. Everyone shall have an equal opportunity

to exercise the right to freedom of expression and to access information without discrimination.

## II Interference with Freedom of Expression

1. No one shall be subject to arbitrary interference with his or her freedom of expression.
2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society.

## III Diversity

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things:-

- availability and promotion of a range of information and ideas to the public;
- pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;
- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts.

## IV Freedom of Information

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
  - everyone has the right to access information held by public bodies;
  - everyone has the right to access information held by private bodies which is

necessary for the exercise or protection of any right;

- any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
  - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
  - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
  - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

## V Private Broadcasting

1. States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.
2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:
  - there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
  - an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
  - licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and

- community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.

## **VI Public Broadcasting**

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

## **VII Regulatory Bodies for Broadcast and Telecommunications**

1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
2. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.
3. Any public authority that exercises powers

in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

## **VIII Print Media**

1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.
2. Any print media published by a public authority should be protected adequately against undue political interference.
3. Efforts should be made to increase the scope of circulation of the print media, particularly to rural communities.
4. Media owners and media professionals shall be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content.

## **IX Complaints**

1. A public complaints system for print or broadcasting should be available in accordance with the following principles:
  - complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
  - the complaints system shall be widely accessible.
2. Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.
3. Effective self-regulation is the best system for promoting high standards in the media.

## **X Promoting Professionalism**

1. Media practitioners shall be free to organise themselves into unions and associa-

tions.

2. The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.

### **XI Attacks on Media Practitioners**

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.
2. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.
3. In times of conflict, States shall respect the status of media practitioners as non-combatants.

### **XII Protecting Reputations**

1. States should ensure that their laws relating to defamation conform to the following standards
  - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
  - public figures shall be required to tolerate a greater degree of criticism; and
  - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.
2. Privacy laws shall not inhibit the dissemination of information of public interest.

### **XIII Criminal Measures**

1. States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.

2. Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

### **XIV Economic Measures**

1. States shall promote a general economic environment in which the media can flourish.
2. States shall not use their power over the placement of public advertising as a means to interfere with media content.
3. States should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

### **XV Protection of Sources and other journalistic material**

Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:

- the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression; and
- disclosure has been ordered by a court, after a full hearing.

### **XVI Implementation**

States Parties to the African Charter on Human and Peoples's Rights should make every effort to give practical effect to these principles.

# Declaration of Table Mountain

The World Association of Newspapers and the World Editors Forum, meeting at the 60th World Newspaper Congress and 14th World Editors Forum Conference in Cape Town, South Africa, from 3 to 6 June 2007,

Note that in country after country, the African press is crippled by a panoply of repressive measures, from the jailing and persecution of journalists to the widespread scourge of ‘insult laws’ and criminal defamation which are used, ruthlessly, by governments to prevent critical appraisal of their performance and to deprive the public from information about their misdemeanours,

State their conviction that Africa urgently needs a strong, free and independent press to act as a watchdog over public institutions,

Consider that press freedom remains a key to the establishment of good governance and durable economic, political, social and cultural development, prosperity and peace in Africa, and to the fight against corruption, famine, poverty, violent conflict, disease, and lack of education,

Reaffirm our responsibility as the global representative organisations of the owners, publishers and editors of the world’s press to conduct “aggressive and persistent campaigning against press freedom violations and restrictions”,

Reaffirm our commitment to freedom of the press as a basic human right as well as an indispensable constituent of democracy in every country, including those in Africa,

Note that Article 19 of the Universal Declaration of Human Rights guarantees freedom of expression as a fundamental right, and emphasise that freedom of expression is essential to the realization of other rights set forth in international human rights instruments,

Recall that those principles have been restated and endorsed in the 2002 Declaration on Principles of Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples’ Rights and the African Union, thus requiring member states of the African Union to uphold and maintain press freedom,

Recall also the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press,

Observe that despite numerous opportunities for a free press to emerge from national independence, fully-fledged press freedom still does not exist in many African countries and that murder, imprisonment, torture, banning, censorship and legislative edict are the norm in many countries,

Recognise that these crude forms of repression are bolstered by the deliberate exclusion of certain newspapers from state-advertising placement, the burden of high import taxes on equipment and newsprint and unfair competition from state-owned media,

Note that despite the adoption of press freedom protocols and the repression of that freedom on a wide scale in Africa, the African Union in instituting its African Peer Review Mechanism under the NEPAD (New Partnership for Africa’s Development) programme has excluded the fostering of a free and independent press as a key requirement in the assessment of good governance in the countries of the continent, and

Identify as the greatest scourge of press freedom on the continent the continued implementation of “insult laws,” which outlaw criticism of politicians and those in authority, and criminal defamation legislation, both of which are used indiscriminately in the vast majority of African states that maintain them and which have as their prime motive the “locking up of information”,

## Declare that

African states must recognise the indivisibility of press freedom and their responsibility to respect their commitments to African and international protocols upholding the freedom, independence and safety of the press, and

To further that aim by, as a matter of urgency, abolishing “insult” and criminal defamation laws which in the five months of this year have caused the harassment, arrest and/or imprisonment of 229 editors, reporters, broadcasters and online journalists in 27 African countries (as outlined in the annexure to this declaration),

Call on African governments as a matter of urgency to review and abolish all other laws that restrict press freedom,

Call on African governments that have jailed journalists for their professional activities to free them immediately and to allow the return to their countries of journalists who have been forced into exile,

Condemn all forms of repression of African media that allows for banning of newspapers and the use of other devices such as levying import duties on newsprint and printing materials and withholding advertising,

Call on African states to promote the highest standards of press freedom in furtherance of the principles proclaimed in Article 19 of the Universal Declaration of Human Rights and other protocols and to provide constitutional guarantees of freedom of the press,

Call on the African Union immediately to include in the criteria for “good governance” in the African Peer Review Mechanism the vital requirement that a country promotes free and independent media,

Call on international institutions to promote progress in press freedom in Africa in the next decade, through such steps as assisting newspapers in the areas of legal defence, skills development

and access to capital and equipment,

Welcome moves towards a global fund for African media development and recommends that such an initiative gives priority attention to media legal reform and in particular the campaign to rid the continent of “insult” and criminal defamation laws,

Commit WAN and WEF to expand their existing activities in regard to press freedom and development in Africa in the coming decade.

WAN and WEF make this declaration from Table Mountain at the southern tip of Africa as an earnest appeal to all Africans to recognise that the political and economic progress they seek flourishes in a climate of freedom and where the press is free and independent of governmental, political or economic control.

This Declaration shall be presented to: The Secretary-General of the United Nations with the request that it be presented to the UN General Assembly; to the UNESCO Director-General with the request that it be placed before the General Conference of UNESCO; and to the Chairperson of the African Union Commission with the request that it be distributed to all members of the African Union so that it can be endorsed by the AU at its next summit meeting of heads of state.

Cape Town, 3 June 2007

# African Platform on Access to Information

19 September 2011

## Preamble

We, participants at the Pan African Conference on Access to Information, organised by the Windhoek+20 Campaign on

Access to Information in Africa in partnership with the United Nations Educational and Cultural Organisation (UNESCO), the African Union Commission (AUC) and the Special Rapporteur on Freedom of Expression and Access to

Information of the African Commission on Human and Peoples' Rights in Cape Town, South Africa, September 17 – 19, 2011:

**Remembering** the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press and viewing the significant progress that has been made in the past 20 years on freedom of expression, access to information and the free flow of information;

**Stating** that access to information (ATI) is the right of all natural and legal persons, which consists of the right to seek, access and receive information from public bodies and private bodies performing a public function and the duty of the state to provide such information;

**Emphasising** that access to information is an integral part of the fundamental human right of freedom of expression, essential for the recognition and achievement of every person's civil, political and socio-economic rights, and as a mechanism to promote democratic accountability, good governance;

**Acknowledging** that access to information is

instrumental to fostering access to education and health care, gender equality, children's rights, a clean environment, sustainable development and the fight against corruption;

**Recalling** Article 19 of the Universal Declaration of Human Rights of 10 December 1948, which guarantees that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers", Article 19 of the International Covenant on Civil and Political Rights and the UN Human Rights Committee General Comment No. 34 adopted in 2011 which states that Article 19(2) of the ICCPR includes the right of access to information held by public bodies, and Article 1.2 of the UNESCO Constitution;

**Underlining** Article 9 of the African Charter on Human and Peoples' Rights adopted by the Organisation of African Unity (OAU) on 27 June 1981, which provides that, "Every individual shall have the right to receive information";

**Reaffirming** Article IV(1) of the Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples' Rights at its 32nd Ordinary Session held in October 2002, which provides that "Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law";

**Cognisant** of the African Union Convention on

Preventing and Combating Corruption, the African Charter on Values and Principles of Public Service and Administration, the African Charter on Democracy, Elections and Governance, the African Youth Charter and the African Statistics Charter, all of which promote transparency in public life.

**Welcoming** the efforts of the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information in developing a Model Law for AU Member States on Access to Information, aimed at assisting Member States in formulating, adopting or reviewing access to information legislation and its implementation;

**Mindful** of the efforts of international organisations and others to develop principles and declarations on the right of access to information and freedom of expression including the 2010 Brisbane Declaration "Freedom of Information: The Right to Know", the Atlanta Declaration and African Regional Findings, the Accra Agenda for Action, the Lagos Declaration on the Right of Access to Information, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, and the Declaration of Table Mountain;

**Aware** that the World Summit on the Information Society (WSIS) brought to the forefront the importance of access to information in the modern world through the Geneva Declaration of Principles and Tunis Commitment and that the Internet Governance Forum (IGF) plays a crucial role in bringing together all of the stakeholders to facilitate an international internet governance debate that includes issues of access and openness;

**Recognising** the work of the African Union Commission to give practical expression to the various instruments of the African Union on freedom of expression and access to information, through such initiatives as the Pan African Media Network and portal, the new AU website, social networks, the media center, training programmes, ensuring media access to the

AUC leadership, and publication of other information materials among others; as well as its efforts in promoting Information and Communications Technology (ICTs) in Africa;

**Encouraged** that over 90 countries around the world have adopted comprehensive national access to information laws or regulations including ten in Africa; that many countries in Africa have joined the Extractive Industries Transparency Initiative, the International Aid Transparency Initiative and the Open Government Partnership; and that the Economic Community of West African States is moving towards adoption of a binding Supplementary Act for a Uniform Legal Framework on Freedom of Expression and Right to Information;

**Concerned** that most African nations have not yet adopted comprehensive ATI laws or regulations and that significant problems remain with both the substantive provisions of many of those that have adopted laws and the full implementation of the laws;

**Acknowledging** that civil society organisations and government bodies around the world have adopted 28 September as International Right to Know Day; Convinced that it is of critical importance that clear and comprehensive principles are established to guide the promotion and protection of the right of access to information in Africa through the adoption and effective implementation of appropriate national laws and regulations;

**Resolve** to adopt the following Principles on The Right of Access to Information:

## Key Principles

1. **Fundamental Right Accessible to Everyone.** Access to information is a fundamental human right, in accordance with Article 9 of the African Charter on Human and Peoples' Rights. It is open to everyone, and no one should be privileged or prejudiced in the exercise of this right on

account of belonging to a class or group howsoever defined, and whether in terms of gender, class, race, political association, occupation, sexual orientation, age, nationality, HIV status, and other bases as cited in many African constitutions. It is not required that anyone must demonstrate a specific legal or personal interest in the information requested or sought or otherwise required to provide justification for seeking access to the information. 3

2. **Maximum Disclosure.** The presumption is that all information held by public bodies is public and as such should be subject to disclosure. Only in limited circumstances set out in these principles below may disclosure be denied.
3. **Established in Law.** The right of access to information shall be established by law in each African country. Such law shall be binding and enforceable and based on the principle of maximum disclosure. The law shall take precedence over other conflicting laws that limit access to information.
4. **Applies to Public Bodies and Private Bodies.** The obligations of ATI shall apply to all public bodies, as well as to private bodies that are owned or controlled by the government, utilise public funds, perform functions or provide services on behalf of public institutions, or have exclusive contracts to exploit natural resources (with regards to said funds, functions, services or resources), or which are in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety, or to the exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right.
5. **Clear and Unambiguous Process.** The law shall include procedures for the exercise of the right. The process to obtain information should be simple and fast

and take advantage of new information and communication technologies where possible. Bodies falling under the scope of the ATI law should provide assistance to requesters in order to ensure that they receive the information they need. The information provided should be provided in a form understandable to the requestor. Information should be disclosed within a clear and reasonable deadline provided for by law. It should be available at low or no cost.

6. **Obligation to Publish Information.** Public and relevant private bodies shall be obliged to proactively release information in a timely manner about their functions, powers, structures, officials, decisions, expenditures, budgets, and other information relating to their activities that is of public interest. The dissemination should use all reasonable means of communications, including ICTs, to maximise access to all communities and sectors of society.
7. **Language and Accessibility.** To the greatest extent possible, information should be available in the language of the person seeking it, in an accessible location, in a format that is as accessible as possible, and, in particular, ensures that it is accessible to those who may be particularly affected by the subject matter of the information.
8. **Limited Exemptions.** The right of access to information shall only be limited by provisions expressly provided for in the law. Those exemptions should be strictly defined and the withholding of information should only be allowed if the body can demonstrate that there would be a significant harm if the information is released and that the public interest in withholding the information is clearly shown to be greater than the public interest in disclosure. Information can only be withheld for the period that the harm would occur. No information relating to human rights abus-

es or imminent dangers to public health, environment, or safety may be withheld. 4

9. **Oversight Bodies.** Independent bodies such as an ombudsperson or information commissioner should be established to monitor and hold government bodies and relevant private entities to account on their access to information disclosure practices, to receive and decide upon complaints, and generally oversee the implementation of the access to information legislation. The oversight body should be adequately funded.
10. **Right to Personal Data.** All persons have a right to access and correct their personal data held by third parties.
11. **Whistleblower Protection.** To ensure the free flow of information in the public interest, adequate protections against legal, administrative and employment-related sanctions should be provided for those who disclose information on wrongdoing and other information in the public interest.
12. **Right of Appeal.** Everyone has a right to appeal administratively any action that hinders or denies access to information or any failure to proactively disclose information. They have a right to further appeal to an independent body and to finally seek judicial review of all limits of their right of access to information.
13. **Duty to Collect and Manage Information.** Public and relevant private bodies have a duty to collect information on their operations and activities on behalf of their citizens. They also have a duty to respect minimum standards in relation to the management of this information to ensure that it may easily be made accessible to citizens.
14. **Duty to Fully Implement.** Public and relevant private bodies have an obligation

to ensure the law is fully implemented. This includes internal procedures and processes and the designation of responsible officials.

## Application of Principles

These principles are essential to development, democracy, equality, and the provision of public service, and are applicable to, amongst others, the following:

1. **Enabling Environment.** Governments should ensure that the legal frameworks create an enabling environment allowing individuals, civil society organisations including trade unions, media organisations, and private businesses to fully enjoy access to information, thus fostering active participation in socio-economic life by all, in particular people living in poverty and those discriminated against or marginalised.
2. **Elections and Electoral Processes:** Governments and election management bodies have a positive obligation to provide the public with information before, during and after elections, not to interfere with media coverage, to encourage public participation and proactively publish campaign spending and contributions.
3. **Disadvantaged Communities:** Governments have a particular obligation to facilitate access to information by disadvantaged minority groups and minority language speakers, as well as 5 marginalised groups including women, children, rural people, the poor and persons with disabilities. Information should be available at no costs to these groups. This especially applies to information that contributes to the long-term empowerment of the groups. Governments also have an obligation to ensure equitable and affordable access to ICTs for those with special needs and for other disadvantaged persons

and groups.

4. **Women:** Governments, civil society and the media have an obligation to facilitate women's equal access to information, so that they can defend their rights and participate in public life. Civil society organisations should be encouraged to make the best use of access to information mechanisms to monitor governments' fulfilment of commitments to further gender equality, to demand the enhanced delivery of services targeted at women and to ensure that the public funds they are entitled to actually reach them. The collection, management and release of information should be gender disaggregated.
5. **Children and Youth:** Governments have an obligation to encourage the mass media to disseminate information and material of social and cultural benefit to children and the youth. Governments are further encouraged to facilitate the exchange and dissemination of such information and material from a diversity of cultural, national and international sources as well as the production and dissemination of information specifically for children and youth and wherever reasonably possible facilitate and encourage access to such information by children and youth.
6. **Environmental Information:** Governments and inter-governmental organisations should increase their efforts in implementing Principle 10 of the 1992 Rio Declaration on the Environment and Development on the right of access to information, public participation and access to justice on environmental issues. Governments should adopt appropriate legislation and regulations to promote access and proactive release of environmental information, guarantee openness, fight secrecy in institutional practices, and repeal that which hinders public availability of environmental information. Governments' capacity to supply environmental information and civil society organisations' demand for such information, as well as engagement in decision-making processes and the ability to hold governments and other actors accountable for actions affecting the environment should be strengthened.
7. **Education:** Taking into account the close connection between the right of access to information and the right to education, governments have the duty to make publicly available information about educational policies and assessments of their impacts, school performance data, and budgets for education at all government levels. Governments also have a positive obligation to provide information for each school, in particular, schools' admission policies and admission lists, information on management practices, school governance, and other relevant aspects.
8. **Health:** Governments have a duty to provide access to information with a view to ensuring and improving access to health care services and enhancing accountability regarding their provision. Civil society actors should be encouraged to implement actions to expand the reach of this type of information to all sectors in society, promote the exercise of the right to information to advance the right to health and counter its violations, undertake advocacy and monitoring actions and directly involve individuals in them. Enhanced access to health-related information shall not preclude the protection of individuals' right to privacy. 6
9. **The Fight Against Corruption:** By contributing to openness and accountability, access to information can be a useful tool in anti-corruption efforts. Besides ensuring that access to information legislation is effectively implemented, governments have a duty to guarantee a broader legal and institutional framework conducive to preventing and combatting corruption. Civil

society organisations and plural media independent of powerful political and commercial interests are critical actors in unveiling and fighting corrupt practices, and their use of access to information laws and other mechanisms enhancing transparency should be encouraged.

10. **Aid Transparency.** Governments, donors and recipients have a duty to make all information relating to development assistance including grants, loans and transfers to public and private bodies, and assessments on the use and effects of such assistance fully public in a proactive manner based on the principles of the International Aid Transparency Initiative.

11. **Natural Resources Transparency.** Governments should proactively publish all information including policies, impact assessments, agreements, subsidies, licenses, permits and revenues relating to the exploitation of natural resources including the extractive industries, water, fisheries, and forests. Private bodies which are exploiting natural resources should be required to publicly disclose the terms of such agreements and payments made to governments based on the principles developed by the Extractive Industries Transparency Initiative (EITI).

12. **Media and Information Literacy.** Governments, civil society, education institutions, and the media have an obligation to promote media and information literacy, to assist individuals and communities to ensure that all members of society can understand and take advantage of new technologies, and to be able to participate intelligently and actively in public matters, and enforce their right of access to information. Citizens should be empowered to be able to consume information critically and express their views on such information, as well as be enabled to seek corrections where applicable.

13. **Access to Information and Communications Technologies.** Governments have an obligation to (i) use ICTs and other media to ensure maximum disclosure and dissemination of information; (ii) promote and facilitate unhindered public access to such technologies for all citizens and especially for disadvantaged minority groups and minority language speakers, as well as marginalised people such as women, children, rural people, the poor and persons with disabilities.

14. **Apply in Other Spheres.** The principles stated above on the right of access to information also apply to various spheres that have not been listed.

## Call to Action

In light of the above, the Conference calls on:

### UNESCO to:

- Endorse, through its General Conference, the “African Platform on Access to Information” and the proclamation of 28 September as International Right to Information Day, also recommending the endorsement of this International Day by the United Nations General Assembly, as a date to raise awareness about the importance of the right of access to information throughout the world;
- Develop and implement internal policies facilitating access to information held by UNESCO in line with this Declaration, and to encourage the adoption of similar policies by other UN agencies.

### UN Economic Commission for Africa:

- Develop as part of the RIO +20 Earth Summit a regional convention on access to environmental information, public participation and access to justice based on Principle 10 of the 1992 Rio Declaration and the UNEP Bali Guidelines.

## **The African Union, its Organs and Institutions:**

- The African Commission on Human and Peoples' Rights to promote 28 September as African Right to Information Day;
- The African Commission on Human and Peoples' Rights to adopt use this Declaration for a resolution authorising the Special Rapporteur on Freedom of Expression and Access to Information to expand Article IV of the Declaration of Principles on Freedom of Expression in Africa to incorporate the principles of this Declaration.
- The African Commission on Human and Peoples' Rights to complete and approve the proposed Africa Model Law for AU Member States on Access to Information;
- The African Union Commission to take forward this Declaration by (1) proposing to the next AU summit in January 2012 to adopt 28 September as African "Right to Information Day"; and (2) initiate an Experts Group to develop further instruments on access to information;
- The Pan-African Parliament (PAP) to endorse this Declaration;
- All African Union bodies to promote the respect of the principles in this Declaration by national governments and provide assistance in implementing them;
- The New Partnership for African Development (NEPAD) to adopt the revised African Peer Review Mechanism (APRM), which includes transparency and access to information;
- The African Union should develop and implement internal policies on access to information held by AU bodies based on this Declaration.

## **Other African Regional Organizations and Institutions:**

- All Regional Economic Communities (RECs) should develop internal policies on access to information held by those bodies based on this Declaration;
- ECOWAS to review and adopt the Supplementary Act for a Uniform Legal Framework on Freedom of Expression and Right

to Information in West Africa;

- The Southern African Development Community (SADC) to revise the Protocol on Culture, Information and Sport to include principles on access to information;
- Inter-governmental Agency on Development (IGAD) to develop and adopt a Protocol on access to information based on this Declaration;
- The East African Community (EAC) to develop and adopt a Protocol on access to information based on this Declaration;
- The African Development Bank (ADB) to adopt a revised public access policy based on the Transparency Charter for International Financial Institutions.

## **National Governments of AU member states to:**

- Adopt or revise existing comprehensive laws on access to information in line with the principles in this Declaration and the proposed AU Model Law, and fully implement them;
- Harmonise legal frameworks to ensure access to information including repealing or revising antiquated laws which restrict access and ensuring that new laws are compatible with the ATI principles;
- Engage with civil society and other stakeholders to ensure widespread information demand and effective implementation of laws and policies to advance access to information by all persons, especially marginalised groups.
- Join and implement multi-stakeholder efforts including the Extractive Industries Transparency Initiative (EITI), the Construction Sector Transparency Initiative (CoST) and the Medicines Transparency Alliance (MeTA) to further transparency;
- Promote availability of public domain information through ICTs and public access to ICTs;
- Support AU efforts to adopt an instrument on access to information;
- Officially recognise 28 September as International and African "Right to Information Day";

- Adopt and effectively implement legislation and policies ensuring whistleblower-protection.

#### **Civil Society to:**

- Engage with governments in developing, enhancing and implementing ATI laws;
- Monitor progress on the implementation of ATI laws including sectoral laws;
- Create awareness on ATI and provide assistance to facilitate information access by the general public as well as by specific audiences (including women, minority groups and minority language speakers, children, rural communities, individuals with disabilities or living in poverty);
- Ensure transparency in their own activities;
- Promote September 28 as African and International Right to Information Day and, in particular, carry out activities on that date every year to advance the recognition, awareness and enjoyment of the right of access to information by all sectors of society.

#### **Media to:**

- Respect editorial independence, professional ethics and journalism standards in their provision of information;
- Recognise the need for transparency and accountability with regard to their own output and institutions, while safeguarding the principal of protecting sources;
- Respect and promote equality, and provide equitable representation within their information output;
- Promote the widest possible access to their information output;
- Enhance mechanisms for audience participation and response;
- Recognise and be responsive to gender differences in regard to audience and market research;
- Popularise the importance of, and issues around, access to information.
- Make optimum use of ATI laws to access information for the public interest.

#### **Business Sector Companies and Corporations to:**

- Join multi-stakeholder initiatives promoting transparency including EITI, CoST and MeTA;
- Adopt corporate and social responsibility (CSR) policies that promote transparency and accountability, including access to information and protection of whistleblowers;
- Proactively disclose information of public interest including on pollution releases and other environmental issues;
- Support government and CSO efforts to improve access to information in society.

#### **Public and Private Donors to:**

- Ensure that all information relating to the use of development assistance and its effects are made public;
- Ensure that all information relating to development assistance is made available in conformity with the International Aid Transparency Initiative (IATI) standards;
- Encourage and support governments in the adoption and full implementation of access to information laws and policies;
- Support civil society and governments' efforts to promote access to information.

Adopted in Cape Town, South Africa, on this 19th Day of September 2011, upon a motion for adoption moved by Advocate Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights, and seconded by Hon. Norris Tweah, Deputy Minister of Information of the Republic of Liberia.

# Guidelines on media coverage of elections SADC region

## Preamble

We, the participants - journalists, broadcasters, media practitioners, media organisations, media councils and representatives of electoral management bodies throughout the SADC region gathered in Johannesburg, South Africa on 26 September, 2012 for the MISA Conference on Media and Elections.

Recognizing the importance of democratic elections at all levels;

Noting the important role of free media in promoting democracy, including the conduct of free and fair elections;

With due emphasis on the fundamental principle of editorial independence and importance of the media during election periods;

Firmly guided by the protocols, charters, conventions and guidelines endorsed, signed and/or ratified by our governments in the region in their desire to ensure the success of democratic processes and in particular:

- The African Charter on Human and Peoples' Rights (1981),
- The Windhoek Declaration on Promoting an Independent and Pluralistic African Press (1991),
- The African Charter on Broadcasting (2001)
- The Declaration of Principles on Freedom of Expression in Africa, adopted by formal-resolution by the African Commission on Human and Peoples' Rights (2002),
- The SADC Principles and Guidelines Governing Democratic Elections (2004)
- The Southern African Broadcasting Association: Guidelines and Principles for Broadcast Coverage of Election in the SADC Re-

gion (2005)

- The African Charter on Democracy, Elections and Governance (2007),

Acknowledging the continuing challenges of limited access to information during the electoral cycle, amidst election conflict and violence, throughout elections conducted in adverse environments of intolerance, especially of dominant ruling party states, and state repression;

Aware of the continuing deficit of freedom of expression and media freedom in parts of Southern Africa;

Mindful of the need for gender-sensitive and equitable reporting and programming of all information during the electoral cycle;

Appreciating the diversity of the electorate, especially the different information needs of marginalised communities and differently-abled persons;

Firmly believing that the coverage of elections by the media should be fair, accurate and balanced;

Recognising the need to take account of the significant differences which exist between the private, public and community media in the region as well as the differences between print, electronic and new media;

Taking into consideration that public service broadcasters have a particular mandate in ensuring fair and thorough coverage of elections through equitable distribution of airtime to political parties and candidates.

Determined to assist voters make informed choices:

Hereby agree on, adopt and resolve to abide by or support the implementation of the following voluntary guidelines, which media professionals are urged to apply throughout the electoral process  
– pre-voting, voting and post voting period.

## 1. Role of the media in elections

The role of the media during the entire electoral process is to ensure that voters make informed choices. The coverage of candidates, parties and electoral processes is in pursuit of this central purpose.

Principal roles of the media in elections are defined as follows:

The media are required to provide relevant information, analyse it and additionally offer substantive opinions to the public, while also serving as a platform for debate and discussion. Furthermore, the media shall fulfill their watchdog role by promoting transparency and thus preventing electoral fraud.

The media have a duty to provide election coverage that gives the voter comprehensive, accurate and reliable information on all aspects of the electoral process. This information will also help to ensure that the voters know and understand their democratic rights and exercise them free from fear, intimidation or coercion.

As the Fourth Estate the media is expected to:

- a) Ensure that journalists are familiar with the national legislative framework governing the electoral process and are fully conversant with all aspects of the electoral process, including the electoral institutions;
- b) Be familiar with regional and continental principles and benchmarks on election coverage
- c) Provide platforms for accessing information that enable informed analysis and opinion on elections.

The role of the media is to report during the entire electoral process:

### I. Pre-voting

- Electoral management institutions
- Civic education
- Electoral system
- Demarcation of constituencies
- Voter registration
- Voters' roll
- Candidate or party registration
- Nomination processes
- Official campaign period

### II. Voting Period

- Voting days
- Voting procedures,
- Location of polling stations
- Activities at polling stations
- Role of stakeholders at polling stations
- Election monitors
- Election observers and their observations
- Vote counting and results

### III. Post Voting Period

- Appointments to office
- Analysis of promises made by the government/governing party
- Holding parties accountable.

## 2. Conditions necessary for the media to play an effective role

Freedom of expression, freedom of the media and access to information are crucial for media to play these roles effectively. Also of critical importance is that:

- a) Media houses provide adequate resources to their journalists for effective election coverage;
- b) The media enjoy unfettered editorial and programming independence from all vested interests including candidates, parties, media owners and organisations allied to and/or supporting candidates and political parties;
- c) All laws that hinder the media in fulfilling their role are repealed;
- d) All media are allowed access to all elec-

- tion activities including rallies, media conferences, candidates, parties and electoral management institutions and officials;
- e) Transparent polling procedures, fair, open counting of the votes and timely release of the results are guaranteed;
  - f) Journalists and media houses can operate in an environment free of violence, harassment and intimidation;
  - g) Sources and interviewees are not threatened, intimidated or harassed;
  - h) Perpetrators of attacks against media personnel and property are brought to justice;
  - i) State and public broadcasters are transformed into truly public service broadcasters as outlined amongst others in the African Charter on Broadcasting;
  - j) Whistleblowers are protected;
  - k) Complaints procedures for aggrieved media professionals exist (e.g. complaint mechanisms of Electoral Management Bodies).

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises. At the same time this protection should not obstruct them in carrying out their work. Journalists reporting on the electoral process have a right to be protected from undue pressure and interference from public authorities with a view to influencing the elections.

### **3. Ethical considerations in election coverage**

Journalists and editors should act with integrity and should neither ask for, nor accept bribes of any kind, be they financial or other, or give special favours to any politicians or party. Journalists should not defame or promote hate, violence or corruption.

Given the critical importance of media in covering the elections, the media must at all times observe the core values and principles of journalism which include:

#### **a) Fairness and Accuracy**

During election periods media must recognise that government officials are in a position to use their incumbency to advance their electoral prospects and should regard with particular caution any statement or action by an official of an incumbent party. In particular, media should ensure that they do not afford the policies of incumbent parties' greater legitimacy than they would afford those policies or actions if the party were not in government.

News reports must be factual, accurate, well-sourced and based on sound evidence. News should be comprehensive, fair and balanced ensuring that all candidates, parties and election issues are given equitable and gender sensitive coverage.

#### **b) Opinion and Analysis**

Editorial opinion must be clearly distinguished from fact or news. A diversity of opinions representing the broadest possible range of views and ideas especially those of contesting candidates and political parties should be allowed across all media platforms.

Media which choose to endorse candidates or parties must ensure the endorsement is clearly presented as opinion and is not part of its news reports.

Analysis should provide insights based on research and diversity of expert opinions which enable voters to get a deeper understanding of processes, issues and candidates.

Debate and discussion platforms, which include representatives of all shades of political opinion, experts and civil society representatives should be organised. As far as possible, and especially in the electronic media (including presidential or prime ministerial), candidates should be given an opportunity to debate with each other in moderated programmes.

#### **c) Use of Language**

Media must, without censoring and undermining freedom of expression of anyone,

avoid and preclude the use of language which constitutes hate speech incites violence or promotes stereotypes.

#### **d) Right of reply**

A fair opportunity to reply to inaccuracies and allegations contained in a report that has been broadcast or published should be given to aggrieved individuals or organisations. The right of reply must be given in a timely manner and in a similar programme and with respect to the print media in space of appropriate prominence.

#### **e) Diversity and Confidentiality of Sources**

The media have an obligation to reflect the diversity and plurality of voices in society in its coverage including those of marginalised groups.

Reporting should be gender-balanced and sensitive, treating men and women equally as news sources and subjects.

Confidentiality of sources must be protected by the media (whereby the journalist knows the identity of the source even when not revealing it). Whenever possible the media should refrain from using anonymous sources (whereby the journalist does not know the identity of the source).

The principle of multiple sources to verify information and facts applies.

The media should recognise their obligation to the electorate to provide a full and accurate record of events and developments. It is critically important that media proactively seek information from political parties and not wait for information to be delivered to them. Failure to do so will give parties with greater resources inequitable amounts of news coverage.

#### **f) Media Public Accountability**

In ensuring their responsibility to the voters and exercising their right to freedom of expression, journalists shall respect the rights, integrity and reputation of others in terms of these guidelines as well as codes of conduct established by self-regulatory bodies.

## **4. Reporting on election observers and election monitors**

Journalists are expected to distinguish between Election Observation being the information gathering, fact finding and reporting on the credibility, legitimacy and transparency of the electoral process often carried out by external personnel, who are not permitted to intervene in the voting and counting operation; and

Election Monitoring referring to the information gathering, fact finding and reporting on the credibility, legitimacy and transparency of the electoral process carried out by local agencies or personnel, who are able to draw attention to observed deficiencies during the voting and counting operations.

Media houses must scrutinize the work and reports of election observers and election monitors, including their identity i.e. the organisations and institutions they are from, their expertise and experience in election observation or election monitoring. They must report the methodologies used by election observers and election monitors and how they arrive at their conclusions.

## **5. Role of public and private media regarding election advertorials**

State-operated media, and more specifically public service broadcasters, have a particular role to play in ensuring fair, balanced and equitable coverage and allocation of free airtime for party political broadcasts. In this regard they should work closely with independent electoral bodies, media regulatory bodies, media councils and Media Ombudsmen in developing formulas for fair and equitable allocation of air time.

All media houses should adopt their own transparent in-house policy or code on campaign advertisement and sponsorship. Such a policy should ensure that all candidates and parties are treated equitably.

Political adverts and advertorials should be

clearly distinguished from editorial content. Before and after each party election broadcast there should be a clear statement identifying it as such.

Where media give political parties time slots to air programmes setting out their policies to voters, the content of the programmes will primarily be the responsibility of the party.

However, the broadcaster remains responsible for the broadcast as publisher and should require candidates and political parties to obey laws which may not impinge on freedom of expression, but instead observe standards that pertain to accuracy and fairness.

## 6. Converged media

With rapidly evolving ICTs, traditional media is expanding into the new and social media sphere and media outlets have a responsibility to extend the application of journalistic principles to these diverse platforms.

Specifically, the use of social media in election coverage of conventional media should take into account the following:

- a) Journalistic standards and ethics still apply.
- b) Journalists using social media platforms in their personal as well as professional capacity should try to separate the two as their audience might not be able to differentiate.

In conclusion, journalists should not be seduced by the informality of social media and compromise their integrity and professionalism.

## 7. Polls

### a) Opinion Polls

Opinion polls are an important element in election coverage because they are one way of determining public attitudes toward(s) issues, candidates and parties. In this regard they can enrich coverage and enable voters to get a fuller picture of an election.

In reporting, opinion polls media need to reveal which party, individual or organisation commissioned and paid for the poll, the purposes of the poll, the identity of the polling organisation and its expertise in polling, the nature of the questions or issues the poll focused on, the geographic coverage and demographic profile of those who were polled, the methodologies used in polling including details of the sample and the margin of error which will contextualise the poll results.

### b) Exit polls

Reporting of exit polls should be clearly identified as such and not as a reflection of how all voters have actually voted and what the outcome of the election will be. The reporting should reveal a sample of the exit poll, the organisation that conducted and financed it, its methodologies and the margin of error. Results of exit polls should not be announced or broadcast until after the last polling stations have closed.

## 8. Reporting results

Media covering elections are obliged to inform the electorate of the election results in a comprehensive way, as they become available, whether provisional or final, as released by the Electoral Management Body. Journalists should take special care when predicting final results based on partial results available.

When reporting on parallel vote tabulation, journalist should be aware that parallel vote tabulation is an estimation of final results of an election based on the collection and aggregation of election results obtained at polling station level. This collection can be complete (all polling stations) or based on a random sample (selected polling stations). While parallel vote tabulation have a solid level of statistical validity, journalists must exercise caution, care and responsibility in reporting parallel vote tabulation to avoid confusing or mixing up official tallies and parallel tabulation. In reporting parallel vote tabulation media need to reveal which

individual or organisation commissioned and paid for the parallel vote tabulation, the purposes of the parallel vote tabulation and the methodology used.

## 9. SMS surveys, phone-ins and talk shows

### a) Radio/Television instant SMS audience surveys

With the increase in the use of mobile phones, radio and television broadcasters conduct so called 'opinion polls' during news bulletins, using text messages (SMS) sent by the audience, and giving immediate results of the 'poll' at the end of the programme. Such a practice can be misleading as it contravenes the basic rules of scientific methodology and analysis.

Results from 'SMS polls' should not be treated as representative scientific results. If a broadcaster uses them nonetheless, they should at least make the audience aware of the lack of scientific methodology and indicate the number of respondents. 'SMS polls' can be reported as a reflection of some people's opinions and provide a snapshot of feelings and changes of views during an election. However, media must be alert and make their audiences aware of possible manipulation of SMS surveys by individual politicians and political or other interested parties.

### b) Guidelines for Phone-ins and talk shows

Phone-ins and talk shows provide the viewer or listener with an opportunity to be heard, to participate, and sometimes to create content. Unlike newspaper copy or pre-recorded programmes, live radio and television can pose a challenge though. Presenters must become their own editors and be acutely aware of the sort of content that should not be aired. This includes hate speech, ethnic baiting, lies and propaganda, crude and vulgar language, incitement

to violence, and unverified information.

- i. Journalistic principles must apply during the programme.
- ii. The presenter should be alert and prepared to challenge a caller who says something that is problematic.
- iii. Time-delay technology or other mechanisms to filter out offensive content or calls prior to broadcast should be installed.
- iv. Viewers, listeners and callers should be treated with respect, honesty and fairness.
- v. The privacy of callers should be respected and their personal information safeguarded (e.g. the telephone numbers of callers should not be revealed to third parties).

## 10. Implementation and monitoring of media and election guidelines

To implement these guidelines effectively media houses need to do the following:

- a) Initiate a process of domestication at national level allowing for amendments of the guidelines and aiming to create ownership and commitment by the media.
- b) Develop in-house editorial codes and policies based on these guidelines.
- c) Publish these guidelines and any internal codes that they develop to promote awareness and to help the public monitor media performance
- d) Establish their own internal mechanism to monitor their performance and, where resources are available, to contract external parties who have expertise in media monitoring
- e) Be prepared to take corrective measures to address problems of performance identified through media monitoring.

## References

1. Guidelines for Election Coverage, Media Council Kenya
2. Principles for Election Management, Monitoring and Observation in the SADC Region, Electoral Commissions Forum and

Electoral Institute of Southern Africa

3. Recommendations of the Committee of Ministers, Council of Europe

**Participants of the conference were drawn from different SADC countries and organizations:**

#### **Angola**

Freelance journalist

#### **Botswana**

Press Council of Botswana  
MISA Botswana  
Independent Electoral Commission  
Democratic Republic of Congo  
Electoral Commission

#### **Lesotho:**

MISA Lesotho  
Harvest FM (Radio)  
Electoral Commission

#### **Madagascar**

TV PLUS Madagascar  
Freelance journalist  
Madagascar Electoral Commission- CENIT

#### **Malawi**

Media Council of Malawi  
MISA Malawi  
Malawi Electoral Commission

#### **Mauritius**

Mauritius Electoral Commission

#### **Mozambique**

Mediacoop  
Electoral Commission Mozambique

#### **Namibia**

Editors' Forum of Namibia  
MISA Namibia  
Electoral Commission Namibia

#### **Seychelles**

Electoral Commission Seychelles

#### **South Africa**

South African National Editors' Forum

#### **Swaziland**

Swaziland Editors' Forum  
Swaziland Media Complaints Commission  
MISA Swaziland  
Electoral and Boundaries Commission  
Swaziland

#### **Tanzania**

MISA Tanzania  
National Electoral Commission of Tanzania  
Zanzibar Electoral Commission

#### **Zambia**

Zambia Media Council (ZAMEC)  
MISA Zambia  
The Post, Press Freedom Committee  
Electoral Commission Zambia

#### **Zimbabwe**

Voluntary Media Council of Zimbabwe  
MISA Zimbabwe  
Zimbabwe Electoral Commission  
SADC-CNGO  
SADC- Electoral Commission Forum

#### **Kenya**

Media Council Kenya

The meeting was organised by the Regional Secretariat of the Media Institute of Southern Africa (MISA) and the SADC- Electoral Commission Forum with the support of fesmedia Africa, Friedrich- Ebert-Stiftung and the Open Society Institute of Southern Africa (OSISA)

# The African Declaration on Internet Rights and Freedoms

## Preamble

**E**mphasising that the Internet is an enabling space and resource for the realisation of all human rights, including the right to hold opinions without interference, the right to freedom of expression and information, the right to freedom of assembly and association, the right to freedom of thought, conscience and religion, the right to be free from discrimination in all forms, the right of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language, and economic, social and cultural rights;

**E**mphasising that the Internet is particularly relevant to social, economic and human development in Africa;

**A**ffirming that in order to fully benefit from its development potential, the Internet must be accessible, available and affordable for all persons in Africa;

**A**ffirming further that the Internet is a vital tool for the realisation of the right of all people to participate freely in the governance of their country, and to enjoy equal access to public services;

**R**ecalling that a number of regional standards are relevant to the protection of human rights on the Internet, in particular the African Charter on Human and Peoples' Rights of 1981, the Windhoek Declaration on Promoting an Independent and Pluralistic African Press of 1991, the African Charter on Broadcasting of 2001, the Declaration of Principles on Freedom of Expression in Africa of 2002, the African Platform on Access to Information Declaration of 2011,

and the African Union Convention on Cybersecurity and Personal Data Protection of 2014;

**A**cknowledging the roles being played by many African and international organisations, including the African Union Commission, the United Nations Economic Commission for Africa (UNECA), the NEPAD Planning and Coordinating Agency and UNESCO, in promoting access to and use of the Internet in Africa;

**M**indful of the continuing efforts of international organisations and other stakeholders to develop principles that apply human rights to the Internet, particularly since the Joint Declaration of 2011 concerning Freedom of Expression and the Internet by the four Special Rapporteurs on Freedom of Expression: including the United Nations Human Rights Council resolution of 2012 on The promotion, protection and enjoyment of human rights on the Internet; the UN General Assembly Resolution of 2013 on The right to privacy in the digital age; the UN Human Rights Council Resolution of 2014 on The Internet and Human Rights; the United Nations Guiding Principles on Business and Human Rights; the Johannesburg Principles on Freedom of Expression and National Security; The Right to Share Principles, The Necessary and Proportionate Principles; and the Manila Principles on Intermediary Liability;

**C**oncerned by the continuing inequality in access to and use of the Internet, and the increasing use of the Internet by state and non-state actors as a means of violating individual rights to privacy and freedom of expression through mass surveillance and related activities;

**A**ware that some individuals and groups – in particular women and girls, people with dis-

abilities, ethnic, religious and sexual minorities, and people living in rural areas – might be threatened with exclusion and marginalisation in relation to exercising their human rights in relation to the Internet and digital technologies;

**Emphasising** the responsibility of states to respect, protect and fulfil the human rights of all people;

**Convinced** that it is critical for all African stakeholders to invest in creating an enabling and empowering Internet environment that truly serves the needs of Africans through the adoption and implementation of this Declaration.

## HEREIN DECLARE:

Key principles

### 1. Openness

The Internet should have an open and distributed architecture, and should continue to be based on open standards and application interfaces and guarantee interoperability so as to enable a common exchange of information and knowledge. Opportunities to share ideas and information on the Internet are integral to promoting freedom of expression, media pluralism and cultural diversity. Open standards support innovation and competition, and a commitment to network neutrality promotes equal and non-discriminatory access to and exchange of information on the Internet.

### 2. Internet access and affordability

Access to the Internet should be available and affordable to all persons in Africa without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Access to the Internet plays a vital role in the full realisation of human development, and facilitates the exercise and enjoyment of a number of human rights and freedoms, including the right to freedom of expression and information, the right to education, the right to assembly and as-

sociation, the right to full participation in social, cultural and political life and the right to social and economic development.

### 3. Freedom of expression

Everyone has the right to hold opinions without interference.

Everyone has a right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds through the internet and digital technologies and regardless of frontiers.

The exercise of this right should not be subject to any restrictions, except those which are provided by law, pursue a legitimate aim as expressly listed under international human rights law (namely the rights or reputations of others, the protection of national security, or of public order, public health or morals) and are necessary and proportionate in pursuance of a legitimate aim.

### 4. Right to information

Everyone has the right to access information on the internet. All information, including scientific and social research, produced with the support of public funds, should be freely available to all, including on the Internet.

### 5. Freedom of assembly and association and the Internet

Everyone has the right to use the Internet and digital technologies in relation to freedom of assembly and association, including through social networks and platforms.

No restrictions on usage of and access to the Internet and digital technologies in relation to the right to freedom of assembly and association may be imposed unless the restriction is prescribed by law, pursues a legitimate aim as expressly listed under international human rights law (as specified in Principle 3 of this Declaration) and is necessary and proportionate in pursuance of a legitimate aim.

## **6. Cultural and linguistic diversity**

Individuals and communities have the right to use their own language or any language of their choice to create, share and disseminate information and knowledge through the Internet.

Linguistic and cultural diversity enriches the development of society. Africa's linguistic and cultural diversity, including the presence of all African and minority languages, should be protected, respected and promoted on the Internet.

## **7. Right to development and access to knowledge**

Individuals and communities have the right to development, and the Internet has a vital role to play in helping to achieve the full realisation of nationally and internationally agreed sustainable development goals. It is a vital tool for giving everyone the means to participate in development processes.

## **8. Privacy and personal data protection**

Everyone has the right to privacy online, including the right to the protection of personal data concerning him or her. Everyone has the right to communicate anonymously on the Internet, and to use appropriate technology to ensure secure, private and anonymous communication.

The right to privacy on the Internet should not be subject to any restrictions, except those that are provided by law, pursue a legitimate aim as expressly listed under international human rights law, (as specified in Article 3 of this Declaration) and are necessary and proportionate in pursuance of a legitimate aim.

## **9. Security, stability and resilience of the internet**

Everyone has the right to benefit from security, stability and resilience of the Internet. As a universal global public resource, the Internet should be a secure, stable, resilient, reliable and trustworthy network.

Different stakeholders should continue to cooperate in order to ensure effectiveness in address-

ing risks and threats to security and stability of the Internet.

Unlawful surveillance, monitoring and interception of users' online communications by state or non-state actors fundamentally undermine the security and trustworthiness of the Internet.

## **10. Marginalised groups and groups at risk**

The rights of all people, without discrimination of any kind, to use the Internet as a vehicle for the exercise and enjoyment of their human rights, and for participation in social and cultural life, should be respected and protected.

## **11. Right to due process**

Everyone has the right to due process in relation to any legal claims or violations of the law regarding the Internet.

Standards of liability, including defences in civil or criminal cases, should take into account the overall public interest in protecting both the expression and the forum in which it is made; for example, the fact that the Internet operates as a sphere for public expression and dialogue.

## **12. Democratic multistakeholder internet governance**

Everyone has the right to participate in the governance of the Internet. The Internet should be governed in such a way as to uphold and expand human rights to the fullest extent possible. The Internet governance framework must be open, inclusive, accountable, transparent and collaborative.

## **13. Gender equality**

To help ensure the elimination of all forms of discrimination on the basis of gender, women and men should have equal access to learn about, define, access, use and shape the Internet. Efforts to increase access should therefore recognise and redress existing gender inequalities, including women's under-representation

in decision-making roles, especially in Internet governance.

## APPLICATION OF PRINCIPLES

Realising these principles on the Internet requires:

### • Openness

In accordance with the principle of network neutrality, all data on the internet must be treated in an equal and non-discriminatory manner, and shall not be charged differentially, according to user, content, site, platform, application, type of attached equipment, and modes of communication.

The architecture of the internet is to be preserved as a vehicle for free, open, equal and non-discriminatory exchange of information, communication and culture. There should be no special privileges for, or obstacles against, the exchange of information online or any party or content on economic, social, cultural or political grounds. However, nothing in this declaration may be interpreted as preventing affirmative action aimed at ensuring substantive equality for marginalised peoples or groups.

### • Internet access and affordability

Access and affordability policies and regulations that foster universal and equal access to the Internet, including fair and transparent market regulation, universal service requirements and licensing agreements, must be adopted.

Direct support to facilitate highspeed Internet access, such as by establishing necessary infrastructure and infrastructure facilities, including access to openly licensed or unlicensed spectrum, electricity supply, community-based ICT centres, libraries, community centres, clinics and schools, is crucial to making the Internet accessible to and affordable for all.

Equally important is support for the establishment of national and regional Internet exchange points (IXPs) to rationalise and reduce the cost of Internet traffic at national, local and subregional levels. It is also essential to address the gender digital divide, with factors such as level of employment, education, poverty, literacy and geographical location

resulting in African women having lower levels of access than men.

The sharing of best practices about how to improve Internet access for all sectors of society should be encouraged among African states.

These efforts should be geared towards ensuring the best possible level of Internet connectivity at affordable and reasonable costs for all, with particular initiatives for unserved and underserved areas and communities.

The cutting off or slowing down of access to the Internet, or parts of the Internet, for whole populations or segments of the public, should not be permitted on any grounds, including public order or national security grounds.

Internet intermediaries should be required to be transparent about any traffic or information management practices they employ, and relevant information on such practices should be made available in a form that is accessible to all stakeholders.

### • Freedom of expression

Content blocking, filtering, removal and other technical or legal limits on access to content constitute serious restrictions on freedom of expression and can only be justified if they strictly comply with international human rights law as reiterated in Article 3 of this Declaration. Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.

Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.

Products designed to facilitate end-user filtering should be required to be accompanied by clear information to end-users about how they work and their potential pitfalls in terms of over-inclusive filtering.

No-one should be held liable for content on the Internet of which they are not the author. To the extent that intermediaries operate self-regulatory systems, and/or make judgement calls on content and privacy issues, all such decisions should be made taking into account the need to protect expression that is legitimate under the principles provided for under international human rights standards, including the Manila Principles on Intermediary Liability. Processes developed by intermediaries should be transparent and include provisions for appeals.

States have a positive obligation to take steps to prevent violent attacks against anyone on their territory. These obligations take on a particular importance when individuals are attacked for exercising their right to freedom of expression online. States must create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear. When an attack takes place, states must launch an independent, speedy and effective investigation in order to bring both the perpetrators and the instigators to justice. They must also ensure that victims can obtain appropriate and holistic remedies for what they have suffered.

Journalists, media workers and other communicators who contribute to shaping public debate and public opinion on the Internet should be recognised as actors who enable the formation of opinions, ideas, decision-making and democracy. Attacks on all who engage in journalistic activities as a result of their work constitute attacks on the right to freedom of expression. In addition, guidelines for the protection of those who gather and disseminate information to the public, including journalists, women's rights and human rights defenders, should be put in place to ensure their safety. Such guidelines should be formulated with a view to harmonising legislative frameworks, practice, applicable regional and international standards, and law-enforcement processes at national level.

Actions should be initiated or intensified to implement such guidelines and best practices through appropriate efforts by states and other actors, including through regional cooperation, and the provision of technical assistance programmes and activities.

States should review and reform their legislation related to freedom of expression online and ensure

this legislation fully complies with international standards. In particular, criminal defamation, sedition and speech related offences should be abolished, including their application on the Internet.

Rights of all to engage in individual or collective expression of oppositional, dissenting, reactive or responsive views, values or interests through the Internet should be respected. Everyone should have a right to use the Internet as a tool and/or platform for a protest action.

## • Right to information

The Internet offers new opportunities to access information, and for governments to communicate with people, through the use of open data. Open data and new forms of online consultation can empower people to take a more active part in public affairs.

Data and information held by governments should be made publicly accessible, including being released proactively and routinely, except where legitimate grounds for restricting access comply with the rule of law, including relevant freedom of information legislation.

Public authorities and private bodies which perform public functions, provide public services or utilise public funds have a duty to collect and maintain information on their operations and activities on behalf of their population. They also have an obligation to respect minimum standards in relation to the management of this information to ensure that it may easily be made accessible to all. States and relevant non-state actors should demonstrate good practices in the management of data. The use and re-use of government-held data and information should be available free of charge wherever practical. If not, pricing should be transparent, reasonable, the same for all users, and not designed as a barrier to the use or re-use of the data.

Copyrighted materials held by public bodies should be licensed for re-use in accordance with relevant access to information laws and licensing frameworks.

The existing obligation on public bodies to share all information produced with the support of public funds, subject only to clearly defined rules set out

in law, as established by the Declaration of Principles on Freedom of Expression in Africa, shall extend to the proactive release of such information on the Internet in openly licensed, freely re-useable formats.

### • Freedom of assembly and association and the internet

The Internet can augment the opportunities and capabilities of individuals and groups to form associations and to manage organisations and associations.

It can increase the membership and reach of associations by allowing groups of people to communicate despite physical boundaries. It provides new tools for those organising assemblies offline, as well as the possibility of conducting assemblies and protests online.

Hence, everyone should enjoy unrestricted access to the Internet. Any shutting down or blocking of access to social networking platforms, and in fact the Internet in general, constitutes a direct interference with this right. Free and open access to the Internet must therefore be protected at all times.

### • Cultural and linguistic diversity

The linguistic and cultural diversity which exists on the African continent must be promoted and reflected online. This requires states to put in place comprehensive policies, and allocation of resources, to support the development and use of tools to facilitate linguistic diversity on the Internet. This includes the promotion of technology and content required to access and use domain names, software, services and content in all languages and scripts. Special attention should be given to promoting access in minority languages.

There is a need to promote free or low-cost training opportunities and methodologies and materials for minority-language speakers on using the Internet.

Diversity of content should also be preserved and promoted, including by encouraging diverse groups and communities to share their content online and through the digitisation of educational, scientific and cultural heritage.

### • Right to development and access to knowledge

Developing media and information literacy is essential in ensuring that consumers of media products have the skills to find evaluate and engage with various types of information, including those relevant for their social, economic, cultural and political development.

Information and communication technologies should be designed, developed and implemented in a manner that contributes to sustainable human development and empowerment. Accordingly, policies should be adopted to create an environment which enables various actors to pursue initiatives in this regard.

Media and information literacy programmes should be instituted in schools and in other public institutions. Where practical, school children and other learners should have access to Internet-enabled devices. There is also a need for policies that improve girls' access to quality education and ICT, gender mainstreaming in Science, Technology, Engineering and Mathematics (STEM) policies, and family-friendly policies in STEM workplaces.

### • Privacy and personal data protection

Personal data or information shall only be collected and/or processed by states and non-state actors such as access providers, mail providers, hosts and other intermediaries, in compliance with well-established data protection principles, including the following: personal data or information must be processed fairly and lawfully; personal data or information must be obtained only for one or more specified and lawful purposes; personal data or information must not be excessive in relation to the purpose or purposes for which they are processed; and personal data or information must be deleted when no longer necessary for the purposes for which it is collected.

The collection, retention, use and disclosure of personal data or information must comply with a transparent privacy policy which allows people to find out what data or information is collected about them, to correct inaccurate information, and to protect such data or information from disclosure that they have not authorised. The public should

be warned about the potential for misuse of data that they supply online. Government bodies and non-state actors collecting, retaining, processing or disclosing data have a responsibility to notify the concerned party when the personal data or information collected about them has been abused, lost or stolen.

Mass or indiscriminate surveillance of individuals or the monitoring of their communications, constitutes a disproportionate interference, and thus a violation, of the right to privacy, freedom of expression and other human rights. Mass surveillance shall be prohibited by law.

The collection, interception and retention of communications data amounts to an interference with the right to privacy and freedom of expression whether or not the data is subsequently examined or used.

In order to meet the requirements of international human rights law, targeted surveillance of online communications must be governed by clear and transparent laws which, at a minimum, comply with the following basic principles: first, communications surveillance must be both targeted and based on reasonable suspicion of commission or involvement in the commission of serious crime; second, communications surveillance must be judicially authorised and individuals placed under surveillance must be notified that their communications have been monitored as soon as practicable after the conclusion of the surveillance operation; third, the application of surveillance laws must be subject to strong parliamentary oversight to prevent abuse and ensure the accountability of intelligence services and law enforcement agencies.

It should also be recognised that for the enjoyment of their right to privacy, individuals must be protected from unlawful surveillance by other individuals, private entities or institutions, including in their place of work or study and in public internet access points.

### • Security, stability and resilience of the internet

Everyone has the right to enjoy secure connections to and on the Internet including protecting from services and protocols that threaten the security, stabil-

ity and resilience of the Internet.

Security, stability and resilience of the Internet must be protected and technical attacks against information systems should be prevented. Encryption is one of the key ways in which this can be achieved.

States should recognise in their legislation and practices that encryption is a basic requirement for the protection of the confidentiality and security of information. In particular, States should promote end-to-end encryption as the basic standard for the protection of the rights to freedom of expression and privacy online, and promote the use of open source software.

At the same time, States should refrain from adopting measures requiring or promoting technical backdoors to be installed in hardware and software encryption products. They should repeal laws banning the use of encrypted products, particularly by end-users, or laws requiring government authorisation for the use of encrypted products.

Companies should also refrain from weakening technical standards and roll out the provision of services with strong end-to-end encryption.

Initiatives to improve security of the Internet and address digital security threats should involve appropriate collaboration between governments, private sector, civil society, academia and the technical community.

### • Marginalised groups and groups at risk

States and non-state actors shall respect and protect the right of all individuals to have access to and use the Internet. Special attention should be paid to the needs of groups at risk of discrimination in the enjoyment of their human rights, including women, the elderly, young people and children; minorities, including ethnic, linguistic, sexual and religious minorities; and other marginalised groups such as indigenous people, persons with disabilities, and rural communities/people living in rural areas.

### • Due process

States must respect the right of every individual to equal protection under the law. This means that no one can be arbitrarily detained or punished for any

action, including in relation to any legal claims or violations of the law regarding the Internet. Protection of this right requires entitlement to a fair and public hearing within a reasonable time by an independent, competent and impartial tribunal established by law. The court concerned should ensure that adequate relief is possible when dealing with a matter.

Jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection, normally because the author is established there, the content is uploaded there and/or the content is specifically directed at that State. Private parties should only be able to bring a case in a given jurisdiction where they can establish that they have suffered substantial harm in that jurisdiction.

For content that was uploaded in substantially the same form and at the same place, limitation periods for bringing legal cases should start to run from the first time the content was uploaded and only one action for damages should be allowed to be brought in respect of that content, where appropriate by allowing for damages suffered in all jurisdictions to be recovered at one time (the ‘single publication’ rule).

### • **Democratic multistakeholder internet governance**

It is important that multistakeholder decisions and policy formulations are improved at the national level in order to ensure the full participation of all interested parties. Independent, well-resourced, multistakeholder bodies should be established to guide Internet policy at the national level.

National Internet governance mechanisms should serve as a link between local concerns and regional and global governance mechanisms, including on the evolution of the Internet governance regime.

### • **Gender equality**

Aside from addressing the gender digital divide (mentioned under Principle 2 and 13 of this Declaration), the creation and promotion of online content that reflects women’s voices and needs, and promotes and supports women’s rights, should be encouraged.

Processes and mechanisms that enable the full, active and equal participation of women and girls in decision making about how the Internet is shaped and governed should be developed and strengthened.

Conscious that the online environment reflects the inequality that women and girls face in wider society, the core principles underpinning the Internet – decentralisation, creativity, community and empowerment of users – should be used to achieve gender equality online. Wide-ranging efforts, including comprehensive legislation on rights to equality before the law and to non-discrimination, education, social dialogue and awareness-raising, should be the primary means to address the underlying problems of gender inequality and discrimination.

Women and girls should be empowered to act against gender inequality replicated on the Internet, including by using tools enabling collective monitoring of various forms of inequality, individualised tools that allow them to track and limit the availability of personal information about them online (including public sources of data), and improved usability for anonymity and pseudonymity-protecting tools.

Additionally, all restrictions aimed at prohibiting gender-based hatred that constitutes an incitement to violence, discrimination or hostility (‘incitement’) should fully comply with the following conditions:

- Grounds for prohibiting advocacy that constitutes incitement should include gender;
- The intent to incite others to commit acts of discrimination, hostility or violence should be considered a crucial and distinguishing element of incitement;
- Legislation prohibiting incitement should include specific and clear reference to incitement to discrimination, hostility or violence with references to Article 20(2) of the ICCPR and should avoid broader or less specific language and should conform to the three-part test of legality, proportionality and necessity;
- Criminal law penalties should be limited to the most severe forms of incitement and used only as a last resort in strictly justifiable situations, when no other means appears capable of achieving the desired protection.

## **CALL TO GOVERNMENTS AND ALL OTHER STAKEHOLDERS**

**All African stakeholders, including regional and sub-regional bodies, national governments, civil society organisations, media institutions, and relevant technology and Internet companies, should:**

- Formally endorse this Declaration, the African Declaration on Internet Rights and Freedoms;
- Use this Declaration to develop a deeper understanding of how existing human rights apply to the internet.

**National governments in Africa, as principal duty-bearers, must respect, protect and guarantee the rights outlined in this Declaration, including by:**

- Ratifying and giving effect to all relevant international and regional human rights treaties on human rights related to protection of human rights on the Internet, through incorporation to their domestic legislation or otherwise;
- Adopting clear legal, regulatory, and policy frameworks for the protection of these rights, in full compliance with international standards and best practice, and with the full and effective participation of civil society and other concerned stakeholders at all stages of their development;
- Providing sufficient safeguards against the violation of these rights and ensure that effective remedies for their violations are available;
- Ensuring that national regulators in the telecommunications and Internet sectors are well-resourced, transparent and independent in their operations.

**Pan-African and African regional organisations and institutions:**

- The African Commission on Human and Peoples' Rights should establish a mechanism to promote and monitor Internet rights and freedoms in Africa.
- The African Union should take the lead in creating a common African Programme of Action on Internet Governance, which will ensure that the rights of Africans on the Internet are promoted and upheld, and that African concerns are recognised in the global Internet governance regime.

- Other relevant pan-African institutions should develop programmes to support national institutions (including national human rights commissions and the judiciary) to understand and protect human rights online.
- The African Telecommunications Union should recognise and promote the access and affordability principle of this Declaration.

**International organisations:**

- UNESCO should integrate the Declaration into its "Priority Africa" strategies. UNESCO should promote the advancement of social and cultural rights on the Internet as well as the use of local languages and local content online. UNESCO should also develop model laws protecting online freedom of expression and privacy.
- The International Telecommunication Union should recognise and promote the Access and Affordability principle of this Declaration.

**Civil society should:**

- Seek to increase public awareness of the importance of the Internet in the realisation of human rights;
- Advocate for Internet rights and freedoms; monitor Internet laws and regulations; and highlight abuses, including in their reports to regional and international treaty bodies and other human rights mechanisms;
- Communicate with the Special Rapporteur on Freedom of Expression and Access to Information in Africa on measures to uphold freedom of expression in relation to the Internet;
- Encourage and monitor the participation of women and girls in all areas related to Internet development and governance.

**Media organisations should:**

- Popularise this Declaration and the principles outlined in it;
- Improve their own understanding of Internet issues and foster awareness about the importance of the Internet to all sectors of society, particularly among marginalised groups and disadvantaged communities.

**All intermediaries should:**

- Internalise and apply the “Respect, Protect and Remedy” framework to fulfil their duties to uphold human rights, including in relation to the Internet and digital technologies.
- Respect human rights to the fullest extent possible. For example, where faced with government demands which would violate human rights, companies should interpret government demands as narrowly as possible, seek clarification of the scope and legal foundation for such demands, require a court order before meeting government requests, and communicate transparently with users about risks and compliance with government demands.
- Invest in online tools, software and applications that enhance local and intercultural content exchange, and simplify the exchange of information across language barriers;
- Publish transparency reports on government requests for user data, content removal, network disruptions, and compliance rates on a regular basis. All company policies on privacy and data protection, including data retention rates and breach notification policies, should be translated to local languages and easily accessible on the company’s country-level website.

**Technical communities should:**

- Innovate and develop open source software, open data, and open educational resources relevant to African users;
- Engage actively in the multistakeholder processes that deal with human rights as well as Internet governance in Africa and provide policy inputs to Internet-related issues;
- Ensure African participation in the development of open standards.

**Academic, research and training institutions in Africa should:**

- Actively respect and promote the open standards of the Internet in terms of the technical architecture and design of the Internet;
- Integrate courses on Internet rights and freedoms in their curriculum;
- Promote and contribute to the development of local content, particularly content that fosters

the use of the Internet by marginalised groups and communities;

- Proactively engage in the generation of scientific evidence on Internet rights and freedoms in Africa;
- Promote and participate in the reinforcement of Africa’s capacity to contribute content and expertise in global, regional and national Internet development and policy forums.

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