



International Press Institute

Report on Press Freedom and Media Regulation in Zambia

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Introduction

A delegation from the International Press Institute (IPI) visited Zambia from 11-17 October 2010 to meet with journalists, media organizations and with government. The major focus of discussions was media regulation. With general elections scheduled for 2011, issues of media freedom become even more pressing in this southern African country.

The IPI delegation spent most of its time in the Zambian capital, Lusaka, but also had the opportunity to briefly visit two stations – one commercial station and one community station – in the small city of Livingstone.

Most discussions with journalists revolved around the issue of media regulation in Zambia. This has become a hot topic and primary



concern for the Zambian press over the past year. In 2009, the government warned the media fraternity that it must come up with an effective self-regulatory mechanism or be regulated by statute. The media has answered this call by developing and adopting a code and constitution for an inclusive, non-statutory council: the Zambia Media Council (ZAMEC).



Other press freedom issues that were touched upon include inefficiencies with broadcast licensing, the intimidation of media houses, the harassment of journalists at the hands of political party

cadres, the use of frivolous lawsuits against journalists and media houses, the proposed registration of journalists, government pressure on the newsrooms of public media, and the lack of a freedom of information act.



Country Facts

Full name: Republic of Zambia

Independence: Formerly the territory of Northern Rhodesia, Zambia gained independence from the United Kingdom in 1964, when its name was changed.

Government type: Zambia is a republic. The president is head of both the state and government, and is elected in a popular vote every five years. The National Assembly forms the unicameral legislative body. The legal system is based on English common law. The Supreme Court is appointed by the president. Zambia was governed under a one-party system until 1991, when multi-party elections brought the current ruling party, the Movement for Multi-Party Democracy, into government for the first time.

Area: 752,618 sq km
(Comparable to Chile, Turkey or Texas in the United States)

Border countries: Angola, Democratic Republic of the Congo, Malawi, Mozambique, Namibia, Tanzania, Zimbabwe



Population: 13,460,305 (Comparable to Angola, Guatemala, Mali or Illinois in the United States)



Literacy: 80.6%; male: 86.8%; female: 74.8%

Major exports: copper/cobalt, cobalt, electricity; tobacco, flowers, cotton

Economy: GDP growth 6.3% per year, but 85% of the workforce is employed in the agricultural sector; there is 50% unemployment and 85% of the population live below the poverty line.*

Media: The Zambian media is relatively free. Radio is the medium of choice for most Zambians, especially in rural areas, although increasing numbers of Zambians have access to a number of private, Zambian-owned television stations. The public broadcaster, the Zambia National Broadcasting Corporation (ZNBC) is dominant in both radio and television. There is only one privately owned daily newspaper, which competes with two publicly owned dailies. The government continues to own and exert political control over the public media, which employ the majority of journalists in the country.

* All country facts taken from: CIA World Factbook. "Zambia."
<https://www.cia.gov/library/publications/the-world-factbook/geos/za.html>. Accessed 15 November 2010



Mission Overview

IPI was in Zambia from 10-17 October, 2010.

The IPI delegates who were present in Lusaka, Zambia include:

- **Raheem Adedoyin**, secretary, IPI Nigeria National Committee; and board chairman for the Kwara State Television Authority
- **Raymond Louw**, IPI fellow; publisher/editor of the Southern Africa Report and chairman of the South Africa Press Council
- **Alison Bethel McKenzie**, IPI acting director
- **Nayana Jayarajan**, IPI communications officer
- **Naomi Hunt**, IPI press freedom adviser



IPI Acting Director Alison Bethel McKenzie with Information Minister Lt. Gen. Ronnie Shikapwasha

IPI met with journalists from most of Lusaka's major media houses. Meetings were held with editors from public, private, print and broadcast media, with representatives from several journalist organizations and unions, and with representatives from the United States embassy and the United Nations.

Journalists will not be identified by their name or organization in this report,

only by whether they were print, radio or television journalists, and whether they worked for private or publicly owned media.



The IPI delegation met with Minister for Information and Broadcasting Services (MIBS) Lt. Gen. Ronnie Shikapwasha on both 12 and 14 October.



Overview of Zambian Media Landscape

The Zambian media has diversified greatly since the 1990s liberalisation that came with the end of single-party rule. There are now a handful of private publications, four private television stations and a large number of private radio stations around the country.

The government is an important media owner in Zambia and various estimates IPI heard put the proportion of Zambia's journalists employed by state media at between 60 and 70 percent. The state media include the Zambia National Broadcasting Corporation (ZNBC), which has two television stations and several radio stations, a public news agency, and two newspapers, the *Zambia Daily Mail* and the *Times of Zambia*.

Among the state media, ZNBC receives the most money directly from government followed by the news agency, the Zambia News and Information Service (ZANIS). ZANIS's managing director is a civil servant and paid directly by the ministry. Despite the fact that he is a political appointee, one public media journalist remarked that the news agency is largely (although not always) "left alone" by government because of the nature of its mostly factual reports. (It was also noted that many journalists in both private and public media began their careers at ZANIS).

Government is Zambia's biggest media owner

The state-owned newspapers, the *Times of Zambia* and the *Daily Mail*, reportedly receive only periodic "injections" of funds from government and are expected to function commercially (Africa Media Barometer Zambia, 2009). The newspapers' boards, however, are appointed by the information minister, as is the ZNBC board. Both newspapers are produced daily.



The only privately-owned daily is *The Post*, which has the highest circulation of any newspaper in the country (Africa Media Barometer Zambia, 2009). There are also a growing number of monthly newspapers and magazines, although the costs of printing and distribution prohibit too many entrants in the industry. Unfortunately, print publications are often not accessible to people in rural areas and are often too expensive for many people to afford (Africa Media Barometer Zambia, 2009).

The state broadcaster, is dominant in both television and radio

The state broadcaster, the Zambia National Broadcasting Corporation (ZNBC), is dominant in both television and radio, and journalists from several broadcasters agreed that ZNBC's stations have among the widest coverage areas in the country and are quite popular.

Alongside ZNBC's two television channels, there are four private TV stations in Zambia – Copperbelt Television, Muvi TV, Mobi TV and the Central Broadcasting Corporation, three of which are based in the capital, Lusaka (Africa Media Barometer Zambia, 2009). Since mid-June 2009, Muvi TV – an entertainment station that also carries news – has been available throughout the country via satellite.

There are a number of popular private radio stations throughout the country, both community and commercial. Popular commercial stations with news and current affairs programs include QFM Radio, Radio Phoenix and Sky Fm, Breeze FM in Chipata, and Zambezi FM in the south, amongst others. The Catholic Church also runs a number of stations. All stations that IPI met with have phone-in programs, which are a popular forum for the public to voice its opinions.

Radio journalists mentioned anecdotally the scarcity of advertising that radio stations (and other media) face. Survival for many stations thus depends on sponsored issue-specific programming



(Banda 2006) – a fact that was confirmed by the managing directors at two of the radio stations that IPI visited (one commercial radio and one community radio station), which each carry sponsored programs on good governance, HIV/Aids and other social issues. Journalists at the stations spoke with enthusiasm about the content of these programs and their importance for listeners.

Radio is the medium of choice in most of the country, where there is sometimes a lack of access to other media as a result of poor infrastructure, a lack of literacy and English skills, and the high cost of newspapers or television subscriptions (Africa Media Barometer Zambia, 2009).

Journalists are subject to various individual or institutional ethical codes, but many admit that more training and professionalism is required, and that a self-regulatory body would improve the practice of journalism in Zambia. A previous self-regulatory mechanism, the Media Council of Zambia, is now defunct and will be phased out. Political reporting by both private and public media is often slanted. Public media tend to present a pro-government perspective, without giving room to opposition views, while private media tend to favour the opposition.

Many admit that more training and professionalism is required



Laws Affecting Press Freedom

The current Zambian constitution of 1991 guarantees freedom of expression and the press, but provides an exhaustive list of exceptions that greatly undermine the principle as it is understood internationally.

Progress toward a new constitution has been made over the past few years, and in 2010, Zambia's National Constitutional Conference (NCC) finished its report and draft constitution, which was duly submitted to the national assembly. The conference was established by an act of parliament in 2007, and given the power to "debate, recommend and adopt recommendations" from a previous draft that was submitted in 2005 by the Mung'omba Constitutional Review Commission¹. Accessed 5 November 2010)

The Mung'omba constitution contained several progressive provisions protecting press freedom. It recognized the right to freedom of expression, including freedom of the press and other media (a right that does not, however, extend to incitement of violence, propaganda for war, or certain specific types of hate speech). The document further guaranteed the freedom of an independent press and online media, and would have limited broadcast regulation to procedures administered by a body independent of government. It explicitly prohibited anyone from censorship, interference with freedom of expression, or the harassment or penalization of a person for "any opinion or view or the content of any publication, broadcast or dissemination." (Section 53.3, Mung'omba Draft Constitution). Access to information and source protection were also protected.

Many of these provisions did not, unfortunately, make it into the latest draft constitution.

¹ <http://www.ncczambia.org>, accessed 5 November 2010



The new constitution does not provide any broad guarantees of freedom of expression and press freedom. In fact, a February 2010 news report in *The Post* quoted one NCC member, the commissioner of a district council, as saying, “The media today is quite dangerous. It is only today that we have certain print media publishing words like ‘idiot’, foolish towards fellow human beings or even the Head of State. I’m not saying it’s all the media, but one groundnut can destroy the goodness of the other groundnuts. We need to provide safety measures.” (*The Post*, “NCC abandons Mung’omba recommendation on press freedom”. 21 February 2010)

The new constitution does not provide any broad guarantees of freedom of expression and press freedom.

Guarantees of access to information and the independence of the public broadcaster were also reportedly removed.

The view from some quarters is that many media houses and journalists often behave irresponsibly. Unfortunately, this perception has not bolstered support for a strong self-regulatory mechanism, but instead seems to have had the effect of undermining support for broad press freedom protections in the Constitution.

The penal code also contains laws that could have a potential chilling effect on press freedom. These include laws criminalizing defamation, including defamation and insults against the President; the publication of obscenity (used last year against *The Post*’s news editor Chansa Kabwela); and sedition and seditious publication where seditious intention is defined to include any attempt to “bring into hatred or contempt or to excite disaffection against the Government”, “to bring into hatred or contempt or to excite disaffection against the administration of justice in Zambia” and to “raise discontent or disaffection among the people of Zambia.” (Zambia Penal Code, Section 60).



There are no constitutional guarantees to access to information. A Freedom of Information Bill was brought before the national assembly in 2002, but was withdrawn for consultations. (“The bill has not been re-tabled despite pressure from media associations and some sectors of civil society, and it is not clear whom the government might be consulting” - Africa Media Barometer Zambia, 2010). IPI’s conversations with journalists in Lusaka suggest that most journalists acquire information on government activities through inside sources and sometimes leaks, and not through official channels.

One journalist in Lusaka told IPI that his newsroom really needs such a law in place to do its work, including uncovering corruption – but that there was “a lack of political will”, both from the ruling party and the opposition.

“Lack of political will”- Journalist

Two laws that were passed in December 2002, which should have made the public broadcaster independent of government oversight and placed control of broadcast licensing in the hands of an independent body, unfortunately have not been fully enacted. The Zambia National Broadcasting Corporation Act (ZNBC Act) and the Independent Broadcasting Authority Act (IBA Act) together set up independent boards for the national broadcaster and the broadcast regulatory body, respectively, but these aspects of the law were never implemented.

In April of this year, the ZNBC (Amendment) Act 2010 was passed, and the information minister can now appoint the ZNBC board without relying on nominations from an appointments committee. His selection must then be ratified by parliament.

So far, a new board at ZNBC has not been appointed. It is unclear what is causing this “breakdown”, as one journalist described it.



The IBA Act was also amended this year, in July. The amendment also removes the requirement of an appointments committee to make board nominations, and the minister, again, has the power to name people to the IBA board – and unlike with the ZNBC board, there is no need for the minister to seek parliamentary approval.

Since the IBA Amendment Act was passed, the minister has stopped issuing new broadcast licenses and licenses that would allow broadcasters to expand their operations to other provinces on the basis that this mandate now belongs to the Authority. However, he has also failed to appoint the IBA board over the past three months, so the authority is not yet operational.

This ministerial inaction at the ZNBC and IBA creates the suspicion, which was also voiced by journalists from two Zambian broadcasters, that government is loath to risk an independent public broadcaster, and unwilling to give up its control over licensing and the influence this brings.

“ZNBC is public, so why should it always suit government?”, one journalist asked.



Statutory Regulation

The Zambia Media Council (ZAMEC) is Zambia's second effort at an independent media council. Another council, the Media Council of Zambia (MECOZ) was established by the Media Institute of Southern Africa and the Press Association of Zambia with the support of international donors in 2002, and launched in 2004, but unfortunately proved to be an ineffective regulatory mechanism. The disintegration of MECOZ has been largely blamed on the lack of participation by *The Post* – the country's only privately-owned daily newspaper – and on members' failure to comply with decisions.

Although MECOZ still existed when the Zambian government called for effective media self-regulation in 2009, it was by all accounts fairly defunct, and the media fraternity had already decided that an improved mechanism was necessary. The Media Liaison Committee – a consortium of media organizations that together represent journalists from almost all public and private media houses – decided in late-2008 that Zambia needed a reformed regulatory system.



ZAMEC TIMELINE

August – October 2008: President Levy Mwanawasa (Movement for Multi-Party Democracy) dies. New elections are held, resulting in the election of former VP Rupiah Banda as president. He is also a member of the MMD.

October 2008: The Media Liaison Committee (MLC), a consortium of media organizations that was originally constituted in 1997, defines “Regulation” as its major theme for 2009, recognizing that MECOZ has not had the success the MLC had hoped for since MECOZ’s launch in 2004.

November 2008: Parliamentarians call for the media to be regulated through the use of statutory instruments, as opposed to self-regulation, as a result of election coverage. They had also called for increased regulation following the 2006 elections.

25 November 2008: Minister of Information and Broadcasting Services (MIBS) tells the *Times of Zambia* that the government has no choice but to regulate the media, because it has failed to regulate itself. The minister challenges various media organizations to prove their ability to regulate themselves.

3 May 2009: The MLC, having expanded to include the Catholic Media Services and the Press Freedom Committee (PFC) of *The Post*, announce its intention to work with media houses to create a new self-regulatory body. This process is supported by the United Nations Development Program.

August 2009: MIBS minister Ronnie Shikapwasha asks media to initiate self-regulation, and says that government will regulate by statute in six months otherwise.

July-October 2009: MLC members begin wider research into media regulatory systems around the world.

October - November 2009: MLC members visit regional press councils as part of their investigations.

February 2010: The MLC meets with representatives from a broad array of media to discuss possible models for regulation at the Fringilla Farm Lodge in Chisamba, Zambia. This meeting becomes known as the “Fringilla Consensus”. The media decide on a voluntary, self-regulatory system in the style of the Tanzanian and South African press councils (See section on “Brief Descriptions of Regional Regulatory Systems for more information”). The new body is named the Zambia Media Council (ZAMEC)



15 April 2010: Media stakeholders meet to adjust and adopt a code of ethics and constitution (drafted in the meantime by a committee of the MLC). Midway through the meeting, MIBS minister writes a letter saying that the government is withdrawing its support for this process because it fears that any voluntary system will be left “toothless and unenforceable.” The minister writes that government supports the Kenyan “hybrid” model of regulation – whereby an independent council is created by statute (See section on “Brief Descriptions of Regional Regulatory Systems for more information”).

The MLC replies to the information minister’s concerns about the bill via an open letter in The Post asking for a meeting. MLC says that it could launch ZAMEC, but would like ministerial support so that government-owned media can also participate.

3 May 2010: Originally intended to be the launch date for ZAMEC, the MLC postpones the launch until a compromise with government is reached.

August 2010: ZAMEC prepares to launch operations on 26 August

August 2010: The Society of Senior Zambian Journalists (SSZJ) offers to broker a meeting between ZAMEC & MIBS, which ZAMEC accepts. ZAMEC postpones the launch of the regulatory body.

September 2010: The minister of information establishes a ministerial team tasked with looking into the self-regulatory body.

October 2010: The ministerial team meet with the SSZJ.

12 & 14 October 2010: IPI delegation meets with Information Minister Ronnie Shikapwasha to discuss regulation and other press freedom concerns. IPI urges the government to allow state media to participate in ZAMEC and to refrain from statutory regulation.

As of the time of this writing, the MLC and other members of the media fraternity have not yet met with the SSZJ, the information minister or the ministerial team to discuss the way forward.

The information minister is adamant that the media allow the ZAMEC constitution to be used as the basis for a statutory but independent council. The media fraternity insists that it will not accept statutory regulation at all. They want government – as the



country's largest media owner – to accept the principle of self-regulation and allow the public media to participate in ZAMEC. MLC spokesperson Amos Chanda says that the media is waiting for the outcome of discussions with government.

Zambia Media Council (ZAMEC)

The constitution of the proposed Zambia Media Council (ZAMEC) was adopted by all media in Zambia in April 2010 at a meeting held at the Taj Pamodzi hotel in Lusaka. The final version reflects the “Fringilla Consensus” of February 2010, when the Zambian media as a whole decided to adopt a regulatory body modelled on both the Media Council of Tanzania and the South African Press Council.

The ZAMEC constitution sets up a voluntary, self-regulatory body for all Zambian media. Features of this constitution are described below. In evaluating the ZAMEC constitution, IPI has borrowed the parameters for press council analysis developed by Professor Franz Krüger in his very useful research report on “Media Courts of Honour,” published by fesmedia Africa in November 2009. These include mandate, organisational details, financing model, complaints and powers.

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(This report leaves out three of Krüger's parameters. His “history” parameter is omitted because this is covered above; and the parameters “environment” and “public profile and public activities” are omitted because the council has not yet launched, so neither its real relations with media and government nor its public profile and activities can be assessed). The descriptions below are based *solely* on the ZAMEC constitution, and thus on the foreseen rather than the actual workings of the council.



Mandate: The two main objectives of ZAMEC as listed in its constitution are to “promote, preserve and defend freedom of expression, the press and allied forms of public communication” and to improve journalistic practice for practitioners from across the media industry – including both print and broadcast.

Beyond adjudicating on complaints, ZAMEC’s stated objectives are to conduct training, conduct media freedom campaigns, establish press clubs, and hold other events that contribute to the development of the media profession. The council is mandated to produce publications that further its aims. The council also aims to “monitor and evaluate compliance to the code of ethics by both training institutions and media practitioners,” which would suggest a more proactive role for the council than simply responding to complaints from members of the public.

The Ombudsman and Ethics Complaints Commission are tasked with handling cases against the media brought by members of the public. However, they will also hear complaints from anyone aggrieved by anything done to a media professional that “limits or interferes with” their constitutional freedom of expression or press freedom. This is unusual but not unheard of - the Indian Council also makes provisions for such complaints (Krüger 2009).

Organisation: Membership of ZAMEC is open to all public and private media, as well as journalism training institutions, press clubs and individual journalists. All Zambian media “with a physical address” (Press Freedom Committee of The Post in conversation with IPI, June 2010) were invited to attend the proceedings that led to the adoption of a code and constitution.

The eleven-member Governing Council will be appointed by various groupings of the media and civil society, where five members of the council are from media and five from the public. The last member is selected by the Annual General Meeting of ZAMEC (which is comprised of all ZAMEC members).



The Governing Council appoints a Media Ombudsman and Deputy Media Ombudsman, who are the first to accept complaints and attempt to negotiate a settlement.

The Ethics and Complaints Committee is constituted from among the Governing Council and the Law Association of Zambia; it shall comprise five members whereby one must be a lawyer. Appeals against decisions of the Ombudsman are referred to the ECC.

In addition to setting up a secretariat and a finance committee, the document also allows for the creation of committees for special investigations on particular issues and for the creation of a research and publications committee.

Financing Model: According to its constitution, ZAMEC will be funded by stakeholders' fees and contributions, donations from "legitimate local and foreign sources" and through the sale of ZAMEC's "publications and consultancy".

Complaints: This is a description of the complaints procedure as it is set out in the constitution:

The ombudsman and complaints committee will hear complaints from persons who are either aggrieved by the "publication or professional conduct of a media house or journalist, editor, broadcaster, producer, director or proprietor of a media house, respectively."

After receiving a complaint, the ombudsman has seven days from the date of receipt to set a date of hearing, but has 14 days from the date of receipt to notify the party against whom the complaint has been made. After hearing the matter, the ombudsman makes his or her decision, and communicates the decision to both parties.

If either party is unhappy with the decision, they may appeal to the complaints committee. The committee should attend to the appeal



“immediately,” and following this hearing must take a decision within three months. The committee’s decision must be in writing.

Powers: The authority of the Zambia Media Council’s (and its Ethics and Complaints Committee) is primarily moral, although members must sign a document in which they agree to submit to the jurisdiction of ZAMEC, and agree that decisions and orders from ZAMEC are binding.

When deciding on a complaint, the ombudsman can either dismiss an appeal, order an apology and correction and/or issue a public reprimand of the journalist, editor, broadcaster, producer, director or proprietor. The ombudsman can also order payment of “token or nominal damages.”

The ethics committee has the same tools of reprimand at its disposal, but may also expel the media house or journalist from membership in ZAMEC for up to two years.

Brief Description of Regional Regulatory Systems

The Zambian Media Council’s constitution contains aspects of both the Tanzanian and South African regulatory bodies. The Zambian information minister, on the other hand, promotes the Kenyan system.

KENYA

Until 2007, the Kenyan media operated under a voluntary self-regulatory system. Following debates about media professionalism and political violence, the Kenyan government instituted a “hybrid” regulatory model where an independent body is set up through parliament, and its decisions are given the force of law.



Many amendments were changed before the bill was passed, because it originally contained a number of restrictions on press freedom and provisions that undermined the council's independence.

Originally, the bill provided for the Media Council of Kenya's (MCK) chairperson to be appointed by the minister of information and communications, and the chair was not required to come from the media. The council's complaints committee was given the right to remove journalists from a list or to deny their accreditation, and the bill defined journalists by their formal education (IPI, 2007). In August 2007, the bill was further amended to include a provision that would force journalists to reveal their sources.

Fortunately, following a media outcry, the bill was rejected by President Mwai Kibaki as an affront to press freedom. Several of the more draconian measures were amended and removed, and guarantees of its independence were added.

Similarly to what government has suggested in Zambia, the Kenyan council registers and accredits journalists – and has ordered a subscription fee for journalists who are on their roster.

Unfortunately, the launch of the media council did not stop government from passing other laws that affect press freedom. Among these is the Kenya Communications (Amendment) Act, which was signed into being on 2 January 2009. This piece of legislation gives the Communications Commission of Kenya (CCK) wide powers over broadcasting and broadcast journalism. Unlike the MCK, the CCK is not independent of government oversight.

The CCK now has the power to rule on complaints against broadcast media, to oversee broadcast content, and to license and de-license broadcasters. These provisions do much to negate the media's independence that is theoretically protected by the independence of the statutory council.

The Communications (Amendment) Act also allows the minister for internal security to take over media houses and confiscate equipment on national security grounds, and provides prison terms and heavy fines for press offences.



TANZANIA

The Media Council of Tanzania (MCT) was formed in 1995, and its members are drawn from both print and broadcast media. Along with the South Africa Press Council, the MCT is the most active media council in the southern Africa region. Over the years, the council has developed immense credibility and respect, and enjoys high compliance rates.

The Ethics Committee of the MCT is comprised of members of the media, members of the public and representatives with a legal background; It hears around 20 complaints a year. While the council generally orders apologies, it can also mandate that the offending news organization and the complainant agree on an amount of money to be paid to the complainant as damages, and the sum is usually much smaller than the amount that would be awarded by the courts. (Krüger 2009).

Beyond adjudicating on complaints, the MCT publishes a monthly magazine and regular reports, and is active both in terms of training and press freedom.

SOUTH AFRICA

The South Africa Press Council is the region's busiest council by far (Krüger 2009). It has ruled on over 50 cases so far in 2010, according to its website (<http://www.presscouncil.org.za/pages/rulings/2010.php>).

During IPI's meeting with the minister of information and broadcasting services, Lt. Gen. Ronnie Shikapwasha referred to the South African Press Council as an example of the shortcomings of voluntary self-regulation. The South Africa Press Council has been criticized by that country's ruling party, the Africa National Congress (ANC), and some have complained about the slowness of the council in making rulings. The ANC is now considering drafting a media tribunal bill that would allow for the statutory regulation of the South African press – something that IPI and many media houses and organizations within South Africa have fervently protested.

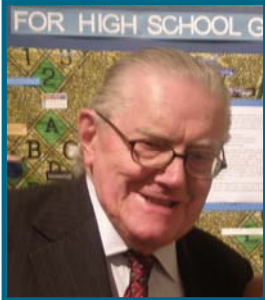


The Zambia Media Council (ZAMEC) will use a press ombudsman system similar to that in South Africa. Under the South African system, the ombudsman first accepts a complaint and attempts an informal negotiation between the parties. If he deems it necessary, he can hold a hearing for which he calls in one public and one press member from the appeals panel.

If either the publication or the complainant is unhappy with this decision, the case is brought before the appeals panel. The chairman of the panel, a retired judge from South Africa's Supreme Court of Appeals, is joined again by one press and one public member of the panel. Both the ombudsman and the appeals panel can order retractions, apologies and corrections, or decide that a reply from the complainant must be published.

The council's authority is moral, but its public profile and the legitimacy it derives from its wide membership ensure high compliance rates.

IPI was grateful to have the chairman of the South Africa Press Council, Raymond Louw, as one of the delegates on the IPI mission to Zambia. In the following report, he provides a more detailed description of the workings of the Press Council.



Why the SA Press Council Works

By Raymond Louw

The South African Press Council is a voluntary self-regulatory system for the print industry only; broadcast TV and radio have their own Broadcasting Complaints Commission. All the major dailies and weeklies subscribe to the system. The code of conduct, rules of procedure and constitution of the council were originally drawn up by representatives of the print industry - publishers of newspapers, magazines and regional newspapers represented separately, editors and journalist trade unions. The administration was dealt with by a Founding Bodies Committee which later changed its name to the SA Press Council and invited members of the public to join the council. A separate list of public representatives was compiled to attend hearings.

A few years ago, there was a review of the code of conduct, etc., by both the press and the public representatives. The “punishment” -- an apology, correction, etc - can extend to a reprimand, and the ombudsman, or judge, can dictate where the finding, etc. - if it goes against the paper - is to be published in the paper.

An important feature is the waiver by a complainant of his or her right to take the issue at hand to a court after it has been dealt with by the ombudsman and/or appeals panel. However, the complainant has the right to take the finding on review to the High Court.

Until recently, there have been no public complaints about the operations of the office; indeed, a cabinet minister once wrote a note thanking the ombudsman for a finding in her favour and praised the ombudsman for the manner in which the issue was dealt with.

In 2007, the ruling African National Congress raised a series of criticisms about the media generally and the print industry in particular and called into question the operations of the Press Council. Later, it put forward the proposal that parliament investigate the setting up of a Media Appeals Tribunal (MAT) “to aid the ombudsman process”.



So far it has not detailed a code of conduct, rules of procedure or a constitution, but ANC spokespersons have made statements that it should be a statutory body composed of independent persons answerable to parliament, and that punishment should be imprisonment for journalists and heavy fines for publications (though these two features have been soft-pedalled following an outcry by the media). There have been denials that the MAT is intended to censor the press - it applies only to the print media - or control it. The claimed intention is to promote the freedom of the press, raise journalistic standards and protect the dignity of persons who are the subject of press reports.

In the last year, the ANC has criticised the lack of meaningful penalties, and bias by the ombudsman (an ex-journalist) in favour of the media – even though 65% of the findings are against the press.

In the last year, the ANC has criticised the lack of meaningful penalties, and bias by the ombudsman (an ex-journalist) in favour of the media – even though 65% of the findings are against the press. They have also criticized issues not dealt with by the ombudsman, such as lack of diversity of publications and “brown envelope” journalism -- arising from one case where a journalist voluntarily confessed to having received payment for doing stories that placed a leading ANC politician in a good light, a claim denied by the politician. There are no other known cases of bribery of journalists.

The composition of the Press Council is six press representatives and five public representatives, the thinking being that as it is a press self-regulatory mechanism it should be controlled by the press. There is criticism of this by the ANC, but I have argued that if the institution had a majority of public representatives and was controlled by the public, it would no longer be a self-regulatory mechanism but one in which other (the public's) standards would be applied.

This argument has been used to oppose the MAT, which would be seen to impose other than journalistic values on the conduct of the press ombudsman's office.



There has been much criticism of the demand by the Press Council for a waiver from the complainant to go to court after subjecting oneself to the ombudsman process. The Press Council has argued that if the person wants to avail him- or herself of the right to go to court, they can exercise that right but the ombudsman will not deal with the complaint. The ANC says the waiver takes away a person's constitutional right to go to court; the Press Council says the complainant can still exercise the right to go to court but the ombudsman process will not be involved. This stance is supported by the retired appeal court judge heading the appeals panel.

A survey undertaken by the New Zealand press council in 2007 found that 57 percent of the 87 press councils in the world support the waiver. This does not mean that 43 percent support the removal of the waiver but that some do, and others have not stated what their rule is.

The SA Press Council has called for public comment and submissions about the current system following the issue being raised by the ANC. These public submissions are now being considered.

On two occasions, the ombudsman has expressed disapproval of the conduct of the press following adjudications against the papers concerned. One was a complaint to the owners that an editor did not carry out the ruling of the ombudsman. The owners then compelled the editor to abide by the ombudsman ruling.

A survey undertaken by the New Zealand press council in 2007 found that 57 percent of the 87 press councils in the world support the waiver.

The second case followed publication by the editor of the ruling in full, followed by the editor adding criticism of the ruling. The complainant turned to the ombudsman, who held a further hearing of the new complaint, which resulted in the editor withdrawing his criticism and publishing the ombudsman's finding.

The New Zealand council's survey came up with findings that the majority of Press Councils are run on lines similar to the South African council.



Government Concerns with ZAMEC

Background

The Zambian government and the Information Ministry were supportive of the media fraternity's work to create a viable self-regulatory body until April 2010. In April, the Media Liaison Committee – tasked with setting up the regulatory body – called a general stakeholders meeting to discuss the draft code of ethics and draft constitution of ZAMEC. Stakeholders met at the Taj Pamodzi hotel in Lusaka over a weekend and, following debate, adopted an amended constitution and code of ethics.

But during the course of the meeting, a letter from Information and Broadcasting Services Minister Lt. Gen. Ronnie Shikapwasha was delivered to the MLC. In it, he withdrew his support for the body, whose stakeholders had chosen to adopt a voluntary, self-regulatory mechanism along the lines of the Tanzanian or South African models. "The proposed framework in the Fringilla Consensus falls short of a genuine self-regulatory framework and would not be able to achieve the objective of regulating the media in the country," the minister wrote.

He added that a self-regulatory mechanism would be a "reincarnation of MECOZ" and therefore both "toothless" and "unenforceable." Almost all journalists and media representatives, as well as the information minister, agreed that there had been serious problems with MECOZ. These included the lack of participation by *The Post* – who declined to join because they felt they had not been consulted in its formation - and the failure of media houses, especially public media, to comply with unfavourable decisions.



“Government's position is that the Kenyan model of media self-regulation would be the best option for Zambia,” wrote Shikapwasha².

IPI Conversations with Lt. Gen. Ronnie Shikapwasha

IPI met with **Lt. Gen. Ronnie Shikapwasha**, Zambia's minister of information, on 12 October to discuss the media council and advocate for self-regulation.

IPI's position, which was impressed upon the minister, is that government should allow ZAMEC to go ahead and operate – with the participation of the government-owned media – for at least one year. Although IPI recognizes that voluntary regulation was ineffective under the previous system, the minister's scepticism about media commitment to the system is based on the failure of MECOZ several years ago, and journalists' attitudes have changed considerably since then. And in any case, IPI believes a self-regulatory system is the only form of media regulation that does not impinge on press freedom, and that more and better training is the solution to improving the practice of journalism.

The Lusaka visit was the second time that the minister had spoken with IPI about regulation. On 21 June, the minister had an extended telephone conversation with IPI's press freedom adviser Naomi Hunt on the subject, in which he first explained his concerns with the proposed voluntary self-regulatory council.

The minister again said that during the last election, the media had pushed the country to “the brink of civil war.”

² Daily Mail, <http://www.daily-mail.co.zm/media/news/viewnews.cgi?category=8&id=979563374>. Accessed 6 November 2010).



In June, the minister explained that media reporting, particularly during the 2006 elections, had shown that regulation is necessary. In 2006, he said, members of parliament had called on government to do something about “unethical reporting,” which they reportedly believed was incitement similar to that in Rwanda. During IPI’s October visit, the minister again said that during the last election, the media had pushed the country to “the brink of civil war.”

The minister said that if media continues as it has, it might “destroy the nation.”³

The minister said the previous regulatory body, MECOZ, had failed because of the refusal of some media to join, and the “flouting” of council decisions. He believes the media “badly undermined” itself through the use of a voluntary mechanism and that ZAMEC is designed to repeat those mistakes.

If media continues as it has, it might “destroy the nation”-Minister

Statutory Regulation

The minister now insists the media either accept a statutory body created using the ZAMEC constitution and code of ethics, or the government will create its own statutory body – in either scenario, creating an “independent” but statutory body along the lines of the Kenyan media council.

Lt. Gen. Shikapwasha made it very clear that if ZAMEC launches with its current constitution, the ministry will not permit public media to participate in the council. (Various estimates from journalists put the proportion of Zambian journalists who work for one of the three public media houses or at the public news agency at between 60 percent and 70 percent – one of the main reasons

³ (Phone interview with Ronnie Shikapwasha, 21 June 2010).



MLC members have postponed the launch until a compromise with government is reached).

The minister argued that lawyers and doctors in Zambia are also regulated through independent but statutory bodies. IPI noted that journalism is a different type of profession, and that journalists work under different circumstances than doctors or lawyers, because it is their job to report and comment on society, and sometimes on the government. The fact that press freedom is constitutionally guaranteed in most countries, and under international law, speaks to the exceptional nature of the journalistic profession.

Further Changes

According to the minister, “85 to 90 percent” of the ZAMEC constitution is “good.” The parts that the minister would like to change include the addition of a registration requirement for journalists, who must fulfil certain (unspecified) training requirements and be accredited through the council.

IPI believes that leaving a government-appointed body to license and accredit journalists is dangerous, because accreditation could be used as a tool to control journalists. There are many world-renowned journalists whose only training was on the job, and not through formal institutions. Government-imposed registration requirements for journalists could be used to exclude practicing journalists from their profession.

The minister also called for the inclusion of enforced penalties, including monetary fines.

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(ZAMEC’s current constitution provides for the ombudsman or the ethics committee to order that “token” damages be paid to the complainant.)



Lt. Gen. Shikapwasha says he is against the use of prison sentences as penalties under the regulatory body, and says he will not seek their inclusion if a statutory council were to be imposed.

He also addressed fears that if ZAMEC is created as a statutory body, the present government will make so many amendments and additions that the draft is unrecognizable. He said this is untrue.

The minister assured the IPI delegation the process of taking the bill through parliament would provide the public, including the media, the opportunity to “debate” and “present information to parliament.”



Journalists' Views on Regulation and the Zambia Media Council

Despite the fact that the Zambia Media Council is prepared to launch, the media are waiting in hopes that government, as a major media stakeholder (the largest media organizations are state-owned and operated), will accept ZAMEC and allow public media to join. The entire media community was involved in the creation of ZAMEC's code of ethics and constitution, and the journalism community wants all media houses to be able to participate.

The entire media community was involved in the creation of ZAMEC's code of ethics and constitution

A few main themes on the Zambia Media Council emerged during the IPI delegation's meetings with journalists in Lusaka and Livingstone. The first theme was

the efficacy of voluntary self-regulation. Most journalists agreed with the principle of voluntary self-regulation. Some journalists, however, also believed that a voluntary council would be unable to achieve compliance, and cited the previous self-regulatory body as evidence that this model would not succeed.

The majority of journalists seemed to believe that the Zambia Media Council differs in important ways from the Media Council of Zambia.

It is widely believed that the Zambian government is looking for justifications to regulate the media by statute, but that in any case efforts to curtail media freedom would not succeed.

Much hope has been placed in the Ministry of Information's new permanent secretary Dr. Sam Phiri, who, IPI was told, was an ardent defender of press freedom and the right to self-regulation



in his previous position. Many journalists hope that his appointment could reflect or lead to a change in government policy on regulation.

Voluntary Self-Regulation

IPI believes that self-regulation is the best and most effective means of media regulation, and is principally against government regulation.

Journalists who had doubts about compliance cited the previous regulatory body, the Media Council of Zambia (MECOZ), which failed to effectively regulate the media. But the majority of journalists, from both public and private media, were convinced that voluntary regulation will work because of the media's enthusiasm and participation in the ZAMEC process until now – which they say was not the case with MECOZ.

Representatives at one media outlet, which had participated in ZAMEC'S formation, now seemed fed up with what they saw as a politicized back-and-forth between the Media Liaison Committee (MLC) (the group of media representatives leading the creation of ZAMEC) and government. "We have a business to run, and stay aloof," the journalist said.

"All the biggest players are members," one journalist from a private broadcaster said. He believed that because all media houses were consulted, including *The Post* and public media, no one would pull out.

"It's not foolproof, but everyone is on board."

Another editor acknowledged that the council, once launched, would need time to refine its procedures and mechanisms, but saw this as a natural part of the process. "It's not foolproof, but everyone is on board," he said.



Journalists also believe that the penalties foreseen under the ZAMEC constitution are sufficient to improve media professionalism. “The moment a media house is found wanting repeatedly, they will lose credibility,” one editor at a private broadcaster explained.

Concessions

Overall, there seemed to be a great deal of frustration on the part of the media that government has not recognized its willingness to negotiate.

ZAMEC’s launch has been postponed twice for negotiation. The media first postponed the launch from World Press Freedom Day on 3 May 2010 in order to give government time to read the latest ZAMEC constitution. The second postponement came some months later, after a group of senior journalists said they wanted to mediate discussions between government and the media fraternity – an offer that the MLC accepted.

The media have also made changes to the ZAMEC constitution in response to criticism from the information ministry and other journalists. For example, one of the government’s major concerns is that media houses would withdraw from the voluntary body as soon as a complaint was filed against them. Media stakeholders have inserted a provision that prevents media who are under investigation from withdrawing, or face a two-year exclusion from the council – a concession that some believed has been overlooked.

Government was also concerned with a provision under which complainants who use the media council system must waive their right to bring a case to court. Speaking with IPI by phone in June, the minister said that such a provision would be a breach of “human rights,” because every individual has a right to use the courts.



Such waivers are common among press councils. They encourage the use of the quicker press council system and prevent one case from moving through the council and the courts at the same time. (For more information on a similar waiver, please see the section on the South Africa Press Council, written by its Chairman Raymond Louw, above.)

Nonetheless, MLC spokesperson Amos Chanda confirmed to IPI that this provision was removed in the interest of compromise. (Phone conversation with Amos Chanda, 8 November 2010)

“Why can’t government see how forthcoming the media have been?” one editor asked.

“Why can’t government see how forthcoming the media have been?”

The media fraternity, and especially the MLC, believe they have made every effort to ensure that all media, including state-owned media and the journalists who work there, are represented by the council. Many representatives of the MLC and from media houses indicated their belief that the government is not acting in good faith, and wants to impose statutory regulation by any means.

Mistrust of Government

Journalists pointed to a “secret” media regulation bill that was leaked late last year as evidence of government’s intention to limit press freedom. In December 2009, they said, journalists from public media leaked a copy of a bill that had been drafted in the Vice President’s office. The bill set up a media council and an institute for journalists. It also reportedly called for the profession of journalists to be rigidly defined and for journalists to be registered through the regulatory body. It also required media houses seeking to employ an editor to register that person with the journalism institute (as the minister continues to recommend).



Under the leaked bill, press offences would be punished with prison terms and steep fines. The board of the media council would be comprised mainly of non-journalists who are directly appointed by the information minister. The information minister would also be allowed to change the council's constitution through consultations with only three of the council members.

Under the leaked bill, press offences would be punished with prison terms and steep fines.

In December 2009, the Media Liaison Committee's then-chair, Henry Kabwe, responded forcefully against the "leaked bill" through a statement published in *The Post* on 28 December 2009. He condemned the "recklessness" that the vice president had shown, and accused him of having abused his authority to "bulldoze his way in matters that ordinarily should be outside his domain." The MLC further declared Vice President George Kunda "the number one enemy of the media freedom since the end of single party dictatorship."

The response from state-owned media was more subdued, but the *Times of Zambia* also ran an opinion piece criticizing the bill. "Vice-President George Kunda has also campaigned for introduction of the media bill and believes that the media has been infiltrated by quacks who should be weeded out," Andrew Sakala of the *Times* wrote. "Although, the proposed media bill is under lock and key, what has come out clearly is that the minister will have excessive power [...] The question is why should Government want to create a law that gives so much power to an individual? Aren't such powers open to abuse and manipulation?"⁴

Many among the media fraternity feel that the bill, which government officials have denied exists, was drafted in bad faith, as government was openly supporting the self-regulatory process

⁴ Cached report in the Times of Zambia, <http://bit.ly/atVq5B>, Accessed 8 November 2010.



at that point, and say it points to a desire to punish and control media houses.

Journalists also criticized the flimsy nature of some government complaints against ZAMEC, including that the ZAMEC constitution protects gay rights. This criticism was also found in an op-ed from “a correspondent” at the *Times of Zambia*, which called the ZAMEC constitution a “shameful piece of work.”⁵ In Zambia, where many people oppose gay rights, the accusation was seen as a way for government to rouse popular animosity toward the independent media council. (The actual ZAMEC constitution makes no mention of gay rights one way or the other.)

Solidarity Amongst Journalists

As is mentioned above, some media professionals from government-owned media (as well as a few from privately-owned media) expressed to IPI their worries about the voluntary aspect of ZAMEC’s membership. However, the majority of journalists, it would appear, including a number from state media, were supportive of the self-regulatory body and the current process of establishment.

The main concern was that state-owned media will not be allowed to participate in ZAMEC.

The main concern was that state-owned media will not be allowed to participate in ZAMEC. (As it stands, all public media are listed as members in Annex III of the ZAMEC Constitution, and have adopted the constitution). The other fear is that government intends to regulate the media by statute, no matter how forthcoming the media.

Nonetheless, the media see strength in its solidarity, noting that government has limited tools to stop ZAMEC from functioning. As an independent body, it does not need government approval.

⁵ Times of Zambia, <http://www.times.co.zm/news/viewnews.cgi?category=7&id=979999307>, Accessed 8 November 2010



Many journalists felt that even if government eventually forced the state media houses to withdraw from ZAMEC, many journalists from those media could and would participate anyway. They could join either as individuals or through their respective unions, which are members of the Media Liaison Committee and actively support the ZAMEC process.

One well-connected journalist noted that the current parliament includes “rogue” opposition members who vote with the ruling party, the Movement for Multi-Party Democracy (MMD), so government could conceivably pass a media council bill through parliament. It remains to be seen whether government will try to impose statutory regulation, and if so, whether it will leave out some of the more draconian provisions that the vice president and information minister have suggested.

But others doubted whether a statutorily imposed regulatory body would have much success. “Zambians have embraced free expression,” said one representative of a journalist organization. “Government knows that even a statutory council needs legitimacy.”

“Government knows that even a statutory council needs legitimacy.”

Others said it was “too late” to turn back from press freedom, and remarked that while broadcasting is more tightly controlled (as it is in most countries because of the limited broadcasting spectrum), today anyone can start a newspaper. One editor pointed out that Zambians can watch Al Jazeera and the BBC or listen to Deutsche Welle, so trying to regulate information is a lost cause. He said that when President Levy Mwanawasa passed away in 2008, Zambian media respected a request to withhold news of his death – but the news came in from foreign news channels anyway.

One editor believed that a statutory body would be unconstitutional in any case. He cited a 1997 High Court ruling that deemed it unconstitutional for the government to regulate the media by statute unless they fail to regulate themselves.



Continued Negotiation

The Society for Senior Zambian Journalists (SSZJ) offered in August 2010 to help mediate discussions between the Media Liaison Committee and the information ministry. By the time of IPI's visit to Zambia (11-17 October 2010), the SSZJ had already met once with the minister. The MLC is now hoping for a meeting with the SSZJ and the information minister in the near future, and has postponed the launch of ZAMEC to make time for further negotiation.

Some journalists said that the tension between the government and media might be a result of misunderstanding. "Many of the minister's fears should have been allayed through the [final]

"Many of the minister's fears should have been allayed through the [final] constitution," one journalist said.

constitution," one journalist said, wondering aloud whether the minister had read the final version. The recent tendency for the media's spokespersons and the minister to communicate with each other through public statements, rather than directly, has probably added to misunderstanding.

Others asked whether today's government realizes that they may be in opposition after next year's elections – in which case the independence of the media council, as well as the independence of the public media – would be to their advantage.



Other Press Freedom Issues

Although self-regulation was the main topic of most discussions, several other concerns were also raised, including the issue of broadcast licensing and broadcast license renewal, intimidation, and attacks from political party members and supporters.

Broadcast Licensing

The Independent Broadcasting Act (IBA Act) of 2002 set up an independent body to oversee broadcast license distribution. The aspects of the Act that would have made the authority truly independent were never implemented, and the Ministry for Information and Broadcasting Services continues to control licensing for radio and television.

Journalists at one private media house suggested that government has not operationalized the IBA Act because they would “lose their grip” on the process. They suggested that this is also why the public broadcaster has not been made independent, even though “all the contentious issues [about interpretation of the Acts] were ironed out by the courts.”

Journalists at two private broadcasters suggested that licensing procedures were generally fair, but inefficient

Journalists at two private broadcasters suggested that licensing procedures were generally fair, but inefficient – and that it can take years for applications to go through, particularly applications to extend broadcast areas. One editor noted that when they asked the information ministry about the time their application was taking, the ministry said it had 110 similar applications to work through.

With general elections coming up next year, private Lusaka-based radio stations see an excellent opportunity to expand their



coverage areas and their businesses. But the information ministry has put a hold on issuing new licenses, ostensibly until the new broadcast authority is established. One journalist believed government is trying to “stall” the private media, which would compete with public radio; another said that licensing procedures have “retarded media growth.”

Journalists at one station that recently attempted to renew its license said that the ministry would not accept payment for the license. They felt that this could put their station at risk if government ever wants to shut them down on a technicality (which has happened before).

The information minister, meeting with IPI on 14 October, explained that with the coming broadcasting authority, the finance minister no longer has a budget line to receive monies for renewals.

Nonetheless, the minister said stations should try to renew their coverage. “Let them go ahead and apply and it will be up to us to see what we can do,” he said.

There seemed to be some misunderstanding between the information ministry and broadcasters. One broadcaster told IPI that the IBA Amendment Act passed this year still needed to be signed by Zambia’s president (this journalist claimed to have gotten this information from the information ministry). But the information minister clarified that he only needs to appoint the board – the Act is already legal, and he will not need parliamentary approval.

This being the case, it is difficult to understand why the minister has not yet appointed the IBA board.



Intimidation

Threats are sometimes acted upon, one journalist said, citing an instance in which his station lost its licenses for a handful of provinces outside Lusaka.

Journalists from two broadcasters said that they have received intimidating phone calls from the information minister or from the president's office.

Another journalist said that his station has received complaints from the minister that they were broadcasting more news than is allowed by its license.

The information minister denied that there was any restriction on news programming, and said that all radio stations can cover as much news as they like, so long as it is in their programme schedule.

The minister said that sometimes media fail to fulfil their own (licensing) responsibilities, but then turn around and accuse his ministry of wrongdoing. He cited the example of one broadcaster that had put up an illegal transmitter, and then wondered why its licensing application had not yet been accepted. The minister also speculated that some “firebrands” are receiving “money from somewhere” and are “singing the wrong tune”.

Not all journalists disagreed with some limits on press freedom. One journalist from a public media house said things should be seen in the Zambian context. “The problem is culture. This is not a culture where you call the president stupid,” he said. He added that some media are trying to “criminalize the government.”



Violations by Political Party Supporters

In September 2009, President Rupiah Banda said that he would attempt to stop violence by members of his party, the ruling Movement for Multi-Party Democracy. He was responding to a letter written by the Zambia chapter of the Media Institute for Southern Africa, in which the press freedom group called on the ruling party to stop “terrorizing” journalists.

Several journalists mentioned incidents in which their reporters were excluded, threatened or attacked by political party supporters. One editor said that his journalists have repeatedly

One editor said that his journalists have repeatedly been harassed by MMD cadres, even in front of police.

been harassed by MMD cadres, even in front of police. There are seldom repercussions for those who attack media workers.

There appears to be a general lack of respect by political party officials for the rights and duties of journalists

On 7 August 2009, shortly after an MMD youth leader was arrested for attacking journalists at the Lusaka International Airport, MIBS minister Ronnie Shikapwasha was asked in parliament about a separate incident in which MMD supporters had attacked three journalists from Muvi TV. He was asked whether anyone was arrested in that case.

The minister told the Zambian parliament that police had “already arrested one cadre.” He added, “On our part, as a Government, we cannot instruct the police who they must arrest.” (This was the same parliamentary meeting in which the minister gave the media six months to regulate itself, or face statutory regulation. He said: “Having deliberated over this issue with the media for nine years without finding a solution, the Government feels it is necessary, within those six months, for the media to come up with self-regulatory laws. If the media is unable to do so on its own, the Government will move in.” (Website of the Zambian Parliament, Accessed 9 November 2010).



But rhetoric against journalists is not limited to those in power. While IPI was in Zambia, opposition party politician Mumbi Phiri, of the Patriotic Front (PF), referred to journalists from the public media as “dogs” for the information minister, after a journalist asked her about allegations that she had sold land belonging to her constituents. Following criticism and a demonstration, Phiri gave a semi-apology in which she said she had not called the journalists dogs, but “watch dogs,” and apologised “most sincerely to all those who may have been injured by this misrepresentation and deliberate distortion of my words.” (Lusaka Times, 12 October 2010. Accessed 9 November 2010). The Zambia Union of Journalists, a union mainly for journalists at public print media, rejected this “apology.”

On 24 November, members of another opposition party, the United Party for National Development (UPND), threatened to “burn and kill” *The Post* newspaper’s assistant news editor at a press conference, after the paper reported that talks had been held between the opposition party and the ruling MMD (in contravention of a pact between the UPND and Patriotic Front, a major opposition group), which was publicly denied by UPND leadership.

According to a report in *The Post*, the journalist’s car was surrounded by party cadres who reportedly threatened to kill him for “playing with us” as he attempted to drive away (*The Post*, 25 November 2010. Accessed 25 November 2010). In this instance, government officials from the ruling party immediately slammed the attack. Information Minister Shikapwasha was quoted by the *Times of Zambia* as saying that “Everyone should be assured that the Government has a duty to protect all citizens, whether journalists or not, and will not allow any one to take the law into their hands.” (*Times of Zambia*, 26 November 2010. Accessed 26 November 2010.)



Targeting of *The Post* Newspaper

Journalists across the board agreed that one publication in particular, daily newspaper *The Post*, is the biggest thorn in government's side. One journalist from a different media house went so far as to say that government's real interest in regulation is in regulating *The Post*.

The Post is the nation's only independent daily newspaper, and has the largest circulation of any daily in the country. It is popular around the country, and has a role in shaping public opinion. The newspaper frequently runs articles and opinion pieces that are extremely critical of government policy and certain officials.

As a result, journalists at this newspaper have been singled out for prosecution on a number of occasions. Last year, *The Post's* news editor, Chansa Kabwela, was charged with distributing "obscene" material after she mailed two photographs of a woman giving birth in the street to the Zambian health minister. Kabwela had received the photographs at *The Post's* newsroom, however, they were deemed to disturbing to be published and so she sent them to the health minister (as well as other public officials and civil society groups) along with a letter describing the negative effects that an ongoing nurses' strike had on the people.

A magistrate eventually ruled that Kabwela had no case to answer – a decision that was warmly welcomed by IPI, which believed that Kabwela was being targeted simply because of her association with *The Post*.

At the same time, *The Post* itself ran an opinion piece from Cornell University professor Muna Ndulo, who described the case against Kabwela as "a comedy of errors". For publishing this article, *The Post's* owner Fred M'membe, along with Ndulo and deputy managing editor Sam Mujuda, were charged with contempt of court, which carries a prison term. (Charges were eventually



dropped against Mujuda and Ndulo, who were out of the country at the time).

A magistrate eventually found both M'membe and *The Post* newspaper guilty of contempt of court, and M'membe was sentenced to four months in prison with hard labour. After spending a weekend on prison, M'membe was released on bail.

As then-deputy director of IPI Alison Bethel McKenzie said at the time, "Like contempt of court laws in many countries, this provision has provided a tool for the government in its assault on a publication. Every branch of the government, including the

A magistrate eventually found both M'membe and The Post newspaper guilty of contempt of court, and M'membe was sentenced to four months in prison with hard labour.

judiciary, should be subjected to the scrutiny of the public, and it is the media's job to provide varying viewpoints. Journalists should never be jailed for publishing an editorial." (IPI, 7 June 2010).

IPI also sent a letter to President Rupiah Banda, signed by 23 IPI World Press Freedom Heroes who were writing in support of a fellow awardee. (Fred M'membe was named an IPI World Press Freedom Hero in 2000). In it, they wrote that "a truly independent media – sometimes raucous and critical– is a cornerstone of any democracy. Journalists should be permitted to publish and broadcast freely without fear of retribution."

These are not the only criminal charges that have been brought against Fred M'membe, who has been accused of criminal libel and of defaming the president on several occasions over the past few years. Beyond the fact that criminal defamation laws are an inappropriate means to deal with press offences, repeatedly bringing one publisher or journalist to court constitutes a form of harassment and intimidation that is in violation of press freedom.



Conclusion

Journalists educate and inform the public on matters of public interest, and it is the role of the media to hold governments accountable to the people, and serve as watchdogs for democracy. To do this, the right of journalists to freely “seek, receive and impart” information must be upheld.

But insofar as both government and the media are tasked with upholding democracy, government must refrain from attempting to control the press, because the press represents the voice (or voices) of the people.

Because the media provides a check on government power, the relationship between the two is unique, and conflicting interests are to be expected. But insofar as both government and the media are tasked with upholding democracy, government must refrain from attempting to control the press, because the press represents the voice (or voices) of the people.

This does not mean that individual journalists do not make mistakes. They do – but the remedy is better training. And the best response to mistakes is for media to voluntarily print retractions and apologies, or in the most severe cases, for media houses to reprimand the offending journalist. It is the media itself that is best suited to deal with ethical breaches, because any government regulation of media ethics places a limitation on press freedom.

Journalists are not above the law, but there are civil laws in place to deal with breaches of privacy and defamation. (The use of criminal penalties such as imprisonment for ordinary press offences is incompatible with press freedom, because they can be used to punish critical voices, and have a ‘chilling’ effect on the media.)



Journalists and government agree that the media do not always live up to their own standards – and it is a legitimate concern if news outlets are reporting untruths, or if their reports invade the privacy of individuals, or lead to the attack or death of someone, or if they distribute reports that are factually wrong but which irrevocably damage individuals’ reputations. However, it is not the place of government to interfere on matters of journalistic ethics.

The Zambian government has recently called for the media to be regulated by what it says will be an independent, statutory body, after months of supporting the media fraternity in its establishment of a self-regulatory body. Government withdrew its support because it learned that membership in the new council will be on a voluntary basis. It claims that the new body will be as ineffectual as its predecessor.

IPI believes that ZAMEC should be given the opportunity to succeed, particularly since government called for the media to regulate itself and the media are making a serious and concerted effort to do so.

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If the Zambian authorities want the media to uphold press freedom but also strengthen regulation, they should let state-owned media participate in ZAMEC. Zambian journalists from across the board are enthusiastic about the participatory, inclusive process by which the Zambia Media Council was established, and have already adopted its code and constitution. In fact, the state media are already listed as members.

Journalists believe that ZAMEC will succeed because all of the country’s major media houses, including *The Post* and all state-



owned media, have already agreed to submit to the council's adjudication.

Government should enter into direct conversations with the media in order to find common ground. The media has taken steps to address government concerns about compliance and enforcement mechanisms, by adding a provision to the ZAMEC Constitution that prevents media from withdrawing while under investigation. They have also removed a waiver that would prevent complainants from simultaneously bringing a complaint to ZAMEC and the courts.

The Zambian authorities should refrain from statutory regulation of the media. The minister wants to take the ZAMEC constitution, but create the body as an independent state institution whose decisions will be enforced by law. The information minister has assured the media, and IPI, that any such body would be entirely independent of government oversight and could function independently.

But the Zambian government's track record with independent statutory institutions is weak. The Zambian government failed to liberate the public broadcaster, ZNBC, from ministerial oversight, despite the passage of the ZNBC Act in 2002. Even after a Supreme Court ruling in 2007 – which said that an appointments committee must submit board nominations from which the minister can choose (rather than a list which the minister must accept, which was the media's contention at the time) – the appointments process remained stalled.

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The independent broadcasting authority, which was established by the IBA Act 2002 to oversee broadcast licensing, suffered the same fate. There are legitimate concerns that even a nominally independent body would be subject to government influence.



On 18 October, IPI sent a letter to Zambian Vice President George Kunda, copied to President Rupiah Banda and Information Minister Ronnie Shikapwasha, urging the government to refrain from statutory regulation, and asking for state media to participate in ZAMEC for the following reasons:

- Media should not come under the regulation of government bodies who can, and often do, impose severe fines and even jail time for what the government or a government official deems as an offense to him or herself, or to an affiliated business or political institution.
- Like all other Zambian citizens, journalists are already regulated by laws in Zambia that deal with defamation, libel and sedition.
- Of the 87 press councils in the world, 86 percent (around 74) are voluntary and self regulating, according to a 2007 survey by the New Zealand Press Council – demonstrating the effectiveness of this system
- Voluntary self-regulation works, because the most powerful coercive force to a media house or journalist is the opinion of other media and other journalists. Repeated sanctions or reprimands from a press council cause painful and lasting damage to a journalist or media house's reputation-and eventually to its bottom line.

(Note: As of this writing, IPI has not received any response from the Vice President or the Information Minister, who is also chief government spokesperson, despite repeated telephone requests.)

IPI believes that rather than attempt to control the media through a statutory body, which could end up as a mechanism to punish critical media, the Zambian government should support the media in its efforts to regulate itself.



Journalists do make mistakes, but to punish those mistakes by restricting press freedom will inevitably restrict public debate.

Journalists do make mistakes, but to punish those mistakes by restricting press freedom will inevitably restrict public debate. Freedom of the press is not just for journalists, it is for all people, who share the universal right to seek and impart information from any source they please. The Zambian media is how the Zambian public talks to itself and citizens have a right to receive a wide range of information and diverse opinions.

As the American statesman Thomas Jefferson once wrote, in a letter in which he was bitterly complaining to a friend about unethical reporting, "It is however an evil for which there is no remedy. Our liberty depends on the freedom of the press, and that cannot be limited without being lost."



Recommendations

- Media houses should strengthen internal ethical codes and procedures
- Media houses should focus on improving journalists' skills through training
- Police should arrest and prosecute those who attack journalists
- Public officials should cease the intimidation of journalists
- The Information Minister should ensure that the Independent Broadcasting Authority Board is appointed as soon as possible. He should ensure that broadcasters who want to expand their operations are able to do so ahead of elections in 2011
- ZNBC, the *Times of Zambia*, the *Zambia Daily Mail* and the *Zambia News* and Information Service should be allowed to operate without political interference and political pressure
- Government should give the voluntary, self-regulatory Zambia Media Council at least one year from its launch before judging the council's effectiveness
- Government should refrain from statutory regulation of the media.



Follow Up Activities

The International Press Institute is committed to supporting the process of self-regulation and the protection of press freedom in Zambia, and is considering a follow-up visit in 2011 in order to:

- Meet again with the information minister and other government officials to discuss media freedom with regard to election coverage
- Monitor media coverage of the elections
- Monitor press freedom conditions for journalists covering the elections
- Conduct training on investigative journalism and ethical election coverage



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