

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

THE MEDIA IN ZAMBIA: GOVERNMENT CONTROL OF MEDIA

INSTITUTIONS V. FREEDOM OF THE PRESS

THE PAST, THE PRESENT AND THE FUTURE

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CHANZA KEPHAS SIKAZWE

Being a dissertation submitted in partial fulfilment of the requirement for a Bachelor
of Laws Degree at the University of Zambia.

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PREFACE

Article 20 (1) of the constitution of Zambia guarantees the freedom of expression, in the following manner:

“Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to import and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons and freedom from interference with his correspondence”.¹

It is from the freedom of expression that the freedom of the press springs from.

Consequently, media institutions operate on the premise of that constitutional guarantee. The Zambian experience suggests that extent of Government controls of media institutions has varied over particular dispensations.

The importance of this study resides in the principle that the freedom of expression is a human right, guaranteed and enshrined, in the Bill of Rights of the Zambian constitution. Furthermore, Press freedom is an indispensable element of Democracy. Media institutions exercise the freedom of the press in a bid to fulfil their threefold mandate: To inform, educate and entertain the public. Government Control and Press freedom are crucial for the enhancement peace, stability, development, democracy and the rule of law.

The study will explore Government control through licensing laws, rules and regulations of media institutions. Particularly focusing on the broadcasting Media.

¹ Constitution, CCAP 1 of the laws of Zambia, Article 20 (1).

Highlighting the challenges of balancing between being too restrictive on Traditional media (radio and T.V.) and on the other hand unrestrictive in the face of the development of modern media such as the Internet. The analysis also attempts to assess and evaluates the effectiveness of the censorship and penal laws.

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IN MEMORY

Of my late Uncle John Sichangwa whose encouragement and fellowship was crucial in seeing me complete my Bachelor of Laws programme. Uncle John, even though you are not here, the memory of you still lives on.

DEDICATION TO:

My parents: Mr George Isaiah Sikazwe and Mrs Rhoda Kephass Sikazwe. Two of the greatest people that ever lived on earth in my book!!! Without their consistent love, support, tender guidance and unfailing encouragement, the completion of this work would not be possible.

Dad, ever since I began school you have always been there for me. You have always managed to bring out the best in me.

Mum; words fail me at this point, how do I begin to describe how loving, caring, supportive – even in times when I was unsure of myself and my academic standing. You have stood out as a pillar of strength, love prayer, and with due respect a friend. Mum you have done it, your boy is soon to be a University Law graduate!!!

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My stay on campus, would not have been worth while without the companionship of my closest friends Nephas Ndhlovu, Nyuma K. N'gambi and Micheal Nabutali. Many thanks to Moses Chitambala and Nyuma N'gambi who made my stay in Law School a memorable and exciting experience.

The typing of this essay would have been impossible without assistance of Ms. Evah Mudenda.

Many thanks to the members of staff at the Media Institute of Southern Africa (MISA) Zambia, in particular Mr. Sipo Kaoumba, Mr. Brian Lingela and Mr. Daniel Sikazwe for allowing me to use the library materials.

Lastly, but no means the least, I give the highest praise, honour and glory to my Saviour and Lord Jesus Christ, without whom I could do nothing.

CHAPTER ONE

FREEDOM OF EXPRESSION AND FREEDOM OF THE PRESS OPERATIONAL DEFINITIONS, DISTINGUISHING AND COMPANING THE TWO CONCEPTS.

In view of the subject matter existing in the succeeding chapters of this essay, a clear appreciation of the subject of the freedom of expression and in deed the freedom of the press is necessary.

This chapter defines the freedom of expression and the freedom of the press, distinguishing the two concepts. Furthermore, it under scores the importance of these rights to Democracy. It also utilises the Zambian judicial Interpretation of Press freedom in shedding more light on the Zambian Experience of freedom of expression.

1.1. Freedom of Expression V. Press Freedom

The ‘freedom of expression’ and the ‘freedom of the press’ are phrases that are oftenly used interchangeably. This is indicative of an understanding or perspective that these two phrases mean one and the same thing. It is true to state, that they are closely related, in fact interconnected and interdependent. However, it must be noted that they are not entirely the same.

1.1.1. The Freedom of Expression

The freedom of expression is a Human Right; Guaranteed, Protected and Recognised in various International and National Bills of Rights.

“The Universal Declaration of Human Rights (Article 19) the international Covenant on Civil and Political Rights (Article 19) and the African Charter on Human and peoples Rights

(Article 19)”¹ are some such International and Regional instruments that protect the freedom of expression.

Article 19 (1) of the Universal Declaration of Human Rights and the International Covenant on civil and Political Rights state that everyone shall have the right to hold opinions without interference.²

At the municipal level, in the United States for instance, the “1st Amendment to the U.S. Constitution, the first of the

Bill of Rights, says that “Congress shall make no law... abridging (limiting) the freedom of speech, or of the press...”³

A similar provision is found in the constitution of many states.⁴

The Zambian constitution provides for the freedom of expression in the following terms.

“Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons and freedom from interference with his correspondence.”⁵

The freedom of expression entails the right to express oneself. According to Longman Dictionary of English Language⁶, to express means to show or represent, especially in words: state, reflect to make known or show the opinions, feelings, abilities or creative impulses of oneself.”

¹ Afronet (2000) Zambia Human rights Report 200, p. 24.

² Ibid

³ Poor, V.M. (1977) *You and the Law* p. 54-55.

⁴ Ibid.

⁵ CAP 1 of the Laws of Zambia, Article 20 (1) The Constitution.

⁶ Longman Dictionary of English Language (1984) p 518.

Basically, the freedom of expression includes the right to “hold opinions without interference, the right to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference and freedom from interference with one’s correspondence.”⁷

Undoubtedly, the Zambian constitution provides for the freedom of expression in very broad terms. It must be noted that within Article 20 the constitution goes further to mention the freedom of the press.

1.12. Freedom of the Press

“Subject to the provisions of this constitution a law shall not make any provisions that derogates from freedom of the press”⁸

The freedom of expression differs from the freedom of the Press in that it is much broader, in its sphere of application. The freedom of expression is an umbrella, under which the freedom of the press falls. The freedom of the Press is further described as an integral or continent part of the freedom of expression⁹. Professor Francis Kasoma, argues that press freedom is the right of every citizen to express himself through the press or the media of public communication.¹⁰

Kasoma, emphasises that the freedom of the press cannot and should not be reduced to the general right of the freedom of expression and communication. In the sense that, the freedom of the press necessary entails the collective and individual right of the people to express themselves as well as receive information through the press.¹¹ Not only does it refer to the right of journalists to publish news as they see fit and in

⁸ CAP 1 of the Laws of Zambia, the constitution Article 20 (2)

⁹ Chanda, A.W. *Opit*, P. 123.

¹⁰ Kasoma, P.F. (1992) Paper presented at ACCE Conference “Press Freedom and African Charter of Human Rights.

¹¹ Ibid.

accordance with the laws of the country, but also the right of the people to express themselves in the media of public communication without being curtailed by those yielding political, religious, economic and other powers.¹² Additionally, freedom of the press translates into the relative absence of governmental, religious, economic and other controls in the operation of the press. Furthermore, in describing Press Freedom, Picard¹³ lists eight requirements for press freedom in order of ascendancy. These

- (1) Requisite Media technology.
- (2) Availability of an audience
- (3) Relative absence of economic restraints
- (4) Relative absence of governmental restraints
- (5) Media plurality.
- (6) Relative absence of social restraints.
- (7) News room autonomy and democracy.
- (8) Public access and social public ownership of the media.

Roumeen Islam,¹⁴ argues that freedom of the press is correlated with income: Richer countries seem to value information more, but there is variation. In other words, the economic conditions have a great effect on the extent of Free press. He also states that changes in Media freedom are affected by changes in culture and expectations, just as culture and expectations can be changed through information provided by the media.¹⁵

¹² Ibid.

¹³ As quoted by Francis Kasoma, "Press Freedom and African Charter of Human Rights." Paper presented at the ACCE conference. Cairo Egypt, October 16-23, 1992, p.2.

¹⁴ Islam, R (2002) "What the Media tell and why-An overview" in The Right to Tell: The Role of Mass Media in Economic Development; World Bank Institute, Washington, D.C. p. 2.

¹⁵ Ibid, p. 3.

Having defined, described and differentiated freedom of expression and press freedom; the importance and relevance of the two concepts to democracy will be explored.

1.2. The importance and relevance of freedom of expression and press freedom to Democracy.

Democracy, is not an easy concept to define. However, it is widely agreed that the following are essential elements of democracy:

- (a) system-wide pluralism.
- (b) freedom of expression and association.
- (c) an independent judiciary.
- (d) accountability of government to the governed.
- (e) non-partism, ethnically diverse and professional civil service.
- (f) Periodic elections.¹⁶

Basically, Democracy means “the freedom of the people in their daily lives to determine their destinies e.g. their right to build their own organisations, residences, schools, cultural institutions etc”.¹⁷ The freedom of expression plays a very key role in democracy. It is the Oxygen that democracy breathes. It serves four broad purposes:

- (i) Helps an individual attain self-fulfilment.
- (ii) It assists in the discovery of the truth.
- (iii) It enhances the capacity of an individual to participate in a democratic society.

¹⁶ Ndulo, M. (199) “The Democratic state in Africa” in Zambia Laws Journal vol 31, 1999. p. 22.

- (iv) It provides a mechanism by which to establish a reasonable balance between stability and social change.¹⁸

Freedom of the press and freedom of expression have a lot to do with furthering the ideals and the purpose of Democracy. Freedom of expression and freedom of the press are basic rights, so basic that they are to be considered almost synonymous with Democracy.¹⁹ Moreover,

“If democracy entails the right to choose from alternatives what course of action to take, it is based to a great extent on the availability of information which gives the alternatives.

If democracy involves making one’s views known to other people particularly those in government, then the press is again indispensable in enabling people individually and collectively to do this.”²⁰

Undoubtedly, freedom of expression and freedom of the press is not only crucial to democracy, but also indispensable for democracy to thrive.

1.3. The Zambian Judicial interpretation of Freedom of expression and press freedom.

To establish the importance that the courts have, in interpreting the freedom of expression and press freedom,

It is said that “the courts have an important role to play in protecting journalists and the people against persecution from the state for merely exercising the human right of the freedom of expression”²¹

¹⁷ Ibid, p. 23.

¹⁸ Chanda, A.W. opcit, p. 123.

¹⁹ Kasoma, F.P. Opcit, p. 3.

²⁰ Ibid, p. 3.

²¹ Chanda, A. W. (1998) Zambia law journal; vol 30, p. 145.

The freedom of expression and press freedom is a human right as such it is not guaranteed in absolute terms. Derogations are permitted under Article 20 (3)²² The derogation clause, is very wide. If broadly construed it completely emasculates the protection of freedom of expression the press contained in clauses 1 and 2, of article 20.²³ According to Article (3) derogations must be provided for by law and reasonably required in the interests stated therein. With reference to the 'interests' especially those in clause (a), there are expressed in very broad and vague terms. There is no definition of public safety, public order or defence. Almost any restriction can be justified on any of these grounds.²⁴ This is the perspective that the Zambian Judiciary have maintained. In the case of Micheal Chilufya Sata V. Post Newspaper Ltd²⁵ former Chief Justice Mathew Nglube said:

“I do not consider that there can be any who would seriously dispute that side by side with the freedom of speech is equally very important public interest in the maintenance of the public character of public men for the proper conduct of public affairs which requires that they be protected from destructive attacks upon their honour and character.”

Attention is drawn to the equal status placed on public interest with the freedom of speech. This equation of freedom of speech to the maintenance of public character for the proper conduct of public affairs, reveals a very broad construction of the derogations to the freedom of expression. This is further exemplified in the case of M'membe and Mware V. the people²⁶, among other things the appeal looked into the constitutionality of S.69 of the Penal Code, which dealt with defamation of the President. Furthermore, it was argued that section 69 of the constitution penal code

²² Cap 1 of the Laws of Zambia, the constitution Article 20 (3).

²³ Chanda, A. W. Op cit, p 127.

²⁴ Ibid, P.

²⁵ Unreported 1992/HP/11395 and 1993/HP/821

²⁶ (1995-1997) ZR 118 (S.C.).

conflicted and offended Article 20 and was therefore infringing upon the freedom of expression. It was held by the Supreme Court of Zambia.

“that there was nothing in Article 20 which immunised defamation a law not the test of being reasonably required if it had as its aim at least one of the interests or purposes listed in Article 20 (3).”

This clearly shows the attitude of the Zambian Judiciary when it comes to matters of the freedom of expression. There is a tendency to broadly construe the derogations, which results in negating the very protection that the constitution guarantees; guaranteeing with one hand and taking away with the other. It must therefore be noted that the Zambian legal system imposes many restrictions on the freedom of expression. Almost all the laws that impede the freedom of expression were enacted in colonial days.²⁷ Such as criminal defamation, sedition and the laws which empower authorities to ban publications.

The conclusion of this matter is captured in the following words:

“The right to free expression and free speech is qualified by exception, in some cases more heavily than in others. For another we are at different stages of development and democratisation and the courts in each country must surely have regard to the social values applicable in their own milieu.”²⁸

²⁷ Chanda, A.W. *Opcit*, P. 128.

²⁸ SATA, V. Post Newspaper Ltd, 1993/HP/1395 9 1804 and 1993/HP/1823.

CHAPTER TWO

THE THEORY AND RATIONALE OF GOVERNMENT CONTROL ON MEDIA INSTITUTIONS.

INTRODUCTION

This chapter deals with the rationale and theory of Government control of media institutions, in general. It explores the justification for government control on media institutions and highlights arguments against it. Furthermore, the general effect of government control on press freedom will be examined.

2.1. The Structural forms of Government Control of Media Institutions

In discussing the issue of media it is imperative to note that ownership of the media confer control of the media. He who owns the media controls the media. Therefore, government control of the media depends on the structure of ownership. If a government absolutely owns the media, then it has absolute control over the media.

There are several structural modes of ownership and regulation of the media. The two dominant forms of ownership of media firms around the world are state ownership and ownership by concentrated private owners, that is by controlling families.¹

¹ S. Djankov, McLush, C. Nenova, T. and Sleifer, A. (2002) "Media Ownership and Prosperity" in The Right to Tell: The Role of Mass media in Economic development: Washing D.C: World Bank Institute p. 142.

² M. E.Price, and P. Krug, (2000) The enabling environment for free and independent media; London, Oxford University P. 15.

The first regulatory form is the state monopoly ownership and media control. This is where state authorities directly supervise the media system and no voice can be heard without the permission or consent of the state.² State ownership takes different forms, for instance the British Broadcasting Corporation (BBC) is classified as state owned.³

- It is funded by government license fees and advertising. The board of governors is applied by Royal prerogative in practise the Prime Minister, and is accountable to the government, but the BBC Charter specifies a number of safeguards to ensure its independence from government interference.⁴

In other jurisdictions, state ownership is to be contrasted with the political party ownership. For example, in Kenya the Kenyan African National Union (KANU) is the ultimate owner of the daily newspaper, the Kenya Times, so that the ownership would still remain with KANU even after leaving government. The Kenya Broadcasting Corporation is state owned in the sense that control would remain with the state regardless of the party in government⁵

The second regulatory form is called private ownership, which is said to be motivated largely by the non-financial benefits such as fame and influence, obtained by controlling a Television station.⁶ This type of ownership is usually accompanied by some degree of state regulation the magnitude of such regulation varies from state to state and from cycle to cycle.⁷

³ S. Djarkov, . Opcit, p. 149.

⁴ Ibid.

⁵ Ibid, P. 151.

⁶ Ibid, P. 142.

⁷ Price, M.E. and Krug P. Opcit.

Price and Krug further argue that from the state monopoly ownership and the private ownership there exists a public or public service monopoly. This implies that the media (usually the broadcasting system) is in public and not private hands, but the governors of the system enjoy substantial autonomy and are not under the direct rule of the executive or legislative branches of government.⁸

•

However, the ideal public service monopoly is often hard to achieve. Therefore, the pure public service monopolies have become rarer.⁹ Increasingly, a mixed system has arisen in which both private and public broadcasters co-exist and substantially overlap.

2.2. THE JUSTIFICATION OF GOVERNMENT CONTROL ON MEDIA INSTITUTIONS.

Governments have an administrative obligation to provide for the good of society. With the emergence of the welfare state, governments have a legal, social and moral duty to ensure the welfare of its citizens. Hence one of the strongest justifications for government ownership and control of the media is "...to maximize the welfare of consumers by providing information through the media which is a public good."¹⁰ The derogations that exist in Article 20 (3) (a) (b) and (c) of the Zambian Constitution¹¹ serve as justifications of government involvement and control of media institutions. These include the following:

....in the interests of defence, public safety, public order, public morality or public health... for the purpose of protecting the reputations, rights and freedoms of other persons or the private

⁸ Ibid, P. 15.

⁹ Ibid.

¹⁰ Djankov, S. Opcit, P. 141.

¹¹ Cap 1 The Constitution, of Zambia, Article 20 (3) (a) (b) and (c).

lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions...¹²

These derogations to freedom of expression also serve as justification for government's control of media institutions. The Zambia Information and Media Policy¹³ States as follows:

“Government has a duty and responsibility to ensure the availability of media service at all times particularly in rural areas which are deprived of private investment in the media industry.”

Furthermore, considering the importance and the impact of information provided through broadcasting government's tend to assume responsibility.

“High levels of illiteracy along with difficulty of distributing newspapers mean that broadcasting is the only media which is accessible for many people. For the poor, newspapers may be prohibitively expensive and some people find it easier and more enjoyable to watch or listen to the news than to read it.”¹⁴

Apart from broadcasting's centrality as a source of information and news due to “...Its growing profitability governments have historically sought to control broadcasting”.¹⁵ Moreover, if the task of providing media services was entirely left with the private sector, it may under provide broadcasting services being motivated more by a desire for profit rather than a need to provide a vital service.¹⁶

¹² Ibid.

¹³ Ministry of Information and Broadcasting Services, (Zambia) (May, 1999) Information and Media Policy; Lusaka: Government, Printers, p. 1.

¹⁴ Article 19 (2002) Access to the Air waves, principles on freedom of expression and Broad cast Regulation April, 2002, p. 1.

¹⁵ Ibid, P. 1.

¹⁶ Ibid.

•
Since private broadcasters depend on market revenues, it is presumed that they are less likely to fulfil the public service mission and imposing strict public service obligations on them would endanger their existence. Therefore, in Germany the private broadcasters are only allowed to operate as long as the public broadcaster, offers a basic service.¹⁷ The control of media institutions by government definitely has some advantages. However the adage 'all that glitters is not gold' applies in this case.

2.3. Arguments against Government control of Media Institutions.

Roumeen Islam states that opponents of government monopoly of the media argue that the media can be used to manipulate people and to distort information supplied in the incumbent governments favour.¹⁸ This has an effect of precluding the electorate and consumers from making informed decisions thus under mining democracy and markets.¹⁹ The private and independent media are suggested as an alternative to government monopoly. This would ensure, a different perspective and views to the public, they enable voters and consumers to choose among many political candidates, commodities, and securities with less fear of abuse by unscrupulous politicians, producers and promoters than in a monopoly situation. Moreover, competition among media firms assures that on average, voters and consumers obtain unbiased and accurate information.²⁰

¹⁷ Djankov, S. Opcit.

¹⁸ Islam, R. Opcit.

¹⁹ Ibid.

²⁰ Djankov, S. Opcit, P 142.

Additionally, government owned media which is not subject to competition would give rise to the danger of both poor quality production and inefficiencies.²¹ Government monopoly kills competition and destroys quality. In many countries governments regulate the media industry, provide direct subsidies and advertising revenue to media outlets, restricts access to news print and information collection and harasses journalists.²²

Apart from this,

“a recent article on the BBC claims that government ownership makes it harder than it would otherwise be for other media companies to grow. The article claims that the large amounts of tax revenue that are given to the BBC gives it an advantage relative to private companies. It also contends that the BBC would be more dynamic, and therefore better able to compete with global media firms.”²³

Furthermore, high levels of state ownership reduces the effectiveness of the media in providing checks and balances on public sector behaviour. This translates into the erosion of the ‘watchdog’ status that the media should have in society, towards government.

It must also be appreciated, that the private media is not exempt from all the pressure that government may impose on the media. Statistically, private industries who own media institutions usually have close ties; either family ties or otherwise with the government. These type of private media firms are in danger of distorting information. Moreover, if they do not face competition they may be as guilty as government owners of ignoring

²¹ Ibid.

²² Ibid, P. 143.

²³ Islam, R. Opcit, p.6.

consumer preferences.²⁴ This is apparent in Italy, where a few companies control the media.

2.4. Government Control on Private media.

Government that own the media control that media especially in cases where there is a state monopoly. But it is also true that governments have manipulated laws and legal systems to legitimise their actions against the private media, and safeguard their own rights.²⁵ A close example is Zimbabwe's Daily Newspaper in line with the strict laws existing in that country.

Roumeen Islam argues that licensing the media enterprise can be an effective way of controlling the content and limit competition. The licensing restrictions may be explicit, prohibiting certain kinds of broadcasts or implicit, as when the government might not renew licenses unless it perceives the broadcasting as favourable.

Licensing laws are justified on the basis of proof of solvency, which requires all current and prospective newspapers to maintain a bank balance as collateral against any offences that their journalists might commit.

The tendency of strong government control monopoly of the media is seen to be higher in poorer countries that have more autocratic regimes and where overall state ownership in

²⁴ Ibid.

²⁵ Ibid, P. 3.

the economy is higher.²⁶ Additionally, “poor countries such as China, Egypt and Malawi the state controls T.V. Its clear that poor countries with autocratic governments are likely to have state monopoly of ownership.”²⁷

CONCLUSION

The clearest way to compare alternative theories of state ownership of the media is by focusing on freedom of the press. After all the main implication of the good government theories is that greater government ownership should, if anything lead to greater press freedom.²⁸ However, in practise this is not the case. The media tends to be more independent and journalists tend to be arrested and jailed less frequently when the media are privately owned.²⁹ Where as, government ownership and control of the media is detrimental to economic, political and social outcomes.

Having generally, stated the rational and basis of government intervention, influence, ownership and control of the media, the question is what is the Zambia experience? Chapter 3 and 4 addresses these issues.

²⁶ Djankov, S.

²⁷ Ibid, p. 158.

²⁸ Ibid.

²⁹ Ibid.

CHAPTER THREE

GOVERNMENT CONTROL OF MEDIA INSTITUTIONS IN ZAMBIA V. PRESS FREEDOM, THE PAST: 1ST REPUBLIC POST INDEPENDENCE ERA AND 2ND REPUBLIC ONE PARTY ERA.

INTRODUCTION

Zambia's recent political history falls into three distinct periods: The post-independence multiparty system, One-party rule starting in 1973, and multiparty politics after 1990.

This chapter deals with the historical account of government control of media institutions in Zambia during the 1st republic and 2nd republic. It evaluates the legal infrastructure existing at the time, with a specific tilt toward broadcasting. It also assesses the impact of the legal framework on press freedom, during that era.

3.1. 1ST REPUBLIC: POST INDEPENDENCE ERA 1964-1972

3.1.1 ZAMBIA'S BROADCASTING MEDIA HISTORY

The development of the media in Zambia, as in other African countries, was directly or indirectly linked to the objectives of the British Empire.¹ The history of the mass media in Zambia dates back to the early 1900s when white settlers established newspapers in towns along the line of rail to cater for their own interests. These newspapers were racially biased, excluding African interests from their news columns.²

¹ Banda, F. (2002) The Media and political change in Africa: Zambia, A freedom forum report on the media in Zambia; Freedom forum: Arlington Va, p. 6.

² Ministry of Information and Broadcasting (Zambia) (1999) National Media Policy: Government Printers: Lusaka, p. 9.

With regard to broadcasting the colonial government set up a radio broadcasting station for Africans in 1941 in Lusaka.³ The credit for this goes to Harry Franklin, director of information in the colonial administration.⁴

The station galvanized the support of the settler community and the few indigenous listeners who could listen to the community sets provided at chief's courts and administrative centres. Following the introduction of the so-called "saucepan special" in 1949, the first popular mass-produced radio set in Africa, and later the invention of the transistor, nearly half the African households along the railway lines had radio, and in the urban areas 8 out of 10 Africans had become listeners.⁵

In 1961, a private company the London Rhodesia Company (Lonrho) started a television station in Kitwe to serve the European Community. The station was however, purchased by the Zambian government in 1964 and incorporated in the government broadcasting station.⁶ Cinema too was racially segregated with separate film censorship boards operating for whites and blacks. Films which white settlers allowed to see were in many cases, found 'not suitable' for black people.⁷

Apart from being divided along racial lines, the media in Zambia was more developed in urban centres than it was in the rural areas. Newspapers, cinema, radio and Television served almost exclusively, people living in towns. At independence the mass media remained divided into 2 racial camps as well as between a well served urban populace and a very poorly served rural citizenry.⁸

In 1966 a broadcasting act was passed to dissolve the Zambia Broadcasting Corporation (ZBC), as Franklin's creation was called, and pave way for the

³ Ibid, P. 9.

⁴ Banda, F. Opcit, p. 14.

⁵ Ibid, p. 15.

⁶ Ministry of Information, Opcit, p. 9.

⁷ Ibid, p. 10.

⁸ Ibid.

establishment of the Zambia Broadcasting Services (ZBS) under direct governmental control.⁹

Attention is drawn to the fact that during the post independence era the Zambian government had an absolute monopoly over the broadcasting media in Zambia. This meant that the Zambian government had absolute control over the broadcasting media. There was no form of private ownership of the broadcasting media whatsoever in the Post Independence era. The following section examines the legal and institutional framework that made this government monopoly on the broadcasting media possible.

3.12 LEGAL AND INSTITUTIONAL FRAMEWORK OF BROADCASTING MEDIA IN ZAMBIA DURING THE POST INDEPENDENCE ERA.

The starting point of analysing the legal framework behind the broadcasting media in Zambia during the post independence era, is taking a look at the Zambia independence constitution. Regard must be had to the forces that precipitated the enactment of the independence constitution.

In May, 1964 a conference opened at Marlborough House in London under the Chairmanship of the Secretary of state for commonwealth relations and colonies Mr Duncan Sandys to discuss the independence constitution for Northern Rhodesia. The conference sought to determine the changes necessary under the existing constitution to establish an independent constitution should be on the lines of the 1963 constitution.¹⁰

⁹ Banda, F. Opcit p. 15.

¹⁰ Sangwa, J.P. (1994) The making and remaking of constitutions in Zambia: The need for a new perspective LL.M Thesis UNZA, p. 235.

The Bill of rights was retained with few modifications. A look at the Zambia Independence Act of 1964, which contains the Zambia Independence order schedule 2 to the order of the constitution, is necessary. Concerning the freedom of expression the independence constitution had this to say;

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class persons) and freedom from interference with his correspondence. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or that imposes restrictions upon public officers; and except so far as that provision or as the case may be, the thing done under the authority thereof is shown to be reasonably justifiable in a democratic society.¹¹

It must be noted that Zambia's Supreme law was not entirely an indigenous creation. In essence it was inherited from a colonial system of governance that had the discrimination and the oppression of the natives at heart. The primary goal of the colonialists was to further the interests of the white settlers. The spirit of that system was transferred on to the independence constitution. The instruments of governance were structured in such a way as to ensure that those that governed, oppressed those that were being governed. Furthermore, there was no reference to press freedom in

¹¹ Schedule 2 to the Zambia Independence order 1964: The Constitution of Zambia chapter 3 section 22-freedom of expression.

section 22 above. That suggests the lack of appreciation or lack of importance that was attached toward press freedom.

Apart from the constitution, the following pieces of legislation regulated the broadcasting media in Zambia during the post independence era: The Radio Communications act,¹² the Broadcasting act¹³ and the Zambia Broadcasting Corporation (Dissolution) act.¹⁴ Each one of these will be analysed separately.

The radio communications act was first enacted on 1st February, 1958 for the purpose of controlling and supervising radio communication.¹⁵ The act placed the control of and supervision over radio communication through the directions of the minister to be exercised by the postmaster general.¹⁶ Furthermore, the president was empowered on the occurrence of a public emergency or in the interests of public safety or tranquillity, to make an order authorising an officer or authority to take over licensed radio stations or any particular licenced radio station in Zambia and all premises.¹⁷

This shows the immense power and authority that the head of state had. Additionally, there is no clear definition of public safety, or public emergency, which implies that it was left to the president's discretion. With regard to licenses required in respect of radio stations the act provided that;

1. Subject to the provisions of this section, no person shall have in his possession or under his control or

¹² CAP 796 Radio Communications Act. 1958.

¹³ CAP 253, Act No, 70 of 1965 Broadcasting Act

¹⁴ CAP 2254, Act No, 71 of 1965 Zambia Broadcasting Corporation (Dissolution).

¹⁵ CAP 796 Radio Communications Act Preamble.

¹⁶ Ibid, Section 4.

¹⁷ Ibid, Section 13.

work a radio station specified and defined in the schedule otherwise than in accordance with the terms and conditions of a license issued by the postmaster-general and on payment of such fees, if any, as the Minister may prescribe.

2. Subject to the provisions of this section, no person, other than a broadcaster, shall have in his possession or under his control or work a radio transmitting station which is not a radio station specified and defined in the schedule.
3. The Post Master-General may, without charge, issue a temporary licence authorising a person to possess a radio station referred to in subsection (1) or a radio transmitting station referred to in subsection (2) for a limited period on condition that the station is not used for the purpose of carrying on a radio communication service.¹⁸

Furthermore, Licensees and operators were to be citizens of Zambia or commonwealth citizens. The licensees were not to employ a person who is not a citizen of Zambia or a commonwealth citizen to work or assist in the working or maintenance of a licensed radio station or to carry on or assist in carrying on a radio communication.¹⁹

Vast powers were also exercised by the postmaster general in connection with licences. The act stated that

The postmaster-General may at any time-

- (a) Suspend for a period specified by the postmaster-general or cancel a Licence or a certificate issued in terms of this Act; or
- (b) Refuse to issue or renew a license or certificate which may be issued in terms of this Act;
If he is satisfied, after due inquiry, that the suspension or cancellation or The refusal to issue or renew the licence or as the case may be certificate is justified in the public interest.²⁰

¹⁸ Ibid, Section 17 (1), (2), (3).

¹⁹ Ibid, Section 22.

²⁰ Ibid, Section 23 (1)

The issue of public interest seems to consistently crop up in this statute. The unfortunate thing is that it has not been properly defined, hence its exposed to abuse.

The Radio communication act also provided that:

A person who is aggrieved by the suspension or cancellation by the postmaster General to issue or renew a licence or certificate may appeal in the manner prescribed to the minister, whose decision in the matter shall be final.²¹

The above passage indicates that the Minister of Information was the ultimate authority when it came to appeals against decisions made by the postmaster general. There was no provision for a neutral appellate body which would handle these cases objectively. The entire system favoured the government officials, giving them unfettered powers and control over broadcasting media. Furthermore, each licence was issued with specific terms and conditions which would vary according to the discretion of the postmaster general.

Apart from the Radio communications act, the Broadcasting Act, came into force on 1st January, 1966. It provided for the control and regulation of broadcasting and diffusion services and matters incidental thereto.²² Similar to the radio communications act, the broadcasting act empowered the minister to provide and carry on broadcasting services for the information, education and entertainment of listeners in the Republic.²³ Additionally,

No person shall operate a broadcasting service in the republic otherwise than in accordance with the terms and conditions of a licence issued by the minister.²⁴

With regards to the cancellation of broadcasting and diffusion licences:

²¹ Ibid, Section 23 (3).

²² CAP 253, Broadcasting Art, No. 70 of 1965, Preamble.

²³ Ibid, Section 13 (2) (f) (g).

²⁴ CAP 252, section 5 (1).

The minister may at any time cancel or refuse to issue a licence or to renew a licence issued to a broadcaster or operator of a diffusion service under this act, if he is satisfied, after due inquiry, that the cancellation or the refusal to issue or renew the licence is justified in public interest.²⁵

Furthermore, the minister was able by regulation, statutory order or notice prescribed all matters by which the broadcasting act required or permitted to be prescribed. The minister, was therefore empowered to issue regulations, order or notices which provided for interalia:

the form and manner in which applications for licences are to be made and the information to be supplied in connection there with....the circumstances in which and the terms and conditions subject to which licences shall be issued.²⁶

Another statute of interest to the broadcasting media in the post independence era was the Zambia Broadcasting Corporation (Dissolution) act.²⁷ Enacted for the purpose of vesting the undertaking of the Zambia Broadcasting Corporation in the President and to provide for the dissolution of the Zambia Broadcasting Corporation.²⁸ It had nothing to do with licensing of the Broadcasting media.

3.13. PRESS FREEDOM IN THE POST INDEPENDENCE ERA

In as much as all these regulations existed for the Broadcasting media in Zambia, during the post independence era there was no privately owned broadcasting station. This means that all these regulations were only applicable or useful with regard to the government owned media.

²⁵ Ibid, section 9 (1)

²⁶ Section 13 (2) (f) (g).

²⁷ CAP 254 Zambia Broadcasting Corporation (Dissolution) Act.

²⁸ Ibid.

²⁹ Mwanakatwe, M.J. (1994) End of Kaunda Era; Multimedia; Lusaka, p. 86

As it was observed earlier, in chapter 2 of this essay, he who owns the media controls the media. Government was in absolute control of the broadcasting media. The repercussions of this negatively reflected on Press freedom. Clearly, divergent views were silenced and no an opportunity was given to voice out against government views, and policies. Politically, Zambia was a multi-party democracy in the post independence era, and even though the economy did experience a boom during the first few years, the latter part was not that rosy. Mwanakatwe states:

Internal strife among UNIP members had worsened. Kaunda's biggest problem in post-independence times was to contain growing sectionalism among members of his own political party at all levels...when Kapwepwe resigned from UNIP to form his own party, the UPP in 1971 the dye was cast.²⁹

The increasing tension in the country due to the economic decline and political dissatisfaction prompted government to stifle any form of dissenting views in order to consolidate the reign of those in authority, this did a lot to erode the existence of press freedom in Zambia during the post independence era.

The events that followed did not help the situation in anyway.

3.2. THE 2ND REPUBLIC: ONE PARTY STATE ERA 1973-1991

3.21. ZAMBIA'S BROADCASTING MEDIA HISTORY

The broadcasting media remained virtually the same after the dissolution of the Zambia Broadcasting Corporation (ZBC) and the establishment of the Zambia Broadcasting Services (ZBS). It was not until, 1988 that the Zambia Broadcasting Service was transformed into a statutory body by an act of Parliament³⁰. The Zambia

³⁰ Banda, F. Opcit, P. 15.

National Broadcasting Corporation (ZNBC) was the new statutory body. Reference to the political climate that existed at the time is necessary.

Sangwa describes the political scenario as follows:

Internal political rivalry reached its zenith during the elections to UNIP's central committee in 1967. The alliance between some ethnic groups ensured that members of some ethnic groups got seats on the committee and others were excluded largely on tribal lines. One party rule was seen as a solution to intra-party rivalry, which rocked the foundation of the independence constitution and tested the credibility of the ideas underlying it...the introduction of one party rule in 1972 was the last step in creating an authoritarian system of government.³¹

Chiluba adds to this description in stating that:

In Zambia the parallel structures of party and government, the UNIP Central Committee and Cabinet (in both cases the latter subordinated to the former) represented a wasteful duplication of resources, which led to the employment of an overblown public service-too large and too costly to maintain, even in a resource-rich country like Zambia.³²

Whatever, else were the merits of introducing a one party state, one party state, one thing was clear: It was also a means of strengthening Kaunda's own ability to overcome challenges from his political opponents"³³ In the one party system, the party is seen as the peoples party, and above all the organs of government. The party assumes the role of directing the political, economic, and social policies of development.³⁴

This political system prompted by the desire to 'unite' the country and concentrate power affected the media. The UNIP party and government was determined to

³¹ Sangwa, J.P. Opcit, P. 250-252.

³² Chiluba, FTJ (1995) Democracy: The Challenge of Charge; Multimedia: Lusaka, P 25.

³³ Sangwa, Opcit, P. 283.

³⁴ CAP 1, Constitution 1973-preamble.

eliminate all forms of opposition and create a political monopoly. To achieve this there was need to maintain monopoly in the Broadcasting media.

3.22. LEGAL FRAMEWORK IN THE ONE PARTY ERA

The 1973 Constitution, set Zambia as a one party participatory democracy.³⁵ With regards the freedom of expression, article 22 (1) of the constitution was virtually the same as the independence constitution – verbatim. Except that reference was made in the one party constitution to articles as opposed to sections that existed in the independence constitution.

There was no substantive change in the constitutional guarantee of the freedom of expression. However, it must be noted that the mindset of those in authority at that time was to maintain power at all costs. This meant abusing the fundamental freedoms and rights. It was clear that the constitution was subject to abuse especially when one considers the derogations which existed to the freedom of expression. When widely construed, the derogations could serve as an adequate justification for any action, taken against a citizen, with reference to their freedom of speech.

Another relevant piece of legislation is the Zambia National Broadcasting Corporation (ZNBC) Act of 1987. This act provides for the establishment of the Zambia National Corporation (ZNBC) and the definition of its functions and powers. It also generally provides for the control and regulation of broadcasting and diffusion services and other relevant factors.³⁶

³⁵ Chiluba, FTJ (1995) **Democracy: The Challenge of Change**; Multimedia: Lusaka, p. 25.

³⁶ Chanda, A.W. and Liswaniso M. (1999) **Handbook of media laws in Zambia**; Teresianum Press: Lusaka. P. 22.

Section 25 of the ZNBC deals with the licensing of broadcasters as follows:

Subject to the provisions of this act, no person other than the Corporation shall operate a broadcasting service in Zambia otherwise than in accordance with the terms and conditions of a licence issued by the minister and on payment of such fees as the minister, after consultation with the Board, may prescribe³⁷

Furthermore, section 31 of the ZNBC act highlights the conditions of cancellation or refusal of broadcasting and diffusion licences. This section is framed in the exact words of section 9 of the Broadcasting act of 1966. Attention is drawn to the fact that despite this inclusion of the Zambia National Broadcasting Corporation act, the status of government monopoly on broadcasting media was maintained, during the one party era.

3.23. PRESS OF FREEDOM IN THE ONE PART ERA

Freedom of the media suffered terribly under the one party regime. The broadcasting media was still entirely under government control, only this time the ruling party UNIP was supreme. In order to maintain Kaunda's reign the broadcasting media was used to indoctrinate the mindset of the masses that the policies of UNIP were not only working but the best for Zambia. Dissenting views were not entertained at all. In as much as the licensing power was vested in the minister of information and Broadcasting, Government was apprehensive about the potential opposing voices that would come from an independent media. This led to a restriction of ownership of broadcasting media, to government.

³⁷ CAP 154, Zambia National Broadcasting Corporation ACT Section 25.

CONCLUSION

The post independence era and the one party, era, did little for the advancement of press freedom. The legal framework was inherited from a colonial system that was built to oppress those that were governed. This system did not change after independence. During the one party era the same system was resurrected and reactivated to maintain the supremacy of the ruling party UNIP and to strengthen Kaunda's reign. It was in 1991 that the hour of political change had come for Zambia. The next chapter explores whether the hour for press freedom had truly come.

CHAPTER FOUR

GOVERNMENT CONTROL OF MEDIA INSTITUTIONS IN ZAMBIA V. PRESS FREEDOM (THE PRESENT) 1991-2003 THE THIRD REPUBLIC

INTRODUCTION

This chapter highlights the present level of government control of media institutions in Zambia beginning from the start of the 3rd republic. It explores the changes that took place in the legal infrastructure and examines the impact on press freedom. It also discusses the contemporary challenge of the internet on government control. Additionally, it projects the future of government control and press freedom by giving a brief assessment of the Freedom of Information bill, Independence Broadcasting Authority Act and the ZNBC amendment act.

4.1. 3RD REPUBLIC:- MULTIPARTY POLITICS ERA 1991-2003.

4.11 THE STATE OF ZAMBIA'S BROADCASTING MEDIA

The one party participatory democracy came to an end on the 17th December, 1990 when Dr Kaunda signed a parliamentary amendment to the constitution of the republic of Zambia deleting Article 4, and opened the way for any number of political parties to seek registration. This step was heralded as the birth of the 3rd republic.¹ The Movement of Multi-Party Democracy (MMD) won the elections on the 31st October, 1991 and Fredrick Chiluba was sworn in as the President of Zambia on the 2nd November, 1991.

¹ Chiluba, FTJ (1995) Democracy: The Challenge of Change; Multimedia: Lusaka p 72.

There was an atmosphere of great expectancy in the air, as the 27-year rule of president Kaunda was brought to an end. The Movement for Multiparty Democracy MMD government under president Chiluba, promised, that the hour of change had come.

Apart from multiparty plural politics; the MMD government introduced a liberalized free market economy. This translated into the privatization of several parastatal companies. This thrust of liberalization was extended to the broadcasting media in 1993.

4.12 LEGAL AND INSTITUTIONAL FRAMEWORK

With the legalisation of political parties in addition to UNIP in December 1990, the way was opened to multiparty elections. However, difficulties arose afterwards on the method of preparing a new constitution for the third republic.²

Sangwa argues that what was needed was a constitution guaranteeing a democratic and constitutional system of government. A constitution which would guarantee that the system of government was not easily manipulated to support an authoritarian regime as was the case with the independence constitution.³

Mwanakatwe states:

The MMD did not favour the proposal to appoint a Commission to draft a new constitution for the third republic for these reasons. Instead the officials of the MMD advocated re-introduction of the old constitution handed down by the British government at independence in

² Mwanakatwe, J.M. (1995) **Democracy: The Challenge of Change**; Multimedia; Lusaka, p. 72.

³ Sangwa J.P. (1994) **The making and remaking of constitutions in Zambia: The need for a new perspective** UNZA, LUSAKA LLM Thesis, p. 332.

1964 with necessary amendments reflecting the changed circumstances. Such a procedure was considered less costly, yet efficacious and fair to all because in the view of the MMD the 1964 independence constitution provided a successful framework for democracy under the multiparty political system.⁴

The government appointed a commission to draft a new constitution for the Third Republic. The commission was chaired by Professor Patrick Mvunga, the permanent secretary and solicitor-General in the Ministry of Legal Affairs. The new constitution and election law were accepted on 4th September, 1991.⁵

Sangwa observes that the 1991 constitution as a compromise constitutional framework, was a poor reproduction of the independence constitution in content, arrangement of various provisions and literal style. The arrangement of the various sections of the 1991 constitution is largely the same as that of the 1964 constitution. The Bill of rights guaranteed the same rights and provides the same derogation provisions, despite the fact that the country's human rights position has been very poor and that Bill of rights were at best merely decorative.⁶

With regards freedom of expression the 1991 Multiparty Constitution was an exact replica of the 1964 and 1973 Constitution, in all respects except that Article 20 (2) included the following:

⁴ .Mwanakatwe, J.M Opcit, p. 208.

⁵ Ibid, P. 222

⁶ .Sangwa, J.P. Ocipit, P. 333.

Subject to the provisions of this constitution no law shall make any provision that derogates from the freedom of the press.⁷

This reference to freedom of the press was a great step in the right direction. It was an indication of the commitment that the MMD government had towards the enhancement of press of freedom. For the first time in the history of Zambia, the freedom of the press was particularly and specifically referred to in the Supreme Law of the land. President Chiluba noted that:

Freedom of the press is good for democracy and cannot thrive if ideas, views and opinions do not have a channel for their effective expression.⁸

Apart from the 1991 constitution, the Zambia National Broadcasting Corporation⁹ (ZNBC) act of 1987 was still in force, with some modifications. The Zambia National Broadcasting (licensing) regulation of 1993 made provisions for the granting of licences to individuals, body corporates and an association established on a permanent basis. Furthermore, no person shall operate a radio or Television (TV) broadcasting station without a license issued by the minister.¹⁰

The conditions for a license were set out in the following terms:

An applicant for a license shall-

- a) Comply with the provisions of the Radio Communications Act;
- b) Fully describe the proposal technical facilities which he wishes to establish;

⁷ CAP 1, The Constitution of Zambia, 1991, Article 20 (2).

⁸ F. Banda, *Opcit*, P. 17.

⁹ CAP 154, Zambia National Broadcasting Act, 1987 Licensing Regulations 3 (1).

¹⁰ *Ibid*, Regulation 3 (1).

- c) Demonstrate his financial ability to construct the station and operate it for a period of at least one year; and
- d) Indicate the type of programmes he wishes to show on air, and, if the station is not an international broadcasting station, it shall also indicate the economic, social and cultural events in Zambia.¹¹

There is also a requirement of an application for a construction permit; the construction of a broadcasting facility shall not exceed one and a half years.¹² The minister has power to allow extension of time where circumstances beyond the control of the contractor prevent the completion of construction in the time specified in the permit. Notice must be published in the local media at least twice a week in two consecutive weeks.¹³

As stated above the licence application involves complying with the Radio Communications Act. The Radio Communications Act CAP 796 was replaced by the Radio Communications Act No. 25 of 1994 CAP 169.

The new Radio communications Act provided that any person was able to apply to the Communication Authority for a license.¹⁴ The Communication Authority was created and established by the Telecommunications Act¹⁵ to supervise and promote the provision of telecommunication services throughout Zambia. It is interesting to note that the Communication Authority is subject to the control of the minister. The act provides as follows:

¹¹ CAP 154, ZNBC Act, Licensing regulations, Reg. 41.

¹² CAP 154, ZNBC Act, Licensing regulations Reg. 6 (8).

¹³ CAP 154, ZNBC Act, Licensing regulations Reg. 6 (3).

¹⁴ CAP 169, The Radio Communications Act, Section 6 (1).

In the exercise and performance of its powers and functions, the Authority shall be subject to the control and direction of the Minister.¹⁶

Additionally,

In the event of any inconsistency between conditions imposed by the authority on a licence when its is granted and conditions imposed thereon by the regulations, the provisions imposed by the regulations shall prevail to the extent of the inconsistency.¹⁷

These provisions clearly place the Minister at the pinnacle of regulating the licensing process. Ministers are appointed by the President, they are delegates of the President. Therefore, the minister's interest would be to further the cause of the government/president in office. This compromises the licensing procedure, in that political interference is unavoidable in this type of a system.

4.13 INSTITUTIONAL FRAMEWORK

The Ministry of Information and Broadcasting Services is responsible for policy formulation, analysis and co-ordination and facilitates resource mobilization for implementation of government media programs. It has the task of liasing and networking on all issues related to the media industry at national, regional, and international level, to ensure media responsiveness. The ministry also liaises with other government bodies and departments through its presentations in cabinet and other fora including parliament, to ensure that the media operate in an environment which respects and supports media freedom as a backbone of democratic governance and development.¹⁸

¹⁵ CAP 469, Telecommunications Act, section 3 (1).

¹⁶ CAP 469, Telecommunications Act, section 5 (4).

¹⁷ CAP 169, Radio Communications Act, Section 7 (4).

¹⁸ Ministry of Information and Broadcasting Services (Zambia) 1999 **National Media Policy**; Lusaka, p. 22.

The Ministry of Information and Broadcasting Services, in collaboration with the Ministry of Communications and Transport, allocates radio and Television (TV) frequencies. The communications authority, which is answerable to the Ministry of Communications and Transport, is a member of the Radio and television Technical licensing committee on technical matters concerning radio or Television (TV) frequencies. Although this collaboration arrangement has worked well so far, there is need to harmonize these legislative provisions enjoyed by the 2 ministries, so that only one piece of legislation under one authority is responsible for the broadcasting industry.¹⁹

4.14. PRESS FREEDOM IN THE 3RD REPUBLIC

One fundamental occurrence in favour of press freedom was the explicit reference to press freedom in the 1991 multiparty constitution. That was a serious signal of governments awareness of the critical place that press freedom occupies, in democracy, and it is also a representation of the peoples assertion of their right to voice out, having been grossly oppressed in the Second Republic.

There was an air of high expectancy, in 1991 in Zambia. However, it increasingly became clear that the constitutional provision-the statement of press freedom-was merely decorative. Not even worth the paper it was written on. Not all was well for press freedom in the 3rd republic. The Movement for Multiparty Democracy (MMD) government appeared to fear the free spirit of the Zambian people to criticize the newly elected government, especially as the elections of 1996 drew nearer. It was 1993 that saw the liberalisation of the airwaves. Radio Christian Voice, owned by British

¹⁹ Ibid, p. 29.

evangelist-turned-businessman Bob Edmonton, was the first privately owned radio station. Set up in 1994, the 24-hour station is financed by money from business run by Radio Christian Voice International, including a farm in Zambia.²⁰ Some observers have complained that Christian organizations have received the preponderance of licenses. This is largely due to the fact that Radio Christian Voice was inclined towards 'preaching the gospel' rather than reporting on political, socio-economic issues in Zambia. Their newscasts consisted of international news items or non-political news stories. The non-religious Radio stations were more objective in their broadcasts and hence experienced a lot of resistance from Government.

A case in point, is the closure of Radio Phoenix, in August, 2001, a few weeks before the 2001 Tripartite elections. The then Information Minister Vernon Mwaanga stated that government suspended Radio Phoenix broadcasts, because Radio Phoenix failed to renew their operating license.²¹ The timing of the closure of Radio Phoenix strongly suggests that it was more of a political move than anything else. Proprietor and Managing Director Errol Hickey had this to say:

Radio Phoenix started feeling the pressure at the time when the doctor's strike was featured on its Let the People Talk programme...It was also surprising that Radio Christian Voice was given a short wave frequency when a private station is not supposed to.²²

Other individuals also observed that politics were at play in the closure of Radio Phoenix. The Editorial of the Post Newspaper stated:

²⁰ F. Banda, *Opcit*, P. 15.

²¹ The Post, 20th August, 2001, Front page.

²² The post, 27th August, 2001, P.2.

...Vernon Mwaanga's argument that Radio Phoenix has been closed because they have not paid their license renewal fees, is a cheap excuse.

The obvious and well known fact is that the MMD government wasn't pleased with Radio Phoenix's political programmes which gave many of our people chance to comment on our leader's corruption and failure to adhere to the tenets of good governance.²³

Dipak Patel said:

As former member of the information parliamentary committee which clearly stated that Zambia Daily Mail, Times of Zambia, and ZNBC owed Zambia revenue Authority huge amounts in outstanding taxes... If Radio Phoenix was closed down for failure to renew their broadcasting license the ZNBC, Daily Mail and Times of Zambia should also be shut down because they have been flouting tax remittance regulations.²⁴

The undoubtful conclusion to this matter is properly summed up in the words of Sakwiba

Sikota:

The closure of Radio Phoenix and the manner it was executed shows that the government was well bent on muzzling the independent press.²⁵

There were other incidents of the abuse of press freedom by the government. The state used force to silence journalists from the privately owned media. Enough fear had been created and maintained by the threat of detentions and the use of physical force.

On January, 17, two journalists, Kangwa Mulenga and Rachel Chiumya from the Monitor and Radio Phoenix respectively, were roughed up by police as they attempted to cover a demonstration staged by group of women's non-governmental organizations. Chiumya was chased by several police officers after being boundled into a police van. Chiumya said in an interview broadcast on Radio

²³ The Post, Wednesday 22nd August, 2001, P. 12.

²⁴ The post, Thursday, 23rd August, 2001, P. 3.

²⁵ The Post, Monday, 20th August, 2001, Front page.

Phoenix on the same day that she was petrified by the harassment and behaviour of the police.

Mulenga was chased by a plain-clothes police officer. "He said he would shoot me. Another one slapped me across the face", Mulenga said,²⁶

In terms of government attacks on private radio stations, this was clearly seen when it came to the application for expansion licenses.

On Monday 8, Information Minister, Newstead Zimba, attacked private radio stations and said they had departed from what was outlined in their original operating licenses. He said this to a three-man team at Radio Christian Voice. Mr. Zimba met Regional Manager, Andy James, station manager Charles Maboshe and General Manager Neil Mcrae. Radio Christian Voice was asking for an expansion license.

Some radio stations have become too political. Christian Voice has not fallen prey to the line of destruction. You have continued to preach the messages of Christianity. Even the president is very happy you have continued to preach and entertain the people. Government will definitely consider your application, said Mr. Zimba.²⁷

Recently, former Information Deputy Minister Webby Chipili threatened Radio Ichengelo with a revocation of their broadcasting license, due to airing of Patriotic Front leader Micheal Sata's Interview.

Information minister Newstead Zimba warned Radio Ichengelo of stern action including the withdrawal of their operating license. He said he fully supported his deputy minister Webby Chipili's threats to withdraw Radio Ichengelo's license and that he was now looking at the conditions pertaining to community radio stations including the operations of Trinity Broadcasting Network...He said he did not understand why Radio Ichengelo were insisting

²⁶ Afronet (2000) Zambia Human Rights Report 2000, Lusaka, P. 28.

²⁷ Ibid, P. 33.

on giving opposition Patriotic Front leader Micheal Sata a platform when he was in the forefront of censoring the media when he was MMD National Secretary.²⁸

Additionally, the institutional and legal framework molded the minister as the powerful, figure ultimately in total control of the licensing process. The irony of this exists in the fact that the minister of information and broadcasting is an appointee of the president. A delegate who serves at the president's pleasure. The intention of that minister therefore, would be to further the whims and caprices of the President; to strengthen the reign and rule of the President and Government of the day. Furthermore, the Minister was empowered to place particular conditions in the license. He was able to cancel the licenses, in instances where he determined in his own discretion that it was appropriate to do so. Even the courts are hesitant to interfere with the great powers of the minister, in terms of licenses and permits. For instance, in the Omega Television-Africa Press Trust Case,²⁹ Africa press Trust had challenged the minister's decision to cancel – the constructing permit for Omega Television (T.V.). The Lusaka High Court upheld Government's withdrawal of a broadcasting station construction permit. High Court Judge Tamula Kakusa said the following in judgement;

This court can only interfere with the Minister of Information decision upon being satisfied that the decision was either illegal, irrational, in bad faith or on grounds of procedural impropriety ... in any event, the Minister has power to cancel a license. I do not see any logic or reason why he cannot cancel a construction permit.

...the minister acted within the Zambia National Broadcasting Corporation Act when he cancelled the permit and the court could not interfere with that decision.³⁰

²⁸ Post, Thursday, February 27, 2003, P. 7.

²⁹ As reported in the Times of Zambia, Friday, Oct, 17, 2003, P.3.

³⁰ Ibid.

With reference to the institutional framework, there was duplication of responsibility. It must be noted that the Communications Authority is answerable to both the Minister of Information and the Minister of Communication. Apart from this the responsibility for licenses also dwells under the supervision of the Communications Authority, which is a body of professionals. Instead of reserving the application and administration of the licensing process to a professional body like the Communications Authority; the whole process has been politicized by involving the Minister. Moreso, that in the event of a conflict between the Ministerial regulations and the regulations of the Communication Authority, the Minister's regulations prevail.³¹

CONCLUSION

The 3rd Republic has been extremely eventful in terms of the cause of press freedom. For once press freedom was explicitly stated in the supreme law of the land. Furthermore, the broadcasting media was liberalized, opening a new dimension to broadcasting media in Zambia. The stronghold and monopoly that Zambia National Broadcasting corporation ZNBC, had on the media sector was finally broken. Private ownership of the broadcasting media began to take shape. However, this was not without stumbling blocks. The constitutional provisions were merely decorative, carrying little or no substance. The private media suffered great attacks, threats of closure and in some cases closure.

³¹ See CAP 169 Radio Communications Act Section 7 (4).

The 3rd republic has seen the greatest achievements for press freedom in Zambia's history, but it also witnessed some of the worst violations and infringements of press freedom. The Minister of Information remains in total control of the licensing press. Even though the airwaves were liberalized they were still open to manipulation. Another point of interest is the Zambia National Broadcasting Corporation Amendment Act, and the Freedom of Information Bill and the Independent Broadcasting Authority Act (IBA), which are products of the process of media law reform. These are discussed in greater detail in the succeeding passages.

4.2. THE CHALLENGE OF GOVERNMENT CONTROL ON THE INTERNET

The internet presents a dynamic challenge towards government control and regulation. Traditionally government has always been strongly concerned about regulating the media, especially the Broadcasting media. The internet presents a multitude of possibilities for communicating or transferring communication including person to person e-mail; online interactive chat, facilities for posting and transferring files, and reading or viewing files of printed materials, online galleries of images, online radio and Television broadcasts, online library catalogs, and online libraries.³² Apart from this it was developed, with a deliberate plan to frustrate any attempt to stop the flow of information. It is already apparent that the complex nature of this new technology will require radically different approaches to the regulation of its content. Some believe that this phenomenon will even require a reconsideration of existing laws governing the

³² P. D. Theall, (1998) Canada, Censorship and the Internet; University of Toronto Press: Montreal P. 1.

regulation of content – issues such as hate propaganda and obscenity.³³ There are two sides of concern that exist:

...those alarmed at the possibility of losing a unique international opportunity for freedom of expression and communication, for a free exchange of creative discovery in the arts and other areas of cultural production...and the concerns of those who have been persuaded that the internet is a major means of hawking pornography, terrorism, drug culture and racial hatred, thus endangering children who use the net.³⁴

It must be noted that Zambia has no clear policy on the Internet. Recently the Minister of Science and Technology Able Chambeshi announced that government had prepared a draft policy on Information and Communication Technology (ICT).³⁵ There is much to be learnt from the American experience. The U.S. Supreme Court, in the case of the American Civil Liberties Union (ACLU) V. Reno, which dealt with censorship on the Internet, will be of continuing interest to those making policy and legislation with respect to the regulation of content in a country.

President Clinton, signed into law an amendment called the communications Decency Act which was directed at banning “indecent” and “patently offensive” material by criminalizing it. The American civil Liberties Union (ACLU) and the American Library Association (ALA) challenged the constitutionality of various provisions in the act by applying for an injunction on the grounds that they were unconstitutional, violating the first and fifth amendments of the U.S. Constitution (i.e amendments

³³ Ibid.

See: WWW.Catalaw.com

³⁴ Ibid.

³⁵ Minister of Science and Technology, speech in October, 2003, ZNBC News.

guaranteeing freedom of speech and press, and due process under law respectively).

The Court stated; it is no exaggeration," the findings of fact declare to conclude that the content of the internet is as diverse as human thought...Content providers have little or no editorial control... The Justices concluded in their findings that "the internet is therefore a unique and wholly new medium of worldwide communication."³⁶

It has been widely accepted in Canada that the Internet should be subjected to those laws governing hate literature, child pornography and obscenity and that might be sued for deformation (such suits have succeeded in other jurisdictions, Australia, for example) or for assisting in violations of copyright.³⁷

Vladmir Golubev, argues that there are five basic directions of regulating internet-relations; in a legal way;

protection of personal data and private life in the Net; regulation of electronic commerce, other electronic transactions and maintenance of their security; protection of intellectual property; control over illegal information contents and unlawful conduct in the internet, legal regulation of electronic message.³⁸

These are the issues that the Government of Zambia must consider in formulating regulations on the Internet usage in Zambia.

4.3. An Assessment of the ZNBC amendment act, Independent Broadcasting authority Act, and the Freedom of Information Bill. The impact on government control of the media and press freedom (The Future).

³⁶ June, 1996, US. Supreme Court case as quoted by Theall P. 3.

³⁷ Ibid.

³⁸ Golubev, V. (2003) The Internet: Five basic directions of legal regulations, see: WWW.crime-research.org.

4.31. **The Zambia National Broadcasting Corporation ZNBC (amendment)**³⁹

The purpose of this amendment is to transform the Zambia National Broadcasting Corporation (ZNBC) from a propaganda organ of the ruling party in government to a public broadcaster, which would cater for the needs of its diverse audience. Section 7 of the amendment act sets out the functions of the corporation some of which are:-

- a) To provide varied and balanced programming for all sections.
- b) Serve the public interest
- c) Meet high professional quality standards
- j) Defend democratic Freedom
- m) Broadcast news and current affairs programmes which shall be comprehensive, unbiased and independent.⁴⁰

It must be noted that this act is already in force, however it has been observed that the tendency has been to emphasise part IV of the amendment which deals with the Television license fee, as follows.

...a person shall not have in the persons possession a television receiver otherwise than in accordance with the terms and conditions of a license by the corporation.⁴¹

³⁹ Act No. 20 of 2002.

⁴⁰ Section 7 (1), (a), (b), (c), (j), (m) of ZNBC (amendment) Act

⁴¹ section 25 (1) of the ZNBC (amendment) act.

This is what prompts the “when you pay it will show” campaign on ZNBC Television.

Sipo Kapumba, the information officer at MISA-Zambia, states:

That the ZNBC amendment provides an adequate legal framework, to ensure complete editorial independence of the ZNBC. However, the culture of fear and self-sensorship which is engraved in the top management, is too deep seated; therefore a complete change of mind set and a re-orientation of staff at ZNBC is a necessary pre-requisite, to editorial independence.⁴²

Courageous individuals are required to implement the law and enforce the rights granted to the Zambia National Broadcasting Corporation.

4. 32. THE INDEPENDENT BROADCASTING AUTHORITY ACT

The act establishes the Independent Broadcasting Authority and defines its functions, furthermore it provides for the control and regulation of broadcasting and diffusion services.⁴³

The act seeks to remove the political interference in the granting of licenses that existed through the Minister of Information and Broadcasting services. Currently, the names of the Board members are before the National Assembly for ratification. Additionally, the responsibility of appointing the Board has been taken away from the Minister. The act provides for an appointment committee who recommends people to the Minister who in turn submits them to the National Assembly for approval. This has further reduced the power of the Minister and thus provides for a more independent and transparent process of granting licenses. Another point to note, is that the act provides for its own supremacy, in the following terms:

⁴² Sipo Kapumba, interview with author, November, 2003.

If any inconsistency arises between provisions of this act and those of any other written law relating to the regulation of broadcasting and diffusion services the provision of this act shall prevail to the extent of the inconsistency.⁴⁴

Moreover, the act also states that the Independent Broadcasting Authority functions shall include the provision of guidelines for the issuing of licenses giving due regard to the need of discouraging monopolies in the industry. It is therefore clear that the central role of the Minister in issuing of broadcasting licenses has been done away with. However, this act can only effectively be implemented when the Independent Broadcasting Authority has been properly constituted and appointed. One hopes that the process of appointing the Independent Broadcasting Authority will not be unnecessarily delayed. Furthermore, the Independent Broadcasting Authority Act classifies broadcasting services into commercial, community and religious broadcasting services. Each category has its own conditions attached to the type of license that may be granted.⁴⁵ This provision takes into account the specific needs/requirements that a particular broadcasting service may have; as opposed to taking all of them together.

4.33 FREEDOM OF INFORMATION BILL

The object of this bill, was to establish the public information commission and to promote the right of access to information and to promote transparency and accountability of public officers.⁴⁶ It is unfortunate that this bill was withdrawn from the National Assembly before the 3rd reading. This bill if made law would have removed the secrecy that surrounds government offices. The effect of this was to make government

⁴³ Preamble of Independent Broadcasting authority Act No. 17 of 2002.

⁴⁴ Section 3 of the IBA Act No. 17 of 2002.

⁴⁵ Section 6 of the IBA act No. 17 of 2002.

accountable, not only to the media but the public in general. No wonder the government was hesitant in having this bill passed as law.

The government is using for an excuse the fact that they passed the two new media laws; the ZNBC (amendment) act and the Independent Broadcasting Authority act. Government desires to see how those laws will fair in terms of implementation, before embarking on enacting another media law. The failure to bring the Freedom of Information Bill into law leaves a gap in the cycle that would have totally changed the landscape of press freedom, providing a very strong legal foundation for the enhancement of press freedom in Zambia.

CONCLUSION

The ZNBC (amendment) act, the Independent Broadcasting Authority act and the Freedom of Information bill are vital pieces in strengthening press freedom in Zambia.

The ZNBC (amendment act reduces government control on the National broadcasting station while the Independent Broadcasting Authority act removes the power of the Minister where the granting of licenses is concerned. Ideally, this serves as a strong basis for enhancing media freedom. Comparatively, there has never been a time in the legal history of Zambia that such legal framework existed. Therefore, the future completion of press freedom in Zambia is much brighter than it has ever been in the past.

⁴⁶ Section 5 (2) (b) (ii) of the IBA Act.

With a transparent process of licensing of broadcasting stations and a transformed Zambia National Broadcasting Corporation (ZNBC) into a public broadcaster, there is light at the end of the press freedom tunnel.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0. INTRODUCTION

This last chapter of the essay, basically sums up the main findings and conclusions of the research. It also makes recommendations, to assist in achieving the desired goal of press freedom in Zambia.

5.1. CONCLUSIONS

Press freedom is distinguishable from freedom of expression, in the sense that the latter is an umbrella under which the former falls. Generally government control on media institutions in a country depends on the structure of ownership that exists in a particular country. The two dominant forms of ownership are state ownership and ownership by concentrated private owners. Furthermore, Government control on media institutions can be justified in the name of maintenance of public safety, public security and defence. In the Zambian experience government control of media institutions was more pronounced during the 1st and 2nd Republics. This was achieved through an inherited, colonial, legal and institutional framework which predisposed those in government to oppress those that were governed. The government owned broadcasting media held the monopoly of broadcasting, until the 3rd republic – 1993 when the airwaves were liberalized. Comparatively, government control was much more forceful in the 1st and 2nd Republic than the 3rd republic. Therefore, government control somewhat curtailed and choked press freedom in the 1st and 2nd Republics. The 2nd Republic experienced even more oppression and violation of press freedom; in the quest of silencing the divergent views to the one party participatory democracy of Dr. Kenneth Kaunda. On the other hand the 3rd republic witnessed greater strides

in the promotion, protection and enhancement of press freedom through the constitutional recognition of press freedom and the liberalisation of the airwaves. However, it is also clear that at certain instances press freedom suffered even in the 3rd republic because the explicit reference to press freedom in the 1991 constitution was merely decorative rather than substantive.

Additionally, the power of granting licences was retained by the minister of information and Broadcasting services. This implied political interference in the process of licensing. Furthermore, there was duplication with reference to the functions of the Minister of Information and Broadcasting and the Communications Authority.

With respect to the internet, it was established that this modern technology presents a challenge to government control, generally. In Zambia, the matter is complicated further because government is still in the process of formulating policy where Information Communication Technology is concerned. In America, blocking software is used to restrict the content on the internet. Zambia does not have such mechanisms in place. The effect of this is rendering ineffective the Penal Code Laws such as Section 117 obscene matters or things. Additionally, the Penal Code was enacted in 1930 therefore several of its provisions are archaic and backward.

The Independent Authority Act and the Zambia National Broadcasting Corporation (amendment) act and the freedom of Information Bill are a great legal foundation and framework for the enhancement of press freedom in Zambia. In the sense that they substantially reduce direct government control, by placing the responsibility of

licensing in an independent Body, in addition, it gives ZNBC the autonomy and the leverage to be a public broadcaster as opposed to a government mouth piece.

There is need to change the mind set of the management and staff of ZNBC. Great emphasis has been placed on implementing Part IV of the ZNBC (amendment) act which deals with the Television license fees. However, in the area of additional independence and unbiased news coverage there is much to be desired.

Furthermore, the withdrawal of the freedom of Information Bill, from the National Assembly, has left a fundamental gap in the foundation of press freedom. All in all the future of press freedom in Zambia appears to be much brighter than its past has been.

In view of the foregoing the following are Recommendations:

5.2. RECOMMENDATIONS

The constitution must guarantee the freedom of the press and other media in clear and unambiguous terms.¹ Furthermore any restriction on freedom of the press and other media must be prescribed by law. That law must be accessible, unambiguous, drawn narrowly and with precision so as to enable the individuals to foresee whether a particular action is unlawful.²

The freedom of Information Bill must be returned to the National Assembly and enacted into law. Additionally, the Independent Broadcasting Authority must be

¹ Report of the task force on media law reform, January, p. 24.

quickly appointed and begin regulating the licensing process. There must be balance in the implementation of Zambia National Broadcasting Corporation ZNBC (amendment) act, especially where additional independence and unbiased news coverage is concerned.

The Penal Code has several provisions that need to be repealed, because they work negatively against press freedom. For instance, Publication of certain publications and offences in respect of prohibited publications.³ And the publications of false news with internet to cause fear and alarm to the public.⁴ This provision is unfair and a hindrance to press freedom as there is no legal obligation on the part of those who hold public office to provide information or confirm any information that is sought by a journalist.⁵ Another section worth reviewing is the obscene matters or things⁶ This section does not define what is obscene neither does it shed light on the import of the phrase “tending to corrupt morals”. This provision should be amended to provide for the definition of obscene material. Government must develop deliberate policy on the Internet, that addresses the subject of the content allowed for those who access it. Additionally, the use of blocking software is suggested, as is the case in America.

If these measures are rigorously implemented then the future of press freedom, in Zambia is very promising.

² Ibid.

³ CAP 87 Penal Code sections, 53,54, and 55.

⁴ CAP 87 Penal Code section 67.

⁵ Report of the Sangwa Task force on Media Law reform January 2000, P. 34.

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