UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

THE ZAMBIA NATIONAL BROADCASTING CORPORATION AMENDMENT ACT

NO. 16 OF 2010 AND IT'S IMPACT ON THE STANDING OF THE ZAMBIA NATIONAL BROADCASTING CORPORATION AS A PUBLIC BROADCASTER.

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I Mundia Siyauya, Computer No. 25045253, do hereby declare that I am the author of this research proposal entitled: THE ZAMBIA NATIONAL BROADCASTING CORPORATION AMENDMENT ACT NO. 16 OF 2010 AND IT'S IMPACT ON THE STANDING OF THE ZAMBIA NATIONAL BROADCASTING CORPORATION AS A PUBLIC BROADCASTER and confirm that it is my own original work. I further declare that due acknowledgement has been given where other people's work has been used.

I therefore, declare that all errors and other shortcomings contained herein are my own.

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DEDICATION

To Madube, Tumelo and Emmanuel for your thoughtfulness, love, care and support.
ACKNOWLEDGEMENTS

I would like to express my gratitude to all those that were instrumental in the completion of this Obligatory Essay.

Iam indebted to my supervisor, Mr. J. Sangwa for the direction that he availed to me. His insight, clarity of thought sustained my interest from inception to the end of this study.

I would also like to express my gratitude to my course mates who were available to encourage me when I encountered challenges in my research and shared whatever information they thought would be helpful for this study.

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Lastly but not the least, I would like to express my family, Madube, Tumelo and Emmanuel for the patience and support as I worked on this essay.
ABSTRACT

The revised statute, Section (3) of the Zambia National Broadcasting Corporation (ZNBC) (Amendment) Act No. 16 of 2010, abolishes the ‘Appointments Committee’ thereby, effectively assigning the responsibility of appointing members of the ZNBC Board to the Minister of Information and Broadcasting Services subject to ratification by the National Assembly.

The original intention of the government was to transform the ZNBC into a public service broadcaster, accountable to the public through the legislature rather than the government’ and ‘governed by a Board which is protected against interference, particularly of a political or economic nature. This was done through Section 4(2) of the ZNBC (Amendment) Act No. 20 of 2002 which provided for appointment of Board Members through an Adhoc Appointments Committee comprising members from various sectors of society.

It is not debatable, in the light of the history of the ZNBC, that “a change of government entails a change in the Board of Directors of the ZNBC.”¹ However, it must be noted that it is a requirement for a Public Broadcaster that the “process of appointing members should be set out clearly in law, be open, democratic, should not be dominated by any particular political party or commercial interest and should allow for public participation and consultation...Overall, membership should be required to be reasonably representative of society as a whole.”²

Thus, legislation which provides for the appointment of members of the ZNBC Board by the Minister in charge of broadcasting is not open or democratic and can be said to be dominated by a particular political party. The process further does not allow for public participation or a

consultation system as provided under Section 4(2) of the Zambia National Broadcasting Corporation (Amendment) Act of 2002.

This places in jeopardy all the efforts by Board members and staff to manage the institution professionally for the benefit of the nation. For instance, with regard to coverage of elections, the Board does not remain non-partisan.

This study analysed Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No.16 of 2010 and its implications on the standing of the ZNBC as a Public Broadcaster. It examined the characteristics of a Public Broadcaster against the implications arising out of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No.16 of 2010.

It revealed that Section (3) of the ZNBC Corporation (Amendment) Act No. 16 of 2010, will not enhance but shall inhibit the process of transformation of the ZNBC from a State to a Public Broadcaster. The amendment, does not insulate the ZNBC Board against political and economic interference as well as providing a guarantee of editorial independence, contrary to the original intention to transform the ZNBC into a public service broadcaster, accountable to the public through the legislature rather than the executive wing of government and governed by a Board which is protected against interference of any kind including that of a political or economic nature.
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CHAPTER ONE
INTRODUCTION AND BACKGROUND TO THE STUDY

1.0.0 INTRODUCTION

"The Zambia National Broadcasting Corporation Act No. 16 of 1987 established the ZNBC as a government-owned statutory corporation. The broadcaster operates three radio stations and two television stations. The second TV channel – TV2 – was officially launched on 15 January 2010."¹ The Act was passed to transform what was then known as the Zambia Broadcasting Services from being a government department under the Ministry of Information and Broadcasting Services into a Statutory Body called the Zambia National Broadcasting Corporation (ZNBC).

The Zambia National Broadcasting Corporation Act No. 16 of 1987 was later amended by the Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002 which was meant to “transform the ZNBC from being a purely state controlled broadcaster, set to communicate Government programmes to a broadcaster controlled by the members of the public through an independent Board of Directors. The Government of the Republic of Zambia assumed 100 % equity holding in the Corporation.”²

In the year 2010, the government passed the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 which mainly focused on the introduction of the Television Levy and the abolishment of the “Appointments Committee” which was responsible for recommending the appointment of nine part-time directors appointed to the Minister who would

subsequently submit the names to the National Assembly for ratification by the National Assembly.”


According to the African Commission on Human and Peoples’ Rights, through the Declaration of Principles on Freedom of Expression in Africa:

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- public broadcasters should be governed by a Board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

The ZNBC is involved in the action of disseminating or communicating by sound and vision. This emanates from the definition of the term broadcasting which means “communication by wireless telegraphy by sound alone or by sound and vision” and “To transmit on radio or

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3 Section 4(2) of the Zambia National Broadcasting Corporation Act No. 16 of 1987.
television; to make known widely". The ZNBC runs both television and radio transmission. It has two television stations and three radio station (Radio One, Radio Two and Radio Four).

Further, the ZNBC is a Public Broadcaster and the main characteristic of a Public Broadcaster is that it “is owned by the public and is accountable to it. It is also funded, at least partly, out of public money.”

In addition, a Public Broadcaster should always encompass characteristics of a Public Service Broadcaster which include: “(1) contributing to a democratic and /or pluralistic society; (2) contributing to a national culture and language; (3) providing high-quality programming; and (4) meeting high journalistic standards.”

At the time of its establishment in 1987, the functions of the ZNBC were:

(a) Entertainment of all listeners in Zambia;
(b) Subject to the direction of the Minister, to carry on broadcasting services for such purposes as the Minister may specify for reception by listeners outside Zambia;
(c) To carry on or operate:
   i. such other services including diffusion services; and
   ii. Such undertakings which in the opinion of the Board are incidental or conducive to the exercise of the functions as the Board may consider expedient.

The enactment of Section (6) of the Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002 repealed the provision in the Zambia National Broadcasting Corporation Act No.16 of 1987. The functions of the ZNBC were substituted under Section (7) of the amendment by:

(a) Provide varied and balanced programming for all Sections of the population;
(b) Serve the public interest;

8 Ibid, 459-467.
9 Section (7) of the Zambia National Broadcasting Corporation Act No.16 of 1987.
(c) Meet high professional quality standards;

(d) Offer programmes that provide information, entertainment and education;

(e) Contribute to development of free and informed opinions and as such constitute an important element of the democratic process;

(f) Reflect, as comprehensively as possible, the range of opinions and political, philosophical, religious, scientific, and artistic trends;

(g) Reflect and promote Zambia’s national culture, diversity and unity;

(h) Respect human dignity and human rights and freedoms and contribute to the tolerance of different opinions and beliefs;

(i) Further international understanding and the public’s sense of peace and social justice;

(j) Defend democratic freedoms;

(k) Enhance the protection of the environment;

(l) Contribute to the realization of equal treatment between men and women;

(m) Broadcast news and current affairs programs which shall be comprehensive unbiased and independent and commentary which shall be clearly distinguished from news;

(n) Promote productions of Zambian origin; and

(o) Carry on or operate such other services including diffusion services and undertakings as in the opinion of the Board, are conducive to the exercise of its functions under the Act.10

The Board of the ZNBC is tasked with the responsibility of undertaking the functions of the Corporation.11 The importance of the role played by the ZNBC Board cannot therefore, be overemphasised.

Prior to the enactment of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010, the provision regarding appointment of ZNBC Board members stated that: “The Board shall consist of nine part-time directors appointed by the

10 Section (6) of the Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002.
11 Ibid, Section 4(1).
Minister on the recommendation of the appointments committee, subject to ratification by the National Assembly”\textsuperscript{12}

However, Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 provides, that “Section four of the principal Act is amended in Subsection (2) by the deletion, immediately after the word ‘Minister’, of the words ‘on the recommendation of the appointments committee.’ ” Thus the provision now reads: “The Board shall consist of nine part-time directors appointed by the Minister subject to ratification by the National Assembly”\textsuperscript{13}

The question of standing of the ZNBC as a Public Broadcaster has been a subject of much debate. It has been observed that:

Although there are major changes in the new Zambia National Broadcasting Corporation Act, where ZNBC is expected to operate as a ‘truly’ public service broadcaster representing a diversity of opinions and a wider range of programmes, there is still too much political interference and abuse by those holding political power. Biased TV news coverage is a clear indication that the ZNBC is far from fulfilling the obligations of a Public Service Broadcaster.\textsuperscript{14}

The revised statute, Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 abolishes the ‘Appointments Committee’ thereby, effectively assigning the responsibility of appointing members of the ZNBC Board to the Minister of Information and Broadcasting subject to ratification by the National Assembly.

Since the ZNBC Board is tasked with the responsibility of undertaking the functions of the Corporation,\textsuperscript{15} the study seeks to examine the impact of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 on the standing of the ZNBC as a

\textsuperscript{12} Section 4(2) of the Zambia National Broadcasting Corporation Act No.16 of 1987.
\textsuperscript{13} Ibid.
\textsuperscript{14} Herbert Macha, So This Is Democracy? State of Media Freedom in Southern Africa 2003 (Windhoek: Media Institute of Southern Africa), 101.
\textsuperscript{15} Ibid, Section 4(1).
Public Broadcaster. It seeks to analyse whether the ZNBC is accountable to the public in accordance with the principles that govern Public Broadcasters.

The objective of this study is to analyse Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16. The study also examines the whether Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 is in keeping with the requirements of a Public Broadcaster and makes recommendations on how the standing of the ZNBC as a Public Broadcaster may be enhanced.

Further, the study examines the implications of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 on the standing of the ZNBC as a Public Broadcaster. In particular, it examines the mode of appointment of members of the ZNBC Board including its impact on the ZNBC Board in carrying out its mandate.

The study also considers whether the mode of appointment of members of the ZNBC Board is contrary to principles of a Public Broadcaster and whether Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 diminishes the standing of the ZNBC as a Public Broadcaster. In addition, the study adds to the general body of knowledge.

The qualitative research paradigm was used to collect data for the study. The mode of Data collection primarily involved desk review of the relevant documents and legislation. Further, decisions from the Zambian Courts were used depending on their relevance and availability. These were of crucial importance not only for purposes of analysis but also due to the principle of stare decisis applicable in the Zambian judicial system.
The study comprises four chapters. The first chapter encompasses the introduction, background to the study, statement of the problem, objectives of the study, significance of the study, methodology and the outline of the study. The second chapter outlines the provisions of Section (3) the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 and the principles of a Public Broadcaster. Additionally, the third chapter analyses the provisions of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 and its impact on the Principles of a Public Broadcaster based on the research findings. Finally, the fourth chapter concludes the findings of the study and provides recommendations that attempt to propose measures aimed at enhancing the position of the ZNBC as a Public Broadcaster.
CHAPTER TWO
OUTLINE OF SECTION (3) OF THE ZAMBIA NATIONAL BROADCASTING CORPORATION (AMENDMENT) ACT NO. 16 OF 2010 AND PRINCIPLES OF A PUBLIC BROADCASTER.

2.0.0 INTRODUCTION
The aim of this chapter is to trace the background, outline and interpret the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010, Section (3). The Section further provides an outline of the characteristics or principles of a Public Broadcaster.

The Chapter therefore, sets the stage for a discussion of the implications of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 on the standing of the ZNBC as a Public Broadcaster in chapter three of the study.

2.0.1 OUTLINE OF SECTION (3) OF THE ZAMBIA NATIONAL BROADCASTING CORPORATION (AMENDMENT) ACT NO. 16 OF 2010.
In order to appreciate the provisions of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010, it is necessary to trace the background to the amendment. A trace of the legal framework governing the operations of the ZNBC necessitates a discussion of media law reforms. Felicity K Kalunga in her Obligatory Essay traces the history of media law reforms in Zambia and states that:

The beginning of media law reforms in Zambia was linked to the ascending to power of the Movement for Multi-party Democracy (MMD) in 1991. In less than a decade, the Media Law Reform Committee (MLRC) and the John Sangwa led task force were constituted to formulate appropriate records for reform. Consequently a number of bills were presented by the Minister of Information and Broadcasting Services in 2002. These bills included the Zambia National Broadcasting Corporation (ZNBC) (Amendment Bill),
the Independent Broadcasting Authority (IBA) Bill and the Freedom of Information (FOI) Bill to Parliament.\textsuperscript{16}

The ZNBC was established by an Act of Parliament, the Zambia National Broadcasting Corporation Act No.16 of 1987. The Act was passed to transform the Zambia Broadcasting Services from being a government department under the Ministry of Information and Broadcasting Services into a Statutory Body called the Zambia National Broadcasting Corporation.

The Zambia National Broadcasting Corporation Act of 1987 provided that the functions of the Corporation were:

(a) To carry on broadcasting services for the information, education and entertainment of all listeners in Zambia;
(b) Subject to the direction of the Minister, to carry on broadcasting services for such purposes as the Minister may specify for reception by listeners outside Zambia;
(c) To carry on or operate;
   (i) Such other services including diffusion services; and
   (ii) Such undertakings which in the opinion of the Board are incidental or conducive to the exercise of the functions as the Board may consider expedient.\textsuperscript{17}

Section (4) of the Zambia National Broadcasting Corporation Act No.16 of 1987 of the Laws of Zambia gave power to the Minister in charge of broadcasting to appoint the Board of Directors, Chairperson of the Board of Directors. Additionally, Section (7) empowered the Minister to give the Board general or specific directions with respect to the carrying out of the functions of the ZNBC. Further, Section 17 (1) (b) empowered the Board to appoint and dismiss the Director-General of the ZNBC but the Board had to seek the approval of the Minister in charge of broadcasting. The functions of the ZNBC as provided in the Zambia National Broadcasting


\textsuperscript{17} Section (7) of the Zambia National Broadcasting Corporation Act No.16 of 1987.
Corporation Act No. 16 of 1987 were considered by the media community as being outdated and the powers of the Minister autocratic.\(^{18}\)

The 1987 Act was consequently amended by the Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002. The Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002 was meant to transform the Corporation from being a purely state controlled broadcaster set to communicate Government Programmes to a broadcaster controlled by the members of the public through an independent Board of Directors.\(^{19}\)

The enactment of Section 4 (2) of the ZNBC (Amendment ) Act No. 20 of 2002 provided that the Board shall consist of nine part-time directors who shall be appointed by the Minister on the recommendation of the Appointments Committee and the appointments shall be subject to ratification by the National Assembly. The Zambia National Broadcasting Corporation Act changed the mode of appointing directors to the Board. It provides that:

The Minister shall for purposes of constituting the Board of Directors of ZNBC, appoint an adhoc Appointments Committee drawn from the following:
(a) One member nominated by the Law Association of Zambia;
(b) One member nominated by a non-governmental organization active in human rights;
(c) One member nominated by religious organizations; and
(d) One member nominated by the ministry responsible for information and broadcasting.\(^{20}\)

The functions of the Appointments Committee were:

(a) To invite applications from persons with such qualifications as may be specified for appointment to the Board;


\(^{20}\) Section 4 A (1), Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002.
(b) To interview the applicants and nominees referred to in paragraph (a); and
(c) Following the interview referred to in paragraph (b), to select the candidates for
appointment to the Board and to submit a recommendation to the Minister.  

It may be argued that the primary objective of the Appointments Committee is to ensure public participation in the appointment process due to its composition and functions.

Prior to the enactment of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010, a case arose where the Minister in charge of Information and Broadcasting refused, to submit some of the names recommended by the Appointments Committee to Parliament for ratification. The case is that of Fanwell Chembo and Others vs Minister of Broadcasting Services and the Attorney General,  also known as the Chembo Case.

The Chembo Case was a matter of an application for leave to apply for judicial review by Media Institute of Southern Africa, Press Association of Zambia, Zambia Union of Journalists, Zambia Media Women's Association, Society of Senior Journalists and Post Newspapers Limited against the decision of the Minister of Information and Broadcasting, the then Minister of Information and Broadcasting Services, Mrs Mutale Nalumango. The Minister of Information and Broadcasting Services:

Pursuant to the provisions of Section 7(2) of the Independent Broadcasting Authority Act No. 20 of 2002 and Section 4(2) of the Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002(1) appointed an Adhoc Appointments Committee pursuant to the provisions of the two Acts for purposes of appointing members of the Boards of the Independent Broadcasting Authority and the Zambia National Broadcasting Corporation.

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21 Ibid, Section 4 A (4).
23 Ibid.
The Adhoc Appointments Committee duly selected persons to be appointed to the two Boards. Subsequently, the Committee made recommendations to the Minister. The Minister in turn questioned some of the persons recommended. She insisted that she had power to do so. Consequently, she rejected some of the persons recommended on account, *inter alia*, that there was no representation from various sectors of the society as provided for under the two Acts. On those grounds, the Minister did not forward the names to Parliament for ratification in terms of the two Acts. Hence, the applicants commenced these proceedings before the High Court.

The applicant's contention was that the decision of the Minister, not to submit the names recommended by the Adhoc Appointments Committee appointed under the provisions of the two Acts, was so unreasonable in that no reasonable authority, directing itself to the relevant law and facts, could ever have come to such a decision; that the Minister's decision was *ultra vires* Section 7 of Act No. 17 and Section 4 of Act No. 20; that the Minister has no power to vet the names recommended by the Adhoc Appointments Committee; that the decision to vet was based on personal whims; and that the Minister's refusal to forward some names amounted to discrimination, usurping of the role of the National Assembly to ratify or refuse to ratify the names recommended.

The Minister's contention was that she acted *intra vires* Sections 7 and 4 of Acts Nos. 17 and 20 of 2002, respectively, and did so in good faith and without any discrimination; that she had a duty to ensure equity in the appointment process; and that the recommendations, once made by the Adhoc Appointments Committees, are not binding on the Minister.”

The Applicants sought a number of remedies including:

(ii) A Declaration that the decision by the Minister of Information and Broadcasting Services to stop presentation of some of the names recommended by the Adhoc Appointments Committee appointed under the provisions of the Independent Broadcasting Authority Act number 20 of 2002 and the Zambia National Broadcasting Corporation (Amendment) Act number 20 of 2002 to the National Assembly is null and void and of no effect.

(iii) An order prohibiting the Minister of Information and Broadcasting Services from stopping or vetting presentation of the names recommended by the Adhoc Appointments Committees appointed under the provisions of the Independent Broadcasting Authority Act number 20 of 2002 and the Zambia National Broadcasting Corporation (Amendment) Act number 20 of 2002 to the National Assembly.

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24 *Fanwell Chembo and Others vs Minister of Broadcasting Services and the Attorney General, S.C.Z (2007, Judgment No. 11) (Unreported).*
(iv) An order of Mandamus compelling the Minister of Information and Broadcasting Services to submit the names recommended by the Adhoc Appointments Committees appointed under the provisions of the Independent Broadcasting Authority Act number 20 of 2002 and the Zambia National Broadcasting Corporation (Amendment) Act number 20 of 2002 to the National Assembly.  

The High Court held in favour of Fanwell Chembo and the media organisations. However, the government appealed the decision of the High Court to the Supreme Court and the decision of the High Court was overturned in 2007.  

According to the Supreme Court, the word “recommendation” implied discretion on the part of the person to whom it is made to either reject or accept the recommendation. As such, the Minister was not bound by the decision of the Appointments Committee and had a de facto right to veto nominations by the Appointments Committee. The Supreme Court went further to state that once the Board had been established, it becomes independent and in its operation is beyond the control of the Minister or any other authority or person as provided for in Section (6) of the Independent Broadcasting Authority Act No.20 of 2002.

The Government passed the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 on 13th March, 2010. A casual examination of the amended piece of legislation seems to suggest that the Act was mainly meant to make provisions relating to the collection of the Television License Levy. However, the new law makes a very important amendment which changed the way in which members of the ZNBC Board are appointed.

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26 Ibid.
The Zambia National Broadcasting Corporation Act No.16 of 1987, provided with regard to the appointment of Board members that: “The Board shall consist of nine part-time directors appointed by the Minister on the recommendation of the appointments committee, subject to ratification by the National Assembly.”27 Upon enactment of the Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 states that: “Section four of the principal Act is amended in Sub-section (2) by the deletion, immediately after the word ‘Minister’, of the words ‘on the recommendation of the appointments committee.’”

Thus the provision now reads: “The Board shall consist of nine part-time directors appointed by the Minister subject to ratification by the National Assembly.” It must therefore, be noted that Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 allows the Minister to appoint members of the ZNBC Board without receiving recommendations from an appointments committee or any other person(s). It is also clear that the decision of the Supreme Court in the Chembo case28 has now been legislated and is beyond debate with regard to the power of the Minister in so far as appointing Board members of the ZNBC is concerned.

2.0.2 PRINCIPLES OF A PUBLIC BROADCASTER

In order to outline, the principles of a Public Broadcaster, it is imperative to distinguish the various systems of broadcasting. It must be observed that there is no unanimity as to the number of systems. However, this study:

Identifies four types of broadcasting in this regard:

- **State broadcasting** is controlled by the state and represents state interests. It is funded (at least in part) out of public money.
- **Government broadcasting** is controlled by the government of the day and represents the viewpoint of the executive. It too is at least partly funded out of public money.

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• Public broadcasting is owned by the public and is accountable to it. It is also funded, at least partly, out of public money.
• Public service broadcasting has a specific remit to broadcast material in the public interest. A public service broadcaster need not be publicly owned – privately owned broadcasters may have such a role – but a public broadcaster should always have a public service remit.\textsuperscript{29}

The main characteristic of a Public Broadcaster is that it “is owned by the public and is accountable to it. It is also funded, at least partly, out of public money.”\textsuperscript{30} It must be noted that a Public Broadcaster always encompasses characteristics of a Public Service Broadcaster.\textsuperscript{31} The ZNBC is considered as a Public Broadcaster.

It has been noted concerning broadcasting in Africa that:

In most, if not all, countries in Africa, broadcasting has since independence been a monopoly of the state, a situation justified on grounds that it was a public service critical to development, the fostering of unity and the promotion of national culture and identity. To achieve these policy goals, broadcasting is often located in the Ministry of Information and Broadcasting and the state broadcaster is answerable and accountable to the Minister and the state president. Consequently, all too frequently the Public Broadcaster operates largely as a mouth-piece of government, rather than serving the public interest. Consequently, principles have been developed on how to promote and protect independent broadcasting and yet ensure that broadcasting serves the interest of the public.\textsuperscript{32}


\textsuperscript{31} Ibid, 459-467.

\textsuperscript{32} Patrick Matibini, \textit{The Struggle for Media Law Reforms in Zambia}, (Lusaka: Media Institute of Southern Africa), 50.
The principles of a Public Service Broadcaster include:

2.0.2.1 Editorial Independence

The editorial independence of public service broadcasters should be guaranteed by statute.  
Allowing individuals to guarantee this principle will simply render it unattainable since individuals have their own biases and personal interests. It must be noted that:

The principle of editorial independence entails that programming decisions should be made by broadcasters on the basis of professional criteria, and the public’s right to know should be guaranteed and respected in practice. Governments should ensure that the public service broadcaster is fully independent in all editorial and operational matters. At a minimum, there needs to be a statutory guarantee of independence and clear prohibition of government interference in any respect of operations.  

2.0.2.2 Independent Governing Boards

The principle of independent governing Boards:

Entails that the operations of the broadcaster must be governed by a Board that is independent. The process of appointing members should be set out clearly in law, be open, democratic, should not be dominated by any particular political party or commercial interest and should allow for public participation and consultation...Overall, membership should be required to be reasonably representative of society as a whole.  

In short, Public Broadcasters should be governed by a Board which is protected against interference, particularly of a political or economic nature.

2.0.2.3 Tenure of Governing Boards

The principle of tenure of the governing Boards requires that the:

Members of the governing Boards should be appointed for a fixed term. The terms and conditions of membership, as well as the responsibilities of members should be set out clearly in the law. No other terms, conditions or responsibilities should apply. In particular, no Minister or government representative should have power to impose terms

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34 Op cit, 50.
or conditions or responsibilities on members. Neither individual members nor the body itself should receive instructions from anybody, other than the one that appointed the members.  

2.0.2.4 Promoting Diversity and Transmission System

Diversity and transmission system implies pluralism of broadcasting organizations of ownership of those organizations, voices, points of view and languages within broadcasting programming as a whole. Further, Public Broadcasters should strive to ensure that their transmission system covers the whole territory of the country.

2.0.2.5 Election Coverage

This principle entails that broadcasters should ensure that all election coverage is fair, equitable and non-discriminatory. The public service ambit of Public Broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

2.0.2.6 Funding of Public Broadcasting

The funding of Public Broadcasters should be adequate taking into account their remit, by means that protects them from arbitrary interference with their budgets. The remit includes broadcasting in the overall public interest, by providing a wide range of informational, educational, cultural and entertainment programming.

37 Opicit, 50.
38 Ibid, 42.
40 Opicit, 42.
41 Opicit, Article (IV).
2.0.2.7 Public Service Remit

The remit of Public Broadcasters is as already stated, closely linked to their public funding. The principle of public service remit makes it imperative that Public Broadcasters should promote diversity in broadcasting or broadcasting in the public interest, by providing a wide range of educational, informational, cultural and entertainment programmes.

Their remit should include among other matters, providing a service that:

(a) Provides quality, independent programming that contributes to plurality of opinions and an informed public;
(b) Includes comprehensive news and current affairs programming, which is impartial, accurate and balanced;
(c) Provides educational programmes and programmes directed towards children; and
(d) Promotes local programme production, including through minimum quotas for original productions, and material produced by independent producers.\(^{43}\)

2.0.3 CONCLUSION

This chapter has traced the background and an outline of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 enacted on 13\(^{\text{th}}\) March, 2010. Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 allows the Minister to appoint members of the ZNbc Board without receiving recommendations from an Appointments Committee or any other person(s) subject to ratification by the National assembly.

The chapter further outlined the principles of a Public Broadcaster, thereby, allowing for an assessment of the implication of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 on the role of the ZNbc as a Public Broadcaster in the light of the research findings presented in the next chapter of this study.

\(^{43}\) Ibid, 43.
CHAPTER THREE

ANALYSIS OF THE PROVISIONS OF SECTION (3) OF THE ZAMBIA NATIONAL BROADCASTING CORPORATION (AMENDMENT) ACT NO. 16 OF 2010 AND IT’S IMPACT ON THE PRINCIPLES OF A PUBLIC BROADCASTER

3.0.0 INTRODUCTION

In section two, this study focused on the background and an outline of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010. It also, outlined the principles of a Public Broadcaster.

This section analyses the implications of Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 on the standing of the ZNBC as a Public Broadcaster. It is of utmost importance to take cognizance of the fact that the ZNBC Board is tasked with undertaking the functions of the ZNBC. The section shall only consider principles of a Public Broadcaster that are directly affected by Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010. These include: Editorial Independence; Independent Governing Boards; Tenure of Governing Boards; and Election Coverage.
3.0.1 IMPACT OF SECTION (3) OF THE ZAMBIA NATIONAL BROADCASTING CORPORATION (AMENDMENT) ACT NO. 16 OF 2010 ON THE ZNBC

3.0.1.1 Editorial Independence

Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 provides that: "The Board shall consist of nine part-time directors appointed by the Minister subject to ratification by the National Assembly." Since the undertaking of functions of the ZNBC is vested in the ZNBC Board,\textsuperscript{44} it can be asserted that control of the ZNBC is by the Board of Directors.

The Appointments Committee was established by the Zambia National Broadcasting Corporation (Amendment) Act of 2002 and it must be noted that:

The primary purpose of the 2002 amendment to the Zambia National Broadcasting Corporation Act was to provide for the conversion of the ZNBC from a state broadcaster into a public broadcaster. A key aspect of the reformed Zambia National Broadcasting Corporation Act was that it made provision for the appointment of the ZNBC Board by the public. Section 4(2) of the Zambia National Broadcasting Corporation Act provides that the Board shall consist of nine part-time members appointed by the Minister, on the recommendation of the appointments committee, subject to ratification by the National Assembly.\textsuperscript{45}

The effect of the 2010 amendments to the Zambia National Broadcasting Corporation Act was to do away with the role of the Appointments Committee. The abolishment of the appointments Committee means that the Minister can make decisions on appointment of members of the ZNBC Board without consulting any person(s) or organization(s).

It is common knowledge that individuals are most cases likely to show gratitude to the appointing authority. Further, the Ministers’ priority is likely to be the appointment of persons

\textsuperscript{44} Section 4(1) of the Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002.

that are sympathizers to the political party in power unlike priority being to appoint persons that would carry out their duties professionally - as required of a Public Broadcaster.

From the outset, it is imperative to bear in mind that: "Editorial independence entails that programming decisions should be made by broadcasters on the basis of professional criteria, and the public’s right to know should be guaranteed and respected in practice." 46

Since the abolished Appointments Committee comprised members from various sectors of society, it is ordinarily expected that the persons appointed by the Appointments Committee would be free from editorial interference by the government officials. They would therefore, be predisposed to act using professional criteria and thereby ensure that the public’s right to know is guaranteed. The ZNBC would therefore, be a step further towards being a Public Broadcaster in this regard.

A survey by the Africa Governance Monitoring and Advocacy Project (AfriMAP), Open Society Initiative Southern Africa (OSISA) and Open Society Institute Media Program (OSIMP) revealed that:

For the time being the government is still getting directly involved in the running of the ZNBC. For example, the Ministry of Information and Broadcasting directed station managers of all commercial and community radio stations as well as the ZNBC to desist from broadcasting phone-in programmes during the pre-election period in 2008 ‘to protect non-participants from insults and accusations that cannot be rebutted by callers’. The ZNBC dutifully obliged. The broadcaster now provides a mobile phone number and asks listeners or viewers to send their comments or questions via sms text only, thus making it possible to ‘edit’ opinions. 47

In addition, prior to the enactment of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010, a research was undertaken on SADC Media Law by the Konrad Adenauer Foundation which revealed that:

The television broadcast media is still dominated by the government owned ZNBC. Unfortunately, the government still appears to wield a significant influence over the public broadcaster.

Many interviewees cited as a problem that the Board of the ZNBC is still directly government appointed. This, they argue, seems to translate into the government sometimes exercising editorial control over the ZNBC’s broadcasts. The recent banning of live TV programme, “Kwacha Good Morning Zambia” on the ZNBC was cited as an example of this. The background to the banning order is that the programme used to run every Saturday morning. The programme was presented by two independent journalists, Edem Djokotoe and Anthony Mukwita, who used to review the front pages of all national daily newspapers. The prevailing view amongst interviewees was that the government banned the programme as this segment was perceived as being too critical.\(^{48}\)

It must be observed that in 2002, the Zambian government had:

Attempted to reform the broadcasting sector by facilitating its autonomy from the state, in particular in passing the Independent Broadcasting Authority Act (“the IBA Act”) and amendments to the Zambian National Broadcasting Corporation Act (“the Zambia National Broadcasting Corporation Act”) in 2002. However, the implementation of both pieces of legislation has been dogged by controversy, in particular because the Minister of Information and Broadcasting Services wants be able to veto the recommendations of the appointments committees who are responsible for recommending members to be appointed to the respective Boards of the IBA and the ZNBC.\(^{49}\)

The enactment of the Zambia National Broadcasting Corporation (Amendment) Act of 2010, consolidated the Ministers position by enacting a law which abolished the Appointment Committee and vested the power to appoint members of the Board in the Minister in charge of Broadcasting. Whereas the initial debate under the ZNBC (Amendment) Act of 2002 was on whether or not the Minister possessed the power to vet nominations of the Appointments


\(^{49}\) Ibid, 82.
Committee, the ZNBC (Amendment) Act No. 16 of 2010 is that the Minister is the appointing authority.

Since the Appointments Committee comprised members from various sectors of society, it is ordinarily expected that the persons so appointed would be free from editorial interference by the government officials. They would be predisposed to act using professional criteria and ensure that the public’s right to know is guaranteed. If in the year 2002, the Appointments Committee, which selected Directors independently, was considered a step towards reform by researchers and the principles of a Public Broadcaster demand editorial independence, it goes without saying that its abolishment is a retrogressive step in so far as ZNBC transformation into a Public Broadcaster is concerned.

From the foregoing, the Supreme Courts’ decision in the Chembo Case, that once the Board had been established, it becomes independent and in its operation is beyond the control of the Minister or any other authority or person as provided for in Section 6 of the Independent Broadcasting Authority Act No.20 of 2002 cannot go without comment due to the fact that the principle of editorial independence requires that the appointees be appointed by an independent body. The appointment of members of the ZNBC Board cannot be divorced from the process towards achieving editorial independence and moving towards becoming a Public Broadcaster. The process towards editorial independence therefore, starts from the appointment of the members of the ZNBC Board who are tasked with the responsibility of carrying out the functions of the ZNBC.

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The point to note is that the:

Original Zambia National Broadcasting Corporation (Amendment) Act No.20 of 2002 was intended to insulate the ZNBC Board against political and economic interference as well as to guarantee the editorial independence of the broadcaster. This was in line with the provisions of article VI of the Declaration of Principles on Freedom of Expression in Africa, which states that state and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government and 'governed by a Board which is protected against interference, particularly of a political or economic nature'.

The amendment to allow the Minister to appoint members of the ZNBC Board without consultation is therefore, a step backwards in transformation of the ZNBC into a Public Broadcaster.

3.0.1.2 Independent Governing Boards

The principle of independent governing Boards:

Entails that the operations of the broadcaster must be governed by a Board that is independent. The process of appointing members should be set out clearly in law, be open, democratic, should not be dominated by any particular political party or commercial interest and should allow for public participation and consultation...Overall, membership should be required to be reasonably representative of society as a whole.

The ZNBC is controlled by a Board of Directors. In terms of the newly amended Section 4 (2) of the Zambia National Broadcasting Corporation Act, the ZNBC Board is made up of nine part-time directors appointed by the Minister, subject to ratification of the National Assembly.

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52 Ibid, 41.
It must be noted that Section 4A of the Zambia National Broadcasting Corporation (Amendment) Act of 2002 provides that the Board of the ZNBC was to be ‘appointed by the Minister, on the recommendation of the Appointments Committee, subject to ratification by the National Assembly’. The Appointments Committee comprised one member each nominated by the Law Association of Zambia, a non-governmental organisation active in human rights, by religious organisations and the ministry responsible for information and broadcasting.

The Appointments Committee was required to invite applications, interview applicants, select candidates and submit a recommendation to that effect to the Minister, who was expected to pass on the names of the selected candidates to parliament for ratification. Once the list had been ratified by the National Assembly, the Board itself, comprising nine part-time members, was to elect the chairperson and his/her deputy.

This amendment to the Zambia National Broadcasting Corporation Act No.16 of 1987 was a progressive move towards the ZNBC being a Public Broadcaster in fact at the time of its introduction:

The adhoc committee established by the Zambia National Broadcasting Corporation (Amendment) Act of 2002, made up of representatives of civil society and mandated to nominate the members of the ZNBC Board, had been widely heralded as a welcome development by media practitioners and civil society organisations. The new Amendment Act repeals section 4A of the 2002 Act and thus the establishment of the adhoc appointments committee. Consequently, the power of appointing nine part time members of the ZNBC Board reverted to the Minister of Information and Broadcasting Services once more as provided for in the ZNBC principal Act of 1987. To make things worse, the Minister is no longer required to submit names of the ZNBC Board to parliament for ratification.

In a submission to the parliamentary committee on information and broadcasting services prior to the passing of the bill, MISA-Zambia had argued that the appointments
committee should remain ‘to ensure that citizens of the country can have a stake in the public service broadcaster.\textsuperscript{53}

The argument by MISA that the appointments committee should remain ‘to ensure that citizens of the country can have a stake in the public service broadcaster’ was obviously meant to ensure that the ZNBC remained as close as possible to meeting the requirements of a Public Broadcaster.

With the power to appoint being vested in the Minister, the requirement of ZNBC having an independent governing Board as defined in this study and as a required characteristic for a Public Broadcaster is therefore, not met by the ZNBC due to the need for the appointment process to be “open, democratic, should not be dominated by any particular political party or commercial interest and should allow for public participation and consultation...Overall, membership should be required to be reasonably representative of society as a whole.”\textsuperscript{54}

An appointment process of Board members of a Public Broadcaster which allows the Minister, who is a member of a political party, to make all the appointments without consulting any organization or person(s) is devoid of the required attributes of openness, democratic, not dominated by any particular political party or commercial interest including public participation and consultation. Thus rendering the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 retrogressive as far as the drive towards the ZNBC being a Public Broadcaster is concerned.

\textsuperscript{53} Op cit.,p 71.
\textsuperscript{54} Ibid.,p 41.
3.0.1.3 Tenure of Governing Boards

The principle regarding tenure of the governing Boards of a Public Broadcaster requires that the
"Members of the governing Boards should be appointed for a fixed term ... In particular, no
Minister or government representative should have power to impose terms or conditions or
responsibilities on members. Neither individual members nor the body itself should receive
instructions from anybody, other than the one that appointed the members.”55

Under this principle, there are three major issues that need to be met for a state broadcaster to be
transformed into a Public Broadcaster. Namely, that “the members of the Board should be
appointed for a fixed term; No Minister or government representative should have power to
impose terms or conditions or responsibilities on members; and neither individual members nor
the body itself should receive instructions from anybody, other than the one that appointed the
members.”56

As to the requirement of fixed term of appointment for the ZNBC Board, members, Section (5)
of the Zambia National Broadcasting Corporation Act of 1987 provides that “the directors hold
office for a renewable period of three years.” On this aspect, the Zambia National Broadcasting
Corporation Act No. 16 of 1987 was not amended and therefore, did not depart from the
requirements of a Public Broadcaster.

It is important to note that the result of the 2010 amendments to the Zambia National
Broadcasting Corporation Act is to do away with the role of the Adhoc Appointments Committee
which used to be in control of the appointments process and would recommend persons to the

55 Patrick Matibini, The Struggle for Media Law Reforms in Zambia. (Lusaka: Media Institute of Southern Africa,
2006), 41.
56 Ibid, 41.
Minister for appointment to the ZNBC Board. Thus the second requirement that no Minister or government representative should have power to impose terms or conditions or responsibilities on members is not tenable in Zambia. The Minister has power to appoint sympathizers to the ruling party and ordinarily, people have a tendency to be loyal to the appointing authority. The example used above is also applicable here where:

For the time being the government is still getting directly involved in the running of the ZNBC. For example, the Ministry of Information and Broadcasting Services directed station managers of all commercial and community radio stations as well as the ZNBC to desist from broadcasting phone-in programmes during the pre-election period in 2008 ‘to protect non-participants from insults and accusations that cannot be rebutted by callers’. The ZNBC dutifully obliged. The broadcaster now provides a mobile phone number and asks listeners or viewers to send their comments or questions via sms text only, thus making it possible to ‘edit’ opinions.\(^{57}\)

Thus the government issued an instruction bordering on operations of the ZNBC, thereby interfering with the operations of the ZNBC Board.

Thirdly, the requirement that neither individual members nor the body itself should receive instructions from anybody, other than the one that appointed the members,\(^{58}\) leads to a retrogressive situation since it means in the Zambian context, that the Minister, who is the appointing authority is the only one allowed to issue instructions to the ZNBC Board.

Inspite of the compliance to requirements of a Public Broadcaster by having a Board with a fixed tenure of three years, the ZNBC still does not comply with the other two requirements for a Public Broadcaster. In particular, the Minister or government representatives have power to

\(^{57}\) Chris H Chirwa, Jeanette Minnie and Hendrik Bussiek, Public Broadcasting Series: Zambia, A survey by the Africa Governance Monitoring and Advocacy Project (AfriMAP), Open Society Initiative Southern Africa (OSISA) and Open Society Institute Media Program (OSIMP), (Johannesburg: Open Society Initiative for Southern Africa, 2010), 72.

\(^{58}\) Op cit, 41.
impose terms or conditions or responsibilities on members of the ZNBC Board. This is through
the power to appoint members of the ZNBC Board. Further, the requirement that instructions to
the Board must only emanate from the appointing authority as required of a Public Broadcaster
puts the ZNBC at variance with the requirements of a Public Broadcaster since the Minister in
charge of broadcasting is also the appointing authority. Thereby, leading to conflict of interest,
since the Minister is a politician who represents a particular political party and is bound to be an
interested party who may not have the ability to be object.

3.0.1.4 Election Coverage

This principle entails that broadcasters should ensure that all election coverage is fair, equitable
and non-discriminatory. The public service ambit of Public Broadcasters should be clearly
defined and include an obligation to ensure that the public receives adequate, politically balanced
information, particularly during election periods. It should be stated that this principle is
closely related to that of ‘Editorial Independence.’

Where election coverage is concerned, the “ZNBC is, according to the Amendment Act of 2002,
and even the Electoral Act (2006) supposed to, offer balanced, non-partisan and fair news reports
of the political landscape. It is now a public broadcaster and is expected to operate in the public
interest. This is a critical requirement for furtherance of democracy and good governance.”

59 Ibid, 42.
60 Op cit, Article (VI).
61 Fidelis H. Muzyamba and Brian M. Lingela, Report Of The Study into the Zambia National Broadcasting
Corporation (ZNBC) News Coverage During the 2006 Local Government, Parliamentary and Presidential Election,
In *Zambia Democratic Congress vs Zambia National Broadcasting Corporation, Times of Zambia Limited, Zambia Daily Mail Limited and the Attorney General*, the Zambia Democratic Congress, (ZDC) a political party led by Mr Dean Mung’omba complained that the Zambia National Broadcasting Corporation had refused to offer coverage for the political party’s activities. The ZDC alleged that the ZNBC had on several occasions not attended the party’s activities inspite of being invited to attend and offer media coverage. Where the ZNBC had been in attendance at ZDC activities, the coverage was often negative. The ZDC further stated that activities of a similar nature conducted by the by the ruling party had been covered.

Further, a research was conducted by the Media Institute of Southern Africa (MISA) aimed at determining whether or not ZNBC provides fair, balanced, impartial coverage of all contesting political parties during Zambia’s local government, parliamentary and presidential elections that were scheduled for 28 September 2006 due to complaints from different sectors of society on the manner of coverage of ZNBC news during the election period.

On coverage by ZNBC Radio, the study revealed that:

There continues to be partisanship in favour of the ruling party and government in the news coverage of ZNBC. The ruling Government and its Movement for Multiparty Democracy (MMD) continued to receive more coverage as compared to other contesting political parties. They continued to be the most covered party comparatively speaking. the Government / MMD had a whooping 75 percent of the ZNBC radio news hole in the period, compared to 6.3 for the Patriotic Front (PF), 10.4 percent for United Democratic Alliance (UDA), and 4.2 percent each for Heritage Party (HP) and the All People’s Congress (APC). Out of a total of 48 stories recorded during this period, 36 were for the MMD, 3 for the PF, 5 for the UDA and 2 for the HERITAGE party and APC respectively.

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64 Ibid, 4.
As regards the ZNBC Television coverage:

Like with Radio above, a similar situation obtains for television where 57.9 percent of the political stories were found to relate to the government/ ruling party, 15.7 percent to the Patriotic Front, and 14.3 percent to the UDA. 2.9 per cent went to the Heritage Party and 5.7 percent to the All People’s Congress. .. the ruling party and government had more than half the coverage than any other single party during this period! This does not augur well for Zambian democracy because it prevents competition on fair and even ground. Democracy thrives on the free-flow of information, especially during election times. 65

The reason for the biased coverage by the ZNBC is due to appointment to the ZNBC Board of persons that shall be loyal or easily influenced in favour of the political party in power since it has been observed that:

The Zambia National Broadcasting Corporation Act gives the government authority over editorial decisions, management and financing...A change of government entails a change in the Board of Directors and the Director General. This compromises every effort to manage the institution professionally for the benefit of all. This is evident during elections, when it is impossible for the Board and Director General to remain non-partisan. 66

It can therefore, be posited that Section 3(1) of the Zambia National Broadcasting (Amendment) Act No. 16 of 2010 abolished the Adhoc Appointments Committee and empowered the Minister to appoint Board members shall not enhance the status of the ZNBC as a Public Broadcaster. The Minister can change the ZNBC Board of Directors with speed since there is no need to wait for any recommendations from the Adhoc Appointments Committee which comprised members from various sectors. The Minister can therefore, appoint sympathizers of the party in power with ease.

65 Ibid.4
The power of the Zambia National Broadcasting Corporation Board can be illustrated with regard to appointment and disappointment of senior management of the ZNBC:

In October 2009, the ZNBC Board of directors announced the termination of the contracts of the Director-General, director of programmes, director of finance and director of marketing and sales, and decided not to renew the contract of the director of human resources that was due to expire at the end of November 2009. In June 2010, Edward Mupeso, who had served in the position between 2001 and 2004, was again appointed as the Director-General. The new directors of programmes, finance, marketing and sales, and human resources were appointed on 1st July, 2010. 67

An important issue to note is that:

The director of programmes deals with all editorial issues, but the Director-General, as the chief executive, is kept posted with any major development in the editorial section. In the words of former Director-General, Joseph Salasini, ‘I have to be involved in editorial issues – controversial or major – as the buck ends with me.’ The Director General is thus effectively also the editor-in-chief. This might create conflicts of interest with editorial decisions possibly becoming subject to commercial or other extraneous considerations. 68

Section 3(1) of the Zambia National Broadcasting (Amendment) Act No. 16 of 2010 therefore, has a negative effect on the standing of the ZNBC as a Public Broadcaster since it empowers the Minister to appoint members of the Board in an undemocratic manner.

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68 Ibid, 73-74.
3.0.1.5 Public Service Remit

The principle of public service remit makes it imperative that Public Broadcasters should “promote diversity in broadcasting in the overall public interest, by providing a wide range of educational, informational, cultural and entertainment programming.” 69

In attaining the aspect of Public Remit, independence of the ZNBC management is crucial. Section 3(1) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 amended the law in a manner that caused it to revert to the situation in the Second and Third Republic before the enactment of the ZNBC (Amendment) Act No. 20 of 2002 which was a move towards making the ZNBC a Public Broadcaster.

The ZNBC (Amendment) Act No. 20 of 2002 provided for the establishment of an Adhoc Appointments Committee which was abolished by Section 3(1) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 which placed the responsibility for appointment of Board members solely on the Minister subject to ratification by the National Assembly.

The effect is that both the Board and management at ZNBC are basically appointed by the government. This is retrogressive because of the influence by government officials on the content of both television and radio programming. For instance, it has been stated that:

Through the state appointment of media heads, as was the case in the Second Republic, it was possible even in the Third Republic for Government to influence the orientation of news and programme content on both national radio and television.

For example, in December of 1991, just two months after the MMD came into power, the *Weekly Post* reported that contrary to its promises to secure press freedom, the MMD Government had, in the few weeks it had been in power, tightened its control over operations of the editorial staff at the Mass Media Complex which houses ZNBC, ZANA and ZIS.

It said that just the week before, ZNBC sub-editor Nkamu Nkamu had been grilled by three Ministers over an editorial decision in which he gave a Ministerial statement on education prominence over an African soccer match between Power Dynamos and BCC Lions of Nigeria.

The then Minister without Portfolio, General Miyanda, and the then Information Minister Stan Kristafor and his deputy Danny Pule had driven to the complex to castigate Nkamu for what they claimed was his underplaying of the game at which President Chiluba had officiated. Nkamu had led the 19.00 hours TV News bulletin with a statement by the then Education Minister Arthur Wina on the rehabilitation requirements of schools, estimated at K2 billion. This behavior of the new government demonstrated that the importance of a news item was adjudicated on the political status of the source.70

The most important outcome of the example above is that the Minister has the power to influence the programming by the ZNBC which may negatively impact diversity in broadcasting or broadcasting in the public interest, by providing a wide range of educational, informational, cultural and entertainment programmes as required of a Public Broadcaster.

### 3.0.2 Conclusion

This Chapter has evaluated the research findings, the provisions of the Zambia National Broadcasting Corporation Amendment Act No. 16 of 2010 and the principles of a Public Broadcaster.

A number of civil society organisations are agreed that the ZNBC is falling short of expectations as a Public Broadcaster. For instance Fr Paul Samasumo, Executive Director of the Catholic Media Services and spokesperson of the Zambia Episcopal Conference, said that the “ZNBC has

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been over-politicised by politicians who have such a hold on it that it is failing to fulfill its mandate adequately.\textsuperscript{71}

Further, according to a local Non-governmental Organisation, Women for Change:

The ZNBC as a public service broadcaster fell short of its mandate in its programming and reporting as it was mostly seen to be or indeed serving only the current government. Its tone and choice of programming especially in respect of current affairs and news were far below what was expected of a public service broadcaster.

Women for Change attributed this poor performance to apparent or perceived pressure on the broadcaster under the direct influence of the government through the Ministry of Information and Broadcasting – even though the ministry has often denied exerting such influence. This, the organisation said, made the ZNBC accountable mainly to the incumbent government and less to the public as a whole.\textsuperscript{72}

\textsuperscript{71} Chris H Chirwa, Jeanette Minnie and Hendrik Bussiek: Public Broadcasting Series: Zambia, A survey by the Africa Governance Monitoring and Advocacy Project (AfriMAP), Open Society Initiative Southern Africa (OSISA) and Open Society Institute Media Program (OSIMP) (Johannesburg: Open Society Initiative for Southern Africa, 2010), 111.

\textsuperscript{72} Ibid, 115.
CHAPTER FOUR

CONCLUSIONS AND RECOMMENDATIONS

4.0.0 INTRODUCTION

The study examined the implications of Section 3(1) of the Zambia National Broadcasting (Amendment) Act No. 16 of 2010 on the standing of the ZNBC as a Public Broadcaster. The second chapter outlined the provisions of the Zambia National Broadcasting (Amendment) Act No. 16 of 2010, Section 3(1) and the principles of a Public Broadcaster. The third chapter, on the other hand, analysed whether the provisions of Section 3(1) of the Zambia National Broadcasting (Amendment) Act No. 16 of 2010 are in line with the principles of a Public Broadcaster.

This chapter reflects on the major issues raised in the study and makes recommendations.

It must be recalled that the Zambia National Broadcasting Corporation was established by the Zambia National Broadcasting Corporation Act No. 16 of 1987. The 1987 Act was later amended by the Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002 which was meant to “transform the ZNBC from being a purely state controlled broadcaster, set to communicate Government programmes to a broadcaster controlled by the members of the public through an independent Board of Directors. The Government of the Republic of Zambia assumed 100 % equity holding in the Corporation.”\(^73\)

In the year 2010, the government passed the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 which mainly focused on the introduction of the Television Levy and the abolishment of the “Appointments Committee” which was responsible for recommending the appointment of nine part-time directors appointed to the Minister who would

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subsequently submit the names to the National Assembly for ratification by the National Assembly.”

The Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010 Section (3) provides: “Section four of the principal Act is amended in Subsection (2) by the deletion, immediately after the word ‘Minister’, of the words ‘on the recommendation of the appointments committee.’”

Thus the provision now reads: “The Board shall consist of nine part-time directors appointed by the Minister subject to ratification by the National Assembly.”

4.0.1 CONCLUSIONS

The foregoing reveals that the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010, Section (3) will not enhance but shall rather be a fetter in the process of transformation of the ZNBC from a State to a Public Broadcaster.

The implications of the 2010 amendment are immense and include:

4.0.1.1 Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010, Confers More Power on the Minister in Charge of Broadcasting

The revised statute, Section (3) of the Zambia National Broadcasting Corporation (Amendment) Act No. 16 of 2010, abolishes the ‘Appointments Committee’ thereby, effectively assigning the responsibility of appointing members of the ZNBC Board to the Minister of Information and Broadcasting Services subject to ratification by the National Assembly.

75 Ibid.
The Zambia National Broadcasting Corporation (Amendment) Act No.20 of 2002 was:

Intended to insulate the ZNBC Board against political and economic interference as well as to guarantee the editorial independence of the broadcaster. This was in line with the provisions of article VI of the Declaration of Principles on Freedom of Expression in Africa, which states that ‘State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government’ and ‘governed by a Board which is protected against interference, particularly of a political or economic nature’.

The amendment of the Zambia National Broadcasting Corporation (Amendment) Act No.20 of 2002 is therefore, contrary to the original intention to transform the ZNBC into a public service broadcasters accountable to the public through the legislature rather than the government’ and ‘governed by a Board which is protected against interference, particularly of a political or economic nature.’

Infact the position is akin to that under the Zambia National Broadcasting Corporation Act No.16 of 1987 where the government could interfere both directly and indirectly. This is made more so because public media is still owned, controlled and funded by the government. Ownership entails appointment of board members deemed acceptable by the executive.

Becoming a Public Broadcaster must be an aspiration of all African Union members such as Zambia. This is because, according to the Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17-23 October, 2002, Article (VI):

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

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76 Chris H Chirwa, Jeanette Minnie and Hendrik Bussiek, Public Broadcasting Series: Zambia, A survey by the Africa Governance Monitoring and Advocacy Project (AfriMAP), Open Society Initiative Southern Africa (OSISA) and Open Society Institute Media Program (OSIMP) : (Johannesburg: Open Society Initiative for Southern Africa,2010), 72.

• Public broadcasters should be governed by a Board which is protected against interference, particularly of a political or economic nature;
• the editorial independence of public service broadcasters should be guaranteed;
• Public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
• Public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
• The public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.  

Section (3) of the Zambia National Broadcasting (Amendment) Act of 2010, abolished the Adhoc Appointments Committee and gave power of appointment of ZNBC Board members to the Minister. This is against the principles of a Public broadcaster. In particular, the principle of independent governing Boards, as discussed in this study, which:

Entails that the operations of the broadcaster must be governed by a Board that is independent. The process of appointing members should be set out clearly in law, be open, democratic, should not be dominated by any particular political party or commercial interest and should allow for public participation and consultation. Overall, membership should be required to be reasonably representative of society as a whole.

The principle on “Independent Governing Boards” as discussed in Chapter three above is also similar to the Principle under the Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17-23 October, 2002, Article (IV) which provides that: “public broadcasters should be governed by a Board which is protected against interference, particularly of a political or economic nature.”

Therefore, contrary to what is expected of a Public Broadcaster, the appointments by the Minister are therefore, not open, democratic can be said to be dominated by a particular political party and does not allow for public participation or consultation system under the Zambia

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79 Ibid, 41.
National Broadcasting Corporation (Amendment) Act No. 20 of 2002 where an Adhoc Appointments Committee comprising members from various sectors of the public was in charge of appointing members of the ZNBC Board.

**4.0.1.2 Increased Power of the Minister to Appoint Members of the ZNBC Board Diminishes the Standing of ZNBC as a Public Broadcaster**

The fact that the power to appoint members of the ZNBC Board lies with the Minister, has a negative cross-cutting effect with regard to all the principles of a Public Broadcaster. It must be recalled that the Board of the ZNBC is tasked with the responsibility of undertaking the functions of the Corporation.\(^8^0\)

Although the Supreme Court stated in the *Chembo Case*,\(^8^1\) that once the Board had been established, it becomes independent and in its operation is beyond the control of the Minister or any other authority or person as provided for in Section 6 of the Independent Broadcasting Authority Act No. 20 of 2002, the reality is far from this assertion by the Supreme Court.

As observed by a number of researchers already cited in this study, the ZNBC has been plagued by poor performance in terms of being a Public Broadcaster due to appointment of the Board by the executive.

The Non-Governmental Organisation (NGO), Women for Change stated that:

> The ZNBC as a public service broadcaster fell short of its mandate in its programming and reporting as it was mostly seen to be or indeed serving only the current government. Its tone and choice of programming especially in respect of current affairs and news were far below what was expected of a public service broadcaster. Women for Change

\(^{80}\) Section 4(1) of the Zambia National Broadcasting Corporation (Amendment) Act of 2002.  
attributed this poor performance to apparent or perceived pressure on the broadcaster under the direct influence of the government through the Ministry of Information and Broadcasting – even though the ministry has often denied exerting such influence. This, the organisation said, made the ZNBC accountable mainly to the incumbent government and less to the public as a whole.\(^{82}\)

Further, Kenny M. Makungu had a similar observation when he stated that, “through the state appointment of media heads, as was the case in the Second Republic, it was possible even in the Third Republic for Government to influence the orientation of news and programme content on both national radio and television.”\(^{83}\)

Again, Father Paul Samasumo, the Executive Director of the Catholic Media Services and spokesperson of the Zambia Episcopal Conference stated that:

ZNBC has been over-politicised by politicians who have such a hold on it that it is failing to fulfill its mandate adequately. Successive governments that have ruled Zambia – even in colonial times – have never really allowed the organisation to fulfill its public mandate and vision. The few documents and aspirations from ZNBC that I have had a chance to look at are truly beautiful and indicate that this organisation or indeed the people who are working there are aware of the requirements of what a public service broadcaster should do. They fall short when it comes to implementation.

My interactions with the staff at ZNBC seem to indicate a certain level of frustration. Though they are professionals, there is a feeling that they always have to look over their shoulders in their day to day work. This results in self-censorship. The problem is that it is difficult to provide any proof for this unless former and present employees come out and speak out. Clearly for the sake of their livelihoods they dare not say anything.

In my humble opinion ZNBC does not fulfill the expectations of various non-government stakeholders. This explains why free to air channels and private radio and TV stations are preferred to ZNBC which is viewed as too biased in favour of government. This is more apparent during election times when government Ministers and MMD politicians are given preference over opposition candidates and the electoral guidelines thrown to the wind by ZNBC itself.”\(^{84}\)

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\(^{84}\) Op cit, 111.
Another comment by a former employee of the ZNBC and now a: "A Lusaka-based World Bank Communications Specialist, Jumbe Ngoma, said the ZNBC was not what one could even in generous terms describe as a public service broadcaster, but rather a ‘government radio and television station’ which wielded a lot of public influence because of its reach."  

The assessment by prominent Lawyer, Mr. John P. Sangwa summarises the issue when he states that:

The Zambia National Broadcasting Corporation Act gives the government authority over editorial decisions, management and financing...A change of government entails a change in the Board of directors and the Director General. This compromises every effort to manage the institution professionally for the benefit of all. This is evident during elections, when it is impossible for the Board and Director General to remain non-partisan.  

4.0.2 RECOMMENDATION

There is need for amendment of Section (3) of the Zambia National Broadcasting (Amendment) Act which reads: “The Board shall consist of nine part-time directors appointed by the Minister subject to ratification by the National Assembly” has negative implications on the standing of the ZNBC as a Public Broadcaster, is amendment is necessary if the ZNBC is to be transformed into a Public Broadcaster. The amendment must be in line with the principles of a Public Broadcaster to ensure that the appointment of ZNBC Board members is done in a transparent and open manner which is protected from economic or political interference.

The legislation must be amended in a manner which avoids doubt or ambiguity. It must provide that an Adhoc Appointments Committee comprising members from various sectors of society (as was provided under Section (4) of the Zambia National Broadcasting Corporation (Amendment)

85 Ibid, 113.
Act No.20 of 2002, shall be responsible for appointment of the nine ZNBC Board members. The statute must further provide that the Minister in charge of Broadcasting shall have no authority to vary, amend or alter the recommended list of names by the Adhoc Appointments Committee before submission for ratification by the National Assembly. Additionally, the statute must provide a time-frame within which the names must be submitted to the National Assembly.
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