The Quest for Regulation of the Media in Zambia

By

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LUSAKA

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AUTHOR'S DECLARATION

I Mary Katumwa Kamwengo do hereby declare that this directed research paper is my own work and that to the best of my knowledge, no similar piece of work has previously been submitted for a degree at this or any other university. All other people's work consulted have been duly acknowledged.

Signature: ...........................................

Date: ..............................................

9/02/09
APPROVAL

This directed research of Mary Katumwa Kamwengo is approved as partial fulfilment of the requirements for the award of the Bachelor of Laws (LL.B) by the University of Zambia.

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Date
ABSTRACT

A democratic society cannot function properly without the participation of the media. The media play the special role of *watchdogs of society*, by providing the public with information that enable them to make informed decisions on issues of governance. While it is recognized and appreciated that the media are watchdogs of society, it is equally recognized that they do not operate in a vacuum and therefore have to observe societal norms such as respect for decency, truth telling and responsibility. This is because accurate and reliable information is the lifeblood of the democratic process. However, the press are often seen to rely on government propaganda and be influenced by commercial values when reporting political and social issues. These concerns have resulted in calls for the press to be more socially responsible. Generally, the press have come to realise that some form of regulation of media ethics is essential because failure to regulate will result in further erosion of public confidence in the media. Accordingly, in the last few years, Zambia has found itself pushed in the debate on media regulation. The question has been what sort of regulation will ensure the press behaves ethically; should the media be encouraged to regulate itself, or is statutory regulation necessary?

In 1995, the government sought to impose statutory regulation and control of the media by initiating legislation to establish a Media Association of Zambia to regulate the ethical conduct of journalists. This institution would have a licensing system that would ensure that no media organization could operate without its staff subscribing to it. However, the government’s decision to create such an institution was resisted by members of the media fraternity. Later, the government attempted to draft a Bill to allow for the establishment of a Media Council of Zambia (MCZ), with similar functions to those of the Media Association of Zambia. Again, the media fraternity prevented the Bill from being enacted into law. Thereafter, the Zambian media practitioners in recognition of the need for an ethical code of conduct, agreed to form a media-driven, independent, self-regulatory body that would promote press freedom and uphold the principles and standards of journalism. In 2004, the Media Council of Zambia (MECOZ) was formally launched with the pledge that it would uphold the highest professional conduct and ethics of journalism in Zambia. Its primary responsibility is media self-regulation without interference from government or judicial supervision. This directed research paper aims at investigating whether or not media ethics in Zambia can be best regulated by statutory control or by self-regulation.
DEDICATION

I would like to dedicate this research paper to my late father Professor Martin Kamwengo who taught me the value of education and will forever be an inspiration. I will always remember your wise words: "Knowledge is power. Although a man may not have money, if he has education then he is wealthy."
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Finally, I would like to thank all my friends for their words of encouragement when life seemed to get the better of me. I’ll always hold a special place for you in my heart.
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CHAPTER ONE

NATURE AND RATIONALE OF REGULATION OF THE MEDIA

1.1 Introduction

A free and independent media is the foundation of any democratic society. In terms of governance, the media has a crucial role of supplying the public with information that will enable citizens to make leaders accountable and transparent in their operations. In order for the media to fulfill its mandate, it is important to create an environment in which the media can operate without undue restriction. 1 Article 20 of the Zambian Constitution guarantees every person the freedom of expression, that is, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference. It is on this premise that media institutions operate and exercise their right to freedom of the press. 2

However, in exercising this freedom, the media has become the object of public and government outrage. There is a perceived lack of professional ethics and standards among media practitioners. 3 Media ethics are generally described as a set of principles or code of moral conduct which serve to guide the journalist in his day to day work. 4 They relate to one's conscience and reflect a society's notions about right or wrongful acts. 5 The media are largely seen as a professional body that cannot be trusted with the responsibility of carrying out journalistic chores competently and honorably. 6

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2 CAP 1 of the Laws of Zambia.
1.2 Statement of the Problem

The media in Zambia has become the object of public and government outrage. It has been equated with uncivilized political propaganda and been criticized for its bias, irresponsible and unethical behavior. Clearly, an unjust press is an undemocratic development that needs to be stringently guarded against. For this reason the Media Council of Zambia was established as an independent self-regulatory body of the media fraternity. However, since its establishment, there has been no effort to investigate its operations and effectiveness in upholding the highest professional conduct and ethics. This study is intended to fill this gap.

1.3 Purpose of the Study

The purpose of the study is to examine the quest for regulation of the media and in so doing, an investigation will be made as to the ideal type of media regulatory system to be invoked in Zambia and what can be done to ensure its effectiveness.

1.4 Objectives of the Study

1.4.1 General Objective

To determine how the ethical conduct of the media in Zambia is to be regulated.

1.4.2 Specific Objectives

a) To find out what regulation of the media entails.

b) To find out the role of the Media Council of Zambia in the regulation of the media in Zambia.

c) To investigate the experience of media self-regulation and statutory regulation in Zambia and other jurisdictions.

d) To identify the effects of statutory regulation and self-regulation of the media on press Freedom.

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1.5 Research Questions

a) Why do the media need regulation?

b) Should the media be regulated by statutory control or should it be self regulated?

c) What is the Media Council of Zambia, why was it established and how effective has it been in performing its function?

d) What are the effects of statutory regulation of the media on press freedom

1.6 Significance of the Study

The results of the study would be important in that they would not only document the quest for regulation of the media but also to address the issues relating to press freedom. This research will also suggest the course for future media regulation in Zambia and hence improve the overall media freedom situation. In this regard, it is expected that it would contribute to the database of media law in Zambia.

1.7 Scope of the Study

This research will be confined to the regulation of the print media in Zambia. It would have been desirable for the researcher to cover regulation of the broadcasting sector as well. However, this will not be possible due to limited time and space.

1.8 Methodology

The research design that will be employed in this study is the qualitative research design. It will involve documentary analysis and field investigations. In the documentary analysis, institutional reports, books, journals and magazines will be identified and reviewed. Open-ended interviews will also be conducted with relevant officials from various media institutions. The data from interviews will be analysed qualitatively.
1.9 Basis of Media Regulation

Although for a long time the media have been recognized as a pivotal tool for the building of and mobilization of a nation’s development efforts, the media has been criticized for their failure to give a representative picture of the constituent groups in society; damaging reputations, invasion of privacy, sensationalism and conducting partisan campaigns.\(^5\) They have frequently come under fire for their lack of objectivity, or misrepresentation of facts which has attracted several law suits.\(^9\) The role the state media has played and continues in Zambia is one of safeguarding the interests of the ruling elite. The government has control over it and uses it to peddle hate propaganda against perceived opponents.\(^10\) For this reason, some have argued that when it comes to objectivity, the private media exhibits higher standards of quality in reporting political news than in the case of state-owned newspapers.\(^11\) In fact, research conducted by the Media Institute of Southern Africa (MISA) suggests that top managers at state media institutions, who are state appointees eager to protect their jobs, often stifle stories critical of the government in contrast with their juniors who genuinely desire to work professionally. Yet, others are of the view that state-owned newspapers have made an attempt to balance stories other than those of a political nature.\(^12\) Nevertheless, the independent media has been criticised for compromising professional ethics by overemphasising a political oppositional role and promoting sensationalism.\(^13\) Kasoma observes that the rate of truth reporting in independent newspapers is extremely low. He asserts that,

*The newspapers are full of exaggerations: basing their reports on flimsy biased reporting; publishing smear-campaign based more on the emotions of the writers than reasoned opinions; illogically written editorials and so on.*\(^14\)

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\(^10\) Supra note 8, p. 71


\(^12\) Ibid


The bias of Africa's independent newspapers is more evident in election time, during which they endorse their chosen candidates and present them in the most favourable and biased manner to the electorate. This is normally done in exchange for monetary favours from politicians to whom they give favourable coverage.\textsuperscript{15} Journalists are compelled to engage in unethical practices like accepting bribes and free gifts in order to top up their salaries, which on average, are very low. These practices have a negative impact on the professional conduct of journalists as they directly impact on the lack of objective and accurate writing which is so essential in the profession.\textsuperscript{16} There is also a tendency by some journalists to create anonymous sources, a practice which has bordered on gossip and consequently compromised media ethics.\textsuperscript{17} Kasoma criticises journalists of independent newspapers who are in the habit of publishing a story containing serious allegations about somebody based on one, often dubious, source. He warns that unless journalists are careful and professional enough to cross-check any information given, they may find themselves being used as pawns in the dirty game of politics, particularly when they are clearly and openly identified with one political camp, as some independent newspapers are in Africa today.\textsuperscript{18}

It has been suggested that some of the media's excesses are owing to the repressive governmental influence and control and a general lack of journalistic training. Although true, it is common knowledge that some trained journalists know that what they publish is unethical but continue to do so because of editorial policies and pressures of the trade.\textsuperscript{19} However, the development of communication is dependent on the fact that the media must be credible if they are to be effective. For the media to have credibility with their reading and viewing publics, they must report on events as they are, not necessarily as governments wish them to be reported.\textsuperscript{20} These concerns have

\textsuperscript{16} Ibid.
\textsuperscript{17} PAZA News, 3\textsuperscript{rd} Quarter Edition 2004. “MECOZ dream dawns into reality”.
\textsuperscript{20} F. Kasoma. ‘A Comparative Analysis of Press Codes in Egypt, Mali and Zambia’s Proposed Code’ A Report
resulted in many outsiders, and also some from within the media community, calling on the press for some sense of responsibility, or for the media to be more *socially responsible*. While notions of social responsibility are invoked, there is evidence to suggest that the media are, for the most part, keen on playing the *watchdog* role, rather than being *watched*. Incidentally, in 1995, President FTJ Chiluba, delivering a paper at a British Council Workshop on Freedom of Expression and Information in Africa, stated that:

*Freedom of the press does not imply license to defame or indeed to publish false stories. It places responsibility upon those who practice journalism. ...Criticism is the food on which good governance must thrive, but those who criticize: including the media must have a clear reason for doing so.*

Additionally, Kelly Walubita, the then Minister of Information, argued thus:

*Targeting individuals, whoever they may be, is not surely the most ethical way of doing things. Some journalists have deliberately ignored the ethics of the profession in order to satisfy their destructive agenda.*

The comparative freedom enjoyed by the media to behave unfairly towards individuals and organizations has led to the establishment of tribunals that aim to regulate media ethics. These are independent bodies which act as a mechanism for media accountability through adjudicating complaints by members of the public about the performance of journalists in both the print and electronic media. When dealing only with journalists in the print media, they are referred to as Press Councils. Press Councils usually have a set of rules or codes of acceptable conduct, otherwise known as press codes, which journalists are called upon to observe. Codes of conduct aim to produce the highest good in one's profession. Apart from restricting certain immoral

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26 F. Kasoma, supra note 20
27 Ibid
practices, on the part of journalists, press codes also safeguard press freedom. In this sense they become a guarantor for media independence.28 Codes of conduct relate to the manner in which journalists have obtained a story and/or the manner in which a story is reported. Their aim is to ensure the integrity of the news and general respect for the rest of society in the journalist's pursuit and reporting of news.29

Traditionally, press codes have a threefold aim: to protect journalists from the temptation of acting dishonourably; to protect readers from unfair and irresponsible reporting; and to ensure a two-way communication channel between the governors and governed.30 All these three aims boil down to the protection of freedom of the press, which is a fundamental freedom that is better safeguarded when journalists constantly and of their own strive to maintain the highest sense of professional responsibility by being truthful in their reporting and interpretation of facts.31 The consequences of journalists acting dishonourably are disastrous; not only to the journalists themselves, but also to the society they serve.32 If journalists cannot earn the respect and trust of the public, they will face increasing difficulties in gathering the news because the public soon cease to believe what the press reports, as well as contribute to its reporters.33 In this sense, free expression as well as free flow of information is curtailed.

1.10 Definition of regulation

Regulation has been defined as an arrangement limiting certain behaviour while at the same time facilitating specified actions to take place in an ordered manner.34 According to Campbell,

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29 Ibid
31 Ibid
32 Ibid
regulation has three components: a) legislation; b) enforcement; and c) adjudication.\textsuperscript{35} Media regulation is a simple, yet complex concept which describes the selection and filtering process and determines what gets published. It is the framework which balances conflicting interests between the media and the other involved parties in a system that minimises the infringement on either group’s rights.\textsuperscript{36} There are two key approaches to regulation of the media. Namely: statutory regulation and self-regulation. However, in some jurisdictions co-regulation has been practiced\textsuperscript{37}. Statutory regulation revolves principally around the State; ‘self-regulation’ is centred on civil-society forms of self-control and monitoring; and co-regulation involves regulatory collaboration between the state and civil society. Statutory regulation is likely to be legislative, with co-regulation embracing only some aspects of legislation. On the other hand, self-regulation need not be legislative.\textsuperscript{38}

1.11 Self-regulation vs. Statutory regulation

In the current debate about media ethics, the major question is: Should the media be encouraged to regulate itself, or is statutory regulation necessary? Generally, opinion is polarised, with the media supporting the former option and governments the latter.\textsuperscript{39} Perhaps, it is necessary to appreciate both sides of the argument. From a government point of view, the media can often seem over-intrusive, careless of the effects of their output on those it concerns and in some cases possessing a tendency to misreport and misstate at every opportunity.\textsuperscript{40} On the other hand, the media’s preference for self-regulation stems from a belief that statutory methods often imply heavy-handed control, censorship or the encouragement of self-censorship. There is also the fear that the

\textsuperscript{37} Ibid
\textsuperscript{38} Ibid
\textsuperscript{40} Ibid
governments, state institutions and political leaders who are most often the subject of hard investigation are writing the rules on how they may be covered.\textsuperscript{41}

\textbf{1.12 Self-Regulation of the Media}

Media self-regulation is a joint endeavour by media professionals to set up voluntary editorial guidelines and abide by them in a learning process open to the public. By doing so, the independent media accept their share of responsibility for the quality of public discourse in the nation, while fully preserving their editorial autonomy and shaping it.\textsuperscript{42} Self-regulation is not censorship, but rather it is about establishing minimum principle on ethics, accuracy and personal rights, while fully preserving editorial freedom on what to report and what opinions to express.\textsuperscript{43} A self-regulatory body is governed around the feelings of what type of things should and should not be published, and is often reduced into a written code of conduct that media personnel are expected to follow.\textsuperscript{44} This form of regulation sprung from the media industry’s interest to keep the moral levels of the publication on the right side of common decency and far more importantly to keep the laws relatively unrestricted.\textsuperscript{45}

Self-regulation of the media occurs in the situation where media practitioners themselves constitute a body that ensures that they all conduct themselves in a way that is beyond reproach by the society which they serve. They also put in place a mechanism for settling disputes between those who clash over how any member of the industry has behaved.\textsuperscript{46} It seeks to render court litigation or any sanction by a third party unnecessary. It works by making public any wrongdoing in the industry and in the process makes the wrongdoer realise their wrongdoing, leading to

\textsuperscript{41} Ibid
\textsuperscript{42} \url{http://www.politics.co.uk/referenc/issue}. Accessed: 28/06/2008
\textsuperscript{43} Ibid
\textsuperscript{44} J. Turow, \textit{Media Today: An Introduction to Mass Communication} (Boston: Houghton Mifflin Company, 1999) p.70
\textsuperscript{45} \url{http://www.kamps.org/hage/uk_media_regulation.html}. Accessed:2/102008
reform. It also seeks to reconcile differences by handling complaints and ensuring fair play.\textsuperscript{47} To this effect, self-regulation helps the media respond to legitimate complaints, and correct mistakes in a trial and error way.\textsuperscript{48}

It has been suggested that the key elements of successful media regulation include the following:\textsuperscript{49}

1. The system should not be controlled by State;
2. It should be independently funded;
3. It should be voluntarily delivered by universal industry commitment;
4. It should reflect national culture;
5. It should protect the right of the individual;
6. It should uphold freedom of expression, the public’s right to know and the media’s right to publish without prior restraint;
7. It should provide quick, free and easy resolution to complaints;
8. It should not be overly legalistic or bureaucratic—while at the same time pursuing the principles of natural justice;
9. There should be significant lay membership, independently selected, on adjudication Panels; and
10. The code of conduct should be written or approved by the industry itself.

The aim of promoting self-regulation is to buttress press freedom and protect readers.\textsuperscript{50} In a self-regulatory regime, the state is kept at arm’s length, neither providing funding nor having undue influence.\textsuperscript{51} This provides insurance against statutory control of the journalism profession. However, the strength of self-regulation lies in the industry’s commitment to uphold it and the

\textsuperscript{47} Ibid
\textsuperscript{48} Ibid
\textsuperscript{49} I. Beales, Imperfect Freedom- The Case for Self-Regulation in the Commonwealth Press (Commonwealth Press Union, 2002) p.10
\textsuperscript{50} Dr. P. Matibini, The Struggle for Media Law Reforms in Zambia (Lusaka: MISA Zambia, 2006) p.31
\textsuperscript{51} Ibid
mechanisms put in place for it. The main advantage of this form of regulation is the flexibility and quickness with which the system functions: If the journalists and editors stick to their own codes of practice, violations of the code of practice will never make it to print. If infringements do occur, the publication "must print the adjudication which follows in full and with due prominence." 

Nevertheless, it has been argued that statutory regulation is invoked because self-regulation creates the possibility that the industry may subvert regulatory goals to its own business goals. In a word, self-regulation can so easily mutate to self-service. In this regard, some scholars maintain that voluntary systems act in their own and the industry's self interest. On the one hand cases are sometimes not properly tested because it would not be in the interest of the self-regulator to do so. On the other it might bring in a judgement in a case that was not in fact unethical in order to maintain its position and knowing that the only punishment would be the publication of its adjudication. In addition, many media professionals forget about morals altogether in the frenzy of news production. It is also argued that self-regulation is not sufficient to address the needs of the public or the views of those affected by the media industry. The third argument questions the adequacy of enforcement in self-regulatory regimes. If the code of conduct is broken, the means of reprimand are limited, as there is no legal framework in place to force publications to follow the decrees imposed by the regulatory body. The difficulty lies in determining the type of enforcement that is likely to induce ethical compliance among members; such as expulsion from

52 Ibid, p.32
56 Supra note 53
57 Ibid
58 Supra note 54
membership, professional ostracism or isolation. It is contended that in the absence of legal sanctions, self-regulation cannot be expected to succeed.\textsuperscript{59}

1.13 Statutory regulation of the media

A statutory regulatory body is one that is founded and based exclusively on the text of the law. This can be seen as an advantage in that, the law is essentially absolute, and the punishments for breaking these laws can be very severe indeed.\textsuperscript{60} Proponents of statutory regulation regard the use of laws by government to guide the activities of the media as being legitimate. Press Councils and their accompanying code of ethics should be legislated to make the media supposedly more responsible and to protect government and the state from being unduly endangered by what government sees as irresponsible journalism.\textsuperscript{61} For them, government as one of the judges of press responsibility, has a right to promulgate media laws to ensure that journalists use freedom of the press responsibly.\textsuperscript{62} One of the strongest arguments in support of the enforcement of media ethics through the law is the fact that journalism is different from other professions such as law or medicine since even untrained people work as journalists.\textsuperscript{63} It is said that most of the journalists are hired hands involved in a business and are not completely in control of their methods and products. Therefore, government has a right to regulate the performance of what they see as merely a collection of like-minded people.\textsuperscript{64} Furthermore, media practitioners are seen as messengers who use the communication media to propagate the directives of those that govern. Consequently, those in government feel justified to impose laws which those in the media have to follow in carrying out this function.\textsuperscript{65}

\textsuperscript{59} Ibid
\textsuperscript{60} \url{http://www.kamps.org/hage/uk_media_regulation/html}. Accessed: 2/10/2008
\textsuperscript{62} Ibid
\textsuperscript{63} Ibid
\textsuperscript{64} Ibid
\textsuperscript{65} Ibid
In some countries, governments have passed media laws to keep irresponsible journalism in check, often taking the form of media or press councils enacted through parliament. In these Councils, codes of journalistic ethics have been promulgated whose enforcement has been backed by the force of law. There seems to be two main reasons why Governments have opted on legislation to enforce journalism ethics. The first one is the failure by journalists and media bodies to enforce ethical journalism. It has been suggested that:

In the best interest of the profession, internal ethical enforcement mechanisms should be better than external ones. If, however, it becomes clear to all that the journalists cannot enforce their ethics on their members, the result is usually external enforcement control measures from government. This is the price media practitioners have to pay if they do not show in words and deeds that they can ensure disciplined and decent media practices.

Moreover, many have bemoaned the unethical practices of journalists who have taken advantage of people’s ignorance and provide them with information using unethical means, including: misinformation, propaganda, sensationalism, masking of bad elements in society, publishing of information to paint those whom journalists do not like in a bad light and avoiding publication of certain news because journalists do not want to hurt certain quarters in society. Given such a situation, one may ask: is government, therefore not justified to step in and pass ethical laws to protect innocent citizens?

Notwithstanding these justifications, several reasons have been advanced against enforcing statutory media regulation. First, self-regulation is more flexible than statutory regulation. It is easier for a media association to modify rules in response to changing circumstances than for a government agency to amend its rules. Once media regulation is handed over to law makers, it becomes difficult to obtain the political support and consensus needed to act as and when the association so desires. Moreover, there is the risk that a statutory media body may transform into

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66 Ibid
67 Ibid
68 Ibid
69 Ibid
one based on the prevailing political ideology of the government in power.\textsuperscript{71} Second, statutory regulation is not likely to provide greater incentive for compliance. Scholarly opinion suggests that if rules are developed by the industry, industry participants are more likely to perceive them as reasonable and therefore compliable.\textsuperscript{72} Third, statutory regulation is likely to be more costly to the government because it shifts the cost of developing and enforcing rules to government agencies. To this effect, it must be noted that self-regulation does not necessarily mean the absence of government supervision in the public interest, but supervision requires fewer resources than direct regulation.\textsuperscript{73} Fourth, non-journalists would be excluded from publishing if the practice of journalism was regulated by statute.\textsuperscript{74} Furthermore, statutory regulation will have to contend with defining the changing nature of journalistic expression and thus risk infringing constitutional provisions by criminalising some forms of expression. A related issue here is, regulating the different forms of journalism that are constantly emerging as a consequence of new media technology is likely to render direct governmental control democratically questionable, not to say technologically challenging.\textsuperscript{75} Technological enforcement of the media must contend with the Internet, where jurisdictional and sovereignty issues make it difficult for nations to enforce their laws Traditional media now have Internet presence, and this will prove unsettling for any statutory media regulation.\textsuperscript{76}

The next chapter will focus on the development of media regulation in Zambia and the experience of media self-regulation and statutory regulation in other jurisdiction.

\textsuperscript{71} Ibid
\textsuperscript{72} Ibid
\textsuperscript{73} Ibid
\textsuperscript{74} The Post, 27\textsuperscript{th} September, 2008. “PAZA opposes media regulation”.
\textsuperscript{75} The Post, 13\textsuperscript{th} August 2008. “The Media Statutory or Self-regulation”
\textsuperscript{76} Ibid
CHAPTER TWO

APPROACHES TO REGULATION OF THE MEDIA

2.1 The History of Media Regulation in Zambia

The concept of media regulation in Zambia can be traced back to 1985, when President Kenneth Kaunda’s UNIP government attempted to regulate and license the media through the creation of a statutory body. Interestingly, this was done at a time when all newspapers were state owned and managed by editors hand-picked by the President himself.\(^1\) The editors so appointed inevitably had an interest to ensure the press remained uncritical of the leadership. As such, there was no need to regulate the press by recourse to legislation, as there existed what could be termed *institutionalised gagging*.\(^2\) Nevertheless, the government’s intentions were met with sharp opposition from members of the Press Association of Zambia (PAZA), then the sole representative association of professional interests of journalists, who saw the move as a blatant attempt to muzzle freedom of the media.\(^3\) Government retreated, but as it would later be seen, did not abandon the project to licence journalists.\(^4\) With the dawn of multiparty democracy in 1991, emerged a vibrant independent media which was generally perceived by government as *opposition media*.\(^5\) This perception caused government to tighten its grip on the state media structures, which were compelled to report as they were told; and also motivated them to want to bring the media under control through statutory regulation.\(^6\)

2.2 Media Reform Committee (MLC)

In 1993, a Media Reform Committee (MRC), made up of representatives of a broad section of Zambian media, was established to recommend to government ways in which the media can be

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1 PAZA NEWS, 3rd Quarter 2004. “PAZA’s long, rough journey towards MECOZ”
2 Ibid
3 Ibid
4 Ibid
6 Ibid
reformed to advance press freedom and the democratic process.\textsuperscript{7} The MRC recognized the need to improve journalism standards and to create greater awareness of the ethics of the profession so as to make journalists morally accountable to their readers and listeners.\textsuperscript{8} The MRC was opposed to the formation of a Media Council or any other statutory body with powers to regulate the operations of journalists or media organizations.\textsuperscript{9} Thus, the MRC recommended that media ethics and practices should be the subject of self-regulation by journalists, association and other media groups through the strengthening of media associations such as the Press Association of Zambia (PAZA) and Zambian Union of Journalists (ZUJ).\textsuperscript{10} It was intended that this would lead to the establishment of a voluntary Media Council or a Media Complaints Committee with no statutory powers.\textsuperscript{11}

In its final draft report, the MRC recommended the establishment of a Press Council of Zambia to protect the public and media practitioners. The report noted that the Council could have its origin in an Act of Parliament with powers of censure.\textsuperscript{12} It was further recommended that the Council should be chaired by a retired judge with a keen interest and past experience in media matters. The membership of the Council was expected to be drawn from both members of the public, as well as professional representatives.\textsuperscript{13} The Council was to draw its funding from membership subscriptions, donations and contributions from media organizations. However, the recommendation by the MRC to introduce a Press Council of Zambia was never implemented.\textsuperscript{14}

\textsuperscript{8} Dr. P. Matibini, The Struggle for Law Reforms in Zambia (Lusaka: MISA Zambia, 2006) p.21
\textsuperscript{9} Ibid
\textsuperscript{10} Ibid
\textsuperscript{11} Ibid
\textsuperscript{12} Ibid, p.22
\textsuperscript{13} Ibid
\textsuperscript{14} Ibid
2.3 The Media Association of Zambia (MAZ)

In 1995, under the MMD government of President Frederick Chiluba, another attempt was made to impose statutory regulation and control of the media. A Bill was initiated to establish a Media Association of Zambia (MAZ) to regulate the ethical conduct of journalists in the country.\(^\text{15}\) This body would regulate the media by issuing licences to members with appropriate qualifications, and would have statutory powers to withdraw or cancel such licences.\(^\text{16}\) It would ensure that no media organization could operate without subscribing its staff to the association. Anyone who withdrew from the association would lose his or her status as a journalist.\(^\text{17}\) Consequently, the Government’s decision was challenged by the media fraternity in the landmark case of *Kasoma and Other members of the Press Association of Zambia v. The Attorney General*.\(^\text{18}\) The applicants argued that as a representative of journalists and as an institution which would be affected by the decision, it was never consulted. The decision to create MAZ was made in bad faith and not in furtherance of democratic ideals, among them freedom to form and belong to associations of one’s choice.\(^\text{19}\)

But before the Court could pass its ruling, the Government attempted to draft a Bill to allow for the establishment of a Media Council of Zambia (MCZ) to regulate the journalism profession.\(^\text{20}\) Under the proposed legislation, journalists were required to be licensed by a Media Council to be appointed by the Minister of Information and Broadcasting Services. Journalists not in compliance were to be subject to a three month jail term.\(^\text{21}\) There were a number of other stringent requirements that journalists were supposed to meet before they could be given a license to practice journalism. For example, accreditation was not going to be automatic, but


\(^{16}\) PAZA NEWS, *3rd Quarter 4004*. “PAZA’s long, rough journey towards MECOZ”


\(^{18}\) 1995/HP/2959 (Unreported)

\(^{19}\) Supra note 17

\(^{20}\) K. Makungu, supra note 15, p.51

\(^{21}\) Ibid
subject to the outcome of investigations of the applicant’s background.\textsuperscript{22} Many practicing journalists and members of civil society described the Bill as "draconian".\textsuperscript{23} Subsequently, several media organizations including the Press Association of Zambia (PAZA), the Zambia Union of Journalists (ZUJ), the Zambia Media Women’s Association (ZAMWA), the Zambia Independent Media Association (ZIMA) and the Zambian section of the Commonwealth Press Union (CPU) came together and formed a Media Liaison Committee (MLC) to fight the Bill through lobbying, press statements and street demonstrations.\textsuperscript{24} The MLC pointed out that the action challenging the Government from legislating MCZ was still pending in Court and therefore, argued that the MCZ Bill was drafted in bad faith and contemptuous of the High Court for Zambia. Accordingly, the Government withdrew the MCZ Bill to allow for further consultations with all the stakeholders.\textsuperscript{25}

Meanwhile, the MLC resolved to form a media driven, independent, self-regulatory body to represent and protect the interests and rights of journalists, to defend and promote press freedom, and uphold the principles and standards of journalism under the umbrella of the Zambian Society of Professional Journalists and Media Practitioners. The MLC also resolved to set up a Media Ethics Complaints Commission (MECC) to uphold professional ethics and serve as a forum for the general public to complain against biased and unfair coverage or lack of coverage.\textsuperscript{26} In a bid to take charge of their own affairs, the independent media under ZIMA pulled out of the MLC and established the Independent Media Council (IMC), aimed at promoting professionalism and high standards of reporting.\textsuperscript{27} This was due to a general feeling among ZIMA members that the MLC was dominated by journalists from government-owned media.\textsuperscript{28}

\textsuperscript{22} Ibid
\textsuperscript{23} Ibid
\textsuperscript{24} Dr. P. Matibini, supranote 8, p.23
\textsuperscript{25} Ibid, p.25
\textsuperscript{26} P. Matibini, supra note 7
\textsuperscript{27} K. Makungu, supra note 15, p.51
\textsuperscript{28} Supra note 26
2.4 Media Council of Zambia (MCZ)

On 22nd August 1997, the High Court of Zambia invalidated the attempt to establish the statutory Media Council, stating that statutory licensing of journalists as proposed in the legislation would breach the right to freedom of expression and assembly; and in particular press freedom.\(^{29}\) This was because failure to affiliate oneself to the Council or in the event of breach of any moral code determined by the Council would entail losing his status as a journalist and with the denial of the opportunity to express and communicate his ideas through the media.\(^{30}\) The Court noted that the consequences of implementing a decision without consulting interested parties, was to deprive the applicants the benefit to constitute themselves into a Press Association of Zambia (PAZA) and regulate their own activities without pressure or fear from any quarter.\(^{31}\) Furthermore, it was observed that since the applicants stood to be affected by the formation of MCZ, the rules of natural justice dictated that they were entitled to be heard before the decision was taken.\(^{32}\)

Following the decision in the *Kasoma case*, media organisations continued to meet and dialogue on the importance of establishing an independent self-regulatory ethics body.\(^{33}\) Accordingly, in 2001, journalists from both the state run media and the independent media agreed to adopt a joint Code of Ethics and set up a single Media Complaints body as a means of preventing the government from imposing a Media Council on journalists.\(^{34}\) It was this phenomenal agreement that resulted in an accelerated programme to merge Media Ethics Complaints Commission (MECC) and (Independent Media Council) IMC, seeing as both bodies had made little success since their formation.\(^{35}\) This initiative was prompted by repeated threats by the government for the media to demonstrate a sense of social responsibility before the government could proceed to

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\(^{29}\) The Post, 20\(^{th}\) August, 2008. "Media: Statutory of Self-regulation (Part 3)"

\(^{30}\) Ibid

\(^{31}\) Dr. P. Matibini, supra note 8, p.25

\(^{32}\) Ibid, p.26

\(^{33}\) Ibid.


\(^{35}\) PAZA NEWS, 3\(^{rd}\) Quarter 2004. "PAZA’s long, rough journey towards MECOZ"
implement the long awaited media reforms. In 2004, the Media Council of Zambia (MECOZ) was formally launched as an independent self-regulatory body, with the pledge that it would uphold the highest professional conduct and ethics of journalism in Zambia. However, since its launch, there have been repeated calls to strengthen MECOZ if it is to serve the purpose for which it was established.

2.4 The Experience of Media Regulation in Other Jurisdictions

In most developed democratic countries there is some form of a national Press Council to which people may bring complaints against the print media. Each of these Councils is quite unique, its role and structure dictated by the media landscape of the particular country. Many of them were established in order to avoid statutory controls of the press, but they all emerged out of a public concern about press accountability and they also broadly conform to a Code of Ethics. In Africa, the development of Press Councils has been a problematic area. Media Councils find their work throttled in the midst of anti-media laws most of which were inherited from repressive colonial regimes and have been used to control and harass the press. Like Zambia, many African governments have tried to legislate Media Councils, often with a majority of government representatives on them. This renders the Council ineffective and places media regulation directly in the hands of government.

South Africa and Tanzania are identified to be among the countries in Africa that have embarked on comprehensive self-regulatory schemes with functional Media Councils. In South Africa, the

36 Dr. P. Matibini, supra note 8, p. 26
37 Ibid, p.29
38 Ibid
40 Ibid
42 Ibid
system of self-regulation more directly revolves around the media themselves. The South African National Editors Forum (SANEF) provides the overall self-regulatory framework for print media in the country. SANEF members constitute a Press Council with its Press Ombudsman and Appeals Panel to deal with public complaints.\textsuperscript{43} The ruling party, however, has proposed to explore the possibilities of setting up a statutory media tribunal. The media are of the opinion that such a tribunal would be packed with Government appointees seeking to restrict media functioning.\textsuperscript{44} For fear of a statutory media tribunal, SANEF members have, re-committed themselves to improving standards of journalism and enforcing the Press Council's Code of Conduct.\textsuperscript{45} In Tanzania, however, such efforts have borne fruit, with the entrenchment of the Tanzania Media Council as an independent, voluntary and self-regulatory body.\textsuperscript{46} Upon being launched, the public was sensitised on the role and mandate of the Media Council through television, radio and newspapers.\textsuperscript{47} The Constitution and Code of Ethics were published in all major newspapers in order to initiate national debate and turn the exercise into an awareness campaign, thereby leading to consensus on their content and value.\textsuperscript{48} Notwithstanding, the Tanzanian government has initiated a Bill which aims to regulate media operations and establish a Media Standards Board with powers to accredit journalists, enforce ethical standards and handle complaints regarding the media. Legislating this Bill would thus, pave way for statutory regulation.\textsuperscript{49}

Namibia and Zimbabwe both have Media Councils which are now defunct. In Namibia, reviving the self-regulatory body is regarded as a priority to prevent the government from enforcing a

\textsuperscript{43} The Post, 6\textsuperscript{th} August 2008. "The Media: Statutory or Self-regulation?" (Part 1)
\textsuperscript{44} Z. Titus and CGM. Katukula (Eds), So This is Democracy?: State of Media Freedom in Southern Africa 2007 (Windhoek: Media Institute of Southern Africa, 2008) p.76
\textsuperscript{45} Supra note 43
\textsuperscript{47} A. Ngaiza, 'Institutional Framework for Enforcing Media Ethics: Lessons From Tanzania' Joint ZIMA/PAZA Media Ethics Workshop Paper (June, 2001)
\textsuperscript{48} Ibid
\textsuperscript{49} Z. Titus and CGM. Katukula, supra note 44, p. 306
state-controlled regulatory body.\textsuperscript{50} However, there has been great reluctance among the media to come together and discuss the establishment of a Media Council due to the industry being polarised.\textsuperscript{51} Whilst in Zimbabwe, journalists from both the government and opposition media bodies have united to adopt a code of conduct and are advocating for a new media commission to replace the under-funded one which collapsed years ago.\textsuperscript{52} In Malawi, like in Zambia, the media still appear to be disorganised, largely because of a lack of resources to step up their campaign to mobilise sufficient media support for the strengthening of the Malawi Media Council.\textsuperscript{53} Meanwhile, steps are being made to set up a self-regulatory regime in Mozambique in order to replace the Supreme Media Council established under the Constitution, one of Africa’s oldest statutory regimes.\textsuperscript{54} In Swaziland, the media has adopted a code of ethics developed by the Swaziland National Association of Journalists (SNAJ), but there are no self-regulatory bodies to monitor adherence.\textsuperscript{55} The fifth attempt to launch the Media Complaints Commission (MCC) was carried out early in 2007, after the media firmly rejected the government’s second attempt to introduce statutory regulation through the Media Commission Draft Bill 2007.\textsuperscript{56} Swazi media practitioners are driving the process of making the MCC operational as the threat of statutory regulation still hangs over the industry. But at the same time, there is doubt amongst the media themselves that self-regulation will really work.\textsuperscript{57}

The United States has a successful self-regulatory system. The First Amendment, which expressly states that: \textit{Congress shall make no law... abridging the freedom... of the press}, seems to provide for press freedom in near absolute terms.\textsuperscript{58} As such, the press regulates itself and the

\textsuperscript{50} Ibid, p.214
\textsuperscript{51} Ibid, p.215
\textsuperscript{52} I. Beales, supra note 5, p.17
\textsuperscript{53} F. Banda, supra note 46
\textsuperscript{54} Supra note 52, p.123
\textsuperscript{55} Z. Titus and CGM. Katukula, supra note 44, p.242
\textsuperscript{56} Ibid
\textsuperscript{57} Ibid
\textsuperscript{58} The Post, 6th August 2008.
State cannot interfere in its operations. However, the press has generally seen no need for Press Councils. In 1973, a National News Council, charged with the responsibility of monitoring the media in the country, was created but it later died of neglect. Most media organisations failed to support the Council with funding or publicity hence its collapse. It was believed that media opposition to the Council was rooted in the traditional reluctance of the press to have any outside body looking over its shoulder and in the conviction of the press that each individual media organisation could best solve its own problems and in its own way. Thus, the system of media self-regulation is thus much more intra-institutional than extra-institutional.

Similarly, the United Kingdom (UK) boasts a comparatively successful self-regulatory system, currently overseen by the Press Complaints Commission (PCC). Before its creation in 1991, there was also a self-regulatory Press Council founded in 1953 with the aim of maintaining high standards of ethics in journalism. However, in the late 1980s, several newspapers breached these standards and others were unsatisfied with the effectiveness of the Council. Thus, the Government set up a departmental committee, to investigate whether a body with formal legal powers should be created to regulate the industry. It was concluded that a voluntary body, with a full, published code of conduct should be given eighteen months to prove its effectiveness. Should it fail, a legally-empowered body would replace it. Members of the press, keen to avoid external regulation established the PCC and its Code of Practice. Clearly, the PCC has demonstrated enough success to stave statutory regulation for the press as there are not any specific legislative threats to the existence of self-regulation in the country.

59 Ibid
60 G. Goodwin and R.F. Smith, Groping for Ethics in Journalism, 3rd Ed
   (Ames: Iowa State University Press, 1994) p.300
61 Ibid
62 The Post, 6th August 2008
63 Ibid
65 Ibid
66 Ibid
investigates alleged breaches of the Code of Practice, which is written by editors themselves.68

The members of the public make up the majority of the Commission although the system is entirely self-regulatory and is funded indirectly by the media industry. For this reason, some have argued that the PCC is the most independent Press Council in the whole of Europe.69

Unlike the UK, in Norway, the Netherlands and Sweden, media regulation is less formalised. Instead, the journalists tend to display a far stricter form of self-discipline, which lessens the need for legislation.70 Perhaps, the most visible example of a commitment to self-discipline is the presence, in some media organisations of an Ombudsman, hired to investigate questionable journalistic conduct and to recommend action. The idea originated in Sweden, where there is a Press Ombudsman whose role it is to enforce journalistic ethics in Sweden’s print media.71 The Swedish model has certainly proved successful. Readers see it as a trustworthy mechanism for righting press wrongs because no single interest group is allowed to dominate decision-making. It is clearly independent of government.72

While most countries have embarked on self regulatory systems, India has opted for a statutory body, the Press Council of India (PCI), whose majority of members belongs to the journalistic fraternity.73 The Press Council deliberates on receipt of complaints either by or against the press. It is empowered to make observation in respect of conduct of any authority including the Government and take suitable action where appropriate. It may either warn or censure the errant journalists on finding them guilty.74 Notwithstanding the fact that a substantial part of its funds is augmented from the Government, it has fully functional autonomy and is independent of

68 I. Beales, supra note 5, p. 54
69 Supra note 67
70 Ibid
72 S. Buchanan and L. Hammerer, supra note 39, p.33
74 Ibid
Government control in the discharge of its statutory responsibilities. The Press Council of India is protected by the Constitution and its decisions cannot be questioned in any court of law unless it is proved to be in violation of the Constitution which makes it exceedingly a powerful body.

What the above review of different media cultures underscores is that there is a constant struggle between the State and the media for control of media services. This is true of both developed and developing countries. What is also true is that most democracies have generally regulated media along the principle of self-regulation in preference to statutory regulation. However, the road to self-regulation is strewn with obstacles: intransigent governments; divided press industries; lack of funding; lack of public support and poor motivation. Media practitioners worldwide are generally united in believing that the writing of Codes of Ethics and adjudication of complaints about any breaches of those rules is the business of journalists and not governments. And they broadly agree that the newspaper industries should be either entirely or principally responsible for funding the organisations. But within these broad principles there are many different ways of pursuing self-regulation. The boards of some bodies are dominated by people from outside the regulated industry. Others solely comprise journalists. Some Press Councils obtain a share of their income from sources other than the industry. In others, the industry contributes the entire cost of the system. In some, Codes of Practice are recognised in various pieces of legislation. In others, there is no relationship between the law and the self-regulatory body. The next chapter will give a detailed analysis on the operations of the Media Council of Zambia and its effectiveness in regulating media ethics.

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75 Ibid
77 The Post, 6th August 2008
80 Ibid
81 Ibid
CHAPTER THREE

THE MEDIA COUNCIL OF ZAMBIA

3.1 Formation of the Media Council of Zambia

The Media Council of Zambia (MECOZ) is a non-statutory, voluntary and self-regulatory organization that was launched on 29th November 2002, to promote media freedom, and to arbitrate public complaints on the conduct of the media.¹ The formation of MECOZ followed the commitment by journalists that good faith with the public is the foundation of all worthy journalism.² Journalists strongly felt that they should be accountable to the public for their reports in the media, and that the public should be encouraged to voice any grievances against the media. Journalists also believed that open dialogue with readers, listeners and viewers needed to be actively encouraged.³ Speaking on the occasion, former Information Minister Newstead Zimba, described the development as a clear watershed in the revolution of journalism in the country. He pointed out that Zambian journalists had finally come to grips with the fact the only way to inject respectability and professionalism in the media was to introduce MECOZ.⁴

On 11th July 2004, MECOZ was formally established with the pledge that it would uphold the highest professional conduct and ethics of journalism in Zambia.⁵ The then MECOZ Chairman, retired Judge Kabazo Chanda who officiated at the event, said the role of the Council would be to strike a balance between the interests of the state and the public and those of journalists.⁶ Judge Chanda stated that the operations of MECOZ would be purely to regulate the conduct of media practitioners while at the same time protecting their interest and should not be seen as an opposition to the State. He emphasised that:⁷

¹ Dr. P. Matibini, The Struggle for Media Law Reforms in Zambia (Lusaka: MISA Zambia, 2006) p.27
² Media Council of Zambia (MECOZ) Profile
³ Ibid
⁴ Supra note 1, p.27
⁵ Ibid, p.29
⁷ Ibid
...We are not an opposition to the state but where the journalists are oppressed, we will censure the State, just like when a journalist departs from his or her ethics, we will castigate that journalist...

Speaking at the same occasion, PAZA Vice-President Amos Chanda observed that, the birth of MECOZ was a milestone in the journalists’ quest to give themselves a non-legal, self-regulatory framework. He went on to note that the launch of MECOZ was a celebration of media freedom and the responsibility that Zambian journalists had given to themselves looking inwards and accepting that they will subscribe to a particular code of conduct which would enhance their moral standing.

3.2 Objectives of the Media Council of Zambia

In its Constitution, the role of MECOZ is affirmed as a voluntary self-regulatory body for journalists where the public could forward their complaints and grievances against the media. The objectives of MECOZ are outlined as follows:

a) to promote professionalism by enforcing journalism ethics;

b) to promote freedom of the press;

c) to promote understanding between the media and the public;

d) to arbitrate complaints between the public and the media; and

e) to do such things as may be in the interests of the media and the public.

The Constitution of MECOZ provides for a Code of Ethics to assist journalists to defend the principles of freedom of the press and information. In the preamble to the Code of Ethics, it is stipulated that the purpose of distributing news and informed opinion is to serve the general welfare of the public. The Code states that journalists who use their professional status as representatives of the public for selfish or other unworthy motives violate a high trust. The Code further states that journalists uphold the right to speak on unpopular opinions and privilege to agree

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8 Dr. P. Matibini, supra note 1, p.29
9 Ibid
10 Ibid, p.27
11 Ibid
with the majority, while at the same time respecting the will of the minority.\textsuperscript{12} The preamble urges journalists to defend the principle of the freedom of press at all times, in relation to the collection of information and the expression of comment and criticism. The Code espouses the following ethics:\textsuperscript{13}

i. The public has the right to know the truth. Therefore, journalists have a duty to report the truth either as representing objective reality or representing what the sources say, fairly, accurately and objectively;

ii. Newspaper headlines should be fully warranted by the contents of the articles they accompany. Photographs and Journalists should respect the confidentiality of sources whom they have pledged anonymity;

iii. Only fair methods should be used to obtain news, photographs and documents, except where overriding public interest justifies the use of other means;

iv. Journalists should regard as grave professional offence the acceptance of bribes in consideration of either dissemination or suppression of information;

v. Journalists should rectify promptly any harmful inaccuracies, ensure that correction and apologies receive due prominence and afford the right of reply to persons criticised when the issue is of sufficient importance;

vi. Journalists should be aware of the danger of discrimination being furthered by the media and should do the utmost to avoid or facilitate such discrimination based on among other things, race, sex, religious, political or other opinions of national or social origins;

vii. Secondary employment, political involvement, holding of public office and service in community organisations, should be avoided if it compromises the integrity of journalists and their employers. Journalists and their employers should conduct their personal lives in

\textsuperscript{12} Ibid
\textsuperscript{13} Ibid
a manner that protects them from conflicts of interest, real or apparent. Their responsibilities to the public are paramount;

viii. Plagiarism is dishonest and unacceptable; and

ix. Journalists must respect the moral and cultural values of the Zambian society. Journalists should respect people’s privacy unless when public interest demands otherwise.

3.3 Organisation of the Council

The Council is run by a Board of Directors, drawn from a cross section of the Zambian society. All policy matters of the Council are vested in the Board, subject to the direction of members of the Council at the Annual General Meeting.\textsuperscript{14} A Secretariat, under the direction of the Board, is responsible for the implementation of policy issues and daily management and administration of Council activities.\textsuperscript{15} The Board may reconstitute itself into an Ethics Council on the advice of the Secretariat, for the purposes of adjudicating complaints.\textsuperscript{16} The Chairperson is expected to be a person with legal background. Thus far, the Council has only had two Chairpersons.\textsuperscript{17}

Membership of the Council is both individual and institutional. The Council draws representatives from Media houses, Journalism training institutions, Professional journalists associations, Press clubs and Individual journalists.\textsuperscript{18} The Board accords the status of associate membership to any professional association or individual not in the media, but whose aims and objectives complement, support or relate to the Council’s objectives.\textsuperscript{19} The involvement of a cross section of the society is an important part of the philosophy of media accountability.\textsuperscript{20} With the exception of

\textsuperscript{14} Article 3 of the MECOZ Constitution
\textsuperscript{15} Ibid
\textsuperscript{16} Ibid, Article 9
\textsuperscript{17} Assessment on Media Councils in SADC Countries (April 2008) p.7
\textsuperscript{18} Supranote 14, Article 4
\textsuperscript{19} Ibid
\textsuperscript{20} Dr. P. Matibini, supranote 1, p.27
the Post Newspaper, all major media institutions now subscribe to MECOZ and have accepted the Code and its principles.21

3.4 Operations of the Council

For a long time, the Council operated on an ad hoc basis because there was no Secretariat to handle cases. Therefore, work would only be done when there was a complaint. However, it is now a permanent body.22 Any complaint against a journalist or media house regarding the violation of media ethics, must be lodged in writing with the Executive Secretary and must be signed by the complainant. The complaint must be lodged within thirty days of the publication or broadcast in respect of which the complaint arises. The Executive Secretary may accept a late complaint, provided there are satisfactory reasons for the complaint not being lodged earlier.23 The written complaint must contain: full particulars of the complaint; a copy of the publication containing the matter complained or a video or audio recording of the broadcast complained of and any other evidence, including affidavits from the witness in support of the complaints.24 However, the Executive Secretary may not accept any complaint:

a) Unless the Executive Secretary is satisfied that the complainant has taken all reasonable steps to resolve the matter himself or herself and, if this has been done, the Executive Secretary will advise the complainant on steps he or she must take before the complaint will be accepted by the council:

b) Where the complainant has chosen to remain anonymous and has not signed the complaint;

c) Where the Executive Secretary considers the complaint to be frivolous or vexatious and this view is confirmed by at least one media representative, and at least one public representative of the Council.

21 Z. Titus and CGM. Katukula (Eds), So This is Democracy?: State of Media Freedom in Southern Africa 2007 (Windhoek: Media Institute of Southern Africa, 2008) p.266
22 Interview: Sr. R. Nyondo, Chairperson of the Media Council of Zambia. 22/10/08
23 Article 12 of the MECOZ Constitution
24 Ibid
d) Where the complainant has threatened legal action or has commenced legal proceedings against the respondent, unless the complainant waives the right to claim civil relief in writing to the Executive Secretary.

e) Where the complainant has intimated that he or she intends to bring legal action against the respondent, unless the complainant undertakes in writing to refrain from pursuing such action and instead have the matter dealt with by the Council.  

Not more than seven days after the receipt of the complainant’s statement, the Executive Secretary must send a copy of the complaint statement to the respondent. Within seven days of receipt of the complainant’s statement, the respondent must send to the Executive Secretary a written response to the complaint together with supporting evidence, including affidavits from witnesses. Where possible, the Executive Secretary must attempt to persuade the parties to arrive at a mutually acceptable settlement of the case. Where it appears to the Executive Secretary that a complaint is well founded, the Executive Secretary must seek to persuade the respondent to make a reasonable offer of settlement to the complainant either by way of publication of an apology, or by way of a sum of compensation to the complainant. If the respondent refuses to do this, the Executive Secretary shall refer the case to the Council. If the respondent admits to a violation of the Code of Ethics and makes what, in the opinion of the Executive Secretary, is a reasonable offer of settlement by way of publication of a correction or apology, the Executive Secretary may decline to proceed with the complaint. The complainant may appeal against this decision to the Council. If the complaint is not resolved by conciliation within two weeks of receipt of the respondent’s response, the Executive Secretary shall convene a meeting of the Council to determine the dispute. At the hearing, the Executive Secretary reports on his or her efforts to achieve a settlement of the

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25 Ibid, Article 13
26 Ibid, Article 14
27 Ibid, Article 15
28 Ibid
dispute.\textsuperscript{29} The Executive Secretary also advises the Council on whether the matter should proceed by way of written submissions or by way of an oral hearing. Where it is possible to deal with the matter fairly on the basis of written submissions from the complainant and the respondent, the Council decides the matter on the basis of the written submission.\textsuperscript{30} Where the Council decides the matter cannot be fairly decided on the basis of written submissions alone, it may either direct the Executive Secretary to call upon the parties to the dispute to submit further written submissions on certain specified matters; or direct the Executive Secretary within two weeks of the hearing to which the parties to the disputes are invited, to attend by giving them one week’s notice of such a meeting.\textsuperscript{31} At any oral hearing, the complainant and the respondent will not be entitled to be represented by a legal practitioner, but may have an advisor present to assist. The advisor will not be entitled to cross-examine any witnesses that may be called to address the Council.\textsuperscript{32} The parties to the dispute are entitled to call any relevant witnesses to testify before the Council and the Council may request that relevant witnesses testify even if the parties have not called such witnesses. No media practitioner may be required to disclose the identities of confidential sources of information, but the media practitioner may be questioned about the authenticity and reliability of such sources.\textsuperscript{33} The Council in all circumstances attempts to arrive at a consensus decision. If this is not possible, the decision may be arrived on a majority vote.\textsuperscript{34} If the Council decides that the complaint is well founded, it may impose one or more of the following penalties on the media institution concerned:

i. An order to reprimand the media organization complained of;

ii. An order to correct the error within a period of not more than two weeks;

iii. An order to print or broadcast an apology within a period of not more than two weeks; or

\textsuperscript{29} Ibid, Article 16
\textsuperscript{30} Ibid
\textsuperscript{31} Ibid
\textsuperscript{32} Ibid
\textsuperscript{33} Ibid
\textsuperscript{34} Ibid, Article 17
iv. An order to pay compensation to the complainant.35

Unfortunately, MECOZ does not possess the authority and powers to enforce sanctions. Nevertheless, a media institution is obliged to publish the findings of the Council against it. The Council also supplies details of the same findings to all media institutions for publication in their discretion.36

3.5 Effectiveness of the Council

As a self-regulatory body, MECOZ’s major strength is that it is a Court of honor rather than a Court of law, where journalists are censured, reprimanded, and advised by their fellow peers. In this manner, MECOZ aims at restoring public confidence in the journalism profession by giving an opportunity to aggrieved members of the public to receive fair treatment where necessary.37 Unfortunately, the launch of MECOZ has not really been a complete panacea to the challenge of maintaining high professional standards amongst journalists.38 The failure of MECOZ to live up to its expectations is due to a number of reasons. Firstly, MECOZ lacks financial support. Therefore, it operates on a very low budget.39 The Council was initially funded for one year by the Friedrich Ebert Stiftung Foundation of Germany and efforts are under way to secure additional funding to maintain operations.40 However, it is doubtful that MECOZ will be able to sustain itself without financial support from the media houses. So far, there is no indication that this will be forthcoming.41 Nonetheless, there are views that media houses are willing to fund MECOZ, the only problem is that they lack the capacity to support it.42

36 Ibid, Article 20
37 PAZA News, 3rd Quarter 2004. “MECOZ dream dawns into reality
38 Dr. P. Matibini, supra note 1, p.29
39 Assessment on Media Councils in SADC Countries (April 2008) p.7
40 Z. Titus and CGM. Katukula (Eds), supra note 21, p.266
41 Ibid
42 Interview: Sr. R. Nyondo, Chairperson of the Media Council of Zambia. 22/10/08
Secondly, the objectives, functions and operations of MECOZ have not been sufficiently publicized to the public in general and the journalists in particular. Some journalists do not know how to affiliate themselves to it. Therefore, the Council has embarked on public awareness activities through press statements; collaboration with media houses, by way of columns in newspapers; and attending every media related forum. Despite these efforts, the Council is still not widely known. As a result, MECOZ is rarely resorted to by members of the public. The issues of sustainability as well as desirability and prudence of maintaining a full-time chief executive seem questionable in light of the low case load. In the year 2007 alone, the Council is recorded to have dealt with 7 cases only. This has been attributed to the fact that most complaints that come before the Council are verbal and are not usually recorded because the MECOZ Constitution provides that the Council can only act on written complaints. In one case, the Chipata Municipal Council lodged a complaint against the Times of Zambia Newspapers for publishing unbalanced and negative articles alleging that the Council corruptly or illegally allocated plots to prominent persons in society. The findings of MECOZ were that the Times of Zambia did not violate any journalism ethics in the manner that they covered the matter as the articles were based on verifiable sources. A further decision was reached in a matter involving former Information Minister Vernon Mwaanga whereby the Post Newspaper, the Times of Zambia and the Daily Mail had been accused of ethical violations. Though Mwaanga did not complain to the Council directly, he accepted MECOZ arbitration after it took up the matter on its own accord. Normally, MECOZ steps into ethical adjudication when an aggrieved person or party

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44 Interview: H. Kabwe, Chairperson of MISA Zambia. 3/10/08.
45 Assessment on Media Councils in SADC Countries (April 2008) p.8
46 Supra note 43
47 Z. Titus and CGM. Katukula, supra note 21, p. 266
48 Interview: B. Mwale, Executive Secretary of the Media Council of Zambia. 5/12/08
49 Verdict of the Ethics Committee on a complaint filed by the Chipata Municipal Council against the Times of Zambia Newspaper (December 2007)
50 Vernon Mwaanga Report by the Independent Committee of MECOZ on a complaint against Post Newspaper, Times of Zambia and Zambia Daily Mail
lodges a complaint in writing before it. However, the Council invoked the public interest clause in its Constitution that mandates it to pass advisory opinion on such matters even if the subject matter had not been laid before them by any complainant. Thus, MECOZ can take up matters if they are deemed to be in the public interest. In this case, MECOZ did not find the Post Newspaper and the Zambia Daily Mail with any professional misconduct. However, it upheld the complaint against the Times of Zambia because its publication amounted to passing judgement on an issue that was before the Courts of law.

Thirdly, the media community has not fully embraced MECOZ. Not all media houses are members of MECOZ, for example the Post Newspaper. However, MECOZ has been in on-going discussions with the Post in an effort to persuade it to join the Council. Thus far, the paper has made no decision on the matter claiming that joining the council is, in any case, voluntary. More recently, MECOZ has started to negotiate Memorandums of Understanding with individual member organisations in order to establish a direct link between itself and its members. Another major problem MECOZ has encountered in its operations is the fact that the journalism profession appears to be in a dilemma whether or not to mete out penalties as a way of setting quality standards. The basis for establishing MECOZ was meant to bring media ethics back on course. However, the founding members of MECOZ did not take the issue of adherence into consideration. Therefore, MECOZ has limited enforcement powers in that it cannot effect any sanctions on erring journalists and media houses. As a result, some journalists have gone scot-free. This has eroded the public confidence in MECOZ and led to people resorting to the Courts. For this reason, it has been recommended that MECOZ be given powers to licence journalists and to

51 Ibid
52 Ibid
53 Ibid
54 Ibid
55 Dr. P. Matibini, supra note 40, unpublished.
56 Interview: L. Njunga, Director of the Press Association of Zambia.10/10/08
57 Ibid
bar those found to have grossly transgressed the ethical conduct set out. But the controversial part of this recommendation lies in the fact that for MECOZ to have sanctions, it has to possess statutory powers, a scenario that raises the same fundamentals that were at play when media practitioners opposed statutory regulation as was observed in the previous chapter.\textsuperscript{58} Nonetheless, there have been suggestions of turning MECOZ into a statutory self-regulatory body. Some have argued that such a move would be acceptable provided that the Council’s Board is not appointed by Government. Parliament should only be responsible for its establishment and Government must have no role in regulating the media.\textsuperscript{59}

Since its formation and launch, there have been repeated calls to strengthen MECOZ.\textsuperscript{60} Improving the performance of MECOZ is seen as a matter of highest urgency, as Government is once more threatening to impose statutory regulation on the media.\textsuperscript{61} On 13\textsuperscript{th} November 2008, Members of Parliament called for regulation of the media through a statutory body because of the alleged biased media coverage during the 2008 presidential by-election. Media practitioners are of the view that the media does not need regulation from the Government or Parliament because it would undermine press freedom. They argue that the media was capable of regulating itself and it was currently doing so through MECOZ.\textsuperscript{62} The next Chapter will discuss press freedom and the possible effects that both statutory and self regulation may have on press freedom.

\textsuperscript{58} Paza News, 3\textsuperscript{rd} Quarter 2004. “PAZA’s long, rough journey towards MECOZ”
\textsuperscript{59} Interview: Sr. R. Nyondo, Chairperson of the Media Council of Zambia. 22/10/08
\textsuperscript{60} Dr. P. Matibini, supra note 1, p.29
\textsuperscript{61} Z. Titus and CGM. Katukula, supra note 15, p. 267
\textsuperscript{62} Times of Zambia, 25\textsuperscript{th} November, 2008. ‘Media Bodies Say No to Regulation’
CHAPTER FOUR

PRESS FREEDOM AND REGULATION OF THE MEDIA

4.1 What is Press Freedom?

Press freedom is essentially the latitude and conditionality that accords a media practitioner the liberty to access and gather information, and to select and publish material in order to serve the public good without interference or censorship from any quarters, provided of course that liberty is within the limits set by the individual rights of citizens.¹ That is to say, press freedom is the right to receive and impart ideas and information without interference. The expression “interference” primarily refers to legislative constraint and executive control.² Press freedom fosters and promotes transparency, accountability and good governance in the sense that a free press, as the watchdog of society, helps create an informed citizenry, which is necessary for sustaining a democratic society.³ As the European Court of Human Rights stated in Castell v Spain:⁴

“Freedom of the press affords one of the best means of discovery and forming an opinion on ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of democratic society.”

Therefore, it has been observed that the role played by a free and independent press in any emerging democracy cannot be overstated.⁵ This is a fact, which has been recognised by both Liberalist and Marxist thinkers. To Liberalists, a free press means that journalists are free of all outside controls. For them, a free press is one in which the press is not servile to power and is not manipulated by power. Similarly, to the Marxist, a free press means that the opinions of all people are published, not only those of the rich and powerful. For them, a free press is required to control

⁴ [1992] Series A, No. 236-B
oppression.\textsuperscript{6} It is widely recognised, that freedom of the press is a basic and inalienable right which forms a part of freedom of expression. To limit the press, limits expression and is an indication that there may be limitations to other freedoms. The reality of this restraint is that the public is constrained in knowing about, acting as part of and holding accountable the government.\textsuperscript{7}

4.2 Balancing the Promotion of Press Freedom and the Requirement for Media Regulation

Clearly, freedom of the press means the media alone should decide what they should publish. A press where journalists have surrendered this responsibility to some other people outside their profession is not free. It is censored.\textsuperscript{8} Extremist defenders of press freedom oppose any form of regulation whether voluntary or imposed.\textsuperscript{9} For them, keeping the press free from the government allows the press to help protect citizens from the abuses of government.\textsuperscript{10} They argue that journalism cannot be regulated as it is merely a playing field on which all citizens may exercise their freedom of expression. To regulate it would be to confine it to the licensed media professional \textit{par excellence}, without due regard to others who would like to express themselves journalistically. It would be to regulate or restrict one’s freedom of expression.\textsuperscript{11} Nonetheless, some writers argue that the press can be given freedom, but true freedom comes from the self-actualized and widely practiced standards and ethics of the profession. The press must also demand and act to secure and defend their freedoms.\textsuperscript{12} Uncompromising in its mission to find the truth and serve the people, the press must always strive for accuracy, truthfulness, impartiality, objectivity, absence of libel and malice, integrity, independence and professional confidentiality.\textsuperscript{13} This is

\begin{thebibliography}{9}
\bibitem{6} K. Makungu, supra note 1, p.1
\bibitem{7} R. C. Moore, \textit{The Political Reality of Freedom of the Press in Zambia} (Lanham: University Press of America, 1992) p.73
\bibitem{12} K. Makungu, supra note 1, p.73
\bibitem{13} R. C. Moore, supra note 7, p.92
\end{thebibliography}
because the media are the primary source of information in a democracy. Accurate and reliable information is the lifeblood of the democratic process.\textsuperscript{14} In view of that, many observers believe that press freedom does not imply that the media should be free from interference and regulation. Journalism is too important to be left entirely to journalists, they also need scrutiny.\textsuperscript{15} By the nature of their jobs, journalists have responsibilities and obligations to the society they serve. A profession that subjects people and institutions to intense and constant scrutiny must itself maintain the highest principles. It requires independent and critical monitoring.\textsuperscript{16}

But some journalists have resisted such appraisals on a systematic basis; mostly out of concerns that press freedom might be diminished.\textsuperscript{17} They interpret freedom of the press as extending to the protection of even bad journalism. For them, freedom of the press cannot have any meaning unless unethical journalism is allowed to co-exist side by side with ethical journalism. To try and check unethical journalism by law is, therefore, seen as an attempt to suppress press freedom.\textsuperscript{18} Perhaps, the point that proponents of this view want to underscore is that the press in any given situation, particularly where it is free, cannot be perfect. There will always be those who find fault with it. Simply because some people find fault with the press, is therefore, no reason why its freedom should be curtailed.\textsuperscript{19} Generally, the media is recognized as a distinct profession in society wielding special powers that require special regulations and checks.\textsuperscript{20} In Zambia, the media has been put under pressure to become accountable through the establishment of the Media Council of Zambia and its Code of Ethics. The question is whether media practitioners can maintain their

\textsuperscript{14} L. A. Day, \textit{Ethics in Media Communications: Cases and Controversies}, 3\textsuperscript{rd} Ed (Belmont: Wadsworth, 2000) p.25
\textsuperscript{15} G. Goodwin and R.F. Smith, supra note 10, p.296
\textsuperscript{17} Supra note 15, p.296
\textsuperscript{19} Ibid
\textsuperscript{20} H. Mupfurutsa, supra note 9, \texttt{http://www.dehai.org/archives/sept_oct05/0424.html}
autonomous status, which is necessary in a democratic society, while at the same time fulfilling their mandate of social responsibility.\textsuperscript{21}

4.2 Self-regulation and Press Freedom
The benefits of self-regulation for press freedom are largely self-evident. Although acceptance of self-regulation clearly requires the imposition of self-restraint and the observance of common rules, it can help the media to seize the moral and political initiative, preserving editorial freedom and independence and helping to head off political interference and legal constraints.\textsuperscript{22} Self-regulation enhances press freedom in the sense that the media can operate freely. They can express themselves freely without feeling threatened by government control. The media are conscious of their responsibilities. They are aware of their limitations, yet they can operate with a free mind.\textsuperscript{23} They do not need a law to say how they should operate. The need for the media to operate freely is higher than other bodies. This is because the media is a special industry that attracts a lot of attention, especially from the government.\textsuperscript{24} The media provide the public with quality information that enable them to make informed decisions on a wide range of national issues including choosing who should govern them.\textsuperscript{25} An independent press creates pluralism of the media thereby ensuring that people have access to information. Therefore, it should be protected. There should not be bars to hinder its independence.\textsuperscript{26}

4.3 Statutory Regulation and Press Freedom
As was seen in the first chapter, a statutory body is a mandatory one, regulated by those whose duty it is to execute the laws and those who make the laws. Under a statutory regulated system, the law stipulates the conditions of professionalism, that is to say, the guidelines for media ethics are

\textsuperscript{21} L. A. Day, supra note 13, p.41
\textsuperscript{22} I. Beales, Imperfect Freedom- The Case for Self-Regulation in the Commonwealth Press (Commonwealth Press Union, 2002) p.10
\textsuperscript{23} Interview: H. Kabwe, Chairperson of MISA Zambia. 3/10/08
\textsuperscript{24} Ibid
\textsuperscript{26} Supra note 22, p.10
laid down by the law.\textsuperscript{27} It follows that, media bodies may be subjected to closures and other punitive measures barring their activities for failure to meet requirements of the statutory regulated regime. Moreover, a total disregard of media ethics by those regulated under such a statutory body may at some point attract criminal sanctions.\textsuperscript{28} Furthermore, journalists will be required to register with an appointed organisation in order to practice, leading to the introduction of a licensing system. As a consequence, if a journalist does not appear to be good in the governments’ eyes, they will not be given a licence. Similarly, journalists that are given licences may have them revoked if they are found to have violated any media ethics.\textsuperscript{29} This entails that, under a statutory regulated regime, there is little room for self-expression because journalists live in fear of losing their jobs if they write stories critical of the government. This results in lack of creativity in the media.\textsuperscript{30} Journalists switch allegiance from the profession of journalism to government and start developing the wrong attitude that by committing offences against media ethics law they are committing wrongs to the government, when what should worry them is that by being unethical journalists, they are doing the profession of journalism irreparable harm.\textsuperscript{31} Thus, statutory regulation creates problems of independence as the media ceases to be an independent and objective mouthpiece working in the public interest. In this manner, statutory regulation and Government controls prevent the press from discharging their watchdog role effectively and freely.\textsuperscript{32}

It is worthy to note, that the introduction of a licensing system in media may also result in the creation of classes within the profession, that is to say, between those with degrees and those with diplomas. The journalism profession becomes limited to those people who have been trained, or rather, people who have journalism or media qualifications. However, it is necessary to appreciate

\textsuperscript{27} Interview: L. Njunga, Director of Press Association of Zambia. 10/10/08
\textsuperscript{28} Ibid
\textsuperscript{29} Ibid
\textsuperscript{30} Ibid
\textsuperscript{31} Interview: B. Mwale, Executive Secretary of the Media Council of Zambia. 5/12/08
the fact that they are many talented journalists who are not trained. There are some non-journalists who are an authority on various topics, for example, doctors and economists, who can write more competently than the journalists themselves. Once statutory regulation is introduced, all these professionals might be excluded from writing articles. Therefore, regulating the media using statutory controls would mean licensing freedom of expression which is not an exclusive benefit of journalists but the ordinary citizen as well. Yet, freedom of expression cannot be licensed because it is guaranteed in the Constitution. Like most provisions of the Constitution, several restrictions on absolute freedom have been permitted. For example, the media is not immune from laws on defamation. There are other built-in mechanisms to take care of erring journalists such as the Code of Ethics. Journalists who violate the Code of Ethics do so at the risk of losing honor, respect and credibility without which they cannot perform efficiently as journalists.

The fact that the law prescribes media ethics under a statutory regulatory regime entails that the laws can be abused and manipulated to favour the government. Even if consultations are carried out with journalists in drafting the media ethics law that goes to Parliament, there is no guarantee that what the journalists have suggested will pass unamended in Parliament. The most likely scenario is that the draft would be substantially amended by the parliamentarians in their enthusiasm to protect government and the people from what they see as irresponsible journalism. The fact, however, is that law makers are the least qualified to prescribe media ethics for the simple reason that the majority of them are outsiders to the profession. Under statutory regulation, there is a possibility of government having a representative on the board of the Media

33 Interview: B. Mwale, Executive Secretary of the Media Council of Zambia. 5/12/08
34 The Post, 1st August 2008. ‘PFC vows to fight Statutory Media Regulation’
35 Interview: L. Njungu, Director of Press Association of Zambia. 10/10/08
36 G. Goodwin and R.F. Smith, supra note 10, p.26
37 Supra note 34
39 Ibid
Council and that the operations of the Council would then be dictated to by government.\textsuperscript{40} Once government has a hand in the board arbitrating violations of media ethics, it becomes problematic because government might start influencing the board. It will try to fund the Council through Parliament (National Budget), using the argument that the funding comes from tax payers money. Therefore, the media will lose autonomy of the Council.\textsuperscript{41} Analysts in the media industry, think government wants to establish a Media Complaints Committee which is to be housed at the Ministry of Information, a policy planning wing to be seen to be forming a parallel organisation to the Media Council of Zambia.

In conclusion, media ethics are inexplicably intertwined with press freedom. By exercising ethical journalism, journalists promote press freedom. It is clear that a press which is regulated by the government or courts cannot be truly free. And since a free press is universally regarded as one of the benchmarks of a democratic society, the moral imperatives against having state controls as a means of regulation become undeniable.\textsuperscript{42} It is therefore deemed essential that the MECOZ remains free from government influence in order to remain non-partisan and more importantly, to guarantee the protection of press freedom. The next chapter will provide conclusions and further recommendations on the ideal form of media regulation in Zambia.

\textsuperscript{40} Interview: B. Mwale, Executive Secretary of the Media Council of Zambia. 5/12/08  
\textsuperscript{41} Ibid  
\textsuperscript{42} I. Beales, supranote 23, p.7
CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

i. Chapter 1

This chapter highlights the important role the media plays in providing information in our society, which makes it imperative that they behave ethically. On account of the gradual erosion of public confidence in the media, there appears to have been an increased sensitivity within the industry to ethical issues. As the key findings of this research reveal, self-regulation is a practical and respectable alternative to statutory regulation. The case for self-regulation rests on considerations of expertise, objectivity and efficiency in terms of the speed of decision making and lower costs. On the contrary, statutory regulation is presented as slow, more costly and lacking expertise because government staffs are outsiders to the industry.

Chapter 2

This chapter established that in the last few years, Zambia has found itself pushed in the debate on media regulation, resulting in the formation of the Media Council of Zambia (MECOZ) as an independent self-regulatory body for media ethics. The chapter goes on to indicate that there is a wealth of international experience in the field of self-regulation. There is no single fit-all model of self-regulation which can easily be transferred from one country to another. However, there are fundamental principles, which should be observed and useful lessons that can be learned.

iii. Chapter 3

This chapter examined the operations of MECOZ and its effectiveness in regulating media ethics in Zambia. This research notes the good work being carried out by MECOZ, although it appears to still be in the nascent phase. However, there are some media houses that do not seem to treat MECOZ with any seriousness. This poses an ethical challenge and impacts on quality control.
While it is understood that concerns have been raised regarding the failure of certain media outlets to act ethically and at the failings of MECOZ to tackle this, statutory regulation is not the right response to this problem because it is easily abused as an instrument of control over the media. It is well established that any bodies that have regulatory powers over the media should be free from any commercial or political interference. Statutory regulation undermines this crucial principle by allowing for potential political interference in the appointment of its members. This would endanger the independence of MECOZ and have important repercussions for its work and for the journalistic profession as a whole. In fact, the current efforts at statutory regulation in Zambia are somewhat insincere because they are undoubtedly aimed at monitoring *The Post*, which stands out as the most influential newspaper in Zambia. If *The Post* is a nuisance, the solution would not lie in statutory intervention, but rather in engaging it into practicing ethical journalism. Since self-regulation exists, it must be supported fully in order to demonstrate to Zambian legislators that there is no need for statutory regulation. But if the media cannot regulate themselves, then they are inviting government intervention through statutory regulation. Government in Zambia has tried to pass a Media Council law twice and failed. But that does not prevent them from succeeding this time around. The media industry can prevent this from happening by trying to put their houses in order and assisting MECOZ to function at its full capacity.

iv. Chapter 4

This chapter recognizes the need to promote press freedom as well as the requirement for media regulation. It observes that press freedom can only be enhanced under a self-regulatory regime as opposed to a statutory regulated one, because the media are able to operate without any political interference and legal constraints. Certainly, the levels of ethical conduct in the Zambian media have not reached such proportions as to warrant State intervention. The Zambian media are still developing and require some freedom to carrying out their work effectively.
5.2 Recommendations:

i. **MECOZ must embrace ideas from other Press Councils**

In view of the fact that MECOZ is still in the nascent stage, practical experiences should be taken from other countries that have successfully established self-regulatory mechanisms such as Tanzania and the United Kingdom. These systems must be studied with a view to incorporating elements from them into the Zambian system.

ii. **MECOZ needs to be strengthened in order to uphold high professional standards amongst journalists in Zambia.** The first step here is to strengthen the MECOZ Constitution because professionalism can only be upheld by a strong Constitution. Currently, MECOZ is in the process of amending its Constitution. Hopefully, this Constitution will address the real needs of the public. It should not only look at protecting the media, but balance it with the rights and interests of citizens.

iii. **MECOZ should create effective remedies.** MECOZ, because of its self-regulatory nature, *lacks teeth to bite* and it can only recommend corrective action. While some are of the view that MECOZ should not be entitled to fine or ban media outlets or exclude individual members from the profession, it should be observed that the public is more likely to place its trust in a body that has powers to impose heavy sanctions on journalists who breach professional or ethical standards. The remedies must be sufficient to satisfy the reasonable expectations of the complainant as well as to deter the offender from repeating the occurrence. To this effect, it is recommended that MECOZ introduces a modest system of fines. Media practitioners and media houses found to be in breach of the Code of Ethics should be required to compensate their victims, and such fines would be a very effective way of reminding editors and proprietors of their responsibilities.

iv. **MECOZ needs a rigorous publicity effort to promote itself and the ideal of self-regulation for which it was created.** There is also need to publicise the MECOZ Code of Ethics so that
members of the public may be aware of the standards of behavior expected of media professionals and bring complaints involving violations of media ethics.

v. High standards of accountability, good governance and transparency should be applied to the everyday functioning of the Council in order to preserve legitimacy and credibility of its decisions. This may be achieved through regular publications of decisions and activities of the Council and the publication of procedural rules for complaints. Furthermore, the Board of Directors of the Council should be selected according to democratic procedures and the term of membership limited in duration in order to avoid domination by any individual or interest group and to enable fresh experience and insight to be brought to the activities of MECOZ.

vi. The mandate of MECOZ should extend to advocating for freedom of expression. It should act as both a defender of the rights of members of the media profession as well as a guiding force for their conduct and an adjudicator for complaints received from members of the public. This will encourage widespread support among the media community and contribute to raising its public profile.

vii. The Code of Ethics, which sets the standards to which media practitioners endeavour to adhere, should not be enacted by the legislature as it is the preserve of journalists. It is well established that media ethics are a matter for the media professionals. Therefore, no legislation should be adopted that imposes a compulsory licensing mechanism for journalists or that sets entry requirements for the journalistic profession. Press freedom is a pre-requisite of ethical journalism. Journalists must be allowed to work independently without legislative constraint and executive control. For a country like Zambia not to have a transparently free press, it may risk losing financial assistance from donors as this is normally contingent on commitment to such democratic principles. Therefore, the government must abandon any proposals of setting up a statutory regulated system.
viii. **Government has a role to play in making self-regulation effective.** Institutions dealing with training of journalists in Zambia are mostly under the control of government. If there is bad journalism, government should try to see how it can improve the training programmes at these institutions. Perhaps, one measure would be to introduce retraining programmes for journalists. Standards of professionalism and journalistic ethics should be an integral part of journalism training. The journalism training institutions should develop course formats in conjunction with media associations, thereby making questions of ethics an issue in all areas of journalism training.

ix. **Journalists in Zambia should come together to review and agree upon common standards of ethics and professionalism in order to make them all embracing.** Bearing in mind the dynamic nature of the media and changing values in society, the Code of Ethics should be considered a working document subject to interpretation, rather than a set of rigid rules. To ensure the Code remains relevant to the changing environment, regular review and opportunity for debate about its contents should be provided.

x. **Journalists must be entitled to refuse an assignment that breaches the Code of Ethics.** Considering that journalists are at the frontline of ethical decision-making, a clause of conscience that endorses a journalist’s right to refuse assignments which breach the principles outlined in the Code of Ethics should be included in a journalist’s contract of employment and endorsed by the Media Council of Zambia. Further clauses that guard against conflict of interest can also be developed.

xi. **The media industry must provide financial support to MECOZ.** It has been a central tenet of many self-regulatory systems that the integrity of the independent system is most secure if the industry itself meets the cost. It gives the industry ownership and a moral authority it might not otherwise command. Many of the funding difficulties might be eased
by a better co-ordination of existing media support agencies working in partnership. MECOZ should have a steady and adequate source of funding to carry out its responsibilities effectively. If the Zambian media industry values its freedoms and wishes to protect them from legislators who will use any excuse to try and curtail them, it is prudent that they fund their Press Council well so that it can run an efficient, high profile complaints mechanism that will demonstrate to the government that there is no need to interfere in regulating the content of newspapers.

In the final analysis, certainly journalists demand a free press, but with freedom come responsibility. They have a special responsibility to society and should consider it a professional mandate to improve the ethical climates of their own institutions. With the subject of media ethics now at centre stage, it is crucial that in a democracy like Zambia that the media should regulate itself and never be subject to direct intervention by government. The above recommendations are fairly modest, but they can serve as a starting point for determining the right model for the regulation of media ethics in Zambia and also to encourage the media to reflect on how they can contribute to preserving hard won freedoms through better adherence to ethical standards and commitment to the principle of accountability.
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