

**THE TRANSFORMATION OF THE ZAMBIA
NATIONAL BROADCASTING
CORPORATION (ZNBC) FROM A STATE
BROADCASTER TO A PUBLIC
BROADCASTER.**

BY

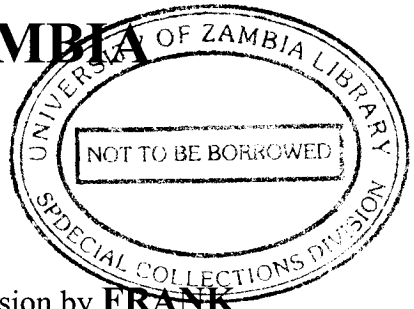
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I, **FRANK MOYO GWABA COMPUTER NUMBER 20066201 DO HEREBY** declare that the contents of this Directed Research Paper are entirely based on my own findings and I have not in any way used any person's work without acknowledging them as the source.

I therefore bear the absolute responsibility for the contents, errors, defects and any omission herein.

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DEDICATION

I dedicate this work to three people that is my mother **Peggy Gwaba**, **Mr. Claus Ruhland** and my grand father **Mr. John Gwaba**. Granny, you always encouraged me to become a Lawyer and at least I am a step away from becoming one. Though you are no more, I know you have always been looking over me from above and may you please continue guiding me as I live to achieve my goals. Mr. Ruhland, I could not have asked for anything better than what you did for me. Though equally late, you will always be imbedded in my heart for you believed in me. I miss you.

Peggy, my mother, you are the best mother in the world. Please continue being the guiding angel you are and wish you more years and good health.

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argument with my mother, you would always rise above emotions and, reason would prevail. You will always have a special place in my heart till we meet again. Fishing will never be the same again in the Atlantic without you. As for my mother, Peggy Gwaba, I thank you for the gift of life and love. You have always shown us, your children a strong character, and please, even in these trying moments we will always look up to you for support since you are the only Parent we remain with. I wish you many more years to guide us into success.

And finally, all my friends and colleagues, just too numerous to mention. Please accept my very heartfelt gratitude. I shall forever remain indebted to you. “Nkombo, remember to come to class tomorrow,” I will miss you pal.

To all of you, I say, thank you very much for everything and may the good lord Almighty bless you abundantly. You all did the very best you could and I remain absolutely responsible for any failures and shortcomings in this work.

Frank Gwaba
University of Zambia
Lusaka. 2005.

PREFACE

Broadcasting is a sensitive issue especially when there are not so many broadcasting stations that are public and cover almost the whole country. Broadcasting is perceived the easiest mode of transmitting information and, it being that, politicians have always been at conflict with each other in wanting to control the media, especially broadcasting. These fights are a result of broadcasting being perceived the best platform for any political group to communicate its ideologies to the masses. Therefore, realising the conflicts associated to broadcasting, it becomes important to put some safeguards in place to regulate the industry and ensure it is accessible to all sectors of society. That is, there is need for those broadcasting stations perceived public to uphold the principles that govern such stations. For example, ZNBC as a public broadcaster should be guided by the principles of public broadcasting to ensure it operates independently. This is very important to ensure all sectors of society are given access to air their views without being impeded by those in power.

Therefore, this paper discusses the transformation of ZNBC from the State broadcaster to a public broadcaster. Public broadcasting ensures the views of the public are embraced, contrary to being a tool for state propanganda. Propangandist reportage would compromise the principles of public broadcasting like editorial independence because journalists are not free to broadcast according to how newsworthy an event could be.

ABSTRACT

This work is an attempt at evaluating whether the Zambia National Broadcasting Corporation –ZNBC has fully transformed from a State Broadcaster to a Public Broadcaster conforming. This transformation is sought to ensure ZNBC is free from political interference which ends up compromising its independence. That is, as a National Broadcaster, and a Public one for that matter, ZNBC should operate independently under an independent board to ensure all views, whether dissenting or for the government are aired. Further, ZNBC should ensure the citizenry is informed and educated about certain the happenings both, within and outside Zambia. This is one of the profound duties of ZNBC; especially that it has been transformed into a public broadcaster.

Zambia, being a pluralistic state, the national media especially broadcasting, which is the easiest way of transmitting information to the citizens, of which about 60 percent of the population is still ignorant, requires an independent public broadcaster to inform and educate the masses. This should be done independently to ensure that even minority groups are taken care of in information dissemination and this is what is expected of ZNBC, especially under a democratic dispensation like present day Zambia.

The state of affairs, however leave much to be desired as far as public broadcasting in Zambia is concerned. The government of the day usually treats the national broadcaster

as an annexure to its political party, frustrating the principles of Public broadcasting. Therefore, it is hoped the politicians in this country can lay off their hands to ensure public broadcasting thrives to the benefit of all.

STATEMENT OF PROBLEM

In view of the transformations that have taken place in Zambia over the last decade that is, the transformation of Zambia from a one-party state to a democratic state, one realizes that equally the national broadcaster (ZNBC), needed to undergo change to enable it operate independently as a public broadcaster. This realization comes in the work of ZNBC having operated as a state broadcaster in a one party political system.

Therefore, Zambia having undergone political change, which introduced Multi – Party politics under ZNBC, the major broadcaster, it needed to adapt to enable it broadcast independently in a pluralistic state that Zambia became. To achieve this score, the national broadcaster needed to be transformed from a state broadcaster to a public broadcaster. This means, no particular group would make claim of a lion's share in terms of coverage, but rather enjoy coverage on the basis of how newsworthy the events could be, based on professional journalistic principles.

Further, it is important to realize that for ZNBC to truly transform from a state broadcaster to a public broadcaster there is need for powers to be trimmed from the Minister of Information and Broadcasting Services, to an independent Body. As such, this paper makes analysis of what steps have been taken in transforming ZNBC, from a State Broadcaster to a Public Broadcaster.

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INTRODUCTION

Broadcasting is by far the most important source of information, as well as of entertainment, for most people in countries around the world. High levels of illiteracy along with the difficulty of distributing newspapers mean that broadcasting is the only media, which is accessible for many people. For the poor, newspapers may be prohibitively expensive, and some people simply find it easier and more enjoyable to watch and listen to the news than to read. Furthermore, broadcasting plays a very important role as a cheap, accessible form of entertainment. All too frequently, the public broadcaster has operated as a mouth of Government rather than serving the public interest. This paper discusses the transformation of Zambia National Broadcasting Corporation from a State Broadcaster to a Public Broadcaster. The paper consists of five chapters and whose objective is to outline the need to transform ZNBC and how this can be achieved.

In **Chapter one** the paper outlines the historical background of the Zambia National Broadcasting Corporation (ZNBC). In this instance, emphasis is placed on tracing the origins of the national broadcaster, that is, what it was prior to incorporation. This will be done with a view to justify the change of status and analyze whether the national broadcaster became better in coverage and attained operational autonomy to minimize political interference.

Chapter two outlines the principles on broadcasting. That is, it elaborates principles setting standards on how to promote and project independent broadcasting by ensuring that broadcasting serves the interests of the public and addresses the complex issue of how to regulate in the public interest and yet prevent that regulation from

becoming a means of government control is considered. Further, these principles address the need for regulators to prevent commercial interests of the public as a whole. Above all, an analysis is made to determine how the national broadcaster conforms to these principles outlined.

Chapter four, examines the implementation of the Amendments to the Zambia National Broadcasting Corporation (ZNBC) Act. Further, the Government's reaction to these changes is reviewed.

In conclusion, **Chapter five** recommends additional changes that would make ZNBC truly a Public broadcaster in a democratic dispensation.

CHAPTER ONE

1.0 HISTORICAL BACKGROUND TO THE INCORPORATION OF ZNBC:

1.1 The Origins of ZNBC

The origins of Zambia National Broadcasting Corporation date back to 1941 when Harry Franklin, the then director of information in the Northern Rhodesian government established a small radio station in Lusaka.¹ The newly established station broadcast in four vernacular languages namely, Bemba, Nyanja, Kaonde and Tonga and from that it could be seen that the objective of the broadcasts were to perpetuate colonial rule in Northern Rhodesia(now Zambia) though Agricultural and other programmes were included later.² Most settlers rarely listened to the newly set radio station for they preferred to tune to the British Broadcasting Corporation (BBC) and the South African Broadcasting Corporation (SABC), which had quality programmes, largely propaganda news of the Second World War in Europe³. The newly formed radio station, which later became the Zambia Broadcasting Corporation (ZBC) got most of its support from the settler community and a few indigenous people who could listen to it from the community sets provided at chief's courts and administrative centres.⁴ In 1949, a radio set called, "the sauce-pan special", was introduced. The "sauce – pan special", was green in colour. Green was chosen because it was the only colour Africans did not hold any prejudice against resulting in eight out of ten Africans in urban areas becoming listeners⁵.

¹ The Media and Political Change, A freedom forum Report on the Media in Zambia (2001) p. 14

² Fackson Banda – Up in the Air? The state of Broadcasting in Southern Africa. Analysis and trends in six Countries. PANOS Institute Southern Africa,(1998) p. 106

³ Ibid

⁴ The Media and Political change: Africa a Freedom Forum Report on the Media in Zambia (2001) p. 16

⁵ Ibid p. 15

Tiny Rowland of the London Rhodesia Company (Lonrho) introduced television in 1961, in Kitwe, some twenty years after the radio was introduced in Lusaka.⁶ Television was mainly introduced to serve the mining and commercial community on the Copperbelt. However, this newly established television station was an extension of Rhodesia Television Limited, which was based in Salisbury (Harare)⁷. In 1966; the Zambia Broadcasting Corporation (ZBC) was dissolved to pave way for the Zambia Broadcasting Services (ZBS), which was now established under the full government control. When Zambia became independent in 1964, the Zambia Broadcasting Corporation was nationalised to become the Zambia Broadcasting Corporation (ZBC) which became a department of the Ministry of Information and Broadcasting.⁸ This meant that London Rhodesia Company (Lonrho) lost control of the Broadcasting station and in 1967; government took full control of the Kitwe studios⁹. By this time, Zambia Broadcasting Corporation was still a government department.

In 1987, the Zambia Broadcasting Services, the predecessor to Zambia National Broadcasting Corporation (ZNBC) which had been under the Ministry of National Guidance Information and Broadcasting since independence, through an Act of parliament,¹⁰ became a corporation. This meant that ZNBC became a body corporate with perpetual secession. The Zambia National Broadcasting Corporation (ZNBC) Act of 1987, enacted by the ruling party, United National Independence Party (UNIP), became the starting point in the development of broadcasting in Zambia. The Act included provisions that would assist in the licensing of radio and television

⁶Supra note 2 at. P 106

⁷ Supra note 4 at p p.16

⁸Supra note 2 at. P. 106

⁹ Francis P. Kasoma "Press Freedom in Zambia and Communication in Africa (press Trenton Africa) (1999)

¹⁰ Parliament Act No 16 of 1987, dated 9, 1987.

stations¹¹. Therefore, having established the origins of the Zambia National Broadcasting Corporation (ZNBC) by capturing its historical background, in the preceding section, this chapter further discusses the reasons for incorporating the Zambia National Broadcasting Corporation (ZNBC) into a body corporate to determine whether the National Broadcaster has achieved its desired goals that inspired it to acquire such status.

1.2 The Reasons for Incorporating ZNBC

In Zambia, in the late 1980's, "Capitalism" was of central importance in articulating what the state could not give and give to its people. Since independence, in 1964, nearly all public services including health care, education, and broadcasting had been provided free of charge or at extremely low cost, and most basic commodities had been heavily subsidised. Despite these socialistic policies, by the late 1980's Zambians were witnessing, virtually on a daily basis, the dramatic erosion of their standards of living. With the state on the verge of economic collapse, the government undertook a far-reaching economic recovery plan to reduce food subsidies, decontrol prices, de-value the national currency (kwacha) and charge basic fees for health care and others social services.¹² Significantly, in this context of economic crisis, Zambia National Broadcasting Corporation that was then called Zambia Broadcasting Services (ZBS) was one of the first government institutions to be removed from direct Ministerial control and to be restructured as a corporate, profit making entity¹³. Prior to incorporation, while commercial adverts had been an important source of revenue for both radio and television since the 1960's, ZBS (as ZNBC was then called) had

¹¹ Section 25 (2) – ZNBC Act No. 16 of 1987

¹² Spitulink Debra Anne Ph.D – Radio culture in Zambia: Audiences public words, and the National state (Vol. I aid II)

¹³ Ibid

always operated with a philosophy of public service. It was non-profit, state run, and for the most part structured around the colonial (and BBC) derived paternalistic authoritarianism, which assumes that broadcasting's role is to build the nation, uplift and enlighten society (*Fraenkel 1959, Franklin 1950, Smith 1983*).¹⁴ As a consequence, ZNBC was removed from the Ministry of Information and Broadcasting Services, to allow it to legally generate its own-revenue as a commercial enterprise. Incorporation of ZNBC meant transforming its predecessor ZBS which had been operating in the red for years, as it was expected that the new corporation (ZNBC), would be better able to exploit the potential of broadcasting to make money.¹⁵ Actually from the perspective of the Corporation, broadcasting was no longer something that should be provided free of charge, hence ZNBC needed both to signify and justify its profit making status to Zambians. As such, several dramatic changes were made to differentiate ZNBC from its predecessor ZBS, a government service with a civil servant structure, and to forge an identity as a sophisticated modern business. For example, in the Act of Parliament creating ZNBC, the new ZNBC was granted the powers to establish a revenue account, to invest, to undertake fund raising activities, and to take out loans with the ultimate goal being that broadcasting would eventually be able to operate without government subvention.¹⁶

After these changes, ZNBC began to concentrate on Commercialisation. That is, a 24 hours F.M stereo commercial radio channel (Radio 4) was created in February 1989, and advertising rates for all ZNBC media were increased. The staffs in the commercial department were urged to be more aggressive in searching for advertisers

¹⁴ Ibid p. 275

¹⁵ Ibid p. 280

¹⁶ Ibid

and program sponsors¹⁷. Accordingly, the idea of the Corporation which was to create an economic unit that would service itself some how succeeded by these changes. Further, the incorporation of ZNBC led to a more commercial approach to broadcasting and the National Broadcaster in its first year undertook several measures to increase revenues. One of these measures was a decision to start charging for the broadcast of funeral messages. This decision unleashed a whole host of issues surrounding ZNBC's service to the public, the nature of money making and the national economic crisis like the fall in the drastic erosion of the standard of living. The outcry was essentially that ZNBC was now bent on making money and was exploiting people in true capitalist fashion and that this was an affront to the National philosophy of Humanism¹⁸.

Conclusively, one would contend that the reasons for incorporating ZNBC were merely for commercial purposes to enable it stand on its own with minimal dependency on the State. Further, it was done to lessen the burden on the government due to the fall in the economic performance of the country of which most public institutions were financially crippled. Consequently, ZNBC could not be spared to be the only one enjoying government sponsorship, hence the decision to incorporate it.

¹⁷ Ibid p. 285

¹⁸ Ibid

CHAPTER TWO

BROADCASTING PRINCIPLES

2.0 An outline of broadcasting Principles

Broadcasting principles elaborate a set of standards that ensure that broadcasting serves the interests of the public. These principles address the complex issue of how to regulate broadcasting in the public interest and yet prevent that regulation from becoming a means of government control. They also address the need for regulators to prevent commercial interests from becoming excessively dominant and to ensure that broadcasting serves the interests of the public as a whole.¹⁹ Broadcasting principles recognise both the need for independent broadcasting, freedom from government or commercial interference, and the need in some areas for positive action to ensure a vibrant, diverse broadcasting sector. They apply not only to specific regimes for the regulation of broadcasting, but also apply more generally to state and even private action in the broadcasting area and the overall legal frame work for freedom of expression recognising both the need for independent broadcasting, freedom from government or commercial interference, and the need in some areas for positive action to ensure a vibrant, diverse broadcasting sector.²⁰ Broadcasting Principles are generally based on international and regionally recognised laws and standards that involve State Practice and the general principles of law recognised by the community of nations. These are: -

¹⁹ Article 19: Access to the Airwaves – Principles on Freedom of Expression and Broadcasting Regulations. April 2002 P. 1

²⁰ Ibid P.2

2.1 Right to Freedom of Expression and Information:

This principle entails that everyone has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, orally, in print, in the form of art, through the broadcast Media or through any other Media of his or her choice. The right to freedom of expression includes both the right of broadcasters to be free of state, political or commercial interference and the right of the public to information of maximum diversity, and ideas in broadcasting. Further, broadcast content should never be subjected to prior censorship either by the government or by regulatory bodies. Any sanctions for breach of regulatory rules relating to content should be applied only after the material in question has been broadcast.

2.2 Editorial Independence:

Whereas programming decisions are made by broadcasters on the basis of professional criteria and the public's right to know, this should be guaranteed by law and respected in practice. Broadcasters should decide and not the government regulatory bodies or commercial entities, about what to broadcast especially on content issues and election coverage. However, this principle protects both general editorial policy and specific editorial decisions. Broadcasters, according to this principle should never be required to carry specific broadcasts on behalf of or to allocate broadcasting time to, the government, unless when granting direct access to political broadcasts. That is, unless when public broadcasters grant political parties and/or candidates direct access air time, on a fair, equitable and non-discrimination basis for political broadcasts.

2.3 Emergency Measures:

The legal framework for broadcasting should not allow state actors to assume control of broadcasters – either over their equipment or their broadcasts – in an emergency. Should a genuine state of emergency arise which absolutely necessitates such measures, special legislation can be passed at that time, to the extent strictly required by the exigencies of the situation and in accordance with international law.

2.4 Liability for the Statements of others

Broadcasters should be protected against liability for the statements of others, especially during a broadcast where it would be unreasonable to expect the broadcaster to prevent transmission of the statement. Equally, where it is in the public interest for the statements to be broadcast, for example, to demonstrate the existence of certain views in society, and the broadcaster does not adopt the statements uttered, especially under direct access political broadcasts, he must be protected.

2.5. Broadcast Policy

Legislation establishing regulatory bodies should set out clearly the policy objectives underpinning broadcast regulation, which should include promoting respect for freedom of expression, diversity, accuracy and impartiality, and the free flow of information and ideas. Regulatory bodies should be required to take into consideration and to promote these policies in all their works, and to act in the public interest at all times.

2.6 Commercial and Political Advertisements

Where parties and candidates are permitted to purchase broadcast time to air political advertisements, broadcasters should be required to make such time available on an equal non-discriminatory basis, to all parties and candidates.

2.7 Adequate Public Information

Public broadcasters have a primary obligation to ensure that the public receive adequate information during an election on how to vote, the platforms of political parties and candidates, campaign issues and other matters of relevance to the election. Further, broadcasters should be required to ensure that all election coverage is fair, equitable and non-discriminatory. However, any obligations regarding election broadcasting should be overseen by a regulatory body that meets the conditions of independence set out by a clear legislative statement of overall broadcast policy, as well as of the powers and responsibilities of the regulatory body.

Further, Public Broadcasters should be required to grant political parties and or candidates direct access airtime, on a fair equitable and non – discriminatory basis, for political broadcasts. Direct Access Political Broadcast requires broadcasters not to refuse to carry obligatory direct access political broadcasts, unless they clearly and seriously breach a legal obligation.

2.8 Independence

Public broadcasters should be overseen by an independent body, such as a Board of Governors. The institutional autonomy and independence of this body, should be

ensured in the same way as for regulatory bodies. Particularly, independence should be guaranteed and protected by law. This can be done by: -

- a) having a clear legislative statement of goals, powers and responsibilities;
- b) respecting editorial independence;
- c) in funding arrangement; and
- d) through formal accountability to the public through a Multi-party body.

The role of the governing body should be set out clearly in law. This role should include ensuring that the public broadcaster fulfils its public mandate in an efficient manner and protecting the broadcaster against interference. The independent governing body should resist interfering in day to day decision making, particularly in relation to broadcast content, have respect for the principle of editorial independence, and should never impose prior censorship. The running of the broadcaster should be left to management, especially, in relation to programming matters.

The African Charter on broadcasting²¹ similarly devised some principles to guide the broadcasting regulation in Africa. They devised these principles in cognisance of the fact that for the vast majority of the peoples of Africa, the broadcast media remains the main source of public communication and information. The Charter affirmed that:

“all state and government controlled broadcasters should be transformed into public service broadcasters, that are accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one sided reporting and programming in regard to religion political belief and gender. The editorial independence of public service broadcasters should be guaranteed. Public service broadcasters should also be adequately funded in a manner that protects them from

²¹ 2001. MISA Media Advocacy Tool kit Resource Book p. 43

arbitrary interference with their budgets and mandate of public service broadcasters should be clearly defined.”

Though numerous broadcasting principles have been cited in this Chapter, they are a product of a long process of study; analysis and consultation overseen by **Article 19**, drawn on extensive experience and work with partner organisations in many countries around the world. The ones cited in this Chapter are only those relevant to this particular study. In the preceding section, it remains to be seen how ZNBC has embraced them in its endeavour to conform to international standards of broadcasting.

2.2 ZNBC’S CONFORMITY TO BROADCASTING PRINCIPLES

In this segment, there shall be an analysis of ZNBC’s conformity to broadcasting principles earlier highlighted, especially that they are internationally recognised guidelines to an ideal public service broadcaster reflective of the ideals of the citizenry in a pluralistic society like Zambia.

The independence of the Zambia National broadcasting Corporation as a national Broadcaster depends on how it embraces the Principles highlighted above. There is need to quickly transform ZNBC into a public broadcaster to curb political interference that has reached alarming levels. Even where the National Broadcaster is supposed to carry out its duties to the nation objectively and diligently, it has always failed because of the rampant interference from those in the political arena especially, the government of the day. One would wonder why ZNBC, if it was truly a public broadcaster, as those in government want us to believe, should fail to adequately cover such important national events as the *November 1* and the *December 10*

demonstrations organised by the *Oasis forum*²² aimed at lobbying government to adopt the Republican Constitution through a Constituent Assembly. This style of broadcasting is reflective of a propagandist kind of media which only reflects the views of those holding the reins of power at any given time. Therefore, as a way of curbing such practices there is need to adopt these internationally acknowledged principles to ensure editorial independence is realised. As such, editorial independence is one principle that needs embracing for the smooth running of the national Broadcaster.

Editorial Independence entails programming decisions being made by broadcasters on the basis of professional criteria and the public's right to know and it must be guaranteed by law and respected in practice. Broadcasters, should and not the government regulatory bodies or commercial entities, decide about what to broadcast, especially on content issues and election coverage²³. Therefore, as proof of conformity, ZNBC should have televised the two demonstrations adequately for they were newsworthy enough by any standards. However, because of lack of editorial independence, they were treated as irrelevant just because the demonstrations were against the government's position on the mode of adopting the Constitution.

The long hand of government is always there to ensure that only what is considered pro-government is what comes on news, or at least takes a bigger chunk of what is

²² LAZ, EFZ, CCZ ZEC, NGOCC and Women for Change.

²³ Article 19: Access to the Airwaves-Principles of Freedom of Expression and Broadcasting regulation. P.2

aired. Definitely, with such a state of affairs one should not expect conformity to the principle of editorial independence just as **Banda Fackson**²⁴ observes:

“Political interference plays a fundamental role in ZNBC’s programming starting with the fact that television cameras are assigned according to who will be at the centre of the event being covered. The president will predictably have a camera following him, even if the event is not newsworthy, and this applies in varying degrees to the other members of the ruling elite. It has been known for the President’s Press and Public Relations Assistant, to come into the editing suite at ZNBC whenever there is a sensitive political story, especially during elections”.

Therefore, to ensure editorial independence is attained, there is need for the establishment of an Independent body such as the Board of Governors with institutional autonomy and independence to ensure the public broadcaster fulfils its public mandate in an efficient manner and protects the broadcaster against interference. This can only be attained if editorial independence as a principle of broadcasting is realised. The principle of editorial independence entails the appointment of an independent governing body, which should resist interference in the day-to –day decision making, particularly in relation to broadcasting content. In such a case, emphasis is placed on determining how the Zambia National Broadcasting Corporation has endeavoured to attain independence.

According to the ZNBC (Amendment) Act²⁵, the Minister of Information does not the enjoy power to appoint the Board of ZNBC and its Chairman. Even those powers he enjoyed to remove a Director at any time without cause have been taken away from him as well. In other words, the Minister no longer enjoys that discretion he had for it was subject to abuse. Since a Minister is a political player and by virtue of being a politician with partisan interests, it was impudent to leave such powers with him in

²⁴ Elections and the Press in Zambia: The case of the 1996 polls. Lusaka ZIMA 1998 p.112.

²⁵ Section 4

conformity to the Act²⁶ which forbids any one who was an office bearer or employee of any political party to sit on the ZNBC Board. The Minister was an ex officio member of the Board. Therefore, what this meant is that, the Amendment Act, left only independent people to sit on the Board without fear of being removed any how if they did not represent the interests of government in Board. The only remaining powers of the Minister empower him to appoint only nine part- time directors on recommendation of the appointment committee, which appointments were still subject to ratification by Parliament.²⁷

In conformity to the principle of editorial independence, the ZNBC (Amendment) Act complies with this principle because the Broadcaster is now assured of protection against any forms of interference because the main threat, the Minister, has no power to intimidate professionals, thus ultimately guaranteeing editorial independence. Actually the commendable part of the amendment is the involvement of Parliament in the appointments through ratification of the nominees.

The African Charter on Broadcasting²⁸ highlights the principles which member states should follow in determining the future of broadcasting and information technology in Africa. On state ownership of the media, the charter states:

‘all state and government controlled broadcasters should be transformed into public service broadcasters that are accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one sided reporting and programming in regard to religion, political belief, culture race and gender’.

²⁶ Section 4 (5)(d)

²⁷ Section 4 (2)

²⁸ MISA Media Advocacy Tool kit Resource book p.43

This principle can be deemed the most important of them all, because, for as long as government remains the sole shareholder in ZNBC, all the good policies that may be formulated would just be futile. For example, a lot can be learnt from the decision of the Supreme Court in the case of ***Kasengele and others V. ZANACO***.²⁹ This was an appeal against a decision of the Industrial Relations Court in which the appellants' complained that they be paid terminal benefits in accordance with the shareholders' directive, dated 28th March, 1995. The facts of the case were that, the appellants were employed by the respondents (ZANACO), a subsidiary of ZIMCO and wholly owned by Government, the Minister of Finance being the sole shareholder. On various dates, but between 28th March 1995 and November 1996, the appellants were retired. On 28th March 1995, the then Minister of Finance, wrote to the then Director-General of ZIMCO, with a copy to the President, that the 87th meeting of ZIMCO Board of Directors decided that the allowances be merged with salaries, and that the decision be implemented without further delay. Upon their retirement, the appellants were paid terminal benefits not based on the Minister's directive, but on ZIMCO conditions of service then applicable and this prompted the appellants to file a complaint in the Industrial Relations Court which was unsuccessful. In allowing the appeal the Court said at pages 12-13:

... and the question which was not discussed, but which was in fact staring the court in the face was whether those with a controlling voice and interest in a company could not bind the corporate entities which in common language they "own". In other words, it was discussed, it seems to us, whether the beneficial owners of a company, that is, the beneficial owners of shares have or do not have overriding authority over the company's affairs and even over the Board of Directors. The case of Van Boxtel V. Kearney³⁰ and also the case of re: Pan Electronics,³¹ are authority for the proposition that, 'the beneficial owners especially shareholders, enjoy as a matter of

²⁹ Supreme Court Judgment no. 11 of 2000.

³⁰ (1987) ZR 19.

³¹ (1988-89)ZR 63.

right overriding authority over a company's affairs. Theirs is the controlling voice over the wishes of mere directors and nominees.

Further, the court said, at page 19:

“Thus, we affirm that those with a superior claim and title such as the beneficial owners of the company have overriding authority over the company's affairs, even over the wishes of the Directors.”

The decision of the Court affirmed the position of the law in reference to the Companies Act, that, the Directors of a company can not make an overriding decision over the shareholders for the later have a controlling stake in the company and going against their will would be depriving an owner of a bona fide right. The *Kasengele case* enables one to confirm the generally held view that even though the Chairman of the Board is no longer the Ministry's Permanent Secretary, as was the case before the Amendments, the Minister of Information still has powers to influence the Board Membership. Actually, as long as government remains the sole share holder of ZNBC, its wishes would always prevail against the decisions of the Board of Directors and it can disobey any decisions with impunity. To prevent such from recurring, ZNBC should be removed from government control and be placed under an Independent Public Authority accountable to, and financed by Parliament.³² However, though the above recommendation could be another endeavour towards realisation of an independent broadcaster, the very fact that ZNBC would still be owned by government undermines the independence of ZNBC. This is because; no decision of the Board of Directors would be binding on ZNBC for as long the government remains the sole shareholder at ZNBC.

³² Media Reform Committee, August 1992.

Dipak Patel³³ said in advocating for the government to relinquish the ownership of ZNBC.

“I still believe that the government has no intention whatsoever to ensure that ZNBC is operated independently and wishes to retain control. It is therefore necessary to obtain public support and support from all relevant organisations to put pressure on government to relinquish their control over a partisan ZNBC... control of ZNBC should not be a case in a multiparty party democracy.”

What this statement by *Patel* meant was that, continued ownership of ZNBC by the government was detrimental to the growth of an independent broadcaster especially that Zambia was now a pluralistic society with a citizenry having diverse views on several matters of national interest. For example the holding in *Kasengele* is reflected in President Mwanawasa’s utterances when he rebuked ZNBC for not covering some of his events. He said³³:

“What happens at ZNBC is to poorly report on me and avoid repeating it for fear of being criticised as a government mouthpiece do like Cable News Network (CNN) and British Broadcasting Corporation (BBC)..... I was interviewed by CNN and BBC and they all televised the interviews many times. If I can be covered widely by the foreign media, why can’t I get it from our own and for that matter state own station”, President Mwanawasa said as he reminded government owned media that his voice was newsworthy.

Therefore, no matter how professional most ZNBC reporters may be, this and similar political encroachments have the effect of making them conscious of the forces at work in their internal and external environment. Actually, when a Head of State utters such, it is difficult to draw the distinction whether, such are personal views or not because he is representing the institution of Presidency. Actually, such utterance by a Head of State exposes the government’s mind set towards the transformation of ZNBC from a state broadcaster to a public broadcaster. This includes the observance

³³ Lusaka Central Forum for Democracy and Development (FDD) Member of Parliament. The POST Newspaper 20th March 2002. “Govt reluctant to privatise the State owned Media”, says Dipak.

³³ “Zambia Shall be saved” The POST, 7th Oct, 2004.

of editorial independence and independence of the broadcaster from state interference. The failure to exercise restraint towards the operations of the national broadcaster translates into lack of political will in the transformation of ZNBC to conform with democratic changes that have taken place in Zambia requiring the Media to operate independently.

On funding, public broadcasters should be adequately funded taking into account its remit. This principle is closely related to the one on ownership because for as long as government still sponsors the day-to-day operational expenditure of ZNBC, it would be difficult to realise a truly independent ZNBC, free of political interference. As the adage goes, *'he who pays the piper calls the tune'*. The status quo leaves ZNBC without much choice but to dance to the government of the day because it is still heavily dependant on the government for most of its operational budget. No wonder, though ZNBC is portrayed as a public broadcaster, there is nothing reflective of it, as one would not hesitate to say it is a government mouthpiece used for propaganda purposes. *Gilbert Wandt*³⁴ observes;

“Having been away from Lusaka when the Oasis Forum led a peaceful rally on the way the constitution should be adopted was held in Lusaka, I was still thinking that I will be able to catch up with what I missed during the rally by watching ZNBC news, but alas, my hopes were shattered during the news because ZNBC does not give real news to the nation. I was so disappointed that during the 19:00 hour’s news, ZNBC showed a very short clip of Rev. Ndhlovu, which made me fail to even connect what Rev Ndhlovu was trying to say. ZNBC, when are you going to be the people’s station? On November 1, you still failed to cover the peaceful demonstration which took place at Parliament building. Does it mean now that you have become a mouthpiece only for the MMD and not for the nation?”

³⁴ ZNBC’s biased coverage, The POST, Tuesday December 13, 2005

All these sentiments by the concerned citizenry entail ZNBC's failure to conform to these internationally recognised principles for they remain the guidelines to an independent and effective broadcaster.

The right to freedom of expression and information and the principle of editorial independence is another area of concern. As such, freedom of expression and information entail the right of broadcasters to be free of state, political or commercial interference and the right to the public for maximum diversity of information and ideas in broadcasting. Broadcasting content according to this principle of independence should never be subjected to prior censorship either by the government or by regulatory bodies. Failure by ZNBC to broadcast independently and objectively due to the long hand of the government, entails that only what is considered pro-government comes as news. This emphasises non-conformity to freedom of information and expression's set standards. Even independence as a principle has had no place at ZNBC. *Mapoma*³⁵ says in relation to this principle:

“...as institution, ZNBC does not have the power to broadcast independently and objectively. The long hand of the government is there to ensure that only what is considered pro-government is what comes on news, or at least takes a bigger chunk of what is aired”.

These sentiments reflect the concerns of the citizens and surely, would it be truthful for someone to claim that ZNBC has conformed to broadcasting principles. Definitely it would not, and hence the contention that the national broadcaster has got to have its shares floated on the market to enable it raise enough operational capital and also operate independently without much ado from the government, that does not have respect for editorial independence, since it would be occupied with the need for

³⁵“Is ZNBC representing public views or govt's?” The POST Wednesday November 9, 2005.

ZNBC to portray it in the favourable light amongst the electorate, justifying *Gilbert Wandis*'s assertions.

Even the introduction of the Television licenses is not sufficient to address the operational needs of ZNBC hence the need to just float some of its shares on the market to lessen the governments grip on the National Broadcaster creating a favourable environment for implementing the Media Law Reforms.

CHAPTER THREE

3.0 HISTORICAL BACKGROUND TO THE AMMENDMENT OF THE ZNBC ACT

The need to amend the Zambia National Broadcasting Corporation Act was realised at the dawn of Multi- party Politics in Zambia. In the run up to the 1991 Presidential and Parliamentary elections, the lack of Press freedom was one of the key issues raised by the main opposition party at the time, the Movement for Multi-Party Democracy³⁶.

This was what prompted *Hon. Dipak Patel* soon after he was appointed Minister of Information and Broadcasting Services to organise the ‘National Seminar on Democracy and the Media in Zambia – the way forward’ held between 2nd and 4th October 1992. Out of this seminar, a media Reform Committee made up of representatives of a broad-section of the Zambian Media was established to recommend to government ways in which the media can be reformed to advance Press Freedom and the democratic process.³⁷

The Committee identified five critical areas which required the attention of government as follows:³⁸

- a) The need for constitutional and comprehensive legal reforms;
- b) The need to privatize the state run press and address the economic and financial constraints to the development of an independent and plural press;
- c) The need to strengthen Media associations, including the training of journalists;

³⁶ Report of the Media Reform Committee ‘Recommendations for the Media Reform in Zambia’ September, 1993 at 3.

³⁷ Ibid.

³⁸ 28 id

- d) The need to place state owned broadcasting services under independent public control rather than under the control of the government and to enable private participation in broadcasting; and
- e) The need to set up a Media resource centre.

Though the Media Reform Committee was established by government, unfortunately the committee's various recommendations were not acted upon by government.³⁹ The report of the committee on Information and Broadcasting Services observed that the government of the day was delaying the implementation of the proposed 1993 Media Law Reforms and that there appeared to be no political will to implement the reforms.⁴⁰ After reviewing the operations of ZNBC, the report suggested the following mandate for ZNBC upon being transformed into a public service broadcaster:⁴¹

- a) to provide timely, relevant and factual information, which would in turn provide content for development and participation in decision- making.
- b) To educate and develop in both formal and non-formal sectors and to encourage collaboration with educational or curricular developing institutions.
- c) To provide entertaining programmes which would be enriching in both social and human spheres capable of placing issues within a personal and global context ; and

³⁹**Patrick Matibini** "Implementation of the Amendments to the Zambia National Broadcasting Act and the Independent Broadcasting Authority Act". A paper presented to the Sensitization Seminar of the Appointments Committee of the Zambia National Broadcasting Corporation and IBA, Boards of Directors, Held on Friday 29th August, 2003, at Protea Hotel, Chisamba, and Kabwe. P 15.

⁴⁰ Id at 22

⁴¹ Id p.16

- d) The identification and promotion of core values that would assist in the strengthening of national unity whilst promoting diversity and the multiple faceted nature of society.

The report concluded that in order for the public broadcaster to fulfil its mandate, it should:

- a) provide a universal service reaching all citizens of the country;
- b) be accessible to most citizens by providing enjoyable , interesting and relevant programming;
- c) promote diversity and choice by providing wide variety of programming;
- d) promote quality by providing new , compelling and innovative programming which encourages new ideas and talent;
- e) be credible and reliable by providing factual and timely information to allow the public to make informed choices;
- f) be independent of vested interests, be they political or economic;
- g) encourage the development of the local broadcasting and production industries;
- h) promote the national culture and create a sense of identity which reflects common purpose; and
- i) be accountable, efficient, provide value and operate efficiently.

Due to the apparent lack of political will, the media fraternity galvanised themselves into action and launched a sustained campaign to resuscitate the implementation of the media Law Reforms by reviewing the government initiative to introduce to introduce the freedom of information law, introduction of the Independent Broadcasting Authority Bill and initiation of the Broadcasting Bill aimed at

introducing a new legal regime for a Broadcasting services in this country⁴². The media fraternity consequently engaged the services of the private law firm⁴³ to draft the Freedom of Information, Independent Broadcasting Authority and Broadcasting bills. However, an attempt to introduce for the first time in the history of Zambia private members bills was thwarted by a constitutional technicality that requires government consent to introduce any bills with financial implications.⁴⁴ Eventually, the government adopted the three Bills commissioned by the media fraternity and presented them to the National Assembly with minor modification⁴⁵

⁴² Id p.17

⁴³ MNB Legal Practitioner were appointed to draft the bills on 5th February 2002

⁴⁴ Article 81- constitution of Zambia

⁴⁵ Supra note 29, at p. 17.

3.1 AMENDMENT OF THE ZAMBIA NATIONAL BROADCASTING CORPORATION ACT

Although the government had initially proposed only two amendments to the ZNBC Act (Introduction of license fees and transferring the licensing function to the IBA), *due to the informed debate inspired by the amendments suggested by the media fraternity*, the amendments to the ZNBC Act have been far reaching⁴⁶. It will be recalled that in the campaign launched by the Media fraternity, the following shortcomings were identified in the ZNBC Act prior to the amendments⁴⁷:-

- (a) the Minister of Information and Broadcasting services was in terms of *section 4* of the ZNBC Act, empowered to appoint the Board of ZNBC and its chairperson;
- (b) the Minister was empowered in terms of *section 5(4)* of the ZNBC Act to remove a director at any time and without cause.
- (c) the Minister was empowered in terms of *section 17(1) (b)* to approve the appointment and termination of services as the case maybe, of the Director General of ZNBC.
- (d) the Minister was empowered in terms of *section 25 and 27* of the ZNBC Act to issue or cancel at any time, licenses, to broadcasting;
- (e) the minister was empowered in terms of *section 27* to prohibit any broadcast that in his or her opinions, he/she considered to be defamatory, blasphemous, obscene or seditious.
- (f) the minister was empowered in terms of *section 19 and 20* of the ZNBC Act to oversee the funds of ZNBC;
- (g) the minister was empowered in terms *section 7(2)* to give the Board of ZNBC general or specific directions with respect to the carrying out of functions of ZNBC; and
- (h) the Minister was empowered in terms of *section 33* of the ZNBC Act to regulate ZNBC.

⁴⁶ Id page 18

⁴⁷ Ibid.

From the shortcomings cited above as highlighted by the media fraternity, the following extensive amendments to the ZNBC Act, were assented to by president Mwanawasa on 31st December 2002, in Act No. 20 of 2002.⁴⁸

- C.F.R.
- (a) **Section 4** of the ZNBC Act was repealed and replaced by a new section. The Board of ZNBC, comprising nine (9) part- time directors will be appointed by the Minister on recommendation of the appointment committee. These appointments are now subject to ratification by the National Assembly.
 - ✓ (b) **Section 5** of the ZNBC Act was repealed and replaced. The Minister was relieved of the powers to remove a director at any time and without cause.
 - (c) **Section 12** of the ZNBC Act was amended. In the amendment, there is no requirement for Ministerial approval when hiring or firing a Director General. However, the Board is required prior to hiring or firing a Director- General to consult the Minister.
 - (d) In the amended Act, the licensing powers previously enjoyed by the Minister have been removed and transferred to the Independent Broadcasting Authority as enacted by **Act Number 17 of 2002**, and assented to by president Mwanawasa on 31st December 2002.
 - ✓ (e) **Section 27** of the ZNBC Act has been repealed and the Minister, no longer enjoys the power to prohibit materials that he/she may in his/her opinion consider defamatory, blasphemous, obscene or seditious.
 - (f) The Minister continues to enjoy oversight powers out the funds of ZNBC; and
 - (g) **Section 7** of the ZNBC Act has been repealed and replaced. The Minister no longer enjoys the power to give general or specific directions to ZNBC.

The new functions of ZNBC as provided in the Amendment Act, **section 7** are as follows⁴⁹:-

⁴⁸. Ibid P19

⁴⁹. Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002.

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- a) to provide varied and balanced programming for all sections of the populations;
 - b) serve the public interest;
 - c) meet high professional quality standards;
 - d) offer programmes that provide information;
 - e) contribute to the development of free and informed opinions and as such constitute an important element of the democratic process;
 - f) reflect as comprehensively as possible, the range of opinions and political, philosophical, religious, scientific and artistic trends.
 - g) reflect and promote Zambia's national culture, diversity and unity;
 - h) reflect human dignity and human rights and freedom and contribute to the tolerance of different opinions and beliefs;
 - i) further international understanding and the public sense of peace and social justice;
 - j) defend democratic freedoms;
 - k) enhance the protection of the environment;
 - l) contribute to the realisation of equal treatment between men and women;
 - m) broadcast news and current affairs programmes which shall be comprehensive, unbiased and independent and commentary which shall be clearly distinguished from news;
 - n) Promote production of Zambian origin;
 - o) Carry on or operate such other services including diffusion services and undertakings as in the opinion of the Board, are conducive to the increase of its functions under the Act.⁵⁰

Therefore, most of the critical concerns raised by the media fraternity have been addressed and redressed by the Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002⁵¹. The succeeding section makes an evaluation to determine whether these ZNBC amendments are in conformity to broadcasting principles highlighted in chapter two.

⁵⁰ Ibid.

⁵¹ Supra note 30, at p.22

3.2 ARE THE ZNBC AMENDMENTS IN CONFORMITY TO BROADCASTING PRINCIPLES?

Broadcasting principles elaborate a set of standards on how to promote and protect independent broadcasting and ensure that broadcasting serves the interest of the public. Broadcasting principles address the complex issue of how to regulate in the public interest and yet prevent that regulation from becoming means of government control. These principles are based on international and regional laws and standards involving state practice and the general principles of law recognised by the community of nations. Zambia, being among those nations that eventually make the community of nations, would equally make good case study in determining how its media laws especially the Zambia National Broadcasting (Amendment) Act conform to these internationally recognised Broadcasting Principles.

Numerous principles have been propounded in *Chapter Two*, among the principles so propounded as a guide to better public broadcasting is **Independence**. It advocates for public broadcasters to be overseen by independent bodies such as Board of Governors and it further states that Institutional autonomy and independence of such bodies be ensured by law. This can be achieved by⁵²:-

- a) having a clear legislative statement of goals, powers and responsibilities,
- b) respecting editorial independence,
- c) in funding arrangements,
- d) through formal accountability to the public through a multi-party body.

In the same vein independence can be realised by leaving Management of the broadcaster to run the day-to-day matters in relation to programming. In addition, the independent governing body should resist interfering in day-to-day decision making, especially on matters of broadcast contents, restraint in imposition of prior censorship and having respect for the principles of editorial independent

⁵² ARTICLE 19-Broadcasting Policy and Practice in Africa p.186.

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⁵² ARTICLE 19-Broadcasting Policy and Practice in Africa p.186.

However, in determining the conformity of ZNBC (Amendment) Act to broadcasting principles, *section 4* of the Act comes under review. This section empowers the Minister on recommendation of the Appointments Committee to appoint the Board of Directors of ZNBC subject to ratification by the National Assembly. Prior to these Amendments, *section 4*, had vested a lot of powers in the Minister, in that, the eventual freeing of the Minister from the previously enjoyed powers to appoint the Board of Directors is a step towards conformity to broadcasting principles, especially Independence. As **Fackson Banda**⁵³ puts it in relation to the principle of Independence:

“the government can directly control and manipulate the media through the appointment and dismissal of staff, or reward for exemplary behaviour. It uses the appointment system as a conduit for influence on editorial matters. The Board hires and fires managerial staff”.

Therefore, the amendments to the ZNBC Act, particularly *Section 4* grants the national broadcaster autonomy and independence against Ministerial interference for the Minister no longer enjoys the power to appoint and dismiss the Board at will, which powers were subject to abuse especially that, the Minister is also a politician with vested interest in the furtherance of his political ambitions to which ZNBC can be a good platform for such. As the ZNBC Act stands after the amendments, it has involved other independent institutions in the appointment of the Board of Governors such as parliament, leaving the minister no room for manipulating the appointment process. This matter up for judicial review in the case of **Fanwell Chembo and others V. The Minister of Information and Broadcasting**.⁵⁴ In this case judicial review was sought against the decision of the Minister of Information and Broadcasting Services not to submit the names recommended by the Ad hoc Appointments Committees

⁵³ **The Media and Political Change; A Freedom Forum Report on the Media in Zambia**, Lusaka: PANOS.

⁵⁴ 2004 /HP/0512

appointed under the **Independent Broadcasting Authority**⁵⁵ and the **Zambia National Broadcasting Corporation (Amendment) Act**⁵⁶ to the National Assembly.

Among the reliefs sought by the applicants in this case were:

- i) An Order prohibiting the Minister of Information from stopping or vetting presentation of the names recommended by the Ad Hoc Appointments Committees appointed under the provisions of the **IBA Act** and the **ZNBC (Amendment) Act** to the National Assembly; and
- ii) An Order of Mandamus compelling the Minister of Information and Broadcasting Services to submit the names recommended by the Ad Hoc Appointments Committees appointed under the provisions of the **Independent Broadcasting Authority Act No. 17 of 2002** and the **Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002** to the National Assembly.

In response to the reliefs sought by the Applicants, the Respondents submitted that it could not be seriously argued by the Applicants that the Minister of Information and Broadcasting Services was a silent Partner in the entire process, which process was the submission of names to the National Assembly for ratification. The Respondents argued that the Minister could accept, reject or modify the recommendations in accordance with the law and on reasonable grounds. They also questioned whether the Minister can be compelled to submit the names recommended to the National Assembly in the circumstances of this case whereby mandamus was sought.

In finding for the Applicants, **Justice Gregory Phiri** had this to say at page J25:

I do not think that this is the perception that the Applicants have. The two statutes in issue are very clear and they prescribe many other functions which the Minister should exclusively perform. For example, the Minister has power to nominate a member to sit on the Ad Hoc Appointments Committee which she is empowered to constitute. She also has power to

⁵⁵ Act NO. 17 OF 2002.

⁵⁶ Act No.20 of 2002

determine the terms and conditions of the Ad Hoc Appointments Committees. On whether the Minister can modify, accept or reject the recommendations, I have not seen any provision of the law which either specifically or generally reposes such discretion in the Minister. Coming back to the case at hand on the first ground of illegality, I must say illegality and non-compliance with a statutory provision are synonymous. I therefore find in favour of the Applicants.

The net result is that I enter judgement for the Applicants as claimed. The effect of this is that the Minister's decision is declared bad at law and therefore null and void and of no effect. Same is quashed as prayed. It is further ordered that the Minister is prohibited from vetting presentation of the names recommended by duly constituted Ad Hoc Appointments Committees to the National Assembly. Further still, an order of mandamus shall issue forthwith compelling the Minister to submit the names recommended by the ad hoc Appointments Committees appointed under the provisions of the Independent Broadcasting Authority Act No. 17 of 2002 and the ZNBC(Amendment)Act No. 20 of 2002 to the National Assembly.

The *Chembo* case lays emphasis on the need to uphold the ZNBC (Amendments) Act by ultimately reducing the minister's involvement in the operations of the national Broadcaster. That is, minimising political interference, a mischief the amendments meant to address. In reference to the submissions by the respondents, that the Minister cannot be a silent partner in the selection and appointment process, it becomes evident that the Minister who once enjoyed discretionary powers of appointing members to the board has found it difficult to accept his position under the new Act, especially on appointments, because he can no longer hand pick his desired team. Now a cross-section of society has been given powers to intervene in the appointment process. That is, the civil society and Parliament⁵⁷ have come in to appoint and ratify the nominees making the selection process broad based. Therefore, the Court in this case made a declaration that the Minister's discretionary powers end after he appoints the Ad Hoc appointments committee and do not extend to the vetoing of nominated names.

⁵⁷ Section 4(2) ZNBC (Amendments) Act.

Therefore, the **Chembo case** justifies the amendments as it gives them force because the court ruling addresses the misunderstanding that the Minister of Information and Broadcasting had over his role in the amended Act.

Whilst on the principle of **independence**, the ZNBC Amendments Act has shown conformity by outlining a clear legislative statement of goals, powers and responsibilities, which is one of the characteristics of the principle of independence, vital for the attainment of an independent broadcaster. This is highlighted in *section 7* of the amended Act⁵⁸ which spells out the functions of the national broadcaster. In this section it states in part:-

- a) provide varied and balanced programming for all sections of the population.
- b) contribute to the development of free and informed opinions.
- c) broadcast news and current affairs programmes which shall be comprehensive, unbiased and independent and commentaries which shall be clearly distinguished from news.
- f) reflects as comprehensively as possible, the range of opinions and political philosophical , religious, scientific and artistic trends

Editorial independence, a subset of **independence** is reflected in the need for national broadcasters to provide varied and balanced programming and broadcast news and current affairs programmes that should be comprehensive, unbiased and independent and finally by reflecting as comprehensively as possible, a range of opinions and political philosophies⁵⁹

Funding too helps in the attainment of independence. The ZNBC Amendment Act provides for every television owner to pay for a television license.⁶⁰ Public Service television should be funded by the public it serves, particularly by means of a license fee compulsory for every owner of a television set in return for a good service

⁵⁸ It outline functions of ZNBC as Amended

⁵⁹ Section 7 (1) a) m) and f) of the ZNBC (Amendment) Act.

⁶⁰ . Section 25

available to all from the broadcaster⁶¹. The idea of television licenses is to keep the public service television independent of the paymaster, preventing government retaining control of the media limiting the influence of the opposition⁶². The license fee is perceived crucial for safeguarding the autonomy of broadcasters. It provides protection against government pressures. The license fee, often fixed compulsory is a distinct advantage to a public broadcaster over a commercial, as it constitutes a steady funding base⁶³. Therefore, the introduction of the television license in the amended *Act was intended to eventually cut the government from sponsoring ZNBC, which still gets its funds, both for capital and recurrent expenditure from the government of the day. The money is usually allocated to ZNBC from parliament through the Ministry of Information and Broadcasting services. In line with the dictum 'he who pays the piper calls the tune,' the government has tightly controlled what ZNBC broadcasts through the Permanent Secretary and the Minister.*⁶⁴ With the aforesaid, ZNBC needs to generate its own income to enable it be independent as an institution and cease to be a de facto state communication Institution. Actually, ZNBC can only realise full independence if the government relinquishes its grip on it by floating its shares on the market and government remains with only a minimal stake of shares it shall hold on behalf of the Zambian people. As long as the status quo remains the same, ZNBC's conformity to this particular principle (funding) will remain a dream though the Amendment Act in *section 25* has re-introduced television licenses.

Liability for the statement of others is one principle worth review. This principle aims at protecting the broadcasters against statements of others especially during live broadcasts where it would be unreasonable to expect the broadcaster to prevent transmission of the statement, and where it is in the public interest for the statements to be broadcast. For example, demonstrating the existence of certain views in society and the broadcaster does not adopt the statements as his/hers. About this principle, the ZNBC (Amendment) Act has maintained the same old position which did not

⁶¹ **Mano Winfred; The State of Public Service Broadcasting in Zimbabwe**. M.Phil. Thesis. University of Oslo, Oslo 1997. p. 35.

⁶² Herbert Macha. "State or Public service? An analysis of coverage of political issues and elections in December during 2001 Election campaign on television" *Masters thesis* P.22.

⁶³ Syvertsen T. "Public Television in Transition". Oslo NAVF Forffatheren Opplag 600. (1992) p.20

⁶⁴ Francis Kasoma Community Radio. *Its management and organisation in Zambia* .p 261.

guarantee any protection to the broadcaster on such issues but rather to board members. *Section 16* of the Old Act states:

No action or other proceedings shall lie or be instituted against any board members for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

From the phrasing of *section 16* of the ZNBC Act, one concludes that only members of the Board are protected by this Act. All other broadcasters are not protected to the exclusion of members of the board. As in the case of the Controller of Television programmes at ZNBC, **Ben Kangwa**, he was suspended for allowing a paid for UNIP advertisement in which Dr. Kaunda was announcing his party's decision to boycott the elections in October 1996.⁶⁵ Actually, the failure by the ZNBC (Amendment) Act to review this section⁶⁶, that is, placing it in conformity to the principle under review made the Amendment Act not to conform to this particular principle. For example, journalists often complained that if they ran a story that was not favourable to the M.M.D government, they were often times summoned to State House. As the controller of News and current Affairs recalled one of the incidents:-

*We ran a story given to us by the Permanent Humans Right Commission one year, criticising government on its human rights record an institution created by government. The Director General of ZNBC, Mr. Duncan Mbazima, late David Likando and I were called to state House by Press Assistant to the president, Mr. Richard Sakala and were all reprimanded for running that story. Furthermore, if we ran a story for the opposition, somebody in the Ministry will order to stop the story.*⁶⁷

The above except confirms the ZNBC (Amendment) Act's failure to protect the broadcaster against assuming liability for the statement of others.

Emergency measures are prohibited by the internationally recognised and agreed broadcasting principles. That is the legal framework for broadcasting should not allow state actors to assume control of broadcasters – either over their equipment or

⁶⁵ . **Kabwe T. Kenneth Kaunda, Perspectives on his Exit from office**.(1997) Harare SAPES BOOKS, P 16.

⁶⁶ . Section 16 ZNBC Act

⁶⁷ Supra note 61, at p 79.

their broadcasts – in an emergency. In other words, *section 28* of the ZNBC Act, which allows the President to take over all broadcasting stations in Zambia during a state of emergency, is prohibited. This kind of legislation should be taken off broadcasting statutes to achieve conformity with international law.⁶⁸ That is, failure by government to rectify this anomaly in conflict with international law entails the ZNBC (Amendment) Act's failure to suit the ideals of broadcasting as espoused in chapter two.

Commercial political adverts entail permitting parties and candidates to purchase broadcast time to air political adverts. This is another principle of broadcasting which is quite contentious in a multi-party state like Zambia. With this principle, broadcasters are required to make such time available on an equal non-discriminatory basis to parties and their candidates. Kasoma,⁶⁹ similarly raises the need for legislation regarding the giving of 'equal time' to political opponents. He says, "Broadcasters need to have laws such as those regarding the giving of '*equal time*' to political opponents when their opponents (MMD) have been given air time to broadcast their political views". Because of the numerous political parties in the country, such a law would have to be practical, of course. Essentially, '*equal time*' laws should take into account, in order to be fair, not only the giving of equal time to political opponents, but also the time given should correspond with that given to the first person or party. That is, if the first person or the party were given 30 minutes of time to broadcast their views, then even opponents should also be given 30 minutes of the same prime time on a subsequent day".

⁶⁸. **Article 19** – Broadcasting Policy and Practice in Africa (2003) P3.

⁶⁹ Supra note 63 at p. 260

This acknowledgment by **Kasoma** is as a result of lack of such legislation currently in Zambia, which has seen only members of the ruling party enjoying massive airplay on the national Broadcaster, that which is not enjoyed by the opposition as earlier shown by Nkamu Nkamu⁷⁰. If any legislation exists in relation to the principle under review, then it exists impliedly as shown under **section 7** of the ZNBC (Amendment) Act especially subsections **1 (a), (f) and (m)**. These sub-sections outline the functions of the National Broadcaster as stipulated in the Act. Therefore, Commercial Political Adverts as one of the tenets of a Public Broadcaster have been embraced by Amendment Act through section **7(1) (a), (f), and (m)** though not expressly. As a result, ZNBC's autonomy is often called into question during elections because it lacks a clear policy that takes into account all differing political and other opinions in the country to avoid complaints or accusations of bias towards the ruling party⁷¹. Therefore, there should be proper policy guidelines to ensure the national broadcaster upholds the plurality and diverse nature of the present day Zambia. That's why pronouncements, such as the one recently made by the Minister of Information and Broadcasting,⁷² that a Committee is to be set at ZNBC to ensure there is equal coverage of all Political Parties towards the 2006 elections⁷³ are welcome for they are a step towards the realisation of an independent broadcaster. However, it still makes sad reading to learn that such vital pronouncements have to come from a Minister, who is at the centre of controversy pertaining to him having too many powers, especially going by the old Act. Such a committee should have been provided

⁷⁰ Supra note 66.

⁷¹ **Fackson Banda**. "Up in the Air?" *The state of Broadcasting in Southern Africa* PANOS page 113

⁷² Vernon Mwaanga. Nominated Member of Parliament.

⁷³ THE TIMES OF ZAMBIA 14TH December, 2005.

for by the Act clearly stating its composition and the powers it would have to enable it operate well.

In conclusion the ZNBC (Amendment) Act has strived to conform to internationally recognised Broadcasting principles. This is a positive step towards the attainment of an independent broadcasting especially that there is political will from the government evidenced from the Amendments to the ZNBC (Amendment) Act.

CHAPTER FOUR

4.0 IMPLEMENTATION OF THE ZNBC AMENDMENT ACT

Since the dawn of multi party politics in Zambia, there has been advocacy to amend the Zambia National Broadcasting Corporation Act, which Act regulates the operations of ZNBC, the National Broadcaster. The main issue that has inspired this advocacy is the need to promote freedom of expression to reflect the pluralistic nature of the Zambian society and, which society had labored under a one- party political set up. With the exertion of more pressure on the Government, the major stakeholder and sole owner of ZNBC, amendments to the ZNBC Act were effected. However, it took eleven years of campaign for them to be actualised.

Initially, only two amendments to the ZNBC Act were proposed by the Government. However, with the media fraternity exerting pressure, the amendments became far reaching. A lot more sections of the ZNBC Act⁷⁴ were amended. However, these amendments have culminated in a power struggle between the Government and media fraternity⁷⁵ which advocates for a power transfer from the Minister of Information and Broadcasting Services to the Public.

In this chapter, emphasis shall be placed on evaluating whether these amendments highlighted in the preceding chapters have been fully implemented. Further, if they haven't, the chapter shall cite reasons why the amendments have not been implemented.

⁷⁴ Introduction of license fees and transferring the licensing functions to the IBA.

⁷⁵ Media Institute of Southern Africa (MISA), Press Association OF Zambia (PAZA), Zambia Union of Journalists (ZUJ), Society of Senior Journalists , Zambia Women Media Associations and the POST Newspapers.

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By and large, the amendments to the Zambia National Broadcasting Corporation Act, have not been implemented. Only one prominent amendment has been implemented⁷⁶. That is, the introduction of television licenses to all television owners in Zambia. Actually, it is worth noting that this particular amendment was one of those initially proposed by the government⁷⁷. Therefore, one would contend that this particular amendment was easily implemented, because it did not take any powers from the Minister of Information and Broadcasting Services. That is, Government and ZNBC stood to benefit. The benefits are that ZNBC, which lacked financial resources to operate adequately, could now gather surplus finances to ease its operational woes.

Due to financial constraints, ZNBC has been unable to deliver quality radio and television services to listeners and viewers nationwide. Its obsolete technology has seen its coverage area diminish because of failure to buy spare parts to rehabilitate its obsolete equipment. Further, ZNBC cannot even meet the wage bill and other staff operational costs, ultimately compromising broadcasting standards⁷⁸. Therefore, the introduction of television licenses was necessary because, ZNBC needed extra finance to enable it offset its operational difficulties.

As regards the failure to implement the amendments to the ZNBC Act, the major reason has been lack of political will on Government to implement the amendments. The Government's actions since the laws were assented to by the President, show that there is no political will to implement them, as the IBA Act has not been established

⁷⁶ Section 25 ZNBC (Amendment) Act.

⁷⁷ Supra note 61 at page 18.

⁷⁸ Implementation Plan for the re-organization of the Zambia National Broadcasting Corporation (ZNBC)

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⁷⁸ Implementation Plan for the re-organization of the Zambia National Broadcasting Corporation (ZNBC)

August 2003 p.1

while the ZNBC Amendment Act has only been partially implemented.⁷⁹ In view of the non-implementation of the IBA, regulation of the broadcasting sector has continued to be flawed with lack of transparency in the manner in which regulations are arbitrarily constituted and applied without consultation with stakeholders.⁸⁰ Lack of political will to implement the amendments to the ZNBC Act became evident when then Minister of Information and Broadcasting Services, *Mutale Nalumango*, stalled the law reform process by refusing to take to Parliament for ratification the names of people recommended to sit on the IBA and ZNBC boards by the ZNBC Appointments Committees, because she was not satisfied with some of the nominees. She argued that she had the right to veto names and endeavoured to convince the Appointments Committees as such, but to no avail⁸¹. From 2002, when the law was assented to by the President, Government has not implemented the amendments to the ZNBC Act and this has infuriated the media fraternity whose campaign propelled the amendment of the ZNBC Act of 1987. Therefore, the media fraternity decided to take the matter to court to compel Government to act. That is how the *Chembo case* came about. The media fraternity, in this case⁸² argued that, the Minister of Information is not entitled, at least at law, to veto the names recommended for ratification. The proper body clothed with legal authority to veto the names was the National Assembly⁸³.

⁷⁹ Joint Statement by the Media Institute of Southern Africa (MISA) Zambia, Press Association of Zambia (PAZA), Press Freedom Committee of the Post Newspapers (PFC), Society For Senior Zambian Journalists (SSZJ), Zambia Media Women Association (ZAMWA) and Zambia Union of Journalists (ZUJ) on Media Law Reforms and the Constitution Process. 9th January 2006. Chrisma Hotel, LUSAKA. P.3

⁸⁰ Ministry of Information officials threatening Community Radio Stations with closure if they did not submit weekly programming schedules.

⁸¹ Supra note 79.

⁸² *Chembo and others V. Minister of Information* 2004/HP/0512.

⁸³ Section 4(2) ZNBC (Amendment) Act and 7(2) IBA Act.

The decision by the Minister to veto the names meant denying the National Assembly the benefit of assessing the collective wisdom of both Appointments Committees in so far as the function of constituting the Board was concerned. In arriving at its decision, the court asked itself the following questions:

- a) *Does the Minister have power to appoint the Directors or Members of the two Boards? The answer is yes. She does because the law says so.*

- b) *Is the Minister's power to appoint the Directors or Members unfettered? The answer is No, because the law itself provides a specific method and and specific pre conditions for such appointments.*

- c) *Does the law empower the Minister to consider any other qualifications or views other than those prescribed in the two statutes? The answer is No. It does not and that, if that were the intention of the legislature, the law would have specifically empowered the Minister to consider other qualifications or views.*

- d) *Does the law empower the Minister to substitute the names of nominees for appointment as Directors or Members? The answer is No because, again, if it were the intention of the legislature, the law would have specifically provided for that power.*

e) *Does the law empower the Minister to Veto any nominated candidates? No it does not and*

f) *Has the Minister complied with the prescribed methods of appointment of Members to the Board of Directors? The answer is No, because the Minister has not availed the National Assembly the names of the recommended appointees for ratification. As such, the Boards⁸⁴ cannot take off the ground.*

These questions were pertinent in guiding the Court to arrive at a decision in favour of the Applicants- the Media fraternity. Despite this landmark judgment, the Minister remained adamant and decided to appeal to the Supreme Court. In the mean time, Government made an application before **Justice Gregory Phiri** for a stay of the Judgment pending the appeal. The application for Stay of execution speaks volumes about the Government's commitment to media reforms. **Justice Phiri**,⁸⁵ in refusing the application to stay execution judgement,⁸⁶ affirmed his earlier stance. He said;

“...the decision of the Minister in the context of this new legislation does not only promote non-compliance with the new law, but also prevents and frustrates the vital reform of the media law in this country. The decision clearly prevents the law from taking its course; thereby making it moribund from its beginning. In this context, therefore, I have found the Minister's decision to be irrational.”

As a result, the court threw out the Appeal by the state on the 22nd of December, 2005, confirming the assertion that the whole process was merely a power struggle between

⁸⁴ IBA Board and the ZNBC Board.

⁸⁵ Supra note 78 at page J30.

⁸⁶ Minister of Information and Attorney GENERAL v. MISA 2004/HP 0512 (22ND December 2005. page R 7.

adversaries⁸⁷. The Government lacks political will. Its refusal to relinquish power to the public indicates the lack of political will towards Media Law Reforms, especially implementation of the ZNBC (Amendments) Act.

As a result of the non-implementation of the amendments, the mischief that this law meant to remedy is still flourishing, four years after the law came into force. There is continued biased coverage of news and current affairs in favour of the Movement for Multi party Democracy (MMD) to the exclusion of other political parties and Civil Society Organizations⁸⁸. Censorship is still rife at ZNBC. For instance, upon the insistence of the Ministry of Information and Broadcasting Services, ZNBC management has taken a decision to ban the broadcast of all live programmes deemed to be political in nature. The media fraternity in its Press statement disclosed;

“ We have had sight of a letter written by Mrs. Juliana Mwila, Assistant Secretary for press at the Ministry of Information and Broadcasting Services in November 2005 reminding the ZNBC Director General Mr. Joseph Salasini of an earlier meeting between his team and Information and Broadcasting Services Permanent Secretary, Emmanuel Nyirenda, where it was decided that live programmes which were political in nature should be phased out with a view to completely removing them in preference for recorded programmes.”⁸⁹

This blatant act of censorship makes a mockery of government's claims that ZNBC was independent and furthermore, puts such actions in conflict with the ZNBC amended Act and, which Act still awaits, implementation. ZNBC management has received the directive by *Mrs. Juliana Mwila* by refusing to broadcast the *Oasis*

⁸⁷ Minister of Information and Media Fraternity (MISA, PAZA, ZUJ, ZAMWA, POST NEWSPAPERS).

⁸⁸Supra note 79 at. Page 4.

⁸⁹ Ibid

Forum programme on the Constitutional demonstrations of 2005⁹⁰. MISA Zambia has also been a victim of State censorship. Its television Phone-in programme “Media and the Public” which discussed Media issues has been denied airtime by ZNBC management after it was initially informed that the programme had been approved and airtime has been allocated. This was before the directive banning live programmes was issued by the Ministry⁹¹. This prompted the media fraternity⁹² to condemn the censorship and political interference in the editorial independence and operations of ZNBC. *“Why should Zambians continue paying television license fees if what they want to see on the public broadcaster is censored”*, the media fraternity asked.

The failure to implement the amendments to the ZNBC Act, four years after they became law, implies the Government’s desire to interfere in the operations of the National Broadcaster, contrary to the law. One wonders why the Government would not want to implement the new law if it did not enjoy the state of affairs, that is, interfering with the operations of ZNBC at will. Therefore, it remains to be seen whether, with the close of the court process, amendments to the ZNBC Act can now be implemented. In view of this, it remains with the newly appointed Minister of Information and Broadcasting Services, Vernon Mwaanga, who is on record as saying he was in favour of media law reforms, to respect the court ruling and immediately submit the names of the people recommended to sit on the IBA and ZNBC boards to Parliament for ratification⁹³.

⁹⁰ *ibid*

⁹¹ *ibid*

⁹² *ibid*

⁹³ *Supra* note 79 at page 3.

In conclusion, partial implementations of the Zambia National Broadcasting Corporation amendments are not sufficient enough for the realization of a true public broadcaster. Therefore, it is prayed that the pressure currently being exerted by the media fraternity should continue until ZNBC is truly transformed into a public broadcaster through the implementation of the amendments. Once the names are ratified by Parliament, automatically the old board existing illegally due to the expiration of its tenure of office and the coming into force, the ZNBC (Amendment) Act will pave way for a new board which will reflect the aspirations of the citizenry and uphold the principles of public broadcasting.

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS.

5.1 CONCLUSIONS.

Although the Zambia National Broadcasting Corporation (Amendments) Act has been in force for four years now, since the year 2002, implementation is still awaited. As such, this has demonstrated lack of political will on Government, the major stake holder and thereby frustrating the efforts of the civil society who are the major advocates for media law reforms in Zambia. In this study, it has been shown that the non-implementation is merely due to Government's laxity through the Minister of Information and Broadcasting Services to submit the nominated names to Parliament for ratification, so that the media law reforms can take off.

Due to the non-implementation of the amendments to the ZNBC Act, it has been shown that there are blatant violations by the Government⁹⁴ aggravating the situation which should have been corrected by now. For instance, four years after the amendments were assented into law, the current ZNBC Board, which was appointed by the Minister of information and broadcasting Services under the old Act, has continued to operate illegally, years after the expiration of its mandate⁹⁵. Further, biased coverage is still rampant at ZNBC,⁹⁶ when it was expected that all these violations would come to an end with the coming into force, the ZNBC (Amendments) Act. Therefore, it remains to be seen whether the situation as it obtains will change, especially after the court process has been concluded, which was Government's scapegoat. Further, in the study it has been shown that ZNBC is not

⁹⁴ Supra note 79.

⁹⁵ The Board lost its legal validity soon after the coming into being of the ZNBC (Amendment) Act.

⁹⁶ Supra note 69.

sufficiently funded to ensure that the National Broadcaster operates independently with a stable income. As a result, ZNBC is unable to effectively deliver quality Radio and Television services to listeners and viewers nation-wide due to outdated technology, lack of financial resources and poor management. Even more, its coverage area has kept on diminishing due to lack of spare parts to rehabilitate the obsolete equipment and lack of capacity to replace it⁹⁷. By and large, lack of financial resources is the main problem ZNBC is facing. Just as poverty in human beings breeds subservience, with ZNBC it breeds loyalty to the Government of the day. As earlier stated,⁹⁸ ZNBC cannot meet the wage bill and other staff and operational costs without compromising broadcast standards, this is already happening because, as the situation obtains on the ground, those who provide transport to ZNBC crew members whenever they have a function, always get coverage⁹⁹. This is against the principle of editorial independence, hence the need to fund ZNBC adequately whilst balancing commercial and political interests because it is a public broadcaster. To enable ZNBC operate adequately, the television licence fee should be revisited by a committee and the recommendations made into law. However, this would mean, ZNBC broadcasting in accordance with the tastes of the majority Zambians, failure to which, the people will feel burdened by the license fees because they won't see the need to subscribe to a propagandist network. To realise what the people want, ZNBC has to be accountable to its viewers through regular access by the public to its management and programme – makers within ZNBC. Continued propagandist reporting will not make

⁹⁷ Supra note 78.

⁹⁸ Ibid.

⁹⁹ Transport is usually sent to Mass Media whenever there is an MMD function from State House to collect ZNBC crew to do Propaganda reporting.

ZNBC a public broadcaster, if anything, it will alienate itself from its viewers.

Nsokola observes¹⁰⁰;

“...Of late, ZNBC TV has taken delight in parading people on the screen that are incoherent to speak on the constitution... ZNBC TV, be reminded that the citizens are paying those licensing fees for better services and not to see government stooges day in and day out on the screen”.

It is hoped the recommendations put forward in this research can be considered by the relevant authorities for the realization of a public broadcaster befitting that title.

5.2 RECOMMENDATIONS

5.2.1 ACCOUNTABILITY

To ensure ZNBC is accountable to the public, there should be regular access by the public to its management and programme- makers within ZNBC. This could either be through public meetings held at regular intervals in all regions in which ZNBC is transmitted or by audience response programmes. The audience response programmes would encourage viewers to write in or telephone their reaction either positive or negative to any programme transmitted. Where necessary, a programme- maker concerned should respond to the concerns raised by the viewers. Finally, a complaints procedure should be instituted to be part of the Regulatory Authority’s duties. Methods of communication of complaints, and procedures for dealing with these complaints should be clearly delineated and the results of such complaints procedure should be made public. This way ZNBC would truly be a worth public broadcaster as the citizens’ involvement would determine the broadcast content especially that it is now introduced television licenses.

¹⁰⁰ The POST, Thursday September 22, 2005.

5.2. 2 Appointment of a committee to oversee the allocation of airtime on ZNBC to Political and Civil Society groups.

A committee should be appointed at ZNBC to oversee the allocation of airspace on both radio and television, to ensure political players are accorded equal coverage on television. Unlike a committee that was proposed by the Minister of Information and Broadcasting Services to be appointed, this particular committee should be appointed in consultation with stake holders like political parties, civil society groups and the Government. This committee should derive its powers from the ZNBC Act to ensure it operates independently and conforms to the broadcasting principles like *commercial and political adverts*.

5. 2. 3 PROTECTION OF EDITORIAL STAFF

To ensure editorial independence thrives at ZNBC, protection should be guaranteed by statute to all editorial staff, the same way it is guaranteed to members of the ZNBC board. In **section 16** of the ZNBC Act, Board members are given immunity against any action or other proceedings that may be instituted against them in respect of any act or thing done in good faith in the exercise or purported exercise of their functions under the Act. These same conditions should be extended to the actual players in the media- the media practitioners to ensure that editorial independence thrives. The **Ben Kangwa** saga should not be allowed to recur because it compromises the independence of the broadcaster and conflicts with the broadcasting principles, like, *liability for statements of others*.

5.2.4 EDITORIAL INDEPENDENCE.

To ensure editorial independence, **Section 28** of the ZNBC Act should be repealed. Section 28 allows a Head of State to take over all broadcasting stations in times when there is a state of emergency. This law impedes editorial independence because the media practitioners may be compelled to report on the head of state without letting them evaluate how newsworthy an item could be.

5.2.5 CONSTITUTIONALLY GUARANTEED INDEPENDENCE.

The independence of the Zambia National Broadcasting Corporation should be constitutionally guaranteed. As a constitutionally guaranteed independent institution, the ZNBC Board should be selected by a Parliamentary committee assigned for that particular purpose. Relevant groups in society, like civil society groups and individuals should be allowed to nominate candidates for consideration to sit on the Board. The parliamentary Committee, then shortlists nominees and invites them for interviews in public hearings to ensure transparency in the selection process. The committee finally decides on its list of candidates which is published. The list of candidates can then be passed to the Speaker of the National Assembly for tabling in the house for review and debate and eventual appointment of the Board. This procedure can ensure independence of the National Broadcaster. This process is recommended because; it would exclude the Minister from the appointment process being the biggest hurdle in the realisation of a public broadcaster in Zambia.

5.2.6 FUNDING

ZNBC should be funded by the state. However, safeguards should be incorporated into the funding process to ensure, to the greatest extent possible, that the government

or parliament shall not reduce or manipulate broadcasting budgets in retaliation for programming decisions with which they disagree. One mechanism is for funds to be voted by parliament through a multi-party consensus vote. That is, all parties must agree to ensure the vote is not a simple majority. The funds must come directly through Parliament and not the Ministry of Information, because Parliament is more broad based, therefore, manipulation would not occur. This is because not all parliamentarians are adequately covered because of their political affiliations. Therefore, any attempts to manipulate the national broadcaster would result into a heated debate in the house.

5.2.7 LICENSE FEES.

License fees funding has been associated with good quality and diverse programming. This is a completely independent source of revenue and establishes a direct link between the public broadcaster and its viewers and listeners. Programme producers usually are aware that it is their audience that pays them for their work, and audiences feel entitled to demand that the broadcaster delivers value for money. However, such a fee would be widely acceptable if only the service is indeed perceived as truly public or else it would be seen as just another burden some tax. The license fee must be approved by a public body like parliament or a committee that recommends the changes to the amount to be paid and then recommends for adoption by the legislature.

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