



MISA-Zimbabwe

STATE OF THE MEDIA REPORT 2013

In the Report:

Introduction

Political Context and Key Events

Media Environment

Arrests, threats and harassment of journalists

Access to information/freedom of expression

Print Media

Broadcasting/Telecommunications/ICT

Way Forward in 2014

Conclusion

Media Violations Statistics: 2013

❖ Introduction

The advent of Zimbabwe's new constitution back-to-back with the outcome of the 31 July 2013 elections will have a bearing on the country's socio-economic and political future and democratic practice.

In the mix of these historic events was the return of Professor Jonathan Moyo as the Minister of Information, Media and Broadcasting Services. Moyo's return is of great significance in that he is widely believed to be the architect of draconian media laws such as the Access to Information and Protection of Privacy Act (AIPPA).

The *Daily News*, *Daily News on Sunday*, *The Tribune* and *Weekly Mail*, were closed under AIPPA which he defended ferociously during his preceding tenure as Minister of Information. His 'second coming' cannot therefore be dismissed as a mere political event considering that the *Daily News* only returned to the streets in 2009 during his absence from government.

❖ Socio-politico environment

Zimbabwe held its landmark elections on the 31st of July 2013 with (President) Robert Mugabe of Zanu PF winning 61% of the presidential vote against Morgan Tsvangirai of the MDC – T's 34%.

President Mugabe then proceeded to appoint a Cabinet in which he retained the majority of his pre-2008 elections ministers with a sprinkling of new faces - the majority of whom are deputy ministers. Reference is made here to the retention of the same ministers given that the Zanu PF leader once described this same line-up as the worst Cabinet ever.

Given the president's reservations then, the question is will the new government deliver on the envisaged socio-economic and political reforms?

This apprehension is not without foundation for it is the very same retained ministers who in 2007 were duped by the abracadabra antics of a Grade 3 school dropout spirit medium into believing that pure diesel had been discovered gushing from some boulders in the country's Mashonaland West Province.

Meanwhile, Zanu PF now commands a two-thirds majority in the Parliament of Zimbabwe. This has shifted the political levers from the previously hung parliament that operated through consensus to a monolithic establishment that can easily rule through its single party majority.

In essence, this development has pulled Zimbabwe back to the period prior to the year 2000 when Zanu PF was a hegemonic political party that ruled through its party parliamentary caucuses and whipping system.

This contrasts sharply with the previous setup during the Government of National Unity (GNU) when none of the parties commanded a two-thirds majority and tended to make decisions through consultative leadership and consensus.

The obtaining situation comes on the backdrop of Zimbabwe's new homegrown Constitution which, among other progressive provisions, for the first time now explicitly guarantees the right to media freedom and citizens' right to access to information.

While this development offers immense opportunity for the realignment of the country's repressive media laws with the new constitutional provisions, there is fear that Zanu PF, through its two-thirds majority might scupper or torpedo progress towards that eventuality.

The endorsement of the Draft Constitution by the Parliament of Zimbabwe and its subsequent signing into law by President Robert Mugabe following the Constitutional Referendum raised immense hope for media legislative reforms ahead of the country's general elections.

This hope was hinged on the fact that the new constitution, for the first time in the history of Zimbabwe, now provides for explicit provisions that guarantee media freedom and citizens' right to access to information.

The expectation was that the Parliament of Zimbabwe would therefore seize the opportunity of the new constitutional dispensation to audit with the aim of repealing or amending laws that impinge on media freedom, freedom of expression and access to information.

The urgency for these envisaged media reforms were agreed to in the context of Zimbabwe's 2013 Election Roadmap and reiterated several times through the mediation of SADC facilitator on the Zimbabwean crisis, South African President Jacob Zuma, as key to the holding of free, fair and credible elections in Zimbabwe.

Existing laws such as AIPPA, Public Order and Security Act (POSA), Criminal Law (Codification and Reform) Act, Broadcasting Services Act (BSA), Censorship and Entertainment Controls Act, Interception of Communications Act, Official Secrets Act and the Zimbabwe Broadcasting Act, among others, immediately stick out as some of the laws crying for wholesale repeal or amendment of some of their provisions.

The three parties to the then inclusive government notably Zanu PF, MDC-T and MDC, further agreed on the need to reconstitute the Zimbabwe Mass Media Trust (ZMMT) and the board of the Zimbabwe Broadcasting Corporation. It was expected that the reconstituted ZMMT and ZBC boards would be independent and representative enough to guard against political interference with the editorial independence of the state-controlled Zimpapers and Zimbabwe Broadcasting Corporation (ZBC) respectively.

These developments which have a bearing on citizens rights to freedom of expression, media freedom, and access to information, should thus be viewed against the deteriorating economic situation in a country where the majority of its 13 million people are leaving beneath the bread basket line of nearly \$600 a month.

Unemployment is pegged at more than 80 percent amid reports that 300 employees were being retrenched every week in the wake of the closure of 700 companies.

The country continued to face a serious liquidity crunch with nine companies going into liquidation between September and October 2013 while 12 were placed under judicial management. Capacity utilisation in the manufacturing sector also continued to dip hovering at about 39 percent.

❖ **Media Environment**

When President Robert Mugabe officially opened the First Session of the Eighth Parliament on 18 September 2013, he assured the nation that Zimbabwe would uphold the new constitution. He then made reference to new Bills that would be brought to Parliament to underpin envisaged reforms in line with the new Constitution, but did not make specific reference to the media sector.

This was indeed telling in that 100 days (as of end of November 2013) into his new government, several of the repressive media laws in contention, enacted by Zanu PF's pre-GNU government remained firmly entrenched in the statutes.

These laws range from the Access to Information and Protection of Privacy Act (AIPPA), the Broadcasting Services Act (BSA), Criminal Law (Codification and Reform) Act, Interception of Communications Act (ICA), the Official Secrets Act (OSA) and the Censorship and Entertainment Controls Act, among others.

These laws accounted for the constricted media space as witnessed by the closure of newspapers such as the *Daily News*, *Daily News on Sunday*, *Tribune* and *Weekly Mail* under AIPPA prior to the formation of the GNU which saw the marginal opening up of the media space.

Encouraging though is the fact that Professor Moyo has reiterated his commitment to comply with the new constitutional provisions on media freedom, freedom of expression and access to information. In addition, an inter-ministerial committee is reportedly looking into the laws that need to be re-aligned with the new constitutional dispensation.

Moyo has further hinted that criminal defamation as enshrined under the Criminal Law (Codification and Reform) Act, should be repealed. It is reported that all in all, close to 200 laws need to be realigned with the new constitution.

However, commitment alone is not enough. There is need for transparency as to the nature of the laws that are being looked at in that regard as well as allowing for input from interest groups and society at large as opposed to piecemeal approaches on the long overdue legislative reforms agenda.

While MISA-Zimbabwe commends the Professor's seeming repentance and determination to depolarise the media environment, we urge him to consult widely where it pertains to media legislative reforms as opposed to cherry-picking laws that should be subjected to repeal or amendment of their respective provisions.

❖ **Arrests, threats and harassment of journalists**

As noted in our 2012 report, the advent of the now defunct inclusive government, saw a marked reduction in the number of cases of media violations – a trend that continues to hold with further reductions in 2013 compared to the previous year.

In 2009, MISA-Zimbabwe issued 80 alerts pertaining to media violations which then dropped to a total of 27 in 2010, 28 in 2011, with a similar number recorded in 2012.

The number further declined to 22 as of 19 December 2013.

While this reduction could be indicative of a country that is on the reform path, these cases tend to rise during elections as witnessed ahead of the 31 July elections. The cases some of which border on criminality ranged from, abductions, harassments, assault, arrests and destruction of newspapers by unruly political party supporters.

These wanton acts of lawlessness which put the lives of journalists and media workers at great risk, assumed new shocking levels following the hospitalisation of Chinhoyi-based journalist Paul Pindani on 14 June 2013. Pindani was abducted from his home, severely assaulted, and left for dead by unknown assailants who were wearing masks.

Other cases involved the assault of *Zimbabwe Independent* reporter Herbert Moyo and the detention and harassment of Mashudu Netsiada, a senior reporter with the state-run *Chronicle*, by MDC-T supporters and security personnel respectively.

Bernard Mapwanyire, a reporter with *The Mirror* in Masvingo, was allegedly subjected to similar harassment and threats by MDC-T 'bouncers' on 8 June 2013 while covering the party's primary elections.

On 18 June 2013, Emmanuel Mhorombe a vendor with *Newsday*, was reportedly threatened with unspecified action by suspected Zanu PF youths at Alpha Media Holdings' news stand in Harare's populous suburb of Mbare. The youths are said to have also confiscated 40 copies of the newspaper.

Journalists Wendy Muperi and Wonai Masvingise of the *Daily News* and *Newsday* respectively, were harassed and detained by security personnel at the Zanu PF Headquarters in Harare on 21 June 2013.

Ironically, no arrests have been made following these incidents which come on the freshness of the endorsement and signing into law of the new Zimbabwean constitution which now exclusively guarantees media freedom as well as citizens' right to access to information.

The police should deal firmly with these wanton acts of lawlessness which pose great risk to the lives of journalists, media workers as well as their families.

Supporters of political parties should be educated that their actions constitute serious violations of journalists' constitutional right to media freedom and citizens' right to freedom of expression and access to information.

On the other hand, political leaders should guard against making inflammatory statements that incite and excite their supporters to take the law into their own hands thus tarnishing the images of their respective parties and that of Zimbabwe.

❖ Access to Information/Freedom of Expression

Access to information is a fundamental component of freedom of expression critical to citizens making informed choices as well as holding accountable the Executive and any other public institutions for that matter.

The observation by the Supreme Court in October 2013 that Section 31 (a) iii of the Criminal Law (Codification and Reform) Act which criminalises publishing or communicating false statements prejudicial to the state, is in violation of the Constitution, could thus be a pointer to the repealing of that provision.

Although the Supreme Court made the observation in terms of the old constitution's section 20 (1), it is trite to note that Section 61 of the new supreme law now explicitly guarantees freedom of expression and media freedom.

The Supreme Court's observation followed an appeal by *Zimbabwe Independent* journalists Constantine Chimakure and Vincent Kahiya, and artist Owen Maseko, who had been charged under the Criminal Code.

The two journalists were charged after they published a story titled: *Activists abductors named*. The story proceeded to name senior police officials who allegedly abducted MDC-T activists and Zimbabwe Peace Project director Jestina Mukoko.

Without dwelling much into the matter since it is *subjudice* following the subsequent filing of opposing heads of arguments by the Minister of Legal and Parliamentary Affairs Emmerson Mnangagwa, it is noted that several journalists and citizens have been arrested over the years for alleged breach of the Presidential insult laws.

As for Professor Moyo's statements as noted earlier in this report on the need to repeal criminal defamation, MISA-Zimbabwe is of the very strong view that the issue of media reforms should be done in a holistic manner as opposed to nebulous piecemeal approaches.

While the minister's intentions are positive, it should be noted that the same act contains other provisions that still criminalise expression, which should be repealed too. These are:

- section 95 which provides for the offence of criminal insult
- section 31 which provides for the offence of publishing or communicating false statements prejudicial to the State
- section 33 which deals with the offence of undermining authority of or insulting the President

Zimbabwe as a state party to Article 9 of the African Charter on Human and Peoples Rights and its Declaration on the Principles of Freedom of Expression in Africa, has no excuse in continuing to cling to these repressive and anachronistic laws.

These laws serve to instil fear and self-censorship among journalists and the generality of citizens thereby curbing free flow of information and public accountability and transparency.

The need to do away with laws such as criminal defamation and presidential insult laws is of imperative urgency given the new constitutional dispensation and the African Commission on Human and Peoples Rights' Special Rapporteur on Freedom of Expression and Access to Information Advocate Pansy Tlakula's push for the decriminalisation of free speech.

❖ **Print Media**

At least 85 media organisations have been registered by the statutory Zimbabwe Media Commission (ZMC) since its formation in 2009 thereby expanding the country's media diversity spectrum and presumably, citizens' access to diverse views and opinions.

The latest entrant into the print media market, was marked by the launch of *The Zimbabwe Mail* which hit the streets on 9 December 2013.

In its inaugural editorial, the paper poignantly states: The Zimbabwe Mail aims to create opportunities for the formerly marginalised communities by including them in its coverage.”

That statement of intent goes to the heart of the now oft-asked question as to whether the array of print publications in circulation reflect the cultural, ethnic and socio-economic diversity of Zimbabwe’s 13 million people and as espoused by its now constitutionally recognised 16 official languages.

Suffice to say Zimbabwe’s mainstream media is largely viewed as elitist by continuously quoting the same political and business voices at the expense of the very same marginalised communities, women and children, whom they still expect to buy their products.

This is an issue that needs to be addressed as this poses a serious challenge on the long term viability and sustainability of newspapers and citizens’ access to information and freedom of expression in Zimbabwe. This issue needs serious attention more so in the context of the advent of ICTs and new social media and dwindling income levels in a country with more than 80 percent unemployment.

The voices of marginalised communities are critical in sensitising the government to their socio-economic concerns and is critical to the economic wellbeing of the country. Newspapers, especially the small privately owned publications have a role to play in that regard.

Also of concern and paramount to their long-term viability is the statutory Zimbabwe Media Commission’s (ZMC), 0.5 percent levy imposed on annual gross turnover realised by media houses at a time when companies are collapsing resulting in dwindling advertising revenues – the very lifeblood of the survival of media publishing companies.

This untenable situation was confirmed by ZMC Commissioner Henry Muradzikwa, who said most of the licensed publications were struggling to pay the mandatory levy due to viability challenges.

This indeed paints gloomy prospects for the media industry given that the manufacturing sector’s capacity utilisation plunged to 39 percent in 2013 and requires \$2 billion to recapitalise and become competitive.

As mentioned in our 2012 report, several of the newspapers licensed by the ZMC are mostly being distributed in urban and peri-urban areas at an average cost of \$1 a copy.

The majority of citizens who live on less than a dollar a day, however, cannot afford to buy a single copy let alone at least two papers a day i.e. one state-run daily and a privately- owned daily if one is to get a full picture of what is going on because of the polarity of news content in the Zimbabwean media.

Commendable though are Professor Moyo’s efforts to depolarise the media environment which should enable journalists and media workers to address common professional issues such as the declining journalism standards, poor salaries and working conditions and corruption in the media.

Comments by Professor Moyo that the media should not be victimised for being the messengers, but that politicians should heed the message, if sustained, will go a long way in fostering media freedom.

Nevertheless, the issue of professionalism remains of major concern.

Professionalisation of the media industry should address issues of knowledge, skills and ethics in the media industry by media practitioners, managers and owners as we believe that good journalism is that which is accountable to the public.

The recognition of self-regulatory mechanisms such as epitomised by the Voluntary Media Council of Zimbabwe (VMCZ), will increase its effectiveness in promoting media professionalism and ethics. In addition, professionalisation should look at issues of safety and security of journalists as well as improving the working conditions of media practitioners.

❖ **Broadcasting/Telecommunications/ICTs**

The advent of Zimbabwe's new constitution with particular reference to Section 61 sub-sections 3 and 4, if followed to the letter, offers immense opportunity for a reformed broadcasting sector especially where it pertains to the transformation of the state-controlled Zimbabwe Broadcasting Corporation (ZBC), into a truly independent public broadcaster.

In terms of Section 61 which guarantees freedom of expression and freedom of the media, sub-section 3 (b) states that broadcasting and other electronic media of communication should be independent of control by government or by political or commercial interests.

It further stipulates under sub-section 4 that all state-owned media of communications must:

- a) be free to determine independently the editorial content of their broadcasts or other communications
- b) be impartial and
- c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

These yet to be implemented guarantees are at the root of the problems besetting the bankrupt ZBC and the vulgar \$40 000 monthly salary, perks and allowances earned by its currently suspended chief executive officer Happison Muchechetere while workers went for months without salaries.

While the new minister of information has been applauded for dissolving the ZBC board and suspension of its CEO, the problems besetting the corporation can easily be attributed to its governance and management structure.

As the forensic audit of ZBC gets underway, the minister who is on record saying the government will comply with section 61 as well as section 62 which guarantees the right to access to information, should now shed light on steps being taken to comply with the provisions in question.

The current governance structure is a naked breach of the afore-mentioned constitutional provision on media freedom not to mention the African Charter on Broadcasting. This has left the corporation exposed to political interference as the minister appoints the board, issues regulations/directions to the board and management.

ZBC is thus a state-owned and state-controlled and not public broadcaster. The ZBC Commercialisation Act should thus be repealed accordingly to meet the new constitutional obligations.

The present setup lives room for political interference, patronage, nepotism, propaganda, partisan journalism which impacts negatively on the professional and ethical conduct of ZBC.

The appointment of an independent ZBC board answerable to Parliament is now of imperative urgency given the new constitutional dispensation as it will go a long in securing the editorial and programming independence of ZBC through a binding Editorial Charter to foster accountability on its envisaged public service mandate.

community radio stations

The government continued to dither and prevaricate as to when and how it is going to proceed concerning the much awaited licensing of community radio stations as provided for under the Broadcasting Services Act until almost towards the end of the year.

Suffice to say, Zimbabwe went into the 12th year without licensing community radio stations despite their being provided for in terms of the BSA of 2001.

Instead, the closest there was to further opening of the airwaves, was a renewed call by BAZ in October 2013 for applications for 25 commercial free-to-air provincial radio stations under questionable licensing procedures. Bizarrely, applicants have to indicate directors and shareholders' political affiliation.

digitisation

On digitisation, Zimbabwe is likely to miss the International Telecommunications Union's 2015 deadline let alone the SADC's 2013 cutoff date due to lack of funds.

This comes at a time when the country is still to license privately owned commercial television stations notwithstanding the first ever commercial radio stations which started operating in 2011.

That as it may be, the controversy surrounding the licensing of *ZiFM* and *Star FM* owned by Supa Mandiwanzira and the state-controlled Zimbabwe Newspapers, makes a strong case for more independently owned radio stations.

Mandiwanzira, now deputy Minister of Information, stood and won a parliamentary seat on a Zanu PF ticket in 2013 elections.

According to Professor Moyo, digital broadcasting has the potential to support about 80 television services. While he hinted that ZBC's monopoly of the television broadcasting could be ending soon, the licensing of new radio and television services cannot be left to the Broadcasting Authority of Zimbabwe (BAZ) as it is currently constituted.

The Broadcasting Services Act (BSA) which established BAZ, should be repealed to allow for a new and converged independent regulatory framework that establishes a clear separation of powers between government, regulators and service providers.

The Declaration on the Principles on Freedom of Expression in Africa states:

1. Any public authority that exercises power in the areas of broadcasting or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
2. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society and shall not be controlled by any particular party.
3. Any public authority that exercises powers in areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

The current untenable regulatory framework is evidenced by the fact that the ZMC's chief executive officer, Dr Tafataona Mahoso, is also the Chairperson of BAZ.

The Independent Communications Authority of South Africa (ICASA), is hailed as a model independent regulator on the continent.

It is MISA-Zimbabwe's argument that the manner in which the Zimbabwean regulators namely the Broadcasting Authority of Zimbabwe (BAZ) under the BSA, the Posts and Telecommunications Regulatory Authority of Zimbabwe, and Zimbabwe Media Commission (ZMC) under AIPPA, are constituted makes them susceptible to direct political interference.

AIPPA through the ZMC imposes statutory regulation in breach of the Banjul Declaration on the Principles of Freedom of Expression in Africa while BAZ is hostage to the whims and dictates of the Executive in violation of the African Charter on Broadcasting.

These bodies need to be replaced by a truly independent communications regulator that will oversee these sectors. This new regulator's independence must be guaranteed by the law and must have financial, structural and functional independence in order to regulate the sector effectively and impartially for the development of the ICT sector to be guaranteed.

mobile penetration/telecommunications

On a positive note though and according to latest World Bank figures, access to cellphones in Zimbabwe has risen by 646 percent since 2008, by far the largest jump in the region. In 2008, only 13 percent of Zimbabweans had access to cellphones. Now, the penetration rate – the ration of cellphones to the population – stands at 97 percent.

According to the 2012 Sub-Saharan Africa Mobile Observatory Report , more people access the web via their cellphones in Zimbabwe than elsewhere in the world. Mobile internet access accounts for more than half of all web traffic in Zimbabwe at 58.1 percent, far higher than the global average.

Zimbabwe's multi-currency regime also triggered a boom in telecoms investment in the wake of the removal of duties on network equipment, cellphones, computers and other accessories. This allowed companies to invest more in expansion while making cellphones cheaper.

Econet Wireless chief executive officer Tito Mboweni says his company has invested \$1 billion since 2008.

A 2013 survey by the Mass Public Opinion Institute, nine out of 10 youths in a country of 13 million people, have access to cellphones. In addition, the country's three major mobile service providers, Econet, NetOne and Telecell, are now also offering mobile money services, which makes it easier to transact without the high charges and red tape endured at banks.

❖ **Way Forward in 2014**

- Zimbabwe should move swiftly in aligning the media laws, policy and regulatory frameworks with the new constitutional dispensation and the regional and international instruments that it is a state party or signatory to.
- Repealing of laws such as criminal defamation and presidential insult laws is of imperative urgency given the new constitutional dispensation and the African Commission on Human and Peoples Rights' Special Rapporteur on Freedom of Expression and Access to Information Advocate Pansy Tlakula's push for the decriminalisation of free speech.
- The government should deal with perpetrators of media violations and ensure the greatest safety and security of journalists conducting their lawful professional duties.
- Supporters of political parties should be educated that the harassment, assault and unlawful arrests of journalists constitute serious violation of journalists' constitutional right to media freedom and citizens' right to freedom of expression and access to information.
- On the other hand, professionalisation of the media industry should address issues of knowledge, skills and ethics in the media industry by media practitioners, managers and owners to foster media accountability to the public.
- Publishers and media professional bodies such as the Zimbabwe Union of Journalist (ZUJ) should agree on a framework that addresses the working conditions of journalists and other media workers in general.
- The recognition of self regulatory mechanisms such as the VMCZ will increase its effectiveness in promoting media professionalism and ethics.
- The Broadcasting Services Act (BSA) which established BAZ, should be repealed to allow for a new and converged independent regulatory framework that establishes a clear separation of powers between government, regulators and service providers.
- The ZBC Commercialisation Act should equally be repealed and replaced with a new act that secures its governance, managerial and editorial independence as provided for under the new constitution.
- In equal vein, the Zimbabwe Mass Media Trust should be reconstituted to cushion Zimpapers from political interference.

❖ **Conclusion**

For Zimbabwe, 2014 and the years ahead, offer immense opportunity for the country to walk the talk in its avowed subscription to Pan-African solutions to African problems.

This can be achieved by hinging its yearned for and long overdue socio-economic and political development on the domestication and strict adherence to the continent's instruments, that among others, guarantee freedom of expression, access to information and media freedom.

Compliance with the new constitutional dispensation will be the first major step towards the envisaged economic prosperity and socio-political stability.

End

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