



# ZAMBIA

National Overview 2004  
by MISA Zambia

# Zambia



**By Kenny M. Makungu**

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## **A struggle for media freedom**

During 2004, Zambia made little progress in its struggle to have the Freedom of Information Bill re-introduced in Parliament and legislated. The government and media also failed to have the names of Independent Broadcasting Authority (IBA) and the Zambia National Broadcasting Corporation board members taken to the National Assembly for ratification.

These two issues served to show a major difference in opinions. The Government feels that in spite of the progress the country has made in liberalising the media - for example, through the passing of laws which brought the IBA and ZNBC into being - it should retain some measure of control. However, press freedom advocates believe the media should be left to serve the interests of all people, regardless of their political affiliations.

In February 2001, Government had published a draft Freedom of Information Bill that would have made it easier for the press to access Government-held information, but the Bill was withdrawn before being tabled in Parliament. It has not been reconsidered.

## **Triumph in the courtroom**

The IBA/ZNBC issue resulted in a High Court case that was won by six media bodies, which jointly sought a judicial review following a decision by the Minister of Information and Broadcasting Services, Mutale Nalumango, to veto some of the people recommended to sit on the boards by two appropriate ad-hoc appointment committees.

In his judgement on December 23, 2004, Lusaka High Court Judge Gregory Phiri said the Minister's decision in the context of the new legislation not only promoted non-compliance with the new law, but also prevented and frustrated the vital media law reforms in Zambia.

"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," he said.

The Judge observed that the two pieces of legislation (IBA and ZNBC) represented a clear and deliberate effort at reform of the law and circumstances that previously existed, and that the two laws were clearly and deliberately aimed at moving Government away from direct and day-to-day control of both public and private media organisations in Zambia.

"Specifically, the law clearly creates the IBA and an independent board of directors for ZNBC, a key public media organisation in Zambia, free from interference and not subject to the direction of any other person or authority," he said.

Judge Phiri, however, noted that he had not found any evidence to suggest that the Minister's

decision was made in bad faith, particularly because she had concealed her reasons for the decision.

The judge said he had found that the Minister erroneously believed she had power to veto the nominees, or to reject or modify the recommendations of the committees under the law.

The six media organisations involved in the suit were The Media Institute of Southern Africa (MISA) Zambia Chapter, Press Association of Zambia (PAZA), Zambia Union of Journalists (ZUJ), Zambia Media Women’s Association (ZAMWA), Society of Senior Zambian Journalists (SSZJ), and the Post newspaper’s Press Freedom Committee.

### Legislative Environment

There were no significant changes that affected the legislative environment for the media. There were also no new legislative measures that affected the media, but the struggle, as earlier alluded to, to have The Freedom of Information Bill re-introduced and passed in Parliament, continued though no significant progress was made.

However, the period saw attacks on constitutionally entrenched rights, particularly that of freedom of expression and freedom of speech. This was brought to the fore on 5 February 2004 when Roy Clark, a columnist for the privately owned Post newspaper was given 24 hours in which to leave the country for allegedly having insulted President Levy Mwanawasa and two cabinet ministers in an article published in the Post newspaper on 1 January, 2004.

Home Affairs Minister Lieutenant General Ronnie Shikapwasha confirmed having issued orders to deport Clark on 5 January in Lusaka when he addressed ruling Movement for Multi-party Democracy (MMD) cadres who gathered at his office demanding the immediate deportation of Clark.

Clark, in his weekly column, *The Spectator*, is said to have referred to President Mwanawasa as a muwelewele (a fool) and called two of his cabinet ministers offensive names.

Several groups condemned the minister’s actions. The Post’s Deputy News Editor Amos Malupenga described the action as “barbaric and unreasonable”. He argued that Government should have found a better way of dealing with the issue instead of resorting to deportation.

Thankfully the fight for media freedom was greatly boosted when on 26 April, Lusaka High Court Judge Philip Musonda quashed the deportation order issued by the Minister against Clark, saying it was unlawful and violated freedom of expression.

In his ruling, Justice Musonda said the deportation order violated Section 26 (2) of the Constitution because there was procedural impropriety in the way the order was issued. He said that Clark had shown that his constitutional rights, including freedom of expression and the right not to be discriminated against were violated by the State.

### Keeping media in the dark

Another incident occurred on 3 February 2004 when the media and the public were barred from attending a tribunal that was launched to investigate allegations of professional misconduct levelled by President Mwanawasa against Director of Public Prosecutions (DPP) Mukelebai Mukelebai.

Tribunal Chairperson Judge Esau Chulu, who presided with judges Philip Musonda and Charles

Kajimango, ruled that the proceedings would be held in camera, despite an application by Mukelabai's lawyer, Vincent Malambo, that they should be open to the public.

MISA-Zambia quite rightly pointed out that "... journalists are there to inform the public about what is happening, therefore, having the case of the DPP heard in camera is an infringement of the journalists' rights as well as the denial of information to the public."

### **Police brutality: media under threat**

Other incidents included the four-hour detention by police of two reporters working for Radio Lyambai, a community radio station in Mongu (581 kilometres west of Lusaka), for allegedly inciting people in a local township to riot.

Joseph Ngenda and Dennis Mwiiya, both producers at Radio Lyambai, were picked up on 20 February 2004, by three armed police officers for presenting a programme that police claimed led to a riot in which residents of Imwiko Township beat up and set on fire the home of a suspected child abductor.

Mwala Kalaluka, a Zambia Information Service reporter who was covering the riot, was detained for two hours. Police threatened to shoot if he did not stop interviewing witnesses. He was also called a "fake reporter who reports lies".

On April 24 and 25, Samuel Botha, a sub-editor, and George Lwanja, a programme manager, both of Radio Chikaya, a small community radio station in Lundazi (about 800 kilometres north east of Lusaka), were arrested, detained and charged with "obstructing a police officer on duty." In a related incident, announcer and volunteer Chaison Gwede Ngulube was arrested in connection with a murder investigation at a village in Lundazi.

Botha was arrested after he prevented a police officer from entering the transmission studio to arrest Ngulube, who was anchoring a live discussion programme at the time. Lwanja was only arrested the next day when he tried to negotiate for Botha's release from detention. Lwanja informed MISA-Zambia that he and Botha had been beaten up in the process.

There were other sad cases of institutional or police intimidation, victimisation and arrests of journalists. An example is ZNBC'S one-month suspension of its Acting Director of Programmes, Ben Kangwa and another employee, Ignatius Sibetta, over the broadcast of "Unshackled," an African film featuring a man addicted to masturbation on 3 August 2004.

### **Silencing the detractors**

The period also witnessed the Minister of Home Affairs, Lt. Gen. Shikapwasha deregistering The Southern Africa Centre for Constructive Resolution of Disputes (SACCORD), after he accused the organisation of "engaging in activities inimical to the interests of the State."

SACCORD was a non-governmental organisation involved in human rights, promoting good governance, monitoring elections and lobbying for legislative reform. Around the time of deregistration, the organisation had been outspoken in calling for the amendment of the Public Order Act, which regulates public processions and gatherings in Zambia.

The banning of SACCORD was greeted with alarm by a number of NGOs, particularly because it followed threats by President Mwanawasa that Government would introduce legislation to check the source of NGO funding. The President had accused some of the NGOs of trying to

destabilise the Government.

### **On the warpath**

And to crown it all, on 20 December, Lusaka police wearing riot gear assaulted, detained and charged four journalists with “conduct likely to lead to breach of the peace” and barred several others from covering people detained over blocked peaceful demonstrations on the mode of adopting the Constitution.

The four were Radio Phoenix reporter Kangwa Mulenga, Post senior reporter Brighton Phiri, Radio Q-FM reporter Mutuma Chanda and Times of Zambia chief photographer Eddie Mwanaleza.

The journalists were arrested after attempting to get a glimpse of 68 people who were being held at a Lusaka soccer stadium for trying to demonstrate against government’s position on the timeframe for the adoption of the Republican Constitution.

A team of MISA -Zambia officials that rushed to the scene found the four journalists detained at Kabwata Police Station. Kangwa, who had sustained a big cut above his right eye and was bleeding, told the officials that he had been roughed up and pistol-whipped by a police officer despite identifying himself as a journalist.

### **Media diversity**

Media diversity received a boost of sorts when a few more community radio stations including Radio Liseli Oblates in Mongu, Radio Mano in Kasama and 5 FM in Lusaka were granted full licences. Muvi Television Studio also received a full licence.

A plus for the media fraternity in the country is that The Media Council of Zambia (MECOZ) Board was established in February 2004. It is headed by a retired High Court judge. MECOZ is fully operational and has adjudicated a number of cases. It is significant to note here that Government has also brought a case before MECOZ, an indication that it has embraced the concept of self-regulation.

A spirit of oneness vis-à-vis media law reform and advocacy among the media associations has continued, resulting in significant strides such as the IBA and ZNBC court case won by the six media organisations. This shows that if these organisations work together, they could achieve a lot more than they would if they worked in isolation.

### **Conclusion**

From the account offered above, it seems reasonable to say that, in terms of harassments and intimidation of journalists, there was no respite, but, comparatively, in terms of agitating for media law reforms and an improved working environment for journalists, Zambia had a relatively quiet year.

# Zâmbia



Por M. Makungu De Kenny

Traduzido por Rui Correia

(\* short bio coming)

## Um luta pela liberdade da comunicação social

Durante 2004, a Zâmbia fez pouco progresso na sua luta pra conseguir re-introduzir e levar a voto na Assembleia Nacional o projecto da Lei sobre a Liberdade da Informação. O governo e a comunicação social também não tiveram sucesso em levar para ratificação na Assembleia, os nomes dos membros do conselhos para a Autoridade Independente para a Radiodifusão (IBA) e para a emissora nacional, a Zambia National Broadcasting Corporation (ZNBC).

Estas duas questões serviram para ilustrar uma grande diferença de opiniões. O governo sente que apesar do progresso que o país fez em liberalizar a comunicação social - por exemplo, com a aprovação das leis que criaram a IBA e a ZNBC - ele devia reter um certo grau de controlo. No entanto, os activistas da liberdade da imprensa acreditam que a comunicação social deve ficar livre de controlo, para assim melhor servir os interesses de toda a sociedade, não obstante as suas afiliações políticas.

Em fevereiro de 2001, o governo tinha publicado um projecto da Lei sobre a Liberdade de Informação, que tornaria mais fácil o acesso à informação retida por fontes da administração. Mas a lei foi retirada antes de ser posta a voto na Assembleia Nacional. O projecto nunca mais recebeu atenção alguma.

## Triunfo no tribunal

A questão da IBA/ZNBC resultou num caso de Tribunal Supremo que foi ganho por seis órgãos da mídia, depois de uma revisão judicial contra uma decisão da Ministra da Informação e Dos Serviços de Radiodifusão, Mutale Nalumango, de vetar algumas das pessoas recomendados para servirem nos dois conselhos. As pessoas tinham sido seleccionadas por dois comités de selecção.

Na sua decisão a 23 de dezembro de 2004, o juiz Gregory Phiri do Tribunal Supremo de Lusaka disse que a atitude da ministra no contexto da nova legislação, não só incentivava o não cumprimento da nova lei, como também impedia e frustrava as reformas da lei da comunicação social na Zâmbia.

O juiz observou que as duas peças de legislação (IBA e ZNBC) representavam um esforço lúcido e concreto para reformar a lei e as circunstâncias que existiam antes disso. Disse também que as duas leis visavam afastar o governo do controlo directo dos órgãos públicos e privados da comunicação social na Zâmbia.

O Juiz adiantou que não tinha encontrado nenhuma evidência para sugerir que a decisão da ministra tivesse sido em má fé. A ministra estava enganada ao pensar que tinha o poder de veto.

Os seis órgãos da comunicação social envolvidas no caso foram o Instituto da Comunicação Social para a África Austral, MISA-Zâmbia; a Associação da Imprensa da Zâmbia (PAZA); a União dos Jornalistas da Zâmbia (ZUJ), a Associação das Mulheres da Comunicação Social da Zâmbia (ZAMWA), a Sociedade dos Jornalistas Sêniores (SSZJ), e o Comitê da Liberdade da Imprensa do jornal The Post.

## **Ambiente Legislativo**

Não houve nenhuma mudança significativa que afectou o ambiente legislativo para a comunicação social. Também não surgiu nenhuma medida legislativa nova que afectasse a comunicação social, mas - como já dito acima - a luta para reintroduzir o projecto da Lei da Liberdade Informação continuou.

No entanto, o período testemunhou ataques contra direitos constitucionalmente consagrados, em particular a liberdade de ideias e a liberdade de expressão. Isto veio à tona a 5 de fevereiro de 2004, quando Roy Clark, um colunista no jornal privado Post recebeu ordens para sair do país dentro de 24 horas por supostamente ter insultado o presidente Levy Mwanawasa e dois ministros do seu gabinete num artigo publicado no jornal do Post a 1 de janeiro, 2004.

Clark, na sua coluna semanal, o espectador, supostamente referiu-se ao Presidente Mwanawasa como um ‘muwelewele’ (um tolo) e usou linguagem ofensiva ao se referir aos ministros do seu gabinete. Vários grupos condenaram as ações do ministro, que o Editor Adjunto de Notícias do Post, Aмос Malupenga descreveu de ‘bárbaras e descabidas’. Ele argumentou que as autoridades deviam ter procurado uma maneira melhor de tratar do caso em vez de recorrer à deportação.

A luta pela liberdade da comunicação social recebeu uma grande ajuda quando, a 26 de abril, o juiz Philip Musonda do Tribunal Supremo de Lusaka rejeitou a ordem de deportação emitida pelo ministro contra Clark, declarando que esta era ilegal e violava a liberdade de expressão.

Na sua decisão, o Juiz Musonda disse que Clark tinha demonstrado que a ordem de deportação violava a seção 26 (2) da constituição, que trata de direitos constitucionais, incluindo a liberdade da expressão e do direito de não ser discriminado pelo estado.

## **Mantendo a comunicação social na escuridão**

Um outro incidente ocorreu a 3 de fevereiro 2004, quando a comunicação social e o público foram negados acesso a uma sessão para investigar alegações de má conduta profissional, feitas pelo presidente Mwanawasa contra o alto oficial dos Serviços de Justiça, Mukelebai Mukelebai.

O Juiz Esau Chulu decidiu que o julgamento decorreria a portas fechadas, apesar de um pedido do advogado de Mukelabai, Vincent Malambo, que estas deviam ser abertas ao público.

O MISA-Zâmbia declarou na altura que “... jornalistas existem para informar o público e por isso julgar um processo a portas fechadas é uma violação dos direitos dos jornalistas assim como negação de informação ao público”.

## **Brutalidade policial: comunicação social sob ameaça**

Outros casos incluíram a detenção por 4 horas, de dois repórteres da Rádio Lyambai, uma estação de rádio comunitária em Mongu (581 quilômetros ao oeste de Lusaka). Os dois foram detidos pela polícia por supostamente estarem a incitar a população da aldeia à violência.

Joseph Ngenda e Dennis Mwiiya, ambos produtores da Rádio Lyambai foram detidos a 20 de fevereiro 2004, por três policiais armados por terem apresentado um programa que os policiais disseram ter provocado o motim, durante o qual habitantes de Imwiko agrediram um suposto sequestrador e pegaram fogo à sua casa.

Mwala Kalaluka, um repórter do Serviço de Informação da Zâmbia que estava a cobrir o motim, foi detido por duas horas. Os policiais ameaçaram disparar se ele não parasse de

entrevistar as testemunhas. Também foi chamado de 'repórter falso que noticia mentiras'.

A 24 e 25 de abril, Samuel Botha, um editor adjunto e George Lwanja, um gerente de programação, ambos da Radio Chikaya, uma pequena estação de rádio comunitária em Lundazi (aproximadamente 800 quilômetros a nordeste de Lusaka), foram detidos e presos por 'obstruir um oficial da polícia que cumpria o seu dever'. Num caso relacionado, Chaison Gwede Ngulube, anunciador voluntário foi detido com relação à investigação de um assassinato na aldeia de Lundazi.

Botha foi detido por ter impedido um policial de entrar no estúdio da emissora para prender Ngulube, que na altura estava ao microfone num programa ao vivo. Lwanja só foi detido no dia seguinte quando tentou negociar a liberação de Botha. Lwanja informou o MISA-Zâmbia que Botha tinha sido agredido.

Houve outros casos tristes de intimidação, vitimização e detenções da parte da polícia ou outras instituições contra jornalistas. Um exemplo foi a suspensão por 30 dias do director de programação em exercício da ZNBC, Ben Kangwa e outro funcionário, Ignatius Sibetta, por terem transmitido, a 3 de agosto 2004, um filme africano sobre um homem que era viciado em se masturbar.

### **Silenciando os críticos**

Este período testemunhou também a decisão do Ministro do Interior, Tenente-General Shikapwasha de anular o registo do Centro para Resolução Constructiva de Disputas da África Austral (SACCORD), depois de ter acusado a organização de se "envolver em actividades contrárias aos interesses do estado".

SACCORD era uma organização não-governamental envolvida em direitos humanos, promoção da boa governância, monitoramento de eleições e actividades de lobby para a reforma legislativa. Na altura em que o registo foi cancelado, a organização tinha sido abertamente crítica em insistir numa emenda da Lei sobre a Ordem Pública, que regula procissões e reuniões públicas na Zâmbia.

A proibição da SACCORD foi recebida com alarme por algumas ONGs, especialmente como isto ocorreu depois de ameaças pelo presidente Mwanawasa que o governo introduziria legislação para verificar a origem do financiamento das ONGs. O presidente tinha acusado algumas das ONGs de tentativas de destabilizarem o governo.

### **Guerra declarada**

Para coroar tudo isto, a 20 de dezembro, membros de um esquadrão de choque de Lusaka agrediram e deteram quatro jornalistas e acusaram-nos de "conduta apta a levar à quebra da paz" e impediram outros de fazerem cobertura de pessoas que tinham sido detidas durante demonstrações pacíficas para protestar o método a ser usado para adoptar a constituição.

Os quatro eram o repórter da rádio Kangwa Mulenga de Phoenix, o repórter sénior Brighton Phiri do Post, o repórter da rádio Q-FM, Mutuma Chanda e o fotógrafo principal do Times of Zambia, Eddie Mwanaleza.

Os manifestantes - que estavam detidos num estádio de futebol de Lusaka - tentaram demonstrar contra a posição do governo sobre a escala de tempo a ser seguida para a adopção da nova constituição republicana.

Uma equipa do MISA-Zâmbia logo se deslocou ao local e encontraram os quatro jornalistas



detidos na esquadra de Kabwata. Kangwa, que tinha sofrido um golpe enorme acima de seu olho direito e estava sangrando, disse que os policiais o tinham agredido à coronhada de pistola. Isto, apesar de se ter identificado como jornalista.

### **Diversidade da comunicação social**

A diversidade da comunicação social ganhou um impulso com o concedimento de licenças a mais algumas estações de rádio comunitária, incluindo a rádio Liseli Oblates em Mongu, Rádio Mano em Kasama e 5 FM em Lusaka. A estação de televisão Muvi Television Studio também obteve a sua licença.

Um bom sinal para a comunidade da comunicação social no país, foi a inauguração do Conselho da Comunicação Social da Zâmbia (MECOZ), em fevereiro de 2004. O conselho é presidido por um juiz aposentado do Tribunal Supremo. MECOZ já está em plena actividade e já ouviu vários casos. É significativo mencionar que o próprio governo também trouxe um caso para a decisão do MECOZ, uma indicação da sua aceitação do conceito de auto- regulação.

### **Conclusão**

Baseado no que relatamos acima, parece ser razoável dizer que - em termos de perseguição e intimidação de jornalistas - não houve nenhuma trégua, mas, em comparação, em termos de activismo pelas reformas da lei da comunicação social e a melhoria do ambiente de trabalho dos jornalistas, a Zâmbia teve um ano relativamente calmo.

• **ALERT**

**Date: January 1, 2004**

**Persons/Institutions: Breeze FM, BBC**

**Violation(s): Censored**

On January 1 2004, Zambia's Ministry of Information and Broadcasting Services (MIBS) ordered the community based commercial radio station, "Breeze FM", to stop the relay of British Broadcasting Corporation (BBC) programmes. "Breeze FM" is based in Chipata, an area approximately 600 kilometers from the capital Lusaka, and broadcasts over a radius of 150 kilometres. "Breeze FM" Managing Director Mike Daka told MISA-Zambia that the MIBS Assistant Secretary for Press, Juliana Mwila, on January 1 reiterated the ministry's directive that the broadcast of BBC programmes was in violation of the radio station's license conditions. Mwila pointed out that in line with the station's application, it was licensed to carry foreign news sourced only from the Zambia News Agency (Zana), the Southern African Broadcasting Association (Saba) and Pan African News Agency (Pana).

• **ALERT**

**Date: January 5, 2004**

**Persons/Institutions: Roy Clarke**

**Violation(s): Expelled**

On January 5 2004, Roy Clarke, a columnist on the privately owned "Post" newspaper was given 24 hours in which to leave the country for allegedly having insulted President Levy Mwanawasa and two other cabinet ministers in an article published in the "Post" newspaper of January 1, 2004. Home Affairs minister Lieutenant General Ronnie Shikapwasha confirmed having issued orders to deport Clarke in Lusaka on January 5 when he addressed ruling Movement for Multi party Democracy (MMD) cadres who were gathered at his office demanding the immediate deportation of Clarke. Shikapwasha said Clarke was being deported because time had come for him to be let out of the country. He said government cannot allow Zambians to be insulted by a foreigner through satire. He said government has been following Clarke's writing and was finally deporting him. In his weekly column, the Spectator, Clarke is said to have referred to President Mwanawasa as a Muwelewele (fool) and called two of his cabinet ministers names.

• **UPDATE**

**Date: January 7, 2004**

**Persons/Institutions: Roy Clarke**

**Violation(s): Expelled**

On approximately 20h15 on January 5 2004, the Lusaka High Court blocked a deportation order against the "Post" newspaper columnist Roy Clarke, who is accused of insulting President Levy Mwanawasa and calling two of his ministers "baboons". The action signified that the decision to deport Clarke could not be effected until it was heard by the court on Thursday, January 8 at 14h30. Meanwhile, the government announced that it was looking for Clarke, who had reportedly gone into hiding to elude deportation.

• **UPDATE**

**Date: January 9, 2004**

**Persons/Institutions: Roy Clarke**

**Violation(s): Expelled**

On January 8 2004, the Lusaka High Court adjourned the hearing of the case in which Post newspaper columnist Roy Henry Clarke is challenging his deportation from Zambia. The case was to be heard on to January 26, 2004.

• **UPDATE**

**Date: January 14, 2004**

**Persons/Institutions: Roy Clarke**

**Violation(s): Expelled**

On January 13 2004, the Lusaka High Court ruled that Roy Clarke, the British national facing deportation from Zambia for writing a satirical article which allegedly insulted President Levy Mwanawasa and two ministers, will continue enjoying his status as a permanent Zambian resident until the court disposes of the case where he is challenging his deportation.

Judge Phillip Musonda made the ruling in his chambers following an application by Clarke's lawyer, Patrick Matibini, who was seeking clarification from government over Clarke's residential status, in view of the injunction which he obtained on January 5, 2004, restraining government from deporting him. The application was prompted by concerns over media statements by some government officials that Clarke should apply for a temporary residence permit if he wanted to remain in Zambia legally.

• **ALERT**

**Date: January 17, 2004**

**Persons/Institutions: Leonard Hikaumba (ZCTU President)**

**Violation(s): Other (censored)**

On January 17 2004, the state owned Zambia National Broadcasting Corporation (ZNBC) television station cancelled a live discussion programme meant to discuss government's controversial decision to impose a civil service wage freeze and hike personal tax called Pay As You Earn (PAYE). The Zambia Congress of Trade Unions (ZCTU) President Leonard Hikaumba told MISA-Zambia that the ZNBC had decided to cancel the programme intended to respond to statements made by Finance and National Planning Minister Ngandu Magande, on the wage freeze despite having confirmed it. Hikaumba said the programme was initiated by ZNBC Director of Programmes Ben Kangwa, who invited him to react to Magande's interview, which was broadcast on February 15 2004, in which he justified government's imposition of the wage freeze and increase in PAYE. Magande argued that the measures were meant to ensure that Zambia qualifies for the Highly Indebted Poor Countries (HIPC) initiative by June 2004.

• **ALERT**

**Date: January 28, 2004**

**Persons/Institutions: Mackson Wasamunu**

**Violation(s): Detained, beaten, censored**

On January 28 2004, Mackson Wasamunu, a photojournalist working for the state-owned "Zambia Daily Mail" newspaper was beaten and detained by police officers for taking photographs of a police action to remove street vendors from the capital Lusaka's city centre. Wasamunu was detained for approximately six hours. His two cameras worth about K10 million (approximately US\$2 100) were damaged in the ensuing struggle with the police officers, and his film was confiscated.

• **ALERT**

**Date: February 3, 2004**

**Persons/Institutions: Media in Zambia, citizens of Zambia**

**Violation(s): Censored**

On February 3 2004, the media and the public were barred from attending the hearings of a tribunal investigating allegations of professional misconduct levelled by President Levy Mwanawasa against Director of Public Prosecution (DPP), Mukelebai Mukelebai.

Tribunal Chairperson Judge Esau Chulu who sat with Judges Philip Musonda and Charles Kajimanga, ruled that the proceedings would be held in camera, despite an application by Mukelabai's lawyer, Vincent Malambo, that they should be open to the public.

• **ALERT**

**Date: February 20, 2004**

**Persons/Institutions: Joseph Ngenda, Dennis Mwiiya and Mwala Kalaluka**

**Violation(s): Detained, threatened**

On February 20, 2003 two reporters working for "Radio Lyambai", a community radio station in Mongu, 581 kilometers west of the capital, Lusaka, were detained by police for about four hours for allegedly inciting people in a local township to riot.

Joseph Ngenda and Dennis Mwiiya both producers at "Radio Lyambai" were picked up by three armed police officers for presenting a programme that police claimed led to a riot in which residents of Imwiko township beat up and set on fire the home of a suspected child abductor. Mwala Kalaluka, a Zambia Information Service reporter who was covering the riot, was detained for two hours and threatened with shooting if he did not stop interviewing witnesses. He was also called "a fake reporter who reports lies".

On February 19 2004, "Radio Lyambai" aired a programme in which a family accused Mongu police of dragging their feet in investigating a case in which a boy, believed to have died two years ago, "miraculously" returned to his parents. A man from a nearby fishing community who was alleged to have used witchcraft to abduct the boy, who he later claimed as his own, was beaten and had his house burnt by irate residents who accused the police of alleged cover-up in the investigations. The residents allegedly rioted after hearing the programme on the radio station where by the boy's supposed biological parents accused the police of shielding the alleged wizard.

• **ALERT**

**Date: April 26, 2004**

**Persons/Institutions: Roy Clarke**

**Violation(s): Victory (expelled)**

On April 26 2004, Lusaka High Court Judge Phillip Musonda quashed a deportation order issued by Home Affairs Minister Ronnie Shikapwasha against "Post" newspaper columnist Roy Clarke, saying it was unlawful and violated freedom of expression. Clarke, a British national and permanent resident of Zambia, had appealed against the order.

In his ruling Justice Musonda said the deportation order violated Section 26(2) of the Constitution in that there was procedural impropriety in the way the order was issued. He said that Clarke had shown that his constitutional rights including freedom of expression and the right not to be discriminated against, were violated by the state.

• **ALERT**

**Date: April 24 and 25, 2004**

**Persons/Institutions: Samuel Botha, George Lwanja and Chaison Gwede Ngulube**

**Violation(s): Detained, beaten, threatened**

On April 24 and 25 2004, Samuel Botha (sub-editor) and George Lwanja (programme manager) who work for "Radio Chikaya" - a small community radio station in Lundazi about 800 kilometers north east of Lusaka - were arrested, detained and charged with "obstructing a police officer on duty".

Related to the incident, radio announcer and volunteer Chaison Gwede Ngulube was arrested in connection with a murder investigation at a village in Lundazi.

Botha and Lwanja were arrested after they prevented a police officer from entering the

transmission studio to arrest Ngulube, who was anchoring a live discussion programme at the time. Lwanja however, was only arrested the next day when he attempted to negotiate for Botha's release from detention. Lwanja told MISA-Zambia that he and Botha were beaten up in the process. "He (police officer) slapped me on the face and hit me with a gun and threatened to shoot me while pointing the gun at me. He then fired the gun in the air which attracted the attention of passers-by," he said.

Lwanja was later released on bond after being remanded in custody for close to six (6) hours while Botha was only released after two (2) days following the intervention of the chairperson of the station's board of directors, Muyunda Zulu.

• **ALERT**

**Date: June 3, 2004**

**Persons/Institutions: *Zambian media organisations/coalition***

**Violation(s): *Legislation***

On June 3 2004, the Lusaka High Court granted a stay of execution to the Media Institute of Southern Africa (MISA)-Zambia and five other media bodies prohibiting the Minister of Information and Broadcasting Services from stopping presentation or vetting presentation of some names of board members recommended by the Ad Hoc Appointments Committees appointed under the provisions of the Independent Broadcasting Authority (IBA) and Zambia National broadcasting Corporation (ZNBC) (Amendment) Acts of 2002 to sit on the two institutions' boards.

This is in a matter in which MISA Zambia, together with the Press Association of Zambia (PAZA), Zambia Union of Journalists (ZUJ), Zambia Media Women's Association (ZAMWA), Society of Senior Zambian Journalists (SSZJ) and the Post newspapers are seeking judicial review challenging the Minister's decision not to submit all the names to parliament for ratification. Lusaka High Court Judge Gregory Phiri granted the stay following an application for leave filed in the Lusaka High Court on 3 June by MISA Zambia as first applicant, PAZA, ZUJ, ZAMWA, SSZJ and the Post newspapers seeking, among other things, to quash the Minister's decision.

In their application, the media bodies contended that the refusal by the Minister of Information to forward some of the names for presentation to the National Assembly amounts to usurping the role of the National Assembly to ratify or refuse to ratify the names.

They argued that the Minister does not have the power to vet the names presented by the appointments committees, as doing so is contrary to the provisions of the law.

They also said the Minister's decision not to present some of the names amounts to discriminating on extraneous grounds.

**BACKGROUND:** On May 30 2004, Information and broadcasting Services Minister Mutale Nalumango announced that she would remove some appointees from the IBA board.

Nalumango has come under fire for delaying the submission of nominees to the ZNBC and IBA boards to Parliament for ratification. The ZNBC (Amendment) and IBA Acts were enacted in December 2002.

• **UPDATE**

**Date: August 31, 2004**

**Persons/Institutions: *Zambian media organisations/coalition***

**Violation(s): *Legislation (victory)***

On August 27 2004, the Lusaka High Court dismissed an application by the state arguing that six media organizations that sued the state had wrongly commenced the matter of challenging the legality of government's decision not to take all the recommended names appointed to sit on the Independent Broadcasting Authority (IBA) and the Zambia National Broadcasting

Services (ZNBC) boards to parliament for ratification.

In his ruling in chambers, High Court Judge Gregory Phiri said the matter was properly commenced before the court and could therefore be heard by judicial review.

This followed an objection by the state in a preliminary hearing on August 24 saying the six organizations - except the "Post" newspaper, had legal authority to sue the state in the case and that the matter was not supposed to be commenced in the first place due to irregularities relating to Order 53 of the Supreme Court Practice Rules.

He said the organizations also have legal authority to seek judicial review over Information and Broadcasting Services Minister Mutale Nalumango's refusal to take to Parliament names of the Independent Broadcasting Authority (IBA) and the Zambia National Broadcasting Services (ZNBC) board members. He said the decision to leave out some names was made by Information and Broadcasting Services Minister Mutale Nalumango, in the exercise of her statutory powers under the Independent Broadcasting Authority Act No.17 of 2002 and the ZNBC (Amendment) Act No. 20 of 2002.

Judge Phiri said there was a decision involved by the minister and that decision was administrative in nature and could be subject of judicial enquiry. He stated that the subject matter of the application for judicial review by the media associations was not about interpretation of statutory provisions but about the decision made by the minister.

"Clearly this decision cannot be vividly said to be a question of interpretation of statutory provisions per se," he said.

**BACKGROUND:** On August 24 2004, the Court allowed the media bodies to make amendments to the legal action to show names of individuals to sue on behalf of the respective organizations.

Those that have sued the state and the Minister of Information and Broadcasting Services include the Media Institute of Southern Africa (MISA)-Zambia, Press Association of Zambia (PAZA), Zambia Media Women's Association (ZAMWA), Society of Senior Zambian Journalists (SSZJ), Zambia Union of Journalists (ZUJ) and the "Post" newspaper.

Despite the coming into effect of the IBA and ZNBC Acts in December 2003, and the fact that the Appointments Committees have submitted names to the Minister in order for her to take them to the National Assembly for ratification, the Minister has not done so to date. MISA consequently demanded that the minister submits these names to Parliament for ratification without any further delay in the interests of transparency and good governance.

The IBA Act removes the Minister of Information's regulatory powers in terms of awarding broadcasting licenses to non-state broadcasters, which will instead be performed by a publicly nominated board ratified by Parliament. Delays in the ratification of this board mean that the Minister of Information so far continues to control this function. The government refused to surrender its right of licensing the ZNBC, but the new ZNBC act does require the state broadcaster to transform into a public broadcaster serving the diversity of political views and interests across the spectrum. It also enables the government to charge the public a TV license fee. Additional funds are urgently required to refurbish the antiquated equipment and facilities of the state broadcaster.

• **ALERT**

**Date: September 1, 2004**

**Persons/Institutions: Mazuba Mwiinga**

**Violation(s): Detained**

On September 1 2004, Mazuba Mwiinga, a reporter working for the Catholic-owned community radio station "Radio Chikuni", was detained by local police in what appears to be a case of settling personal scores.

Mwiinga told MISA-Zambia that he was detained from approximately 15h30 hours on September 1, 2004, till 08h30 the following day on a fabricated charge of "telling falsehoods

against the police". Such a charge does not exist in the Penal Code.

Mwiinga said his detention was instigated by the officer in charge at Chikuni police post identified as Mwembe who, on August 29, 2004, was involved in a quarrel with two teachers from a nearby school. The quarrel resulted in the police officer being attacked by one of the teachers. Mwiinga witnessed the incident. However, for unexplained reasons, the officer in charge accused Mwiinga of spreading rumours that the assault did not happen and sent one of his police officers to fetch Mwiinga from his home and detain him.

"Radio Chikuni" news editor Matongo Maumbi confirmed the incident.

• **ALERT**

**Date: November 15, 2004**

**Persons/Institutions: Southern Africa Centre for Constructive Resolution of Disputes (SACCORD)**

**Violation(s): Other (censored)**

Minister of Home Affairs, Lt. Gen. Ronnie Shikapwasha has deregistered the Southern Africa Centre for Constructive Resolution of Disputes (SACCORD), accusing the organisation of "engaging in activities inimical to the interests of the state".

SACCORD is a non-governmental organisation involved in human rights, good governance, election monitoring and lobbying for legislative reform. Recently, the organisation has been outspoken in calling for the amendment of the Public Order Act, which regulates public processions and gatherings.

Shikapwasha said in a letter dated November 11, 2004, which was made available to the media on November 15, 2004, that he was deregistering SACCORD "with immediate effect" and that it should stop operating.

But SACCORD executive director Lee Habasonda told MISA-Zambia that he was shocked to learn about the banning of his organisation and had written to the minister to name the activities that his organisation was engaged in which were a danger to national security. In the meantime, he was consulting his lawyers with a view to sue the minister for breach of his association's rights to freedom of association and assembly.

The banning of SACCORD has been received with alarm by a number of NGOs especially that it follows threats made by President Levy Mwanawasa on November 1, 2004 that government would introduce legislation to check the source of NGO funding. He accused some unnamed NGOs of trying to destabilise the government.

The Zambia Congress of Trade Unions (ZCTU), Zambia Episcopal Conference (ZEC) and Inter-African Network for Human Rights and Development (AFRONET) are among the organisations that have criticised the banning of SACCORD and have challenged Shikapwasha to give the reasons for his action.

But Shikapwasha told the state-owned "Times of Zambia" on November 16, 2004, that his action was final and not subject to appeal.

"By law I am not even supposed to give SACCORD a hearing if I am convinced that they are involved in serious issues meant to undermine the security of the country," he said.

• **UPDATE**

**Date: November 24, 2004**

**Persons/Institutions: Zambian media organisations/coalition**

**Violation(s): Legislation**

On November 24 2004, lawyers representing the six media bodies in the case in which they have sued the Minister of Information and Broadcasting Services and the Attorney General for vetoing the names recommended to sit on the boards of the Independent Broadcasting Authority (IBA) and Zambia National Broadcasting Corporation (ZNBC), asked the Lusaka High Court

to grant an order directing Minister of Information and Broadcasting Services Mutale Nalumango to transmit the names to parliament for consideration and ratification.

In their submission before High Court Judge Gregory Phiri in Chambers, Patrick Matibini and Norman Sampa argued that the minister's decision to veto the names was irrational and ultra-vires as the proper body with discretion to do so was the National Assembly.

They said that the minister's decision was tantamount to usurpation of parliamentary jurisdiction and urged the Court to declare it null and void.

The two submitted that the intention of the two Acts as seen from the parliamentary debates prior to their enacting by parliament was to transfer excessive discretion and control from the Minister to the two Boards instituted under the two Acts and not submitting the names accordingly would be reversing the very intention for which the Acts were created.

They asked the court to interpret the word "recommend" as it exists in the context of the two Acts.

• **ALERT**

**Date: November 26, 2004**

**Persons/Institutions: Zambia Daily Mail, Times of Zambia and Zambia National Broadcasting Corporation (ZNBC)**

**Violation(s): Threatened**

On November 24 2004, Deputy Minister of Commerce Trade and Industry, Geoffrey Samukonga, caused a furore at the "Zambia Daily Mail", "Times of Zambia" and Zambia National Broadcasting Corporation (ZNBC), accusing the organisations of tarnishing his image. Samukonga threatened to have the newspaper's managing editor Godfrey Malama fired if he did not dismiss chief reporter Patson Phiri who he accused of writing adverse stories against him. Mr. Samukonga stormed the "Daily Mail" newsroom and unleashed a tirade of insults on chief reporter Patson Phiri, whom he accused of writing adverse stories against him. Thereafter, the deputy minister reportedly proceeded to Managing Editor Godfrey Malama's office, where he allegedly insulted him. He also allegedly pointed his finger menacingly in the face of editor in chief Mary Mbebe and threatened to cause the dismissal of top management at the "Daily Mail" if Phiri was not fired. "The Times of Zambia" and ZNBC reported that Samukonga repeated fit of rage at both institutions. At ZNBC he reportedly threw papers about in anger at a story that his firm had been sued by a security company for non-payment of services rendered.

• **UPDATE**

**Date: December 1, 2004**

**Persons/Institutions: Zambian media organisations/coalition**

**Violation(s): Legislation**

On December 1 2004, Lusaka High Court Judge Gregory Phiri set 21 December 21, 2004, as judgment in the case in which the five media bodies have sued the Minister of Information and Broadcasting Services (first respondent) and Attorney-General (Second respondent) for vetoing the names recommended to sit on the boards of the Independent Broadcasting Authority (IBA) and Zambia National Broadcasting Corporation (ZNBC) respectively.

• **ALERT**

**Date: December 20, 2004**

**Persons/Institutions: Kangwa Mulenga, Brighton Phiri, Mutuna Chanda and Eddie Mwanaleza.**

**Violation(s): Detained, censored**

On December 20 2004, Police in riot gear in Lusaka assaulted, detained and charged four journalists with "conduct likely to lead to breach of the peace" and barred several others from



covering people detained over the blocked peaceful demonstrations on the adoption of the constitution.

The four are “Radio Phoenix” reporter Kangwa Mulenga, “Post” senior reporter Brighton Phiri, “Radio Q-FM” reporter Mutuna Chanda and “Times of Zambia” Chief Photographer Eddie Mwanaleza. They were detained at Kabwata police station.

The journalists were arrested after attempting to catch a glimpse of the 68 people who were being held at a Lusaka police stadium for trying to demonstrate against government’s position on the timeframe for the adoption of the republican constitution.

Mulenga Kangwa, who sustained a deep cut above his right eye and was found bleeding, told MISA-Zambia that he was roughed up and hit with a gun-butt by a police officer despite identifying himself as a journalist. He said the police officers descended on him and other journalists when they refused to leave the scene where the demonstrators were being held.

The journalists, whose notebooks and camera were confiscated, were detained for close to five hours before they were released on police bond. They were to appear in the Lusaka Magistrate’s Court on December 23, 2004. Later, the journalists refused to yield to overtures by the officers at Kabwata police who told them that they were dropping the charges against them following instructions from high command.