



# So this is democracy?

State of media freedom in Southern Africa 2015



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State of media  
freedom in Southern Africa

2015

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Friedrich-Ebert-Stiftung  
fesmedia Africa  
P.O Box 23652  
Windhoek  
Namibia  
Email: [info@fesmedia.org](mailto:info@fesmedia.org)  
Website: [www.fesmedia-africa.org](http://www.fesmedia-africa.org)

**Cover design and layout**

Clara Schnack  
Email: [cm@iway.na](mailto:cm@iway.na)

**Editing**

Reyhana Masters  
Email: [zambezimasala@gmail.com](mailto:zambezimasala@gmail.com)

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# ‘Policing the internet’ Reflecting on 2015

## From the office of the Regional Director

Welcome to the 2015 edition of the Media Institute of Southern Africa’s (MISA) flagship publication, *So This Is Democracy?: State of Media Freedom in southern Africa*.

Each year, MISA produces this report based on our daily monitoring of media freedom victories and violations occurring in the 11 Southern Africa Development Community (SADC) countries within which MISA operates. This report is a core part of our work as the leading advocate for free expression in the southern African region and informs our campaigns and initiatives as we work toward our vision of a southern Africa where everyone enjoys freedom of expression and pluralism of views and opinions.

The disturbing but relevant theme for media freedom in southern Africa in 2015 is ‘policing the internet’. The year 2015 marked a period of frantic activity by southern African governments to control free expression online through threats of increased surveillance and regulating social media, among others.

In doing so our governments regrettably overlook the fact that access to information for example, is crucial to both national security and economic integration by both ensuring democratic participation and sound policy formulation.

## 25 Years of the Windhoek Declaration

It would be safe to say that the journalists who met in Windhoek, Namibia, 25 years ago to put on paper their aspirations for an independent and pluralistic African press, never imagined that their pronouncement – the Windhoek Declaration on Promoting an Independent and Pluralistic African Press – would inspire a solidarity movement of journalists, editors and media owners and the emergence of media development organisations across the continent. The spirit of this Declaration reverberated around the world influencing the adoption of the Declaration of Alma Ata (Kazakhstan), the Declaration of Santiago (Chile), the Declaration of Sana’a (Yemen) and similarly the Declaration of Sofia (Bulgaria). The Windhoek Declaration remains one of Africa’s greatest gifts to the world.

Sadly an “independent, pluralistic and free press”, as the Declaration demanded, is still far from being realised. However, on the upside, a growing swell of citizens are realising the importance of press freedom and free expression in enabling their ability to participate in decision making. If nothing else, this is the legacy of the Windhoek Declaration and cause for celebration.

## Towards Sustainable Development

The Sustainable Development Goals (SDGs) provides a unifying agenda to fight poverty, inequality, and environmental degradation. MISA applauds the inclusion of SDG 16.10 target on access to information, for we hold the view that freedom

of expression and access to information are fundamental pillars of sustainable development and a cross-cutting means of supporting the agenda's implementation. Thus, the SDGs recognise that access to information is not a development outcome, it is a development catalyst.

On our part, and through our role in the African Platform on Access to Information (APAI) campaign, we will make every effort to give life to the principles of the APAI Declaration. The Declaration speaks to the central role that access to information plays in furthering a number of rights including gender equality, health and education, which are all crucial to development.

### **A victory for all citizens**

On Tuesday, November 17, 2015 the 38th General Conference of UNESCO adopted a resolution declaring September 28th International Day for Universal Access to Information. The resolution was the outcome of sustained campaigning by a global community of access to information advocates, spearheaded by the members of the Working Group of the APAI.

As stipulated by the APAI Declaration: "... access to information (ATI) is the right of all natural and legal persons, which consists of the right to seek, access and receive information from public bodies and private bodies performing a public function and the duty of the State to prove such information".

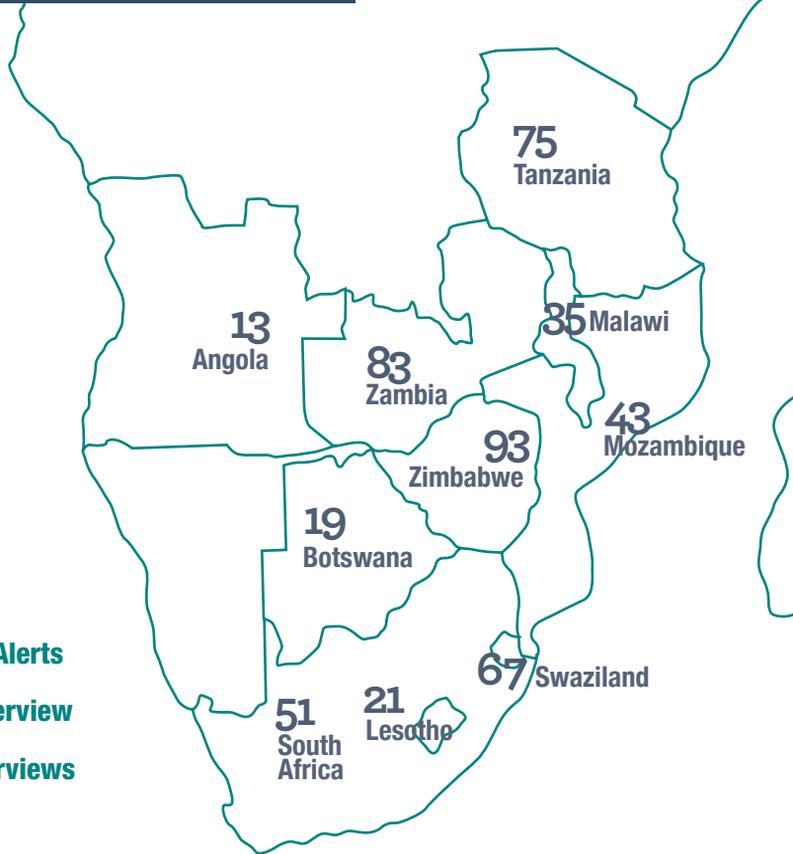
MISA heeds the call of the Chairperson of the African Commission on Human and Peoples' Rights (ACHPR) and its Special Rapporteur on Freedom of Expression and Access to Information, Advocate Pansy Tlakula, to lobby the African Union (AU) to endorse this declaration. Indeed, it would be a fitting commemoration of 2016 as the Year for Human Rights.

Enjoy the read!

Zoé Titus  
Regional Director  
zoe@misa.org



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# MISA alerts

Throughout the year, MISA issues media alerts in the following 11 categories:



## ASSAULTED

This includes any incident where journalists are physically assaulted, tortured, or wounded during the course of their work. The statistic refers to the number of media workers involved.



## BOMBED

This includes incidents where a journalist's home or the office of a media house/outlet/organisation is sabotaged through bombing, arson, vandalism or theft. The statistic given is for the number of media workers or media organisations involved.



## CENSORED

This covers incidents where information is prevented from being communicated. For example, issuing a gagging order, forcing editorial changes, using legislation like interdicts and court orders to stop information from being published, shutting down or suspending production and confiscating equipment or materials. The statistic given is for the number of media workers or media organisations involved.



## DETAINED

This refers to an incident where a media worker is imprisoned or detained. It can be legal or illegal and includes being sentenced to a gaol term or being detained without charge or incommunicado, held for preventative reasons, or arrested. The statistic given is for the number of media workers involved.



## EXPELLED

This includes incidents where journalists are expelled from, prevented from entering or leaving (such as by denying visas, work papers or accreditation), and / or generally inhibited from moving freely in a country or certain areas to perform their work. The statistic given is for the number of media workers involved.



### **KILLED OR MISSING**

This tops the list in terms of severity, and there is no need to explain why. Included under this category are incidents where journalists have been killed, kidnapped or gone missing in circumstances that suggest a link to their work or role as a journalist. The statistic given is for the number of media workers involved.



### **LEGISLATED**

This relates to all aspects of the legislative process and the application of common law. It includes instances where official proposals are made for new laws, legislation is passed, laws are amended or struck down either in Parliament or by the courts, and civil litigation is instituted against media. The statistic given is for the number of incidents reported.



### **SENTENCED**

This is when a judgement is handed down against a media worker involving either a prison term or a fine. The statistic given is for the number of media workers involved.



### **THREATENED**

This involves a threat from a public official, death threat, various forms of harassment (such as veiled warnings, threats of action, interference in editorial processes, cyber attacks, raids and forcibly occupying a home or office), or journalists being questioned or interrogated on their sources. The statistic given is for the number of media workers or media organisations involved.



### **VICTORY**

This includes immediate victories for media workers or organisations including being released unconditionally, having charges dropped, winning or avoiding civil litigation, overturning gagging orders and being acquitted of criminal charges. This category also includes incidents that advance media freedom, access to information or freedom of expression in general. For example, favourable policy statements, media friendly laws or policies and favourable and precedent-setting court judgements. The statistic given is for the number of incidents reported.



### **VIOLATION OF PUBLIC FoE\***

This category includes incidents that affect freedom of expression (FoE) or speech in general, and do not necessarily involve media workers or organisations. For example, cases of sedition against members of the public, general curbs on free speech and access to information, violations of the right to freedom of assembly and protest, restrictions on artistic or academic freedom and restrictions on access to public media. The statistic given is for the number of incidents reported.

\*Freedom of expression





# Regional Overview

Regional Overview  
2015 by MISA Regional  
Secretariat

**A**s free expression activists we are used to attacks on the media taking on the form of censorship, threats, assaults, arrests, attacks, bombings and in some cases killings. So even though they pose challenges, being confronted with the partially homogenous nature of these incidents on a frequent basis, has to an extent prepared us in terms of what measures we need to take.

The latest threat to the wellbeing of all citizens is unfamiliar territory for us.

The new area of contestation between the state and advocates for freedom of expression and access to information and media freedom – is internet regulation. Internet penetration across the southern African region is growing at a rapid rate and changing both the complexion and the structure of a country's landscape. Internet has been responsible for the way in which people send out and get information, interact with each other or even conduct business. Distance, borders and even language are no longer barriers to our ability to freely express and exchange ideas, information and opinions or even mobilise.

Along with the growth in internet usage, is the increase in cybercrime and with that a growing number of unsuspecting targets who have no idea where or how to protect themselves.

This is where governments have come in.

Concerned with the power of new technologies to catalyze political change, governments across the continent have taken various measures to filter, monitor, or otherwise obstruct free speech

online.<sup>1</sup> During the last decade the trend across Africa has been to craft cyber security and cybercrime legislation which seemingly provide citizens protection from online crime, as well as ensuring online privacy and protections while at the same time restricting access to information and even infringing our personal and private civil liberties by allowing monitoring and surveillance of our communication.

**African governments are increasingly exploiting the “national security” discourse to introduce regressive interventions.**

This insidious behaviour by governments is being fully supported by citizens only because the legislation is being sold as a protective measure to safeguard the public.

Although the online space undeniably presents real threats (e.g. criminal acts, national security, phishing etc – governments in Africa are increasingly exploiting the “national security” discourse to introduce regressive interventions. There is the “rise of the securocrat” - resulting from the prioritisation of national security principles throughout all administrative functions. This has promoted increased secrecy across the board, affecting online and offline freedom and access to information.

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<sup>1</sup> *Evolving Tactics of Internet Control and the Push for Greater Freedom* by Sanja Kelly and Sarah Cook (Freedom House)

Countries across the continent are also pushing the line that the adoption of the “African Union Convention on Cyberspace Security and Protection of Personal Data” at its 23rd Ordinary Session of the African Union in Malabo, Equatorial Guinea in June 2014, the AU is a resolution they support and are acting in accordance with the contents of the covenant. Although states have a legitimate responsibility for ensuring digital security for its people, the language of the African Union seems to push a restrictive agenda above freedom.

African governments are increasingly exploiting the “national security” discourse to introduce regressive interventions. There is the “rise of the securocrat” - resulting from the prioritisation of national security principles throughout all administrative functions. This has promoted increased secrecy across the board, affecting online and offline freedom and access to information.

In almost each case, the legislation either fails to provide basic protection for user data, or allow the government to violate the rights of privacy, expression, and assembly.

## TURNING TO SOUTHERN AFRICA

**Namibia** developed its cyber security policy framework in 2014 with the technical assistance from the International Telecommunications Union (ITU). The Electronic Transactions and Cybercrime Act, when promulgated, will allow government to conduct search and seizure operations of databases and computers, the interception of data and communications, as well as remote monitoring for a period of up to three months.<sup>2</sup>

<sup>2</sup> Namibia develops cyber security law, Windhoek Observer <http://observer.com.na/business/2819-namibia-develops-cyber-security-law>

**South Africa’s** Cybercrimes and Cybersecurity Bill aims to address a number of valid objectives, such as giving better legal definition to crimes such as identity theft, network hacking, online copyright violation and malware attacks. The Bill does indeed include many progressive clauses and at the same time places excessive limitations on online freedoms such as the right to access information, right to privacy, and the right to freedom of expression and opinion. The bill gives the South African Police Service and the State Security Agency overly far-reaching powers to investigate, search, access and seize just about anything. Furthermore, the bill will criminalise whistleblowing, as well impact on investigative reporting.

**Malawi** implemented the Consolidated ICT Regulatory Management System (CIRMS)—known locally as the “spy machine”, enabling the communications regulator to access subscriber’s data and communications without judicial oversight.<sup>3</sup>

**Zambia’s** Electronic Communications and Transaction Act of 2009 details conditions for lawful interception of communications, which generally requires a court order. Yet, under the late President Michael Sata, numerous reports accused the government of conducting extensive illegal surveillance of citizens’ ICT activities, such as the phone tapping of senior government officials who fell out of the ruling party’s favour civil society leaders, and journalists.<sup>4</sup>

<sup>3</sup> Gregory Gondwe, “‘Spy Machine’ brings telcoms fears,” Biztech Africa, November 14, 2011, <http://bit.ly/1Mhgs3V>

<sup>4</sup> Evans Mulenga, “Sata Is Listening to Your Conversation,” Zambia Reports, October 9, 2013, <http://bit.ly/1X7BJVc>





# Angola

National Overview 2015 by  
MISA Regional Secretariat

**F**reedom of the media should be a given in a democracy and such a freedom is enshrined in the Angolan constitution. But these are watershed years in Angola, with a number of factors coalescing to give reason for the Angolan Government and elite to feel unsettled to say the least. It is all about the preservation of power and Angolan Government is now using the judiciary to do its dirty work.

This watershed time coincides with an unprecedented scrutiny of Angolan financial activities in Portugal, with investigations targeting the interests of high-profile Angolans, including Deputy President Manuel Vicente and companies with ties to the president's daughter, Isabel dos Santos, who owns significant assets in Portugal, especially in the banking sector. With this already straining relations between the two countries, it did not go down well when Portuguese civil society rose in defence of Angolan human rights activists. Add to that pressure at the European Union spearheaded by Portuguese member of the EU parliament Ana Gomes, who compiled a report that led to the EU asking Angola to free all human rights advocates immediately and unconditionally. Gomes also claimed that the Angolan Government made subtle attempts to buy her silence on the issue of human rights in Angola.

The timing coincides also with the uncertainty over the eventual exit from politics of the 73-year old President Dos Santos, was announced in March that he will leave office in 2018, by then after 39 years in power. While deputy President Manuel Vicente was widely expected to fill Dos Santos's shoes, some analysts are now beginning to entertain the pos-

sibility that he is preparing to hand over the reins to one of his children.

## CONTROL OF THE MEDIA

Would-be applicants for community radio licences are told that they will have to wait until the Radio Law is published. However, the radio station Rádio Mais has been launched and enjoys nationwide coverage, much to the chagrin of the Catholic Church's Rádio Ecléssia, which continues restricted to the Luanda area. Rádio Despertar (formerly the UNITA radio station) and Rádio Ecléssia are regularly threatened with closure. Both stations keep a list of people they are not supposed to allow on air. The same double standards apply to television: with no television law yet in place, the private free-to-air television station, TV Zimbo has been licensed – on an 'experimental' basis, without meeting the prescribed processes.

**“**The government has added a new weapon to its already formidable arsenal, enacting the Law on Precautionary Measures in Criminal Proceedings, which allows the state to detain suspects indefinitely.**”**

This led the Catholic Church to say in a statement issued in March at the conclusion of its annual Episcopal Conference that the crisis in Angola is partly due to the “mentality of cronyism and nepotism and the growing discrimination that is the result of increasing partisanship within the public administration, in which genuine merit and competence are being sacrificed.” The bishops point the finger at the “lack of ethical standards, mismanagement of the public purse and generalised corruption” in the country.

The year 2015 saw the death of the *Angolense* newspaper. *Angolense* was of the independent papers at the turn of the century. It was bought out in 2010, when well-resourced media groups entered the market and introduced a swathe of new publications, offering better quality papers and good salaries to lure the best journalists from the remaining independent papers. After all these years it is still not clear who owns these groups – Score Media, Media Investments and Media Nova –, despite a requirement in the Press Law that the names of the owners must be made public. From a healthy spread of independent papers a few years ago, only *Folha 8* survives. *Folha 8* Editor William Tonet said the paper is now “the last target of the regime’s snipers”.

## NEW LEGISLATION

For the year under review, it was the turn of human rights activists to bear the brunt of the government’s drive to quash all forms of dissent. A United States State Department report said corruption in Angola was the root cause of incidents of torture, beatings and limits to the rights of freedom of association, expression and the press. Angola rejected the report, saying Angola has no political prisoners.

February saw the tabling of draft regulation on the activities of NGOs, proposed by the Ministry of Social Assistance and Reinsertion and the Service of External Intelligence. Under the guise of preventing terrorism, the draft regulation, which will be adopted by Presidential decree, contains a number of provisions that will considerably jeopardise the work of independent human rights organisations. Among others, the regulation requires NGOs to have certificates of registration to be authorised to carry out their activities, failing which they risk suspension or closure. However, most independent human rights organisations, have never received their certificate from the Ministry of Justice.

At the same time, the government has added a new weapon to its already formidable arsenal, enacting the Law on Precautionary Measures in Criminal Proceedings, which allows the state to detain suspects indefinitely. The new law approved in December also does away with the need for a judge to issue search warrants; all requirement being an authorisation from the Attorney General’s Office, a body that answers to the Office of the President of the Republic.

## THE SWORD AND THE PEN

In May, Angolan investigative journalist Rafael Marques de Morais was the recipient of the “Voice of Free Expression” award from the Index on Censorship for his work exposing corruption in government and business in Angola.

May also saw the resumption of Marques’s on-off defamation case over his 2011 book “Blood Diamonds: Torture and Corruption in Angola,” which recounts 500 cases of torture and 100 killings that took place over 18 months in a diamond-mining district in Angola. According to the book, the torture and

killings were carried out by guards from a private security firm and by members of the Angolan Armed Forces.

By mid-May, several dozen human rights, press freedom, and anti-corruption NGOs worldwide including Amnesty International, Committee to Protect Journalists, Freedom House, and Transparency International expressed grave concerns over irregularities in the proceedings and feared that Marques would not receive a fair trial. In a surprise development, the defamation charges against Marques were dropped by the Angolan military generals who had laid them.

“Under the guise of preventing terrorism, the draft regulation, which will be adopted by Presidential decree, contains a number of provisions that will considerably jeopardise the work of independent human rights organisations.

A week later, Rafael Marques de Morais reached an out-of-court settlement with the group of generals, accepting that they did not have direct knowledge of the atrocities. Marques was released on bail, awaiting sentencing. He was sen-

tenced on May 28, given a six-month jail sentence suspended for two years for falsely linking military generals to the “blood diamond” trade.

Also in May, correspondent of Rádio Despertar in Malanje, Marcelino Gimbi, was arrested while interviewing moto-taxi drivers protesting over restrictions on moto-taxis in the city centre of Malanje. One person was killed in police action.

In the same month, Rádio Despertar Comercial journalist Queiroz Anastácio Chiluvia reported receiving death threats in connection with an interview with the provincial secretary of Youth and Sports of Cuando Cubango, Antunes Huambo, who is also the head of the Christian Coalition Churches in Angola (ICCA). During the interview, Huambo said on air that at ICCA nobody was affiliated to any party, but everyone carried MPLA party membership cards.

In July Gonçalves Vieira, a reporter with *Radio Despertar*, was arrested as he prepared to report on a protest in Luanda.

## TURNING ON HUMAN RIGHTS ACTIVISTS

The turning point was the arrest and conviction of José Marcos Mavungo in March. Mavungo was arrested and summarily tried on sedition charges on 19 March 2015. The court found no evidence for the charge of sedition against him and ordered further investigations. On 27 May 2015, he was formally charged with ‘rebellion’ for organising a demonstration on human rights violations and bad governance in the Cabinda Province of Angola. He was convicted in September 2015 and sentenced to 6 years in prison. Mavungo is a former member of the human rights organisation Mpalabanda, banned by

the authorities in 2006. The World Organisation against Torture (OMCT) and the International Federation for Human Rights (FIDH) in the framework of their joint programme, The Observatory for the Protection of Human Rights Defenders indicated that they would take up his case at the 58th ordinary session of the African Commission on Human and Peoples' Rights taking place in April 2016. The United Nations Working Group on Arbitrary Detention (UNW-GAD) condemned his arrest and conviction as being "arbitrary and in violation of international law".

At the same time, security forces arrested Arão Bula Tempo, a human rights lawyer and the president of the Cabinda provincial Council of the Angolan Bar Association and his client Manuel Biongo. They were accused of "collaborating with foreigners to constrain the Angolan state", because they had allegedly invited journalists from the Republic of Congo to cover the demonstration organised by José Marcos Mavungo. They were released on 13 May 2015 pending trial. As a condition of his release, he was not allowed to leave Cabinda without authorisation. With his health deteriorating he indicated that he did not feel safe receiving treatment in state-owned hospitals and wanted to be treated outside Cabinda province. However, the Angolan authorities denied him permission to travel. He was convicted and sentenced to 6 years in prison in September. This was days after the European Parliament's resolution on Angola calling on the authorities to immediately and unconditionally release all human rights defenders, including José Marcos Mavungo, and to drop all charges against them.

On May 18 João Massanga, commander of the Cabinda separatist movement (FLEC/FAC) was found dead in the vicin-

ity of Pointe Noire, Republic of the Congo, on a road that connects the city to the border with Cabinda. FLEC declared in a statement that he was killed in a joint operation by Angolan and Congolese security forces.

*"The activists should never have been detained in the first place. Their continued detention is a sign of how far Angolan authorities will go to suppress dissent" – Amnesty International's Deputy Director for Southern Africa, speaking on the Book Club 17*

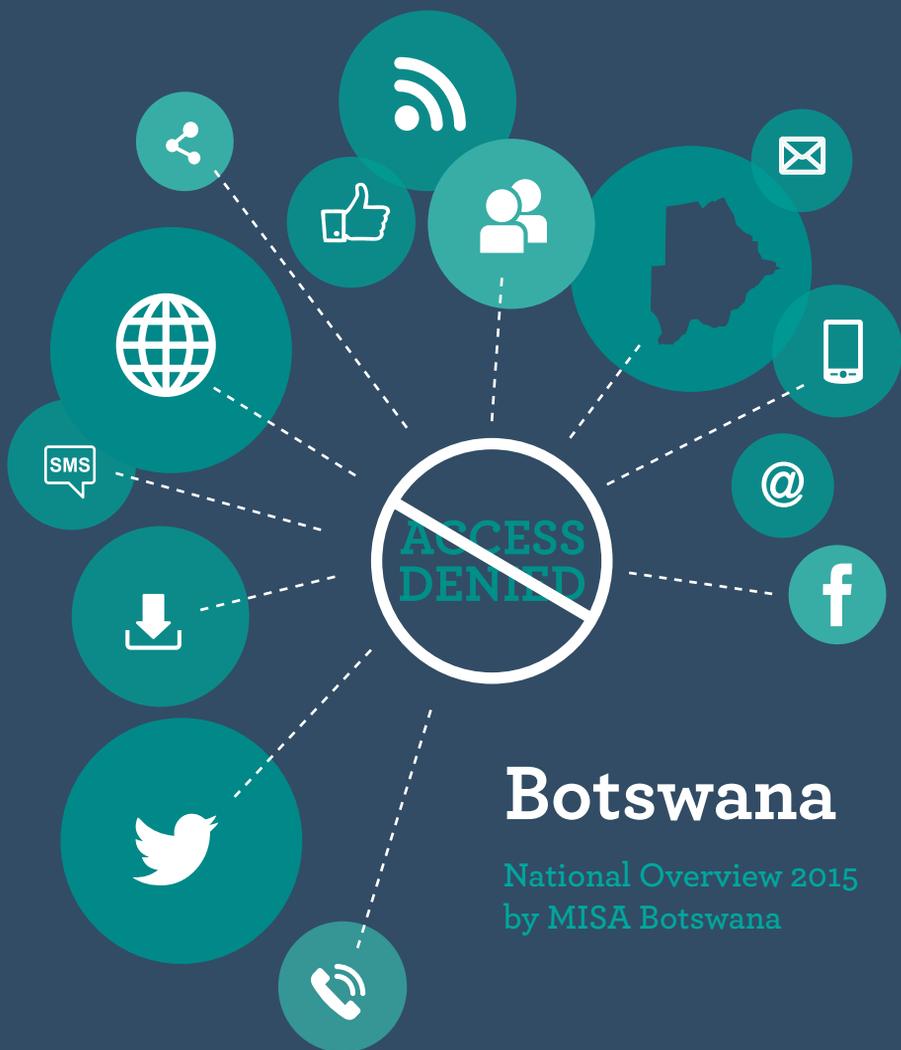
In June, 15 human rights activists were arrested in Luanda after organising a reading of an adaptation of American academic Gene Sharp's 1993 book, *From Dictatorship to Democracy: A Conceptual Framework for Liberation*. The book's cover describes it as "a blueprint for nonviolent resistance to repressive regimes". Two more people were arrested later. Among the 17 were rapper Luaty Beirão, writer Domingos da Cruz and Nito Alves, who had already had a brush with the system two years earlier for printing 20 T-shirts with political slogans. The group also included a reserve military officer acquainted to one of the others in the group. They were sent to different prison facilities.

They were accused of acts of rebellion, planning mass civil disobedience in the capital and producing fake passports, among other charges and were formally charged on 16 September 2015 with preparing a "rebellion and a coup attempt" against the president. Amnesty International described their detention as a "travesty of justice". Beirão and several others went on hunger strike to protest his detention, with Beirão maintaining his hunger strike for 36 days.

The activists should never have been detained in the first place. Their continued detention is a sign of how far Angolan authorities will go to suppress dissent.

In December 2015, Anacleto Ngala Mbiquila, Tempo's secretary, was arrested. The reasons for his arrest are unknown. In February 2016 Lawyers for Lawyers called on the authorities to drop the charges against Arão Bula Tempo if they had been brought against him solely because of his human rights work and his exercise of his right to freedom of expression.

Despite worldwide condemnation, the group of 17 were sentenced in March 2016, with sentences ranging from two years to eight-years-and six-months for "rebellion against the president of the republic, criminal association and falsifying documents". Activist Domingos da Cruz, singled-out as the group's 'leader', was given an eight-and-a-half year sentence for planning a coup and for criminal association.



# Botswana

National Overview 2015  
by MISA Botswana

**B**otswana is considered a success story in the region based on its status as a fast growing economy and political stability, which puts it high on the list of countries favoured by the international community. It is also held up as the model of a thriving democracy on the African continent for holding free and fair elections on a regular basis and having a constitution that provides for fundamental rights.

Under this camouflage of good governance and a sound economy is a government intent on muffling inquiring minds and squashing dissenting voices.

The clamping down on the media is largely due to the interlinkage between power, patronage and corruption. The hierarchy of the rich state has cascaded into pockets of power and influence for people in leadership or those close to leadership allowing them to benefit financially along the various rungs of the supply chain. Party membership and position especially, but not exclusively, in the ruling party have become an important ticket for accessing jobs, business loans, opportunities and the winning of tenders for supplying to the government and its agencies.

Media reports exposing these corrupt practices is unpalatable for the establishment, mostly because the cases reported involve people high up on the ladder of hierarchy. So when specific cases of fraud have been exposed, Botswana's corruption watchdog, the Directorate on Corruption and Economic Crime (DCEC) tends to come down hard on the media. These exposures are penalised through raids on media houses,

arrests of journalists or intimidation through surveillance.

Media sustainability is partially also linked to power and patronage. The ownership of private media by leading business interests has been a limiting factor to their independence. The media's high dependence on advertising fees - mainly from the government - has made the media vulnerable and so Government has used this susceptibility to curb the watchdog role of the media by determining the placement of their ad-spend.

**“**  
**Under this camouflage of good governance and a sound economy is a government intent on muffling inquiring minds and squashing dissenting voices.**

Another dent on Botswana's prominent status was the suspension of 4 judges by President Ian Khama, which caused an international and regional outcry with the SADC Lawyers Association calling for the immediate re-instatement of the four judges. The actions of the state were further questioned when an appeal by the judges to have their suspension lifted was dismissed by the High Court.

## FREEDOM OF EXPRESSION

### Judges suspended

The independence of the Third Estate – the judiciary – came under attack, when President Ian Khama suspended four judges on August 28, under Section 97 of the Botswana Constitution for alleged misconduct and bringing the judiciary into disrepute. This followed a petition signed by 12 judges, including the suspended four, calling for the impeachment of Chief Justice Maruping Dibotelo.

The four judges - Justice Key Dingake, Justice Modiri Letsididi, Mercy Garekwe and Justice Rainer Busang had written a letter, along with their eight counterparts to the Chief Justice complaining about the poor conditions of service in the Judiciary.

In the same letter, the 12 Judges also collectively disapproved of the conduct of the Chief Justice and questioned his suitability to hold office. Acting on the advice of the Judicial Service Commission President then accused the four judges of “misbehaviour” and suspended them.

In his court papers President Khama disclosed that he suspended the judges for undermining Chief Justice Dibotelo and bringing the judiciary into disrepute. Khama suspended them after they challenged Justice Dibotelo’s move to report them to the police for receiving housing allowances while staying in official residences.<sup>1</sup>

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1 Mmegi Online - Botswana urged to lift judges' suspension <http://www.mmegi.bw/index.php?aid=54746&dir=2015/october/09#sthash.3jGZTql0.dpuf>

## PRINT MEDIA

### Botswana Gazette offices raided

Just a few days after the commemoration of the 2015 World Press Freedom Day under the theme “Let journalism thrive! Towards better reporting, gender equality in the digital age” the Botswana Gazette offices were raided by the DCEC on the premise that the newspaper carried a story that disclosed information on a case they were investigating. Section 44 of the DCEC Act prohibits anyone from disseminating information on any case being investigated by Botswana’s corruption watchdog.

The *Botswana Gazette* broke a story linking a Zambian national, who was deported from the country to alleged corrupt deals linked to his relationship with the Directorate on Intelligence and Security Services (DISS), and the ruling Botswana Democratic Party.

During the raid, the staff was prevented from entering the building, computers were confiscated, and the following day, the newspaper’s managing director, Rudolf Shike Olsen and journalists, Lawrence Seretse and Innocent Selatlhwa were arrested and their lawyer Joao Salbany was detained.

DCEC justified the raid on the grounds that the investigation had been recently initiated and the DCEC was concerned that the potential witnesses could be intimidated by the corrupt officials involved in the case. “The matter in fact is a fresh matter that the DCEC is investigating. DCEC is worried because the Chitube article alerted some corrupt characters that we are still investigating. It has also exposed the potential witnesses which could now be intimidated by the corrupt fellows we are after,” said the source.

“We are investigating and dealing with very smart and sophisticated individuals. Once something like this is made public they may interfere with potential witnesses and kill our case,” said the source who spoke on condition of anonymity.

## **Advertising Ban**

A ban on the placement of advertisements with certain media houses has had a devastating effect on the sector. While top officials adamantly denied any mention of a ban and instead referred to the move as a rationing of adverts, members of the media intercepted communication that specified the media houses that government departments were able to do business with and the ones they had to avoid.

This has resulted in several media houses downsizing and streamlining their business operations.

Two papers – The Oriental Post and Monday Times closed down in early 2015 after declaring bankruptcy.

## **Establishment of a media union**

As media houses contemplated streamlining their operations, journalists sprang into action and decided to resuscitate a media labour union to deal with possible job losses caused by shrinking revenue as a result of the government advertising ban. Towards the end of 2015, an interim committee was formed and registration documents submitted to the registrar of societies. The challenge now, is for the organisation to lobby for recognition by their employers.

## **MEDIA REGULATION**

### **Attempt to repeal Media Practitioners Act thwarted**

The Media Practitioners Act 2008 continues to remain a threat to the media and an attempt by Dr Phenyio Butale to have it repealed was thwarted.

The Act compels all journalists to register and be accredited with a media council. It also creates an enormously powerful complaints committee with the authority to fine and deregister journalists who violate an ethical code that includes “fair competition”, “protection of privacy” and “unlawful publication of defamatory matters”.

The committee is appointed solely by the minister of presidential affairs and public administration – meaning that the government, through its appointees, can strip journalists of the right to practise their profession.

The legislation also gives the minister sweeping regulatory powers, including the right to make regulations on any matter “intended to safeguard the interests of the public and promote professional standards in the media”, and to regulate the registration and accreditation of foreign journalists.

When Dr Butale introduced his motion in parliament during the July session to repeal the contentious legislation, he soon realised that ruling party members of parliament were targeting the amendment of only Section 15 of the Act which requires the Law Society of Botswana to appoint a lawyer who is then supposed to chair the Appeals Committee that is established through the MPA 2008. The only reason the Appeals Committee has

failed to become operation is because the Law Society of Botswana has refused to recommend and appoint a lawyer.

As soon as Dr Butale realised the amendment of Section would undoubtedly facilitate the establishment of the Appeals Committee to oversee and regulate the media, he withdrew his motion.

## BROADCASTING

### Broadcasting Digital Migration

After months of assuring the public that Botswana's digital migration process was on schedule and would take place in June 2015, the deputy permanent secretary for Information and Broadcasting Services, Mr Mogomotsi Kaboea-modimo said government had set March 2016 as the new deadline for migration from analogue to Digital Terrestrial Television (DTT).

The digital migration process has been marred by controversy, when it was revealed that Botswana had opted for the Japanese standard for digital terrestrial television instead of the European standard favoured by many of the countries in the region. Botswana opted for Integrated Services Digital Broadcasting Terrestrial (ISDB-T) standard for digital broadcasts, rather than the second generation of the Digital Video Broadcasting Terrestrial (DVB-T2) standard adopted by other countries.<sup>2</sup>

The South African Digital Broadcasting Association warned Botswana that its choice of the Japanese top set boxes isolate it in the region.

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<sup>2</sup> To enjoy the benefits of digitisation, a black box decoder known as a set top box is required to convert the digital signal to an analogue signal which is fed into a TV set to convert the signal to pictures for viewing.

An independent research study carried out by Stellenbosch University showed that the DVB-T2 is "far superior" to other digital standards as it delivers 50% more capacity than the ISDB-T (that Botswana has opted for) and is unrivalled in its flexibility and features by first-generation standards."<sup>3</sup>

The purchase of the Japanese top set boxes will impact on citizens in terms of unnecessary costs in upgrades to a newer technology and reduces the benefits of transition from analog to digital. Since the Japanese model is not readily available.

## FREEDOM OF EXPRESSION ONLINE

### Mmegi Newspaper Website Hacked

A website belonging to the largest and only private daily newspaper, *Mmegi* was hacked and deleted in early January. Ten days later the website was hacked again and 12 years of archive material was deleted.

According to a *Mail and Guardian* report, Editor, Ntibinyane Ntibinyane told the *Mail and Guardian* at the time "that Mmegi's website is one of the most secure in Botswana and that what happened clearly shows that the hackers used sophisticated technology".

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<sup>3</sup> *Tech Central* Botswana TV move draws fire

# Botswana 2015 violations & victories



**January 23**

## **Newspaper website hacked**

A website belonging to the largest and only private daily newspaper, *Mmegi* was hacked and deleted by unknown attackers. Tlhalefang Charles, a reporter and new-media coordinator at the *Mmegi* newspaper, told MISA Botswana that they suspect hackers want to intimidate the organisation and delay their business. "Even though it is not clear who these hackers are, they definitely are coming after us because our website was hacked again about ten days ago."



**March 30**

Journalist arrest under Cybercrime and Computer Related Crimes Act  
Journalist Daniel Kenosi was arrested and jailed under in a case of unlawful distribution of pornographic or obscene material contrary to section 16 of the Cybercrime and Computer Related Crimes Act. He was also detained in respect of a criminal defamation charge in Francistown contrary to section 192 of the Penal Code.



**May 6**

## **Gazette offices raided**

Security agents stormed the Botswana Gazette offices with a warrant to confiscate computers of the organization. According to publisher of The Botswana Gazette, Shike Olsen, the warrant that the agents were carrying was vague and did not state what it was they were looking for. The agents later left when confronted by the organisation's lawyers.

This incident took place three days after commemoration of World Press Freedom Day under the theme, "Let journalism thrive! Towards better reporting, gender equality in the digital age".



**May 7**

## **Gazette lawyer, publisher, editor and journalist arrested**

Publisher of the Botswana Gazette Shike Olson, Editor Lawrence Seretse and journalist Innocent Setatlhwa were arrested without appropriate court orders. The arrest followed an eventful evening during which security agents sealed offices of the Gazette and preventing journalists from accessing the building.



**May 22**

**DCEC raid offices of the  
*Botswana Gazette***

Corruption watchdog, the Directorate on Corruption and Economic Crime (DCEC) raided the offices of the *Botswana Gazette* using Section 44 of the DCEC Act of 1994. This section prohibits anyone from sharing or publishing information on a matter that the DCEC is investigating.

This section is part of the thirty two provisions that MISA Botswana has identified as contravening section 12(1) of the Constitution of the Republic of Botswana granting freedom of expression.



**July 7**

**Member of Parliament forcefully  
removed from the Chamber**

Gaborone Central Member of Parliament, Dr Phenyio Butale was forcefully removed from the chamber by security agents. According to a press release issued by government Dr Butale was accused of failing to obey the Deputy Speaker's (Kagiso Molathegi) orders to leave the House and so security agents were ordered to remove him from the chamber.

The Gaborone Central MP had asked the house to set aside its business of the day and debate his urgent motion on the electricity and water crises bedevilling the country. The Deputy Speaker did not allow him to continue and instead informed the House that Honourable Dithapelo Keorapetse intended asking a question on the matter.

Pictures showing the agents carrying Dr Butale and eventually leaving him on the ground circulated on both print and social media.





# Lesotho

National Overview 2015  
by MISA Lesotho

In an attempt to resolve the political and security challenges hounding Lesotho, Cyril Ramaphosa, SA's deputy president, encouraged the leadership to hold general elections two years earlier than scheduled.

Lesotho's second ever coalition was quickly cobbled together after the closely fought snap election on February 28, 2015. The early election was expected to ease tensions and resolve the political tensions that had intensified through 2014. Unfortunately the same friction that drove the acrimonious breakdown of government in 2014, threatened the new government as well.

The political turmoil has interfered with the journalists' ability to operate and has led to heightened polarization in the media.

The Lesotho media was put to the test during the coverage of its elections which was marked by uncritical reporting and political patronage. Additionally, a climate of fear and culture of impunity developed as journalists were threatened and attacked. The government also wanted to ban social media amid the continuing political turmoil in the country.

It was not all gloom and doom, as the country saw the establishment of new radio stations and a weekly newspaper.

Going forward, Lesotho needs to develop a strong ethical and professional media that promote the public interest.

Notwithstanding the alleged coup attempt in 2014 – Lesotho is still regarded as a democratic country. The country ranks in the top 10 of the Ibrahim Index

of African Governance, a survey used to measure and assess good governance and policy outcomes across the continent.

## FREEDOM OF EXPRESSION

### Legal Framework

Section 14 (1) of the Constitution of Lesotho clearly provides for freedom of expression, which covers among other issues, freedom to receive, communicate and exchange ideas and information without interference. Despite this provision, the environment for practicing freedom of expression is hampered by existing laws such as Official Secrets Acts, Seditious Law and the Internal Security (General) Act.

No meaningful media reforms have taken place in the country over the years. Although the first ever coalition government had declared government's intention to adopt media reforms in 2014, political instability and dissolution of parliament stalled this process and even after the election in 2015 ushering in a new coalition, there was no progress.

Citizens still do not have a legal right of access to government information as no freedom of information act has been adopted. Media freedom organisations and human rights NGOs have been fighting for over 15 years for enactment of the Access and Receipt of Information Bill, passed by Parliament in 2000, but without success.

Freedom of expression received a boost in 2015 with the increase of radio stations from thirteen to twenty four and the introduction of another weekly newspaper to the existing seven. Sadly, the country still has no daily newspapers.

## The operating environment for the media

In practice, citizens of Lesotho enjoy their rights to freedom of the media to a large degree, but there are some exceptions. In an Afrimap survey it states: “prior to, during and post elections you expect conflicts and often you find journalists getting caught in these conflicts and then suffer[ing] the wrath of the government. The government uses the Internal Security Act, 1984, where journalists are accused of being seditious.’

**The attempted military coup on August 30, by Lieutenant General Tlali Kamoli to oust Prime Minister Thomas Thabane, not only created political instability, but also impacted greatly on freedom of expression and of the media way into 2015.**

The government uses the media it has influence over to project its propaganda and positions, and it is not impartial. Government officials and ruling-party officials also have preferential access to the state media. The state media comprise the Lesotho Today/Lentsoe la

Basotho newspaper, the Lesotho News Agency, Lesotho Television, Radio Lesotho and Ultimate FM.

The privately owned media used to be impartial to an extent. Since the ongoing political turmoil there has been a noticeable change as some of the media have taken a partisan position. Since the state media collectively enjoy much wider coverage than all non-state media combined, the private media therefore try to provide a platform for opposition parties, but they do try to balance it by also providing the government space for their views.

## Economic Impact on Media

There is a great deal of effort made by the media to thrive in an economy that is interdependent on South Africa - with 35% of the male population travelling across the border to work in the mining sector. While Lesotho's primary resource – water – provides a lifeline to South Africa, the country depends on its neighbour for most of its food and other goods. With precious alternative resources, a large chunk of the Basotho population, are reliant on subsistence farming.

With a low per capita income – newspapers, televisions and internet are seen as unaffordable luxuries. Radio is still the cheapest and most broadly accessed medium across Africa and Lesotho is no exception. So the shoestring budgets, prohibitive printing costs, poor technology and unavailability of newsprint make it difficult for Lesotho's small publications to grow. The only sector that has reported any growth is the broadcasting sector with the establishment of 12 new radio stations – 11 commercial and 1 community based.



**Multiple laws, including the Sedition Proclamation No. 44 of 1938 and the Internal Security (General) Act of 1984 prohibit criticism of the government, provide penalties for seditious libel, and endanger reporters' ability to protect the confidentiality of their sources.**

## **MEDIA AND ELECTIONS**

### **Early Elections**

Lesotho held a general election on 28 February for all 120 seats of the National Assembly - the lower house of the Parliament of Lesotho - more than two years ahead of schedule. The events that led to this early election climaxed on August 30, 2014 when Lesotho's capital city Maseru witnessed radio stations including the government owned Radio Lesotho, going off-air, several police stations being taken over and the residence of the Prime Minister and one of the three coalition leaders being surrounded by the army.

Lesotho has had its disproportionate share of troubles over the years ranging from coups, the banning of political parties, a constitutional crisis, attacks on opposition members, discord between the police and army to a reported coup attempt in 2014. The attempted military coup on August 30, by Lieutenant General Tlali Kamoli to oust Prime Minister Thomas Thabane, not only created political instability, but also impacted greatly on freedom of expression and of the media way into 2015.

A few months after the General Election leaders of the opposition and some of their members fled to South Africa, claiming their lives were in danger. Tension in the country reached its peak when soldiers were abducted earlier this year. Attempts to get information on their whereabouts proved impossible forcing family members of the missing soldiers to lodge a court application requesting a High Court Order for the Lesotho Defence Force to produce them. They were eventually brought to court, in shackles, accompanied by heavily armed soldiers wearing balaclavas.

Midway through the year, the former commander of the Lesotho Army Lieutenant General Maaparankoe Mahao was shot and killed. Mahao, who was appointed army commander in August in 2014, by former premier Thabane, was removed from office by the incumbent Prime Minister, Pakalitha Mosisili. Mahao replaced Lieutenant General Tlali Kamoli but was unable to take control of the army after the latter rejected his dismissal.

The friction in the security sector continues to affect all citizens and in particular the media sector with many journalists being threatened by either the army or the police.

## Election coverage

Fair elections involve the necessity to provide citizens with fair, balanced, and objective information to enable them to come to an informed and rational decision about which leader or party to vote for. Media, therefore, play an indispensable role in the proper functioning of democracy.

The Coordinated Civil Society Regional Observer Mission which included the SADC Council of NGOs and the SADC Lawyers Association (SADC-LA) saluted the efforts of MISA-Lesotho for the Broadcasters Capacity Building in Peace Building and Conflict Reporting project prior to the 2015 elections. MISA Lesotho was lauded for this pioneering project which contributed to fair and professional coverage of candidates, parties and electoral processes.

During this training workshop, a new approach was introduced and the 29 journalists from 10 districts around the country agreed to engage an innovative approach which saw live simultaneous radio reporting of the elections involving 9 radio stations. This reporting strategy was essential in ensuring the minimization of incorrect information by individual radio presenters when reporting elections in Lesotho.

It was interesting to note that the Lesotho media reported the elections differently from other countries such as Zambia and South Africa in that the political party that received the most votes in the previous election did not receive the most coverage during the 2015 elections.

This was an observation made by the South African-based Media Monitoring Africa (MMA) in conjunction with MISA Lesotho during their monitoring of the

coverage of the elections by the media.

*Media in Lesotho operate under strenuous conditions and the continual threat to free press poses serious challenges in covering crucial events like elections, particularly in ensuring that media carry the citizens agenda and ask the rights questions so that citizens become informed voters. While the Lesotho Constitution does not directly mention press freedom, it guarantees freedom of expression and information exchange.*

*However, multiple laws, including the Sedition Proclamation No. 44 of 1938 and the Internal Security (General) Act of 1984 prohibit criticism of the government, provide penalties for seditious libel, and endanger reporters' ability to protect the confidentiality of their sources. These laws and incidents where journalists and their media houses have been attacked and threatened, pose a major restriction to the ability of media in Lesotho to report elections to their optimum ability.*

*The stories are fair and not biased but to whose favour? By looking at the results in their entirety, an argument can be made that the media avoided controversy and reported in fair manner and ignored critical issues that are important to the nation of the Basotho people.<sup>1</sup>*

The absence of a dominating party resulted in the state media provided fairly equitable access to parties and candidates. On the other hand some of the private media (especially radio) aligned themselves with various political parties.

Election debates were aired on eleven private and public radio stations which comprised: *Harvest FM, KEL FM, Mo-Af-*

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<sup>1</sup> Media Monitoring Interim Results. Lesotho Election 2015

*rika Radio, Mafeteng Community Radio, Motjoli FM, People's Choice FM, Radio Lesotho, Radio Spez Nostra, Thaaah-Khube FM, Ts'enolo FM and Ultimate Radio.* Some of these radio stations were blatantly biased in favour of either the All Basotho Congress (ABC) and the Basotho National Party (BNP), on the one hand, or the Lesotho Congress for Democracy (LCD) and the main opposition Democratic Congress (DC).

### **Defamation cases**

Several newspapers are facing defamation cases in the courts of law with complainants demanding huge amounts of money (over US\$300,000.00). In some cases some radio stations have appeared before the BroadCasting Dispute Resolution Panel.

All the Panel's resolved disputes were accepted with one exception – the complaint against Mafeteng Community Radio Station. The radio station has filed a case in the courts of law in Maseru requesting the court to put aside the Panel's ruling that the acting station manager be suspended from air and undergo training until he was seen capable of handling radio programmes well.

### **JOURNALIST SAFETY**

Two radio journalists, Motsamai Talla and Puseletso Ramokhethi fled the country after allegedly receiving threats from members of the Lesotho Defence Force. A month later Marafaela Mohloboli also left Lesotho after police pressured her to reveal her sources. She was also accused of allegedly leaking records of her conversation with Assistant Commissioner of Police, Ezekiel Senti.

A few weeks before the General Election a journalist from MoAfrika FM, David Mtakha was assaulted during an

All Basotho Convention rally in Maseru, Lesotho, on 1 February.



During the elections, online media platforms proved to be the preferred choice for political conversations and for the first time, politicians and political parties also became active on Facebook. This is when threats to internet freedom emerged.

### **BROADCASTING**

#### **Progress towards broadcasting diversity**

The commercial radio sector grew with the introduction of eleven new stations in 2015. A fourth community radio station was also added when the community of Butha-Butha district in northern Lesotho launched of their community radio station, Moeling FM on May 3, World Press Freedom Day. Moeling FM is the country's fourth community radio after Motjoli FM (Thaba-Tseka Community Radio), Mafeteng Community Radio and DoPE FM of the National University of Lesotho.

## Challenges towards meeting broadcasting digital migration deadline

Lesotho lacked policy direction or a clear road map to gain resources for digital dividend transmission of television development (DDTTD) and subsequently failed to meet the international analogue switch-off deadline of 17 June 2015. To avoid cross border interference, the country signed an agreement of cooperation regarding cross border frequency interference with South Africa.

### FREEDOM OF EXPRESSION ONLINE

As of November 2015, Lesotho had 12.8% internet penetration rate. Although this seems low in relation to other countries in the region, Facebook has turned out to be a vibrant platform for participation and deliberation since there are no daily newspapers and the broadcasting sector lacks real diversity.

During the elections, online media platforms proved to be the preferred choice for political conversations and for the first time, politicians and political parties also became active on Facebook. This is when threats to internet freedom emerged.

In July, Lesotho's deputy prime minister Mothetjoa Metsing, threatened to close down social media sites, particularly Facebook, which he said threatened the security of the country by perpetuating lies and distorting the truth. The government said it was hunting down people who used Facebook to spread rumours and lies about the security situation in the country and about individual political leaders.

Minister of Communications Khotso Letsatsi said the government was at the

final stage of gazetting a law that would stamp out computer crime and cyber-crime. These threats followed a series of Facebook and Whatsapp posts that alleged, among other issues, that government had imposed a dusk-to-dawn curfew, while another linked the Deputy Prime Minister with an alleged plot to assassinate Archbishop Tlali Lerotholi of the Roman Catholic Church.

The social networks posts also carried stories about how the Deputy Prime Minister had allegedly bribed members of the SADC Commission of inquiry into Lesotho's instability to ensure its findings would portray him in a positive light.

### LOOKING TO 2016

There is a desperate need for the enactment of access to information law and advocacy for the adoption of a media policy has to continue.

# Lesotho 2015 violations & victories



**1 February**

**MoAfrika FM radio presenter attacked at political rally**

Jospeh Ntakha, a radio presenter from local private radio station MoAfrika FM Radio was physically allegedly attacked by All Basotho Convention (ABC) supporters at their party rally at Setsoto Stadium in the capital city, Maseru.. The attack of Ntakha was 27 days before the National Assembly elections in Lesotho



**3 May**

A new community radio station, Moeling FM in the Butha-Butha district was launched on Press Freedom Day, 3 May.



**5 July**

**Reporter from People's Choice FM receive death threats**

Puseletso Ramokhethi, reporter for People's Choice FM received threats from the army, leading her to flee the country. The police pressurised her to reveal her sources and in addition she was also accused of allegedly leaking records of her conversation with Assistant Commissioner of Police, Ezekiel Senti.



**5 July**

**Reporter from Harvest FM receive death threats**

John Talla from Harvest FM, together with Puselesto Ramokhethi fled the country after receiving incessant threats from members of the Lesotho Defence Force (LDF).



**15 July**

**Government threaten to ban social media**

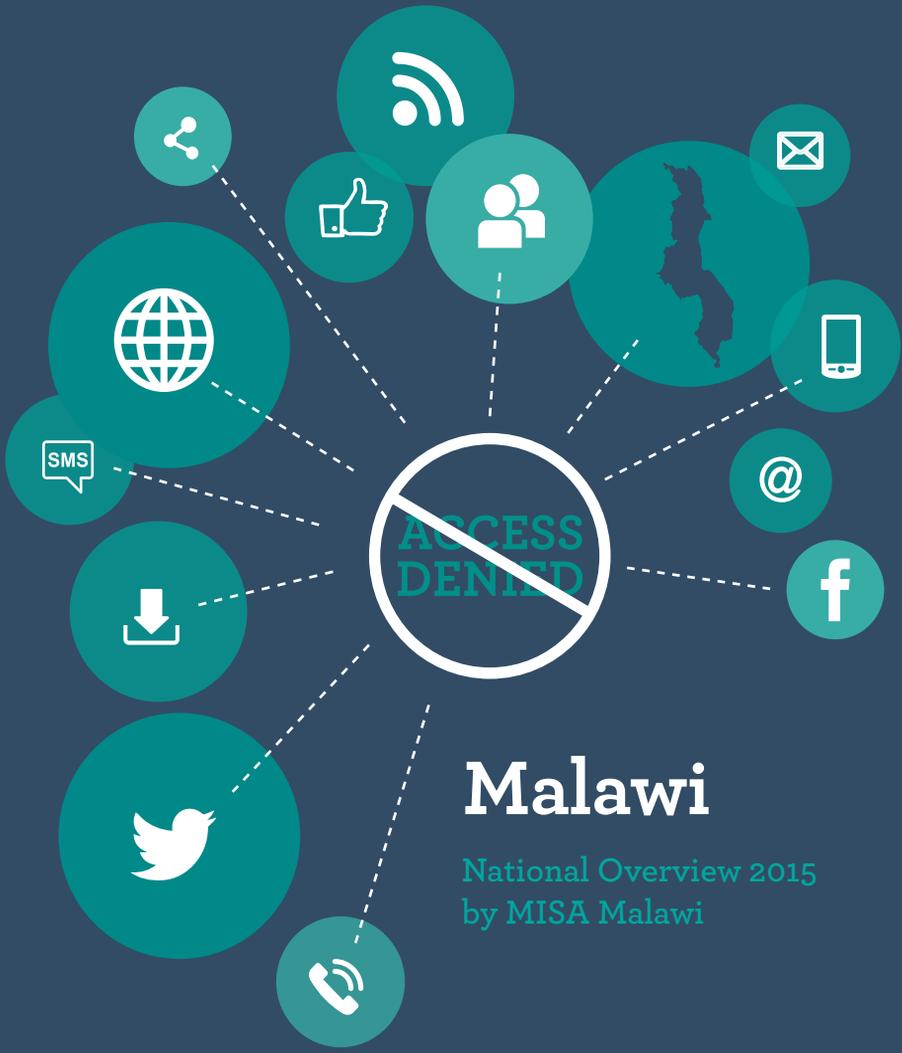
Lesotho's deputy prime minister Mothetjoa Metsing, threatened to close down social media sites, citing security concerns. This followed a series of posts on Facebook and Whatapp attacking politicians in the country.



**6 August**

**Reporter from Public Eye receive death threats**

Marafaele Mohloboli, a journalist from Public Eye reported that she was threatened by the Lesotho Mounted Police Service (LMPS) over an article she wrote about the law enforcement agency. Police officers asked her to reveal sources of her article which was critical of the LMPS. The reporter also received anonymous calls from persons asking her to take care of herself or else she would be killed.



# Malawi

National Overview 2015  
by MISA Malawi

**D**ominating both the political and media environment was the vigorous push for the enactment of

ATI legislation by the media sector under the leadership of MISA Malawi and the Media Council of Malawi (MCM). In a coordinated and strategic effort, the print and electronic media simultaneously ran articles and news bulletins spanning over a week, to press the Peter Mutharika administration to enact the ATI Bill, as promised during the 2014 elections.

In addition, the media provided platforms for Malawians to freely discuss policy preferences, suggest solutions to national or community problems, and debate a range of issues, including crime, corruption, access to justice, food security, minority rights, power outage, sanitation and climate change. The media was also instrumental in exposing social injustices and abuse of power and public resources.

The year under review was a period of contestation between the state and activists – which included the media, as civil society challenged government and questioned its ability to improve the wellbeing of Malawians. With continued economic decline, civil society organizations planned demonstrations highlighting the poor performance of the Democratic Progressive Party (DPP) in terms of social, economic and political governance. Media articles on the demonstrations also focused on apparent lack of focus and lack of direction by the government in running the affairs of the country. The articles openly quizzed

government to explain its apparent lack of seriousness and political will to adhere to its own austerity measures to reduce expenditure. This, attracted the ire of government, which accused the media of being political and partisan.

The year under review also witnessed ordinary citizens being arrested, charged and fined for insulting the president. All these developments occurred while the Malawi Constitution provides for media freedom, freedom of expression and right to information.

## FREEDOM OF EXPRESSION

### Outdated legislation used to restrict free speech

Existing anti-free speech laws were systematically employed to suppress free speech. Colonial legislation that inhibits freedom of speech continues to be applied by the state to curtail media freedom and freedom of expression. By their very nature, the laws instill fear and self-censorship of the media compromising the media's role to promote public accountability.

The most common law the state applies is Section 181 of the Penal Code which states that *“Every person who in any public place conducts himself in a manner likely to cause a breach of the peace shall be liable to a fine of K50 and to imprisonment for three months.”*

Several people have been arrested, charged and convicted based on this section for apparently insulting the President. Most of the cases go unreported but MISA Malawi noted a growing intolerance of free speech in the country and called upon President Arthur Peter Mutharika to distance his administration from the arrests which were tarnishing the image of his government.

In September, a 60-year-old man, Alinafe Paulo of the Traditional Authority Nsamala in Balaka in southern Malawi was convicted and fined MK3,000 (about \$5) and serve three months imprisonment with hard labor for insulting the President. This was also a trend during the period 2012 and 2014 when over 10 cases were reported of people being arrested for insulting the then President Joyce Banda.

Apart from Section 181 of the Penal Code, other laws in the statute books include the Official Secrets Act (1913), the Printed Publications Act (1947) and the Censorship and Control of Entertainments Act (1968) as well as the Protected Flags, Emblems and Names Act. As stated in our past narratives of the same publication, the Protected Flags, Emblems and Names Act still quotes a fine in Pound Sterling and not Malawi kwacha, supporting the call for law reform, 51 years after independence.

The DPP promised to amend and/or repeal laws that limit freedom of expression, including signing the Declaration of Table Mountain, as a sign of commitment to repealing repressive and insult laws, but nothing has happened two years down the line. The existence of these laws remains a cause for concern because they continue to silence both journalists and civil society actors.

## Access to Information

Malawi was considered progressive when Cabinet approved a policy on access to information, during a Cabinet meeting on January 27, 2014.

Since the campaign on ATI started in 2004, the only administration to include ATI as its campaign promise was the DPP by including it in their manifesto. Section 180 of the DPP manifesto read:

*'We recognize that access to information is a major challenge... In this regard, the DPP government will pass and implement the Access to Information bill.'*

“Existing anti-free speech laws were systematically employed to suppress free speech.”

Twenty one months later, to the surprise and disappointment of many Malawians, activists, stakeholders and human rights advocates, the Mutharika administration reneged on its promise to enact the Bill and rejected the proposed legislation during a Cabinet meeting held on Tuesday, November 17, 2015 in the capital Lilongwe. The Bill was referred back to the Cabinet Committee on Legal and Constitutional Affairs for further review.

The Cabinet rejected the Bill on the grounds that it was filled with inconsistencies. Cabinet felt the law could not be applied retrospectively; there were concerns with whistle blower protection and surprisingly it did not want the Official Secrets Act of 1913 to be invalidated by the new law. Cabinet apparently also wanted the Ministry of Information to be the implementation agency and not the Malawi Human Rights Commission or indeed an Independent Information Commission as proposed by different stakeholders who assisted with the drafting the Bill.

The Draft ATI Bill was developed based

on provisions contained in the National Access to Information Policy which government adopted in January 2014. So the concerns of government appear to be in contradiction of the principles it promoted prior to elections.

Although Cabinet rejected the Bill, MISA Malawi and different stakeholders believe that ATI has been irreversibly placed as a crucial development agenda item not just for the DPP administration but all subsequent administrations to come. Chances are high that the Bill will be tabled in Parliament in 2016 and Malawi will join an enviable list of countries with legislation on ATI. MISA Malawi has currently teamed up with a cross section of stakeholders to push the DPP administration to walk the talk on ATI. The Chapter is also engaging chiefs and people at the grassroots level to start demanding information as a right and engage their Members of Parliament (MPs) to support the Bill once tabbed in Parliament.

## JOURNALIST SAFETY

### **President Mutharika verbally attacks the media**

The media operating environment in 2015 remained risky, exploitative and showed serious signs of backsliding. Media houses and journalists deemed critical of the ruling administration were denied access to presidential functions and openly castigated for 'being pro-opposition.' Information officers in some government departments were ordered to 'stop talking to the media' and some mainstream media practitioners were threatened with arrests for carrying stories critical of the elite.

During a press conference held at Kamuzu Palace in the capital Lilongwe On October 8, 2015, President Arthur Peter

Mutharika lambasted and labelled the media 'liars, irresponsible and agents of the opposition'.

President Mutharika's outbursts followed a string of articles and news bulletins criticising the size of the President's entourage, hiring of a private jet and the level of expenditure incurred during his trip to the United Nations General Assembly (UNGA) in New York. The President asked for an apology from some media houses over these stories and fell short of specifying what action he would take should the apologies not come forward. Mutharika's Press Secretary, Gerald Viola, joined the fray and attacked one unspecified radio station, accusing it of having a hidden agenda against the DPP government.

A few weeks after this development, MISA Malawi received reports that Zodiak Broadcasting Station (ZBS), one of Malawi's renowned national radio stations in the country, was being sidelined and denied access to some Presidential functions.

Such developments clearly demonstrated that government was being intolerant of CSOs and media outlets critical of the ruling DPP led administration. All in all, however, the year in question saw the media and selected CSOs fiercely defend their spaces of freedom by strategic networking with both domestic and international advocates.

## BROADCASTING

### **The shortlived evolution of the Malawi Broadcasting Corporation**

Developments in the broadcasting sector during the period under review also show that Malawi takes a step forward and a step backwards.

History was made during 2014 when state controlled Malawi Broadcasting Corporation (MBC) stunned Malawians by 'focusing their content to reflect public interest and professional standards rather than political whims. Better known for being a mouth piece of the party in power, with over 99 percent content in favour of the party in power, MBC shifted gears from being a propaganda machine to a 'platform for critical debate and dialogue on matters of national interest.'

**The media operating environment in 2015 remained risky, exploitative and showed serious signs of backsliding.**

As stated in our 2014 review of this publication, 'MBC proved most critics wrong by broadcasting all the presidential debates live, despite the fact that then incumbent Joyce Banda had refused to participate in the debates.'

During 2015, however MBC reverted back to type and positive steps the radio had taken were obliterated and the people in positions of authority at the station were replaced.

At the same time, Government changed a revised Communications Bill to maintain its grip on MBC and MACRA. MISA Malawi called on MPs to reject the adulterated version of the Bill and ensure that the original version stakeholders had

agreed on is tabled in the August House. In particular, MISA-Malawi raised concern that government reversed stakeholders' proposals in the draft bill which removed the Head of State as the sole appointing authority for the boards and management of the Malawi Communications Regulatory Authority (MACRA) and the Malawi Broadcasting Corporation (MBC). The independence of both MACRA and MBC was key in the review of the Communications Act of 1998. By maintaining the state president as the appointing authority for the boards and management of the two institutions, the cabinet effectively rendered the review of the law useless.

## Digital migration

Malawi is on track with the digital migration process and is one of the few countries on the continent that met the June 17 deadline. Reports also indicate that the country is currently doing well in the region as far as content management and signal distribution is concerned.

Malawi established the Digital Broadcasting Network Limited Company to provide signal distribution services to all licensed broadcasters and the company is currently fully established and hopes to continue doing well. Most Malawians, however, have minimal understanding of the digital migration process and officials at the Digital Broadcasting Network concede that there is a critical need to raise awareness so there is an appreciation of what digital migration means for the country and its citizens.

## New media and ICTs

Malawi has several policies that touch on ICT, including the ICT Policy (2013), the National Access to Information Policy (2014), Digital Broadcasting Policy (2013) among others. These poli-

cies recognize the importance of new media and ICTs in promoting national development. Internet penetration however, remains the lowest in the region at 6 percent with the majority of users being in urban centers. Low levels of computer literacy, high cost of internet services, poor infrastructure and erratic power supply continue to limit advances in ICTs.

Despite these challenges, new media and ICTs remain an exciting platform for most Malawians in general and journalists specifically. A worrying trend is the desire by government to regulate and limit online expression. Government has developed draft legislation dealing with online regulation, which is currently with the Media and Communications Committee of Parliament for consultations after different stakeholders had raised concerns on a number of issues in the Bill. MISA Malawi had also raised concern over sections that limit free speech on the pretext of national security and public order. MISA Malawi argued that the sections were broad and open to abuse.

Most media houses have online publications and the number of stand-alone online news sites is increasing. It is important to note that most of these sites have interactive features for user participation and most journalists are 'blogging as a form of journalism to circumvent editorial control or self-censorship in mainstream media houses.' The biggest challenge is however lack of professionalism in online content.

The Chapter has since introduced awards to recognize on line professionalism as one way of promoting journalistic standards on line. The Chapter introduced an award called blogger of the year and Online Media House of the Year Award to recognize excellent blog-

gers and Online Media Outlets as one way of promoting ethical standards on the net. The Chapter is optimistic that the initiative will in the long term help improve the quality of journalism on line and make it more exciting and rewarding.

## LOOKING AT THE YEAR AHEAD 2016

Despite a hostile environment and an openly antagonistic government, the media continue to play a critical role in building Malawi's democracy and holding elected officials accountable. The sector remained instrumental in exposing social injustices and abuse of power and public resources. In addition to accountability, the media continued to provide a platform for Malawians to freely discuss problems and solutions to improve the welfare of their communities.

The punitive and litigious tendency of the government calls for more advocacy work in 2016 and beyond to rid the country of colonial laws that continue to be used to suppress critical voices and ensure respect for constitutional guarantees on media freedom, freedom of expression and right to information.

# Malawi 2015 violations & victories



## January 23

Mulanje Police Public Relations Officer James Kadadzera ordered reporters from private media houses not to take pictures of First Lady Gertrude Mutharika. The First Lady was the guest of honour at a function organized by Plan International at Mthuruwe Primary School in the area of Traditional Authority Mkanda in Mulanje, southern Malawi. Kadadzera denied barring reporters from taking pictures saying he wanted people to have identification cards before attending the function. MISA Malawi condemned the action of the Police and appealed to law enforcers to respect journalists.



## February

Government backtracked on its promise to table the much awaited Bill on Access to Information during the February-March sitting of Parliament despite promising Malawians that it would be tabled.



## November 17

Cabinet rejected the draft Access to Information Bill and sent it to the Cabinet Committee on Legal and Constitutional Affairs for review. During a meeting with MISA Malawi, Minister of Information, Tourism and Civic Education Jappie Mhango confirmed the meeting and rejection of the bill by Cabinet. Cabinet claimed that the bill is filled with inconsistencies.



## September 28

The Balaka Magistrates Court convicted a 60 year old man, Alinafe Paulo, of Traditional Authority Nsamala in the district and fined him MK3,000 (about \$5) or serve three months imprisonment with hard labor for insulting the President. Paulo was arrested based on Section 181 of the Penal Code and charged with conduct likely to cause breach of peace.



## October 8

President Arthur Peter Mutharika labeled the media as 'liars, irresponsible, and agents of the opposition,' for criticizing his trip to the United Nations General Assembly (UNGA) in New York. The media questioned Mutharika's entourage, hiring of a private jet and the level of expenditure incurred during the trip in the wake of economic problems prevailing in the country. The president also asked for an apology from some media houses over stories on the trip and fell short of specifying what action he would take should the apologies not come forward.





# Mozambique

National Overview 2015 by  
MISA Regional Secretariat

**F**reedom of expression in Mozambique is exercised by citizens and journalists of independent media, except the media controlled by the government (*Televisão de Moçambique*, *Rádio Moçambique* and the newspaper *Notícias*), where there is more self-censorship. The same freedom is amplified by social media, where citizens express themselves without fear, seeing that there are plenty of situations for sharing information freely and of “public outrage” at the management of public affairs.

In 2015, there was a government attempt to instil fear at the universities and on social media sites. For example, the murder of university professor and constitutional law expert Giles Cistac for his academic position on matters relating to autonomous provinces, an attempt to introduce a draft Law on the Regulation of Electronic Transactions and the prosecution and trial of the economist Carlos Nuno Castel-Branco and two journalists, Fernando Veloso and Fernando Mbanze. The first for writing a letter on his Facebook page criticising the government of former President of Mozambique, Armando Guebuza, and journalists Fernando Mbanze and Fernando Veloso for reproducing the economist’s letter in their respective newspapers, *Media Fax* and *Canal de Moçambique*. Both the death of the constitutional law expert as well as the trial of the economist and the two journalists remain unresolved. The criminal police is yet to publicly clarify the circumstances that led to the death of the academic and as for the trial of the journalists, although the defendants were acquitted by the court of the City of Maputo, the public prosecutor appealed to the Supreme Court for a final

outcome. These are all clear signs of attempts to create fear and limit the space for the exercise of freedom of expression.

With regard to the Broadcasting Law, it must be stressed that there is no law that regulates this media sector. Broadcasting is currently governed by the Press Law 18/91, of 10 August, which is very out of step with the growing broadcasting industry, although there was an attempt to create the draft of a law in a joint effort by the Information Office and the National Trade Union of Journalists (SNJ), FORCOM and MISA-Mozambique, but the process stalled.

The migration from analogue to digital is one of the current issues that has attracted a lot of criticism from civil society and professional communication organisations. The problem of digital migration has to do with the way of process is being conducted, culminating in it being awarded to Startimes Software Technology Co. The process involves irregularities that will harm the state, citizens in general and in particular the private sector working in the radio and television sectors. The first major issue is that the deal will cost state coffers \$ 300 million dollars and will directly benefit the company of the family of the former head of state

## RIGHT TO INFORMATION LAW

The constitution of the Republic of Mozambique, in Article No. 48 establishes that any Mozambican citizen has the right to freedom of expression, freedom of the press and right to information.

Access to information is one of the main issues in contemporary Mozambique, given that we live in an era of two-way information flow to satisfy a number of public and private uses; the lack of inter-

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action between the government and society dictated the need to reflect around a public policy on access to information.



**Mozambique has become one of the small group of African countries with an Access to Information Law, an important instrument for the promotion of open government and inclusion of citizens in the management of public affairs.**

Around the Right to Information Law, 2015 saw progress on many aspects, thanks to pressure from civil society driven by IBIS, the Danish non-governmental organisation that works for the empowerment of civil society and the disadvantaged, which joined its partners in the public dialogue on the document at national level to improve the text of the proposed law. Civil society organisations, members of the Coalition Right of Access to Information, IREX, Sekelekani, Misa-Mozambique, the Bar Association of Mozambique, supported by IBIS through the Access to Information (AI) programme, as part of the Actions for Inclusive and Responsible Govern-

ance (AGIR) programme, held conferences and discussions at national level to debate the scope of the Right to Information Law and the need to guarantee full rights to information of public interest and to promote open, public administration and political participation of citizens.

A number of civil society organisations in the AI programme partnership dedicated themselves to the process, especially entrusting to the Human Rights Centre Association (ACDH) the role of technical expert to the parliamentary committee responsible for reviewing the draft of the Right to Information Law (RIL).

The importance of the debate was that it raised awareness of the need to consolidate the rule of democratic law and that the draft Law was a product of national consensus because it followed the United Nations Charter on Human Rights, the African Charter on Human and Peoples' Rights and other international instruments that set their specific standards.

After ten long years of waiting, the Assembly of the Republic of Mozambique, on November 26, 2014, approved the RIL by acclamation. Thus Mozambique has become one of the small group of African countries with an Access to Information Law, an important instrument for the promotion of open government and inclusion of citizens in the management of public affairs. The approval of the RIL was an improvement of the legal framework pertaining to the fulfilment of the constitutional right to information enshrined in Article 48, on freedom of the press and of expression. Regulation of the Right to Information Law

The Law of the Right to Information en-

tered into force on 31 December 2014, while the approval of the regulations of the Law took place on 13 October 2015, in terms of Decree No. 35/2015, of December 31, day on which it entered into force. Although the regulation proposed by the government is an instrument for the implementation of the RIL, in general terms it has gaps and is not very clear.

Civil society organisations held public debates on the proposed regulation of the Right to Information Law, prepared by the government. These discussions led to the improvement of 35 articles, with the inclusion of elements that will make it easy for citizens to use of the law.

The IREX Programme for the Strengthening of the Media, with the support of organisations such as Sekelekani, the Bar Association of Mozambique, the Association of Women in the Media (AMCS), IBIS, Centre for Interdisciplinary and Media Studies (CEC), Institute for Governance and Development Support (GDI) and the SAVANA newspaper promoted these debate, reflection and amendments to the regulation of the RIL.

After conclusion of the discussions and improvements of the proposed regulation of the RIL, the government incorporated the suggestions of the organisations involved and published the final version (as amended) of the proposed regulation of the RIL. Having already approved the law, its regulatory instrument now faithfully corresponds the soul and spirit of the law.

## **BROADCASTING LAW**

The current Press Law 18/91, of 10 August, in force since the date of its adoption, was designed to regulate the print media because the big concern was the press that dominated the Mozambican

media landscape and does not include the broadcasting sector, as it was then still not much developed.

Years later, radio and television media evolved considerably. New community, commercial and public radio and television expanded rapidly throughout the country, thanks to the Press Law and a favourable political environment. The expansion has created new realities and challenges, which are totally different from the situation in 1991, when the Press Law was passed. In this context, there was need for a new legal framework to regulate the radio and television sector and meet the challenges of today's media industry.

In response to these new challenges, the government initiated a process to draft a broadcasting law in 2007 and appointed the Information Office to take the lead in the consultation process, involving the National Union of Journalists (SNJ), the National Forum of Community Radio Stations (FORCOM), MISA-Mozambique and the Association of Media Houses (AEJ), to take an active role in drafting the new legislation.

After a long delay, in April 2009 GABINFO emerged with the document entitled "Preliminary Document of the Restricted Group on the Development of Terms of Reference for the Radio and Television Law", whose content encompasses most of the principles and policies defined by African institutions, namely: (i) strengthening and deepening of the democratic process; (II) the protection and promotion of national culture, in response to cultural globalisation; (III) consumer protection; (IV) the national economic development and the protection of the broadcasting sector.

The document proposes that legislation

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observe the following principles: transparency in the frequency allocation process; equity and pluralism of different operators; response to the real needs in the provision of radio and television service as well as economic sustainability of such services.

For the materialisation of the proposed Broadcasting Law, GABINFO launched a restricted consultation, inviting research institutions to submit technical proposals for the preparation of a broadcasting bill. Professional organisations such as MISA-Mozambique and the National Union of Journalists were not involved in the process. The Faculty of Law of Eduardo Mondlane University was selected for that purpose in May 2009 and began working on the broadcasting bill.

In May 2010, public debates were launched to discuss the future law. The draft law by then developed was completely at odds with the Terms of Reference set out in the “Preliminary Document of the Restricted Group on the Development of Terms of Reference for the Radio and Television Law”. What was presented, was basically a distorted document devoid of any essence (May 2012).

Until today, Mozambique does not have a legal framework that regulates broadcasting, an instrument that can establish: an independent regulation system and body; licensing and transparency in licensing terms; management and accountability system for public broadcasting; financing of public broadcasting; a programming system, including minimum quotas for local content for the commercial sector; promotion of community broadcasting. These remain fundamental issues that the future law should take into consideration. As a result, the absence of this legal instrument

continues to make a tool out of public radio and television (*Rádio Moçambique* and *Televisão de Moçambique*), controlled by the government and a completely unregulated broadcasting market.

## FREEDOM OF EXPRESSION AND OF THE PRESS

In 2015 there was an alleged violation of freedom of expression and of the press that involved economist Nuno Castel-Branco, who wrote a letter on his Facebook page criticising the government of the former President of Mozambique, Armando Guebuza; and two journalists, including the director of the weekly *Canal Moçambique*, Fernando Veloso and the weekly *Savana* editor, Fernando Mbanze who reproduced the letter in their newspapers.

According to the charges, Fernando Mbanze and Fernando Veloso are accused of the crime of abuse of press freedom provided for and punishable in terms of Article 42 paragraph 1 of Law 18/91, of 10 August (Press Law), under Article 46 paragraph 1 of the same law in conjunction with paragraph 22, paragraph 1 of Law 19/91, of 16 August (Law on Crimes against the Security of the State) and articles 407 and 410 of the Penal Code. Carlos Nuno Castel-Branco is accused of having committed the crime of defamation, libel and slander against the former President under Article 22, paragraph 1 of Law 19/91, of 16 August (Law on Crimes against the Security of the State), in conjunction with articles 407 and 410, both of the Penal Code. The articles of the Law on Crimes against the Security of the State were repealed by Article 2 new Penal Code approved by Law 35/2014, of 31 December.

Various sectors of society, including the

president of the Higher Communications Council considered the trial “unwise and unnecessary,” as it was a “clear sign of violation of freedom of expression.”

On this occasion, civil society in Mozambique organised a debate on 25 August 2015, in repudiation of their trial. The debate was organised in conjunction with the IREX Programme for the Strengthening of the Media, IBIS and Sekelekani.

The charges brought by the public prosecutor seriously violated the rights of freedom of expression and of the press set out in Article No. 48 of the Constitution. Convicting economist Carlos Nuno Castel-Branco, and journalists Fernando Mbanze and Fernando Veloso could be seen as political and legal intimidation aimed against freedom of expression and of speech. The article written by economist Nuno Castel-Branco expresses only his opinion, without any association to any institution to which he is connected. Since this is a case involving a former Head of State, convicting the economist, as the author of a crime against state security, would in essence be state condemnation of an offence arising from an opinion, a crime not foreseen in the Mozambican legal and constitutional system.

Condemning Nuno Castel-Branco would have a serious impact and repercussions on the exercise of freedom of expression and of the press in Mozambique, as well as on the practice of open public debate on crucial issues of national political life, producing the so-called political-legal chilling effect on freedom of expression and of speech.

## MIGRATION FROM ANALOGUE TO DIGITAL

The digital migration process in Mozambique took its first steps on November 7, 2010, with the adoption by the Council of Ministers of the DVB-T2 technology standard and the subsequent creation of the National Digital Migration Commission, COMID, which, among other things was responsible for drafting the National Strategy for the Migration from Analogue to Digital Broadcasting.

“Until today Mozambique does not have a legal framework that regulates broadcasting.”

From 2011 until the end of 2013, COMID established the premises for the implementation of the digital migration process in Mozambique, especially the holding of workshops for the Dissemination of the Digital Migration Strategy in the capitals of all provinces, negotiations with StarTimes Software Technology Co. of China to finance the construction of the digital network and the creation of the Transport, Multiplexing and Transmission company, TMT, an organisation created by the public companies *Televisão de Moçambique* (TVM), *Rádio Moçambique* (RM) and *Telecomunicações de Moçambique* (TDM).

The implementation of this network is an alternative to the network project that will be built by StarTimes Software

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Technology Co. since the release of funds agreed in the contract with the Mozambican government is subject to a process that depends on other factors. These funds will be allocated in the framework of bilateral credit agreements between the Government of the Republic of China and the Mozambican state. The EXIM Bank of China is the institution responsible for financing the building of the network for digital migration in Mozambique.

The contract was signed awarding the digital migration process to StarTimes Corporation, Co, the three public companies, *Televisão de Moçambique*, *Rádio Moçambique* and *Telecomunicações de Moçambique* created the Transport, Multiplexing and Transmission company, TMT, which will be responsible for the transport and transmission of the digital television signal.

After the announcement of an initial delay in the implementation of digital terrestrial television, scheduled for June 2015, lack of financial and technical conditions meant that the process was again delayed until 2016. The digital migration project in Mozambique was launched in December 2015, enabling the transition from analogue to digital television signal.

The pilot project began with the installation of 18 television transmitters in the capitals of the provinces of Sofala and Nampula and will terminate in 2016 with the installation of transmitters in the other provincial capitals and 8 border towns: Ponta do Ouro, Ressano Garcia, Vila de Manica, Ulóngue, Zómbue, Milange, Namaacha and Madimba.

To discuss the issue of migration from analogue to digital radio and television, professional organisations related to the media held debates and conferences,

where criticism was levelled at the way the process was being conducted. At issue is the fact that the project is being implemented without any public tender awarded to the company StarTimes Software Technology Co, a company in which the former head of state Armando Guebuza has direct economic interests.

In 2012, a study conducted by IBIS Mozambique warned about, among various issues, the exclusion and secrecy with which the Government was driving the digital migration process. The study was presented and discussed first in Maputo and then in all the provincial capitals of the country. It was also distributed by public bodies, but by the looks of it no-one showed any interest in the danger that was being announced.

In general, there is much scepticism and general insecurity over whether the country will succeed in completing the transition until 2016, given the absence of visible progress in mobilising financing, installing network infrastructure, procurement, purchasing of equipment, technical tests, and especially the establishment of the public company of digital signal transmission and distribution, which will, in practice, control on the ground the whole process of digital signal distribution. Strangely, private radio and television operators, which are the majority in the country, will be excluded from the process.

## CONCLUSION

The exercise of Freedom of Expression and of the Press in Mozambique has made great gains since the approval of the Press Law 91 of August 10. One of the concerns among professional organisations in the media and civil society are the focus of these violations of freedoms. Another concern is the absence of the Broadcasting Law to regulate the

broadcasting sector, a fact that gives the government the power to perpetuate the control of public media, including *Televisão de Moçambique*, *Rádio Moçambique* as well as the *Notícias* newspaper, where there is still self-censorship. The same freedoms are mirrored in social media, where citizens express themselves without fear, seeing that social media tools make it possible to share information freely and to manifest criticism and “public outrage” at the management of public affairs.

The Migration from Analogue to Digital process, besides being complex and costly, is taking on political contours and conflicts of interest. On the one hand, lies the question of digital migration that has to do with driving business to private interests, irregularities that will harm the State. On the other hand, the exclusion of citizens due to the cost of the decoder unit for the digital signal. Finally, there is the danger of the private sector radio and television being excluded by the state-owned Transport, Multiplexing and Transmission company, which has the monopoly in the transmission of digital signal.



# South Africa

National Overview 2015 by  
MISA Regional Secretariat

South Africa is seen as one of the more progressive countries on the continent, enjoying a well-developed and plural media system with a strong Constitution that protects freedom of expression and of the press. This high standing is in danger of decline as the governing party, the African National Congress (ANC) intensifies political pressure on the public-run media and clamps down on the commercial media.

The threats to the media are diverse, with the most disturbing being the proposed bills, which, while addressing a number of valid objectives, also include clauses that encroach on fundamental rights such as access to information, freedom of expression, media freedom and protection of privacy.

The proposed legislation, which the media sector and rights activists are railing against, include the Broadcasting Amendment Bill, the Films and Publications Amendment Bill, the Cybersecurity and Cybercrimes Bill and the hotly debated Protection of State Information Bill which has been dubbed the Secrecy Bill.

The tightening of their grip on the media sector encompasses encroachment on the editorial independence of the public broadcaster, the South African Broadcasting Corporation (SABC), which intensified in 2015, with the gazetting of the Broadcasting Amendment Bill which seeks to give the Minister of Communications immense powers to hire and fire SABC Board members, including the Chairperson.

This assault on the media was extended to the print media, with the ANC resuscitating calls for regulation, with several party leaders attacking the media for lack of transformation and for being anti-ANC. Although the print media remain a crucial check on the government, their urban and elite outlook poses a threat to democracy as many people are denied access to the media.

The Cybercrime Bill will bring South African law into line with international standards and create specific offences for internet-related crime. While the bill includes many progressive clauses, experts have warned that the bill is too broad and encroaches on constitutional freedoms placing excessive limitations on the right to access information, right to privacy, and the right to freedom of expression and opinion.

Another disturbing issue featuring prominently through 2015, was securitisation, with security agencies playing an increasingly visible role in policing different actors such as activists, unionists, journalists and political figures.

As South Africa heads for crucial local elections in 2016, increasing restrictions on fundamental freedoms are expected.

## FREEDOM OF EXPRESSION

### **Drone attack on Parliament fears: journalists' cell phones blocked**

Shortly after the year opened, journalists were confronted with the bizarre situation of not being able to use their cell-phones in the National Assembly Chambers during President Zuma's State of the Nation address, because state security agents had installed cellphone-blocking equipment.

# South Africa

Counsel for the Speaker, Baleka Mbete disclosed the State Security Agency (SSA) had installed the cell phone blocking equipment and in the statement, the SSA described the signal jamming as an operational error by the member on duty. The SSA went on to say that it was responsible for threat and risk assessment, and on the day was supporting SA National Defence Force efforts to enforce airspace security.<sup>1</sup> This supported Minister of State Security, David Mahlobo's explanation that the cellphone jamming was installed to protect the president and Parliament against attacks by remote-controlled drones.

Minister Mahlobo and President Zuma held a meeting with the SA National Editors' Forum (Sanef) at which they promised this would never happen again. Indeed, at another meeting with the media Zuma condemned the jamming.

The one positive element noted by the media was the speedy response by the authorities when the journalists complained about the jamming. The authorities immediately disabled the jamming device.

Part of the "security measures" taken that day, included police officers disguised as waiters who then swooped in on members of the Economic Freedom Fighters, the opposition party led by Julius Malema after they disrupted the proceedings.

The EFF MPs started off by calling for the President "pay back the money" - a reference to the Public Protector's demand that he pay government back the money spent on features at his country estate at Nkandla in Kwa-Zulu Natal which

the Public Protector declared gave him "undue benefit". Soon after, the heckling deteriorated into physical confrontations between MPs which is when the VIP Protection Unit police members were called in to remove the EFF members from the House. Instead of filming the skirmishes, the parliamentary TV broadcasting team focused their cameras on the Speaker and failed to show the turmoil and unruly behaviour that had erupted on the floor of the House.

“While the (Cybercrime) bill includes many progressive clauses, experts have warned that the bill is too broad and encroaches on constitutional freedoms placing excessive limitations on the right to access information, right to privacy, and the right to freedom of expression and opinion.

<sup>1</sup> Source: South African Press Agency as published in AllAfrica: *South Africa: Signal Jam 'An Error' - State Security*

Media organisations, Sanef, Primedia and Media 24, immediately made an

application to the Western Cape High Court to interdict the Speaker, and the Minister of State Security, from blocking cell phone signals in Parliament. The court application included a request for a judicial order calling on Parliament's TV service to broadcast pictures of disruption and turmoil when it occurred in Parliament instead of censoring those scenes by focusing the cameras on the Speaker. Sanef argued that this conduct was unconstitutional as it did not accord with the values of Parliament and of transparency.

In a full bench judgment of the court on May 28, two judges ruled against the media and one dissented, agreeing with the media companies which, encouraged by the dissenting judgment, tendered an appeal with funding from the Open Society Foundation.

The crux of the argument against the media was contained in the court's finding. This stated that it was not for a court to tell Parliament how it should conduct its affairs and that it was not at all unreasonable for Parliament to decide that visuals of unparliamentary conduct and gross disorder should not be broadcast (as the applicants demanded) in real time, frame by frame, of what may be the most egregious conduct. The judge added that such broadcasts could only foster such conduct by ensuring an audience for it far beyond Parliament. "It can only weaken discipline in Parliament, undermine and jeopardise its functioning," the court concluded.

Sanef, however, stated that the majority judgment did not fully appreciate the grave danger of allowing parliament to impose rules that curtail freedom of the media.

During the fracas in Parliament a Media24 journalist, Jan Gerber, was physi-

cally abused by the VIP Protection Unit outside the House. He later opened criminal and civil cases against the police, which are still in progress.



Using the placement of advertisements as a means of pressure or control, is considered corrupt and a breach of the Press Code.

### **Repeal of criminal defamation law planned by government**

The most exciting media related news of the year in South Africa was a declaration by the ruling African National Congress (ANC) that it planned to remove criminal defamation from common law.

This surprise announcement was made during a workshop held by the ANC, in September, to ascertain the views of the public, civil society and the South African National Editor's Forum (Sanef) on criminal defamation.

The ANC defined defamation as the act of intentionally making untrue statements about another person which damages his or her reputation. The party's legal research group also suggested that defamatory statements made through the media should not be considered a criminal offence.

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Though sparingly used in South Africa, many ruling parties throughout the continent have used criminal defamation and so-called “insult” laws to stifle criticism of presidents and politicians by the media, by charging them with criminal defamation and imprisoning them.

The ANC initiative has now reached the stage where the legal instrument for the abolition of the common law aspect of criminal defamation has been incorporated in a General Criminal Law Amendment Bill which is expected to be presented to the Cabinet in March, 2016, and promulgated in April.

## **Use of advertising spend to punish press**

The strident criticism of the media by senior members of the ANC turned to the issue of taxpayers’ money spent on advertising state matters and services which, they claimed, should be placed only in media outlets which were seen to be not “oppositional”.

This judgment took on a surprising dimension when Karima Brown, the highest ranking editorial executive at Independent Newspapers, the biggest English-language newspaper group in the country, urged government to use taxpayers’ funds as a political tool to punish newspapers critical of it and reward those which report favourably on its conduct. She said the government should place its advertisements with media which give it a fair hearing rather than those who write it off as a failed state.

Brown is Group Editorial Executive of Independent Newspapers and is reported to have told this to ANC members on the eve of their National General Council meeting. She agreed with the ANC that “there is a tendency among the print

media to almost take an oppositional stance on the ruling party on occasion.”

Using the placement of advertisements as a means of pressure or control, is considered corrupt and a breach of the Press Code. Journalists contend that advertisements are placed to reach certain readers and those target audiences are identified by research of the newspaper market. There can be no question of selecting newspapers as a reward for favouring government or as a punishment for being critical of it.

Despite these anti-media sentiments, the government gave the bulk of its advertisements to the newspapers which were most critical of it, neglecting those which were balanced.

## **The Right2Know: a case of community-driven advocacy**

As South Africa faces new threats to its freedom of expression, there is a bright silver lining on the horizon with the existence of Right2Know – an activist and community-driven campaign advocacy group.

The Right2Know advocacy campaigns have managed to effectively link freedom of expression to broader issues of poverty, social cohesion and inclusion. It has also created new and alternative participatory spaces for media reform debates such as the streets, town halls and informal settlements. Key achievements include “Freedom Week” that saw 31 events around the country and the hosting of a series of Media Transformation Summits that brought together working journalists, community media and civil society to build alliances to advance a just media transformation.

Right2Know also introduced a new model for access to telecommunication

advocacy. They launched two publications to underpin their campaign for more democratic access to telecommunications. *The Lived Cost of Communications* illustrates the impact of cell-phone profiteering in the lives of poor South Africans, and *Alternatives to Privatized Telecommunications*, presents international alternatives to South Africa's commercialised provision on internet and phone services. The group also published *Zenzeleni: Do it Yourself is an introduction to Community Telecommunications Networks* which tells the story of Mankosi, a village co-operative that came together to build and maintain its own telecommunications network and offer affordable communications to the people in rural Eastern Cape.

## PRINT MEDIA

Print media transformation debates intensify

During the year, the intense debates unfolding about the state of the print media saw several ANC-aligned senior politicians sharply disparaging the print media for bias and subsequently calling for regulation of the press.

The debate on print media transformation deepened when Steven Motale, editor of *The Citizen*, wrote a piece apologising to President Jacob Zuma about the way the media have treated him. The Editor of *New Age*, Moegsien Williams and Hlaudi Motsoeneng, SABC's chief operations officer (COO) concurred and stated that the media acted as an opposition and needed regulation.

These views were echoed by the South African Community Party (SAPC), one of the ANC's Tripartite Alliance, during a conference held in October.

The anti-media sentiments also permeated through discussions, during the ANC National General Council meeting at the end of 2015, when party members repeated their calls to set up the Media Appeals Tribunal to regulate the media.

At a lunch hosted by President Zuma on October 18, to commemorate Media Freedom Day he raised the issue of the ANC proposal - that Parliament be asked to consider introducing a statutory regulatory body. While it is not clear how the Media Appeals Tribunal will operate, journalists are concerned that it will be used to control the press and submerge the current independent co-regulatory press ombudsman system conducted by the press and members of the public.

Julie Reid of the Media Policy and Democracy Project advises that debates around press regulation should be informed by statistical analysis, rather than by hear-say, personal opinion and political interest. In an article titled: *Is the ANC right about press regulation? Research says 'NO'*, Reid points to a research report by the MPDP, which sought "to measure the main arguments of critics of the press regulatory system, most notably those of the ANC, against hard statistics, numbers and facts." "The research report is not to argue a parliamentary investigation of a Media Appeals Tribunal should not take place, but only that if it does, then all involved in such discussions ought to have the relevant correct and empirical evidence available to them during their deliberations, rather than relying solely on conjecture, misinformation and myth," she writes.<sup>2</sup>

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<sup>2</sup> *The Daily Maverick*, 7 December 2015

# South Africa

## Government relations with media and Presidential Press Corps

Juxtaposed against this desire to restrain the media by certain sections of society, Deputy President Cyril Ramaphosa, took a new conciliatory approach, which was seen, when he conducted a meeting between three cabinet ministers, three deputy ministers and editors and senior journalists from the SA National Editors' Forum in Pretoria in November. In effect this was a resumption of annual meetings that had taken place between the two institutions.



The most exciting media related news of the year in South Africa was a declaration by the ruling African National Congress (ANC) that it planned to remove criminal defamation from common law.

He spoke about strengthening relations with the media, acknowledged the tensions between it and the government and the media's critical role in the country. He also expressed the government's commitment to a free and thriving media that should scrutinise the policies

and actions of government. He said the government looked forward to more exchanges of views between the two groupings through quarterly meetings. Three months later there was no indication of this proposal being put into effect.

During the meeting he also announced the launch of the Presidential Media and Communications Working Group whose aim would be to contact media owners and sectoral experts to improve government understanding of developments and challenges in the economic sector. He announced the revival of a plan to create a Presidential Press Corps composed of journalists who cover the presidency. This proposal had been discussed several years earlier between the cabinet and the media but collapsed when the government wanted to introduce security checks on the journalists who would form the corps – a suggestion to which journalists and Sanef raised strenuous objections. Security checks will not be applied to journalists nominated for the new body.

## MEDIA REGULATION

### Press Council reimagining itself to include online publications in its code

In April, Joe Thloloe, Executive Director of the Press Council of South Africa announced that his entity was starting a process of reimagining itself following an announcement by the Print and Digital Media of SA (PDMSA) that it was in the process of dissolving to take account of the changes in the print media industry brought on by declining circulations and revenues.

This meant that instead of the PDMSA representing its members on the Press Council the membership had to be ex-

tended to individual publications by the council. At the same time the Press Council was planning to dissolve itself and set up a new Media Council which would provide for cross-border platform regulation so that it covers both print and online publications that publish news, current affairs, commentary and opinion.

This restructuring process continued throughout the year and was due to reach finality in early 2016. It involved a redrafting of the Press Code to include online publications such as websites, bloggers and other users of the internet who were expected to abide by the code. The council's adjudication section would be a one-stop shop for readers who complain about news, current affairs and commentary by newspapers, magazines and online publications that subscribe to the system. The council was to add people with online skills to its staff to deal with complaints about online material.

A side-effect of the PDMSA ceasing to exist is the loss of an important industry body representing the managements and business side of the press which could have the effect of weakening the press in its relationships with government, authorities and other institutions.

## **JOURNALIST SAFETY**

### **Attacks on journalists increase**

The safety of journalists in the field was a constant talking point throughout the year. There were frequent occasions when journalists and photographers were abused or attacked by people taking part in protest demonstrations and marches or by police at crime and incident scenes. Photographers and reporters often had the images deleted from

their cameras and cell phones by the police.

### **Subsequent meetings were held between media practitioners**

Sanef stated that unlawful conduct by the police was increasing and becoming almost a ritual when journalists arrived at scenes of crime or accident, pointing out that it was an abuse of media freedom and contrary to the regulations in Police Standing Orders which state that police should not obstruct journalists but should treat the media with courtesy, dignity and respect. Under no circumstances should they delete pictures from photographers' cameras. Sanef demanded that the Commissioner should issue instructions to stop this conduct and take public action against those responsible.

During two meetings held with Police Commissioner General Riah Phiyega, journalists protested about the violence they encountered during the coverage of taxi services protests in Durban in October. Print and broadcast journalists and photographers were threatened by people who threw stones at them and their cars, some of which were damaged. Some were tear-gassed.

Following one of the meetings a booklet was compiled, outlining how journalists and police officers should behave at crime or incident scenes, especially towards each other was compiled. The booklet is designed to fit into a person's pocket so that it can be taken out and presented to the police or a reporter if there are complaints about one or the other misbehaving.

On June 1 Sanef met with the Johannesburg Metro Police Department after a photographer and cameraman were abused by JMPD officers outside the

# South Africa

High Court in Johannesburg. The JMPD said it recognised the important role played by the media in gathering and disseminating information and undertook to investigate the matter. The meeting agreed to set-up a forum at which journalists and JMPD members can share perspectives about each other's roles. In light of incidents involving other metro police departments, it was suggested that Sanef should also have similar meetings with them.

There were numerous incidents of violence against and harassment and intimidation of journalists and photographers by both police and demonstrators, during the "Feesmustfall" protests across the country. (The protests were by students and directed at universities and other higher education institutions calling on them not to raise their fees, or to levy any fees at all on impoverished students, in the coming year.)

Sanef declared that the police's heavy-handed approach, in particular at the Union Buildings in Pretoria, affected journalists from a number of media houses including EWN, Radio702, Daily Vox and the BBC. Protestors injured eNCA and SABC journalists and some of these incidents were captured on video. A reporter from the BBC and an eNCA cameraman, were injured after stones were thrown at police and journalists at the Union Buildings. Equipment was damaged and there were also reports of theft. Sanef commended students who intervened and forced the protesters to return stolen equipment. SABC journalists were ordered to leave a meeting of students who claimed that the broadcaster showed bias.

Faith Muthambi, Minister of Communications, dominated media news in the year under review, mainly in connection with the operations of the national broadcaster. Following the SABC Memorandum of Incorporation signed by the Minister in September 2014, giving her the right to usurp the SABC board's powers, the Broadcasting Amendment Bill was gazetted in 2015. The Bill intends to give absolute control to the Minister to hire and fire SABC board members and the chairperson and to reduce the number of SABC board members. If passed, the Bill will make the SABC unaccountable to parliament or to the people of South Africa and instead only accountable to the President through proxy of the Minister of Communication.

Both freedom of expression organisations and opposition political parties have vehemently opposed the Bill. They are joined by the SACP, Congress of South African Trade Unions (COSATU) and ANC alliance partners. The concern is that the Bill will turn the SABC from a public broadcaster into a "corporate broadcaster", or worse still, a state entity.

## Digital migration behind schedule

South Africa failed to meet the deadline to migrate from analogue to digital broadcasting by mid-June. Additionally, the splitting of the former department of communications in 2014 into two entities - the Department of Telecommunications and Postal Services (DTPS) and the Department of Communications (DOC), resulted in a turf war between ministries over control of the migration process.

South Africa agreed in 2006, along with over 100 other countries in the ITU, to switch from analogue to digital television broadcasting by June 2015, but as

## BROADCASTING

### Threats to the independence of the public broadcaster

the day arrived, the country has still not completed making, or begun distributing the set-top boxes required to decode the digital signals to about 15 million households. Disagreements among broadcasters have stalled South Africa's digital migration process.



While the desire to protect children and any move against racism is laudable, the methods to do so, chosen by the South African government are highly questionable.

move is to ensure that children are protected from exposure to disturbing and harmful content and premature exposure to adult experiences, as well as the advocacy of racist ideologies. While the desire to protect children and any move against racism is laudable, the methods to do so, chosen by the South African government are highly questionable.

The FPB states that for all intents and purposes, "content" includes films, games, "certain publications" – not defined but presumed to cover anything that a blogger or user posts online – and self-generated content uploaded or posted on social media platforms.

Although the South African Press Council is broadening its scope to include websites and other online media, there are concerns among freedom of expression organisations about the parallel plans of the South African Films and Publications Board (FPB) to regulate the online media because they fear it could result in restraints on freedom of expression.

The Board has accepted the proposals of the Press Council but is persisting with its plans to regulate those online sites that do not take advantage of the Press Council offer. The Film and Publications Board's Draft Online Regulation Policy document was gazetted 4 March 2015. In August 2015, the South African Cabinet approved the submission of the Films and Publications Amendment Bill which is guided by the policy.

Many South African freedom of expression organisations have criticised the proposed policies which they claim they are unconstitutional, in conflict with other laws, poorly drafted, vague, too far reaching in scope, difficult to interpret and unworkable.

## FREEDOM OF EXPRESSION ONLINE

### The Spectre of Internet Censorship?

The South African Films and Publications Board (FPB) has put together plans to regulate the online media in the form of the Draft Online Regulation Policy which was published in the Government Gazette of 4 March 2015.

The proposals put forward by the FPB are aimed at regulating the online views of bloggers and users of Twitter, Facebook, YouTube and other social media. The reason advanced by the FPB for this

# South Africa

PEN South Africa, the Freedom of Expression Institute and the Right2Know Campaign and other organisations have called for the withdrawal of the draft regulation as it is likely to restrict the expression of opinion in the country. They are also concerned that other governments in Africa and elsewhere may adopt the South African approach or similar approaches as appropriate not only for their efforts to control cyberspace in the interests of childhood protection, but also to protect themselves against legitimate criticism which could result in inroads on media freedom and freedom of expression occurring.

Particularly objectionable is the requirement that online content distributors should be registered and thus could be de-registered for failure to comply with the board's extensive requirements which means they can be prevented from publishing online. In effect, this creates a licensing system which can be used to violate constitutionally protected freedom of expression online and curbing the flow of information, the exchange of ideas and the engagement in creative writing online. One of the uncertainties in the proposals is whether every content distributor in the world would have to register with the FPB or, failing that, be in breach of the regulations since they all make content available in South Africa. The expanded effect of such a regulation should these proposals be adopted in other countries defies comprehension.

Exempted from the regulations in South Africa are the websites of newspapers and magazines which are members of the Press Council and those organisations and individuals that apply to become members of the council – but that leaves the FPB in control over the remaining large number of bloggers, in-

ternet platform users and others that do not take that option, which is unhealthy in a democratic state.

## **Cybersecurity Bill threatens freedom of speech**

On 2 September 2015, government published a Cybercrimes and Cybersecurity Bill for public comment. The law is designed to bring South African law into line with international standards and create specific offences for internet-related crime. The proposed aims to address a number of valid objectives, such as giving better legal definition to crimes such as identity theft, network hacking, online copyright violation and malware attacks. While the bill does indeed include many progressive clauses, at the same time experts have warned that the bill is too broad and encroaches on constitutional freedoms.

The bill places excessive limitations on online freedoms such as the right to access information, right to privacy, and the right to freedom of expression and opinion. The bill gives the South African Police Service and the State Security Agency overly far-reaching powers to investigate, search, access and seize just about anything. Furthermore, the bill will criminalise whistleblowing, as well impact on investigative reporting. Advocacy groups such as the Right2Know (R2K), PEN, Freedom of Expression Institute have stated that says while there is need to combat genuine cyber-crimes and protect national security in the country, the Bill is so broad and open to abuse and should be re-written.

## LOOKING FORWARD

South Africa goes to the polls in 2016 in National Municipal elections which will test the popularity of the governing African National Congress. Signs are its support is falling in some municipalities. The stakes will be very high in this election and as such the role of the media will be of high importance. 2016 is also set to be a year of economic hardship and raised political risks.

# South Africa 2015 violations & victories



**February 12**

## **Journalists' cell phones blocked**

Journalists in Parliament to hear the State of the Nation Address by President Jacob Zuma were astonished when their cell phones would not respond. They found that the State Security Agency had installed a signal blocking device to thwart any attempt to use unmanned aircraft drones to attack the president or parliament and this had rendered the phones inoperable. The one bright spot was the immediate disabling of the device when journalists complained.



**March 15**

## **Western Cape Government calls for boycott of newspaper**

Democratic Alliance leader Helen Zille instructed Western Cape Government provincial departments to cancel their subscriptions to the *Cape Times*, a local newspaper. The directive to end subscriptions followed the publication of a report earlier this month titled, 'Foetal alcohol syndrome' sad legacy: The story of baby Thomas.' The DA Premier Helen Zille responded to the article, criticising the facts of the story and the newspaper's alleged refusal to cooperate in locating the perpetrators.



**February 12**

## **Court action against 'censored' TV pictures of Parliamentary turmoil**

Journalists instituted a court action against Parliament's broadcasting team for failing to transmit pictures of mis-behaviour of MPs and the turmoil that erupted when police ejected Economic Freedom Front (EFF) MPs. The cameras were switched from the scuffling MPs to the face of the Speaker, preventing viewers from seeing the disruption. In May two of three judges ruled against the journalists who have appealed.



**April 8**

## **Security guard stops picture of train derailment taken from public road**

*Paarl Post* community newspaper journalist Frans le Roux was physically prevented by a security guard from the Passenger Rail Authority of SA (Prasa) from taking pictures of a train derailment in Paarl. Le Roux was trying to take pictures from a public road when the guard stormed at him and stopped him. The editor has lodged a complaint with Prasa and pointed out that the newspaper had experienced similar interference from Prasa security guards in the past. Although taking pictures on railway property can be banned, photographers are free to take pictures of scenes on railway property from a public road or place.

# South Africa 2015 violations & victories



## April 9 Journalist held for hours after cell phone picture of Metro policeman detaining motorist

Pretoria *Rekord* journalist Eliot Mahlase was detained for hours by the Tshwane Metro police and forced to delete pictures he had taken with his cell phone of a policeman stopping and detaining a motorist, presumably for alleged reckless driving. Mahlase said the police manhandled the motorist. He was shocked when a policeman he had photographed tried to push him into the back of a police van. He protested he was not a criminal and that he had taken the pictures legally in a public street. He was taken to the Garsfontein police station where he was ordered to delete the pictures from the phone and hand the phone to the officer. After a senior member of the *Rekord* staff had intervened he was released some hours later. He lodged a formal complaint with the metro police and laid a criminal charge. At a meeting between the editor and deputy editor with the Metro police on April 14 the TMPD promised to investigate. Later they disputed Mahlase's allegations. The outcome is not known.



## April 15 Policeman deletes cell phone picture of police acting against looters

After using his cellphone to take pictures of police acting against looters in Jeppestown, Johannesburg, Eyewitness News reporter Thembekile Mrototo was forced by a police officer to hand over

the phone. The officer deleted the pictures and then handed back the phone. The officer was not wearing his police badge.

## April 19 Photographer's front page picture of man being butchered shocks readers

*Sunday Times* senior photographer James Oatway filming rioting in Alexandra Township, Johannesburg, captured a violent attack by a group of men on Mozambican shopkeeper Emmanuel Sithole who was butchered with knives, beaten with a heavy wrench and left for dead. He died shortly afterwards. Oatway's picture, which appeared on the front page of the paper, shocked readers. He was asked whether he should have tried to save the man, but Oatway, clearly worried about his own safety, said there wasn't time and he did what he was expected to do and that was to show people what was happening.



## April 21 Striking taxi drivers order journalists to drive off 'if you don't want to die'

A reporting team from the Daily Sun covering riots by taxi drivers in Cape Town where two Golden Arrow buses had been set on fire were assaulted and abused by the drivers. Reporter Mandla Mnyakama and photographer Lulekwa Mbadamane parked their car near one of the burning buses and as they got out were stormed by 20 men armed with bricks who demanded to know why they were taking pictures. They searched the

journalists and grabbed Lulekwa's camera which she was hiding under her jacket. They smashed it on the road, destroying it, and also took her cell phone. They ordered the two to drive off "if they didn't want to die", before pelting their car with stones.



### **April 21** **Photographer safely escorted from tense suburban scene**

Photographer Mathews Baloyi was safely escorted out of Jeppestown in the evening just before the military and police raid of the area after residents who saw him raise his camera started threatening to beat him and other journalists for the Sunday Times pictures of Emmanuel Sithole being killed in Alex which led to the arrest of four suspects (See April 19 item above).



### **June 1** **Johannesburg Metro police stop cameramen picturing arrest of drunk driver**

Sanef complained to the Johannesburg Metro Police Department that JMPD officers prevented eNCA cameraman Pierre le Roux and Beeld photographer Cornel van Heerden from filming the officers arresting a drunk driver outside the South Gauteng High Court a week earlier by manhandling the journalists. In the scuffle Le Roux's camera was damaged. Sanef was assured that an investigation had been instituted but the outcome is not known.



### **July 27** **Photographer covering parents' violent protest against teacher shortage trampled on**

Daily Sun journalist Luvuyo Mehlwana was hit on the head and fell down while covering a protest march by parents against the East-

ern Cape Education Department in Port Elizabeth's northern areas over an alleged shortage of teachers. The protest turned violent and police and cars were pelted with stones. Mehlwana was trampled on as he lay on the ground and robbed of his laptop, camera, wallet and cell phone. He sustained serious injuries. His camera was recovered, but the pictures and video on it had been deleted. He opened a case of assault and theft.



### **August 6**

Police officer warns cameraman he is "in trouble" if pictures taken *The Citizen* photographer Allister Russell was briefly detained by a police officer while taking pictures of a march on the University of Johannesburg's Auckland Park campus by the EFF Student Command. The officer said Russell would "be in trouble" if pictures of him appeared in the newspaper. Police officers pushed him away when he tried to photograph the arrest of scores of young students.



### **August 7**

#### **Sanef outraged by attack on journalist by former rail chief**

The South African National Editors' Forum (Sanef) expressed outrage at an attack on Rapport journalist Pieter-Louis Myburgh by the former chief executive officer of the Passenger Rail Agency of South Africa (Prasa), Lucky Montana. Myburgh visited Montana's new house in Waterkloof, Pretoria, in his car after allegations of impropriety over the financing of Montana's properties surfaced. After Montana questioned his presence at the house, Myburgh drove off and Montana threw a brick at the car, striking a rear door which was damaged. Myburgh laid charges against Montana at a police station.

# South Africa 2015 violations & victories



**August 18**

## **Court suspect smashes camera in SABC cameraman's face**

Amukelani Rikhotsso, on trial for allegedly causing the accident that killed Public Service and Administration Minister Collins Chabane reacted violently when SABC cameraman Llywellyn Carstens began taking pictures of him walking down the street after appearing in court. He smashed the camera in Carstens' face. Carstens said, "You know in court when you want a shot, you follow people. I followed him down the street and he turned and smashed the camera in my face." He laid a charge of common assault and malicious damage to property.



**November 22**

## **Deputy President Ramaphosa recognises critical role of the press**

After several failed attempts to arrange a meeting as a continuation of previous annual meetings between the Cabinet and the press, Sanef and the Presidency decided on this date for this year's meeting at the Presidential Guest House in Pretoria. The proceedings were chaired by Deputy President Cyril Ramaphosa who emphasised the important role played by the media in society in reporting the news and holding the government to account. He announced the revival of a project to create a Presidential Press Corps.



**September 20**

## **ANC pursues scrapping of criminal defamation**

The ANC held a workshop in Modderfontein, Johannesburg, to discuss its announcement that it plans to scrap criminal defamation law. It stated that defamatory statements made through the media should not be considered a criminal offence. It was seeking the views of media and other organisations upholding freedom of expression and received total support. Draft legislation to scrap the law is expected to come before the cabinet in the first half of 2016.



# Swaziland

National Overview 2015 by  
MISA Swaziland

**I**t has certainly been an eventful year for Swaziland with the most talked event being the release of *The Nation* editor, Bheki Makhubu, and columnist, Thulani Maseko after spending 15 months in prison. The two were released on 30 June, 2015 following an appeal hearing before the Supreme Court. The Crown Prosecutor conceded that the state had no case against them.

The two were arrested after publishing articles in *The Nation* magazine, questioning judicial independence and political accountability in Swaziland. The fine imposed on the magazine was also overturned.

Following close on the heels of this incident which was celebrated by media practitioners, human rights lawyers and activists in Swaziland and on the continent was the judicial crisis which saw the arrest on corruption charges and defeating the ends of justice were issued of the then Minister of Justice and Constitutional Affairs, the Chief Justice, two judges and the High Court Registrar.

For detailed information about the judicial crisis, readers can access the report compiled by members of an international fact-finding mission to Swaziland, convened by the International Commission of Jurists (ICJ), in collaboration with the Africa Judges and Jurists Forum (AJJF), Judges for Judges Netherlands (JJ) and the Commonwealth Magistrates' and Judges' Association (CMJA).

[http://eeas.europa.eu/delegations/swaziland/documents/news/2016/swaziland-justice-locked-out-rol-crisis-publications-mission-report-2016\\_en.pdf](http://eeas.europa.eu/delegations/swaziland/documents/news/2016/swaziland-justice-locked-out-rol-crisis-publications-mission-report-2016_en.pdf)

Justice Locked Out: Swaziland's Rule of Law Crisis provides detailed information on the impeachment of former Chief Justice Ramodibedi, the arrest of the Minister of Justice, two High Court judges and a High Court Registrar. It also analyses the worrying trend of repeated interference by the Executive, and of the Judiciary's inability to defend its independence, exacerbated by apparent strife within the ruling authorities of Swaziland.

## FREEDOM OF EXPRESSION

### Makhubu and Maseko released

On 30 June, 2015, the Swaziland Supreme Court released Bheki Makhubu and human rights lawyer, Thulani Maseko from prison after the Crown Prosecution chose not to appeal against their conviction. The two met were reunited with their families, 15 months after their rearrest.

The case goes back to 2014, when journalist and editor of monthly news magazine *The Nation* Bheki Makhubu and human rights lawyer, Thulani Maseko, wrote articles criticizing the judiciary system of Swaziland for its lack of impartiality and lack of independence. In the articles, the actions of the Chief Justice of the High Court, Michael Ramodibedi, for ordering the arrest of a government vehicle inspector were criticised and condemned.

Makhubu and Maseko were subsequently arrested and charged with two counts of contempt of court. Lawyers argued that the arrest warrant was unconstitutional, unlawful, and irregular since only a magistrate was authorized to issue an arrest warrant and not Justice Ramodibedi, since he was a justice of the High Court. Justice Dlamini of the High Court dismissed the arrest war-

rant and released Makhubu and Maseko were released.

## **It was a short lived reprieve.**

Three days later Justice Mpendulo Simelane reordered the arrest of Makhubu and Maseko based on an appeal by Justice Ramodibedi, the Office of the Director of Public Prosecutions, and the Attorney's General Office, against Justice Dlamini's decision. (Judge Simelane has been since charged with corruption and defeating the ends of justice.).

After the pair had been detained for more than three months without bail, Judge Simelane sentenced Makhubu and Maseko to two years in jail without the option of a fine. According to news reports, the judge said the term was meant to be a deterrent to other journalists.



The government

should stop using the Sedition and Subversive Activities Act and the Suppression of Terrorism Act to impede media freedoms.

In appealing their re-arrest, the two argued that the state did not prove its case beyond reasonable doubt pertaining to the offense of contempt of court, as they lacked sufficient evidence to satisfy the

elements of the offense. Makhubu and Maseko also submitted that both counts were an unjustifiable limit to the right to freedom of expression.

Justice Simelane convicted Makhubu and Maseko for contempt of court. He then sentenced both defendants to two years of prison without benefit of bail, and fined *The Nation* and the publishers of the magazine.

Makhubu and Maseko appealed the decision in the Supreme Court and were released 15 months after their rearrest.

## **Global network of CSOs call for media freedom**

Lawyers in Swaziland and an international human rights group have jointly called for media freedom in the kingdom to be respected.

In a submission to the United Nations they called for an end to media censorship in the kingdom and for more independent newspapers and media houses to be allowed to operate in Swaziland.

The call comes jointly from CIVICUS, a global network of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world, and Lawyers for Human Rights (Swaziland) (LHRS), a non-partisan group of lawyers that advocates for the respect of human rights and promotes good governance, the rule of law and democracy.

The report is to the United Nation's Human Rights Council's Working Group on the Universal Periodic Review of Swaziland that is to investigate Swaziland's record on human rights in 2016.

CIVICUS and LHRS made the following recommendations to the UN working group.

- “The environment in which the media operates in Swaziland should be opened up to allow the registration and operation of more independent newspapers and media houses.
- “The government should stop using the Sedition and Subversive Activities Act and the Suppression of Terrorism Act to impede media freedoms.
- “Swazi authorities should respect and fulfil the right to freedom of expression and stop the practice of intimidating and persecuting journalists using unlawful legal processes.
- “Journalists and media representatives should be protected by the law at all times.
- “Public figures should stop threatening journalists and desist from interfering in state-owned newspapers.
- “Obsolete laws that restrict freedom of expression such as Sedition and Subversive Activities Act Suppression of Terrorism Act should be reviewed and repealed.
- The Swazi authorities should stop censoring the contempt of newspapers and refrain from interfering in the editorial policies of newspapers to eliminate censorship.”<sup>1</sup>

## PRINT MEDIA

While the arrest, conviction and imprisonment of the *The Nation* editor and columnist, Bheki Makhubu and human rights lawyer, Thulani Maseko were actions meant to silence criticism of the judiciary, subsequent events vindicated

<sup>1</sup> All Africa - Swaziland: Call to End Swazi Media Censorship, 29 September, 2015 <http://allafrica.com/stories/201509300612.html>

that condemnation.

In April 2015, Minister of Justice and Constitutional Affairs, Subusiso Shongwe, Chief Justice Michael Ramodipedi, Judges Mpendulo Simelane, Jacobus Annandale and High Court registrar Fikile Nhlabatsi were arrested

The *Swazi Observer* and *The Nation* were vindicated for their scathing articles on the conduct of the judicial officers.

In an unrelenting effort the journalists from these two publications continued investigating the judiciary and eventually this resulted in the arrests of Minister of Justice and Constitutional Affairs, Subusiso Shongwe, Chief Justice Michael Ramodipedi, Judges Mpendulo Simelane, Jacobus Annandale and High Court registrar Fikile Nhlabatsi were arrested.

Charges against them ranged from corruption to defeating the ends of justice. While the State had since dropped charges against Annandale and Nhlabatsi, the trio (Shongwe, Ramodibedi and Simelane) still have a case to answer.

In a bid to clean up the judiciary, the government fired Justice Minister Shongwe and Chief Justice, Ramodibedi.

## MEDIA REGULATION

With the assistance of the National Endowment for Democracy (NED), MISA Swaziland organised a media literacy workshop for the ICT Ministry Parliamentary Portfolio Committee. This was carried out in November 2015 with the purpose of increasing understanding on the importance of ATI in an attempt to lobby MPs to support MISA's campaign for an ATI law in the country. The work-

shop was attended by a majority of the committee members including chairperson, MP Patrick Motsa. Principal Secretary in the ICT Ministry, Sikelela Dlamini and Director for Information and Media Development, Phesheya Dube, were also in attendance. The Portfolio Committee pledged full support to MISA's ATI Campaign.

**“** Division across lines of location - privately owned media and state controlled media – has made it difficult to bring journalists together and this has left them vulnerable to exploitation by media owners.

ed division among media practitioners.

Division across lines of location - privately owned media and state controlled media – has made it difficult to bring journalists together and this has left them vulnerable to exploitation by media owners. With the exception of the Swazi Observer and Swaziland Television Association (STVA), all other media houses are preventing their staff to join a workers union. The Swaziland National Association of Journalists and the Media Workers Union of Swaziland have protested the fact that media houses are disregarding the provision of this fundamental right as contained in the Constitution and the Industrial Relations Act.

This has discouraged media organisations from calling a meeting for their members and prospective members to discuss issues affecting their lives in the workplace.

Whilst awaiting the enactment of the Swaziland Broadcasting Bill into law, SMN had mounted a community broadcasting campaign aimed at raising awareness.

## BROADCASTING

### Community Broadcasting

In November 2015, the Swaziland Community Radio Network (SRCN) was relaunched as the Swaziland Multimedia Network (SMN). This is an amalgamation of the six communities interested in establishing their own local radio stations. During a courtesy visit, the SMN, with the support of MISA Swaziland raised concerns with the ICT Minister Dumisani Ndlangamandla over the slow pace in the implementation of the Swaziland Broadcasting Bill which has provisions allowing for a three tier broad-

## JOURNALIST SAFETY

### Developments in the media industry

Swaziland's media has grappled in uniting collectively around issues that impact on the sector and efforts to revitalise and strengthen the Swaziland National Association of Journalists (SNAJ) and Media Union of Swaziland (MWUS) continued to be frustrated by deep-root-

casting landscape. Ndlangamandla assured SMN that the Swaziland Broadcasting Bill and other media-related bills were ready to be tabled in Parliament.

### **MPs bar ICT minister from House of Assembly for failing to rescind ban**

In July 23 2015, Members of Parliament (MPs) barred ICT Minister, Dumisani Ndlangamandla, from the House of Assembly for failing to implement a resolution they made on June 3 that he rescind a ban imposed on politicians preventing them from accessing the state broadcast media.

A week earlier, when addressing the MPs, Ndlangamandla was quoted as saying: "What is there to revoke because when I came into office there was no instrument stopping MPs from state-owned media." He seemed to be unaware that in 2012, the Ministry under his predecessor Winnie Magagula, introduced the Public Service Announcement Guidelines of the Swaziland Broadcasting and Information Services (SBIS) which amongst many other things would not allow the broadcast "of any public service announcement that does not support government's agenda."<sup>2</sup> According to the same guidelines, only ministers and government officials have unlimited access to broadcast media provided they limit their communication to government business.

During the July Parliamentary session, Manzini North MP, Jan Sithole raised the motion that the Minister should justify why he should not held in contempt of Parliament for failing to implement

a House resolution. The Minister explained that after hearing the concerns of the MPs he held a meeting with directors of broadcasting instructing them to feature MPs talking on government issues. He added that his Ministry was working on regulations to guard the operations of the media so they were not subject to misuse. He said the regulations still had to be presented to Parliament.

To date he has failed to implement the Parliament resolution.

### **Digital migration delay**

Even though the ICT ministry assured Swazis that the International Telecommunications Union (ITU) deadline set for digital migration was on track, the switchover failed to take place on the set date of June 15 or the extended deadline of December 31. The explanation given was that the kingdom was being held back by its telecoms agreements with its two neighbours, South Africa and Mozambique.

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<sup>2</sup> <http://www.observer.org.sz/index.php?news=41420> SBIS Not Allowed To Broadcast Anti-Govt Sentiments - Public Service Announcement Guidelines of the Swaziland Broadcasting and Information Service

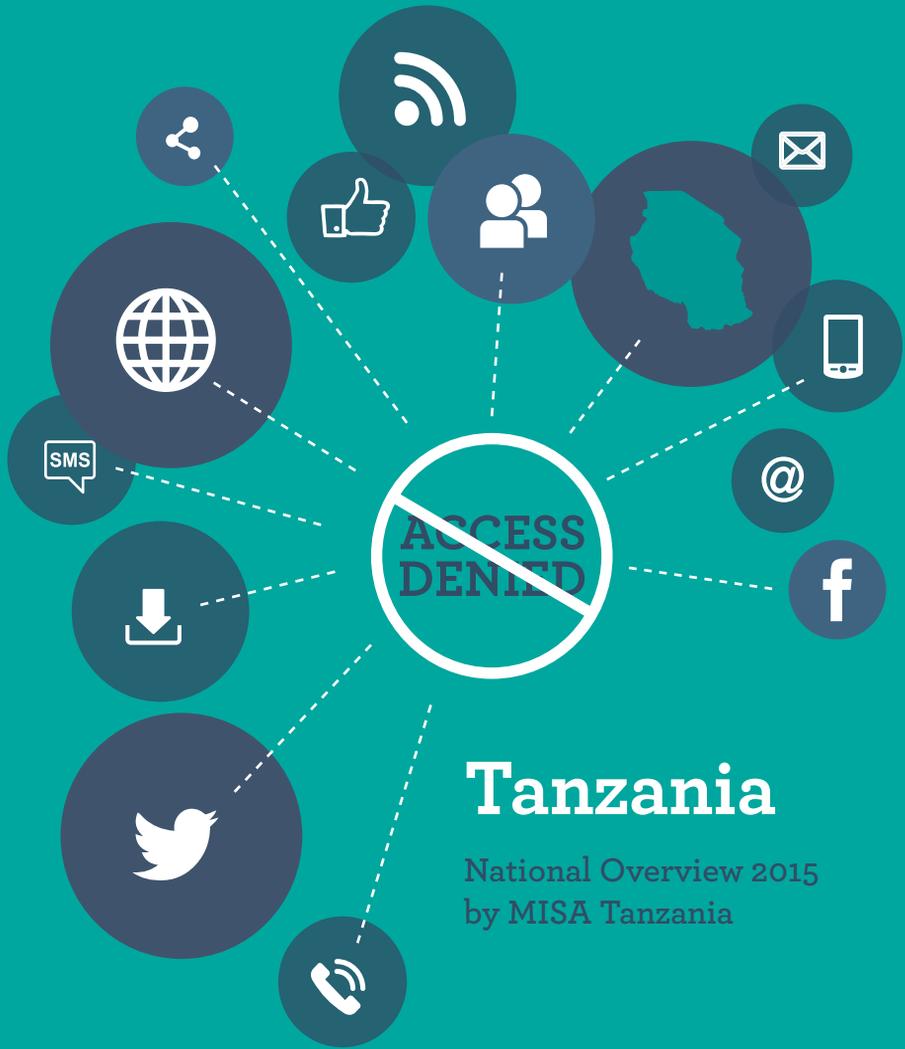
# Swaziland 2015 violations & victories



## 30 June

Bheki Mabhuku and Thulani Maseko were released when Swaziland's Director of Public Prosecution (DPP) unexpectedly backpedalled on the conviction of *The Nation* editor, Bheki Makhubu, and columnist, Thulani Maseko after they had been in prison for 15 months and asked the Supreme Court that they be immediately released.





# Tanzania

National Overview 2015  
by MISA Tanzania

The major political event dominating the landscape in 2015 was the highly contested General Election which ushered in Dr John Pombe Magufuli as the new President of Tanzania.

In an election that was regarded as the most competitive and the most unpredictable since multi-partyism was re-introduced in 1992, Magufuli garnered 8,882,935 votes representing 58.46% of the vote while leading opposition candidate Edward Lowassa gained 6,072,848 votes. Although, 14.5 million Tanzanians cast their vote, over 23 million people across the country were registered through the newly introduced biometric voter registration system.

More familiarly known as the Bulldozer, for driving a programme to build roads when he served as the Minister of Works, President Magufuli has a reputation of being pragmatic and is results driven politician. People saw his sense of humour during the campaign trail when he would drop to his knees and perform push-ups because critics suggested he was unfit for office.

He is as highly regarded on the continent, as he is among his peers – for taking bold action against excessive government expenditure, firing what he considers “lazy and incompetent” civil servants. He cancelled independence anniversary celebrations and directed that the money be used for health services. He cut foreign trips by government officials saying ambassadors can do the work. As his list of impulsive “do good” actions grow, so does his list of admirers.

While the continent celebrate his triumphs, the media sector are concerned with the legislation that the Government has introduced throughout the year and which many felt Magufuli would repeal or amend in an attempt to ensure that media freedom and freedom of expression are maintained.

By the end of April 2015, the Government introduced four bills that directly impact on the media. These were; The Cybercrimes Bill, 2015, The Statistics Bill, 2013, The Media Services Bill, 2015 and The Access to Information Bill, 2015.

A review of the four pieces of legislation in *An Assessment of the New Tanzanian Media Laws of 2015*: points out that while the government argued that the four bills were needed to facilitate access to information and regulate the media sector, its critics argue that these laws contain draconian measures that will close down democratic space.

If all these bills are measured on the basis of issues of rights to freedom of expression and information and the likelihood of these rights being compromised or violated by provisions in the act, then they all go against the international benchmarks of media freedom and media regulation and they contravene African and international standards on numerous counts and should be rewritten.

The contraction of media freedom through legislation and other measures question President’s commitment towards democracy, human rights and development.

## FREEDOM OF EXPRESSION

Enactment of legislation impedes on the right to FoE and media freedom

In April 2015, Government introduced The Cybercrimes Bill, 2015, The Statistics Bill, 2013, The Media Services Bill, 2015 and The Access to Information Bill, 2015 under a “certificate of urgency”, limiting normally available channels for public consultation resulting in the Cybercrimes Bill and The Statistics Bill being passed. Media stakeholders managed to rally support on the The Media Services Bill, 2015 and The Access to Information Bill, 2015, resulting in their enactment being delayed.

The Statistics Act introduces severe restrictions on the publication or communication of any contentious statistical information. It makes it illegal (i) to publish or communicate “false” or “misleading” statistical information, and (ii) “without lawful authorisation of National Bureau of Statistics,” to publish or communicate statistical information that “may result to the distortion of facts”. Punishments in both cases are harsh – a minimum 12 month prison sentence and/or a fine of over ten million shillings (around \$6,000), with no maximums. There are no protections for those acting in good faith.

The Cybercrimes Act makes it an offence to publish any information online that is “false, deceptive, misleading or inaccurate”. If a mistake is made in a survey report or blogpost – or a statement is considered “misleading” – it could be regarded as a punishable offence.

According to the Act: “Publication of false information: (publication of false information is defined as the publication of “information, data or facts presented in a picture, texts, symbol or any other

form in a computer system where such information, data or fact is false, deceptive, misleading or inaccurate”) draws, at the least, a six-months in prison and/or a fine of Tshs. 3 million. An offender can face at least three years in prison and/or a fine of at least Tshs.10 million for publication of materials that incite, deny, minimize or justify acts that constitute genocide or crimes against humanity.

The Act goes further by giving even very junior police officers the authority to search and/or seize any computer equipment or data, including the content of messages, with no meaningful justification required or oversight provided. This includes demanding information from internet service providers and mobile phone networks.



The contraction of media freedom through legislation and other measures question President’s commitment towards democracy, human rights and development.

## Potential ATI legislation restricts access

If adopted in its current form, the Access to Information Act imposes a minimum 15-year prison sentence on any government officials who release information that is subject to a number of overly broad and vaguely defined exemptions. Those exemptions include disclosures that are “not justified in the public interest”, that “infringe commercial interests” or that “significantly undermine the operations of the Tanzania Broadcasting Association”.

Section 18 (1) of the Access to Information Bill carries wider violation of right to information. This section reads as follows; “Information obtained by a person requesting from the information holder shall not be for public use”. The Act also attaches a minimum, five-year prison sentence for the offence of publicly sharing information received from an “information holder” — a public authority or private organisation that receives public funds or possesses information related to public health, the environment, human rights or illegal activities.

The bill will allow such “information holders” to demand fees and will not prohibit officials from refusing to provide requested information. Finally, the Act will not allow courts to substitute fines for prison sentences, which critics said could enable those who wish to silence journalists to use the threat of imprisonment to do so. Critics of the proposed Act said the possibility of prison sentences had the potential to generate fear and create an excuse for officials not to provide information.

## JOURNALIST SAFETY

Journalists prevented from carrying out their duties

There were scattered reports of incidents of intimidation against journalists covering the elections. Journalists were blocked from covering a meeting by an official from the Chama Cha Mapinduzi ruling party. Journalist Benson Mwakalinga was slapped and punched by the same official, when he protested the lack of press access.



## The Cybercrimes Act

makes it an offence to publish any information online that is “false, deceptive, misleading or inaccurate”. If a mistake is made in a survey report or blogpost – or a statement is considered “misleading” – it could be regarded as a punishable offence.

A month before the elections, party officials barred Peter Elias, a reporter from the privately owned newspaper *Mwananchi*, from joining the press entourage following Magufuli, allegedly because of his unfavourable coverage.

## MEDIA REGULATION

### Media Services Bill clamps down on the media

Although it has not been passed, the Media Services aims to restrict the independence and freedom of the media in Tanzania by way of, among other things, establishing a statutory media council (referred to as the “Media Services Council”), requiring journalists and media houses to obtain an official licence, affirming the government-controlled ‘public broadcaster’ as the state broadcaster, introducing severe sanctions for a number of media-specific offences and allowing for the banning of newspapers as well as the import of publications. The Media Services Council will oversee all publishers, from major news outlets to bloggers’ sites and prohibit any non-accredited journalists from publishing.

Contained within the Bill are valid clauses instructing media owners to provide their workers with contracts and insurance, but these legitimate sections are heavily outweighed by the punitive measures against the media.

## FREEDOM OF EXPRESSION ONLINE

Fears over the negative impact of the Cybercrime Act became a reality prior to the General Election in October 2015.

Government announced the enforcement of the Cybercrimes Act in September 2015, and a month later the police raided the tallying centre of an opposition party and arrested 8 members of staff, claiming the group had published inaccurate data on Facebook, Twitter, and the internal election management system, according to reports.

In late October, the police also raided the Dar es Salaam offices of the Tanza-

nia Civil Society Consortium on Election Observation, a civil society group that monitored the elections confiscating laptops and detaining staff. The police accused staff of collecting and sharing election results, despite the consortium having permission from the National Election Commission to observe and monitor election campaigns across the country.

Maxence Melo, founder of *Jamii Forums*, Tanzania’s extremely popular Swahili-language online social media platform has been under severe pressure since the enforcement of the Cybercrimes Act.

Melo been summoned by the Police several times, under this new law and it is all related to content posted on the JamiiForums.com platform. The minimum amount of time he has spent in police custody is 2 hours and 30 minutes and the longest time he has spent being questioned is 8 hours. The direct issues they raised and wanted were the real names, email and IP addresses of members who had posted content they were interested in. The website has also suffered severe attacks and almost US\$10,000 has been spent rectifying the website and changing hosts.

He has also suffered on a personal level – “the indirect attack was a personal one against me. They targeted my home and killed 5 of my dogs. The police inspector who visited said the attack was intended to scare more than to hurt anyone and that what I do may have been the cause,” Melo told MISA Tanzania.

## BROADCASTING

Tanzania Communications Regulatory Authority announces stringent rules

In June, authorities announced stringent broadcasting rules for the election period. Under the rules, bloggers, SMS pollsters, and broadcasters were required to register with the state-run Tanzania Communications Regulatory Authority, comply with Tanzania's laws governing the operation of electronic media, and ensure that information in blogs was accurate, factual, and balanced to all parties in the elections.

The government through the Tanzania Communication Regulatory Authority (TCRA) introduced the Subsidiary Legislation, best known as the Broadcasting Services (Content)(The Political Party Elections Broadcasts) Code of 2015.

This subsidiary legislation one was gazetted in June 2015 and media owners were informed during one of the seminars organized by TCRA. It specifically focuses on electronic media (radio, television and social media) during reporting of election issues. The Code has serious implications on free expression especially online. Journalists were given very little notice of this Code, yet they are directly affected by it.

In June, the government passed a subsidiary legislation to the Broadcasting Services Code, specifically in relation to reporting on the upcoming elections. Ostensibly, the legislation is intended to encourage impartiality from journalists, but littered throughout the 20-page document are regulations that could seriously compromise journalistic freedom.

Television broadcasters, for example, are mandated to report only on things that the government deems "interest-

ing and relevant" and prohibited from broadcasting any "inflammatory, defamatory and divisive matter." Print journalists are cautioned to make sure their reporting is "accurate" and "balanced" and warned not to "hurt the feelings of any person." Under the code, journalists are also prohibited from using any language that might "breach peace." The terminology is general and rather vague, so any issue being discussed may fall under these broad terms.

## LOOKING FORWARD TO 2016

The Access to Information Act has to go back to the drawing board so that the content in particular underscores the essence of an informed public through guaranteeing the citizens' access to public information, which empowers the people to call on their governments to account for their actions.

A Right to Information Act should provide for the legal framework and procedures on how all Tanzanians can access information that is in the hands of the Government and its agencies but also on how Government can pro-actively share this information with the public.

There is a need to review the Cyber-crime Act 2015 and the Statistics Acts 2015 and repeal laws that restrict press freedom and put into place comprehensive and progressive legislation that provides for fundamental and basic rights such as access to information, freedom of expression and provide a more conducive environment for media to operate and function effectively in keeping citizens informed.

# Tanzania 2015 violations & victories



## January

The government banned a regional newspaper *The East African*, claiming that it had not been properly registered in the country, yet the paper has been in circulation in Tanzania and the region for more than 2 decades. It was allowed back on the newsstands a few months later.



## June

Zanzibar based *Coconut FM* was raided by 20 masked men who said they were looking Ali Mohamed Abdulrahman - a radio host at the station. Abdulrahman hosted a special programme that had discussed the voter registration exercise in Zanzibar during which it was alleged that a group of masked men were intimidating people who were registering. It was alleged that the masked men were seen being ferried to registration centres in police vehicles. MISA Tanzania was told that the radio station suspended the journalist for five months and stopped airing political programmes.

In a separate incident, Omar Ali, who is a freelance journalist, was brutally attacked by unknown assailants and his legs were broken. Omar's attack was associated with his coverage of the voter registration exercise and the perpetrators were alleged to be state agents.



## July 25

Mbeya based community radio station *Kyela FM* aired a special programme featuring for a member of the parliament belonging to the Chama Cha Mapinduzi party who is also the CEO of the radio. Soon after the programme was aired, the Tanzania Communication Regulatory Authority (TCRA) confronted the radio station and requested an audio copy of programme and warned that they would suspend the radio station.



## August 3

The Tanzania Communication Regulatory Authority (TCRA) team delivered a letter to *Kyela FM* which announced the suspension of the radio station. The radio station manager refused to provide his signature to indicate receipt of the letter. The TCRA team went ahead and closed down the radio station.

The management of *Kyela FM* feel the radio was suspended following pressure from Minister Mwakymbe who was also contesting candidacy as MP for the CCM. The TCRA team alleged that they suspended the station for operating without a license and a radio transmitter that was found inside the station instead of outside as per regulations.

# Tanzania 2015 violations & victories



## September

Chama Cha Mapinduzi dismissed a *Mwananchi* newspaper journalist Peter Elias from its campaigns over unfavourable coverage. The journalist had been embedded for the CCM campaigns during the 2015 electoral cycle.

During the same month, *Uhuru* newspaper journalist Christopher Lissa, was assaulted by Chadema guards while covering a story of alleged members protesting against a move by the party's presidential candidate, Edward Lowassa, when he requested Lutherans to pray for him to become the president. It was reported that Chadema guards arrested and assaulted Lissa, claiming that he was among those who organized the demonstration.



# Zambia

National Overview 2015  
by MISA Zambia

**T**he year 2015 kicked off with elections held on 20 January 2015 to elect a president to serve the remainder of the term of President Michael Sata, following his death on October 28, the previous year. The Zambian government was complying with Constitutional requirement which stipulates that a fresh election must be held within 90 days following the death of the President.

With the change of government, came a reshuffle of leaders and of particular significance to the media sector was the appointment of the outspoken Chishimba Kambwili who at his swearing in ceremony promised to make the enactment of the access to information bill a priority.

The new leadership promised an open and communicative governance system with regular updates of information which partially came through when President Lungu held a press conference which was the first briefing by a President since the PF took office in 2011.

The polarisation which has plagued the media sector for some time, was more visible in the pre and post Presidential election period as certain media houses put their weight behind certain candidates – sometimes openly and at other times by implication.

In November 2015 the Zambia Parliament passed the Constitution of Zambia Bill Number 16 and The Constitution of Zambia (Amendment) Bill Number 17 when they came up for their second reading after heated debates from both sides of the House. Earlier in March, Minister Kwasimbili told the

state broadcaster that Government was contemplating combining a referendum with the August 2016 general elections in order to cut on the costs.

The economic downturn impacted directly on the media houses, especially print media and the major daily newspapers announced increases in their cover prices due to the exorbitant costs of ink newsprint and printing.

Legal impediments against freedom of expression continued with the arrest of various individuals on archaic penal code provisions that stifle free speech such as the defamation of the president clause in section 69 as well as other vague laws on state secrets, sedition and obscene matters.

The year was therefore a bittersweet year as most of the promises of media reforms that characterised the Patriotic Front's rise to power in 2011 remained unfulfilled by the end of the year, including among others, the enactment of the Access to information bill.

## **FREEDOM OF EXPRESSION**

Steps to reform media laws, but no road-map

In a move that was widely welcomed, President Edgar Lungu directed the Ministry of Justice and other stakeholders to act on the need to reform the Public Order Act and other laws which impede on the freedom of expression, association and assembly such as section 53 of the Penal Code on Prohibited Publications, section 177 on obscenity and the State Security Act among others. He said this during his address to Parliament on September 18, 2015 – his first statement to Parliament since assuming office. This was promising news as the draft Constitution contains clauses that explicitly

guarantee media freedom and access to Information, as opposed to the current constitution in which press freedom is a rider on the freedom of expression in Article 20.

As the year closed, however, there was a glaring absence of a road map to guide the process of reforming legislation, including a consultative process to identify specific areas of concern and subsequent change.

**“The polarisation which has plagued the media sector for some time, was more visible in the pre and post Presidential election period as certain media houses put their weight behind certain candidates – sometimes openly and at other times by implication.**

A notable attack on freedom of expression was the arrest of popular artist and social commentator Chama Fumba, popularly known as ‘Pilato’ on

the charge of ‘conduct likely to cause breach of the peace’ following a song he produced in which he criticised the republican president. It was gratifying when the state entered a *Nolle Prosequi* for lack of evidence and failure to present witnesses before the court. The arrest was widely condemned as an affront on the freedom of expression and MISA Zambia promptly rose to the defence of Fumba by providing solidarity and legal support.

Another infringement on freedom of expression was the threat by Information Minister Chishimba Kambwili to close Radio Phoenix accusing it of being run by the opposition, the United Party for National Development (UPND).

Government fail to move ahead with Access to Information Bill

One of the party promises made by the Patriotic Front (PF) prior to the elections was to ensure the immediate enactment of the Access to Information (ATI) legislation once elected into office in 2011.

This was reiterated by Chishimba Kambwili when he was appointed the Minister of Information and Broadcasting after the Presidential election at the beginning of 2015. Just a month after being in office he said he would ensure the ATI bill was tabled in Parliament when the house resumed sitting on February 24th, 2015. The Bill had not been presented by the time the Parliamentary session adjourned on March 27th, 2015. At a press briefing on March 2nd, 2015, the Minister announced that the ATI bill was submitted to the Attorney General’s Office for clearance pending, presentation to Parliament.

In May President Lungu indicated that he had second thoughts on the ATI Bill due to what he termed as ‘irresponsible

reportage' by some media houses. His narrow interpretation of surprised activists who are aware that ATI law facilitates increasing transparency, accountability and citizen participation in the governance process as citizens will be able to access public information from public institutions to enable them make better informed decisions or contributions.

## MEDIA AND ELECTIONS

On 20 January 2015, Zambians went to the polls to vote for a president in the country's presidential by-elections. These elections came after the passing of the Zambian President, Mr. Micheal Sata.

The pre-election period was fraught with tension as the Patriotic Front witnessed an unprecedented fight for the presidency, which also drew in members of his family that included the late Sata's stepson, nephew and widow. The opposition – the Movement for Multiparty Democracy was also plagued by factional battles.

In the post-election period the opposition denounced the elections as a sham, by the opposition, after the ruling PF candidate Edgar Lungu won by a narrow margin of 27 757 votes against Hakainde Hichelma of the United Party for the National Development. The election was noted for record-low voter turnout of only 32.33% of the registered population.

MISA-Zambia noted that during the campaigns leading to the elections, a number of political parties raised concerns regarding biased and unfair coverage by the media. In the main, the ruling party used the public media to their advantage leaving very little space and sometimes none for the opposition parties.

According to Media Monitoring Africa report on the media coverage of the Zambian Presidential Elections, the reportage mostly on what politicians were saying and did very little to interrogate what these pronouncements meant for the electorate. This resulted in minimal coverage given to critical issues such as health, employment, and poverty. Reporters Without Frontiers agreed with the opinion that media coverage was very partisan during the campaign.

The main opposition party, the UPND filed a complaint against the Zambia National Broadcasting Corporation (ZNBC) for failing to cover the rallies of its candidate, Hakainde Hichilema.

“After 51 years of independence, the government's firm grip on the print media continues despite past promises by the leadership to loosen this grip and privatise the affected newspapers.

## PRINT MEDIA

Print media were affected by the declining economy which saw a rise in the cost of doing business, worsened by the unprecedented load shedding by the main electricity corporation due to poor rainfall and low water levels at Kariba Dam, the main source of water for Kariba power station which operates the main Zambia Electricity Supply Corporation (ZESCO) grid had a dramatic impact on the economy.

### **Ownership and control of print media by state continues**

After 51 years of independence, the government's firm grip on the print media continues despite past promises by the leadership to loosen this grip and privatise the affected newspapers. This control was clearly demonstrated when the newly appointed Minister of Information dismissed boards at the Zambia Daily Mail and the Times of Zambia in April 2015 before their mandate came to an end. According to a source quoted in the Post Newspaper of April 23, 2015, the Minister wrote to the President informing him of his decision to fire the boards and managing directors of the two companies because he felt they were not doing enough to protect the president from attacks.

## JOURNALIST SAFETY

Continued threats over the years to regulate government were reiterated through the year, with government stating that the print media has failed to regulate itself and the Zambia Media Council – a self-regulatory entity launched in 2012 has failed.

Peter Sukwa of The Post and Kelvin Phiri of Feel Free Radio in Chipata were brutally attacked allegedly by PF political

party cadres. It is reported that the two went to verify reports that Malawians were acquiring national registration cards and registering as voters in the Chikoka area. Other political functionaries developed a habit of storming media houses during live programmes that featured guests or discussions deemed to be critical of the sitting government.

In an unprecedented and mysterious attack, a gunshot was fired by an unknown assailant into The Post newsroom, with police describing the bullet as “non-lethal” while the findings of the investigations generally remained inconclusive.

Government continued its attacks on media houses that were seen to be critical, on the premise that they were peddling an agenda against the republican president, Edgar Lungu. The most startling action was the threat to close Zambia's oldest private radio station - Radio Phoenix, on October 21st, 2015, by Minister Chishimba Kambwili when he accused the opposition United Party for National Development (UPND) of having a hand in the running of the station. This raised a lot of dust as it was a direct infringement of the station's freedom of expression.

Other violations included interference in the running of community radio stations such as the ‘dissolution’ of the board at Mkushi Radio by Central Province Minister, Davis Chisopa much to the surprise of citizens, activists and civil society alike.

Journalists continue to face challenges with the existence of such laws as the State Secrets and other laws on classified information. For example, Post Proprietor Fred M'membe and one of his reporters, Mukosha Funga, were arrested and charged in July for publishing a story which quoted a letter written

to the President by the Anti-Corruption Commission chief, informing him of an investigation on one of his advisors.

“  
...government continued to threaten closure of online media as most were deemed to be critical of government.”

## BROADCASTING

### Broadcasting digital migration partially achieved

During the period, Zambia managed to partially meet the digital migration deadline and successfully migrated on 17 June in line with the International Telecommunications Union's deadline. Government opted for a three-phased approach to migration for fear that other citizens, especially in rural areas would be disadvantaged. Government signed a contract with Chinese firm Star Technologies of over US\$273 million for the second and third phase of digital migration. The partial migration has taken place under Phase 1. In this phase, only towns along the line of rail were able to migrate to digital broadcasting by the deadline of 31st December, 2015 while those in the remaining areas of the country continued to receive the analogue signal. Phase 2 will cover all provincial centres while the rest of the country will migrate under phase three.

Evidently, government's decision to derogate from the digital migration policy presented dire consequences as certain conflicts and inadequacies were observed with some players opting to use their own route through satellite broadcasting, while the levels of public awareness on digital migration remained staggeringly low and the level of preparedness equally saddening.

The government waived duties on certain equipment in a bid to boost the digital migration process, thereby cushioning some costs to be incurred by broadcasting companies.

The operationalisation of the Independent Broadcasting Authority presented a level of independence in the allocation of frequencies and broadcasting licences. It is hoped that there will be steps made to transform the authority into a truly autonomous body through curtailing the 'direct' appointment of board members by the minister of information, to include a more open, independent process as originally envisaged in the IBA Act.

### Electronic Media Statistics:

	Radio	Television
Full broadcast	80	17
Test transmission	7	1
Construction permits	17	6

## FREEDOM OF EXPRESSION ONLINE

Internet penetration rose from about 10 to 17% in 2015, with mobile phone use increasing tremendously at 75% penetration by end of December 2015.

There were no direct threats to online freedom in the reporting period. There was somewhat restraint from the powers compared to the previous year. There was no reported or observed blockage of websites and online news outlets considered to be critical of government. No bloggers or users were arrested.

However, government continued to threaten closure of online media as most were deemed to be critical of government. Minister of Information Chishimba Kambwili stated on February 12th, 2015 that he would “close down the Zambian Watchdog at all costs, including the involvement of the FBI if that is what it would take”. Just days after he was sworn in, Kambwili stated publicly: “How can an online publication start reporting maliciously on an individual for 15 days, I can’t allow that to happen as a newly appointed Information Minister. If it take[s] the FBI to ensure that I close Watchdog, I will do so [...] I have never started something that has failed, I will bring the Watchdog down that I can tell you.”

## LOOKING FORWARD TO 2016

The year was therefore a bittersweet year as most of the promises of liberalisation and media reforms that characterised the Patriotic Front’s rise to power in 2011 remained unfulfilled as at the end of the year.

It is evident that the weight of the many repressive laws inimical to media freedom and freedom of expression bore down heavily on citizens and practition-

ers alike. It is therefore important for stakeholders to continually advocate for the amendment or repeal of such laws in addition to other media reforms and adoption of the National Media Policy, which remained in draft form throughout most of the year.

- It is hoped that the Access to Information bill will be tabled before Parliament after such a long wait of 13 years since it was initially withdrawn from Parliament in 2002.
- Laws inimical to media freedom should be amended or repealed and these include the Public Order act among several others.
- The 2016 General elections will bring renewed hope for media freedom activists as parties will be more willing to advocate for media friendly policies; it is hoped that this will not only be lip service as observed in previous elections.

# Zambia 2015 violations & victories



**5 January**

## **Zambia makes notable strides on the Digital Migration process**

Zambia made a great stride towards meeting the ITU deadline when government officially launched the Digital Terrestrial Television (DTT) test transmission at ZNBC.



**12 February**

## **Draft Information and Media Policy unveiled**

Former Permanent Secretary at Minister of Information Chanda Kasolo presented the draft Information and Media Policy that Government had been working on. The policy is aimed at helping grow a vibrant, free and independent media. The draft policy was presented at a stakeholder's consultative workshop.



**26 February**

## **Minister threatens to shut down Zambian independent news site**

Newly appointed Minister of Information, Chishimba Kambwili threatened to close down *Zambian Watchdog*, one of the country's few independent online news sources focused on political and investigative reporting.



**27 February**

## **Support for a vibrant and free media**

Information and broadcasting services Permanent Secretary Chanda Kasolo said government was in the process of coming up with a media policy that will help foster a vibrant, free and independent media in the country. He said this when he officially opened the stakehold-



ers consultative workshop on the draft national information and media policy.



**1 March**

## **Minister denounces harassment of journalists**

Ministry of Information and Broadcasting Services Permanent Secretary Chanda Kasolo said he would not tolerate any harassment of journalists by political party cadres. He told QFM News in an interview that government wanted to set serious standards to protect journalists from harassment because they are the pillar to informing and educating the nation. He further noted that government found it unfortunate that journalists continue to suffer harassment perpetrated by political party cadres.



**3 March**

## **ZNBC journalist assaulted**

UPND cadres attacked a ZNBC news crew that was assigned to cover a police search at their party leader Hakainde Hichilema's residence in Lusaka's New Kasama area. The incident took place in full view of police clad in riot gear. The UPND cadres also blocked the news crew from entering ZNBC and *Daily Nation* from entering Mr. Hichilema's residence.



**24 April**

## **Minister dissolves board and fires MDs of public print media**

Government has with immediate effect dissolved the Boards of Directors of *Times of Zambia* and *Zambia Daily Mail* in a move bordering on political interference.



**29 April**

**Minister orders government to pay money owed to public media**

Information Minister Chishimba Kambwili said it had come to his attention that *ZNBC*, *Daily Mail*, and *Times of Zambia* were owed money by government departments for advertising secured on credit. In an interview with ZNBC, the Minister said no government department shall be allowed to advertise in any public media on credit and he warned public media marketing managers that he would not take kindly to anyone who defies his directive.



**3 May**

**Minister justifies journalist beatings**

Minister of Information Chishimba Kambwili told journalists that political cadres were beating them up because they were continuously writing negative stories on President Edgar Lungu. Ironically, this disturbing comment came on World Press Day.



**6 June**

**Zambian musician arrested over satirical song**

Zambian satirical musician Chama Fumba, better known as Pilato, was arrested over a song considered to be defamatory towards President Edgar Lungu. He was discharged on 14 July by the Lusaka Magistrate Court case.



**17 June**

**Zambia meets ITU deadline with partial digital migration**

Zambia switched from analogue television to digital terrestrial broadcasting in line with the June 17, 2015 deadline as set by the ITU.



**16 July**

**Post Editor and Journalists arrested and charged**

Zambian Police arrested Post newspaper owner Fred M'membe and one of his reporters, Mukosha Funga on a charge of publishing classified documents contrary to Section 5 Cap 111 of the State Security Act. The arrest was in connection with an article which appeared in the *Post* newspaper on 17 April 2015, quoting a letter written by the Anti-Corruption Commission Director-General to the Republican President.



**28 August**

**Minister interferes in Mkushi Community Radio board**

Central Province Minister Davis Chisopa (MP) reportedly ordered the dissolution of the entire Mkushi Community Radio Board. He said that the board of the radio station had breached its own constitution to the detriment of the aspiration and interest of the citizens of Mkushi. He further charged that membership in the current Board allegedly inclined towards opposition political Parties.



**30 September**

**Gunshots at The Post newspaper**

An unknown gunman fired shots inside the newsroom. The shots which came from the roof top sent reporters and other staff members in a state of panic. It is that the target of the shooting was Editor in Chief Fred M'membe who was not in the office at the time. Police rushed to the scene and retrieved the bullets but did not find any cartridges. Luckily no one was hurt.

# Zambia 2015 violations & victories



**12 October**

## **Minister threatens to close radio station**

The Information Minister Chishimba Kambwili threatened to close Zambia's oldest private radio station - *Radio Phoenix*, accusing the opposition United Party for National Development (UPND) of having a hand in the running of the station.



**10 December**

## **Journalists beaten by party cadres**

*Feel Free* Radio journalist Kelvin Phiri and Post newspaper journalist Peter Sukwa were brutally beaten by Patriotic Front cadres. The cadres also assaulted UPND Eastern Province Information and Publicity Secretary Victor Mbuze when the trio went to investigate allegations of Malawians being ferried across the border to be registered as Zambian voters.



**6 November**

## **Zambian Revenue Authority storm Post Newspaper**

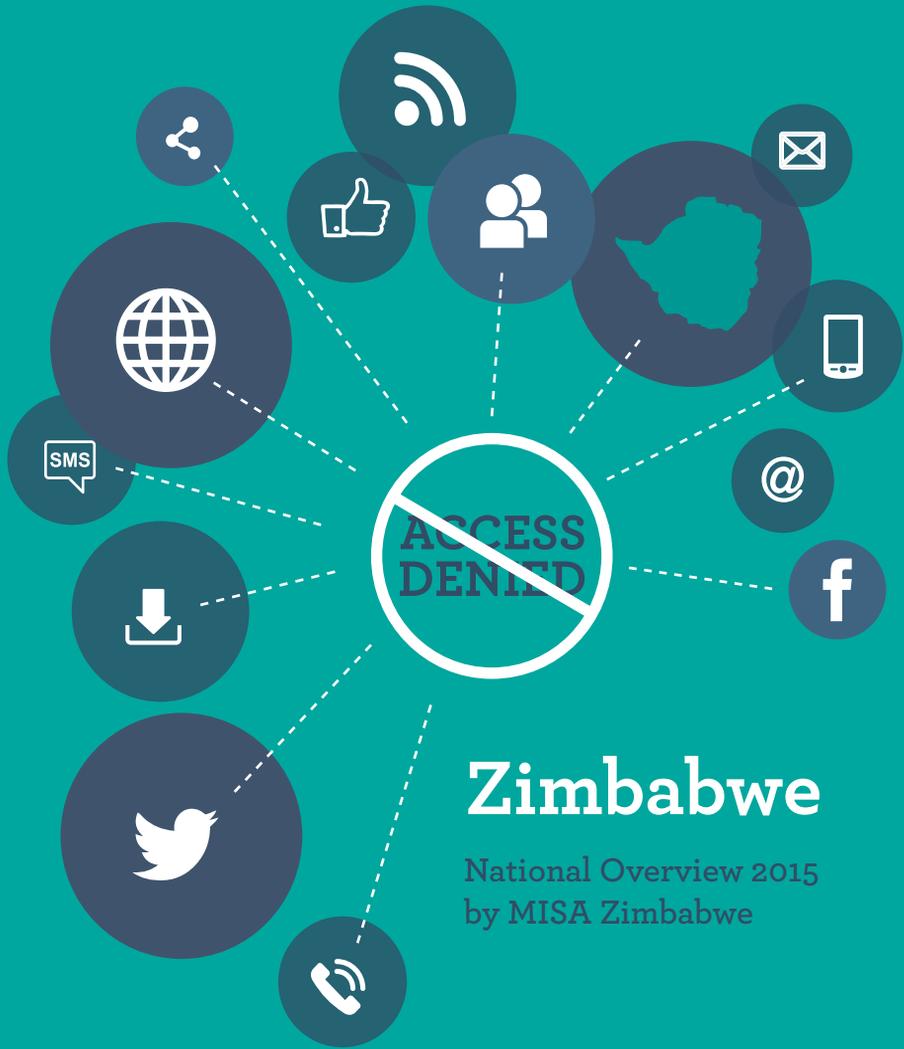
The Zambia Revenue Authority (ZRA) in the company of two armed police officers, raided Post Newspapers Limited offices over alleged unpaid taxes of over K16 million. The Post denied owing ZRA any money and said this was an attempt to make it look as though the newspapers owed a great deal of money when it has already paid over K40 million in taxes over the past 11 months.



**30 November**

## **Party cadres interrupt political interview on radio**

Suspected Patriotic Front Party cadres rudely interrupted a political radio programme on Breeze FM featuring Rainbow Party President Wynter Kabimba. Less than 10 minutes into the programme, the cadres started throwing stones forcing Mr Kabimba to immediately leave the station and abandon the programme. Other Rainbow members who accompanied Mr. Kabimba and *Breeze FM* staff were forced to scamper for safety as the unruly cadres forced themselves into the station building.



# Zimbabwe

National Overview 2015  
by MISA Zimbabwe

**T**owards the end of 2014, factional fights spawned by Zanu-PF intra-party contestations to succeed President Mugabe, resulted in the ejection of former Vice President Joice Mujuru

from government and eventually the party. This was followed by dismissals and suspensions of her perceived loyalists and included senior party officials and Ministers. This factional war spilled into 2015 and eventually gave birth to two distinct and bitterly-opposed camps – whpd pthe President continuously works hard on containing.

The factionalism, coupled with an ailing economy that witnessed massive company closures, staff retrenchment, salary cuts, and reduced working hours across all sectors also filtered down to the media. The operations of the media were affected by a shrinking advertising market and discriminating consumers, posing serious viability and sustainability challenges for media houses. Media houses cut down on staff, froze salaries and streamlined their operations. This led to a decline in media diversity, increased self-censorship, and deterioration in the independence and quality of reporting.

Slow progress in media reforms also characterised 2015.

Despite adoption of a progressive Constitution in 2013 that guarantees media freedom and freedom of expression and the launch of the country's Media Panel of Inquiry recommending the reform of oppressive laws, the country has not seen any meaningful shifts in the country's legislation or policies.

For instance Sections 60, 61 and 62 of Zimbabwe's constitution guarantee the rights to propagate one's thoughts, media freedom, freedom of expression and access to information. However, most statutes relating to unhindered enjoyment of these liberties have remained intact. Other laws such as the Official Secrets Act, the Criminal Law (Codification and Reform) Act (CODE), as well as the Defence and Police Acts, restrict the dissemination of information on the pretext of protecting public security. All this militates against the spirit and letter of the new constitution.

The beacon of hope for the media sector was the scrapping of criminal from the statute books by the Constitutional Court.

## FREEDOM OF EXPRESSION

### Media Reforms

On 18 March 2015, Media Panel of Inquiry (IMPI) officially released its report on Zimbabwe's information and media sector. Launched by the then Media and Broadcasting Services, Minister Jonathan Moyo, in December 2013, the 25 member panel went around the country in a 666-page report which included recommendations that government review misaligned legislation and at the same time recommended the repeal of laws such as the Access to Information and Protection of Privacy Act (AIPPA), Criminal Law (Codification and Reform) Act (CODE), Broadcasting Services Act (BSA), Censorship and Entertainment Controls Act (CECA), Official Secrets Act (OSA) and Copyright and Neighbouring Rights Act.

"The orientation of laws affecting the information sector has been one of control, and not one of viewing this sector anew, as a growth pole in the national

# Zimbabwe

economy. Legally, the information revolution has thrown up new issues to do with growth promotion, regulation, standards and protection of society from negative, harmful material,” noted the report.

“The main recommendation is the need for review of existing media laws in line with the Constitution, including media regulation and removal off all penal measures and criminalisation.”

However, the enthusiasm to implement the findings seemed to have been lost with the reassignment of Professor Jonathan Moyo to the Ministry of Higher Education from that of Media, Information and Broadcasting Services where he was spearheading the IMPI process.

## **Economic Impact on Media**

The environment for freedom of expression and media was greatly affected by the declining economy.

Vigorous and various attempts to attract foreign investors continued to fall flat, due in part to the Indigenisation Act which compels foreign companies to cede 51% shareholding to locals and is a clause that most investors find constraining.

Another major burden for the business sector, was the effect of perennial water and electricity shortages, which according to a Confederation of Zimbabwe Industries (CZI) survey, reduced capacity utilisation in the manufacturing sector from 34.3% from 36.5%.

All these problems were topped by the exposure of malfeasance and mismanagement in public institutions by Auditor-General Mildred Chiuri during her tabled report to Parliament. Her 2015 report noted that among many other

anomalies, bad corporate governance and mismanagement had led to the loss of US\$180 million in public funds which could not be properly accounted for.



Despite adoption of a progressive Constitution in 2013 that guarantees media freedom and freedom of expression and the launch of the country’s Media Panel of Inquiry recommending the reform of oppressive laws, the country has not seen any meaningful shifts in the country’s legislation or policies.

This harsh economic situation affected the media in terms of content and ethics as the industry was driven solely by the bottom line mantra.

Sensational and superficial stories became the order of day as newspapers

tried to increase sales amidst dwindling readership. The cost-cutting measures adopted by media companies, led to slashing of salaries creating a fertile ground for “brown envelope” journalism. In contexts where journalists have low salaries and fear losing their jobs, ethical reporting can be perceived as a lesser priority than making money and complying with ethical journalism. Journalists therefore solicited bribes from different sectors of society in a number of different ways and some became lackeys of certain politicians, religious leaders, musicians and organisations for financial gain.

The worsening economic environment also posed serious viability and sustainability challenges to newspaper companies as evidenced by the closure of the privately owned *Southern Eye*, *The Zimbabwe Mail*, *The Flame* and *New Zimbabwean*. There was also downsizing of staff which worsened in the wake of a Supreme Court ruling allowing employers to give workers three months termination notices.

The quality of reporting and journalism ethics predictably degenerated in this environment as journalists have concentrated on economic survival and self-preservation in the midst of political polarisation and factionalism.

## JOURNALISTS SAFETY

While cases pertaining to media freedom violations had been on a steady decline with 22 cases recorded in 2014 compared to 28 the previous year, the cases shot to 25 violations in 2015.

This speaks volumes on the lack of willingness to embrace and practice constitutionalism on the part of senior government and Zanu PF officials and other non-state actors. The violations which

were mainly in the form of threats and unlawful arrests, came in the wake of Zanu PF factional fights. The private media came under heavy censure for highlighting the rifts within Zanu PF. The threats were ominous in that they came from President Mugabe, his wife, Grace, and the Permanent Secretary for Media, Information and Broadcasting Services, George Charamba.

**The main recommendation is the need for review of existing media laws in line with the Constitution, including media regulation and removal of all penal measures and criminalisation.**

There were a large number of cases involved the unlawful arrests or assaults by the police of journalists conducting their lawful professional duties. Some of the cases involved the arrest of *The Sunday Mail* journalists and the detention of Mutare journalists, Sydney Saize, Bernard Chiketo and Kenneth Nyangani in Rusape.

Journalists Obey Manayiti, Reagan Mashavave and Pindai Dube were also detained, threatened and released without charges by the police on 8 August

## BROADCASTING

2015 while covering a demonstration in Harare by the Zimbabwe Congress of Trade Unions (ZCTU) against job losses. Photojournalist Crispin Ndlovu, was also assaulted by the police in Bulawayo in July 2015. James Mwaya of Bindura was in September 2015 charged with contravening Section 33 of the Criminal law (Codification and Reform) Act for allegedly insulting or undermining the President.

Journalist Patrick Chitongo was convicted and sentenced for a slightly different reason - publishing unregistered newspapers in breach of the stringent registration requirements under AIPPA. He was sentenced to an effective eight months imprisonment following suspension of four months of the sentence on condition that he does not commit a similar offence in the next five years.

While media violations have generally been attributed to state actors, political actors and security personnel, there was a worrying if not unprecedented development involving the private sector.

On 26 March 2015 Steward Bank and mobile phone operator, Econet Wireless, raided the offices of The Source news agency in Harare. The Sheriff and the Police searched and seized documents from The Source news agency in execution of a High Court order granted by Justice Musakwa. This followed allegations by Steward Bank and Econet Wireless that the publication of two stories titled: Steward Bank seeks land to settle 2.1 million Chiyangwa loan and Debt distressed Zimbabwe moves to re-schedule domestic debt, were premised on illegally obtained documents.

### **More radio stations amidst a constricted broadcasting sector**

The broadcasting sector largely remained constricted despite the licensing of eight urban-based commercial radio stations by the Broadcasting Authority of Zimbabwe (BAZ) in March 2015.

While this development can easily be perceived as marking the decentralisation of broadcasting, reality is that the new licenses amounted to the expansion of the media which is directly under state control and associated with the ruling elite.

The licenses were issued to five successful companies notably AB Communications, which will broadcast as Gogogoi FM in Masvingo and Faya FM in Gweru, Kingstons, which will broadcast as Nyaminyami FM in Kariba and KE100.4 in Harare.

Fairtalk Communications, which will broadcast as Skyz Metro FM in Bulawayo and Breeze FM in Victoria Falls. Zimpapers's Diamond FM in Mutare and Ray of Hope, which will broadcast as YA FM in Zvishavane, were also granted licenses.

Only YA FM had started broadcasting (as of December 2015), amid reports that the station which went on air in the mining town of Zvishavane in October, was struggling to stay afloat due to the harsh economic environment.

The majority shares in AB Communications are held by Minister of Information Communication Technologies and Courier Services Supa Mandiwanzira's family trust, while Zimpapers and Kingstons are under state control. Zimpapers and AB Communications already own two

commercial national radio stations Star FM and ZIFM respectively.

The concentration of ownership of broadcast services by the state and those linked to the governing party betrays the authorities' drive to dominate and monopolise the broadcast media space under the guise of private ownership.

Apart from exposing the liberalisation of the airwaves as a charade, the monopolisation of ownership severely compromises Zimbabweans' right to freely express themselves and access information through independent and diverse media platforms. The application fees which amount to \$10 000 inclusive of the initial \$2 500 application fee are prohibitively exorbitant resulting in elitist ownership of the broadcasting sector. For instance, application fees in South Africa are pegged at R3 000 which is less than \$300 and shockingly 3 233% cheaper.

This situation calls for the complete overhaul of the country's broadcasting regulatory and licensing regime to ensure that citizens' constitutionally guaranteed right to establish broadcast services is not hindered by undue restrictions and allow for a genuinely diverse and democratic broadcasting sector.

### **Still no public broadcaster on the horizon**

There was no movement towards transforming the Zimbabwe Broadcasting Corporation (ZBC) into a truly independent public broadcaster. This is despite the fact that Section 61 of the Constitution 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.

The need for the transformation of ZBC to ensure equal and equitable access by political parties and the generality of Zimbabweans despite their political affiliations, cannot be wished away. This is also buttressed in the findings and recommendations of the government-sanctioned Information and Media Panel of Inquiry (IMPI).

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.

### **Attainment of community radio remains a dream**

The country maintained its unenviable record of failing to license community radio stations, 14 odd years after the enactment of BSA, which provides for community radios. In its meeting with the ministry of information officials in October 2015, MISA-Zimbabwe was told that the licensing of community radios will only start after the completion of digitisation. And with government failing to meet its own deadlines to complete the process, the licensing of community radios is unlikely to be done in the first half of 2016.

Even if the licenses were to be issued, there is doubt that the process will be insulated from government manipulation and control to ensure only those communities deemed to be supportive of the ruling elite get the licenses. These doubts are predicated on repeated government pronouncements betraying

# Zimbabwe

their partisan and narrow perspective on what constitute a community radio and how they should be regulated, structured and operated.

## **Broadcasting Digital Migration – near yet so far**

After missing the 17 June 2015 International Telecommunications Union’s deadline for migration from analogue to digital broadcasting, Zimbabwe says it is now on course to meet the Southern Africa Development Community (SADC) June 2016 deadline.

While there was significant coverage and updates on progress post the June 2015 deadline, there is still need for public awareness campaigns on the process and its implications on ordinary Zimbabweans.

Information relating to the process remains confined and only accessible to a select section of the Zimbabwean society. There is need for a wider and much more structured public awareness campaign that uses people-centric platforms to ensure that citizens know what exactly will be at stake including the benefits of digital migration.

broadcast media, communication by the citizenry and the general monetary transactions in the country.

Significant strides were taken by the mainstream media to harness, particularly social media and mobile applications in enhancing the citizenry’s access to and participation in the production content.

**“The internet is not completely secure since laws that are used to regulate and control expression of-line can still be used to regulate online activity.”**

## **FREEDOM OF EXPRESSION ONLINE**

### **Increase in internet and mobile access**

The Postal and Telecommunications Authority of Zimbabwe (POTRAZ) noted an increase in the number of active mobile subscribers, which grew by 0.5% to reach 11.9 million from 11.8 million subscribers recorded in the previous year.

As a result, mobile and internet access in the country continued to change the face of both the mainstream print and

The Zimpapers and Africa Media Holdings groups used mobile technology in the distribution of their content on the SMS platforms with the country’s three Mobile Network Operators (MNO’s) Econet, Telecel and Netone, until about June 2015, when Econet subscribers stopped receiving the Zimpapers Mobile News. The SMS platforms continue to bring in significant revenue for the newspaper groups with a charge of 88 cents and 80 cents, respectively. Social media applications Facebook, Whatsapp and Twitter continue to be platforms of choice for many Zimbabweans

to interact socially and for more critical conversations.

On the broadcasting front, national commercial radio station, *Star FM*, in October launched its mobile application allowing functionalities of live streaming, play or pause, of their live broadcasts.

### **Threats to free expression online**

While legal and, in some instances, extra-legal hindrances continue to hinder freedom of expression and access to information, especially through the traditional means of communication, the internet has remained a relatively freer space for information diffusion, dialogue and debate, providing an opportunity for Zimbabweans to participate in that space. Their participation is reflected in various newspaper websites, online news agencies and various social media platforms on which Zimbabweans robustly debate issues and propagate their views however critical of the state.

However, the internet is not completely secure since laws that are used to regulate and control expression offline can still be used to regulate online activity. This was the situation in the case of councillor for the opposition political party, the MDC-T, Nduna Matshazi who was arrested in October for allegedly posting a derogatory message on a Whatsapp chat group insulting President Mugabe. The councillor was later suspended.

The government worked on bills to control cyberspace, notably the Data Protection Bill, Electronic Transaction and Electronic Commerce Bill and the Computer Crime and Cyber Crime Bills. The proposed legislative measures would give government greater control of cyberspace.

The Electronic Transaction and Electronic Commerce Bill intends to promote legal certainty and enforce ability to electronic transactions and electronic commerce. It also aims to grant legal recognition to electronic communications and writing and would also provide for the legal effect of electronic signatures as well as secure electronic signatures.

The Data Protection Bill will govern the processing of personal information by private and public bodies to prevent unauthorised and arbitrary use, collection, processing, transmission and storage of data of identifiable persons.

The Computer Crime and Cyber Crime Bills, if passed, will allow government to remotely install forensic spying tools onto citizens' communication devices. A remote forensic tool is defined in the draft Bill as an "investigative tool, including software or hardware installed on or in relation to a computer system or part of a computer system and used to perform tasks that include, but are not limited to keystroke logging or transmission of an IP address".

# Zimbabwe 2015 violations & victories



## 4 February

Blessed Mhlanga, *NewsDay* reporter, Jackie Gwemende and Dzikamai Mandzvidza -Zimbabwe Broadcasting Corporation reporters and Munyaradzi Musiyiwa, *The Herald*. Reverend Tititi Moyo leader of the Christ Apostolic Worldwide Revelation assaulted the four journalists from both the private and public media in the Midlands town of Kwekwe accusing them of taking pictures without permission.



## 5 February

The Minister of Information, Broadcasting Services and Media Professor Jonathan Moyo threatened that the government would in future confiscate photographers' cameras if an unfortunate incident like the fall of the President occurs. Journalists covering the arrival of President Robert Mugabe from the African Union Summit in Ethiopia were forced to delete pictures they had taken as he fell at Harare International Airport.



## 13 February

Darius Mutamba, *Daily News* photojournalist was barred from taking pictures of First Lady, Grace Mugabe's welcome function when she arrived at Harare International Airport from the Far East.



## 15 February

Winstone Antonio, *Newsday* reporter was threatened with death by Rockland College's principal director McDonald Makondesa when he asked for comment on allegations that the Zimbabwe



School Examinations Council (ZIMSEC) was withholding the college's Ordinary Level geography results.



## 5 March

Econet Wireless and Steward Bank through its lawyers, the Sheriff and police, searched and seized documents from *The Source* news agency in execution of a High Court order granted by Justice Musakwa. The order was dated 20 March 2015.



## 26 March

Owen Maseko, Bulawayo-based visual artist was issued with a Supreme Court order to pull down his controversial exhibition depicting the 1980s Matabeleland Gukurahundi army massacres.



## 9 April

The Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) cancelled Telecel Zimbabwe's licence following the mobile phone operator's failure to renew its operating licence. In a statement, POTRAZ said it had given Telecel 30-days to wind down its operations and another 60 days to decommission its equipment.



## 7 May

Freelance journalists Phillimon Jambaya and Edgar Gweshe were assaulted by Chitungwiza municipal police while covering a demonstration led by Chitungwiza Residents Trust. The beatings occurred as the municipal police tried to block the journalists from taking pictures of the demonstrations.

# Zimbabwe 2015 violations & victories



**21 May**

Willie Mponda, editor of *The Sun* weekly newspaper in Gweru was threatened with death by the secretary-general of Gweru City Council workers committee, Frank Muzorera and banned from attending council meeting.



**28 May**

The Minister of Media, Information and Broadcasting Services Professor Jonathan Moyo threatened to use legal instruments to force journalists to observe ethical practices. This followed publication of a story by *Newsday* on 25 May 2015 alleging President Robert Mugabe owed businessperson Ray Kaukonde \$30 million.



**15 June**

Wilson Maposa, radio producer with Wezhira Community Radio Initiative in Masvingo was questioned by police over suspicion that the initiative owned broadcasting equipment. According to the Broadcasting Services Act (BSA), it is illegal to broadcast without a licence issued by the Broadcasting Authority of Zimbabwe.



**23 June**

Freelance journalist Patrick Chitungo was convicted and sentenced to an effective eight months imprisonment for contravening Section 72 (1) of the Access to Information and Protection of Privacy Act (AIPPA) by operating *The Southern Mirror*, (a newspaper) without a registration certificate.



**29 June**

Two policemen from Masvingo Central police station's Law and Order Section searched the offices of the Wezhira Community Radio Initiative in Masvingo to determine whether it was in custody of broadcasting equipment.



**2 July**

A Bulawayo-based freelance photojournalist, Crispin Ndlovu, was assaulted by a group of police officers whom he had captured on camera assaulting a suspected cellphone thief.



**8 August 2015**

**Journalists arrested while covering labour protest**

Journalists Obey Manayiti, Reagan Mashavave and Pindai Dube were also detained, threatened and released without charges by the police on 8 August 2015 while covering a demonstration in Harare by the ZCTU against job losses.



**15 September**

**Mugabe threatens media**

President Mugabe warned the media of rigid control while expressing his displeasure at the media coverage and interpretations of a planned launch of a new political party by former Vice President Joyce Mujuru.



**11 October**

**Permanent Secretary threatens stern media legislation**

Permanent Secretary in the President's Office George Charamba threatened stern legislation against the media, accusing it of publishing falsehoods about factionalism within the ruling Zanu PF.



**14 October**

**First Lady attacks media**

The First Lady verbally attacked the private media accusing them of fanning factionalism within the ruling Zanu PF saying she was fed up with the rubbish they were reporting.



**23 October**

Three Mutare based journalists Kenneth Nyangani, Sydney Saize and Bernard Chiketo were arrested and detained by Rusape Police for reportedly trying to cover an alleged MDC-T demonstration in Rusape.



**28 October**

**Zanu-PF warns the private media**

Simon Khaya Moyo, Zanu PF secretary for information and publicity warned the private media that necessary legal instruments would be invoked if they did not desist from unwarranted attacks against the First Family and the ruling Zanu PF leadership.



**2 November**

The editor of *The Sunday Mail* Mabasa Sasa, investigations editor Brian Chitemba and reporter Tinashe Farawo were arrested and detained at Harare Central Police Station, following publication of a story alleging a syndicate involving the police was behind the killing of elephants in Zimbabwe's Hwange National Park.

# About MISA

Making southern Africa a more conducive environment for media freedom

Over the past 21 years, the Media Institute of Southern Africa (MISA) has been the primary advocate for media freedom and freedom of expression in southern Africa, issuing alerts on media freedom violations, condemnations of killings, assaults, criminal charges and other forms of unjustified attacks on journalists, including restrictions on access to information.

The research and analysis that makes up *So This Is Democracy?* is based on this daily monitoring and other research gathered in the 11 Southern Africa Development Community (SADC) countries where MISA operates through Chapter offices.

MISA's work focuses on making sustainable, lasting changes to the media landscape in the southern Africa region that will make our countries safer places for journalists to work and more conducive for media freedom and freedom of expression.

MISA's activities and programmes include:

- Advocating for changes to restrictive laws
- Advocating for development of positive legislation, such as access to information laws;
- Publishing media violation alerts;
- Researching and publishing reports on media violations and the state of the media environment in southern African countries; and
- Training, workshops and publications.

How to report a media freedom violation or victory

## What to report:

Journalists and Free Expression activists who are:

- Assaulted;
- Arrested;
- Censored;
- Denied credentials;
- Harassed;
- Kidnapped;
- Killed;
- Missing;
- Threatened;
- Wrongfully expelled;
- Wounded; and/or
- Wrongfully sued for libel or defamation.

News organisations that are:

- Attacked or illegally searched;
- Censored;
- Closed by force;
- Raided, where editions are confiscated or transmissions are jammed or have materials confiscated or damaged; and / or
- Wrongfully sued for libel or defamation.

## What to include in your report:

To complete an accurate and relevant alert, please provide:

- The names of the journalists and news organisations involved;
- The date and circumstances of the incident; and
- Detailed background information.

**Send your report** to [info@misa.org](mailto:info@misa.org) or call us on +264 61 232975.

# Contact MISA

## **MISA Regional Secretariat**

19 Schinz Street, Ausspannplatz, Windhoek  
Private Bag 13386  
Windhoek, Namibia  
Tel: +264 61 232975  
Fax: +264 61 248016

## **MISA Chapters**

### **MISA Namibia**

19 Schinz Street, Ausspannplatz, Windhoek  
Windhoek, Namibia  
Tel: +264 61 232975  
Fax: +264 61 248016  
Email: natasha@misa.org

### **MISA Angola**

Contact the Regional Secretariat

### **MISA Botswana**

Tel: (+267) 3971972  
Fax: (+267) 316119  
Email: outreach@bw.misa.org

### **MISA Lesotho**

House No. 1B, Happy Villa  
Maseru 100, Lesotho  
Tel: (+266) 22 320941  
Fax: (+266) 22 310560  
Email: MISALesotho@gmail.com

### **MISA Malawi**

Onions Complex, Off Chilambula Road,  
Area 4, Lilongwe 3, Malawi  
Tel: (+265) 1 758090  
Tel/Fax: (+265) 1 758091  
Email: misama@globemw.net

### **MISA Mozambique**

Contact the Regional Secretariat

### **MISA South Africa**

Contact the Regional Secretariat

## **Contact us online**

Email: info@misa.org  
Web: www.misa.org  
Twitter: @MISARegional  
Facebook: MISA.Regional.Secretariat  
Web: www.misa.org  
Twitter: @MISARegional  
Facebook: MISA.Regional.Secretariat

## **MISA Swaziland**

Tel: (+268) 40 46677/40 49700  
Fax: (+268) 40 46699  
Email: misa.swaziland@gmail.com  
Email: vuyisile62@yahoo.com  
Email: misa.nd@realnet.co.sz

## **MISA Tanzania**

Kinondoni Mkwajuni, along Kawawa Road  
Dar es Salaam, Tanzania  
Tel: +255 22 2762167  
Fax: +255 22 2762168  
Email: misatanzania@gmail.com

## **MISA Zambia**

Plot 3814, Martin Mwaamba Road,  
Olympia Park  
Lusaka, Zambia  
Tel: (+260) 1 292096/292027  
Tel/Fax: (+260) 292096  
Email: kamufisa.manchishi@gmail.com  
Email: akayanda2003@yahoo.com

## **MISA Zimbabwe**

84 McChlery Drive, Eastlea  
Harare, Zimbabwe  
Tel/Fax: (+263) 4 776165/746838  
Email: misa@misazim.co.zw



# Appendices

Windhoek Declaration

Africa Charter on Broadcasting

Declaration of Principles on Freedom of Expression in Africa

Declaration of Table Mountain

African Platform on Access to Information

Guidelines on Media Coverage of Elections in the SADC region

African Declaration on Internet Rights and Freedoms

# Windhoek Declaration

*Declarations on Promoting Independent and Pluralistic Media - 3 May 1991*

*Endorsed by the General Conference at its twenty-sixth session - 1991*

We the participants in the United Nations/United Nations Educational, Scientific and Cultural Organization Seminar on Promoting an Independent and Pluralistic African Press, held in Windhoek, Namibia, from 29 April to 3 May 1991,

Recalling the Universal Declaration of Human Rights,

Recalling General Assembly resolution 59(I) of 14 December 1946 stating that freedom of information is a fundamental human right, and General Assembly resolution 45/76 A of 11 December 1990 on information in the service of humanity,

Recalling resolution 25C/104 of the General Conference of UNESCO of 1989 in which the main focus is the promotion of “the free flow of ideas by word and image at international as well as national levels”,

Noting with appreciation the statements made by the United Nations Under-Secretary-General for Public Information and the Assistant Director-General for Communication, Information and Informatics of UNESCO at the opening of the Seminar,

Expressing our sincere appreciation to the United Nations and UNESCO for organizing the Seminar,

Expressing also our sincere appreciation to all the intergovernmental, governmental and nongovernmental bodies and organizations, in particular the United Nations Development Programme (UNDP), which contributed to the United Nations/UNESCO effort to organize the

Seminar,

Expressing our gratitude to the Government and people of the Republic of Namibia for their kind hospitality which facilitated the success of the Seminar,

Declare that:

1. Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.
2. By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.
3. By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community.
4. The welcome changes that an increasing number of African States are now undergoing towards multiparty democracies provide the climate in which an independent and pluralistic press can emerge.
5. The worldwide trend towards democracy and freedom of information and expression is a fundamental contribution to the fulfilment of human aspirations.
6. In Africa today, despite the positive developments in some countries, in many countries journalists, editors and publish-

ers are victims of repression—they are murdered, arrested, detained and censored, and are restricted by economic and political pressures such as restrictions on newsprint, licensing systems which restrict the opportunity to publish, visa restrictions which prevent the free movement of journalists, restrictions on the exchange of news and information, and limitations on the circulation of newspapers within countries and across national borders. In some countries, one-party States control the totality of information.

7. Today, at least 17 journalists, editors or publishers are in African prisons, and 48 African journalists were killed in the exercise of their profession between 1969 and 1990.
8. The General Assembly of the United Nations should include in the agenda of its next session an item on the declaration of censorship as a grave violation of human rights falling within the purview of the Commission on Human Rights.
9. African States should be encouraged to provide constitutional guarantees of freedom of the press and freedom of association.
10. To encourage and consolidate the positive changes taking place in Africa, and to counter the negative ones, the international community—specifically, international organizations (governmental as well as nongovernmental), development agencies and professional associations—should as a matter of priority direct funding support towards the development and establishment of nongovernmental newspapers, magazines and periodicals that reflect the society as a whole and the different points of view within the communities they serve.
11. All funding should aim to encourage pluralism as well as independence. As a

consequence, the public media should be funded only where authorities guarantee a constitutional and effective freedom of information and expression and the independence of the press.

12. To assist in the preservation of the freedoms enumerated above, the establishment of truly independent, representative associations, syndicates or trade unions of journalists, and associations of editors and publishers, is a matter of priority in all the countries of Africa where such bodies do not now exist.
13. The national media and labour relations laws of African countries should be drafted in such a way as to ensure that such representative associations can exist and fulfil their important tasks in defence of press freedom.
14. As a sign of good faith, African Governments that have jailed journalists for their professional activities should free them immediately. Journalists who have had to leave their countries should be free to return to resume their professional activities.
15. Cooperation between publishers within Africa, and between publishers of the North and South (for example through the principle of twinning), should be encouraged and supported.
16. As a matter of urgency, the United Nations and UNESCO, and particularly the International Programme for the Development of Communication (IPDC), should initiate detailed research, in cooperation with governmental (especially UNDP) and nongovernmental donor agencies, relevant nongovernmental organizations and professional associations, into the following specific areas:
  - a. identification of economic barriers to the establishment of news media outlets, including restrictive import du-

- ties, tariffs and quotas for such things as newsprint, printing equipment, and typesetting and word processing machinery, and taxes on the sale of newspapers, as a prelude to their removal;
- b. training of journalists and managers and the availability of professional training institutions and courses;
  - c. legal barriers to the recognition and effective operation of trade unions or associations of journalists, editors and publishers;
  - d. a register of available funding from development and other agencies, the conditions attaching to the release of such funds, and the methods of applying for them;
  - e. the state of press freedom, country by country, in Africa.
17. In view of the importance of radio and television in the field of news and information, the United Nations and UNESCO are invited to recommend to the General Assembly and the General Conference the convening of a similar seminar of journalists and managers of radio and television services in Africa, to explore the possibility of applying similar concepts of independence and pluralism to those media.
18. The international community should contribute to the achievement and implementation of the initiatives and projects set out in the annex to this Declaration.
19. This Declaration should be presented by the SecretaryGeneral of the United Nations to the United Nations General Assembly, and by the DirectorGeneral of UNESCO to the General Conference of UNESCO.

# Africa Charter on Broadcasting

*There have been significant gains in media freedom in Africa since the adoption of the Windhoek Declaration on Promoting an Independent and Pluralistic African Press in 1991. However, the declaration focused primarily on the promotion of the print media and was silent on issues such as broadcasting liberalisation and the globalisation of the communications industry. These issues have far reaching social and economic implications for media freedom and threaten to jeopardize the production of media that reflects Africa's rich cultural diversity.*

*A representative group of African media practitioners sought to address these concerns at a UNESCO conference called to celebrate the 10th anniversary of the original Windhoek Declaration. The result was the African Charter on Broadcasting, which serves as a modern blueprint for policies and laws determining the future of broadcasting and information technology in Africa.*

**W**e the Participants of Windhoek+10  
Declare that:

Acknowledging the enduring relevance and importance of the Windhoek Declaration to the protection and promotion of freedom of expression and of the media;

Noting that freedom of expression includes the right to communicate and access to means of communication;

Mindful of the fact that the Windhoek Declaration focuses on the print media and recalling Paragraph 17 of the Windhoek Declaration, which recommended that a similar seminar be convened to address the need for independence and pluralism in radio and television broadcasting;

Acknowledging the enduring relevance and importance of the Windhoek Declaration to the protection and promotion of freedom of expres-

sion and of the media;

Noting that freedom of expression includes the right to communicate and access to means of communication;

Mindful of the fact that the Windhoek Declaration focuses on the print media and recalling Paragraph 17 of the Windhoek Declaration, which recommended that a similar seminar be convened to address the need for independence and pluralism in radio and television broadcasting;

Recognising that the political, economic and technological environment in which the Windhoek Declaration was adopted has changed significantly and that there is a need to complement and expand upon the original Declaration;

Aware of the existence of serious barriers to free, independent and pluralistic broadcasting and to the right to communicate through broadcasting in Africa;

Cognisant 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;

Recalling the fact that the frequency spectrum is a public resource which must be managed in the public interest.

## Part One

### GENERAL REGULATORY ISSUES

1. The legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas, as well as a three-tier system for broadcasting: public service, commercial and community.

2. All formal powers in the areas of broadcast and telecommunications regulation should be exercised by public authorities which are protected against interference, particularly of a political or economic nature, by, among other things, an appointments process for members which is open, transparent, involves the participation of civil society, and is not controlled by any particular political party.
3. Decision-making processes about the overall allocation of the frequency spectrum should be open and participatory, and ensure that a fair proportion of the spectrum is allocated to broadcasting uses.
4. The frequencies allocated to broadcasting should be shared equitably among the three tiers of broadcasting.
5. Licensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria which include promoting media diversity in ownership and content.
6. Broadcasters should be required to promote and develop local content, which should be defined to include African content, including through the introduction of minimum quotas.
7. States should promote an economic environment that facilitates the development of independent production and diversity in broadcasting.
8. The development of appropriate technology for the reception of broadcasting signals should be promoted.

## **Part Two**

### **PUBLIC SERVICE BROADCASTING**

1. All State and government controlled broadcasters should be transformed into public service broadcasters, that are ac-

countable 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.

2. Public service broadcasters should, like broadcasting and telecommunications regulators, be governed by bodies which are protected against interference.
3. The public service mandate of public service broadcasters should be clearly defined.
4. The editorial independence of public service broadcasters should be guaranteed.
5. Public service broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets.
6. Without detracting from editorial control over news and current affairs content and in order to promote the development of independent productions and to enhance diversity in programming, public service broadcasters should be required to broadcast minimum quotas of material by independent producers.
7. The transmission infrastructure used by public service broadcasters should be made accessible to all broadcasters under reasonable and non-discriminatory terms.

## **PART Three**

### **COMMUNITY BROADCASTING**

1. Community broadcasting is broadcasting which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit.
2. There should be a clear recognition, including by the international community,

of the difference between decentralised public broadcasting and community broadcasting.

3. The right of community broadcasters to have access to the Internet, for the benefit of their respective communities, should be promoted.

## **PART Four**

### TELECOMMUNICATIONS AND CONVERGENCE

1. The right to communicate includes access to telephones, email, Internet and other telecommunications systems, including through the promotion of community-controlled information communication technology centres.
2. Telecommunications law and policy should promote the goal of universal service and access, including through access clauses in privatisation and liberalisation processes, and proactive measures by the State.
3. The international community and African governments should mobilise resources for funding research to keep abreast of the rapidly changing media and technology landscape in Africa.
4. African governments should promote the development of online media and African content, including through the formulation of non-restrictive policies on new information and communications technologies.
5. Training of media practitioners in electronic communication, research and publishing skills needs to be supported and expanded, in order to promote access to, and dissemination of, global information.

## **PART Five**

### IMPLEMENTATION

1. UNESCO should distribute the African Charter on Broadcasting as broadly as

possible, including to stakeholders and the general public, both in Africa and worldwide.

2. Media organizations and civil society in Africa are encouraged to use the Charter as a lobbying tool and as their starting point in the development of national and regional broadcasting policies. To this end media organisations and civil society are encouraged to initiate public awareness campaigns, to form coalitions on broadcasting reform, to formulate broad casting policies, to develop specific models for regulatory bodies and public service broadcasting, and to lobby relevant official actors.
3. All debates about broad casting should take into account the needs of the commercial broadcasting sector.
4. UNESCO should undertake an audit of the Charter every five years, given the pace of development in the broadcasting field.
5. UNESCO should raise with member governments the importance of broadcast productions being given special status and recognised as cultural goods under the World Trade Organization rules.
6. UNESCO should take measures to promote the inclusion of the theme of media, communications and development in an appropriate manner during the UN Summit on the Information Society in 2003.

# Declaration of Principles on Freedom of Expression

## Preamble

Reaffirming the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;

Reaffirming Article 9 of the African Charter on Human and Peoples' Rights;

Desiring to promote the free flow of information and ideas and greater respect for freedom of expression;

Convinced that respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy;

Convinced that laws and customs that repress freedom of expression are a disservice to society;

Recalling that freedom of expression is a fundamental human right guaranteed by the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as other international documents and national constitutions;

Considering the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy;

Aware of the particular importance of the broadcast media in Africa, given its capacity to reach

a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy;

Noting that oral traditions, which are rooted in African cultures, lend themselves particularly well to radio broadcasting;

Noting the important contribution that can be made to the realisation of the right to freedom of expression by new information and communication technologies;

Mindful of the evolving human rights and human development environment in Africa, especially in light of the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, the principles of the Constitutive Act of the African Union, 2000, as well as the significance of the human rights and good governance provisions in the New Partnership for Africa's Development (NEPAD); and

Recognising the need to ensure the right of freedom of expression in Africa, the African Commission on Human and Peoples' Rights declares that:

## I The Guarantee of Freedom of Expression

1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
2. Everyone shall have an equal opportunity

to exercise the right to freedom of expression and to access information without discrimination.

## II Interference with Freedom of Expression

1. No one shall be subject to arbitrary interference with his or her freedom of expression.
2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society.

## III Diversity

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things:-

- availability and promotion of a range of information and ideas to the public;
- pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;
- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts.

## IV Freedom of Information

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
  - everyone has the right to access information held by public bodies;
  - everyone has the right to access information held by private bodies which is

necessary for the exercise or protection of any right;

- any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
  - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
  - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
  - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

## V Private Broadcasting

1. States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.
2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:
  - there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
  - an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
  - licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and

- community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.

## **VI Public Broadcasting**

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

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

## **VII Regulatory Bodies for Broadcast and Telecommunications**

1. Any public authority that exercises powers in the areas of broadcast 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 political party.
3. Any public authority that exercises powers

in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

## **VIII Print Media**

1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.
2. Any print media published by a public authority should be protected adequately against undue political interference.
3. Efforts should be made to increase the scope of circulation of the print media, particularly to rural communities.
4. Media owners and media professionals shall be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content.

## **IX Complaints**

1. A public complaints system for print or broadcasting should be available in accordance with the following principles:
  - complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
  - the complaints system shall be widely accessible.
2. Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.
3. Effective self-regulation is the best system for promoting high standards in the media.

## **X Promoting Professionalism**

1. Media practitioners shall be free to organise themselves into unions and associa-

tions.

2. The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.

### **XI Attacks on Media Practitioners**

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.
2. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.
3. In times of conflict, States shall respect the status of media practitioners as non-combatants.

### **XII Protecting Reputations**

1. States should ensure that their laws relating to defamation conform to the following standards
  - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
  - public figures shall be required to tolerate a greater degree of criticism; and
  - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.
2. Privacy laws shall not inhibit the dissemination of information of public interest.

### **XIII Criminal Measures**

1. States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.

2. Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

### **XIV Economic Measures**

1. States shall promote a general economic environment in which the media can flourish.
2. States shall not use their power over the placement of public advertising as a means to interfere with media content.
3. States should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

### **XV Protection of Sources and other journalistic material**

Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:

- the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression; and
- disclosure has been ordered by a court, after a full hearing.

### **XVI Implementation**

States Parties to the African Charter on Human and Peoples's Rights should make every effort to give practical effect to these principles.

# Declaration of Table Mountain

The World Association of Newspapers and the World Editors Forum, meeting at the 60th World Newspaper Congress and 14th World Editors Forum Conference in Cape Town, South Africa, from 3 to 6 June 2007,

Note that in country after country, the African press is crippled by a panoply of repressive measures, from the jailing and persecution of journalists to the widespread scourge of ‘insult laws’ and criminal defamation which are used, ruthlessly, by governments to prevent critical appraisal of their performance and to deprive the public from information about their misdemeanours,

State their conviction that Africa urgently needs a strong, free and independent press to act as a watchdog over public institutions,

Consider that press freedom remains a key to the establishment of good governance and durable economic, political, social and cultural development, prosperity and peace in Africa, and to the fight against corruption, famine, poverty, violent conflict, disease, and lack of education,

Reaffirm our responsibility as the global representative organisations of the owners, publishers and editors of the world’s press to conduct “aggressive and persistent campaigning against press freedom violations and restrictions”,

Reaffirm our commitment to freedom of the press as a basic human right as well as an indispensable constituent of democracy in every country, including those in Africa,

Note that Article 19 of the Universal Declaration of Human Rights guarantees freedom of expression as a fundamental right, and emphasise that freedom of expression is essential to the realization of other rights set forth in international human rights instruments,

Recall that those principles have been restated and endorsed in the 2002 Declaration on Principles of Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples’ Rights and the African Union, thus requiring member states of the African Union to uphold and maintain press freedom,

Recall also the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press,

Observe that despite numerous opportunities for a free press to emerge from national independence, fully-fledged press freedom still does not exist in many African countries and that murder, imprisonment, torture, banning, censorship and legislative edict are the norm in many countries,

Recognise that these crude forms of repression are bolstered by the deliberate exclusion of certain newspapers from state-advertising placement, the burden of high import taxes on equipment and newsprint and unfair competition from state-owned media,

Note that despite the adoption of press freedom protocols and the repression of that freedom on a wide scale in Africa, the African Union in instituting its African Peer Review Mechanism under the NEPAD (New Partnership for Africa’s Development) programme has excluded the fostering of a free and independent press as a key requirement in the assessment of good governance in the countries of the continent, and

Identify as the greatest scourge of press freedom on the continent the continued implementation of “insult laws,” which outlaw criticism of politicians and those in authority, and criminal defamation legislation, both of which are used indiscriminately in the vast majority of African states that maintain them and which have as their prime motive the “locking up of information”,

## Declare that

African states must recognise the indivisibility of press freedom and their responsibility to respect their commitments to African and international protocols upholding the freedom, independence and safety of the press, and

To further that aim by, as a matter of urgency, abolishing “insult” and criminal defamation laws which in the five months of this year have caused the harassment, arrest and/or imprisonment of 229 editors, reporters, broadcasters and online journalists in 27 African countries (as outlined in the annexure to this declaration),

Call on African governments as a matter of urgency to review and abolish all other laws that restrict press freedom,

Call on African governments that have jailed journalists for their professional activities to free them immediately and to allow the return to their countries of journalists who have been forced into exile,

Condemn all forms of repression of African media that allows for banning of newspapers and the use of other devices such as levying import duties on newsprint and printing materials and withholding advertising,

Call on African states to promote the highest standards of press freedom in furtherance of the principles proclaimed in Article 19 of the Universal Declaration of Human Rights and other protocols and to provide constitutional guarantees of freedom of the press,

Call on the African Union immediately to include in the criteria for “good governance” in the African Peer Review Mechanism the vital requirement that a country promotes free and independent media,

Call on international institutions to promote progress in press freedom in Africa in the next decade, through such steps as assisting newspapers in the areas of legal defence, skills development

and access to capital and equipment,

Welcome moves towards a global fund for African media development and recommends that such an initiative gives priority attention to media legal reform and in particular the campaign to rid the continent of “insult” and criminal defamation laws,

Commit WAN and WEF to expand their existing activities in regard to press freedom and development in Africa in the coming decade.

WAN and WEF make this declaration from Table Mountain at the southern tip of Africa as an earnest appeal to all Africans to recognise that the political and economic progress they seek flourishes in a climate of freedom and where the press is free and independent of governmental, political or economic control.

This Declaration shall be presented to: The Secretary-General of the United Nations with the request that it be presented to the UN General Assembly; to the UNESCO Director-General with the request that it be placed before the General Conference of UNESCO; and to the Chairperson of the African Union Commission with the request that it be distributed to all members of the African Union so that it can be endorsed by the AU at its next summit meeting of heads of state.

Cape Town, 3 June 2007

# African Platform on Access to Information

19 September 2011

## Preamble

We, participants at the Pan African Conference on Access to Information, organised by the Windhoek+20 Campaign on

Access to Information in Africa in partnership with the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the African Union Commission (AUC) and the Special Rapporteur on Freedom of Expression and Access to

Information of the African Commission on Human and Peoples' Rights in Cape Town, South Africa, September 17 – 19, 2011:

**Remembering** the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press and viewing the significant progress that has been made in the past 20 years on freedom of expression, access to information and the free flow of information;

**Stating** that access to information (ATI) is the right of all natural and legal persons, which consists of the right to seek, access and receive information from public bodies and private bodies performing a public function and the duty of the state to provide such information;

**Emphasising** that access to information is an integral part of the fundamental human right of freedom of expression, essential for the recognition and achievement of every person's civil, political and socio-economic rights, and as a mechanism to promote democratic accountability, good governance;

**Acknowledging** that access to information is

instrumental to fostering access to education and health care, gender equality, children's rights, a clean environment, sustainable development and the fight against corruption;

**Recalling** Article 19 of the Universal Declaration of Human Rights of 10 December 1948, which guarantees that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers", Article 19 of the International Covenant on Civil and Political Rights and the UN Human Rights Committee General Comment No. 34 adopted in 2011 which states that Article 19(2) of the ICCPR includes the right of access to information held by public bodies, and Article 1.2 of the UNESCO Constitution;

**Underlining** Article 9 of the African Charter on Human and Peoples' Rights adopted by the Organisation of African Unity (OAU) on 27 June 1981, which provides that, "Every individual shall have the right to receive information";

**Reaffirming** Article IV(1) of the Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples' Rights at its 32nd Ordinary Session held in October 2002, which provides that "Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law";

**Cognisant** of the African Union Convention on

Preventing and Combating Corruption, the African Charter on Values and Principles of Public Service and Administration, the African Charter on Democracy, Elections and Governance, the African Youth Charter and the African Statistics Charter, all of which promote transparency in public life.

**Welcoming** the efforts of the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information in developing a Model Law for AU Member States on Access to Information, aimed at assisting Member States in formulating, adopting or reviewing access to information legislation and its implementation;

**Mindful** of the efforts of international organisations and others to develop principles and declarations on the right of access to information and freedom of expression including the 2010 Brisbane Declaration "Freedom of Information: The Right to Know", the Atlanta Declaration and African Regional Findings, the Accra Agenda for Action, the Lagos Declaration on the Right of Access to Information, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, and the Declaration of Table Mountain;

**Aware** that the World Summit on the Information Society (WSIS) brought to the forefront the importance of access to information in the modern world through the Geneva Declaration of Principles and Tunis Commitment and that the Internet Governance Forum (IGF) plays a crucial role in bringing together all of the stakeholders to facilitate an international internet governance debate that includes issues of access and openness;

**Recognising** the work of the African Union Commission to give practical expression to the various instruments of the African Union on freedom of expression and access to information, through such initiatives as the Pan African Media Network and portal, the new AU website, social networks, the media center, training programmes, ensuring media access to the

AUC leadership, and publication of other information materials among others; as well as its efforts in promoting Information and Communications Technology (ICTs) in Africa;

**Encouraged** that over 90 countries around the world have adopted comprehensive national access to information laws or regulations including ten in Africa; that many countries in Africa have joined the Extractive Industries Transparency Initiative, the International Aid Transparency Initiative and the Open Government Partnership; and that the Economic Community of West African States is moving towards adoption of a binding Supplementary Act for a Uniform Legal Framework on Freedom of Expression and Right to Information;

**Concerned** that most African nations have not yet adopted comprehensive ATI laws or regulations and that significant problems remain with both the substantive provisions of many of those that have adopted laws and the full implementation of the laws;

**Acknowledging** that civil society organisations and government bodies around the world have adopted 28 September as International Right to Know Day; Convinced that it is of critical importance that clear and comprehensive principles are established to guide the promotion and protection of the right of access to information in Africa through the adoption and effective implementation of appropriate national laws and regulations;

**Resolve** to adopt the following Principles on The Right of Access to Information:

## Key Principles

1. **Fundamental Right Accessible to Everyone.** Access to information is a fundamental human right, in accordance with Article 9 of the African Charter on Human and Peoples' Rights. It is open to everyone, and no one should be privileged or prejudiced in the exercise of this right on

account of belonging to a class or group howsoever defined, and whether in terms of gender, class, race, political association, occupation, sexual orientation, age, nationality, HIV status, and other bases as cited in many African constitutions. It is not required that anyone must demonstrate a specific legal or personal interest in the information requested or sought or otherwise required to provide justification for seeking access to the information. 3

2. **Maximum Disclosure.** The presumption is that all information held by public bodies is public and as such should be subject to disclosure. Only in limited circumstances set out in these principles below may disclosure be denied.
3. **Established in Law.** The right of access to information shall be established by law in each African country. Such law shall be binding and enforceable and based on the principle of maximum disclosure. The law shall take precedence over other conflicting laws that limit access to information.
4. **Applies to Public Bodies and Private Bodies.** The obligations of ATI shall apply to all public bodies, as well as to private bodies that are owned or controlled by the government, utilise public funds, perform functions or provide services on behalf of public institutions, or have exclusive contracts to exploit natural resources (with regards to said funds, functions, services or resources), or which are in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety, or to the exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right.
5. **Clear and Unambiguous Process.** The law shall include procedures for the exercise of the right. The process to obtain information should be simple and fast

and take advantage of new information and communication technologies where possible. Bodies falling under the scope of the ATI law should provide assistance to requesters in order to ensure that they receive the information they need. The information provided should be provided in a form understandable to the requestor. Information should be disclosed within a clear and reasonable deadline provided for by law. It should be available at low or no cost.

6. **Obligation to Publish Information.** Public and relevant private bodies shall be obliged to proactively release information in a timely manner about their functions, powers, structures, officials, decisions, expenditures, budgets, and other information relating to their activities that is of public interest. The dissemination should use all reasonable means of communications, including ICTs, to maximise access to all communities and sectors of society.
7. **Language and Accessibility.** To the greatest extent possible, information should be available in the language of the person seeking it, in an accessible location, in a format that is as accessible as possible, and, in particular, ensures that it is accessible to those who may be particularly affected by the subject matter of the information.
8. **Limited Exemptions.** The right of access to information shall only be limited by provisions expressly provided for in the law. Those exemptions should be strictly defined and the withholding of information should only be allowed if the body can demonstrate that there would be a significant harm if the information is released and that the public interest in withholding the information is clearly shown to be greater than the public interest in disclosure. Information can only be withheld for the period that the harm would occur. No information relating to human rights abus-

es or imminent dangers to public health, environment, or safety may be withheld. 4

9. **Oversight Bodies.** Independent bodies such as an ombudsperson or information commissioner should be established to monitor and hold government bodies and relevant private entities to account on their access to information disclosure practices, to receive and decide upon complaints, and generally oversee the implementation of the access to information legislation. The oversight body should be adequately funded.
10. **Right to Personal Data.** All persons have a right to access and correct their personal data held by third parties.
11. **Whistleblower Protection.** To ensure the free flow of information in the public interest, adequate protections against legal, administrative and employment-related sanctions should be provided for those who disclose information on wrongdoing and other information in the public interest.
12. **Right of Appeal.** Everyone has a right to appeal administratively any action that hinders or denies access to information or any failure to proactively disclose information. They have a right to further appeal to an independent body and to finally seek judicial review of all limits of their right of access to information.
13. **Duty to Collect and Manage Information.** Public and relevant private bodies have a duty to collect information on their operations and activities on behalf of their citizens. They also have a duty to respect minimum standards in relation to the management of this information to ensure that it may easily be made accessible to citizens.
14. **Duty to Fully Implement.** Public and relevant private bodies have an obligation

to ensure the law is fully implemented. This includes internal procedures and processes and the designation of responsible officials.

## Application of Principles

These principles are essential to development, democracy, equality, and the provision of public service, and are applicable to, amongst others, the following:

1. **Enabling Environment.** Governments should ensure that the legal frameworks create an enabling environment allowing individuals, civil society organisations including trade unions, media organisations, and private businesses to fully enjoy access to information, thus fostering active participation in socio-economic life by all, in particular people living in poverty and those discriminated against or marginalised.
2. **Elections and Electoral Processes:** Governments and election management bodies have a positive obligation to provide the public with information before, during and after elections, not to interfere with media coverage, to encourage public participation and proactively publish campaign spending and contributions.
3. **Disadvantaged Communities:** Governments have a particular obligation to facilitate access to information by disadvantaged minority groups and minority language speakers, as well as 5 marginalised groups including women, children, rural people, the poor and persons with disabilities. Information should be available at no costs to these groups. This especially applies to information that contributes to the long-term empowerment of the groups. Governments also have an obligation to ensure equitable and affordable access to ICTs for those with special needs and for other disadvantaged persons

and groups.

4. **Women:** Governments, civil society and the media have an obligation to facilitate women's equal access to information, so that they can defend their rights and participate in public life. Civil society organisations should be encouraged to make the best use of access to information mechanisms to monitor governments' fulfilment of commitments to further gender equality, to demand the enhanced delivery of services targeted at women and to ensure that the public funds they are entitled to actually reach them. The collection, management and release of information should be gender disaggregated.
5. **Children and Youth:** Governments have an obligation to encourage the mass media to disseminate information and material of social and cultural benefit to children and the youth. Governments are further encouraged to facilitate the exchange and dissemination of such information and material from a diversity of cultural, national and international sources as well as the production and dissemination of information specifically for children and youth and wherever reasonably possible facilitate and encourage access to such information by children and youth.
6. **Environmental Information:** Governments and inter-governmental organisations should increase their efforts in implementing Principle 10 of the 1992 Rio Declaration on the Environment and Development on the right of access to information, public participation and access to justice on environmental issues. Governments should adopt appropriate legislation and regulations to promote access and proactive release of environmental information, guarantee openness, fight secrecy in institutional practices, and repeal that which hinders public availability of environmental information. Governments' capacity to supply environmental information and civil society organisations' demand for such information, as well as engagement in decision-making processes and the ability to hold governments and other actors accountable for actions affecting the environment should be strengthened.
7. **Education:** Taking into account the close connection between the right of access to information and the right to education, governments have the duty to make publicly available information about educational policies and assessments of their impacts, school performance data, and budgets for education at all government levels. Governments also have a positive obligation to provide information for each school, in particular, schools' admission policies and admission lists, information on management practices, school governance, and other relevant aspects.
8. **Health:** Governments have a duty to provide access to information with a view to ensuring and improving access to health care services and enhancing accountability regarding their provision. Civil society actors should be encouraged to implement actions to expand the reach of this type of information to all sectors in society, promote the exercise of the right to information to advance the right to health and counter its violations, undertake advocacy and monitoring actions and directly involve individuals in them. Enhanced access to health-related information shall not preclude the protection of individuals' right to privacy. 6
9. **The Fight Against Corruption:** By contributing to openness and accountability, access to information can be a useful tool in anti-corruption efforts. Besides ensuring that access to information legislation is effectively implemented, governments have a duty to guarantee a broader legal and institutional framework conducive to preventing and combatting corruption. Civil

- society organisations and plural media independent of powerful political and commercial interests are critical actors in unveiling and fighting corrupt practices, and their use of access to information laws and other mechanisms enhancing transparency should be encouraged.
10. **Aid Transparency.** Governments, donors and recipients have a duty to make all information relating to development assistance including grants, loans and transfers to public and private bodies, and assessments on the use and effects of such assistance fully public in a proactive manner based on the principles of the International Aid Transparency Initiative.
  11. **Natural Resources Transparency.** Governments should proactively publish all information including policies, impact assessments, agreements, subsidies, licenses, permits and revenues relating to the exploitation of natural resources including the extractive industries, water, fisheries, and forests. Private bodies which are exploiting natural resources should be required to publicly disclose the terms of such agreements and payments made to governments based on the principles developed by the Extractive Industries Transparency Initiative (EITI).
  12. **Media and Information Literacy.** Governments, civil society, education institutions, and the media have an obligation to promote media and information literacy, to assist individuals and communities to ensure that all members of society can understand and take advantage of new technologies, and to be able to participate intelligently and actively in public matters, and enforce their right of access to information. Citizens should be empowered to be able to consume information critically and express their views on such information, as well as be enabled to seek corrections where applicable.
  13. **Access to Information and Communications Technologies.** Governments have an obligation to (i) use ICTs and other media to ensure maximum disclosure and dissemination of information; (ii) promote and facilitate unhindered public access to such technologies for all citizens and especially for disadvantaged minority groups and minority language speakers, as well as marginalised people such as women, children, rural people, the poor and persons with disabilities.
  14. **Apply in Other Spheres.** The principles stated above on the right of access to information also apply to various spheres that have not been listed.

## Call to Action

In light of the above, the Conference calls on:

### UNESCO to:

- Endorse, through its General Conference, the “African Platform on Access to Information” and the proclamation of 28 September as International Right to Information Day, also recommending the endorsement of this International Day by the United Nations General Assembly, as a date to raise awareness about the importance of the right of access to information throughout the world;
- Develop and implement internal policies facilitating access to information held by UNESCO in line with this Declaration, and to encourage the adoption of similar policies by other UN agencies.

### UN Economic Commission for Africa:

- Develop as part of the RIO +20 Earth Summit a regional convention on access to environmental information, public participation and access to justice based on Principle 10 of the 1992 Rio Declaration and the UNEP Bali Guidelines.

## **The African Union, its Organs and Institutions:**

- The African Commission on Human and Peoples' Rights to promote 28 September as African Right to Information Day;
- The African Commission on Human and Peoples' Rights to adopt use this Declaration for a resolution authorising the Special Rapporteur on Freedom of Expression and Access to Information to expand Article IV of the Declaration of Principles on Freedom of Expression in Africa to incorporate the principles of this Declaration.
- The African Commission on Human and Peoples' Rights to complete and approve the proposed Africa Model Law for AU Member States on Access to Information;
- The African Union Commission to take forward this Declaration by (1) proposing to the next AU summit in January 2012 to adopt 28 September as African "Right to Information Day"; and (2) initiate an Experts Group to develop further instruments on access to information;
- The Pan-African Parliament (PAP) to endorse this Declaration;
- All African Union bodies to promote the respect of the principles in this Declaration by national governments and provide assistance in implementing them;
- The New Partnership for African Development (NEPAD) to adopt the revised African Peer Review Mechanism (APRM), which includes transparency and access to information;
- The African Union should develop and implement internal policies on access to information held by AU bodies based on this Declaration.

## **Other African Regional Organizations and Institutions:**

- All Regional Economic Communities (RECs) should develop internal policies on access to information held by those bodies based on this Declaration;
- ECOWAS to review and adopt the Supplementary Act for a Uniform Legal Framework on Freedom of Expression and Right

to Information in West Africa;

- The Southern African Development Community (SADC) to revise the Protocol on Culture, Information and Sport to include principles on access to information;
- Inter-governmental Agency on Development (IGAD) to develop and adopt a Protocol on access to information based on this Declaration;
- The East African Community (EAC) to develop and adopt a Protocol on access to information based on this Declaration;
- The African Development Bank (ADB) to adopt a revised public access policy based on the Transparency Charter for International Financial Institutions.

## **National Governments of AU member states to:**

- Adopt or revise existing comprehensive laws on access to information in line with the principles in this Declaration and the proposed AU Model Law, and fully implement them;
- Harmonise legal frameworks to ensure access to information including repealing or revising antiquated laws which restrict access and ensuring that new laws are compatible with the ATI principles;
- Engage with civil society and other stakeholders to ensure widespread information demand and effective implementation of laws and policies to advance access to information by all persons, especially marginalised groups.
- Join and implement multi-stakeholder efforts including the Extractive Industries Transparency Initiative (EITI), the Construction Sector Transparency Initiative (CoST) and the Medicines Transparency Alliance (MeTA) to further transparency;
- Promote availability of public domain information through ICTs and public access to ICTs;
- Support AU efforts to adopt an instrument on access to information;
- Officially recognise 28 September as International and African "Right to Information Day";

- Adopt and effectively implement legislation and policies ensuring whistleblower protection.

#### **Civil Society to:**

- Engage with governments in developing, enhancing and implementing ATI laws;
- Monitor progress on the implementation of ATI laws including sectoral laws;
- Create awareness on ATI and provide assistance to facilitate information access by the general public as well as by specific audiences (including women, minority groups and minority language speakers, children, rural communities, individuals with disabilities or living in poverty);
- Ensure transparency in their own activities;
- Promote September 28 as African and International Right to Information Day and, in particular, carry out activities on that date every year to advance the recognition, awareness and enjoyment of the right of access to information by all sectors of society.

#### **Media to:**

- Respect editorial independence, professional ethics and journalism standards in their provision of information;
- Recognise the need for transparency and accountability with regard to their own output and institutions, while safeguarding the principal of protecting sources;
- Respect and promote equality, and provide equitable representation within their information output;
- Promote the widest possible access to their information output;
- Enhance mechanisms for audience participation and response;
- Recognise and be responsive to gender differences in regard to audience and market research;
- Popularise the importance of, and issues around, access to information.
- Make optimum use of ATI laws to access information for the public interest.

#### **Business Sector Companies and Corporations to:**

- Join multi-stakeholder initiatives promoting transparency including EITI, CoST and MeTA;
- Adopt corporate and social responsibility (CSR) policies that promote transparency and accountability, including access to information and protection of whistleblowers;
- Proactively disclose information of public interest including on pollution releases and other environmental issues;
- Support government and CSO efforts to improve access to information in society.

#### **Public and Private Donors to:**

- Ensure that all information relating to the use of development assistance and its effects are made public;
- Ensure that all information relating to development assistance is made available in conformity with the International Aid Transparency Initiative (IATI) standards;
- Encourage and support governments in the adoption and full implementation of access to information laws and policies;
- Support civil society and governments' efforts to promote access to information.

Adopted in Cape Town, South Africa, on this 19th Day of September 2011, upon a motion for adoption moved by Advocate Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights, and seconded by Hon. Norris Tweah, Deputy Minister of Information of the Republic of Liberia.

# Guidelines on media coverage of elections SADC region

## Preamble

We, the participants - journalists, broadcasters, media practitioners, media organisations, media councils and representatives of electoral management bodies throughout the SADC region gathered in Johannesburg, South Africa on 26 September, 2012 for the MISA Conference on Media and Elections.

Recognizing the importance of democratic elections at all levels;

Noting the important role of free media in promoting democracy, including the conduct of free and fair elections;

With due emphasis on the fundamental principle of editorial independence and importance of the media during election periods;

Firmly guided by the protocols, charters, conventions and guidelines endorsed, signed and/or ratified by our governments in the region in their desire to ensure the success of democratic processes and in particular:

- The African Charter on Human and Peoples' Rights (1981),
- The Windhoek Declaration on Promoting an Independent and Pluralistic African Press (1991),
- The African Charter on Broadcasting (2001)
- The Declaration of Principles on Freedom of Expression in Africa, adopted by formal-resolution by the African Commission on Human and Peoples' Rights (2002),
- The SADC Principles and Guidelines Governing Democratic Elections (2004)
- The Southern African Broadcasting Association: Guidelines and Principles for Broadcast Coverage of Election in the SADC Re-

gion (2005)

- The African Charter on Democracy, Elections and Governance (2007),

Acknowledging the continuing challenges of limited access to information during the electoral cycle, amidst election conflict and violence, throughout elections conducted in adverse environments of intolerance, especially of dominant ruling party states, and state repression;

Aware of the continuing deficit of freedom of expression and media freedom in parts of Southern Africa;

Mindful of the need for gender-sensitive and equitable reporting and programming of all information during the electoral cycle;

Appreciating the diversity of the electorate, especially the different information needs of marginalised communities and differently-abled persons;

Firmly believing that the coverage of elections by the media should be fair, accurate and balanced;

Recognising the need to take account of the significant differences which exist between the private, public and community media in the region as well as the differences between print, electronic and new media;

Taking into consideration that public service broadcasters have a particular mandate in ensuring fair and thorough coverage of elections through equitable distribution of airtime to political parties and candidates.

Determined to assist voters make informed choices:

Hereby agree on, adopt and resolve to abide by or support the implementation of the following voluntary guidelines, which media professionals are urged to apply throughout the electoral process  
– pre-voting, voting and post voting period.

## 1. Role of the media in elections

The role of the media during the entire electoral process is to ensure that voters make informed choices. The coverage of candidates, parties and electoral processes is in pursuit of this central purpose.

Principal roles of the media in elections are defined as follows:

The media are required to provide relevant information, analyse it and additionally offer substantive opinions to the public, while also serving as a platform for debate and discussion. Furthermore, the media shall fulfill their watchdog role by promoting transparency and thus preventing electoral fraud.

The media have a duty to provide election coverage that gives the voter comprehensive, accurate and reliable information on all aspects of the electoral process. This information will also help to ensure that the voters know and understand their democratic rights and exercise them free from fear, intimidation or coercion.

As the Fourth Estate the media is expected to:

- a) Ensure that journalists are familiar with the national legislative framework governing the electoral process and are fully conversant with all aspects of the electoral process, including the electoral institutions;
- b) Be familiar with regional and continental principles and benchmarks on election coverage
- c) Provide platforms for accessing information that enable informed analysis and opinion on elections.

The role of the media is to report during the entire electoral process:

### I. Pre-voting

- Electoral management institutions
- Civic education
- Electoral system
- Demarcation of constituencies
- Voter registration
- Voters' roll
- Candidate or party registration
- Nomination processes
- Official campaign period

### II. Voting Period

- Voting days
- Voting procedures,
- Location of polling stations
- Activities at polling stations
- Role of stakeholders at polling stations
- Election monitors
- Election observers and their observations
- Vote counting and results

### III. Post Voting Period

- Appointments to office
- Analysis of promises made by the government/governing party
- Holding parties accountable.

## 2. Conditions necessary for the media to play an effective role

Freedom of expression, freedom of the media and access to information are crucial for media to play these roles effectively. Also of critical importance is that:

- a) Media houses provide adequate resources to their journalists for effective election coverage;
- b) The media enjoy unfettered editorial and programming independence from all vested interests including candidates, parties, media owners and organisations allied to and/or supporting candidates and political parties;
- c) All laws that hinder the media in fulfilling their role are repealed;
- d) All media are allowed access to all elec-

- tion activities including rallies, media conferences, candidates, parties and electoral management institutions and officials;
- e) Transparent polling procedures, fair, open counting of the votes and timely release of the results are guaranteed;
  - f) Journalists and media houses can operate in an environment free of violence, harassment and intimidation;
  - g) Sources and interviewees are not threatened, intimidated or harassed;
  - h) Perpetrators of attacks against media personnel and property are brought to justice;
  - i) State and public broadcasters are transformed into truly public service broadcasters as outlined amongst others in the African Charter on Broadcasting;
  - j) Whistleblowers are protected;
  - k) Complaints procedures for aggrieved media professionals exist (e.g. complaint mechanisms of Electoral Management Bodies).

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises. At the same time this protection should not obstruct them in carrying out their work. Journalists reporting on the electoral process have a right to be protected from undue pressure and interference from public authorities with a view to influencing the elections.

### 3. Ethical considerations in election coverage

Journalists and editors should act with integrity and should neither ask for, nor accept bribes of any kind, be they financial or other, or give special favours to any politicians or party. Journalists should not defame or promote hate, violence or corruption.

Given the critical importance of media in covering the elections, the media must at all times observe the core values and principles of journalism which include:

#### a) Fairness and Accuracy

During election periods media must recognise that government officials are in a position to use their incumbency to advance their electoral prospects and should regard with particular caution any statement or action by an official of an incumbent party. In particular, media should ensure that they do not afford the policies of incumbent parties' greater legitimacy than they would afford those policies or actions if the party were not in government.

News reports must be factual, accurate, well-sourced and based on sound evidence. News should be comprehensive, fair and balanced ensuring that all candidates, parties and election issues are given equitable and gender sensitive coverage.

#### b) Opinion and Analysis

Editorial opinion must be clearly distinguished from fact or news. A diversity of opinions representing the broadest possible range of views and ideas especially those of contesting candidates and political parties should be allowed across all media platforms.

Media which choose to endorse candidates or parties must ensure the endorsement is clearly presented as opinion and is not part of its news reports.

Analysis should provide insights based on research and diversity of expert opinions which enable voters to get a deeper understanding of processes, issues and candidates.

Debate and discussion platforms, which include representatives of all shades of political opinion, experts and civil society representatives should be organised. As far as possible, and especially in the electronic media (including presidential or prime ministerial), candidates should be given an opportunity to debate with each other in moderated programmes.

#### c) Use of Language

Media must, without censoring and undermining freedom of expression of anyone,

avoid and preclude the use of language which constitutes hate speech incites violence or promotes stereotypes.

#### **d) Right of reply**

A fair opportunity to reply to inaccuracies and allegations contained in a report that has been broadcast or published should be given to aggrieved individuals or organisations. The right of reply must be given in a timely manner and in a similar programme and with respect to the print media in space of appropriate prominence.

#### **e) Diversity and Confidentiality of Sources**

The media have an obligation to reflect the diversity and plurality of voices in society in its coverage including those of marginalised groups.

Reporting should be gender-balanced and sensitive, treating men and women equally as news sources and subjects.

Confidentiality of sources must be protected by the media (whereby the journalist knows the identity of the source even when not revealing it). Whenever possible the media should refrain from using anonymous sources (whereby the journalist does not know the identity of the source). The principle of multiple sources to verify information and facts applies.

The media should recognise their obligation to the electorate to provide a full and accurate record of events and developments. It is critically important that media proactively seek information from political parties and not wait for information to be delivered to them. Failure to do so will give parties with greater resources inequitable amounts of news coverage.

#### **f) Media Public Accountability**

In ensuring their responsibility to the voters and exercising their right to freedom of expression, journalists shall respect the rights, integrity and reputation of others in terms of these guidelines as well as codes of conduct established by self-regulatory bodies.

## **4. Reporting on election observers and election monitors**

Journalists are expected to distinguish between Election Observation being the information gathering, fact finding and reporting on the credibility, legitimacy and transparency of the electoral process often carried out by external personnel, who are not permitted to intervene in the voting and counting operation; and

Election Monitoring referring to the information gathering, fact finding and reporting on the credibility, legitimacy and transparency of the electoral process carried out by local agencies or personnel, who are able to draw attention to observed deficiencies during the voting and counting operations.

Media houses must scrutinize the work and reports of election observers and election monitors, including their identity i.e. the organisations and institutions they are from, their expertise and experience in election observation or election monitoring. They must report the methodologies used by election observers and election monitors and how they arrive at their conclusions.

## **5. Role of public and private media regarding election advertorials**

State-operated media, and more specifically public service broadcasters, have a particular role to play in ensuring fair, balanced and equitable coverage and allocation of free airtime for party political broadcasts. In this regard they should work closely with independent electoral bodies, media regulatory bodies, media councils and Media Ombudsmen in developing formulas for fair and equitable allocation of air time.

All media houses should adopt their own transparent in-house policy or code on campaign advertisement and sponsorship. Such a policy should ensure that all candidates and parties are treated equitably.

Political adverts and advertorials should be

clearly distinguished from editorial content. Before and after each party election broadcast there should be a clear statement identifying it as such.

Where media give political parties time slots to air programmes setting out their policies to voters, the content of the programmes will primarily be the responsibility of the party.

However, the broadcaster remains responsible for the broadcast as publisher and should require candidates and political parties to obey laws which may not impinge on freedom of expression, but instead observe standards that pertain to accuracy and fairness.

## 6. Converged media

With rapidly evolving ICTs, traditional media is expanding into the new and social media sphere and media outlets have a responsibility to extend the application of journalistic principles to these diverse platforms.

Specifically, the use of social media in election coverage of conventional media should take into account the following:

- a) Journalistic standards and ethics still apply.
- b) Journalists using social media platforms in their personal as well as professional capacity should try to separate the two as their audience might not be able to differentiate.

In conclusion, journalists should not be seduced by the informality of social media and compromise their integrity and professionalism.

## 7. Polls

### a) Opinion Polls

Opinion polls are an important element in election coverage because they are one way of determining public attitudes toward(s) issues, candidates and parties. In this regard they can enrich coverage and enable voters to get a fuller picture of an election.

In reporting, opinion polls media need to reveal which party, individual or organisation commissioned and paid for the poll, the purposes of the poll, the identity of the polling organisation and its expertise in polling, the nature of the questions or issues the poll focused on, the geographic coverage and demographic profile of those who were polled, the methodologies used in polling including details of the sample and the margin of error which will contextualise the poll results.

### b) Exit polls

Reporting of exit polls should be clearly identified as such and not as a reflection of how all voters have actually voted and what the outcome of the election will be. The reporting should reveal a sample of the exit poll, the organisation that conducted and financed it, its methodologies and the margin of error. Results of exit polls should not be announced or broadcast until after the last polling stations have closed.

## 8. Reporting results

Media covering elections are obliged to inform the electorate of the election results in a comprehensive way, as they become available, whether provisional or final, as released by the Electoral Management Body. Journalists should take special care when predicting final results based on partial results available.

When reporting on parallel vote tabulation, journalist should be aware that parallel vote tabulation is an estimation of final results of an election based on the collection and aggregation of election results obtained at polling station level. This collection can be complete (all polling stations) or based on a random sample (selected polling stations). While parallel vote tabulation have a solid level of statistical validity, journalists must exercise caution, care and responsibility in reporting parallel vote tabulation to avoid confusing or mixing up official tallies and parallel tabulation. In reporting parallel vote tabulation media need to reveal which

individual or organisation commissioned and paid for the parallel vote tabulation, the purposes of the parallel vote tabulation and the methodology used.

## 9. SMS surveys, phone-ins and talk shows

### a) Radio/Television instant SMS audience surveys

With the increase in the use of mobile phones, radio and television broadcasters conduct so called 'opinion polls' during news bulletins, using text messages (SMS) sent by the audience, and giving immediate results of the 'poll' at the end of the programme. Such a practice can be misleading as it contravenes the basic rules of scientific methodology and analysis.

Results from 'SMS polls' should not be treated as representative scientific results. If a broadcaster uses them nonetheless, they should at least make the audience aware of the lack of scientific methodology and indicate the number of respondents. 'SMS polls' can be reported as a reflection of some people's opinions and provide a snapshot of feelings and changes of views during an election. However, media must be alert and make their audiences aware of possible manipulation of SMS surveys by individual politicians and political or other interested parties.

### b) Guidelines for Phone-ins and talk shows

Phone-ins and talk shows provide the viewer or listener with an opportunity to be heard, to participate, and sometimes to create content. Unlike newspaper copy or pre-recorded programmes, live radio and television can pose a challenge though. Presenters must become their own editors and be acutely aware of the sort of content that should not be aired. This includes hate speech, ethnic baiting, lies and propaganda, crude and vulgar language, incitement

to violence, and unverified information.

- i. Journalistic principles must apply during the programme.
- ii. The presenter should be alert and prepared to challenge a caller who says something that is problematic.
- iii. Time-delay technology or other mechanisms to filter out offensive content or calls prior to broadcast should be installed.
- iv. Viewers, listeners and callers should be treated with respect, honesty and fairness.
- v. The privacy of callers should be respected and their personal information safeguarded (e.g. the telephone numbers of callers should not be revealed to third parties).

## 10. Implementation and monitoring of media and election guidelines

To implement these guidelines effectively media houses need to do the following:

- a) Initiate a process of domestication at national level allowing for amendments of the guidelines and aiming to create ownership and commitment by the media.
- b) Develop in-house editorial codes and policies based on these guidelines.
- c) Publish these guidelines and any internal codes that they develop to promote awareness and to help the public monitor media performance
- d) Establish their own internal mechanism to monitor their performance and, where resources are available, to contract external parties who have expertise in media monitoring
- e) Be prepared to take corrective measures to address problems of performance identified through media monitoring.

## References

1. Guidelines for Election Coverage, Media Council Kenya
2. Principles for Election Management, Monitoring and Observation in the SADC Region, Electoral Commissions Forum and

Electoral Institute of Southern Africa

3. Recommendations of the Committee of Ministers, Council of Europe

## **Participants of the conference were drawn from different SADC countries and organizations:**

### **Angola**

Freelance journalist

### **Botswana**

Press Council of Botswana  
MISA Botswana  
Independent Electoral Commission  
Democratic Republic of Congo  
Electoral Commission

### **Lesotho:**

MISA Lesotho  
Harvest FM (Radio)  
Electoral Commission

### **Madagascar**

TV PLUS Madagascar  
Freelance journalist  
Madagascar Electoral Commission- CENIT

### **Malawi**

Media Council of Malawi  
MISA Malawi  
Malawi Electoral Commission

### **Mauritius**

Mauritius Electoral Commission

### **Mozambique**

Mediacoop  
Electoral Commission Mozambique

### **Namibia**

Editors' Forum of Namibia  
MISA Namibia  
Electoral Commission Namibia

### **Seychelles**

Electoral Commission Seychelles

### **South Africa**

South African National Editors' Forum

### **Swaziland**

Swaziland Editors' Forum  
Swaziland Media Complaints Commission  
MISA Swaziland  
Electoral and Boundaries Commission  
Swaziland

### **Tanzania**

MISA Tanzania  
National Electoral Commission of Tanzania  
Zanzibar Electoral Commission

### **Zambia**

Zambia Media Council (ZAMEC)  
MISA Zambia  
The Post, Press Freedom Committee  
Electoral Commission Zambia

### **Zimbabwe**

Voluntary Media Council of Zimbabwe  
MISA Zimbabwe  
Zimbabwe Electoral Commission  
SADC-CNGO  
SADC- Electoral Commission Forum

### **Kenya**

Media Council Kenya

The meeting was organised by the Regional Secretariat of the Media Institute of Southern Africa (MISA) and the SADC- Electoral Commission Forum with the support of fesmedia Africa, Friedrich- Ebert-Stiftung and the Open Society Institute of Southern Africa (OSISA)

# The African Declaration on Internet Rights and Freedoms

## Preamble

**Emphasising** that the Internet is an enabling space and resource for the realisation of all human rights, including the right to hold opinions without interference, the right to freedom of expression and information, the right to freedom of assembly and association, the right to freedom of thought, conscience and religion, the right to be free from discrimination in all forms, the right of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language, and economic, social and cultural rights;

**Emphasising** that the Internet is particularly relevant to social, economic and human development in Africa;

**Affirming** that in order to fully benefit from its development potential, the Internet must be accessible, available and affordable for all persons in Africa;

**Affirming** further that the Internet is a vital tool for the realisation of the right of all people to participate freely in the governance of their country, and to enjoy equal access to public services;

**Recalling** that a number of regional standards are relevant to the protection of human rights on the Internet, in particular the African Charter on Human and Peoples' Rights of 1981, the Windhoek Declaration on Promoting an Independent and Pluralistic African Press of 1991, the African Charter on Broadcasting of 2001, the Declaration of Principles on Freedom of Expression in Africa of 2002, the African Platform on Access to Information Declaration of 2011,

and the African Union Convention on Cybersecurity and Personal Data Protection of 2014;

**Acknowledging** the roles being played by many African and international organisations, including the African Union Commission, the United Nations Economic Commission for Africa (UNECA), the NEPAD Planning and Coordinating Agency and UNESCO, in promoting access to and use of the Internet in Africa;

**Mindful** of the continuing efforts of international organisations and other stakeholders to develop principles that apply human rights to the Internet, particularly since the Joint Declaration of 2011 concerning Freedom of Expression and the Internet by the four Special Rapporteurs on Freedom of Expression: including the United Nations Human Rights Council resolution of 2012 on The promotion, protection and enjoyment of human rights on the Internet; the UN General Assembly Resolution of 2013 on The right to privacy in the digital age; the UN Human Rights Council Resolution of 2014 on The Internet and Human Rights; the United Nations Guiding Principles on Business and Human Rights; the Johannesburg Principles on Freedom of Expression and National Security; The Right to Share Principles, The Necessary and Proportionate Principles; and the Manila Principles on Intermediary Liability;

**Concerned** by the continuing inequality in access to and use of the Internet, and the increasing use of the Internet by state and non-state actors as a means of violating individual rights to privacy and freedom of expression through mass surveillance and related activities;

**Aware** that some individuals and groups – in particular women and girls, people with dis-

abilities, ethnic, religious and sexual minorities, and people living in rural areas – might be threatened with exclusion and marginalisation in relation to exercising their human rights in relation to the Internet and digital technologies;

**Emphasising** the responsibility of states to respect, protect and fulfil the human rights of all people;

**Convinced** that it is critical for all African stakeholders to invest in creating an enabling and empowering Internet environment that truly serves the needs of Africans through the adoption and implementation of this Declaration.

## HEREIN DECLARE:

Key principles

### 1. Openness

The Internet should have an open and distributed architecture, and should continue to be based on open standards and application interfaces and guarantee interoperability so as to enable a common exchange of information and knowledge. Opportunities to share ideas and information on the Internet are integral to promoting freedom of expression, media pluralism and cultural diversity. Open standards support innovation and competition, and a commitment to network neutrality promotes equal and non-discriminatory access to and exchange of information on the Internet.

### 2. Internet access and affordability

Access to the Internet should be available and affordable to all persons in Africa without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Access to the Internet plays a vital role in the full realisation of human development, and facilitates the exercise and enjoyment of a number of human rights and freedoms, including the right to freedom of expression and information, the right to education, the right to assembly and as-

sociation, the right to full participation in social, cultural and political life and the right to social and economic development.

### 3. Freedom of expression

Everyone has the right to hold opinions without interference.

Everyone has a right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds through the internet and digital technologies and regardless of frontiers.

The exercise of this right should not be subject to any restrictions, except those which are provided by law, pursue a legitimate aim as expressly listed under international human rights law (namely the rights or reputations of others, the protection of national security, or of public order, public health or morals) and are necessary and proportionate in pursuance of a legitimate aim.

### 4. Right to information

Everyone has the right to access information on the internet. All information, including scientific and social research, produced with the support of public funds, should be freely available to all, including on the Internet.

### 5. Freedom of assembly and association and the Internet

Everyone has the right to use the Internet and digital technologies in relation to freedom of assembly and association, including through social networks and platforms.

No restrictions on usage of and access to the Internet and digital technologies in relation to the right to freedom of assembly and association may be imposed unless the restriction is prescribed by law, pursues a legitimate aim as expressly listed under international human rights law (as specified in Principle 3 of this Declaration) and is necessary and proportionate in pursuance of a legitimate aim.

## **6. Cultural and linguistic diversity**

Individuals and communities have the right to use their own language or any language of their choice to create, share and disseminate information and knowledge through the Internet.

Linguistic and cultural diversity enriches the development of society. Africa's linguistic and cultural diversity, including the presence of all African and minority languages, should be protected, respected and promoted on the Internet.

## **7. Right to development and access to knowledge**

Individuals and communities have the right to development, and the Internet has a vital role to play in helping to achieve the full realisation of nationally and internationally agreed sustainable development goals. It is a vital tool for giving everyone the means to participate in development processes.

## **8. Privacy and personal data protection**

Everyone has the right to privacy online, including the right to the protection of personal data concerning him or her. Everyone has the right to communicate anonymously on the Internet, and to use appropriate technology to ensure secure, private and anonymous communication.

The right to privacy on the Internet should not be subject to any restrictions, except those that are provided by law, pursue a legitimate aim as expressly listed under international human rights law, (as specified in Article 3 of this Declaration) and are necessary and proportionate in pursuance of a legitimate aim.

## **9. Security, stability and resilience of the internet**

Everyone has the right to benefit from security, stability and resilience of the Internet. As a universal global public resource, the Internet should be a secure, stable, resilient, reliable and trustworthy network.

Different stakeholders should continue to cooperate in order to ensure effectiveness in address-

ing risks and threats to security and stability of the Internet.

Unlawful surveillance, monitoring and interception of users' online communications by state or non-state actors fundamentally undermine the security and trustworthiness of the Internet.

## **10. Marginalised groups and groups at risk**

The rights of all people, without discrimination of any kind, to use the Internet as a vehicle for the exercise and enjoyment of their human rights, and for participation in social and cultural life, should be respected and protected.

## **11. Right to due process**

Everyone has the right to due process in relation to any legal claims or violations of the law regarding the Internet.

Standards of liability, including defences in civil or criminal cases, should take into account the overall public interest in protecting both the expression and the forum in which it is made; for example, the fact that the Internet operates as a sphere for public expression and dialogue.

## **12. Democratic multistakeholder internet governance**

Everyone has the right to participate in the governance of the Internet. The Internet should be governed in such a way as to uphold and expand human rights to the fullest extent possible. The Internet governance framework must be open, inclusive, accountable, transparent and collaborative.

## **13. Gender equality**

To help ensure the elimination of all forms of discrimination on the basis of gender, women and men should have equal access to learn about, define, access, use and shape the Internet. Efforts to increase access should therefore recognise and redress existing gender inequalities, including women's under-representation

in decision-making roles, especially in Internet governance.

## APPLICATION OF PRINCIPLES

Realising these principles on the Internet requires:

### • Openness

In accordance with the principle of network neutrality, all data on the internet must be treated in an equal and non-discriminatory manner, and shall not be charged differentially, according to user, content, site, platform, application, type of attached equipment, and modes of communication.

The architecture of the internet is to be preserved as a vehicle for free, open, equal and non-discriminatory exchange of information, communication and culture. There should be no special privileges for, or obstacles against, the exchange of information online or any party or content on economic, social, cultural or political grounds. However, nothing in this declaration may be interpreted as preventing affirmative action aimed at ensuring substantive equality for marginalised peoples or groups.

### • Internet access and affordability

Access and affordability policies and regulations that foster universal and equal access to the Internet, including fair and transparent market regulation, universal service requirements and licensing agreements, must be adopted.

Direct support to facilitate highspeed Internet access, such as by establishing necessary infrastructure and infrastructure facilities, including access to openly licensed or unlicensed spectrum, electricity supply, community-based ICT centres, libraries, community centres, clinics and schools, is crucial to making the Internet accessible to and affordable for all.

Equally important is support for the establishment of national and regional Internet exchange points (IXPs) to rationalise and reduce the cost of Internet traffic at national, local and subregional levels. It is also essential to address the gender digital divide, with factors such as level of employment, education, poverty, literacy and geographical location

resulting in African women having lower levels of access than men.

The sharing of best practices about how to improve Internet access for all sectors of society should be encouraged among African states.

These efforts should be geared towards ensuring the best possible level of Internet connectivity at affordable and reasonable costs for all, with particular initiatives for unserved and underserved areas and communities.

The cutting off or slowing down of access to the Internet, or parts of the Internet, for whole populations or segments of the public, should not be permitted on any grounds, including public order or national security grounds.

Internet intermediaries should be required to be transparent about any traffic or information management practices they employ, and relevant information on such practices should be made available in a form that is accessible to all stakeholders.

### • Freedom of expression

Content blocking, filtering, removal and other technical or legal limits on access to content constitute serious restrictions on freedom of expression and can only be justified if they strictly comply with international human rights law as reiterated in Article 3 of this Declaration. Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.

Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.

Products designed to facilitate end-user filtering should be required to be accompanied by clear information to end-users about how they work and their potential pitfalls in terms of over-inclusive filtering.

No-one should be held liable for content on the Internet of which they are not the author. To the extent that intermediaries operate self-regulatory systems, and/or make judgement calls on content and privacy issues, all such decisions should be made taking into account the need to protect expression that is legitimate under the principles provided for under international human rights standards, including the Manila Principles on Intermediary Liability. Processes developed by intermediaries should be transparent and include provisions for appeals.

States have a positive obligation to take steps to prevent violent attacks against anyone on their territory. These obligations take on a particular importance when individuals are attacked for exercising their right to freedom of expression online. States must create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear. When an attack takes place, states must launch an independent, speedy and effective investigation in order to bring both the perpetrators and the instigators to justice. They must also ensure that victims can obtain appropriate and holistic remedies for what they have suffered.

Journalists, media workers and other communicators who contribute to shaping public debate and public opinion on the Internet should be recognised as actors who enable the formation of opinions, ideas, decision-making and democracy. Attacks on all who engage in journalistic activities as a result of their work constitute attacks on the right to freedom of expression. In addition, guidelines for the protection of those who gather and disseminate information to the public, including journalists, women's rights and human rights defenders, should be put in place to ensure their safety. Such guidelines should be formulated with a view to harmonising legislative frameworks, practice, applicable regional and international standards, and law-enforcement processes at national level.

Actions should be initiated or intensified to implement such guidelines and best practices through appropriate efforts by states and other actors, including through regional cooperation, and the provision of technical assistance programmes and activities.

States should review and reform their legislation related to freedom of expression online and ensure

this legislation fully complies with international standards. In particular, criminal defamation, sedition and speech related offences should be abolished, including their application on the Internet.

Rights of all to engage in individual or collective expression of oppositional, dissenting, reactive or responsive views, values or interests through the Internet should be respected. Everyone should have a right to use the Internet as a tool and/or platform for a protest action.

## • Right to information

The Internet offers new opportunities to access information, and for governments to communicate with people, through the use of open data. Open data and new forms of online consultation can empower people to take a more active part in public affairs.

Data and information held by governments should be made publicly accessible, including being released proactively and routinely, except where legitimate grounds for restricting access comply with the rule of law, including relevant freedom of information legislation.

Public authorities and private bodies which perform public functions, provide public services or utilise public funds have a duty to collect and maintain information on their operations and activities on behalf of their population. They also have an obligation to respect minimum standards in relation to the management of this information to ensure that it may easily be made accessible to all. States and relevant non-state actors should demonstrate good practices in the management of data. The use and re-use of government-held data and information should be available free of charge wherever practical. If not, pricing should be transparent, reasonable, the same for all users, and not designed as a barrier to the use or re-use of the data.

Copyrighted materials held by public bodies should be licensed for re-use in accordance with relevant access to information laws and licensing frameworks.

The existing obligation on public bodies to share all information produced with the support of public funds, subject only to clearly defined rules set out

in law, as established by the Declaration of Principles on Freedom of Expression in Africa, shall extend to the proactive release of such information on the Internet in openly licensed, freely re-useable formats.

### • Freedom of assembly and association and the internet

The Internet can augment the opportunities and capabilities of individuals and groups to form associations and to manage organisations and associations.

It can increase the membership and reach of associations by allowing groups of people to communicate despite physical boundaries. It provides new tools for those organising assemblies offline, as well as the possibility of conducting assemblies and protests online.

Hence, everyone should enjoy unrestricted access to the Internet. Any shutting down or blocking of access to social networking platforms, and in fact the Internet in general, constitutes a direct interference with this right. Free and open access to the Internet must therefore be protected at all times.

### • Cultural and linguistic diversity

The linguistic and cultural diversity which exists on the African continent must be promoted and reflected online. This requires states to put in place comprehensive policies, and allocation of resources, to support the development and use of tools to facilitate linguistic diversity on the Internet. This includes the promotion of technology and content required to access and use domain names, software, services and content in all languages and scripts. Special attention should be given to promoting access in minority languages.

There is a need to promote free or low-cost training opportunities and methodologies and materials for minority-language speakers on using the Internet.

Diversity of content should also be preserved and promoted, including by encouraging diverse groups and communities to share their content online and through the digitisation of educational, scientific and cultural heritage.

### • Right to development and access to knowledge

Developing media and information literacy is essential in ensuring that consumers of media products have the skills to find evaluate and engage with various types of information, including those relevant for their social, economic, cultural and political development.

Information and communication technologies should be designed, developed and implemented in a manner that contributes to sustainable human development and empowerment. Accordingly, policies should be adopted to create an environment which enables various actors to pursue initiatives in this regard.

Media and information literacy programmes should be instituted in schools and in other public institutions. Where practical, school children and other learners should have access to Internet-enabled devices. There is also a need for policies that improve girls' access to quality education and ICT, gender mainstreaming in Science, Technology, Engineering and Mathematics (STEM) policies, and family-friendly policies in STEM workplaces.

### • Privacy and personal data protection

Personal data or information shall only be collected and/or processed by states and non-state actors such as access providers, mail providers, hosts and other intermediaries, in compliance with well-established data protection principles, including the following: personal data or information must be processed fairly and lawfully; personal data or information must be obtained only for one or more specified and lawful purposes; personal data or information must not be excessive in relation to the purpose or purposes for which they are processed; and personal data or information must be deleted when no longer necessary for the purposes for which it is collected.

The collection, retention, use and disclosure of personal data or information must comply with a transparent privacy policy which allows people to find out what data or information is collected about them, to correct inaccurate information, and to protect such data or information from disclosure that they have not authorised. The public should

be warned about the potential for misuse of data that they supply online. Government bodies and non-state actors collecting, retaining, processing or disclosing data have a responsibility to notify the concerned party when the personal data or information collected about them has been abused, lost or stolen.

Mass or indiscriminate surveillance of individuals or the monitoring of their communications, constitutes a disproportionate interference, and thus a violation, of the right to privacy, freedom of expression and other human rights. Mass surveillance shall be prohibited by law.

The collection, interception and retention of communications data amounts to an interference with the right to privacy and freedom of expression whether or not the data is subsequently examined or used.

In order to meet the requirements of international human rights law, targeted surveillance of online communications must be governed by clear and transparent laws which, at a minimum, comply with the following basic principles: first, communications surveillance must be both targeted and based on reasonable suspicion of commission or involvement in the commission of serious crime; second, communications surveillance must be judicially authorised and individuals placed under surveillance must be notified that their communications have been monitored as soon as practicable after the conclusion of the surveillance operation; third, the application of surveillance laws must be subject to strong parliamentary oversight to prevent abuse and ensure the accountability of intelligence services and law enforcement agencies.

It should also be recognised that for the enjoyment of their right to privacy, individuals must be protected from unlawful surveillance by other individuals, private entities or institutions, including in their place of work or study and in public internet access points.

### • Security, stability and resilience of the internet

Everyone has the right to enjoy secure connections to and on the Internet including protecting from services and protocols that threaten the security, stabil-

ity and resilience of the Internet.

Security, stability and resilience of the Internet must be protected and technical attacks against information systems should be prevented. Encryption is one of the key ways in which this can be achieved.

States should recognise in their legislation and practices that encryption is a basic requirement for the protection of the confidentiality and security of information. In particular, States should promote end-to-end encryption as the basic standard for the protection of the rights to freedom of expression and privacy online, and promote the use of open source software.

At the same time, States should refrain from adopting measures requiring or promoting technical backdoors to be installed in hardware and software encryption products. They should repeal laws banning the use of encrypted products, particularly by end-users, or laws requiring government authorisation for the use of encrypted products.

Companies should also refrain from weakening technical standards and roll out the provision of services with strong end-to-end encryption.

Initiatives to improve security of the Internet and address digital security threats should involve appropriate collaboration between governments, private sector, civil society, academia and the technical community.

### • Marginalised groups and groups at risk

States and non-state actors shall respect and protect the right of all individuals to have access to and use the Internet. Special attention should be paid to the needs of groups at risk of discrimination in the enjoyment of their human rights, including women, the elderly, young people and children; minorities, including ethnic, linguistic, sexual and religious minorities; and other marginalised groups such as indigenous people, persons with disabilities, and rural communities/people living in rural areas.

### • Due process

States must respect the right of every individual to equal protection under the law. This means that no one can be arbitrarily detained or punished for any

action, including in relation to any legal claims or violations of the law regarding the Internet. Protection of this right requires entitlement to a fair and public hearing within a reasonable time by an independent, competent and impartial tribunal established by law. The court concerned should ensure that adequate relief is possible when dealing with a matter.

Jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection, normally because the author is established there, the content is uploaded there and/or the content is specifically directed at that State. Private parties should only be able to bring a case in a given jurisdiction where they can establish that they have suffered substantial harm in that jurisdiction.

For content that was uploaded in substantially the same form and at the same place, limitation periods for bringing legal cases should start to run from the first time the content was uploaded and only one action for damages should be allowed to be brought in respect of that content, where appropriate by allowing for damages suffered in all jurisdictions to be recovered at one time (the ‘single publication’ rule).

### • **Democratic multistakeholder internet governance**

It is important that multistakeholder decisions and policy formulations are improved at the national level in order to ensure the full participation of all interested parties. Independent, well-resourced, multistakeholder bodies should be established to guide Internet policy at the national level.

National Internet governance mechanisms should serve as a link between local concerns and regional and global governance mechanisms, including on the evolution of the Internet governance regime.

### • **Gender equality**

Aside from addressing the gender digital divide (mentioned under Principle 2 and 13 of this Declaration), the creation and promotion of online content that reflects women’s voices and needs, and promotes and supports women’s rights, should be encouraged.

Processes and mechanisms that enable the full, active and equal participation of women and girls in decision making about how the Internet is shaped and governed should be developed and strengthened.

Conscious that the online environment reflects the inequality that women and girls face in wider society, the core principles underpinning the Internet – decentralisation, creativity, community and empowerment of users – should be used to achieve gender equality online. Wide-ranging efforts, including comprehensive legislation on rights to equality before the law and to non-discrimination, education, social dialogue and awareness-raising, should be the primary means to address the underlying problems of gender inequality and discrimination.

Women and girls should be empowered to act against gender inequality replicated on the Internet, including by using tools enabling collective monitoring of various forms of inequality, individualised tools that allow them to track and limit the availability of personal information about them online (including public sources of data), and improved usability for anonymity and pseudonymity-protecting tools.

Additionally, all restrictions aimed at prohibiting gender-based hatred that constitutes an incitement to violence, discrimination or hostility (‘incitement’) should fully comply with the following conditions:

- Grounds for prohibiting advocacy that constitutes incitement should include gender;
- The intent to incite others to commit acts of discrimination, hostility or violence should be considered a crucial and distinguishing element of incitement;
- Legislation prohibiting incitement should include specific and clear reference to incitement to discrimination, hostility or violence with references to Article 20(2) of the ICCPR and should avoid broader or less specific language and should conform to the three-part test of legality, proportionality and necessity;
- Criminal law penalties should be limited to the most severe forms of incitement and used only as a last resort in strictly justifiable situations, when no other means appears capable of achieving the desired protection.

## **CALL TO GOVERNMENTS AND ALL OTHER STAKEHOLDERS**

**All African stakeholders, including regional and sub-regional bodies, national governments, civil society organisations, media institutions, and relevant technology and Internet companies, should:**

- Formally endorse this Declaration, the African Declaration on Internet Rights and Freedoms;
- Use this Declaration to develop a deeper understanding of how existing human rights apply to the internet.

**National governments in Africa, as principal duty-bearers, must respect, protect and guarantee the rights outlined in this Declaration, including by:**

- Ratifying and giving effect to all relevant international and regional human rights treaties on human rights related to protection of human rights on the Internet, through incorporation to their domestic legislation or otherwise;
- Adopting clear legal, regulatory, and policy frameworks for the protection of these rights, in full compliance with international standards and best practice, and with the full and effective participation of civil society and other concerned stakeholders at all stages of their development;
- Providing sufficient safeguards against the violation of these rights and ensure that effective remedies for their violations are available;
- Ensuring that national regulators in the telecommunications and Internet sectors are well-resourced, transparent and independent in their operations.

**Pan-African and African regional organisations and institutions:**

- The African Commission on Human and Peoples' Rights should establish a mechanism to promote and monitor Internet rights and freedoms in Africa.
- The African Union should take the lead in creating a common African Programme of Action on Internet Governance, which will ensure that the rights of Africans on the Internet are promoted and upheld, and that African concerns are recognised in the global Internet governance regime.

- Other relevant pan-African institutions should develop programmes to support national institutions (including national human rights commissions and the judiciary) to understand and protect human rights online.
- The African Telecommunications Union should recognise and promote the access and affordability principle of this Declaration.

**International organisations:**

- UNESCO should integrate the Declaration into its "Priority Africa" strategies. UNESCO should promote the advancement of social and cultural rights on the Internet as well as the use of local languages and local content online. UNESCO should also develop model laws protecting online freedom of expression and privacy.
- The International Telecommunication Union should recognise and promote the Access and Affordability principle of this Declaration.

**Civil society should:**

- Seek to increase public awareness of the importance of the Internet in the realisation of human rights;
- Advocate for Internet rights and freedoms; monitor Internet laws and regulations; and highlight abuses, including in their reports to regional and international treaty bodies and other human rights mechanisms;
- Communicate with the Special Rapporteur on Freedom of Expression and Access to Information in Africa on measures to uphold freedom of expression in relation to the Internet;
- Encourage and monitor the participation of women and girls in all areas related to Internet development and governance.

**Media organisations should:**

- Popularise this Declaration and the principles outlined in it;
- Improve their own understanding of Internet issues and foster awareness about the importance of the Internet to all sectors of society, particularly among marginalised groups and disadvantaged communities.

**All intermediaries should:**

- Internalise and apply the “Respect, Protect and Remedy” framework to fulfil their duties to uphold human rights, including in relation to the Internet and digital technologies.
- Respect human rights to the fullest extent possible. For example, where faced with government demands which would violate human rights, companies should interpret government demands as narrowly as possible, seek clarification of the scope and legal foundation for such demands, require a court order before meeting government requests, and communicate transparently with users about risks and compliance with government demands.
- Invest in online tools, software and applications that enhance local and intercultural content exchange, and simplify the exchange of information across language barriers;
- Publish transparency reports on government requests for user data, content removal, network disruptions, and compliance rates on a regular basis. All company policies on privacy and data protection, including data retention rates and breach notification policies, should be translated to local languages and easily accessible on the company’s country-level website.

**Technical communities should:**

- Innovate and develop open source software, open data, and open educational resources relevant to African users;
- Engage actively in the multistakeholder processes that deal with human rights as well as Internet governance in Africa and provide policy inputs to Internet-related issues;
- Ensure African participation in the development of open standards.

**Academic, research and training institutions in Africa should:**

- Actively respect and promote the open standards of the Internet in terms of the technical architecture and design of the Internet;
- Integrate courses on Internet rights and freedoms in their curriculum;
- Promote and contribute to the development of local content, particularly content that fosters

the use of the Internet by marginalised groups and communities;

- Proactively engage in the generation of scientific evidence on Internet rights and freedoms in Africa;
- Promote and participate in the reinforcement of Africa’s capacity to contribute content and expertise in global, regional and national Internet development and policy forums.

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