

ZAMBIA

1. INTRODUCTION

The territory formerly known as Northern Rhodesia was administered by the [British] South Africa Company from 1891 until it was taken over by Britain in 1923.¹ In 1964 upon gaining independence, the territory's name was changed to what we today call Zambia.²

Zambia was ruled by President Kenneth Kaunda and his United National Independence Party from 1964-1991. From 1972 to 1991 Zambia was a one-party state.³ It was only after domestic and international pressure that Kaunda agreed to amend the constitution to allow for the country to revert to multiparty democracy in 1991.⁴ That same year former Labour leader Frederick Chiluba and his Movement for Multiparty Democracy (MMD) party captured both the presidency and the National Assembly. However, opposition within the MMD, as well as protests by opposition parties and civil society, eventually forced President Chiluba to end plans to modify the constitution and seek a third term in 2001. The MMD as an alternative, nominated Levy Mwanawasa, who went on to win the 2001 elections. In August 2008, President Mwanawasa succumbed to a stroke and died; he was succeeded by Vice President Rupiah Banda, whose presidency was largely identified by 'controversial politics, growing infringements on civil liberties, and weakened anticorruption efforts'.⁵ In the September 2011 presidential election, President Michael Chilufiya Sata defeated Banda.

Each presidency as documented above has historically had a difficult relationship with the media. For instance during his time it is documented that former President Frederick Chiluba

¹ See <http://www.nationsonline.org/oneworld/zambia.html>.

² Freedom House 'Zambia' available at <http://www.freedomhouse.org/report/freedom-world/2012/zambia> (accessed on 12th April 2013).

³ Freedom House 'Zambia' available at <http://www.freedomhouse.org/report/freedom-world/2012/zambia> (accessed on 12th April 2013).

⁴ Freedom House 'Zambia' available at <http://www.freedomhouse.org/report/freedom-world/2012/zambia> (accessed on 12th April 2013).

⁵ Freedom House 'Zambia' available at <http://www.freedomhouse.org/report/freedom-world/2012/zambia> (accessed on 12th April 2013).

intimidated, harassed, arrested, and censored those who disagreed with him.⁶ In terms of traditional media it is noted that in 1994 President Chiluba raided the Lusaka offices of The Post newspaper and its printer “Printpak” in Ndola looking for "seditious and defamatory material".⁷ That same year police arrested the top editors of the weekly Crime News and held them without bail and without filing charges, for reporting that Chiluba's wife was involved in drug trafficking.⁸

Similarly under both President Mwanawasa and President Banda's time in office, access to information was restricted.⁹ Furthermore, journalists have suggested that Presidents Sata's Patriotic Front (PF) government had failed to improve their conditions of service as well as freedom of speech.¹⁰

The Zambian Constitution and laws provide for freedom of speech and of the press; but in practice these are restricted by government in fact Zambian law includes provisions that may be interpreted broadly to restrict these freedoms.¹¹

It is interesting to note, that the Zambian government has control over the Zambia Daily Mail and the Times of Zambia which, along with the state-run Zambia National Broadcasting Corporation's radio and television services, have the deepest and broadest penetration countrywide.¹² It is evident that the fore-mentioned media providers are rarely critical of the

⁶ McCullagh D 'Net Censorship and Zambian Dictators' available at <http://www.interesting-people.org/archives/interesting-people/199602/msg00130.html> (accessed on 13 April 2013).

⁷ McCullagh D 'Net Censorship and Zambian Dictators' available at <http://www.interesting-people.org/archives/interesting-people/199602/msg00130.html> (accessed on 13 April 2013).

⁸ McCullagh D 'Net Censorship and Zambian Dictators' available at <http://www.interesting-people.org/archives/interesting-people/199602/msg00130.html> (accessed on 13 April 2013).

⁹ Xindex 'Zambia Restricts Access To Information' available at <http://www.indexcensorship.org/2010/03/zambia-restricts-access-to-information/> (accessed on 13 April 2013) see also Media Sustainability Index 'Zambia 2006-2007' available at http://www.irex.org/system/files/MSIO7_zambia.pdf (accessed on 16 April 2013).

¹⁰ Mwenya G 'State Media Journalists Complain of Intense Censorship' available at <http://www.zambiareports.com/2103/02/08/state-media-journalists-complain-of-intense-censorship/> (accessed on 16 April 2013).

¹¹ US State Department '2010 Human Rights Report: Zambia' available at <http://www.state.gov/dri/rls/hrrpt/2010/af/154367.htm> (accessed on 19 April 2013).

¹² Freedom House 'Zambia' available at <http://www.freedomhouse.org/report/freedom-world/2012/zambia> (accessed on 12th April 2013).

government, content is reviewed prior to publication, and many journalists employed here regularly practice self-censorship.¹³

The following research study was launched by the regional secretariat of the Media Institute of Southern Africa (MISA) in February 2012 and partially conducted by a Zambian Researcher in the same year. It is concerned with the laws that criminalise freedom of expression in Zambia, specifically it is concerned with criminal Defamation (incl. libel), insult laws, sedition and false news as they appear in the Penal Code of Zambia

2. LAWS GUARANTEEING FREEDOM OF EXPRESSION

In *William Banda v the Attorney General*¹⁴ the Zambian High Court held that "The freedom of expression rests on the assumption that the widest possible dissemination of information from divergent and antagonistic sources is essential to the welfare of the public. Such freedom is the foundation of a government of a free people. The purpose of such a guarantee is to prevent public authorities from assuming the guardianship of the public mind."

To this end, the most important constitutional provision that protects the media in Zambia is article 20(1) of the constitution, which reads that *'Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence'*.

2.1 Freedom of expression In Zambia

Simply in terms of Article 20 (1), the right to freedom of expression extends to all citizens and non-citizens of Zambia, as well as to both natural and juristic persons.¹⁵ In addition, freedom of

¹³ Freedom House 'Zambia' available at <http://www.freedomhouse.org/report/freedom-world/2012/zambia> (accessed on 12th April 2013).

¹⁴ 1992/HP/1005

¹⁵ Limpitlaw J *Media Law Handbook for Southern Africa* vol1. (2012) 335.

expression as contained in the article is not limited to oral or written expression but is extended to non-verbal or non-written expression.¹⁶

Article 20 (1) also includes the ‘freedom to hold opinions without interference’. The freedom to hold opinions without interference applies in respect of the Zambian media who have the right to write articles that express opinion and comment on important issues facing the country.¹⁷

Furthermore, Article 20(1) includes the ‘*freedom to receive ideas and information without interference*’; and the ‘*freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons*’.

The right to the free flow of information is an essential one because it protects organisations that promote media development and makes public access to different sources and type of information possible.¹⁸ Whilst the freedom to impart and communicate ideas and information without interference whether the communication be to the public generally or to any person or class of persons protects the right to communicate information and ideas to the public, and this is ‘a critically important role of the press and the media more generally’.¹⁹

2.2 Access to Information

Currently in Zambia, there is no provision in the Constitution that separates freedom of expression and the right to access information.²⁰

Nevertheless, on 16 November 2011, President Michael Sata, using his executive powers vested in him by the current Zambia Republican Constitution, appointed a technical committee to draft

¹⁶ ‘Such as mime or dance, photography or art’. Limpitlaw (2012) 335.

¹⁷ Limpitlaw (2012) 335.

¹⁸ Limpitlaw (2012) 335.

¹⁹ ‘So, even though the Constitution of Zambia does not expressly refer to the press or the media, the freedom to perform that role namely, to communicate information to the public is protected.’ Limpitlaw (2012) 335.

²⁰ Media Institute of Southern Africa & The International Human Rights Law Center ‘Zambia’s Breach of its Obligations Under the ICCPR and Fulfil the Article 19 Right To Access Information, Free Speech, Free Press and Free Speech’ available at <http://www.indylaw.indiana.edu/humanrights/./Zambia%20Press%20freedom.pdf> (accessed on 22 April 2013).

a Zambian Constitution.²¹ The draft Constitution for Zambia was released on April 30 2012, and was hailed by media groups as progressive for its clauses on media freedom which included a provision on access to information.²²

The access to information provision in the draft Constitution reads:

37. (1) A citizen has the right of access to- (a) information held by the State; and (b) information that is held by another person; which is lawfully required for the exercise or protection of any right or freedom. (2) A person has the right to demand the correction of untrue or misleading information recorded or published with respect to that person. (3) The State has the obligation to publicise any information that is in the public interest or affects the welfare of the Nation.

2.2.1 Freedom of Information Bill

In 2002, the Zambian government brought before parliament a Freedom of Information (FOI) Bill. The Bill was intended to give its citizens the right to request information from public institutions. In spite of support for the duration of the bill's second reading in parliament, the government withdrew the legislation.²³ Some of the reasons given for the FOI Bills withdrawal were that the country's security would be compromised if the bill passed,²⁴ and the then vice-president Enoch Kavindele at the time suggested that the Zambian government was forced to withdraw the bill because insufficient research had been done. In addition, Lupando Mwape (Zambian vice President from 2004-2006) was of the opinion that if the Freedom of Info Bill was

²¹ Technical Committee on Drafting the Zambian Constitution 'About Us' available at <http://www.zambianconstitution.org/about-us.html> (accessed 22 April 2013).

²² Freedominfo.org 'Access to Information Clause in Draft Constitution' available at <http://www.freedominfo.org/2012/05/access-to-information-clause-draft-zambianconstitution.org/about-us.html>. (accessed on 22nd April 2013).

²³ Free Speech Debate 'Zambia's secret Freedom of Information bill' available at <http://freespeechdebate.com/en/discuss/zambias-secret-freedom-of-information-bill/> (accessed on 20 May 2013).

²⁴ Free Speech Debate 'Zambia's secret Freedom of Information bill' available at <http://freespeechdebate.com/en/discuss/zambias-secret-freedom-of-information-bill/> (accessed on 20 May 2013).

‘not handled properly, it would breed chaos and therefore, certain measures had to be taken to prevent such chaos’, he warned that excessive freedom is dangerous.²⁵

Matibini notes that ‘the withdrawal of the freedom of info bill from the National Assembly on insubstantial grounds raised serious questions about government’s commitment and political will to enact a freedom of info law’.²⁶

A new Freedom of Information Bill was proposed by the new political elite in the country, the Patriotic Front. The PF was voted into power in 2011 and pledged to enact the ATI ‘legislation in a bid to strengthen accountability and increase the effectiveness of democratic participation’.²⁷ Despite this pledge, in that same year, President Michael Sata declared that ‘citizens needed to be better informed before they could demand freedom of information’.²⁸

In June 2012, the Zambian government delayed the introduction of the Freedom of Information Bill, alleging that it had bypassed one requirement which was to have the Bill approved by the Attorney General before it could be launched for public debate and subsequent enactment.²⁹ Following the bill’s life in limbo, government made a fresh announcement that the bill would be enacted in February 2013 which later changed to June 2013. However, at the time of compiling this report, government had moved the date once again to September 2013.³⁰

²⁵ Matibini P The quest for freedom of information law- the Zambian experience in Law, Democracy and Development Journal of the Faculty of Law ISSN 2007-4907

²⁶ Matibini P The quest for freedom of information law- the Zambian experience in Law, Democracy and Development Journal of the Faculty of Law ISSN 2007-4907

²⁷ Free Speech Debate ‘Zambia’s secret Freedom of Information bill’ available at <http://freespeechdebate.com/en/discuss/zambias-secret-freedom-of-information-bill/> (accessed on 20 May 2013).

²⁸ Free Speech Debate ‘Zambia’s secret Freedom of Information bill’ available at <http://freespeechdebate.com/en/discuss/zambias-secret-freedom-of-information-bill/> (accessed on 20 May 2013).

²⁹ Freedominfo.org ‘Zambia Again Delays Introduction of FOI Bill’ available at <http://www.freedominfo.org/2013/02/zambia-again-delays-introduction-of-foi-bill> (accessed on 20 May 2013).

³⁰ Freedominfo.org ‘Zambia Again Delays Introduction of FOI Bill’ available at <http://www.freedominfo.org/2013/02/zambia-again-delays-introduction-of-foi-bill> (accessed on 20 May 2013).

2.4 Conclusion

The election of President Michael Sata in 2011, led to some transformation in the media environment while the momentum to enact new laws seemed to have gained speed.³¹ For instance, a Freedom of Information Bill, which had been long abandoned by previous administrations, gained support from the new government, who shortly after winning the election made known its intention to pass this legislation.³²

In terms of turning the international rights of access to information and free speech into national laws, many African countries have failed in fact it is argued that transparency reforms are not forthcoming.³³ This argument may ring true in Zambia.

Whilst the draft Constitution of Zambia provides a provision on Access to Information neither the draft Constitution nor the Freedom of Information Bill have been adopted to date. Although the current Zambian Constitution provides for freedom of speech and of the press; the provisions therein can and are restricted by subsequent very broad derogations.

3. LIMITATIONS ON FREEDOM OF EXPRESSION

According to Article 20(2) of the Zambian Constitution '*[s]ubject to the provisions of this Constitution no law shall make any provision that derogates from freedom of the press*'.

It goes without saying that only limitations that are provided for in the Zambian Constitution may lawfully limit freedom of the press.³⁴

In terms of Article 20(3) a law which limits the right to freedom of expression will not violate article 20(1) of the Constitution provided that law is:

³¹ Freedom House 'Zambia: freedom of the Press 2011' available at <http://www.freedomhouse.org/report/freedom-world/2012/zambia> (accessed on 12th April 2013).

³² Freedom House 'Zambia: freedom of the Press 2011' available at <http://www.freedomhouse.org/report/freedom-world/2012/zambia> (accessed on 12th April 2013).

³³ Callamard A 'Accountability, Transparency and Freedom of Expression in Africa' (2010) Social Research vol. 77 page1235

³⁴ Limpitlaw (2012) 336.

(a) reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or

(c) imposes restrictions on public officers; and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.'

The limiting provisions as upheld by article 20 (3) are much longer than the right to freedom of expression itself.³⁵ Generally these limitations are internationally acceptable. Although, Limpitlaw points out that there are, 'at least two provisions in the limitations set out in article 20(3) which stand out as not being internationally acceptable grounds for limiting speech'.³⁶

3.1 Laws Which Criminalize Free Speech and Their Effects

Many of the existing laws in Zambia which criminalise free speech can be found in the Penal Code Cap 87 of the laws of Zambia.³⁷

The Penal Code, which is largely inherited from the colonial British government, criminalises acts such as 'sedition, blasphemy, defamation of the president, publication of false news with intent to cause fear and alarm to the public, and defamation of foreign princes'.³⁸

³⁵ Limpitlaw (2012) 336.

³⁶ These are the restrictions imposed upon public officials and the restriction upon educational ministers. Limpitlaw (2012) 337.

³⁷ All Africa "Zambia CSO's Demand Review of Laws Impeding Freedom of Expression" available at <http://www.allafrica.com/stories/201304020891.html> (accessed on 22 April 2013).

³⁸ Banda F 'Zambia Research Findings and Conclusions' available at http://www.radiopeaceafrica.org/assets/texts/pdf/ZAM_AMD_I_Report_pp4%201.pdf (accessed on 13 April 2013)

The effect of this legislation is dubbed by some as having a “chilling effect” on the media, because it leaves the media unsure about how far they can go when it comes to seeking out and distributing information.³⁹

3.1.1 A summary of Criminal Defamation and Insult Laws in Zambia

The following table provides a summarised analysis of the legal provisions that criminalise free speech in Zambia and has been restricted to criminal defamation and insult laws only. It looks at the effects such laws have and the proposed changes that can be made in this regard.

Legal Provision	Effect on Media Freedom	Suggested Changes
<p><i>Penal Code CAP 87.</i></p> <p><i>S.53. (1) If the President is of the opinion that there is in any publication or series of publications published within or without Zambia by any person or association of persons matter which is contrary to the public interest, he may, in his absolute discretion, by order published in the Gazette and in such local newspapers as he may consider necessary, declare that that particular publication or series of publications, or all publications or any class of publication specified in the order published by that person or association of persons, shall be a prohibited publication or prohibited publications, as the case may be.</i></p>	<p>Section 53 effectively grants the President of Zambia the power to prohibit publications which are in his opinion against public interests. The authority to make such a declaration is vested in the President in his/her complete judgment.⁴⁰ The President need not explain his actions, thereby making s.53 open to abuse and the media an easy target should the President be unhappy about any media report.</p>	<p>Repeal the Provision</p>
<p><i>Sedition</i></p>		

³⁹ Limpitlaw (2012) 368.

⁴⁰ Banda F ‘Zambia Research Findings and Conclusions’ available at http://www.radiopeaceafrica.org/assets/texts/pdf/ZAM_AMD_I_Report_pp4%201.pdf (accessed on 13 April 2013)

<p><i>Offences in respect of seditious practices</i></p> <p>S.57 1) Any person who</p> <p>(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;</p> <p>(b) utters any seditious words;</p> <p>(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;</p> <p>(d) imports any seditious publication, unless he has no reason to believe that it is seditious; is guilty of an offence and is liable for a first offence to imprisonment for seven years or to a fine not exceeding six thousand penalty units or to both; and any seditious publication shall be forfeited.</p>	<p>Section 57 gives ‘wide discretionary powers to prosecute ‘seditious intention’ and in effect prohibits many activities that are instrumental to a healthy democracy’.⁴¹</p>	<p>Repeal Provision</p>
<p><u>Seditious Intention</u></p> <p>S.60. (1) A seditious intention is an intention</p> <p>(a) to advocate the desirability of overthrowing by unlawful means the Government as by law established; or</p> <p>(b) to bring into hatred or contempt or to excite disaffection against the Government as by law</p>	<p>Defines ‘seditious intention’ and is linked to s.57. The scope of what amounts to a seditious intention is so broad that the provision is contradictory to Article 20 which guarantees Freedom of Expression.</p>	<p>Repeal the provision</p>

⁴¹ Article 19’s Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

<p><i>established; or</i></p> <p><i>(c) to excite the people of Zambia to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Zambia as by law established; or</i></p> <p><i>(d) to bring into hatred or contempt or to excite disaffection against the administration of justice in Zambia; or</i></p> <p><i>(e) to raise discontent or disaffection among the people of Zambia;</i></p> <p><i>or</i></p> <p><i>(f) to promote feelings of ill will or hostility between different communities or different parts of a community; or</i></p> <p><i>(g) to promote feelings of ill will or hostility between different classes of the population of Zambia;</i></p> <p><i>or</i></p> <p><i>(h) to advocate the desirability of any part of Zambia becoming an independent state or otherwise seceding from the Republic; or</i></p> <p><i>(i) to incite violence or any offence prejudicial to public order or in disturbance of the public peace; or</i></p> <p><i>(j) to incite resistance, either active or passive, or disobedience to any law or the administration thereof;</i></p>		
<p>S.67. (1) Any person who publishes, whether orally or in writing or otherwise, any statement, rumour or</p>	<p>The scope of conduct prohibited by S.60 is so broad making this provision inconsistent with</p>	<p>Repeal Provision</p>

<p><i>report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false, is guilty of a misdemeanour and is liable to imprisonment for three years.</i></p>	<p>international standards in terms of freedom of the press. This prohibition is ‘unnecessary in an open and democratic society, in which publishers of falsehoods may be sued or be subjected to professional ethical sanctions.’⁴²</p>	
<p><u>Insulting the Anthem</u> S.68. <i>Any person who does any act or utters any words or publishes any writing, with intent to insult or bring into contempt or ridicule the official national anthem of Zambia, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding two years.</i></p>	<p>The State interests that section 68 wishes to protect are vague. In addition, by making use of the broad terms insult”, “ridicule” or “bring into contempt” s.68 can without difficulty be used to criminalize opinions.</p>	<p>Repeal Provision</p>
<p><u>Defaming the President</u> S.69. <i>Any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years.</i></p>	<p>Section 69 fails to define ‘defamatory’ or ‘insulting’ in this context. This means that s.69 can be used in relation to a number of ordinary democratic activities, such as expressing political opinion.⁴³</p>	<p>Repeal Provision</p>

⁴² Kanyongololo F ‘Legal Regulation of Freedom of Expression and the Media in Malawi’ (2008). Kanyongololo made this observation in relation to Malawian law but as Chanda (see Chanda A ‘The Role of Lower Courts In The Domestic Implementation Of Human Rights’ available at

http://www.unza.zm/zamlil/comment/lowercourts_humanrights.html (accessed on 21 May 2013)) notes that Zambia and Malawi have similar laws and follow similar legal traditions and so similar arguments can be made.

⁴³ Article 19’s Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

<p><u>Defamation of Foreign Princes</u></p> <p><i>S.71. Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between Zambia and the country to which such prince, potentate, ambassador or dignitary belongs, is guilty of a misdemeanor.</i></p>	<p>The key concepts in the provision such as “degrade, revile or expose to hatred and contempt” and “peace and friendship between Zambia and the country to which such prince, potentate, ambassador or dignitary belongs’ are too vague and broad to be considered reasonable limitations to media freedom.⁴⁴</p> <p>In addition it can be argued that section 71 is outdated because other laws such as that of ‘defamation, conduct likely to cause a breach of the peace’ are accessible for use to protect any legitimate interest the state ‘has in the circumstances envisioned by the provision’.⁴⁵</p>	<p>Repeal Provision</p>
<p><u>Libel</u></p> <p>S.191 Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanor termed "libel".</p> <p>S.193 (1) A person publishes a libel</p>	<p>Making libel a criminal offence is argued to be an unnecessary limitation of freedom of the press and freedom of expression because it is evident that any person who alleges that he or she has been libelled has recourse under civil law in Zambia.⁴⁶</p>	<p>Repeal the provision and sections 191-198 which provide for various aspects of the crime.</p>

⁴⁴ Kanyongololo F ‘Legal Regulation of Freedom of Expression and the Media in Malawi’ (2008).

⁴⁵ Kanyongololo F ‘Legal Regulation of Freedom of Expression and the Media in Malawi’ (2008)

⁴⁶ Defamation Act 46 of 1953. See also and Kanyongololo F ‘Legal Regulation of Freedom of Expression and the Media in Malawi’ (2008)

<p>if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be dealt with, either by exhibition, reading, recitation, description, delivery, or otherwise, so that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.</p> <p>(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.</p>		
<p><u>Defamation</u></p> <p>192. Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. It is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead:</p> <p>Provided that no prosecution for the publication of defamatory matter</p>	<p>S192 defines defamation and provides room for a matter to be defamatory should it concern a dead person. Furthermore the meaning given to words like ‘ridicule’, ‘expose to hatred’, ‘contempt’ is unclear and seems to be left up to interpretation.⁴⁷</p>	<p>Repeal the Provision</p>

⁴⁷ Kanyongololo F ‘Legal Regulation of Freedom of Expression and the Media in Malawi’ (2008)

concerning a dead person shall be instituted without the consent of the Director of Public Prosecutions.		
--	--	--

3.2 Conclusion

In Zambia, laws including those which may undermine freedom of expression are taken to be constitutional unless otherwise stated by the Zambian courts.⁴⁸ The legal instrument most commonly used to suppress the right to freedom of expression in Zambia is the Penal Code of Zambia.⁴⁹ Sections 191 to 198 of Zambia’s Penal Code provide the definition of defamation and extend rights of reputation to the dead.⁵⁰

It is argued that sections 191 to 198 are incompatible with international standards on freedom of speech, and in addition, these sections are used to harass and intimidate journalists and to punish legitimate criticism of governmental figures.⁵¹

Zambian criminal defamation and insult law limits freedom of expression and information.⁵² So while there is no provision which separates access to information from freedom of expression, and that the current Zambian Constitution extends freedom to the media to access information, it is evident that insult and defamation laws persist, limiting that freedom.⁵³

⁴⁸ FIX ‘Press Freedom in Zambia’ available at <http://www.fxz.org.za/pages/Publications/MediaLaw/Zambia.htm> accessed on 31 May 2013.

⁴⁹ Article 19’s Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

⁵⁰ Article 19’s Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

⁵¹ The criminal offence of sedition is, for example, phrased so broadly that any criticism of government may constitute an offence. In *Monja Jaona v. Madagascar* Communication No.132/1982, UN Doc CCPR/C/OP/2 (1990), Monja Jaona, leader of an opposition party and a presidential candidate, challenged the results of the 1982 presidential elections and called for a new election. Shortly thereafter he was placed under house arrest and then detained at a military camp. The Human Rights Committee found that his right to freedom of expression had been infringed even if he had challenged the legitimacy of the government. He had ‘suffered persecution on account of his political opinions’. The Committee accordingly ordered that he be awarded compensation, and that the government should take steps to ensure that similar violations did not occur. See also Chanda A ‘The Role of Lower Courts in The Domestic Implementation Of Human Rights’ available at http://www.unza.zm/zamlii/comment/lowercourts_humanrights.html (accessed on 21 May 2013).

⁵² Media Institute of Southern Africa & the International Human Rights Law Center (2007) 47.

⁵³ Media Institute of Southern Africa & the International Human Rights Law Center (2007) 47.

4. DUE PROCESS LAWS IN ZAMBIA

The exercise of executive powers by given governments has an effect on the lives of people within its borders and if left to their own devices, governments ‘can and have killed, tortured, imprisoned and enslaved their people’.⁵⁴ It is for this reason that the regulation of human rights in a country is often expressed in a legally binding bill of rights.⁵⁵ And while few of the frequently documented human rights are absolute, rights such as ‘due process rights’ aim to protect nationals from ‘unreasonable government persecution’.⁵⁶

Due process rights place restrictions on laws and legal proceedings. This is in order to guarantee that basic procedural legal fairness and justice are understood as the rules through which courts safeguard the protection of individual rights in the court room.⁵⁷

The rules applicable to the administration of justice are extensive and refer to amongst others fair trial, presumption of innocence and independence and impartiality of the tribunal.⁵⁸ Despite the rules that safeguard due process right, journalists who are accused of criminal defamation and insult laws often find themselves subject to a violation of their due process rights.

The following section of this research concentrates on the due process right protected by Zambian Law. It also looks at incidents in which journalists find their right to due process violated as a result of laws that criminalise free speech.

4.1 Laws Protecting Detained Persons in Zambia

Zambia has a supreme Constitution that safeguards the rights of Pre Trial Detainees. Part III of the Constitution, under the heading ‘Protection for the Fundamental Rights and Freedoms of the

⁵⁴ Griffy T ‘Importance of Due Process Rights’ available at <http://www.timothygriffy.hubpages.com/hub/The-Importance-of-Due-Process-Rights> (accessed on 21 May 2013).

⁵⁵ Griffy T ‘Importance of Due Process Rights’ available at <http://www.timothygriffy.hubpages.com/hub/The-Importance-of-Due-Process-Rights> (accessed on 21 May 2013).

⁵⁶ Griffy T ‘Importance of Due Process Rights’ available at <http://www.timothygriffy.hubpages.com/hub/The-Importance-of-Due-Process-Rights> (accessed on 21 May 2013).

⁵⁷ Icelandic Human Rights Center ‘The Right to Due Process’ available at <http://www.humanrights.is/the-human-rights-project/humanrightsconceptsideaandfora/substantivehumanrights/therighttodueprocess/> (accessed on 25 April 2013).

⁵⁸ Icelandic Human Rights Center ‘The Right to Due Process’ available at <http://www.humanrights.is/the-human-rights-project/humanrightsconceptsideaandfora/substantivehumanrights/therighttodueprocess/> (accessed on 25 April 2013).

Individual’ protects the right to personal liberty⁵⁹, freedom from inhuman treatment⁶⁰, and secure protection before the law⁶¹, it guarantees that if any person is charged with a criminal offence; the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.⁶²

In addition, the Zambian Constitution provides means for the enforcement of protective provisions. Article 28(1) reads that*‘Subject to clause (5), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court...’* Furthermore of Article 18(8) provides that a person cannot be found guilty of a criminal offence if at the time it took place it was not an offence in any law. This is a particularly important provision in that it offers protection against arbitrary incarceration of individuals.⁶³

4.2 Rights of Detained Persons

In terms of due process rights whenever a person is arrested, he/she has the right to dignity inherent in a human being and to the recognition of this legal status.⁶⁴ The right to due process demands that human rights should be protected by the rule of law.⁶⁵

The right to due process of the law in relation to arrest and detention includes an extensive guarantee of rights which include:

1. The Right To Be Informed Of The Reasons For Arrest And To Compensation For Unlawful Arrest

⁵⁹ Article 13

⁶⁰ Article 15

⁶¹ Article 18

⁶² Matakala L ‘The Legislative Framework for Pre-Trial Detention’ (2011) 39-48

⁶³ Matakala (2011) 43

⁶⁴ Matakala (2011) 43

⁶⁵ Article 6 of the ICCPR

As soon as an individual is arrested, the person carrying out that arrest is by law obliged to inform an accused person of the full particulars of the offence, which the arresting officer believes has been or is about to be committed.⁶⁶

In Zambia Article 181(b) reads that any person who is charged with a criminal offence *'shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged'*. Simply, the law necessitates that there ought to be reasonable cause for an arrest and where no reasons are given, an arrested person may file a complaint of unlawful arrest and in so doing give the complainant the right to compensation from the one who arrested or detained him.⁶⁷

2. The Right Not Be Charged Unless The Offence Is Prescribed By Law

In Zambia, a person cannot be found guilty of a criminal offence if at the time the act took place it was not defined as an offence in any law.⁶⁸

Article 18(8) states that *'No person shall be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law: Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in written law and the penalty therefore is not so prescribed'*.

3. The Right To Be Brought To Court Within 24hrs

In terms of Article 33 of The Criminal Procedure Act of Zambia states that *'When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station to which such person shall be brought may, in any case, and shall, if it does not appear practicable to bring such person before an appropriate competent court within twenty-four hours after he was so taken into custody, inquire*

⁶⁶ Article 9 (5) of the ICCPR

⁶⁷ Article 13(4) *Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person*

⁶⁸ In *Sikota Wina and Princess Nakatindi Wina v. The People* (1996) SC judgment 8 of 1996 (Kas Legal, Electronic Library), the accused was arrested and taken to court for being in possession of drugs in Ethiopia. At that time, there was no law in Zambia that stipulated that being in possession of drugs was a criminal offence. See also Matakala (2011) 44

into the case, and, unless the offence appears to the officer to be of a serious nature, release the person, on his executing a bond, with or without sureties, for a reasonable amount, to appear before a competent court at a time and place to be named in the bond: but, where any person is retained in custody, he shall be brought before a competent court as soon as practicable. Notwithstanding anything contained in this section, an officer in charge of a police station may release a person arrested on suspicion on a charge of committing any offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.'

Consequently in terms of Article 33, 'a person must be brought before a competent court within 24hrs of being taken into custody, unless the offence is of a serious nature'.⁶⁹ A suspects' continued detention is unconstitutional, once the state fails to bring him/her to court within 24hours.⁷⁰

4. The Right To Be Tried Within A Reasonable Time

The Human Rights Committee has affirmed, that the right to be tried within a reasonable time 'Relates not only to the time a trial should commence, but also the time by which it should end and judgment be entered, all stages must take place without undue delay'.⁷¹

The Zambian Constitution grants individuals the right to be brought before the court 'without undue delay'.⁷² In terms of Article 13(1)(b) '*upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia; and who is not released, shall be brought without undue delay before a court'*

In terms of the law where someone is not tried within a reasonable time, s/he must be released 'either unconditionally or upon reasonable conditions'.⁷³ Not withstanding the

⁶⁹ Matakala (2011) 44

⁷⁰ *Daniel Chizoka Mbandangoma v. The Attorney General* (1979) ZR HC See also Matakala (2011) 44

⁷¹ Human Rights General Committee, General Comment No.13 see also *Lubuto v. Zambia* (1995) Communication No. 390/1990, UN Doc CCPR/C/55/D/390/1990/Rev.1

⁷² Article 13 of the Zed Constitution

⁷³ Article 13(3)b

afore-mentioned, what amounts to reasonable time differs on a case by case basis and depends on the given circumstances of each case.⁷⁴

5. The Right To A Fair Trial Before A Competent, Independent And Impartial Tribunal

In terms of Article 18(1) *'If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law'*.

In Zambia, the right to a fair trial requires that a detainee has the right to be heard before a just and uncompromised court proceeding.⁷⁵ Furthermore, in terms of Article 18(11)⁷⁶ Zambian courts can only ignore this requirement if publicity would prejudice the interests of justice, the proceedings, public safety, public order or welfare of people concerned in the proceedings.⁷⁷

6. The Right To Legal Representation

Article 14(3) of the International Covenant of Civil and Political Rights provides that a detained person has the right *'To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.'*⁷⁸ The right to legal representation requires that a detained person be entitled to

⁷⁴ 'Some of the factors to be considered include the complexity of the case, the conduct of the parties especially the prosecution, and the interest of the accused, which is at stake, and whether the suspect is in custody pending trial' Matakala (2011) 44

⁷⁵ Matakala (2011) 44

⁷⁶The Article reads that *'Nothing in clause 18(10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority: (a) may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or in interlocutory proceedings; or (b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings'*.

⁷⁷ Matakala 2011) 45 see also African Commission on Human and People's Rights 'Principles and Guidelines on the Right to A Fair Trial and Legal Assistance in Africa' available at <http://www.achpr.org/instruments/fairtrial/> (accessed on 29th April 2013)

⁷⁸ See also Article 7(1)(c) of the African Charter on Human and Peoples Rights

have a legal representative of his or her choice, 'who is able to counsel him or her on all the legal issues in his case and to represent him or her when the matter comes before court'.⁷⁹

In Zambia in terms of Article 18(1) (d) any person charged with an offence, '*... shall unless legal aid is granted him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice*'. Notwithstanding this, it must be noted that currently in Zambia, the right to legal representation can only be enjoyed by a pre-trial detainee when s/he appears before the High Court.⁸⁰ In the local courts legal representation is not applicable because legal representation by legal practitioners is prohibited.⁸¹

7. The Right To Be Presumed Innocent:

The Human Rights Committee has said that '*The principle of presumption of innocence means that the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.*'⁸²

The right of a detained person to be presumed innocent is an important right because it can have an influence on the treatment an accused person is subjected to from criminal investigations through the trial proceedings up to the end of the final appeal.⁸³ The presumption of innocence obliges the prosecution to prove the charge against a detained person and 'guarantees that no

⁷⁹ Matakala (2011) 45 see also African Commission on Human and People's Rights 'Principles and Guidelines on the Right to A Fair Trial and Legal Assistance in Africa' available at <http://www.achpr.org/instruments/fairtrial/> (accessed on 29th April 2013)

⁸⁰ Matakala (2011) 45

⁸¹ Section 15 (1) of The Local Courts Act of Zambia reads that '*No legal practitioner, other than a practitioner who is a party and acting solely on his own behalf, may appear or act before a local court on behalf of any party to any proceedings therein save in respect of a criminal charge*'

⁸² General Comment No.13 (Article 14) in UN Compilation of General Comments, p124, paragraph 7 see also Matakala L (2011) 45

⁸³ Matakala L (2011) 45

guilt can be presumed until the charge has been proved beyond reasonable doubt'.⁸⁴ In Zambia this right is enshrined in term of Article 18(1) (a).⁸⁵

8. The Right To Be Informed Promptly And In Detail In A Language Which He Understands Of The Nature And Cause Of The Charge Against Him:

Articles 13(2) and 18(2) b of the constitution provides that a person who is arrested or detained must be informed in a language he understands of the reasons for his detention and the nature of the offence he has been charged with .

9. The Right To Liberty And Security Of Person:

A detained person should not be placed under arbitrary arrest or detention or deprived of his free movements except through reasons and procedures established by law.⁸⁶ Article 13(1) of the Zambian constitution protects the personal liberty of citizens. This right to liberty entails the right to free movement or mobility of the person, the 'protection of the individual over himself, his own body and mind as well as the individuals' sovereignty against the tyranny of the political rulers'.⁸⁷

4.3 Arrest and Detention

It has been noted above that in Zambia there are several pieces of legislation, which restrict the right to freedom of expression, assembly and association.⁸⁸

Often Zambian legislation such as the Penal Code which creates criminal defamation offences, defamation of the president and of foreign princes, unlawful assembly, possession of banned publications, is tried by magistrates.⁸⁹ It is argued that even though magistrates lack the capacity

⁸⁴ Human Rights Committee, General Comment No.32, Article 14: Right to Equality before courts and tribunals to a fair trial, UN Doc. CCPR/C/GC/32 (2007)

⁸⁵ The article reads that 'Any person charged with a criminal offence *'shall be presumed to be innocent until he is proved or has pleaded guilty'*;

⁸⁶ Matakala L (2011) 45

⁸⁷ Matakala L (2011) 45

⁸⁸ Most of which were enacted during the colonial and one party era. Chanda A 'The Role Of Lower Courts In The Domestic Implementation Of Human Rights' available at http://www.unza.zm/zamlii/comment/lowercourts_humanrights.html (accessed on 21 May 2013).

⁸⁹ Chanda A 'The Role of Lower Courts In The Domestic Implementation Of Human Rights' available at http://www.unza.zm/zamlii/comment/lowercourts_humanrights.html (accessed on 21 May 2013).

to declare laws restricting freedom of expression unconstitutional, they can nevertheless limit their application by construing them narrowly or strictly.⁹⁰

With this in mind, it is however important to note that under the Article 20(3) of the Constitution of Zambia, freedom of expression can be limited as ‘*reasonably required in the interests of defense, public safety, public order, public morality or public health*’. Currently, in Zambia there are inadequate laws that safeguard the media, meaning that Zambian authorities can easily prosecute and detain journalists based on Zambia’s penal statutes.⁹¹ The laws that still exist and criminalize free speech have lead to a number of unfair arrests, and there have been a number of Zambian cases in which the media has been taken to court.⁹²

4.3.1 Incidents and Cases of Detained Journalists

The following is a table of summarised incidents in which journalists were arrested in terms of the criminal defamation and insult laws in Zambia. It should be noted that there are most likely a good number of decided cases that relate directly to the topic at hand but which cannot be accessed due to the fact that they have not yet been reported in the Zambian Law Reports or because they are difficult to obtain from the courts where they were decided. Consequently this study has been restricted to a few incidents and cases that the researcher was able to access.

Journalist/s	INCIDENT	OUTCOME
<u>Thomas Zyambo and Clayson Hamasaka</u>	Thomas Zyambo a journalist with links to the Zambian Watchdog was arrested along with Clayson Hamasaka a journalist and academic in the early hours of Tuesday, 9 July 2013 and placed in police custody. ⁹³	Hamasaka was released without charge on Wednesday, 10 July 2013 after spending nearly two days in police custody but has since been ordered to report to police for further questioning. ⁹⁵ And Thomas

⁹⁰ Chanda A ‘The Role of Lower Courts In The Domestic Implementation Of Human Rights’ available at http://www.unza.zm/zamlii/comment/lowercourts_humanrights.html (accessed on 21 May 2013).

⁹¹ Media Institute of Southern Africa & the International Human Rights Law Center (2007) 23 .

⁹² Media Institute of Southern Africa & the International Human Rights Law Center (2007) 23.

⁹³ All Africa ‘Zambia: Arrested Journalist Charged with Sedition and Released on Bail’ available at <http://www.allafrica.com/stories/201307140082.html> (accessed 13 July 2013).

	Police, assisted by a drug enforcement agency searched the pair's houses separately and seized computers and other digital equipment. ⁹⁴	Zyambo, was released on bail on 10 July 2013 after spending over 48hrs in police custody. ⁹⁶ He has been charged with sedition.
<u>Mwala Kalaluka and Nyambe Muyumbana</u>	<p>In 2011, Mwala Kalaluka of the privately-owned daily <i>The Post</i>, was arrested and charged with seditious intention, while in a separate incident Nyambe Muyumbana, an assistant station manager of <i>Radio Lyambai</i> was charged with publication of seditious materials in connection with their reports on protests for greater autonomy in Western Province.⁹⁷ Both faced a possible seven-year jail sentence or a fine of 1 million kwachas (\$200).⁹⁸</p> <p>On 18 January Nyambe Muyumbana, was arrested and spent the night in a cell. It was alleged that he broadcast programs 'inciting listeners to rise up against the authorities'.⁹⁹ Afterwards, Zambian security forces closed Radio</p>	<p>Mr Kalaluka told a Reporters Without Borders' correspondent in Zambia that he had not been charged with any offence but was expected to be taken to court on the 19th January 2011. However the authorities citing ill preparation for the case postponed the hearing to the 23rd February 2011.¹⁰¹ In addition the Zambian authorities declined to allow <i>The Post</i> deputy editor, Sam Mujuda, who is a lawyer, the right to defend Mr. Kalaluka on the grounds that they belonged to the same company.¹⁰²</p> <p>Both Mr. Kalaluka and Mr Muyumbana's cases have still not been brought before a Zambian</p>

⁹⁵ All Africa 'Zambia: Arrested Journalist Charged with Sedition and Released on Bail' available at <http://www.allafrica.com/stories/201307140082.html> (accessed 13 July 2013).

⁹⁴ All Africa 'Zambia: Arrested Journalist Charged with Sedition and Released on Bail' available at <http://www.allafrica.com/stories/201307140082.html> (accessed 13 July 2013).

⁹⁶ All Africa 'Zambia: Arrested Journalist Charged with Sedition and Released on Bail' available at <http://www.allafrica.com/stories/201307140082.html> (accessed 13 July 2013).

⁹⁷ Freedom House 'Freedom of the Press-2012-Zambia' available at <http://www.refworld.org/category,COI,,ZMB,50895d881a,o.html> (accessed on 29th April 2013)

⁹⁸ Freedom House 'Freedom of the Press-2012-Zambia' available at <http://www.refworld.org/category,COI,,ZMB,50895d881a,o.html> (accessed on 29th April 2013)

⁹⁹ Freedom House 'Freedom of the Press-2012-Zambia' available at <http://www.refworld.org/category,COI,,ZMB,50895d881a,o.html> (accessed on 29th April 2013)

	Lyambai, the station at which Mr Muyumbana was an assistant manager, and seized its equipment after it aired an ad for a banned secessionist meeting. ¹⁰⁰	Court. ¹⁰³
<u>Matongo Maumbi and Jyde Hamoonga</u>	On March 12 2006, two community radio journalists were arrested and charged with publication of false news. ¹⁰⁴ Matongo Maumbi and Jyde Hamoonga, were arrested and charged with ‘publication of false news with intent to cause fear and alarm to the public’ contrary to Section 67 of the Penal Code the duo for ‘facilitating the broadcasting of an announcement on the radio station in which relatives of a deceased five year old boy who had been missing for over one week, and was later found dead on 3 March 2006 with some body parts missing, called on members of the community to meet and discuss	Undecided

¹⁰¹ Reporters Without Borders ‘Two Journalists Released But Facing Trial on Sedation Charges’ available at <http://en.rsf.org/zambia-two-journalists-held-after-19-01-2011,39363.html> (accessed on 30th April 2013)

¹⁰² Reporters Without Borders ‘Two Journalists Released But Facing Trial on Sedation Charges’ available at <http://en.rsf.org/zambia-two-journalists-held-after-19-01-2011,39363.html> (accessed on 30th April 2013)

¹⁰⁰ Freedom House ‘Freedom of the Press-2012-Zambia’ available at <http://www.refworld.org/category,COI,,ZMB,50895d881a,o.html> (accessed on 29th April 2013)

¹⁰³ Freedom House ‘Freedom of the Press-2012-Zambia’ available at <http://www.refworld.org/category,COI,,ZMB,50895d881a,o.html> (accessed on 29th April 2013)

¹⁰⁴ Zambian Watchdog ‘MISA Disturbed by Caging of Journalists in Relation to Barotseland Confusion’ available at <http://www.afrimap/english/images/report/ZambiaBroadcastingSurveyWeb.pdf> (accessed on 30th April 2013)

	<p>an appropriate response to the suspected ritual murder'.¹⁰⁵ It is reported that the call for the meeting by the journalists was followed by a live phone-in discussion programme hosted by the station in which the issue of the alleged ritual murder was discussed, and that this was followed by a riot.¹⁰⁶</p>	
<p><u>Fred M'membe</u></p>	<p>In 2005, Fred M'membe an editor for the Post Newspaper based in Lusaka was arrested and detained on charges of criminal defamation contrary to section 69 of Cap 87 of the laws of Zambia. M'membe's offence was to have run an editorial in the newspaper's 7 November issue in which he condemned the president's "foolishness, stupidity and lack of humility" and questioned his ability to govern in a more rational fashion.¹⁰⁷</p>	<p>Initially M'membe was charged in November 2005 and his trial was set to begin on 14 February 2006 in the Magistrates Court. However, the case was dropped because the state had decided not to proceed with prosecution.¹⁰⁸</p>
<p><u>Emmanuel Chilekwa, Shadreck Banda, Kinsley Lweendo And Jane Chirwa</u></p>	<p>In 2002, The People Managing Editor Emmanuel Chilekwa, Assistant Editor Shadreck Banda,</p>	<p>Their lengthy detention was generated by the judge postponing the bail ruling for the journalists</p>

¹⁰⁵ Reporters Without Borders 'Two Journalists Released But Facing Trial on Sedation Charges' available at <http://en.rsf.org/zambia-two-journalists-held-after-19-01-2011,39363.html> (accessed on 30th April 2013)

¹⁰⁶ Reporters Without Borders 'Two Journalists Released But Facing Trial on Sedation Charges' available at <http://en.rsf.org/zambia-two-journalists-held-after-19-01-2011,39363.html> (accessed on 30th April 2013)

¹⁰⁷ Reporters Without Borders 'Police Launch Manhunt before finally arresting editor who criticized President' available at <http://www.en.rsf.org/zambia-police-launch-manhunt-before-10-11-2005,15563.html> (accessed on 30th April 2013).

¹⁰⁸ IFEX 'Defamation of the President charge against newspaper editor Fred M'membe dismissed' available at http://www.ifex.org/zambia/2006/02/14/defamation_of_thepresident_charge/

	<p>Senior Reporter Kinsley Lweendo and student reporter Jane Chirwa were imprisoned for 22 days over the “Mwanawasa has brain disease’ story which reported that the president was afflicted with Parkinson’s disease.¹⁰⁹</p>	<p>bail application to June 25 2002, instead of the originally scheduled hearing on June 7. Authorities later withdrew the charges against them.¹¹⁰</p>
•		

4.4 Conclusion

Although due process rights are provided for by the Constitution, in some cases Zambian journalists still find themselves being arbitrarily arrested and are kept incarcerated for lengthy periods of time and sometimes without being charged. In addition sometimes cases never make it to court. The very existence and use of criminal defamation, libel and insult laws continues a cycle of intimidation of journalists in Zambia, creating a persistent culture of self-censorship.¹¹¹

5. OBSERVATIONS FROM QUESTIONNAIRES

In general the questionnaires indicate that although there’s varying degrees of knowledge in terms of the actual application of defamation and insult laws in Zambia, all of the interviewees were in agreement that media practitioners in the country were aware of such laws.

¹⁰⁹ IFEX Alert ‘Journalists arrested, charged with ‘defamation of the president’ denied bail’ http://www.ifex.org/zambia/2002/06/10/journalists_arrested_charged_with/ (accessed on 30th April 2013)

¹¹⁰ IFEX Alert ‘Journalists arrested, charged with ‘defamation of the president’ denied bail’ http://www.ifex.org/zambia/2002/06/10/journalists_arrested_charged_with/ (accessed on 30th April 2013)

¹¹¹ Article 19’s Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

Journalists in Zambia seem to understand the criminal defamation laws in Zambia to some extent although some tend to confuse criminal and civil defamation.¹¹²

Some of the interviewees are of the opinion that criminal defamation laws ‘silence’ the media and in effect limits the way in which reporting is done. Others noted that although media practitioners are affected, they aren’t as affected as members of opposition parties. Others however felt that journalists need to take care and be more ethical when reporting or doing their jobs.

In terms of legal representation for journalists facing litigation the general feeling is that it is sometimes inaccessible and often very expensive. Legal aid is available in Zambia but those interviewed noted that it is reserved for people from backgrounds of extreme poverty.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusion

Part XIII of the ‘Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples Rights’ states that: *‘states shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society’*.

Criminal defamation and insult laws affect the right to freedom of expression seriously in the SADC region as a whole, because these laws breach the guarantee of freedom of expression. For one, defamation laws put tremendous pressures on journalists.¹¹³ In certain cases globally, defamation laws or provisions can and do allow for journalists to be imprisoned if found guilty.¹¹⁴ In addition, criminal defamation and insult laws frequently fail to differentiate between

¹¹² Talk about civil defamation act

¹¹³ Article 19’s Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

¹¹⁴ Article 19’s Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

statements of fact and opinions, it is evident that more often than not journalists are punished for their opinions about politicians, rather than statements of fact.¹¹⁵

Zambia has a Constitution that explicitly protects freedom of speech and freedom of expression and although these freedoms are subject to certain limitations, it goes without saying that these limitations must be made or given in light of the Constitution.¹¹⁶ And while press freedom or even the work that media in Zambia do hasn't been explicitly constitutionally protected, such protection can be deduced from the Article 20, which guarantees freedom of expression, and which includes freedom to hold opinions, receive and impart and communicate ideas and information without interference, whether to the general public or to any person or class of persons.

But while freedom of speech is guaranteed in the Zambian constitution, it is argued that 'the relevant language can be broadly interpreted'.¹¹⁷ Moreover criminal defamation laws, laws prohibiting sedition and obscenity, and provisions in the penal code remain in effect and are at times used against journalists. In many cases in terms of Zambian law, if defamation is established, the defendant faces a criminal prosecution that could lead to imprisonment.¹¹⁸ In effect criminal defamation and insult laws leave room for the intimidation of journalists and create a 'pervasive culture of self-censorship'.¹¹⁹

The 2011 election of Michael Sata of the opposition Patriotic Front as Zambian President led to some encouraging openings in the media environment, such as the endorsement of a new Freedom of Information Bill. However to date, the Zambian government has delayed passing freedom of information legislation as well as proposed reforms to the broadcasting sector.¹²⁰

¹¹⁵ Article 19's Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

¹¹⁶ Supremacy of the zed constitution

¹¹⁷ <http://www.freedomhouse.org/report/freedom-press/2011/zambia>

¹¹⁸ See heading above and <http://www.artilce19.org/data/files/pdfs/tools/def-campaigns-sadc-overview.pdf>

¹¹⁹ Article 19's Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

¹²⁰ FreedomHouse 'Zambia: Freedom of the Press 2011' <http://www.freedomhouse.org/report/freedom-press/2011/zambia> (accessed 22 May 2013).

6.2 Recommendations

This study has shown that journalists, media workers and experts in Zambia are aware of the existence of criminal defamation laws. These laws to some degree affect the operations of the media in the country. Realising the need to protect the media and members of the public from criminal defamation and insult laws, media bodies such as MISA-Zambia in partnership with human rights groups, have played a pivotal role in advocating for law reforms in order to foster media freedom and freedom of expression in Zambia.

These bodies will continue to campaign for the repeal of criminal defamation and insult laws. Here's what is required, in order to further support the cause:

- MISA Zambia in partnership with other like-minded bodies should continue campaigning for the repeal of criminal defamation and insult laws to make concrete efforts to provide publications and other relevant documents on criminal defamation and insult laws to media houses across the country.
- The Zambian Legislature should repeal laws that unfairly limit freedom of expression; in particular the provisions of the Penal Code mentioned above and they should fully acknowledge the principle that 'public figures must tolerate a greater degree of criticism than ordinary citizens'.¹²¹
- There is an increased need for awareness among journalists, media workers, government the judiciary and civil society on the existence of criminal defamation and insult laws in Zambia and the distinction between these and civil defamation laws.
- The Zambian government should not delay any longer the passing of the draft Constitution, which protects media freedom in the country in line with international standards, and the Freedom of Information Bill.

¹²¹ Article 19's Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).