MISA

PROMOTING **FREE EXPRESSION** IN SOUTHERN AFRICA



SO THIS IS DEMOCRACY?

State of media freedom in Southern Africa 2016

Published by
Media Institute of Southern Africa (MISA)
Private Bag 13386
Windhoek, Namibia
Telephone: +264 61 232 975
Website: http://www.misa.org

Realised with the support of
Friedrich-Ebert-Stiftung
fesmedia Africa
P.O Box 23652
Windhoek
Namibia
Email: info@fesmedia.org
Website: www.fesmedia-africa.org

Cover design and layout
Clara Schnack
Email: cm@iway.na

Editing
Reyhana Masters
Email: zambezimasala@gmail.com
Rui Correia
Email: correia.rui@gmail.com

© 2016 The Media Institute of Southern Africa.
All rights reserved.
Unauthorised duplication contravenes applicable laws.

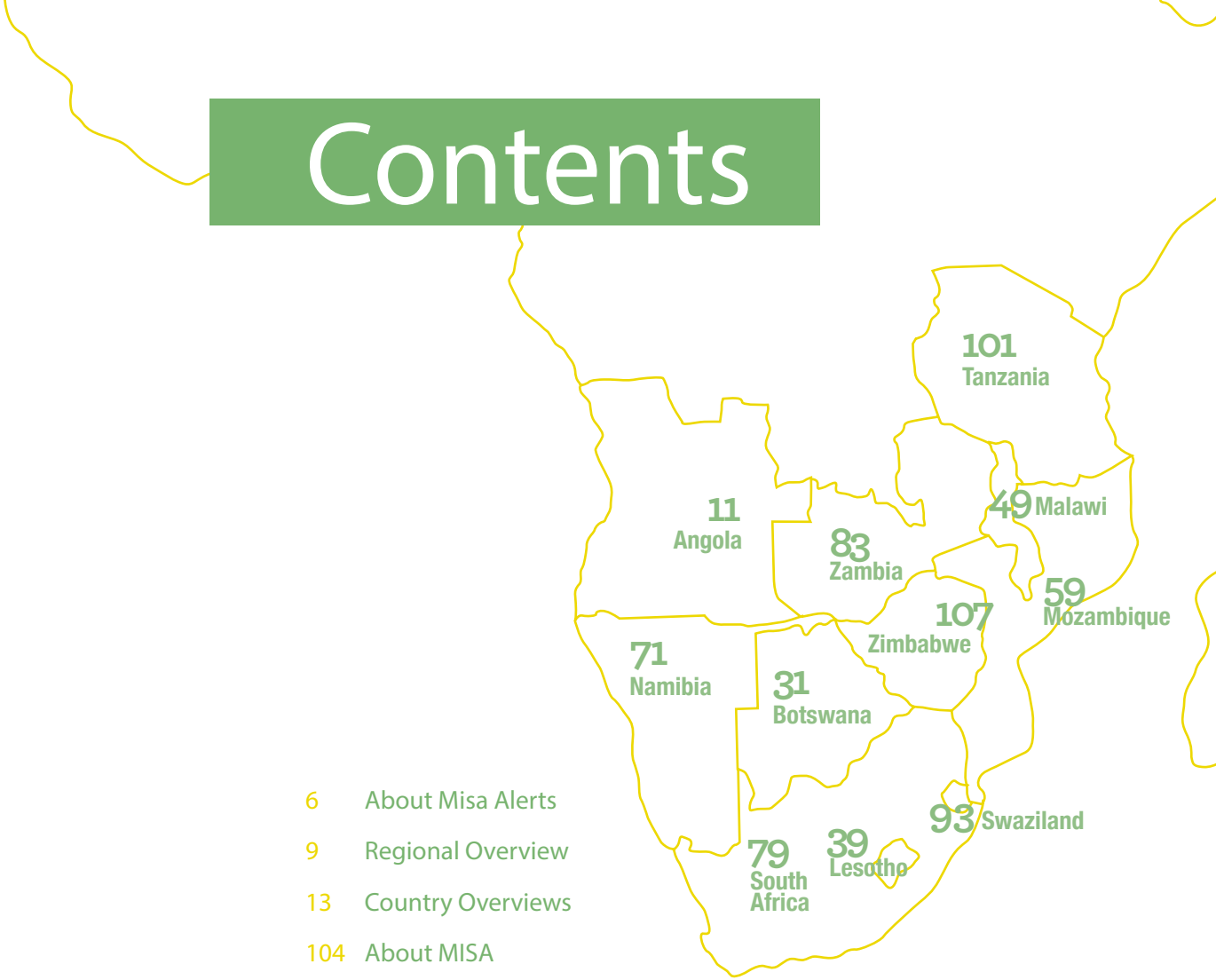
The views expressed by independent contributors are not necessarily those of MISA

SO THIS IS DEMOCRACY?

State of media freedom in Southern Africa

2016

Contents



6 About Misa Alerts

9 Regional Overview

13 Country Overviews

104 About MISA

106 Appendices

Windhoek Declaration 129
Africa Charter on Broadcasting 132
Declaration of Principles on Freedom of Expression in Africa 135
Declaration of Table Mountain 139
African Platform on Access to Information 141
Guidelines on Media Coverage of Elections in the SADC region 149
African Declaration on Internet Rights and Freedoms 156

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.



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.



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.



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
2016 by MISA Regional Secretariat

Traditional media on the continent, indeed, the world, is in a state of flux as it is under both political and economic siege. Direction is being desperately sought in a world reeling from disruption. Media houses across the region are having to contend with low performing economies, shrinking newsrooms, poor working conditions against increasing costs, reduced advertising revenue, drastically reduced print runs, stiffer competition, hostile governments, constricting media legislation and to top it all, increasing corruption and unethical behaviour within the sector itself.

Audiences are being captured by news downloaded off social media platforms that offer content at a dizzying pace packaged in a format that appeals to diverse audiences and can be consumed in seconds. The media is having to find relevance in a world mesmerised by technology and more engaged with news on social media platforms, be it real or fake. News is being shared at lightning speed and by the time it is refuted, it has crossed borders and even continents.

Building, and in some cases reviving, good solid investigative journalism to ensure sustainability and relevance is both a solution and an obstacle. Often the investigative stories highlight corruption in the public sector, or the finger points at public officials, which brings the media into direct confrontation with governing elites. The media then are under direct threat from people willing to abuse their power.

The contestation between States and the media sector has intensified on the legislative front with governments in countries through the SADC region finding insidious ways to curtail the influence and reach of the media.

Through the guise of ensuring protection of citizens from computer related crimes, governments across the region have either enacted legislation or are tabling it, to regulate online content and curb freedom of expression.

The onslaught against the media has expanded and extended to include citizens who have exercised their freedom of expression rights in different ways and through a variety of actions in a number of countries. This increase in citizen agency has been met with harsh and brutal reprisals by Governments.

A disconcerting development is the shift by journalists on what used to be agreed positions in the region. In both Angola and Tanzania, journalists have welcomed content in legislation that requires journalists to be licensed - a form of authorisation to practice journalism based on specific educational specifications. Sections of the media sector in the two countries welcome this on the basis that it will raise journalistic professional standards. Is the idea catching on, in a region where media freedom organisations use to pride themselves on fighting to remove all obstacles to freedom of expression and freedom of the press?

Not all is lost, though.

A cause for celebration is the sustained and vigorous 12 year campaign, spearheaded by MISA Malawi which finally gave birth to an Access to Information Act being passed by Parliament at the end of 2016.

In Botswana, the 16th of March was a historical day for the Lesbians, Gays & Bisexuals of Botswana - LEGABIBO after the organisation won a court case in which the State was instructed to register and officially recognize the sexual minorities' body.

The thawing of relations between the Swazi government and the media was another welcome change. This was in part, due to the engagement by the Special Rapporteur on Freedom of Expression, Pansy Tlakula with government on issues relating to freedom of expression, media freedom and access to information.



Angola

National Overview 2016 by MISA Regional Secretariat

English/Portuguese

The year 2016 was no different from any other year when it comes to the themes that dominated the agenda – but the intensity certainly was a few notches up. Angolans saw in the new year suffering from major hangovers from the previous year – the unfinished business that seems to be the staple, with key developments dragging on, over years before a resolution emerges. Chief among these was the on-off debate over the succession of President José Eduardo dos Santos, the equally on-off trial against journalists doing their job, in specific Rafael Marques, and last but not least the on-off-on-off regulation of the media sector, left hanging in abeyance since the enactment of the Press Law in 2006.

Habemus presidentum?

Uncertainty over the eventual exit from politics of the 74-year old President Dos Santos continues, despite overwhelming 'evidence' that now it is a done deal. With legislative elections scheduled to be held in Angola on August 23 of this year, it would appear that Dos Santos will indeed finally hand over power after almost four decades in power. In terms of the new constitution of 2010, the country ceased to have presidential elections, opting for the party-list proportional representation system, with the number one candidate of the winning party automatically becoming president. The change offered a surgical solution to the irksome debate around Dos Santos's tenure, limited to two five-year terms under the 1975 and 1992 constitutions, both of which failed to provide a clear answer on when Dos Santos's presidency actually started, given that the second round of presidential elections against UNITA leader Jonas Savimbi never took place. Likewise, there was no clarity on whether or not Dos Santos had served his two terms, as the country was in and out of war, making it impossible to hold elections.

There is good reason for the uncertainty to persist. News of Dos Santos's departure have over the years been emblazoned on front-pages on a number of occasions. In 2016, these pencilled a see-saw of contradicting developments, starting with an announcement in March that Dos Santos was grooming one of his children to take over the reins. The news gained momentum when also in March, it was announced that Dos Santos would leave office in 2018. However, this puzzled analysts, as elections were scheduled for 2017, which begged the question of how Dos Santos would stay on as president and then hand over to a stand-in candidate. In June Dos Santos announced that he was contesting the July elections for the presidency of the MPLA. With no other contender, Dos Santos was unanimously elected, being endorsed by the party in August.

The debate culminated with the news in December that a successor to President Dos Santos had been identified in the person of João Lourenço. However, at no point was it made clear that Dos Santos was out of the picture, with the final list still subject to adjustments as it moved along a number of steps in the approval process in the party's political bureau and central committee between January and February of 2017. For much of the recent past, Deputy President Manuel Vicente had been widely expected to fill Dos Santos's shoes when the time came, but the once pivotal party stalwart has since not only been overshadowed, but also implicated in investigations in Portugal into shady dealings involving Angolan and Portuguese citizens. His name now appears at Number 24 on the party list.

Also telling, is the initial appearance for the first time on the party's electoral list of two of Dos Santos's lesser known children, José Filomeno 'Zenu' Dos Santos and Welwistchia 'Tchizé' dos Santos. However, as more information on the composition of the list emerged, Filomeno Dos Santos's name was no longer on the list. Filomeno Dos Santos has been head of FSDEA, Angola's sovereign fund since 2013. The first lady, Ana Paula dos Santos, is on the list, at Number 17. Meanwhile, in April Dos Santos fired the entire board of the state oil company, Sonangol, then appointed his daughter Isabel dos Santos as chief executive of the company, a move that was widely criticised by Angolan society.

However, two 'small details' that seem to have escaped most observers is that what has been communicated to the media is that Dos Santos will "retire from active political life", with no clarity on what that would mean in real terms; and the fact that until December it was reported by a number of reliable sources that Dos Santos was still on the party's election list, occupying the 3rd position, behind heir apparent, João Lourenço and Bornito de Sousa, touted for the position of vice-president. By contrast, what has been widely commented on, is the fact that on the various occasions when Dos Santos has spoken throughout this process, not once has he said a word about his departure, nor about João Lourenço replacing him. Not to be omitted from any scenario though, ifsthe fact that the 74-year-old president's health will also be a factor in his decision to retire from public life.

Elections scheduled for August will be under the indirect control of the Number 2 on the list, Bornito de Sousa, as present Minister of Territorial Administration, which is the ministry responsible for the National Electoral Commission. Opposition parties have voiced their objection, asking for his removal. Queried about the independence of the electoral body and his personal conflict of interests, Bornito de Sousa said that constitutionally and legally there was no incompatibility. He assured that the process was transparent enough, without any human intervention.

Panama Papers

The Angolan Sovereign Fund was caught in the fine mesh of the worldwide investigations that followed the revelations contained in the information leak known as the Panama Papers. The International Consortium of Investigative Journalists linked FSDEA to a number of key figures in Angola, Germany, Switzerland and Russia, all mentioned in the Panama Papers. Investigations uncovered a link between an American oil company and several powerful politicians in Angola. According to the leaked documents, approximately fifteen shell companies funnelled money through UBS bank accounts. Oil Minister Botelho de Vasconcelos was cited in the papers, but human rights campaigner and journalist Rafael Marques believes that there are more, "including Vice President Manuel Vicente". In March, FSDEA said in an internal report that USD 486 million had disappeared from the fund, an amount roughly equivalent to 10% of its capital. However, this information was made public only in September. A number of investigative reports have linked the Fund to shady deals involving companies linked to FSDEA head Filomeno Dos Santos and associates, chief among these, Banco Kwanza Invest, founded by Filomeno Dos Santos himself. FSDEA denied any wrongdoing

and said that its accounts were audited by Deloitte & Touche, with regular reports to the National Treasury Directorate and the Auditor-General's Office.

Repressing Law

After more than a decade in limbo, Angola in November of 2016 finally promulgated a number of pieces of legislation contemplated in the Press Law of 2006. The Press Law itself has been updated to ensure compatibility with the new constitution (2010). The new text was penned by none other than President Eduardo Dos Santos himself. Besides a new version of the Press Law, the sudden impetus came with a new addition, the creation of the Entidade Reguladora da Comunicação Social Angolana (ERCA) – the new body now responsible for media regulation, replacing the Conselho Nacional de Comunicação Social. ERCA – to be created in terms of the ERCA Law – will in essence be the final arbiter over most aspects of the media, especially the practice of journalism. MISA-Angola expressed concern at the composition of the 13-member body, to be made up of 11 representatives of political parties and 2 from among media professionals. Under the guise of offering professional assistance to media organisations to ensure they are in compliance with laws and regulations, ERCA will "organise and maintain a database on behalf of media organisations and companies subject to ERCA supervision, to permit assessment of their compliance with the law". ERCA will have the power to "enforce compliance with professional journalistic ethics and standards"; "enforce compliance with any applicable laws, regulations and technical requirements within the scope of its competence"; and "verify compliance by radio and television operators with both the generic and specific aims and conditions of their respective charters and activities". Furthermore, ERCA will have the right to investigate, and adjudicate complaints about potential or actual "transgression of the legal or regulatory norms" not just from "interested parties" but also "on its own initiative". It bears reminding that this is a body that will be governed by political parties, in a composition that mirrors national political strength, in other words, with a majority of MPLA members.

> "Licensing requirements are inconsistent with international law on freedom of information. The issue is not what Article 19 says; the issue is its enforceability and the use of international law as a tool of litigation in support of prosecuted journalists when you are arguing in domestic courts" – **Enrique Armijo, media lawyer, Washington, USA**

The Press Law of 2006 provided for a number of subsidiary statutes and decrees to govern the media. These have now been enacted as laws in own right. Chief among these are the Law on the Exercise of the Activity of Television Broadcasting, Law on the Exercise of the Activity of Radio Broadcasting, the Law on the Statute of the Journalist and – most importantly – the "Carteira de Jornalista", the licence to practice journalism. In the event of any journalist found working without being licenced, the employing media house can be punished with a fine equivalent to ten median public service salaries. The fine triples in the case of a repeat violation. The new law also makes it illegal for journalists to work as public relations professionals, a common practice in Luanda, often with conflicting interests. In terms of the new Press Law, journalists can face disciplinary, civil and criminal sanctions, with fines of between USD 600 and USD 120,000 if found guilty of violating the law. The new law even criminalises the publication of images, such as cartoons, that can be deemed "offensive to individuals". Once the new set of laws comes into effect, media practitioners will have 90 days in which to comply. MISA-Angola expressed its displeasure at the fact that the new law empowers the Communications Minister to stop any broadcasting without any contestation mechanism or review process. Another issue that has raised eyebrows is the hefty amount of USD 210,000 required to start a new agency.

Oddly enough, in a region where media freedom organisations have been fighting to remove all obstacles to freedom of expression and freedom of the press, in Angola key people among journalists are actually in favour of licencing journalists, as they see in it the means to raise profession standards. Among those are the Sindicato dos Jornalistas, the journalists' professional union. On previous occasions sections of Angolan journalists have defended state regulation of the media, pointing to Portugal as an example where it works well, with all the elements that the new swathe of laws seeks to implement, including minimum tertiary education levels (possibly a "licenciatura" [Master's Degree]) to be allowed to practice journalism. At its 4th Congress held in September, the Sindicato voted to focus its efforts on ensuring the approval of Journalists' Statute, and the creation of Licencing and Ethics Commission. The Sindicato bemoans the fact that after 35 years of independence, Angolan journalists do not have a professional licencing regimen. By contrast, MISA-Angola has decried the creation of ERCA. A veteran Angolan journalist expressed the view that journalists should pressure the government to enact the full range of media legislation. He accused politicians of pointing fingers at the work of journalists, while they are the ones who are hindering the implementation of media regulation. At the time of the approval of the bill in general terms in August, opposition members voted against, citing a number of violations of precepts in the constitution, which they labelled setbacks to rights and freedoms guaranteed in the Constitution. They also argued that it had been drafted without any involvement from journalists. However, the Sindicato expressed its satisfaction with the openness to dialogue and with the way their concerns had been taken on board. However, it said it was against criminal liability, which it believed was designed to intimidate journalists. It further said that the bill contained provisions that were at odds with the constitution. The MPLA maintains that the text is a compromise to ensure the realisation of citizens' rights, freedoms and guarantees.

It is important not to confuse 'licenc-

ing' of journalists with 'accreditation' of journalists. Renowned international freedom of expression expert Toby Mendel put it this way: "licensing of journalists is understood to mean a system whereby individuals are required to apply to an external authority for permission to practice journalism, which permission may be refused or revoked. In some countries, the law places certain minimum conditions on who may practice journalism, such as minimum age or training criteria, or citizenship requirements. Formally, this is not licensing as it does not involve the possibility of permission to practice journalism being refused or revoked. However, where the conditions go beyond the purely technical, for example by removing the right to practice journalism upon conviction for criminal defamation, this system starts to reflect some of the key problems associated with licensing. Accreditation, on the other hand, is quite different from licensing, although the two are sometimes confused. Accreditation involves the granting of special privileges, most commonly access to restricted areas such as legislatures and courts, to journalists on the basis that they will inform the wider public about these proceedings".

"Licensing requirements are inconsistent with international law on freedom of information", said Enrique Armijo, a media lawyer with the Covington & Burling law firm in Washington, D.C. "The issue is not what Article 19 says; the issue is its enforceability and the use of international law as a tool of litigation in support of prosecuted journalists when you are arguing in domestic courts." Already as far back as 1985 the Inter-American Court of Human Rights (IACHR) stated that compulsory licensing of journalists was incompatible with freedom of expression. William Bird of Media Monitoring Africa equated the introduction of licensing of journalists to a democracy taking two steps backwards.

Also within the wide scope of ERCA, a draft law on the Protection of Networks and Information Technology Systems was also approved in August. Post and Telecommunications Minister José Carvalho da Rocha said the Bill was a response to African Union guidelines on cyber security. It is still too soon to assess the full impact of the law. However, it can be said that a few years back when Angola first planned to introduce legislation on cyber-crimes, it rated fairly high in a study on internet freedom. It now remains to be seen how it will fare once this law is fully applied.

Dependence, mightier than the word

In April, the Angolan government announced that it would hold weekly briefings with journalists in Luanda to overcome what it termed "the deficit in information about the government". The meetings will involve ministers and other members of the Government. The director of the Government Office for the Revitalisation and Execution of Institutional Communication and Marketing (GRECIMA), operating from within the Presidency, explained that the objective was to foster a "more professional" relationship with journalists, who routinely complained about limitations in accessing government sources and data. The Portuguese news agency, Lusa, reported in January that corporate and media communication of all Angolan ministries and provincial governments would be coordinated by the Office of Institutional Communication and Press (GCII), created by presidential decree in December 2015. Besides consolidating the communications function, the GCII office will incorporate the professionals in the service of the press offices of the various ministerial agencies and departments, putting an end to the practice of journalists working as press officers for government bodies, now against the law. Employees in the service of the GCII are "strictly forbidden from practicing journalism, working as freelancers, analysts, or experts on specific subjects, and may not take part in any debate and processing of journalistic material" reads the decree, signed by President Dos Santos. The decree says further that the GCII will support ministry departments and provincial governments in the areas of institutional communication and the press and in the drafting of communication plans "in line with the strategic directives issued by the Ministry of Social Communication and GRECIMA". Presenting "crisis management plans", drafting speeches and messages for the members of their respective bodies, organising institutional events or developing publicity campaigns, are among others, the responsibility of the new GCII, supervised by the Ministry of Social Communication and overseen by GRECIMA.

Angola 2016 violations & victories

3 May

In a snap poll conducted among journalists working for State media, on May 3, on the occasion of the commemoration of World Press Freedom Day, most of the participants were of the opinion that there is press freedom in Angola. The picture is quite different among journalists in the private media, who, in April, were accused by the state-owned Jornal de Angola, of being mouthpieces of the opposition.

18 January

A report on the media situation in Angola would be incomplete without mentioning activist, human rights campaigner and journalist Rafael Marques de Morais, arguably the Angolan government's long-time nemesis. Rafael Marques lodged a criminal complaint in court against the Governor of Cuanza Sul Province, General Eusébio de Brito Teixeira, for seizing land and then giving it to a company owned by himself. According to the submission delivered to the Office of the Attorney-General, General Brito Teixeira even wrote a petition to the governor of Cuanza Sul Province – that is, to himself – to request the legal rights to land for the construction of a condominium.

8 February

In February, human rights and pro-democracy activist, Manuel Chivonde Nito Alves was charged with contempt of Court and subjected to a summary trial, at the trial against the 17 Angolan activists, dubbed the "Angola 17". The trial reconvened on 8 February and the father of activist Manuel Chivonde Nito Alves was one of the witnesses. During his cross-examination, Nito felt his father was being intimidated by the line of questioning of the prosecutor. He then said out loud "I'm not afraid of losing my life. This trial is a charade". The utterance prompted the Public Prosecutor to request that Nito be charged with contempt of Court. The judge then stopped the hearing against the 17 activists, suspended the trial for the day and opened new proceedings against Nito on the same day. He was sentenced to six months in prison and asked to pay a fine on 8 February, serving his sentence at Viana Prison.

28 March

The same words were said in court on 28 March by another young activist, Francisco Mapanda (also known as Dago Nível Intelecto). He too was found guilty of contempt of court and sentenced to eight months in prison. On 5 July, the Constitutional Court ruled on appeal that the trial had violated some of his constitutional rights and ordered his release. He was released on 21 November, seven days earlier than scheduled.

28 March

The "Angola 17" were convicted of "preparatory acts of rebellion" and "criminal conspiracy". They were sentenced to prison terms ranging from two years and three months to eight and a half years, fined 50,000 kwanzas (US$300) for court costs and jailed. Fifteen of them were arrested in June 2015 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. They were accused of acts of rebellion, planning mass civil disobedience in the capital and producing fake passports, among other charges. They 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. Luaty Beirão was given a five-and-a-half year sentence 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 rebellion and for criminal association. Charges of preparing a coup against the president were dropped.

Immediately after the convictions, the activists' lawyers lodged two appeals – one before the Supreme Court and the other before the Constitutional Court. They also lodged a writ for habeas corpus, which was heard by the Supreme Court on 29 June. The Court ordered the conditional release of the 17 activists pending a final decision on their case.

20 July

On 20 July, the National Assembly approved an amnesty law relating to crimes committed up to 11 November 2015, including those related to the "Angola 17" case. Some of the 17 stated that as they had committed no crime, they did not want to be granted amnesty. Two youth activists were punished for criticising proceedings during the trial.

13 March

Amnesty International Portugal delivered a human rights petition to the Angolan embassy in Lisbon, demanding that authorities guarantee a fair trial to Angolan activist and journalist Rafael Marques de Morais. In May 2015, Marques was sentenced to six year in prison, suspended for two years, for libel affecting 12 people, including generals in the Angolan armed forces, in his book Blood Diamonds: Corruption and Torture in Angola. Marques alleged that they, and directors of the Cuango Mining Company were responsible for killings, torture and land grabs in the country's diamond fields. "We want the Angolan government to begin respecting, or at least show they respect human rights. We want this visibility to show respect for human rights", said Amnesty International Portugal president Susana Gaspar. Nearly 40,000 people signed the Amnesty petition on behalf of Marques. Since his first brush with the law in 1999, Rafael Marques has faced a barrage of court cases against him, most on charges of defamation, arising from exposés of incidents of corruption and related, involving senior government figures.

8 November

Amnesty International Secretary-General Salil Shetty declared in November that the organisation was extremely concerned with press freedom and the situation of journalists in Angola, Mozambique and Equatorial Guinea.

Shetty said Amnesty was keeping a close eye on Angola, specifically in respect of pressure being applied on journalists. He added that the organisation's new office in Johannesburg was monitoring the situation.



December 27

Rafael Marques de Morais, who runs the anti-corruption website Maka Angola, and Mariano Brás, of the weekly, O Crime, were charged with "crimen injuria," which is similar to insult laws, the journalists told CPJ. Marques de Morais told CPJ that a prosecutor questioned him for three hours on December 27 before charging him with crimen injuria over an article he wrote and published on Maka Angola in October. The article alleged wrongdoing by Angola's attorney general, João Maria de Sousa, in his purchase of state-owned land. A summons was issued for him to present himself at the Interior Ministry's Criminal Investigation Services for interrogation about an alleged "insult" against the country's Attorney General. The "insult", an alleged slander, related to the publication of evidence showing that business dealings by General João Maria Moreira de Sousa, Angola's Attorney General, were contravening both the constitution and the law. Brás, who republished the article in his paper, told CPJ he was questioned for three hours the following day, before being charged with the same crime. Brás said he was questioned about the veracity of the report in his paper and for details about who owned the publication.



18 July

On a more upbeat note, Teresa Fuquiadi of Jornal Nova Gazeta was a finalist in the CNN MultiChoice African Journalist Awards, which saw a record number of applicants, 1637, from 38 countries.

O ano 2016 não foi diferente de qualquer ano no que diz respeito a temas que dominaram dia-a-dia – mas certamente foi bem mais intenso. Os angolanos deram as boas vindas ao novo ano com fortes ressacas do ano anterior – tudo aquilo que ficou por concluir, como já é de costume, com grandes questões que se arrastam por anos antes de aparecer uma solução. Destacam-se entre estes, o debate ora sim, ora não, sobre a sucessão do Presidente José Eduardo dos Santos, processos igualmente ora sim, ora não, contra jornalistas por fazerem o seu trabalho, em específico, Rafael Marques, e por último, mas não menos importante, a regulação ora sim ora não, ora sim, ora não, da comunicação social, que continua pendente desde a promulgação da Lei de Imprensa em 2006.

Habemus presidentum?

A incerteza sobre a eventual saída da política do presidente Dos Santos, de 74 anos, persiste, apesar da 'evidência' esmagadora de que agora é a sério. Com as eleições legislativas programadas para o dia 23 de Agosto do corrente ano, parece que Dos Santos finalmente entregará o poder depois de quase quatro décadas. Em termos da nova constituição de 2010, o país deixou de ter eleições presidenciais, optando pelo sistema de representação proporcional por listas partidárias, com o candidato número um do partido vencedor automaticamente conduzido à presidência. A mudança ofereceu uma solução cirúrgica ao debate incomodativo em torno do mandato de Dos Santos, limitado a dois mandatos de cinco anos de acordo com as constituições 1975 e 1992, que não elucidavam de forma cabal quando a presidência de Dos Santos realmente começou, visto que a segunda volta das eleições presidenciais contra o dirigente da UNITA Jonas Savimbi nunca teve lugar. Da mesma forma, não havia clareza sobre se ou não Dos Santos já tinha cumprido os seus dois mandatos, visto que o país passou por períodos de guerra e paz, tornando impossível realizar eleições.

Há uma boa razão para a incerteza persistir. A notícia da saída de Dos Santos ao longo dos anos já foi estampada na capa de jornais em várias ocasiões. Em 2016, estas traçaram um ora sim, ora não de desenvolvimentos contraditórios, começando com a notícia em Março que Dos Santos estava a preparar um dos filhos para assumir as rédeas. A notícia ganhou impulso quando também em Março, foi anunciado que Dos Santos deixaria o cargo em 2018. No entanto, esta notícia deixou analistas perplexos, visto que as eleições estavam agendadas para 2017, o que levantava a pergunta de como Dos Santos permaneceria presidente e, em seguida, entregaria o poder a um candidato substituto. Em Junho, Dos Santos anunciou que se candidatava à presidência do MPLA, que ocorreriam em Julho. Sem outro candidato, Dos Santos foi eleito por unanimidade, e confirmado pelo partido em Agosto.

O debate culminou com a notícia, em Dezembro, de que o sucessor do Presidente Dos Santos havia sido identificado na pessoa de João Lourenço. No entanto, em nenhum momento ficou claro que Dos Santos estava fora de cena, com a lista final ainda sujeita a ajustes, ainda por tramitar pelas várias etapas no processo de aprovação no Bureau Político e no Comité Central do partido entre Janeiro e Fevereiro de 2017. Por bastante tempo do passado recente, o

vice-presidente Manuel Vicente era visto como o sucessor de Dos Santos quando chegasse a hora, mas este foi não só perdeu a vantagem, como também se viu implicado em investigações em Portugal de actividades que envolvem cidadãos angolanos e portugueses. O seu nome aparece agora no número 24 na lista do partido.

> "Os requisitos de licenciamento são incompatíveis com o direito internacional em matéria de liberdade de informação. A questão não é o que diz o Artigo 19; a questão é a sua aplicabilidade e a utilização do direito internacional como instrumento de litígio em defesa de jornalistas em processos julgados em tribunais a nível nacional" – Enrique Armijo, Washington, USA

É também notório pela primeira vez aparecerem na lista eleitoral do partido dois filhos menos conhecidos de José Dos Santos, José Filomeno "Zenu" dos Santos e Welwistchia "Tchizé" dos Santos. No entanto, à medida que mais informações sobre a composição da lista surgiram, o nome de Filomeno dos Santos deixou de constar da lista. Filomeno dos Santos é desde 2013 presidente do FSDEA, o fundo soberano de Angola. A primeira-dama, Ana Paula dos Santos, está na lista, no número 17. Enquanto isso, em Abril, Dos Santos demitiu todo o conselho da empresa estatal de petróleo, Sonangol, para em seguida nomear a filha Isabel dos Santos no cargo de presidente executiva da empresa, medida que foi amplamente criticada pela sociedade angolana.

No entanto, dois 'pequenos detalhes' que parecem ter escapado à maioria dos observadores são que, o que foi comunicado aos órgãos de comunicação é que Dos Santos "se retirará da vida política activa", sem clareza sobre o que isto significaria em termos reais; e o facto de que até Dezembro de acordo com várias fontes confiáveis Dos Santos ainda estava na lista eleitoral do partido, ocupando a 3ª posição, atrás de João Lourenço e Bornito de Sousa. Em contrapartida, o que tem sido amplamente comentado, é o facto de que, nas várias ocasiões em que Dos Santos falou durante todo este processo, nem uma vez dizer uma única palavra sobre a sua partida, nem sobre a sua substituição por João Lourenço. Outro elemento que não pode ser omitido de qualquer cenário é o facto de que a saúde do presidente de 74 anos também será um factor na decisão da sua saída da vida pública.

As eleições agendadas para Agosto estarão sob o controlo indirecto do número 2 da lista, Bornito de Sousa, como actual Ministro da Administração Territorial, que é o ministério responsável pela Comissão Nacional Eleitoral. Os partidos da oposição manifestaram a sua objecção, exigindo a sua remoção. Questionado sobre a independência do órgão eleitoral e conflito de interesses, Bornito de Sousa disse que constitucionalmente e juridicamente não havia incompatibilidade. Assegurou que o processo é suficientemente transparente, sem qualquer intervenção humana.

Documentos do Panamá

O Fundo Soberano Angolano foi apanhado na malha fina das investigações mundiais realizadas após as revelações contidas na fuga de informações conhecida como os Documentos do Panamá. O Consórcio Internacional de Jornalistas de Investigação ligou o FSDEA a uma série de figuras-chave em Angola, Alemanha, Suíça e Rússia, todas mencionadas nos Documentos do Panamá. Investigações revelaram uma ligação entre uma empresa petrolífera americana e vários políticos poderosos em Angola. De acordo com os documentos vazados, cerca de quinze empresas testa-de-ferro encaminharam fundos através de contas no banco UBS. O ministro do Petróleo Botelho de Vasconcelos foi citado nos jornais, mas o activista e jornalista de direitos humanos Rafael Marques acredita que há mais, "incluindo o vice-presidente Manuel Vicente". Em Março, o FSDEA comunicou num relatório interno que US $ 486 milhões tinham desaparecido do fundo, um montante aproximadamente equivalente a 10% dos activos. No entanto, esta informação só foi tornada pública em Setembro. Diversos relatórios de investigação ligaram o Fundo a acordos ocultos envolvendo empresas ligadas ao dirigente do FSDEA, Filomeno Dos Santos, e a outras entidades, entre estes o Banco Kwanza Invest, fundado pelo próprio Filomeno Dos Santos. O FSDEA negou qualquer irregularidade e afirmou que as suas actividades são auditadas pela Deloitte & Touche, com relatórios regulares à Directoria do Tesouro Nacional e ao Tribunal de Contas.

O Prensar da Lei

Depois de mais de uma década na gaveta, Angola em Novembro de 2016 finalmente promulgou um conjunto de leis contempladas na Lei de Imprensa de 2006. A própria Lei de Imprensa foi actualizada para garantir a compatibilidade com a nova Constituição (2010). O novo texto é iniciativa de ninguém menos que o próprio Presidente Eduardo Dos Santos. Além de uma nova versão da Lei de Imprensa, o súbito impulso veio com um novo elemento, a criação da Entidade Reguladora da Comunicação Social Angolana (ERCA) – o novo órgão agora responsável pela regulação da comunicação social, substituindo o Conselho Nacional de Comunicação Social. A ERCA – a ser criada em conformidade com a Lei da ERCA – será essencialmente o árbitro final sobre a maioria dos aspectos da comunicação social, especialmente a profissão do jornalismo. O MISA-Angola manifestou preocupação com a composição do órgão de 13 membros, composto por 11 representantes de partidos políticos e 2 escolhidos entre profissionais de comunicação social. Sob o pretexto de oferecer assistência profissional às organizações de comunicação social para garantir a conformidade com as leis e regulamentos, a ERCA "organizará e manterá uma base de dados em nome das organizações e empresas de comunicação social sujeitas à supervisão da ERCA, para permitir a avaliação de sua conformidade com a lei". A ERCA terá a atribuição de "zelar pelo cumprimento da ética e deontologia profissional dos jornalistas"; "fiscalizar o cumprimento

de quaisquer leis, regulamentos e requisitos técnicos aplicáveis no âmbito das suas atribuições"; e "verificar o cumprimento, pelos operadores de rádio e televisão, dos objectivos e condições genéricos e específicos estabelecidas nos respectivas alvarás". Além disso, a ERCA terá competência para apreciar e decidir sobre "comportamentos susceptíveis de configurar violação de quaisquer normas legais e regulamentares", não só mediante queixa dos "interessados", mas também "por sua iniciativa própria". Cabe recordar que se trata de um órgão que será governado por partidos políticos, numa composição que reflecte a força política nacional, ou seja, com uma maioria de integrantes que representam o MPLA.

A Lei de Imprensa de 2006 previa um conjunto de estatutos subsidiários e decretos para governar a comunicação social. Estes foram agora decretados como leis de direito próprio. A Lei do Exercício da Actividade de Televisão, a Lei sobre o Exercício da Actividade de Radiodifusão, a Lei do Estatuto do Jornalista e, sobretudo, a Carteira de Jornalista. No evento de qualquer jornalista em situação irregular, trabalhar sem carteira, o órgão a que pertence pode ser punido com uma multa equivalente a dez salários mínimos da função pública. A multa triplica no caso de reincidência. A nova lei também torna incompatível com a profissão de jornalismo o desempenho de funções por estes profissionais em relações públicas, assessoria, e afins, uma prática comum em Luanda, muitas vezes com interesses conflitantes. De acordo com a nova Lei de Imprensa, jornalistas podem ser punidos com sanções disciplinares, civis e criminais, com multas de US $ 600 a US $ 120 mil por violações da lei. A nova lei criminaliza também a publicação de imagens, como caricaturas, que podem ser consideradas ofensivas. Após a entrada em vigor do novo conjunto de leis, os profissionais da comunicação social terão 90 dias para as necessárias adaptações. O MISA-Angola manifestou o seu desagrado pelo facto de que a nova lei atribui ao ministro das Comunicações poder para suspender qualquer transmissão televisiva sem qualquer mecanismo de contestação ou processo de revisão.

Curiosamente, numa região onde as organizações da liberdade de imprensa lutam para eliminar todos os obstáculos à liberdade de expressão e à liberdade de imprensa, em Angola existe quem entre os jornalistas é a favor da introdução da carteira de jornalista. Entre estes estão o Sindicato dos Jornalistas. Em ocasiões anteriores, secções de jornalistas angolanos defenderam a regulação estatal da comunicação social, apontando Portugal como um exemplo onde este sistema funciona bem, com todos os elementos que o novo pacote de leis pretende implementar, incluindo o requisito de formação a nível superior (possivelmente uma licenciatura) para poder exercer a profissão de jornalismo. No seu 4º Congresso, realizado em Setembro, o Sindicato resolveu empenhar-se no processo de aprovação do Estatuto do Jornalista e a criação da Comissão da Carteira e Ética. O Sindicato lamenta que depois de 35 anos de independência, os jornalistas angolanos não tenham um titulo profissional. Em contrapartida, o MISA-Angola criticou a criação da ERCA. Um decano do jornalismo angolano manifestou a opinião de que os jornalistas devem pressionar o governo a promulgar toda a gama de legislação da comunicação social. Este acusou os políticos de apontar o dedo para o trabalho dos jornalistas, enquanto são estes que impedem a implementação da regulamentação da comunicação social. No momento da aprovação da lei na generalidade, em Agosto, os membros da oposição votaram contra, citando várias violações de preceitos da constituição, que consideram retrocessos no que diz respeito a direitos e liberdades garantidos na Constituição. Afirmaram também que o texto fora redigido sem qualquer envolvimento de jornalistas. No entanto, o Sindicato manifestou sua satisfação com a abertura ao diálogo e com a forma como as questões levantadas foram incorporadas. No entanto, declarou-se contra responsabilidade criminal, que é uma forma de intimidar os jornalistas. Disse ainda que o projecto de lei continha disposições contrárias à Constituição. O MPLA sustenta que o texto é um compromisso para garantir a realização dos direitos, liberdades e garantias dos cidadãos.

Cabe salientar que é importante não confundir o conceito de "licenciamento" de jornalistas com "acreditação" de jornalistas. O reconhecido especialista internacional em liberdade de expressão, Toby Mendel, afirma o seguinte: "O licenciamento de jornalistas é entendido como um sistema pelo qual indivíduos são obrigados a solicitar autorização externa para exercer o jornalismo, cuja autorização pode ser recusada ou revogada. Em alguns países, a lei estabelece certas condições mínimas sobre quem pode exercer o jornalismo, tais como idade mínima ou critérios de formação, ou requisitos de cidadania. Formalmente, isso não é licenciamento, pois não envolve a possibilidade de recusar ou revogar a autorização para exercer o jornalismo. No entanto, quando as condições ultrapassam o nível exclusivamente técnico, por exemplo, retirar o direito de praticar o jornalismo mediante condenação por difamação criminal, o sistema passa a reflectir alguns dos principais problemas associados ao licenciamento. Acreditação, por outro lado, é bastante diferente do licenciamento, embora os dois por vezes se confundam. A acreditação envolve a concessão de privilégios especiais, mais comummente o acesso a áreas restritas, como legislaturas e tribunais, aos jornalistas com base na presunção de que estes vão informar o público mais amplo sobre estes procedimentos".

"Os requisitos de licenciamento são incompatíveis com o direito internacional sobre a liberdade de informação", afirma Enrique Armijo, especializado em direito da comunicação social dos Advogados Covington & Burling em Washington, D.C. "A questão não é o que diz o Artigo 19; a questão é a sua aplicabilidade e a utilização do direito internacional como instrumento de litígio em defesa de jornalistas em processos julgados em tribunais a nível nacional". Já em 1985, o Tribunal Interamericano de Direitos Humanos declarou que o licenciamento de jornalistas era incompatível com a liberdade de expressão. William Bird da organização Media Monitoring África equiparou a introdução do licenciamento de jornalistas a uma democracia a dar dois passos para trás.

Ainda no âmbito abrangente da ERCA, foi também aprovado, em Agosto, um projecto de lei sobre a Protecção de Redes e Sistemas Informáticos. O Ministro das Telecomunicações e Tecnologias de Informação, José Carvalho da Rocha, disse que o projecto era uma resposta às directrizes da União Africana sobre segurança cibernética. Ainda é muito cedo para avaliar o impacto da lei, no entanto, pode-se dizer que há poucos anos, quando Angola primeiro deliberou introduzir legislação sobre crimes cibernéticos, o país obteve um bom resultado num estudo sobre liberdade na Internet. Resta agora esperar para ver o resultado após a aplicação plena desta lei.

O poder da palavra

Em Abril, o governo angolano anunciou que realizaria reuniões semanais com jornalistas em Luanda para superar o que denominou "o défice de informação sobre o executivo". As reuniões envolverão ministros e outros membros do Governo. O director do Gabinete de Revitalização e Execução da Comunicação Institucional e Marketing (GRECIMA), sedeado na Presidência, explicou que o objectivo é fomentar uma relação "mais profissional" com os jornalistas, que rotineiramente reclamavam das limitações de acesso a fontes e dados do executivo. A agência portuguesa Lusa informou, em Janeiro, que a comunicação institucional e de impressa de todos os ministérios angolanos e governos provinciais seria coordenada pelo Gabinete de Comunicação Institucional e Imprensa (GCII), criado por decreto presidencial em Dezembro de 2015. Além de consolidar a função de comunicação, o GCII incorporará os profissionais ao serviço dos gabinetes de imprensa dos vários órgãos e departamentos ministeriais, pondo fim ao desempenho da actividade de assessoria por jornalistas, agora vedado pela lei. Aos funcionários ao serviço do GCII "é vedado em absoluto o exercício da profissão de jornalista, bem como actividade de 'freelancer', analista de programas, emissor particular de opiniões, colaboração ou participação como efectivo de qualquer debate e tratamento de matérias jornalísticas", lê-se no decreto assinado pelo Presidente Dos Santos. O decreto diz ainda que o GCII apoiará ministérios e governos provinciais nas áreas de comunicação institucional e imprensa e na elaboração de planos de comunicação "em consonância com as directivas estratégicas emanadas pelo Ministério da Comunicação Social e o GRECIMA". A apresentação de "planos de gestão de crises", a elaboração de discursos e mensagens para os titulares dos respectivos órgãos, a organização de eventos institucionais ou o desenvolvimento de campanhas de publicidade, entre outros, são responsabilidade do novo GCII, supervisionado pelo Ministério da Comunicação Social e supervisionado pelo GRECIMA.

Violações & vitórias em Angola em 2016

3 de Maio

A 3 de Maio, por ocasião da comemoração do Dia Mundial da Liberdade de Imprensa, num breve inquérito realizado entre jornalistas de órgãos estatais, a maioria dos participantes considerou que existe liberdade de imprensa em Angola. A situação é bastante diferente entre os jornalistas da imprensa privada, que em Abril foram acusados pelo Jornal de Angola de serem porta-vozes da oposição.

18 de Janeiro

Um relatório sobre a situação da comunicação social em Angola seria incompleto sem mencionar o activista, defensor dos direitos humanos e jornalista Rafael Marques de Morais, o inimigo de longa data do governo angolano. Rafael Marques apresentou uma queixa contra o governador da província de Cuanza Sul, general Eusébio de Brito Teixeira, por alegada expropriação e apropriação de terrenos que o próprio general Eusébio Brito atribuiu a uma empresa de que é sócio. De acordo com a participação criminal apresentada ao Ministério Público, o General Brito Teixeira chegou mesmo a escrever um requerimento ao governador da província de Cuanza Sul - isto é, a si mesmo – para a legalização de uma parcela de terra destinada à construção de um condomínio.

8 de Fevereiro

Em Fevereiro, Manuel Chivonde Nito Alves, activista de direitos humanos e defensor da democracia, foi acusado de injúria aos magistrados e submetido a um julgamento sumário, no âmbito do julgamento contra os 17 activistas angolanos. No dia 8 de Fevereiro o pai do activista Manuel Chivonde Nito Alves era um dos declarantes. Durante o interrogatório do pai, Nito disse em voz alta: "Não temo pela minha vida, este julgamento é uma palhaçada". O enunciado levou o Ministério Público a mover um processo pelo crime de injúria aos magistrados. Foi condenado sumariamente a seis meses de prisão efectiva na cadeia de Viana.

28 de Março

As mesmas palavras foram pronunciadas no tribunal em 28 de Março por outro jovem activista, Francisco Mapanda (também conhecido como Dago Nível Intelecto). Também foi condenado pelo crime de injúria e condenado a oito meses de prisão. A 5 de Julho, o Tribunal Constitucional decidiu que o julgamento tinha violado alguns dos seus direitos constitucionais e ordenou a sua libertação. Foi libertado em 21 de Novembro, sete dias antes do previsto.

28 de Março

Os "17 Activistas" foram condenados por "actos preparatórios de rebelião" e "conspiração criminosa". Foram condenados a penas de prisão que variam de dois anos e três meses a oito anos e meio, multados em 50 mil kwanzas (US $ 300) por custas judiciais. Quinze destes foram detidos em Junho de 2015 em Luanda, depois de uma leitura de uma adaptação do livro de 1993 do académico americano Gene Sharp, "From Dictatorship to Democracy: A Conceptual Framework for Liberation". A capa do livro descreve-o como "um modelo para a resistência não-violenta a regimes repressivos". Outras duas pessoas foram detidas mais tarde. Entre os 17 estavam o rapper Luaty

Beirão e o escritor Domingos da Cruz e Nito Alves, que já tinham tido um encontro com a justiça dois anos antes, por imprimir 20 T-shirts com slogans políticos. Foram acusados de actos de rebelião, planeamento de desobediência civil em grande escala na capital e produção de passaportes falsos, entre outras acusações. Foram formalmente acusados a 16 de Setembro de 2015 de preparar uma "rebelião e uma tentativa de golpe" contra o presidente. A Amnistia Internacional descreveu a sua detenção como uma "paródia da justiça". Beirão e vários outros começaram uma greve de fome para protestar contra a sua detenção. Beirão manteve a greve de fome por 36 dias. Foi condenado a uma pena de cinco anos e meio por "rebelião contra o presidente da República, associação criminosa e falsificação de documentos". O activista Domingos da Cruz, apontado como o líder do grupo, foi condenado a uma pena de oito anos e meio por planear um golpe e por associação criminosa.

Imediatamente após as condenações, os advogados dos activistas interpuseram dois recursos – no Tribunal Supremo e no Tribunal Constitucional. Também interpuseram recurso de habeas corpus, que foi proferido pelo Supremo Tribunal em 29 de Junho. A Tribunal ordenou a liberação condicional dos 17 activistas aguardando uma decisão final.



20 de Julho

A 20 de Julho, a Assembleia Nacional aprovou uma lei de amnistia relativa a crimes cometidos até 11 de Novembro de 2015, incluindo os relacionados com o caso "17 Activistas". Alguns dos 17 declararam que, como não haviam cometido nenhum crime, não queriam beneficiar da amnistia. Dois jovens activistas foram punidos por criticar os procedimentos durante o julgamento.

13 de Março

A Amnistia Internacional Portugal apresentou uma petição à embaixada angolana em Lisboa, exigindo das autoridades uma garantia de julgamento justo do activista e jornalista angolano Rafael Marques de Morais. Em Maio de 2015, Marques foi condenado a seis anos de prisão, suspenso por dois anos, por difamação contra 12 pessoas, incluindo generais nas forças armadas angolanas, no livro Diamantes de Sangue: Corrupção e Tortura em Angola. Marques alegou que estes, e os directores da Sociedade Mineira do Cuango eram responsáveis por assassinatos, tortura e apropriação de terras nas regiões diamantíferas. "Queremos que o governo angolano comece a respeitar, ou pelo menos demonstrar que respeita os direitos humanos. Queremos essa visibilidade do respeito pelos direitos humanos", afirmou Susana Gaspar, presidente da Amnistia Internacional em Portugal. Quase 40.000 pessoas assinaram a petição da Amnistia em nome de Marques. Desde o seu primeiro choque com a lei em 1999, Rafael Marques já enfrentou um dilúvio de processos judiciais, a maioria por alegada difamação, decorrentes de denúncias de actos de corrupção e afins, envolvendo altas figuras governamentais.



8 de Novembro

O secretário-geral da Amnistia Internacional, Salil Shetty, declarou em Novembro que a organização estava extremamente preocupada com a liberdade de imprensa e a situação dos jornalistas em Angola, Moçambique e Guiné Equatorial. Shetty disse que a Amnistia estava de olho em Angola, especificamente em relação à pressão exercida sobre os jornalistas. Acrescentou que o novo escritório da organização em Joanesburgo estava a acompanhar a situação.



27 de Dezembro

Rafael Marques de Morais, responsável pelo site 'Maka Angola' que se dedica a expor a corrupção, e Mariano Brás, do semanário O Crime, foram acusados de injúria. Marques de Morais disse ao CPJ que um procurador o interrogou por três horas no dia 27 de Dezembro por um artigo que escreveu e publicou no site Maka Angola em Outubro. O artigo denunciava o envolvimento do Procurador-Geral da República, João Maria de Sousa, na compra de terras do estado. O "insulto", uma alegada calúnia, dizia respeito à publicação de provas que mostravam que os negócios do general João Maria Moreira de Sousa, Procurador-Geral de Angola, violavam tanto a constituição como a lei. Brás, que republicou o artigo no seu jornal, disse ao CPJ que foi interrogado por três horas no dia seguinte, antes de ser acusado do mesmo crime. Brás disse ainda que foi questionado sobre a veracidade do artigo que publicou no seu jornal e também sobre quem era o proprietário da publicação.



18 de Julho

Num tom mais optimista, a jornalista Teresa Fuquiadi da Nova Gazeta chegou às finais do Prémio Africano de Jornalismo CNN MultiChoice, que recebeu um número recorde de candidatos, 1637, de 38 países.



Botswana

National Overview
2016 by Dr Seamogano
Mosanako, MISA
Botswana

The state of the media in Botswana

Botswana continues to operate from an economically sound platform but limited press freedom and a somewhat restrictive access information environment. The country certainly hit the headlines on a sparkly note, with news of the discovery of a 1,111 carat diamond, the second largest ever. But the shine was soon dulled, with both a slump in world markets and signs of repression which was particularly felt by civil society. In just one year, Botswana slid down 6 positions in the World Justice Project (WJP) Rule of Law Index, now standing at No 45 out of 113 countries studied worldwide, and now ranked at Number 3 out of the 18 African countries included in the report. By comparison, in 2012 Botswana was ranked at Number 20 out of 97 countries and Number 1 in Africa. In other press freedom indices, the country has gone from a rating of "free" to "partly free".

The Socio-political and Economic Context

Botswana is in the midst of the more subdued period of the electoral cycle which coincides with a time when the country's economy is facing challenges resulting in cut in expenditure by most businesses. The implication for this is that advertising revenue has been reduce, which is the key source of income for most media businesses in Botswana and this is a major setback. With the slump in income, media houses face the challenge of continuously seeking alternative revenue channels.

Some media houses have demonstrated resilience following the government's decision to stop paying for advertising from state coffers, for the second year running. While government maintains that this is a cost-cutting measure, media professionals are of the view that the decision was a ploy to influence their editorial content with the view to making it less critical of the government or even to stifle the media altogether.

> "The economic downturn is real and has made itself felt.

Cost-cutting or not, the pinch of the economic downturn is real and made itself felt when in September, President Ian Khama lashed out at Zimbabwe's 92-year-old President Robert Mugabe, calling on him to step aside without delay. Khama said that the political and economic implosion in Zimbabwe since 2000 was dragging down the whole of Southern Africa and that the instability was damaging Botswana's efforts to wean itself off mining – which accounts for 20 percent of GDP and nearly 60 percent of exports – hampering its efforts to promote itself as a regional logistics and services hub.

Botswana is home to an estimated 100,000 Zimbabweans, including 5000 in Botswanan jails. Against this background, Mugabe was absent from Botswana's independence anniversary celebrations, which the Zimbabwean authorities put down to a clash in schedules, with Mugabe having to attend a meeting of his ruling party's Women's League.

Still on regional matters, Botswana stepped up to the plate in its handling the political impasse in Lesotho, with Botswana judge Mpaphi Phumaphi, at the head of the mission.

Media and Technology – "more than just nature, beef and diamonds"

The media in Botswana has to a large extent tried to adopt new technologies. A large number of media houses have an online presence, keeping pace with the digital revolution. However, online editions of most newspapers remain very similar to the print edition, which points to a need for skills capacity for online media production. However, the online platforms remain an unexplored terrain in terms of identifying revenue streams and mechanisms. Nonetheless, a number of media businesses have greatly embraced social media in their online publications. Many have set up Facebook pages, and the journalists also use these platforms. The national television and radio stations have yet to extend their reach onto online platforms.

Botswana is still to make digital television receivers available to the public. In 2015, when the government switched to digital television, it was expected that set-top boxes for reception of the digital signal would soon be available to the general public on the market. However, it remains unclear when this will happen. A limited number are being given away as prizes to listeners during call-in programmes on national radio, Radio Botswana.

In May the media witnessed a milestone in the maturing of the broadcasting sector, when the Botswana Communications Regulatory Authority (BOCRA) invited interested parties to submit bids for commercial broadcasting licences. This is a welcome development in a country with only one commercial television channel, e-Botswana, which is still available only within a radius of 60 kilometres from the capital, notwithstanding claims in the BOCRA report for 2016 that e-Botswana has been expanding its range.

Fulfilment of this initiative will signal the end of the monopoly of television airwaves in Botswana. The BOCRA announcement invited applications for licences for both subscription and free-to-air satellite television broadcasting as well as for licences for subscription management service. The announcement was placed in media outlets only, deviating from the usual BOCRA practice of announcing such major developments at a press conference.

> "Online platforms remain an unexplored terrain.

Television viewers were also greeted with the news of the lowering of subscription fees for Digital Satellite Television (Dstv) by Multichoice Botswana, arguably making subscription television more accessible. While this is a welcome development, with the slump in the national economy and social challenges such as poverty and unemployment, many Batswana might not enjoy the benefits of low subscription fees. In light of this, free to air television services by both state and commercial media remain even more critical in Botswana.

In terms of the three tiers of broadcast-

ing – public, commercial and community – Botswana legislation – specifically the BOCRA Act of 2012 – does not make provisions for community media or public service media and the law is silent about online radio stations. There have been calls from various stakeholders for the need to diversify the sector and create conducive conditions for community broadcasting to ensure a truly diverse, competitive and quality broadcasting sector.

In September, Mascom Wireless, one of Botswana's leading mobile network providers, launched the Tsena-Botswana online portal. The Tsena Botswana portal was described by Thato Moruti and Tebogo Lebotse-Sebego of Mascom as "an online one-stop shop and information sharing platform on anything and everything about Botswana, consisting of news content not paid for and produced by journalists paid by a variety of media houses involved". Mascom consulted a wide range of parties, including bloggers, farmers, students and many more in different sectors to get their opinion and in other instances receive content for the portal. Tsena aims to be an online gateway to Botswana. Mascom said it was important to show the world that Botswana was "more than just nature, beef and diamonds"

The Legal Environment

It was an eventful year in the legal domain in Botswana. Although most of the events do not directly relate to the media, they are worth highlighting as the media in Botswana has over the years had confidence in the courts of law in terms of obtaining justice when it seeks it.

Recently, the judiciary experienced some turbulence over discontentment with the appointment of judges and justices of the court of appeal. In a separate development, the suspension of a number of high court judges raised questions about the stability of the judiciary in Botswana. This followed allegations that they had questioned the administration of Chief justice Maruping Dibotelo.

In another rights-related setback for the government, it lost its battle to block the registration of a gay rights group. Botswana's highest court said the organisation Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) should be allowed to register. A five-judge bench at the Court of Appeals said the refusal had been unconstitutional. Judges dismissed Home Affairs Minister Edwin Batshu's argument that registration might encourage the group's members to break the law. Judge Ian Kirby, who handed down the ruling from a five-judge bench, said the reason for refusal was irrational based on the evidence presented. The ruling means LEGABIBO will be able to campaign for changes in anti-gay legislation.

In and around newsrooms and courtrooms

Repression of journalists while in pursuit of their job, especially investigative stories, remains a problem in Botswana, with no sign that the tension between the media and the state will be resolved soon. The year saw the continuation of the on-going court case in which Botswana weekly newspaper, *Sunday Standard* editor Outsa Mokone was charged with sedition after his paper covered a story about a car accident that allegedly involved the President of Botswana, Dr Seretse Khama Ian Khama in 2014.

The *Sunday Standard* story appeared on the front page on September 1, 2014, with the headline "President hit in car accident while driving alone at night". A reporter for the paper, Edgar Tsimane obtained the information from staff members of a lodge, where the other party to the accident was staying on the night of the accident, August 23.

> The media witnessed a milestone in the maturing of the broadcasting sector.

Shortly after publication, Mokone received a letter from the attorney-general, Athaliah Molokomme, containing details of a road accident, but these related to an entirely different incident, involving different vehicles in a different place and at a different time. Molokomme demanded that Mokone provide a written explanation for his conduct and the publication of a full retraction in the *Sunday Standard*. He refused to do both. Tsimane, the reporter, fled to neighbouring South Africa, where he has been living as an asylum seeker since 2014. He insists he is not afraid of facing the law, but says that he was advised to skip the country by a close contact in the intelligence service, who advised him that if he valued his life, he "should seek sanctuary beyond Botswana's borders".

The case is being handled under sections 50 and 51 of Botswana's Penal Code, which outlaw any "intention to bring into hatred or contempt, or to excite disaffection against the person of the president or the government of Botswana as established by law". However, the chairperson of the Law Society of Botswana, Lawrence Lecha, said that for the offence under section 50(1) to be established prima facie, the prosecution had to show that the article incited "hatred or contempt" against Khama and questioned "whether the facts and circumstances can sustain a charge of sedition".

In December 2016, Magistrate Mokwadi Chris Gabanagae announced that he was recusing himself from the case, saying that the accused was well known to him, as they had attended school together and were from the same neighbourhood. He stated that the case had been assigned to Broadhurst Chief Magistrate Faith Ngandu to preside over on Friday December 16, 2016. At the hearing, the case against Mokone was scheduled for 2017.

This is the first time a Botswana journalist has been charged with sedition, which lawyers say carries a maximum three-year jail sentence. The sedition case, together with other incidents highlighted in this report and in the preceding years, raises questions over the credibility of Botswana's democracy. There is a growing perception especially among politicians and academia of growing authoritarian tendencies by the Botswana government. Seditious libel, in the few places where it is still on the law books, is generally viewed as having no place in a modern democracy. In 2009 the British Parliament voted to repeal the act (originally promulgated in 1661) after a long campaign by free-speech lobbyists in that country highlighting that the offence is "obsolete" and in contravention of global human rights legislation.

In March freelance journalist Sonny Serite was arrested by the Directorate of Intelligence and Security Services (DISS) for obtaining documents allegedly containing "state secrets". Serite had cov-

ered stories about alleged corruption and was later locked up at Gaborone Police Station under Section 317(2) of the Penal Code of 1986, which carries a sentence of 14 years in prison. However, human rights lawyer Uyapo Ndadi says that the Act deals with receiving stolen property, not information. Ndadi said that if the information breached national security, "they would have gone for the National Security Act, which carries a jail sentence of 30 years".

> Repression of journalists while in pursuit of their job remains a problem.

Serite, a freelancer reporter for newspaper the *Botswana Gazette*, was allegedly arrested during a private meeting with a source, a Records Officer in the Office of the President. The two were arrested on a Thursday and held without bail until the following Monday. Court documents allege that Serite received the documents on March 17 "knowing that it was illegal". The official documents belonged to Tsaone Nkarabeng, one of Khama's personal secretaries. Serite had earlier published a series of articles in the Gazette critical of President Ian Khama's government, including reports alleging corruption involving Botswana Railways and Transnet of South Africa, relating to the purchase of coaches from its South African counterpart. This was ten months after the detention of the Gazette's managing editor, Shike Olsen, and a reporter at the paper, Innocent Selatlhwa, and lawyer, Joao Salbany, over a corruption exposé. Salbany, who is not a Botswana citizen, later left the country when the authorities refused to renew his work permit.

In protest, the Botswana Media and Allied Workers Union and the Botswana Editors Forum officially declared a media blackout on the ruling party, the Botswana Democratic Party. The union's president, Phillimon Mmeso, said that there had been "continued arrests of journalists by state agents and we have observed that those charges will later be dropped. This means it is just their way to threaten journalists - making them fear reporting on issues of corruption that are happening within government. The ruling party have been quiet and never raised their voice on the harassment of journalists".

The ruling party responded to say it was aware of the media blackout. The party's general secretary Botsalo Ntuane said it was "not a problem at all", that the union could go ahead with the blackout. He said the party had received a letter in this regard, and that it would take it from there. He went on to say that the party had no problem at all in engaging with the media and the union and that it could not be accused of harassing the media.

In May, on the occasion of World Press Freedom Day, reporters in Botswana called on the international community to help stop the arrests of journalists in the country. The Media Allied Workers Union said that existing laws made journalists feel threatened. Union President Phil Mmeso said the media in Botswana was under siege.

In June the world was stunned by news of the so-called Panama Papers, which then provided further opportunities for the media around the world The Botswana-based INK Centre for Investigative Journalism joined the Global Investigative Journalism Network (GIJN) in the fine combing of the documents from the expose.

In September, a joint two-month investigation by the Botswana Gazette newspaper and the INK Centre uncovered the existence of a mystery institution issuing fake university degrees, including to two lecturers in Botswana. The institution, the New World Mission Dunamis International University, claims to be based in the Cape Province in South Africa, but no records could confirm its existence.

INK was founded in 2015, "to develop investigative journalism in the public interest essential in promoting an open, accountable and just democracy". The Centre also supports local investigative journalists with professional and financial assistance. In 2016 INK was accused of being in the pay of the CIA through the Open Society Initiative and USAID. Foreign funding accounts for 90 per cent of the centre's income. Alvin Ntibinyane of the INK Centre bemoaned the fact that the attacks were not by government but from other newspapers. On a more pleasant note, Lawrence Seretse of the Botswana Gazette, made it to the finals of the CNN MultiChoice African Journalist Awards, which saw a record number of applicants - 1637 from 38 countries.



Lesotho

National Overview 2016
by MISA Lesotho

OVERVIEW

Contestation between the leadership and the security sector has dominated the political landscape of Lesotho to the extent that mainly South Africa, through the Southern African Development Community has had to play a critical interventionist role over the last few years.

At the beginning of 2016, the SADC Double Troika Summit handed over a Commission of Inquiry report to the Lesotho government and tasked it:

- to publish the Report within 14 days - by February 1, 2016.
- to provide feedback on the implementation of recommendations to the Chair of the Organ on Politics, Defence and Security Cooperation at the meeting to be held in August 2016.

At a further meeting held by the SADC Double Troika Summit in August 2016, the gov-ernment was further tasked:

- to prepare a roadmap for the implementation of the constitutional, public sector and security sector reforms and submit a progress report to the SADC Summit in August 2016.

The reforms contained in the report were recommended against a backdrop of issues, namely, attempted coups, the banning of political parties, a constitutional crisis, attacks on opposition members forcing them to flee the country and discord between the police and army and the political leadership over appointments in the security sector.

To get an understanding of the friction between the army and the political leadership, it is important to go back to 2014.

Following political tensions and the suspension of the National Assembly over the controversial change of the head of the army from Lieutenant General Kennedy Tlali Kamoli to Lieutenant General Maaparankoe Mahao, an alleged attempted coup d'état forced Prime Minister Tom Thabane to flee to neighbouring South Africa.

He returned home under the 24 hour protection of the South African and Namibian security and the guarantee that under the auspices of the SADC, there would be a mediation led by South African Deputy President Cyril Ramaphosa. Based on the mediation, Prime Minister Thabane called elections in February 2015, a year ahead of schedule.

A few months after the 2015 General Elections, 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 that year. Midway through the year, the former commander of the Lesotho Army, Lieutenant General Maaparankoe Mahao was shot and killed.

It was Mahao's death that prompted an intervention in 2015 whereby President Jacob Zuma appointed a commission of Inquiry, in his capacity as the chair of the security organ of SADC. The 10 member Commission of Inquiry, headed by Botswana Judge Mphaphi Phumaphi was mandated to investigate the instability in Lesotho and in particular the circumstances of the murder of Lt. General Mahao.

The Commission of Inquiry requested the government of Lesotho to undertake a criminal investigation into the death of Lieutenant-General Mahao. Prime Minister Pakalitha Mosisili announced on 20 June 2016 in Parliament, that a criminal investigation into Mahao's killing is underway.

The Commission also suggested that Lieutenant-General Tlali Kamoli be relieved of his duties as commander of the LDF and all LDF officers implicated in cases of murder, attempted murder and treason be suspended while investigations into their cases proceed in line with international. According to a report in the *Business Day*, Lieutenant Kamoli was poised to retire on December 1.

> There is a lack of cohesion amongst media practitioners on matters of national interest.

The media has had to operate in this politically unstable environment and has not fared well. Journalists have been physically attacked, namely the editor of *Lesotho Times*, Lloyd Mutungamiri was shot and injured while his colleague Keiso Mohloboli is in exile in South Africa. Blogger and University lecturer Mafa Sejanamane was also shot at, but was not injured.

MEDIA LANDSCAPE

Media houses in Lesotho are faced with similar challenges as those of surrounding countries. Newsrooms are understaffed and many of those working in them, lack capacity as they have not been formally trained. Only a few presenters and print media journalists have been to short courses while others have not been trained at all.

The fallout is felt by the public, who consume news that has been inadequately researched or tune in to current affairs programmes that are poorly moderated. While phone in programmes are extremely popular, the lack of moderation skills allows listeners to present unverified information as fact.

The disregard of media ethics and principles has often compromised the media with both the print and broadcasting media having to issue numerous apologies. MISA-Lesotho faces the challenge of, on one hand, having to congratulate the media for operating in a challenging environment and ensuring flow of information, allowing access to news and contributing to debates on diverse political, economic, social and developmental issues. On the other hand it has to berate the media for its continued inaccuracies

It is undeniable that traditional media is considered more trustworthy as opposed to news sourced through new media, to the extent that people ensure that whatever information they get on social media platforms is only considered true or accurate if it is verified in newspapers or broadcast on radio.

One of the major challenges facing the industry is that the media continues to remain politically polarised since 2012.

This ideological conflict along party lines was clearly evidenced during a programme run by the Media Institute of Southern Africa (MISA) Lesotho in 2015. In preparation for the National Assembly elections of 2015, MISA Lesotho invited politicians to the programmes that were run under the Capacity Building On Broadcasters Peace Building and Conflict Reporting programme. Some politicians refused to attend programmes on certain radio stations alleging that these media houses supported their political opponents.

> Traditional media is considered a more trustworthy source of information.

Radio stations like *Ts'enolo FM*, *MoAfrika FM* and *Thahakhube FM* mostly featured politicians from the Congress Party while *People's Choice FM*, *Harvest FM* and *Radio Spes Nostra* enjoyed the vibrant participation of national ideology political parties. This has not changed over the last few years.

With regard to the print media, the rivalry between two competing papers reached a peak when *Newsday* carried a story on the alleged closure of the *Lesotho Times*. On the other hand the *Lesotho Times*' Scrutator - in his satirical column suggested that the *Newsday* proprietor should consider opening a carwash as his newspaper has indications of political polarisation.

The lack of cohesion amongst media practitioners on matters of national interest has been detrimental and explains why advocacy campaigns on media policy and legal issues are not receiving the government's attention.

In September last year the Minister of Communication, Science and Technology issued an indefinite moratorium on the issuing of broadcasting licenses. The rationale put forward for the moratorium, is that allowances need to be made for legal reform but these reforms have not been discussion let alone taken place. There is a strong belief amongst analysts that the moratorium is a political ploy to stop the licensing of more radio stations as it is a vibrant media platform which is extremely popular.

Up until the moratorium, the Lesotho Communication Authority (LCA) issued twenty-four (24) broadcasting licences. There are currently 18 radio stations on air, of which:

- 2 are state owned; *Radio Lesotho* and *The Ultimate Radio*, there are
- 4 community stations: *Mafeteng Community Radio, Thaba-Tseka Community Radio, T Mafeteng Community Radio* and *Botha-Buthe Community Radio*,
- 4 church-owned: *Radio Spes Nostra*, *K.E.L Radio, Voice of God FM* and *Jesu ke Karabo FM* and
- 8 privately-owned: *Harvest FM, MoAfrika FM, People's Choice FM, Thahakube Fm, MXXL Radio,357 FM, Molisa ea Molemo FM* and *Ts'enolo FM*.

Radio Lesotho has nationwide coverage on FM and medium wave, followed by MoAfrika FM which covers almost 75 percent of Lesotho on FM and the rest of the radio stations cover the lowlands. Community Radio stations cover not more than a radius of 50KM.

Print media comprises of 9 weekly newspapers but there is still no daily newspaper. *Lesotho Today/Lentsoe La Basotho* is state-owned, Moeletsi oa Basotho is church-owned and the rest are privately owned; *Lesotho Times* Newspaper, *The Post, Newsday, Sunday Express, Public Eye, Informative* and *Mosotho*. The circulation of most of these newspapers is confined to Maseru and lowland towns in Lesotho.

Basotho have access to Facebook, WhatsApp and Twitter. Facebook is the most popular with most of the youth and working class community of Lesotho having either an account or a page, or both. Facebook also has vibrant groups who provide commentary and up-dates on varying political and developmental issues. WhatsApp is popular platform for mobile phone users either for one on one conversation as well as chat groups.

Media Freedom

The contestation between the government, army and police has often spilled over and has a detrimental effect on the media in the form of threats, criminal defamation and physical attacks. The editor of *Lesotho Times* Lloyd Mutungamiri was shot by unknown people at his home. His workmate Keiso Mohloboli is currently in exile in South Africa. Blogger and University lecturer Mafa Sejanamane was also shot at. To date there have been no arrests in any of the cases.

In March 2016, over 300 members of the public calling themselves the Concerned Citizens of Lesotho, took to the streets "to rescue media freedom" in a protest they headlined as #HANDSOFFMEDIA.

Five members of the group then presented a petition to the Minister of Communications, Science and Technology Khotso Letsatsi and the Minister Kimetso Mathaba in the Prime Minister's Office.

Amongst a number of issues the petition requested the Government of Lesotho to observe Article 19 of the Universal Declaration of Human Rights and the provision of Africa Charter on Human and People's Rights and further stated that the Minister:

- Follow proper legal channels and procedures in cases of misconduct.
- Allow freedom of expression by refraining from acts of intimidation against media houses and journalists.
- Allow access to opposition parties to *Radio Lesotho* and *Lesotho Television* by opposition parties
- Ensure implementation of the communications policy.

LEGAL AND POLICY FRAMEWORK

Since the year 2000 MISA Lesotho has been advocating for the passage of the Access to Information Bill of 2000. There have also been discussions around the review and adop-tion of a media policy.

Complaint against the media

On the May 13, 2016, a local human rights organisation. Transformation Resource Centre (TRC), filed a complaint with the Broadcasting Dispute Resolution Panel (BDRP) against *Ts'enolo FM* radio and requested an intervention regarding the radio station's programme called Lititimi which was aired on April 30, 2016. According to the TRC, Mr. Author Majara, a guest on the programme made statements that "were detrimental to the good image of the Centre". TRC wanted *Ts'enolo FM* to provide them with a recording of the programme, -

which is permissible by law - to allow the organisation an opportunity to refute the statements made on the programme.

Although LCA ordered *Ts'enolo FM* to release a recording of the programme, the order was only processed after 3 months - the period within which complaints could be handled. As a result TRC was unable to continue with the complaint.

Harvest FM is still awaiting a final decision by the LCA Board regarding BDRP's ruling that the radio station should pay a fine of M10 000.00 (1 loti=1 rand). The ruling was made during a hearing of a complaint by Lieutenant Kernel Tefo Hashatsi when he sought a BDRP resolution regarding a programme run by Puseletso Mphana, Harvest FM's 'Raise and Shine' host, during which it was alleged that the cost of Hashatsi's case were covered by the Government of Lesotho at the tune of M100 00.00.

Pressure from social media

In Lesotho, Facebook is seen as a vibrant media platform for up-to-date information that is accessible and appealing to a diverse audience especially youth and the working class, so it is no surprise that it is used by citizens as a news platform and by numerous policymakers to reach out to constituents.

> Facebook is seen as a vibrant media platform that is accessible and appealing.

Through their Facebook pages, Lira Moeti and Mohato Seleke are considered important information sources as they are extremely active in providing news on political develop-ments, corruption and general state operations. They have formed a closed Facebook group called Countdown to Elections 2015, 16 and 17. Both social media advocates were allegedly arrested for their alleged activism on Facebook.

Lesotho Mounted Police, Senior Assistant Commissioner of Police, Masebina Ramone was suspended for allegedly being active on social media as Paul Sithole – once again a closed Facebook group that has been operating since March 2016. Paul Sithole of Facebook fame has been critical of the government especially the Lesotho police. Despite the suspension of Ramone, the Paul Sithole Facebook account is still up and running.

The vibrancy and reach of social media has been picked up by politicians and over 80 percent of them have widened their reach and influence through their personal Facebook accounts. A recent study titled: Facebook and Political Participation in Lesotho indicated that there are 41 Facebook accounts and pages set up by political party leaders and political parties in Lesotho. Amongst these are the Minister of Trade and Industry Joshua Setipa, the Minister of Natural Resources Lebohang Thotanyana, Minister of Social Development Molahlehi Letlotlo and opposition political party politicians Sekhulumi Ntsoaole all of whom communicate their views and achievements through their Facebook pages.

The Lesotho government responded by expressing its concern over the use of social media and threatened to close Facebook. The Minister of Home Affairs Lekhetho Rakuane is on record for the calling of a social media 'ceasefire'.

In August 2016, Rakuaoane was reported by *Lesotho Times* of urging the people to stop posting negative comments about the country on social media. Rakuane's call came after the Deputy Prime Minister Mothejoa Metsing announced the government was working on bringing people to book for using social media to post harmful threats. He stated that: "they were going to see to it that these people who are forever posting these lies are nabbed."

Going Forward

The media has to continue exposing corruption, poor service delivery and incompetence in government, public institutions civil society and private sector. It also has to continue being platform for information exchange between the leaders and the public on national issues.

Along with media freedom monitoring and policy advocacy initiatives there must be intensive capacity building for the media. Despite ever shrinking donor funding on media projects, Lesotho media needs special consideration, for the sector to fully and positively contribute to greater democratic attainment and sustenance for the country to play a needed role in the Southern African Development Community (SADC) and the world at large.

Of urgency for implementation is the Media Legal Reforms as recommended by SADC recent report on the Commission of Enquiry led by Judge Mphaphi Phomaphe which seems to be last on the list of priorities by government regarding the implementations of the Commission's recommendations.

Lesotho 2016 violations & victories

May 6

Attacked/Death Threats

A blogger and the National of Lesotho University lecturer on Political Science and Public Administration Professor Mafa Sejanamane was shot at by unknown assailants. Neither the professor nor his family were injured. To date no one has been arrested. Sejanamane manages a blog, Lesotho Analysis, which has often criticised the implementation of recommendations of the Southern Africa Development Community's (SADC) report on Commission of Inquiries on circumstances that led to the killing of the late Lesotho Defence Force commander Lt. Gen. Maaparankoe Mahao.

June

Reporter and current affairs presenter Bongani Faki at *Harvest FM* radio reported that he had received death threats from an unknown man. According to Faki, the man arrived at his house and questioned his children about his whereabouts. The unknown man allegedly pulled out a gun from under the blanket he was wearing, pointed it at the children and instructed them to tell Faki that his life would end.

Faki suspected that the threat was as a result of him announcing that children could attend the Army Day commemoration that was celebrated locally on July 2, 2016, in Maseru.

July 9

The *Lesotho Times* newspaper editor Lloyd Mutangamiri was shot at the gate of his lower Thamae residence in Maseru, the capital of Lesotho, just before midnight. Lloyd was returning from his office after completing the *Sunday Express* edition, a sister newspaper of *Lesotho Times*.

Police confirmed that a single bullet was fired and that Mutangamiri suffered severe trau-ma, particularly to his mouth. He was hospitalised under 24-hour police security. On July Mutangamiri was relocated to Bloemfontein in South Africa, for medical attention.

June 23

Charged

Mutangamiri was shot just a week after his employer, *Lesotho Times* publisher Basildon Peta was charged with defamation and crimen injuria with regard to the contents of the June 23 edition of the newspaper's satirical column titled Scrutator. The column carried an article about the Lesotho Defence Force (LDF) commander and the Lesotho Cabinet, headlined 'Flicker of hope for my beloved Kingdom….'. The column was written in the wake of an announcement by Prime Minister Pakalitha Mosisili that the government had decided to "engage General Kamoli on a mutually agreeable solution" in light of interna-tional calls that he be relieved of his post.

August 25

Threats

Presenter, Moseketsi Nkuebe of *Thaha-Khube FM* radio received a visit from officers of the Lesotho Correctional Service (LCS) regarding a programme he had aired. When they were granted an audience, the officers said that they were denouncing all statements made by the guest on the show who was the Secretary General of the LCS staff Associa-tion, Lebonajoang Ramohalali. The guest was on suspension from the LCS at the time...

Ramohalali was analysing a recently enacted Lesotho Correctional Service Act, 2016.

August 29

At a press conference held by Matefo Makhalemele, the LCS Acting Commissioner, he stated that Assistant Superintendent Neo Mopeli who was in company of a bodyguard and another officer had been sent by the LCS to Thaha-Khube FM to respond to Lebonajoang Ramohalali.

Following publication of the story by *Lesotho Times* Newspaper and the issuing of a media alert by MISA Lesotho - both the manager Thaha-Khube and the presenter together with the LCS commissioner issued a jointly signed statement dismissing the *Lesotho Times* report as lies. The official statement has the stamps of both LCS and Thaha-Khube FM.

The *Lesotho Times* boss was accused of being a terrorist following his paper's report on the exit package negotiations between the Lesotho Defence Force (LDF) Commander and Lesotho Government. Bokang Ramats'ella requested the right of reply to an article that had appeared in the paper. When he was told that the paper would only accept the material if they were allowed to edit material he then decided to deal with the matter in his own way.

Speaking on *Ts'enolo FM*, Ramatsella accused him of being American spy. The presenter Moruti Ts'ehla added that *Lesotho Times* reporter Billy Ntaote was sent to US for training Ntaote was said to have been sent to the US on a Nelson Mandela Fellowship

Since the case against *Lesotho Times* boss was filed in court, there has been a report that the newspaper was facing closure.

The report by the *Newsday* [27th July-2nd August, 2016 volume 1 no] also alleged that Scrutator a column which Peta was charged with writing, was written by Keiso Mohloboli.

In response to the *Newsday* story on the closure, *Lesotho Times* retaliated through its Scrutator column of August 11-17, 2016, by criticising Rethabile Sello for publishing "a paper called *Newsday*'. The columnist suggested Sello open a carwash outlet rather than producing a paper that is an embarrassment to journalism and media standards.

November 9

Arrested

Machesetsa Mofomobe - the spokesperson of the Basotho National Party handed himself in at the Mabote Police Station after learning that the Lesotho Mounted Police, Lesotho Defence Force, National Security Service and the Lesotho Correctional Service had launched a joint operation to search for him. Following his arrest, Mr Mofomobe was transferred to Police Headquarters. According to a report in the *Sunday Express* he was allegedly wanted in connection with the possession and dissemination of confidential government information. This was after he allegedly took and published pictures at Police Minister Monyane Moleleki's Qoatsaneng Hill home after the latter's arrival from a working visit to Russia and Iran last month.



Malawi

National Overview 2016
by MISA Malawi

INTRODUCTION

Four landmark developments, during the course of 2016, will shape media research and discourse in Malawi for decades to come. The first development is the Mount Soche Declaration, named after the venue where media leaders met to discuss government attempts to silence the private media. The declaration spelled out eight points including media blackout of news regarding the president and cabinet ministers. Although the declaration lacked an effective implementation strategy, it signified strong resolve on the part of the media to defend media freedom.

Secondly, 2016 saw Parliament limiting presidential powers in the appointment of members of the Malawi Communications Regulatory Authority (MACRA) and state funded Malawi Broadcasting Corporation (MBC). Parliament amended the Communications Act (1998) to subject presidential appointments to a Parliamentary screening. This amendment is envisaged to reduce perennial political interference at both MACRA and MBC and to provide a semblance of independence.

It is also the year when Parliament, despite spirited resistance from government, passed the much awaited Access to Information (ATI) Bill, concluding a 12-year process that MISA consistently and vigorously spearheaded. The passage of the Bill is a momentous occasion for MISA and access to information advocates in the region. Implementation may however be systematically delayed looking at the resistance and delaying tactics government employed prior to the passage of the Bill.

Efforts to control online expression also gained momentum in 2016. Government managed to enact the E-Transactions Bill (2016) to regulate online transactions, including online communication. The enactment of the E-Transactions Bill generated mixed reactions but what is clear is that government now has the tool to police and restrict online expression as the Act contains several broad provisions open to abuse.

Overall, 2016 registered positive policy and legislative reforms that have the potential to improve the work of the media as well as citizen participation in governance processes. Threats and strategic attempts to silence the media and foil implementation of the laws is however a big challenge for both media and human rights defenders.

> 4 landmark developments will shape media research and discourse in Malawi.

This review looks at the four key developments and broader media environment in Malawi in 2016 with focus on media-government relationship, free expression and the law, access to information, state of broadcasting and new media.

Media-Government Relationship

The relationship between government and the media was sour, antagonistic and characterised by suspicion. Most media gurus viewed the Democratic Progressive Party (DPP) led government as intolerant and 'belligerent.' On its part, government, including President Peter Mutharika, labelled the private media 'disgusting' and purveyors of 'nonsense' and 'garbage' when he addressed a rally at Bua Primary School in Mchinji on October 27, 2016. President Mutharika's description of the media followed a series of reports on his health and prolonged stay in the USA where he had gone to attend the United Nations General Assembly (UNGA).

Conflict between government and the media climaxed with the Mount Soche Declaration. During a meeting at Mount Soche Hotel in Blantyre on November 7, 2016, media managers developed eight action points which included:

- boycotting conferences of the Head of State;
- blackout on presidential and cabinet minister's news and activities;
- respecting and implementing decisions and guidelines of MISA and Media Council of Malawi;
- engaging the courts to seek interpretation on the role of MACRA which acts as a police, prosecutor, juror and judge in regulating and policing private electronic media;
- regarding attacks on one as an attack on all and rejecting divide and rule tactics by the State.

Unfortunately one media outlet quickly fell victim to the State's divide and rule tactic. Barely a day after the declaration was published, Chancellor College, which runs Chanco radio and television, issued a press statement distancing the two entities from the declaration. The statement, signed by Chancellor College Principal, Professor Richard Tambulasi, indicated that Chanco Radio and Chanco Television were categorically distancing themselves from the Mount Soche Declaration and "… did not authorize the signing of the communiqué and are not part and parcel of the communiqué." MISA Malawi however received reports that "senior government officials" allegedly threatened staff with dismissal at the station.

> Strong resolve on the part of the media to defend media freedom.

Most commentators argue that attempts to silence critical voices started in February with the arrest of opposition Malawi Congress Party (MCP) legislators Dr. Jessie Kabwila, Louis Chakwantha, and member, Ulemu Msungama, for alleged WhatsApp discussions that law-enforcers claimed were seditious. Their arrests stirred controversy and almost derailed Parliamentary proceedings. The case has since been dismissed for lack of evidence. The clampdown on dissent however continued and in March, a 19-year-old university student studying information and communications technology (ICT), Patrick Semu, spent 36 hours in custody for criticising President Mutharika.

The reintroduction of 16.5 percent Value Added Tax (VAT) on newsprint is also considered by media experts as an attempt by government to stifle vocal

and critical voices. VAT on newsprint was first introduced in 2011 and later reversed in 2012, following successful lobbying by MISA and its partners. The move in 2011 saw newspaper cover prices increasing by 40%, which made newspapers expensive and unattainable for most Malawians. Government re-introduced the 16.5% VAT on newsprint in the 2016/17 National Budget and MISA Malawi maintains its position that the move is retrogressive and counterproductive in the quest for access to information.

Around August, media reports alleged that State House had embarked on a campaign to silence critics of President Mutharika and the DPP led government. MISA Malawi received reports that renowned writer Stanley Onjezani Kenani; late President Bingu wa Mutharika's legal advisor, Allan Mtata; Times Group Editor-In-Chief, George Kasakula; talk show host, Brian Banda; and commentator, Henry Kachaje were being targeted with slander by the State for their critical narratives of the president and the ruling DPP.

On Tuesday, August 30th the Daily Times reported that State House was using its blogs malawiindependent.blogspot.com, malawibrief.com, malawivoice.com and blantyrepost.com to circulate false stories "aimed at destroying the reputation…" of the critics.

Around the same time, private broadcaster Zodiak Broadcasting Station (ZBS) was summoned by MACRA for breaching broadcasting license conditions after airing an interview with a vocal Member of Parliament (MP) Kamlepo Kalua. In the interview, Kalua amentioned a number of top government officials whom he alleged were involved in the plunder of government funds. MACRA argued that ZBS was biased for failing to balance the broadcast.

Overall, in 2016, government was aggressive towards the private media and generally intolerant of critical views against the ruling DPP administration. The year saw the media unite and fiercely defend their space.

Free Expression and Law

The legislative environment has remained restrictive. Colonial anti-media and free speech laws still exist in the statute books and each administration continues to employ them to suppress dissent. The laws are inconsistent with the new constitutional order and promote self-censorship.

As stated in our past reports, the most notorious of these laws is Section 181 of the Penal Code. Most recently, the law was enforced by police to arrest ICT university student, Patrick Semu. The Section 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."

Semu spent 36 hours in custody for allegedly insulting President Mutharika. The arrest indirectly silenced other potential critics by instilling fear and stifling free speech in general.

Others laws lurking in the statutes apart from Section 181 of the Penal Code, 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.

Although the DPP administration promised to amend and/or repeal laws that limit freedom of expression, no changes have been made in the past three years of President Mutharika's time in office. The existence of these laws remains a threat to free speech and media freedom.

Access to Information

The year 2016 was a moment of triumph for media freedom and freedom of expression advocates in Malawi and the region as far as access to information is concerned. Despite stiff resistance from government, opposition-dominated Parliament passed the bill and concluded a campaign MISA Malawi spearheaded for 12 years.

Although Malawi currently has legislation on ATI, most critics believe that government will delay implementation based on past tactics used to postpone the passing of the bill.

> Concluding a 12-year process that MISA vigorously spearheaded.

The bill was tabled in Parliament twice. Members of Parliament referred the bill to the Media and Communications Committee of Parliament when it was first tabled in March. The decision followed an appeal by MISA Malawi requesting MPs to reject changes government had introduced in the bill. Cabinet had made changes including removing the independent oversight body and whistle blower protection, among others, and MISA lobbied the legislators to reject the changes and call for further consultations.

The bill was re-tabled in Parliament in November 2016 after further consultations with key stakeholders including MISA Malawi. The Media and Communications Committee recommended reintroduction of an independent oversight body and whistle-blower protection. MISA believes the bill that the August House passed, reflects the views and aspirations of most stakeholders that worked on the bill for 12 years.

State of Broadcasting and Digital Migration

The amendment of the Communications Act (1998) is a key milestone in the push for the transformation of the Malawi Broadcasting Corporation from a state to a public service broadcaster. Parliament amended the Communications Act in June 2016 to subject presidential appointments to approval by the Public Appointments Committee of Parliament. This move is expected to reduce political interference at both MACRA and MBC.

The Communications Act (1998) has been central in MISA Malawi's efforts to free MBC and MACRA from the ambit of government. In 2015, government had reversed stakeholders' proposals to free MBC and MACRA and maintained the State President as the sole appointing authority for the boards of MACRA and MBC. MISA Malawi appealed to MPs to reject the changes and ensure that the original version of the Bill, that stakeholders had agreed on, would be tabled in the August House. The MPs amended the Bill on the floor when it was re-tabled in 2016 and managed to amend the law which now provides that board members of MACRA and MBC will be appointed by the President but

confirmed by the Public Appointments Committee of Parliament.

Digital Migration

As far as digital migration is concerned, Malawi has managed to migrate from analogue to digital. The country is currently implementing Phase Two of its transition plan, which entails broadening reach and coverage of the digital signal. Phase one of the migration involved outreach to 48% of the population covered by analogue. With digital broadcasting, Malawi has managed to increase coverage to 65-70 percent of the population and intends to reach 90% coverage by September 2017, once, more transmitters are installed in some parts of the south and central regions of the country.

As stated in our 2015 report, Malawi established the Digital Broadcasting Network Limited Company to provide signal distribution services to all licensed broadcasters. The company is currently fully operational and driving the process. Awareness is however still a challenge as most Malawians don't understand the relevance of digital migration or what it means for the country.

> An attempt by government to stifle vocal and critical voices.

New Media and ICTs

Malawi has one of the lowest rates of internet and social media uptake in the region with internet penetration for 2015/16 at 9% and mobile phone penetration at 35%.

Despite the figures, in July 2016 Parliament passed the E-Transaction Bill to police online transactions, including online communication. MISA Malawi expressed concern on several provisions which the chapter considers retrogressive and open to abuse.

The Act provides that online communication may be restricted in order to 'promote human dignity and pluralism in the expression of thoughts and opinions,' 'protect public order and national security,' 'facilitate technical restrictions…' and 'enhance compliance with the requirements of any other written law.'

These clauses are overtly broad and fail to provide a framework and definition of what amounts to 'human dignity…,' 'public order and national security' or 'technical restrictions.' In addition, the wording 'enhance compliance with the requirements of any other written law' complicates matters as the country has maintained several archaic laws which criminalise free speech and negate constitutional guarantees on media freedom and freedom of expression.

As it stands, low levels of computer literacy, high cost of internet services, poor infrastructure and erratic power supply continue to limit advances in ICTs. The move by government to limit online expression might instill fear in people and further limit access and uptake.

CONCLUSION

Malawi has made commendable progress on the policy and legal environment which have the potential to improve the work of the media as well as citizen participation in the governance processes. The amendments to the Communications Act (1998) and the enactment of the ATI Bill are key developments that have the potential of changing the media operating environment for decades.

The Mount Soche Declaration is also a landmark document that reinforces the media sector's resolve and dedication to media freedom, independence, and professionalism. The declaration and its eight action points will go down in the annals of media history as a moment the private media fraternity united against government to defend independent and private media in Malawi.

The enactment of the E-Transaction Bill and continued cat and mouse game between government and the private media remain areas of concern for the country. Media outlets, journalists and citizens deemed critical of the ruling DPP were openly castigated and labeled as 'liars,' 'agents of the opposition,' and purveyors of 'nonsense' and 'garbage.' Threats and strategic attempts to silence the private media and foil implementation of positive laws require serious attention by both media and human rights defenders.

Malawi 2016 violations & victories

March 15

Arrested

Patrick Semu, a 19-Year old information and communication Technology student at Daeyang Luke University in Lilongwe spent 36 hours in Police custody for allegedly criticizing President Peter Mutharika. The student allegedly said that Mutharika was failing to run the affairs of government. The student made the remarks whilst in a minibus. Semu was arrested based on Section 181 of the Penal Code and charged with conduct likely to cause breach of peace.

May 31

Government introduces VAT on newsprint

Malawi government has re-introduced 16.5% Value Added Tax (VAT) on newsprint, which is the main raw material in the printing of newspapers in the country.

VAT on newsprint was first introduced in 2011 and later reversed in 2012 following successful lobbying by the media industry. The move in 2011 saw newspaper cover prices going up by 40 percent which made newspapers expensive for most Malawians.

Government has re-introduced the 16.5% import VAT on newsprints in the 2016/17 National Budget presented to Parliament Friday, May 27, 2016.

July 5

Amendment to Legislation

Malawi Parliament limits presidential powers on MACRA, MBC board appointments

Malawi Parliament on Tuesday, July 5, reduced Presidential powers on the appointment of board members to the Malawi Communications Regulatory Authority (MACRA) and the Malawi Broadcasting Corporation (MBC).

The MPs' action followed an appeal MISA-Malawi made in November 2015 to them to reject an adulterated Communications Bill, government had tabled in the House which maintained the President as the sole appointing authority of boards at the two institutions.

The amendment means that the Public Appointments Committee (PAC) of Parliament will start scrutinising all MBC and MACRA board appointments made by the President.

July 14

Parliament passes bill to regulate online transactions

Malawi Parliament has passed the E-Transactions Bill to regulate online transactions.

Most online users fear the Bill, once signed into law, will limit media freedom and freedom of expression online as it contains several provisions which are broad and open to abuse.

Among other things, the Bill allows for online communication to be restricted to 'safeguard public order and national security.' MISA Malawi believes that open and overtly broad provisions can be abused for political or personal interest.

August 30

State house silencing critics

Malawi State House allegedly embarked on a campaign to silence critics of President Peter Mutharika. Reports indicated that critics including renowned writer Stanley Onjezani Kenani, late President Bingu wa Mutharika's Legal Advisor Allan Mtata, Times Group Editor-In chief George Kasakula, Talk Show Host Brian Banda and commentator Henry Kachaje were being targeted by the State for their critical narratives of the president and the ruling Democratic Progressive Party (DPP).

October 21

Intimidated

DPP cadets intimidate journalists

Ruling Democratic Progressive Party (DPP) youth cadets, on Friday, October 21, 2016, intimidated journalists during a press conference President Professor Arthur Peter Mutharika held after returning from the United Nations General Assembly (UNGA) in the USA.

The cadets booed and chanted threateningly and created an intimidatory atmosphere for journalists at the conference.

The Peter Mutharika administration scored highly when it barred party supporters from attending presidential press conferences. The October 21 conference was however different and risky for journalists.

Mutharika also lashed out at some private media outlets whom he accused of perpetuating lies about his health.

November 3

Summoned

MACRA Summons ZBS over radio interview

The Malawi Communications Regulatory Authority (MACRA) summoned Zodiak Broadcasting Station (ZBS) to a disciplinary hearing over an interview the radio had with legislator for Rumphi East constituency Hon Kamlepo Kalua.

MACRA argued that the interview was in contravention of ZBS's broadcasting license conditions.

Zodiak aired an interview with Kalua, in August this year in which Kalua alleged that a number of top government officials were involved in the plunder of government funds.

November 7

Boycott

Private media to boycott presidential press conferences

Private media owners and media managers have resolved to boycott all press conferences and activities of Malawi cabinet ministers in retaliation against President Mutharika and the Democratic Progressive Party (DPP) administration's aggressive stand towards the private media.

President Mutharika recently labelled the private media as 'disgusting' who write 'nonsense' and 'garbage.'

The media gurus agreed to respect and implement guidelines and decisions of the Media Council of Malawi and MISA, boycotting press conferences of the Head of State, blackouts of all news of the Head of State and Cabinet Ministers and to present a united front as a media and regard attacks on one as an attack on all.

December 14

Parliament passes the ATI Bill

Malawi Members of Parliament on Wednesday, December 14, 2016, passed the much awaited Access to Information Bill (ATI) after a heated debate.

The next hurdle is for President Professor Arthur Peter Mutharika to assent to the Bill and live up to his election campaign promise that the ATI Bill would be enacted once he is elected into office.

The passing of the Bill is a huge step in the 12-year long process in which various stakeholders led by Misa-Malawi campaigned for legislation on access to information.



Mozambique

National Overview
2016 by MISA Regional Secretariat
English/Portuguese

CONTEXT

Mozambique has experienced a political-military crisis since 2012. In 2014, armed conflict between government forces (Frelimo) and Renamo, the largest opposition party, experienced a brief interlude as a result of a precarious peace agreement. After the elections in 2014, Renamo claimed victory and accused Frelimo of having fixed the electoral process with massive manipulation of results. In the same year, after the attack and the siege of Afonso Dhlakama's residence, Renamo's leader, he fled and returned to his base in the Gorongosa Mountains, where he remains to this day. A few days after returning to his base, the war reignited, going through a considerably intense period between 2015 and 2016, which affected the movement of people and goods, affecting also the full exercise of press freedoms.

Parallel to this political-military crisis, the Mozambican economic situation suffered with the discovery of hidden debts incurred during the last two years of the government of Armando Guebuza, whose mandate ended in 2014.

The discovery of the Mozambican hidden debt was widely publicised, first by the international press, before being taken up by the Mozambican press. That is to say, it was partly thanks to the international press that a hidden debt estimated at US $ 1.4 billion incurred in 2013, came to light, aggravating the country's foreign debt by 25%. With the Wall Street Journal reporting from the United States, widely followed by other international and national press, the question transcended into the public arena, putting pressure on the government to publicly provide information, as well as the parliament to take measures such as requests for explanation of the debt and the conducting of a parliamentary inquiry.

The secret debts have forced programme partners that support the state budget, including the IMF and the World Bank, to suspend all aid until completion of the ongoing investigation, led by the international firm Kroll.

Suspension of donor support coupled with weak revenue collection has aggravated the economic crisis. The national currency suffered a strong devaluation, with the national debt at 130% of GDP. The State failed to pay debts to creditors and to national companies. Many private companies have declared bankruptcy. Public enterprises are in crisis, in dire need of financial restructuring. This crisis was not alien to the press, which survives on advertising, with the State as the largest client. Just like the revenue of their clients, the revenue of media enterprises has dropped dramatically.

On a social level, Mozambique has faced the worst droughts in the past 30 years, with thousands affected and just over 5,000 head of cattle dead as a result of the phenomenon.

All of these crises had an impact, some more than others, on the behaviour of political and economic actors, with the power to condition press freedom in Mozambique, thus affecting press behaviour.

FREEDOM OF THE PRESS INCREASINGLY THREATENED

The armed conflict and the economic crisis were the biggest threats to press freedom in Mozambique in 2016. These two factors created opportunities for predators to attack the press, limiting their freedom.

> Mozambican economic situation suffered with the discovery of hidden debts.

The year 2016 was characterised by murders of citizens with links to political parties. Hundreds of politicians disappeared, mainly in the provinces of Manica, Sofala, Zambézia, Tete and Nampula, the most affected by the conflict. In Sofala, about two dozen decomposing bodies were found.

Amnesty International shows in its annual report for 2016 that *"intimidation and attacks against persons who have expressed dissent or critical views, including journalists, human rights defenders have taken place throughout the year"* (AI, 2016).

The same report shows that in Mozambique *"security forces and members and supporters of the opposition have committed human rights violations with impunity, including murder, torture and other forms of ill-treatment"*. The cases that most featured in the media include the murder of Jeremias Pondeca, a member of the Council of State and of the Peace Negotiation Committee, in broad daylight in the city of Maputo. Besides this assassination, there were the attack on the Secretary-General of Renamo, Manuel Bissopo, and the assassination of dozens of influential Renamo politicians and Frelimo party secretaries in conflict zones. This scenario, in addition to posing threats to political freedoms, shows that journalists have never been able to feel that they are rid of these threats.

In the same period, several journalists reported incidents of death threats and the use of the Criminal Investigation Police (PIC) by the Government to intimidate them. During this period, we recorded cases of journalists who were informed by the PIC to give a statement on stories produced in conflict zones. We also registered cases of attacks on vehicles belonging to Rádio Moçambique and Televisão de Moçambique, allegedly carried out by Renamo's armed forces.

As a result, Mozambique has been performing worse and worse in the Reporters Without Borders Press Freedom rankings. For example, from 2014 to 2016, Mozambique dropped from Number 79 to Number 87.

CASES REGISTERED IN 2016

- In May 2016, the Criminal Investigation Police notified journalist André Catueira to provide statements about articles published in the Lusa Agency and in the weekly Savana, which reported the existence of a mass grave with 120 bodies in the Gorongosa forests;
- On May 27, MISA Moçambique reported acts that it considered to be violations of the exercise of freedom of expression and demonstration in Mozambique, following the shooting of the academic and commentator of the programme "Pontos de Vista" of Stv, José Jaime Macuane, and the physical attack on the president of the Ecologist Party of Mozambique, João Massango, who was preparing to hold a press conference

in which he was to announce a demonstration;
- On June 14, five CIP agents visited the premises of the weekly Zambeze paper, with three court orders. Of the five agents, two entered the premises of the newspaper not only with the court orders, but also wielding pistol-type weapons. The other three remained outside the building. The two who entered the building presented the court orders to the Administrative Director, who asked the two journalists present to receive them. They read and signed the court orders, which instructed them to appear at the CIP offices at noon on the same day. It being the day when the newspaper edition was put to bed, they tried to request that the hearing be held the following day. The request was rejected by the CIP officers, who argued that the two should make statements on the same day as it was a case of "urgent matters". The agents then asked the journalists to accompany them right there and then to the PIC offices, notwithstanding the fact that the court orders specified that they should report at 12 noon. The journalists went to make statements regarding articles published with the titles: "Zimbabwean soldiers 'slaughtered' in Gorongosa" and "FDS accused of stealing chickens in Vundúzi" [FDS = Defence and Security Forces];
- On 12 August 2016, Televisão de Moçambique (TVM) and Rádio Moçambique (RM) journalists were targeted in an attack carried out by unknown persons, who are believed to be Renamo armed men, in the town of Chiuala, in the district of Báruè, in Manica. Four people were wounded. The journalists were traveling in a convoy of cars escorted by the armed forces, from Chimoio to the Macossa district, to cover a presidential visit;
- 27 September, the Police of the Republic of Mozambique took the camera from the reporter of the Malacha newspaper as he attempted to take photos at the scene of the assassination of the Renamo political delegate in Moatize and member of the Tete Provincial Assembly;
- October 8, journalist Arsénio Sebastião Macuene was arrested at the Balança police station in Dondo village, Sofala province, on charges of defaming a police officer. He was released only on November 11, after MISA-Mozambique intervened. The journalist was detained when he went to the police station with the intention of getting information on why his wife had been targeted by a police officer, who extorted 8,000 meticais from her;
- On October 27, Cateme community radio in the province of Tete was the victim of a robbery in which computer equipment, microphones, a professional recorder, consoles, a digital camera and a motorcycle were stolen.
- On October 29, the weekly Malacha, also published in Tete, had its offices vandalised. The criminals removed all computer hardware, two digital recorders, a camera and the newspaper's digital archive, created in 2011.
- On October 31, a group of five entered Rádio Dom Bosco, also located in Tete, but were unable to steal anything, thanks to the intervention of local security.
- On 27 November, the journalist and director of the Diário da Zambézia newspaper, António Zefanias, received death threats from unknown people communicated by a telephone call made on the WhatsApp social network. The perpetrators of the threat told the journalist that they were following orders of someone to murder him, but they did not reveal the name.
- On 8 December, a group of eight armed men, all unknown, allegedly from the Mozambique Defence Force, threatened to kill the journalist and coordinator of the community radio station in Catandica, Manica province. The same group, driving a Mahindra vehicle, robbed and tortured two of the journalist's children and vandalised property. They asked the journalist's children about his whereabouts. At the time, the journalist was not at home. John Chekwa and Rádio Catandica are accused of being responsible for the poor electoral results of the Frelimo party in Catandica, because they invited people quite critical of Frelimo's governance as guests on their radio programmes.

DIGITAL MIGRATION AT A SNAIL'S PACE

The digital migration process in Mozambique, started on 7 November 2010, with the adoption by the Council of Ministers of the DVB-T2 technological standard and later with the creation of the National Digital Migration Commission (COMID) to prepare the National Digital Migration from Analog to Digital Broadcasting, has moved along at a slow pace. Deadlines have been missed by a wide margin. The end of analogue broadcasting was set for June 17, 2015. Almost two years later, Mozambique has yet to demonstrate any decisive development in the migration process.

The migration commission, COMID, has since been extinguished and the process passed over to a new public company, the Transport, Multiplexing and Transmission (TMT). The new entity is made up of the public companies TV de Moçambique (TVM), Rádio Moçambique (RM) and Telecomunicações de Moçambique (TDM) and without any private operator. This raises concern, given the risk that the public entities, owners of TMT and heavily controlled by the political power, are at the same time competing with the private ones and may in the future resort to acts of blackmail, even more so in the context of the party-centric State and control of the content of some of the government media.

> "Armed conflict and the economic crisis were the biggest threats to press freedom.

Community radios, which are quite influential in the districts where they are in place, fear that they might be adversely affected, since they are not yet ready for migration. In Mozambique, revenues from many community radios do not even cover running costs. A recent study (FORCOM, 2016) indicates that community radio stations played a key role in the 2014 elections, which was a cause for concern for government officials.

In 2015, the Government cancelled the tender that had been awarded to StarTimes Software Technology Co. for breaches of the agreements and launched a new public tender that was won by the same company. The results were made public in October 2016. At present a number of processes are unfolding to find financing for the project,

which will in principle, be financed by EXIM Bank of China to the tune of 160 million dollars.

> 2016 was characterised by murders of citizens with links to political parties.

PRESS LAW STILL IN DRAFT PHASE

Initiated in November 2006, the review of the Press Law, which had already been completed, was supposed to have been tabled in the Assembly of the Republic until the end of 2016, as guaranteed on April 12 by the Director of the Information Office, Emília Moyane. However, at the time of writing this article, the law had not yet been submitted to the Council of Ministers. It should be remembered that the review of the press law suffered a prolonged stoppage without any public justification.

Another issue that has received attention in the media in Mozambique is the debate surrounding the proposal for the first broadcasting law, which, although it is a sign of progress, has been criticised for failing to differentiate between commercial, public and community broadcasting, putting everything together in the same package. Likewise, this broadcasting law does not address the most crucial aspects of broadcasting in Mozambique, especially those related to the professionalisation of management at Rádio Moçambique e Televisão de Moçambique, focusing only on the licensing processes of radios and television and content regulation in the context of the challenges posed by digital migration.

Civil society organisations working in the media have been following the process with justifiable interest.

CONTEXTO

Moçambique vive uma crise político-militar desde 2012. Em 2014, o conflito armado entre as forças governamentais (Frelimo) e a Renamo, maior partido da oposição, observou uma interrupção em resultado de um acordo de paz precário. Depois das eleições, em 2014, a Renamo reivindicou vitória e acusou a Frelimo de ter viciado o processo eleitoral com manipulação massiva dos resultados. No mesmo ano, após atentado e o cerco à residência de Afonso Dhlakama, líder da Renamo, este viria a fugir e regressar à sua base na Serra de Gorongosa, onde se encontra até ao presente. Poucos dias depois de ter regressado à sua base, a guerra reacendeu e com alguma intensidade entre 2015 e 2016, o que afectou a circulação de pessoas e bens, incluindo o pleno exercício das liberdades de imprensa.

Paralelamente a esta crise político-militar, o cenário económico moçambicano foi-se degradando com a descoberta de dívidas ocultas contraídas durante os últimos dois anos da governação de Armando Guebuza, cujo mandato terminou em 2014.

A descoberta da dívida oculta moçambicana foi amplamente divulgada, primeiro, pela imprensa internacional, antes de ser apropriado pela imprensa moçambicana. Ou seja, foi, em parte, graças à imprensa internacional que se tomou conhecimento da existência de uma dívida oculta avaliada em 1.4 mil milhões de dólares, contraída em 2013, o que agravou a dívida externa do país em 25%. Com a reportagem da Wall Street Journal, a partir dos Estados Unidos, amplamente replicado por outra imprensa internacional e nacional, o assunto transcendeu ao debate público, pressionando o governo a prestar informação pública, assim como o parlamento a tomar diversas medidas, como pedidos de esclarecimentos do governo sobre a dívida e a realização de um inquérito parlamentar.

As dívidas ocultas obrigaram os parceiros programáticos que apoiam o orçamento do Estado, incluindo o FMI e o Banco Mundial, a suspender todo o tipo de ajuda até que se conclua o inquérito em curso, liderado pela firma internacional, denominada Kroll.

> O cenário económico moçambicano foi-se degradando com a descoberta de dívidas ocultas.

A suspensão do apoio dos doadores conjugada com a fraca arrecadação das receitas tributárias agravou a crise económica. A moeda nacional sofreu uma forte desvalorização, a dívida situou-se em 130% do PIB. O Estado incumpriu com o pagamento das dívidas a credores e às empresas nacionais. Muitas empresas privadas declararam falência. As empresas públicas estão em crise, precisando de saneamento financeiro. Esta crise não foi alheia à imprensa, que vive de publicidade, tendo o Estado como o maior cliente. Tal como as receitas das empresas clientes, as receitas das empresas de comunicação baixaram drasticamente.

A nível social, Moçambique enfrentou as piores secas dos últimos 30 anos, com milhares de afectados e pouco mais de cinco mil cabeças de gado bovinos mortos devido ao fenómeno.

Todas estas crises tiveram impacto, uma maior do que a outra, no comportamento dos actores políticos e económicos, com poderes de condicionar a liberdade de imprensa em Moçambique, afectando, consequentemente, o comportamento da imprensa.

LIBERDADE DE IMPRENSA CADA VEZ MAIS AMEAÇADA

O conflito armado e a crise económica constituíram, em 2016, as maiores ameaças à liberdade de imprensa em Moçambique. Estes dois factores criaram oportunidades para que os predadores se atirassem à imprensa, limitando a sua liberdade.

O ano de 2016 foi caracterizado por assassinatos de cidadãos com ligações a partidos políticos. Foram centenas de políticos desaparecidos sobretudo nas províncias de Manica, Sofala, Zambézia, Tete, Nampula, as mais afectadas pelo conflito. Em Sofala foram encontradas cerca de duas dezenas de corpos em decomposição.

A Amnistia Internacional revela, no seu relatório anual de 2016, que a "intimidação e ataques contra pessoas que expressaram divergência ou visões críticas, incluindo jornalistas, defensoras e defensores de direitos humanos ocorreram durante o ano todo" (AI, 2016).

O mesmo relatório revela que em Moçambique "as forças de segurança e membros e apoiantes da oposição cometeram violações de direitos humanos com impunidade, entre os quais assassinatos, tortura e outros maus-tratos". Dos casos mais mediatizados constam o assassinado a tiros, em plena manhã, na cidade de Maputo, de Jeremias Pondeca, membro do Conselho de Estado e da Comissão de Negociação de Paz. Além deste assassinato, há de destacar o atentado contra o secretário-geral da Renamo, Manuel Bissopo e os assassinatos de dezenas de políticos influentes da Renamo e dos secretários do partido Frelimo nas zonas de conflito. Este cenário, para além de constituir ameaças às liberdades políticas, é revelador de que o próprio jornalista nunca se sentiu livre dessas ameaças.

> O conflito armado e a crise económica constituíram as maiores ameaças à liberdade de imprensa.

No mesmo período, vários jornalistas denunciaram casos de ameaça de morte e da instrumentalização da Polícia de Investigação Criminal (PIC) pelo Governo para os intimidar. Nesse período, registamos casos de jornalistas que foram notificados pela PIC para irem prestar declarações em consequência de reportagens produzidas nas zonas de conflito. Igualmente, registámos casos de ataques a viaturas da Rádio Moçambique e da Televisão de Moçambique supostamente protagonizadas pelas forças armadas da Renamo.

Em consequência disto, Moçambique tem vindo a piorar na classificação da Liberdade de Imprensa dos Repórteres Sem Fronteiras. Por exemplo, de 2014 a 2016, Moçambique baixou do Número 79 para Número 87.

CASOS REGISTADOS EM 2016

- Em Maio de 2016, Polícia de Investigação Criminal notificou o jornalista André Catueira para prestar declarações sobre os artigos publicados na Agência Lusa e no semanário Savana, que denunciam a existência de uma vala comum com 120 corpos nas matas da Gorongosa;
- No dia 27 de Maio, o MISA Moçambique denunciou ocorrência de actos que considerou atentatórios ao exercício da liberdade de expressão e de manifestação em Moçambique, na sequência do baleamento do académico e comentador do programa "Pontos de Vista" da Stv, José Jaime Macuane, e da agressão física ao presidente do partido Ecologista de Moçambique, João Massango, que se preparava para dar uma conferência de imprensa na qual iria anunciar uma manifestação;
- No dia 14 de Junho, cinco agentes da PIC fizeram-se às instalações do semanário Zambeze, munidos de três notificações. Dos cinco agentes, dois introduziram-se nas instalações do jornal não apenas com as notificações, mas também empunhando armas de tipo pistola. Os outros três permaneceram no exterior do edifício. Os dois que entraram para o edifício apresentaram as notificações à Directora Administrativa, tendo esta solicitado aos dois jornalistas presentes que as recebessem. Os visados leram e assinaram as notificações. As notificações exigiam que os jornalistas comparecessem nas instalações da PIC às 12:00 do mesmo dia. Sendo um dia de fecho da edição do jornal, os notificados tentaram solicitar que a audiência fosse no dia seguinte. A solicitação foi recusada pelos agentes da PIC, que alegaram que os dois deviam prestar declarações no mesmo dia, dado que se tratavam de "questões urgentes". Os agentes exigiram que os notificados os acompanhassem naquele momento à PIC, não obstante o facto de que as notificações especificavam que eles deveriam se apresentar às 12:00 horas. Os jornalistas foram prestar declarações respeitantes a artigos publicados com os títulos: "Militares zimbabueanos 'abatidos' em Gorongosa" e "FDS acusadas de roubar galinhas em Vundúzi";
- No dia 12 de Agosto de 2016, os jornalistas da Televisão de Moçambique (TVM) e Rádio Moçambique (RM) foram alvos de um ataque perpetrado por desconhecidos, que se supõem serem homens armados da Renamo, na localidade de Chiuala, distrito de Báruè, em Manica. Houve quatro feridos. Os jornalistas seguiam viagem na coluna de carros escoltados pelas forças armadas, idos de Chimoio com destino ao distrito de Macossa, para a cobertura da visita presidencial;
- 27 de Setembro, a Polícia da República de Moçambique arrancou a máquina fotográfica do repórter do jornal Malacha, quando este tentava recolher imagens do assassinato do delegado político da Renamo em Moatize e membro da Assembleia Provincial de Tete;
- 8 de Outubro, a jornalista Arsénio Sebastião Macuene foi detido no posto policial da Balança, na vila do Dondo, província de Sofala, acusado de ter difamado um agente da polícia. A sua libertação, sob termo de identidade e residência, só viria a ocorrer no dia 11 de Novembro, após a intervenção do MISA-Moçambique. O jornalista foi detido quando se dirigiu ao posto policial já referido, com a intenção de mel-

hor se aperceber dos contornos sobre um acto de extorsão de que a sua esposa havia sido alvo por parte de um agente da Polícia da República de Moçambique (PRM), que lhe teria exigido e recebido 8 mil meticais;

- No dia 27 de Outubro, a rádio comunitária de Cateme, na província de Tete, foi vítima de um assalto, no qual foram roubados material informático, microfones, um receptor profissional, consolas, uma câmara digital e uma motorizada.
- No dia 29 de Outubro, o semanário Malacha, editado também em Tete, viu seus escritórios vandalizados. Os criminosos subtraíram todo material informático, dois gravadores digitais, uma câmara fotográfica e o arquivo digital do jornal, criado em 2011.
- No dia 31 de Outubro, desconhecidos compostos por cinco elementos entraram na Rádio Dom Bosco, também localizada em Tete, mas não conseguiram furtar nenhum bem, graças à intervenção da segurança local.
- No dia 27 de Novembro, o jornalista e director do jornal Diário da Zambézia, António Zefanias, foi ameaçado de morte por desconhecidos, através de uma chamada telefónica da rede social WhatsApp. Os autores da ameaça comunicaram ao jornalista que haviam sido mandatados por alguém para o assassinar, mas não chegaram a revelar o nome.
- No dia 8 de Dezembro, um grupo de oito homens armados, todos desconhecidos, que se supõem serem das Forças Armadas da Defesa de Moçambique, ameaçou de morte o jornalista e coordenador da rádio comunitária de Catandica, na província de Manica. O mesmo grupo de desconhecidos, que se fazia transportar por um carro de marca Mahindra, vandalizou, roubou e torturou dois filhos do jornalista. No mesmo instante, perguntaram aos filhos do jornalista sobre o seu paradeiro. Na altura, o jornalista não se encontrava em casa. John Chekwa e a rádio Catandica são acusados de serem responsáveis pelos maus resultados eleitorais do partido Frelimo em Catandica, porque convidavam, para os programas da rádio, pessoas bastante críticas à governação da Frelimo.

MIGRAÇÃO DIGITAL A PASSOS LENTOS

O processo de migração digital em Moçambique, iniciado a 7 de Novembro de 2010, com a adopção pelo Conselho de Ministros do padrão tecnológico DVB-T2 e mais tarde com a criação da Comissão Nacional da Migração Digital (COMID) para elaborar a Estratégia Nacional da Migração da Radiodifusão Analógica para a Digital, tem dado passos lentos. Os prazos foram largamente ultrapassados. O fim das transmissões analógicas foi fixado em 17 de Junho de 2015. Quase dois anos depois, Moçambique ainda não começou a dar sinal decisivo no processo de migração.

A COMID foi extinta. O processo passou para a nova empresa pública, denominada empresa de Transporte, Multiplexação e Transmissão (TMT), entidade formada pelas empresas públicas Televisão de Moçambique (TVM), Rádio Moçambique (RM) e Telecomunicações de Moçambique (TDM) e sem nenhum operador privado, o que levanta contestação dado o risco de as entidades públicas, proprietárias da TMT e fortemente controlados pelo poder político, serem simultaneamente concorrentes com as privadas e poderem enveredar futuramente por actos de chantagem, ainda mais em contexto de partidarização do Estado e controlo dos conteúdos de alguns órgãos de comunicação pelo governo.

> 2016 foi caracterizado por assassinatos de cidadãos com ligações a partidos políticos.

As rádios comunitárias, bastante influentes nos distritos onde estão instalados, receiam virem a ser adversamente afectadas, uma vez que não estão ainda preparadas para a migração. Em Moçambique, as receitas de muitas rádios comunitárias nem sequer cobrem custos administrativos. Um estudo recente (FORCOM, 2016) revela que as rádios comunitárias desempenharam um papel do primeiro plano nas eleições de 2014, o que preocupou as autoridades governamentais.

Em 2015, o Governo anulara a adjudicação do concurso que tinha sido atribuída à StarTimes Software Technology Co., por incumprimentos dos acordos e lançou um novo concurso público que viria a ser ganho pela mesma empresa. Os resultados foram tornados públicos em Outubro de 2016. Neste momento, decorrem processos de busca de financiamento para o projecto que, em princípio, será financiado pela EXIM Bank da China, na ordem de 160 milhões de dólares.

LEI DE IMPRENSA AINDA EM REVISÃO

Iniciado em Novembro de 2006, a revisão da Lei de Imprensa, já concluída, deveria ter dado entrada na Assembleia da República até ao final do ano passado (2016), conforme garantira a 12 de Abril, a directora do Gabinete de Informação, Emília Moyane. No entanto, até à conclusão deste artigo, a Lei ainda não tinha sido submetida ao Conselho de Ministros. É de lembrar que a revisão da lei de imprensa sofreu uma interrupção prolongada sem nenhuma justificação pública.

Uma outra questão que tem merecido atenção na comunicação social em Moçambique, são os debates em torno da proposta a primeira lei de radiodifusão que, embora seja uma inovação, tem vindo a receber críticas pelo facto de não distinguir a radiodifusão comercial, pública e comunitária, juntando tudo no mesmo pacote. Igualmente, esta lei da radiodifusão não toca nos aspectos mais cruciais sobre a radiodifusão em Moçambique, sobretudo os ligados à profissionalização da gestão das Rádio e Televisão Pública (Rádio Moçambique e Televisão de Moçambique), centrando-se somente nos processos de licenciamento das rádios e televisões e de regulação dos conteúdos no âmbito dos desafios impostos pela migração digital.

As organizações da sociedade civil que trabalham na área da comunicação social têm vindo a acompanhar o processo com justificado interesse.



Namibia

National Overview
2016 by MISA Regional
Secretariat

OVERVIEW

World Press Freedom Day on May 3rd 2016, was celebrated at a time when Namibian media and civil society experienced unprecedented verbal attacks by President Hage Geingob and members of his administration.

The year under review was significant for African media, but even more so, for Namibian media as it was the 25th Anniversary of the Windhoek Declaration, a seminal document that set the tone for an independent, free, diverse and pluralistic African media, and influenced media policies across the globe. It was here, in a newly independent Namibia, that African journalists adopted these press freedom principles on 3 May 1991 and two years later, the UN General Assembly declared May 3 as World Press Freedom Day. These two events somehow impacted on this nation's psyche, leaving a long-lasting, deeply felt appreciation for media freedom.

Up until now, World Press Freedom Day provided Namibians with an opportunity of acknowledgement and pride of the fact that the media and free expression environment typically exhibits the principles set in the Windhoek Declaration. Namibia is known for reflecting a diversity of voices and opinions, freely shared on a plethora of online and offline media platforms, which do not have to struggle for their right to exist. Not an easy feat for any country, let alone one that has to deal with the unique challenges presented by our divided past and unequal present.

That is, up until now, because, unlike previous years, those who cherish media freedom and freedom of expression, have more cause for concern than jubilation. We commemorate World Press Freedom Day.

Key Highlights

In 2016, the custodians of the Namibian Constitution used every possible opportunity to question the integrity and credibility of Namibian media houses and journalists. The existing schism between Swapo leadership and the media widened, and became filled with tension. Some journalists called for the boycotting of the president's press conferences because it became just another opportunity for him to insult them.

However, thanks to the existence of a vocal, vibrant and visible free expression community in civil society, independent media, and a growing citizen's voice on social media, these unfortunate incidents were effectively countered with pro-free expression advocacy. But it cannot be denied that threats and insults affect the moral of those tasked with searching for, and sharing information that serves the public's interest.

When the leadership of a country constantly undermines journalists, it negatively influences the public's perception of media and journalists if the country's leaders are consistently calling their integrity into question. As a consequence, self-censorship, which always has been a problem in state-owned media, is on the increase.

Independent media, more specifically, the country's biggest independent daily, The Namibian, experienced immense pressure from some government officials and Geingob supporters because of their investigative reporting on the president's questionable business dealings.

Atypically, Namibia made international headlines in April when two journalists working for Japan's *Asahi TV* were briefly detained, and their equipment confiscated by officials of the Ministry of International Relations. Motoi Araki and David Bush who were in the country to investigate the existence of a munitions factory built by controversial North Korean company, Mansudae Overseas Project Group were detained shortly before boarding a departing flight from Hosea Kutako International Airport. Before departing for the airport, they conducted an interview with Deputy Prime Minister and Minister of International Relations Netumbo Nandi-Ndaitwah.

> It was in newly independent Namibia that African journalists adopted press freedom principles.

Instead of an official apology for this unfortunate incident, the Minister of Information and Communication Technology, Tjekero Tweya, justified the violation of press freedom in an anti-media speech in the National Assembly a few days later. Many a times over the course of the year, Tweya made no attempt to hide his displeasure with the media, even when it was an event held to highlight free expression and the media. In September, at an important Gender and Media Summit, he repeated a call for the establishment of a statutory regulatory body for the media, and for journalists to be "punished" when transgressing.

Namibian media officially adopted the self-regulatory system in 2009, yet a senior government official has consistently called for state regulation since 2013. Their attempts were always effectively squashed by the media and civil society. But this year, we also found unexpected allies in the form Presidential Spokesperson Albertus Aochamub, who used to serve as the Director General of the Namibian Broadcasting Corporation (NBC), and Geingob himself. "We struggled for a free press, free movement and free speech, and we will be heartless to say that we are going to control the press," Geingob was quoted as saying. It was only then that Tweya committed to stop calling for statutory media regulation, and the punishment of journalists.

However, a month later, the Communications Regulatory Authority of Namibia (CRAN) held a public consultation where they proposed a Code of Conduct for Broadcasters. They had made a similar attempt in 2014, but retreated after overwhelming resistance from the media and civil society. This time, they presented the draft code as a set of broadcasting standards that would "protect the public", but in reality, it aimed to dictate content and advertising quotas. It was seen as yet another attempt by government to regulate the media, and it was effectively resisted, again.

The media's moment of respite from government interference was not long-lasting, unfortunately.

In November, independent media published a leaked memo that referred to a Cabinet Resolution directing all government departments to prioritise the dissemination of information and advertisement through the state-owned

New Era Publication Corporation and NBC. Cabinet was asked to re-evaluate its decision mainly because this would negatively affect the public's right to information, as not all citizens regularly accesses state-owned media, and because a reduction in advertising revenue will result in a decline of independent media's financial sustainability. Government is a major advertiser, and the resolution came at a time when independent media were still reeling from a substantial decline in corporate advertising, which was a result of the economic decline.

The resolution was made without considering that Namibia's admirable media freedom ratings were a consequence of the diversity, pluralism and independence of the media industry. In a meeting called by MISA and the Editors Forum, Tweya found it difficult to justify the resolution, especially after the potential negative consequences were highlighted to him. The meeting was held at the end of January, two months after the resolution was passed. At the time, independent media were still carrying substantial government advertising and information. Government departments were thus either ignoring the directive, or upholding commitments that were made before the resolution. Tweya declined to call for a retraction of the resolution, but took note of our concerns. It was agreed that a follow-up meeting would be held after six months to assess the impact of the resolution on the public's right to know, and independent media's sustainability.

The High Court application by *The Namibian*, the Institute for Public Policy and Re-search (IPPR), and the Legal Assistance Centre (LAC), on the constitutionality of the Research Act of 2004, is still sub judice. The court action follows failed negotiations between civil society and media organisations, calling for the repeal of the regulations, and the Ministry of Education. A civil society call for UNESCO, an important stakeholder in the local free expression environment, to express dissatisfaction with the regulations was also ignored.

> It is imperative for the bill to undergo an extensive public consultation process.

The important role played by our civil society and the media in advancing the enactment and implementation of laws and policies that subscribe to constitutional and human rights principles, cannot be overstated. These sectors have played an immeasurable role in holding a government that holds overwhelming political power accountable.

ACCESS TO INFORMATION (ATI)

After years of verbal commitments to draft and enact an Access To Information law, the Ministry of Information and Communication Technology (MICT) finally initiated the process with a multi-stakeholder consultative process in June.

The five-day consultation meeting allowed for civil society and media organisations, as well communication officers of various government departments, to provide input on a revised National Information Policy, a Communication Strategy, and a draft ATI Bill, which were shared with invited stakeholders beforehand. The ACTION Coalition, which has led a three-year campaign calling for an ATI Law, played a key role in the facilitation of discussions at the consultation.

At the time of going to press, the ATI Bill was not yet tabled.

It is imperative for the bill to undergo an extensive public consultation process. Concerns are high that citizens' right to provide input will be limited if the MICT is committed to meeting the 28 September deadline, which also is International Day for Universal Access To Information.

There however has been no indication on whether secrecy laws, which include the Protection of Information Act (1982), the Defence Act (2002), the National Security Act (1997) and the Public Service Act (1997), will be repealed. These outdated laws limit the citizen's ability to access information in a number of ways and make the disclosure of information without the permission of the permanent secretary a disciplinary offence.

Further, the Communication Act permits the interception of e-mail, text messages, internet banking transactions, and telephone calls without a warrant. This threatens the independence of the media, and their ability to do investigative journalism, in particular regarding corruption in the public service.

Calls for Namibia to ratify and domesticate the African Charter on Democracy, Elections and Governance and the African Statistics Charter will continue, especially because these important instruments can go a long way in enhancing access to information, as well as promote accountability and transparency.

Internet Governance (IG)

Namibia moved up one point, from 121 to 120, on the International Telecommunication Union's (ITU) 2016 ICT Development Index (IDI). The IDI combines eleven indicators into one benchmark measure, and is used to monitor and compare developments in information and communication technology (ICT) between countries and over time.

There has been considerable progress in terms of infrastructure, which was mainly as a result of Telecom Namibia's renewed commitment to upgrading the international link capacities, and internal fibre network. The Long Term Evolution Advanced (LTE – A) was also implemented to achieve faster data and internet service. Access to the internet however remains limited to mainly urban areas; ITU data shows that 24.5% of households have internet access, and that only 22.3% of individuals use the internet.

> These outdated laws limit the citizen's ability to access information.

Namibia finally joined the international IG community when it hosted the Africa ICT Alliance Summit in October. For the first time, Namibian civil society also attended the UN's Internet Governance Forum (IGF) in Mexico, in December. On its return, the Namibian Internet Governance Forum (NIGF) working group, a multi-stakeholder body, which includes the MICT, civil society and the

ICT industry, was established. The Working Group is tasked with formalising the NIGF and organising the country's first IGF, slated for late 2017.

Two ICT related draft laws, which have been on the shelf for a number of years, remain there. The Electronic Transactions and Cybercrime Bill is expected to be tabled in 2017. There is no indication on the status of the Data Protection Bill, which was referred back to government after concerns were raised on the impact of certain clauses on free expression and the right to privacy in 2012.

MEDIA ENVIRONMENT

Media Ownership

Even though there still is diversity in ownership in the commercial radio sector for example, there are concerns that media ownership is steadily and mostly concentrating among the political and wealthy elite. This is particularly evident in the newspaper sector, where people with strong connections to the ruling party are establishing new titles. This invariably influences the quality and angle of the content produced, and has a negative effect on the public's right to know.

A major new development was the acquisition of Pointbreak, a financial services group that owned Namibia Media Holdings (NMH), by FNB Namibia Holdings. Pointbreak was previously headed by First Lady Monica Geingos, but since taking office, she has rescinded her role there. There however was no evidence that she interfered in the content production at NMH, before she withdrew.

FNB Namibia's acquisition is a more visible sign of increasing interest by the corporate sector in the media sector in recent times. There have been a number of failed attempts by people who have the start-up capital to establish, what usually is a magazine, but lack the knowledge and skills to succeed in this sector. These individuals usually do not necessarily value the principles that underpin and drive media for development, and journalism in particular.

Amplifying Marginalised Voices

Despite a slight improvement in women's representation in the media, women's voices continue to be marginalised by most notably, newspapers. This could be as a result of the fact that they tend to mainly focus on events driven news. This creates the impression that women are not active in national and human development efforts. But this is not case, as women are the bedrock of our communities. It is however also important for women to let go of cultural inhibitions and realise that their opinions matter and their voices should be heard. Radio phone-in programmes and letters to editors continue to be dominated by male voices for example. Female media practitioners however continue to work in an environment that does not exhibit policies or attitudes that are discriminatory towards women.

The media's reporting of children and issues that affect them remain a challenge, although, a number of daily newspapers have to be commended for their weekly supplements targeting children and youth. These supplements also publish content produced by children and the youth.

MISA and Media Monitoring Africa's (MMA) 2015 assessment of children in the media found that, despite children making up almost half of the population, they constituted only six percent of all articles published by the newspapers monitored. It was also evident that the media do not cover issues that directly affect children. Poverty, teenage pregnancy, violence and HIV/AIDS are some of the biggest barriers to child development, yet these issues are rarely covered in relation to children. Their representation remains limited, and they are largely negatively portrayed as helpless, and unable to act, think or speak for themselves.

Indigenous languages continue to enjoy their rightful place on the airwaves, though largely done so by the *NBC* radio's local language stations. Some newspapers also carry a few pages in widely spoken indigenous languages.

> These important instruments can go a long way in enhancing access to information.

In conclusion, it is important to note that in as much as Namibia has a lot to be proud of, there is room for improvement, in particular, in regard to ensuring that the diversity of voices present in the country are amplified. Unfettered access to social media has provided citizens with a wonderful platform on which they can access information, and express themselves on issues of public interest. Journalists themselves make use of social media platforms to address issues that affect them, and even provide newsworthy information that did not make the headlines. There is no denying that social media provided an impetus for citizens to fearlessly engage on issues of national and international interest.

We live in a media and information age, thus the importance of Media and Information Literacy (MIL) cannot be overstated. Citizens have to gain MIL skills to navigate this age of information overload, and understand the difference between credible and fake news. Further, citizens need to understand the power of media, where it lies, and how they can use the media to empower themselves and others. Very importantly, citizens need to understand that with their right to freedom of expression, comes the responsibility to respect the dignity and right to privacy of others.

Whenever the question is asked: Why is Namibia such a media freedom success story? The easy answer is: Because Namibia has freedom.

Testimony to the success of the country is what freedom is able to stimulate. Namibia wouldn't have become an international media freedom leader if the country had a government that aimed to regulate and censor expression. The country wouldn't have been where it is today if media practitioners, despite funding challenges, were not innovative and did not push boundaries. Namibian civil society should also be acknowledged for playing a role in ensuring that the environment remains conducive for freedom of expression.

There is a sincere hope that the recent attacks by political leaders against the media will cease, and that all sectors of society will recommit themselves to upholding Namibia as a best practice model of the Windhoek Declaration.



South Africa

National Overview 2016

by Raymond Louw
Chairperson: MISA South Africa

INTRODUCTION

High hopes that the repeal of the common law crime of criminal defamation – promised by the ruling African National Congress to take place in Parliament in April or May, 2016 – were dashed when the draft repeal Bill had not been submitted to Parliament by the year's end. Inquiries revealed that the Ministry of Justice postponed tabling of the Bill indefinitely because the repeal could raise the possibility of unintended consequences. No date has yet been set for the Bill's submission to Parliament.

The ANC's recently established legal research group that initiated the repeal process had declared that defamatory statements made through the media should not be considered a criminal offence and civil litigation should be used to pursue defamation claims. The continuing delay raised doubts whether the ANC intends to proceed with the repeal.

Though criminal defamation is infrequently used in South Africa, similar laws have been used and abused in many other African countries to stifle criticism of presidents and other political leaders. In those countries, many editors and journalists have been jailed – some for lengthy periods – on charges brought against them for publishing criticism of government policies and conduct.

Many charges have been trumped up while some have been based on allegations of publishing false news, where the arbiters of the falsity are government officials. South African journalists fear that in the climate of ruling party hostility towards the press the authorities could be tempted to try to curb the critical press with recourse to similar abuse of the criminal defamation law.

LEGISLATION

Draft Hate Crimes Bill raises alarm

Journalists' fears have been heightened by the publication in the closing months of 2016 of a draft Bill under the title of Prevention and Combating of Hate Crimes and Hate Speech.

Journalists and civil society organisations were dumbfounded by the content, which proposes sweeping inroads on freedom of expression and freedom of the media. Several organisations – among them the SA National Editors' Forum (SANEF), Freedom of Expression Institute (FXI) and PEN South Africa – have used the period provided for public participation to make highly critical submissions on the Bill.

The offences outlined in the Bill are framed extremely broadly, extending to conduct and speech normally regarded as irritating or even offensive but not meriting a criminal charge. The Bill impinges on what would be regarded as humorous commentary on the mores of society and has alarmed some comedians. While one comedian supports the Bill because too many people have "gotten away with a slap on the wrist for hate speech", three of his colleagues expressed grave concerns that the Bill is "too broad and very restrictive" and that it will prevent them from making critical jokes about the conduct of leading politicians and officials.

"South African journalists fear that in the climate of ruling party hostility towards the press the authorities could be tempted to try to curb the critical press with recourse to similar abuse of the criminal defamation law.

There are also fears that the Bill will stifle artistic expression, media analysis and critique of public figures, cartoons and other forms of political satire. It also opens opportunities to equate certain forms of expression to offences in terms of so-called "insult laws", an offshoot of criminal defamation laws.

"By means of any communication whatsoever…"

A key component of hate speech as defined in the Bill is an expression by any per-son who intentionally "by means of any communication whatsoever …. communi-cates in a manner that advocates hatred towards any other person or group of per-sons or is threatening, abusive or insulting towards any other person or group of persons…. and which demonstrates a clear intention …. to incite others to harm any person or group of persons whether or not such person or group of persons is harmed, or stir up violence against, or bring into contempt or ridicule, any person or group of persons."

The grounds on which "advocates" is based, relate to 17 human characteristics, including race, gender, sex, which includes intersex, ethnic or social origin, colour, sexual orientation, religion, belief, culture, language, birth, disability, HIV status, na-tionality, gender identity, albinism or occupation or trade. The concern here is that the characteristics are defined extremely broadly and encompass practically any conduct and extend far beyond the four characteristics stated in the Constitution. In addition to oral, written, illustrative, electronic and data communication, it extends "without any limitation" to "any gesture", "display", "expression", "visual or other de-scriptive matter" and "representation or reference".

These categories of hate speech extend to virtually any characteristic or activity of people. One of the dangers foreseen is the temptation it holds out for the authorities, including police officers and prosecutors, to base charges on almost any human emotion as expressed by facial or bodily expression or innuendo. Among the characteristics is the new category called "intersex", defined as a congenital sexual differentiation which is atypical to whatever degree – whatever that may mean.

> Journalists' fears have been heightened by the publication … of a draft Bill under the title of Prevention and Combating of Hate Crimes and Hate Speech which proposes sweeping inroads on freedom of expression and freedom of the media.

FREEDOM OF EXPRESSION

Dangers of censorship

Certain clauses in the Prevention and Combating of Hate Crimes and Hate Speech Bill, illustrate the major problem in trying to deal with hate speech. In defining it and taking action to prohibit it, the immediate consequence is intrusion into freedom of expression and the application of censorship. This is strongly opposed, by among others, writers and journalists. They believe that freedom of expression is a core value of a civilised and democratic society and that any curbs on hate speech will have the effect of preventing people from having access to the views and thoughts of others and thus limiting their freedom.

Hate crime is the commission of any offence under any law by a person motivated by prejudice, bias or intolerance towards the victim because of the characteristics – or perceived characteristics – that underlie the offence of communicating hate speech.

An important feature of hate speech is the necessity of proving that the culprit incited or brought about "harm" to the victim. This requirement is a cardinal principle laid down in the Constitution but the definition of harm is extremely wide and includes any mental, psychological, physical or economic harm.

The penalties for hate speech are severe. For a first offence, a three-year jail term or a fine, not defined but according to commentators likely to be heavy, can be imposed and for a second offence, the prison sentence can be ten years or a commensurate fine. In contrast, in Britain, the practice has been to impose a six months' jail term for a first offence. Punishment for hate crime is more variable being subject to legal and court jurisdiction but the severity of the maximum is even more daunting, extending in some instances to a life sentence.

Coupled with this is the reappearance in discussions of the ANC's policy-making committees that the ANC should give effect to the party's long-standing proposal that it initiate legislation in Parliament to set up a statutory Media Appeals Tribunal to supplement, or take the place of, the print media industry's self-regulating Press Council, which deals with public complaints about press reports.

The press is totally opposed to the tribunal, which, it is feared would be used to ex-ercise control over editorial content. Journalists are also conscious that the Protec-tion of State Information Bill, also known as the "Secrecy Bill" –, with its provisions for censorship and heavy prison sentences – is still awaiting the signature of President Jacob Zuma to enact it into law, some three years after its passage through Parliament.

Other laws that continue to plague journalists are the National Key Points Act, which prevents publication of information related to security aspects of certain institutions and buildings; the Protection from Harassment Act – which despite the good causes it serves, can restrict journalists from gathering information by "staking out" the office or home of a person who refuses to answer questions over the telephone; anti-terrorism legislation called the Protection of Constitutional Democracy Against Terrorist and Related Activities Act; and the Promotion of Equality and Prevention of Unfair Discrimination Act.

MEDIA ENVIRONMENT

Press faces hostility from police, public and student demonstrators

Meanwhile, the press is confronting another issue that has taken on a more ominous character in the past year – the increasing hostility of the police and authorities towards the press, as well as violence towards journalists by people protesting against government policies and lack of service delivery.

Journalists and photographers covering the #feesmustfall protests across the country – protests directed at universities and other higher education institutions to not raise their fees, or not levy any fees at all on impoverished students – complained that they were intimidated and harassed by the police, security staff and the protestors.

Government leaders continue to call the press "the opposition" and adopt practices that obstruct the press and prevent the public from being informed. The press and many civil society institutions have been highly critical of the misrule, serious shortcomings in service delivery, ever-increasing levels of corruption and other deficiencies in government. In response, the government has resorted to attempts to cloak its activities in secrecy. Officials obfuscate or withhold information – including official reports that should be released. SANEF has continued to raise its concerns about police hostility towards journalists – including unlawful police actions such as deleting pictures from photographers' cameras – at meetings with the Acting National Police Commissioner, Lieutenant General Johannes Khomotso Phahlane.

As reported in the last year's STID, it was decided to compile a booklet outlining how journalists and police officers should behave at crime or incident scenes, especially towards each other. The booklet, distributed to journalists and the police, fits 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. It is uncertain how effective it is.

Journalists complain about people demonstrating in the streets attacking them, probably because they fear their pictures could result in them being identified by the police and charged in court. One of the worst instances was the outbreak of violence in Tshwane Municipality (Pretoria) in June, when there were violent disruptions over nominations for the office of the mayor in the municipal elections. Groups of residents took to the streets to voice their protests and violence broke out. A high level of hostility and intimidation was displayed towards journalists and photographers covering the unrest. A number were at-

tacked by demonstrators and police and photographers had their pictures deleted and in some instances their equipment taken away.

Media Sustainability

The media are still continuing to contend with the economic onslaught from the so-cial media which is putting pressure on the viability of newspapers and resulting in the worrying retrenchment of staff which has had a negative impact on the compre-hensiveness of news coverage. But the impact on circulations – and advertising revenue – has been spectacular. The circulation of the *Sunday Times*, once the country's biggest seller, is down to about half of the more than 500 000 copies it was selling some years ago. Most other papers are recording decreases in circulation. Some people predict the demise of newspapers, though others believe there will always be a niche market for the industry. The industry is struggling with counter-measures to deal with the situation but no one appears to have found a formula that works and improves profitability, though gains have been made in the electronic market place.

In addition to the unease among staff as a result of retrenchments resulting from the effects of social media, further staff distress has occurred in the major English-language newspaper houses following reports of a high turnover of editorial staff, among them editors, and allegations of improper management interference in the editorial conduct of newspapers. SANEF has expressed its concern over the dismissal of *The Citizen* editor Steven Motale over what he described as an issue of improper interference by management in editorial matters, and management seemingly ending internal disciplinary hearings.

> Government leaders continue to call the press "the opposition" and adopt practices that obstruct the press and prevent the public from being informed.

In October, Independent Media, publishers of a large number of major daily and Sunday papers, announced its withdrawal from the Press Council of South Africa, which administers a self-regulatory adjudication process of complaints of contraventions of the Press Code levelled against publications. Independent complained that in overhauling its structure after a lengthy and wide-ranging consultation process, the Council had scrapped a requirement that complainants consent to a waiver of their rights to institute private litigation against media houses, resulting in an unacceptable increase in the company's legal costs. The Council removed the waiver when advised by a retired Constitutional Court judge that it was unconstitutional.

Independent appointed its own internal Press Ombudsman and so-called Media Press Appeals Tribunal to receive and adjudicate complaints from the public about editorial content published in the group's titles, including The Star, The Sunday Independent, The Cape Argus, Pretoria News and Isolezwe.

SANEF said it believed self-regulation should be executed at arm's length by an independent regulatory mechanism like the Press Council and not by employees of media companies. To use an internal ombudsman as a replacement of independent arbiters was unacceptable and it called on Independent Media to rescind the decision. It has been noted that *Independent* – which has included a waiver clause in its tribunal structure – runs the risk of having its operation declared unconstitutional in light of the retired judge's advice.

SABC operations

During the year, the operations of the state-run *South African Broadcasting Corporation (SABC)* came under critical review by civil society organisations, among them the SOS Support Public Broadcasting Coalition and Media Monitoring Africa, critical staff members and interested parties. Some observers warned that the SABC was deviating from its declared role as a public broadcaster and was being turned into a state broadcaster, serving the interests of the ruling party as it was during the apartheid era under the National Party. Journalists sharply criticised an editorial instruction that visuals of violence and destruction of property during protest demonstrations were not to be broadcast and staff members said they were told not to use stories that spoke ill of President Jacob Zuma.

Eight staff members who objected to this departure from independent and public interest journalism were dismissed, later being dubbed the "SABC Eight".

Staff members spoke of the reckless reign of impunity and the culture of tyranny and fear, interference and censorship introduced by the Chief Operating Officer, Hlaudi Motsoeneng, who was found by the former Public Protector Thuli Madonsela to have lied about having a school leaving certificate when interviewed for a journalist's job at the SABC and when he was irregularly appointed to a senior position in the SABC with his salary being improperly raised. SABC staff also alleged that the SABC paid for the establishment of rival broadcaster *ANN7* and funded the daily newspaper The New Age's promotional events.

The Acting Group CEO of the SABC, Jimi Matthews, the most senior official at the corporation, resigned in disgust from the public broadcaster. In his resignation letter, in which he referred to the "corrosive atmosphere" inside the corporation, he also stated: "for many months I have compromised values that I hold dear under the mistaken belief that I could be more effective inside the SABC than outside…. What is happening at the SABC is wrong and I can no longer be a part of it".

The disclosures about the destructive management practices at the SABC resulted in civil society media freedom organisations and journalists holding pickets outside at the SABC offices in Auckland Park, Johannesburg, and Sea Point, Cape Town, on July 1 in protest against censorship and in support of the staff who protested and took a stand on journalistic principle. Motsoeneng denied there was a crisis and described the protests as a campaign to destabilise the public broadcaster.

South Africa 2016 violations & victories

January 8

Censored

The ANC announced that it had not invited senior freelance politics reporter Carien du Plessis to the party's 104th birthday celebration in Rustenburg because she had tweeted that among the guests would be "pantypreneurs" and "tenderpreneurs". The ruling party's spokesperson, Zizi Kodwa, who announced the ban, responded, "The ANC takes offence to these kind of derogatory remarks against women, we will take up this matter with yourself and employer."

She apologised and though SANEF described the "unfortunate and offensive tweet" as "beyond defensible commentary", it urged the party to rise above such regrettable utterances and allow even those who might have made offensive remarks to cover the party's anniversary celebrations. The ANC refused to rescind the ban.

February 22

Censored

Following a protest by the SA National Editors' Forum (SANEF) against what it con-strued as "dangerous remarks" by Economic Freedom Fighters party leader Julius Malema, threatening journalists employed by TV station *ANN7* and *The New Age* newspaper, and barring them from EFF functions, a Sanef delegation met with the EFF leadership. SANEF said it is unacceptable and a violation of the constitution for any political party to intimidate journalists and to publicly state that they cannot guarantee their safety.

The EFF claimed the two news operations were owned by the wealthy Gupta family and were not media because they were "nothing more than instruments of propa-ganda for the ruling party and funded by allegedly corrupt returns from government". The party was not prepared to reconsider its decision. SANEF said the EFF was entitled to its views about media owners, but should allow journalists to conduct their work without fear. The meeting ended without agreement but with an understanding that further meetings may be held in future.

February 24

Threatened

The South African National Editors' Forum (SANEF) asked the Independent Elec-toral Commission (IEC) and political parties to include fair treatment of the media in the declarations and pledges that political parties sign during elections. SANEF also asked political parties to protect journalists from political harassment and intimidation and start adhering to the electoral code of conduct even before the election date is promulgated as campaigns were already under way and journalists had experienced problems in some areas. SANEF condemned instances where bribes, disguised as "cool drink money" or "transport money", were offered to journalists in the past to cover the events of certain political parties.

April 4

Assaulted

SANEF requested an urgent meeting with senior police officers to place before them complaints about the conduct of the police during several incidents in which journalists were attacked while on assignment. SANEF alleged that journalists were assaulted and kidnapped in the presence of police officers who allegedly either assisted the assailants or failed to intervene.

On April 2, following the funeral of anti-mining activist Sikhosiphi 'Bazooka' Rhadebe in a village near Mbizana, in the Eastern Cape, two journalists from *The Citizen*, Nigel Sibanda and Simnikiwe Hlatshaneni, who were photographing an area around the village where mining was planned, were attacked by an angry mob, armed with knobkerries, machetes, a spade and stones. The community is deeply divided over the mining project and Rhadebe is alleged to have been assassinated because of his opposition to the mine.

The attackers beat the journalists with the blunt end of a machete, knobkerries and their bare hands. Sibanda's camera was taken by the attackers and later confiscated by the police. He was critically wounded. Hlatshaneni, a woman, was dragged out of a car and hit over the head and on her shoulder with a spade and a machete. The attackers demanded to know what she was doing there and one of them was heard saying: "they want to tell people we killed Bazooka, that is why they are here."

They alleged police officers who arrived on the scene did not assist or stop the as-saults but took the wounded and some of their attackers in a police van to the police station instead of to hospital. Hlatshaneni, who had gained refuge in her car after she was assaulted, was ordered by police to return to her attackers and explain what she was doing there.

March 31

Detained

SABC journalist Jacques Steenkamp, investigating child prostitution in Mogale City, was accosted and kidnapped by alleged drug dealers who are alleged to operate the prostitution ring. They are alleged to have been in the company of police officers who assisted them. Steenkamp was held for a number of hours and only released after the group had withdrawn about R5 000 from his bank account.

April 1

Assaulted

Sowetan photographer, Tiro Ramatlhatse, who was covering a fraud case at the Molopo Magistrate's Court in Mmabatho, North West, involving about R18 million of North West University funds, was attacked inside the courtroom by spectators. He was rescued by a security guard.

SANEF condemned the attacks and expressed "extreme concern" at what appeared to be patent disregard by the police officers of their duty to protect members of the public including journalists.

April 14

Assaulted

Daily Sun photojournalist Samson Ratswana was brutally attacked by 70 people at the International Pentecostal Holiness Church (IPHC) in Soshanguve, north of Pretoria, on the evening of April 13 after responding to a call about fighting breaking out in the church. The crowd shouted "journalist, journalist" as they attacked him. Attempts by two Metropolitan police officers to rescue him failed when they were overpowered by the group. Ratswana was assaulted for nearly 30 minutes before he was rescued by a VIP protection unit officer. Sanef condemned the attack, commended the police for assisting the journalist and called on a church elder who apologised to hand over those responsible to the police.

South Africa 2016 violations & victories

May 27

Violation of Public Freedom of Expression/Access to Information

The SABC announced that it would stop broadcasting footage in news bulletins of "the destruction of property" during protests and demonstrations and immediately drew a barrage of criticism from media and civil society organisations, which ac-cused it of trying to sanitise news instead of acting in the public interest by reporting fully on what was happening in the community. Some likened the SABC's conduct to that of the apartheid government, which at one stage barred journalists from areas where protests were taking place. In July, civil society organisations appealed to the Independent Communications Authority of South Africa (ICASA), which directed the SABC to lift the ban. The SABC shocked viewers by taking the matter on review, which, however, failed. Despite this, the SABC stubbornly maintained its ban until it was forced by public pressure to lift it.

June

Assaulted

The South African National Editors' Forum (SANEF) expressed outrage over a series of violent attacks on journalists covering protests in the Tshwane (Pretoria) metropolitan municipality. Reporters from a number of media outlets were chased away by protesters, threatened with violence and physically attacked or intimidated by police officers on the scene. Sanef reported the following incidents:

- Power FM journalist Tshidi Madia was threatened and forced out of Soshanguve, north of Pretoria, on June 22 and told to leave Mamelodi on June 21 because she was reporting on the protests.
- eNCA reporter Jody Jacobs and camerawoman Noluthando Hlophe were robbed at gunpoint by a mob in Mamelodi after a live broadcast of the protests on the evening of June 22. Two men walked up to them and threatened to shoot them if they did not hand over their equipment. The journalists handed the robbers their camera, tripod and microphone.
- SABC journalist Horisani Sithole received medical treatment after his hand was bitten in Mabopane while he was trying to capture on camera a mob looting a spaza shop owned by a foreign national.
- News24 reporter Jeff Wicks was assaulted in Ga-Rankuwa on June 22 by a po-lice officer who wanted to prevent him from recording video footage of police shooting rubber bullets at protestors. Officers also confiscated his phone and instructed him to delete video and pictures.
- On June 21 Atteridgeville residents took the phones and video camera of EWN reporters Clement Manyathela and Kgothatso Mogale after threatening them with a brick. They were forced to delete all footage and were released after doing so.
- News24 reporter Karabo Ngoepe in Ga-Rankuwa had his phone confiscated by a police officer who forced him to delete pictures and video. The officer took pic-tures of News24's vehicle and threatened to "deal with" the journalist.
- A freelance photographer from AFP had his mobile phone stolen while taking pictures of the unrest in Mamelodi.

June 24

Censored / Violation of Public Freedom of Expression/Access to Information

The SABC suspended Economics Editor Thandeka Gqubule, Radio Sonder Grense Executive Producer Foeta Krige and senior journalist Suna Venter for objecting to an instruction during a news conference not to cover a protest organised by the Right2Know (R2K) campaign against censorship at the public broadcaster. On June 20, R2K led protests against SABC management in Durban, Cape Town and Johannesburg, over an editorial instruction banning the coverage of violent protests and for introducing new editorial policies that gave Chief Operating Officer Hlaudi Motsoeneng the final say on editorial decisions.

Eight other staff members who also objected to the new editorial policies were later dismissed. Five of them, Busisiwe Ntuli, Krivani Pillay, Jacques Steenkamp, Lukhanyo Calata and Vuyo Mvoko. The journalists, now called "the SABC Eight", challenged the SABC in court, which reversed the dismissals and seven of the eight were reinstated. Mvoko was on contract which was not renewed. A few days later the eight were the recipients of SANEF's Nat Nakasa Award, honouring their courage to speak out against censorship even in a climate of fear and threat.

The Sunday Times has reported that later some of the group were threatened, intimidated, tailed, had their houses broken into and ransacked, car brakes tampered with and in one instance shot at with ceramic bullets.

June 24

Censored / Violation of Public Freedom of Expression/Access to Information

Eight members of the editorial staff were dismissed by the television station *ANN7*, 12 staff members received final written warnings and another 11 received warnings after objecting to management conduct. They all objected to being named as parties to a company letter to four banks that had revoked banking services to the television station's owners, Oakbay Holdings, and they refused to attend a meeting at the company addressed by ANC Youth League President Collen Maine. The staff were variously charged with insubordination and intimidation and one was charged with calling a radio station to protest on air at the Maine meeting. Later in August, five of the journalists who had been warned were also dismissed.

South Africa 2016 violations & victories



September 29

Violation of Public Freedom of Expression/Access to Information

The Supreme Court of Appeal ruled that the censoring in February 2015, of videos of disorder and commotion in Parliament in the parliamentary broadcast service, which feeds national broadcasters, was unconstitutional. SANEF, Prime Media Broadcasting, and civil society organisations upholding freedom of the press had raised the issue in an urgent application in the Western Cape High Court, which ruled that the censorship was constitutional. The organisations appealed in the Supreme Court of Appeal, which made the unconstitutional ruling on September 29. The appellants hailed the court judgment "a victory for openness and transparency".

The censorship – which resulted in the video service showing only the face of the Speaker while disorder raged – followed the jamming of mobile phone signals at the opening of Parliament earlier that month. Parliamentary officials said the censorship was in line with its rules, which stated that unruly behaviour should not be shown. The appellants had also called on the Supreme Court of Appeal to declare the jamming of mobile phones unlawful and unconstitutional. Appeal Court Judge C H Lewis declared that "the rules and policy adopted by Parliament governing the broadcast of disorder in the Parliamentary Chamber violates the public's right to open Parliament and are unconstitutional and unlawful. The disruption of the cellphone signal….was unlawful".



September 29

Assaulted

Journalists covering the #feesmustfall campaign at the Doornkloof and Kingsway campuses at the University of Johannesburg on September 28 were attacked by private security officials hired by the university. In one chilling incident, a photographer was punched repeatedly on the head, hit with a stick in the stomach, and then pepper-sprayed at close range. A group of reporters were circled on Joe Slovo Drive, ordered to sit on the road and then pepper-sprayed. A photographer was also hit in the face with a plank-like object. SANEF expressed outrage at the attacks and complained to university Vice-Chancellor Dr Ihron Rensburg, who condemned the officials' conduct and promised to ensure that they would respect the right of journalists to do their work. SANEF also condemned the hostility of student leaders towards journalists. He also urged journalists to lay charges against the security officials.



November 10

Threatened

Two police officers called on 20-year-old second year student journalist Magnificent Ndebele between 1 and 2am at his university residence and without any warrant confiscated his equipment, including his mobile phone and laptop. They accused him of inciting violence and interfering with their investigation. They also warned him that his movements were being watched. A few days earlier Ndebele had witnessed and taken pictures of a confrontation between students and private security officials at one of the student residences, where one of the students, Kelvin Baloyi, had been shot dead at point-blank range. SANEF condemned the harassment of Ndebele, which it viewed in the broader context of increasing police hostility and intimidation towards journalists. It called for the immediate release of his equipment.



November 29

Censored

The Citizen morning daily reported that Editor Steven Motale, who had been sus-pended from his duties earlier in the month, had been dismissed. He was accused of failing to "follow agreed-upon editorial procedures and to uphold his editorial duties" which had "led to an irretrievable breakdown in the relationship of trust and confidence between the editor and the publisher of the newspaper". Motale, who was reportedly dismissed without a hearing, claims he has had to contend with improper managerial interference in editorial affairs, including news content and processes to hire journalists. Publisher Eureka Zandberg denied that the content of stories published in the paper were at issue.



Swaziland

National Overview 2016
by MISA Swaziland

INTRODUCTION

Much to the delight of the media fraternity, human rights defenders and political activists, 2016 was not a year of doom and gloom in Swaziland, as positive developments overshadowed negative ones.

Signs of the thawing of the usually cold relations between government and media began to show during the period under review. This can largely be attributed to the mission to the country by the African Commission on Human and Peoples' Rights (ACHPR) and the Special Rapporteur on Freedom of Expression and Access to Information in Africa, Commissioner Pansy Tlakula, and her team from 7 to 11 March 2016.

After taking stock of the state of human rights, Tlakula drew the attention of senior members of both the executive and legislature to human rights violations that were going unchecked in Swaziland and its population of 1,2 million inhabitants.

Armed with information obtained from the media, civil society and trade unions, Tlakula enumerated these human rights violations, among others, as the criminalisation of freedom of expression, criminal defamation law, existence of 33 media restrictive laws, lack of freedom of information, a ban of citizens from state broadcasters, and failure to liberalise the airwaves.

Commissioner Tlakula then proposed to the media fraternity holding a National Media Indaba in Swaziland intended to raise awareness among media practitioners, legislators, government officials, civil society actors and members of the public of human rights-related issues, focusing mainly on freedom of expression, media freedom and access to information.

> Signs of the thawing of the usually cold relations between government and media began to show...

Responding to the team's report, the government conceded its failure to uphold and respect the Bill of Rights enshrined in the Constitution and hastened to make promises to correct the situation and meet compliance with regional and international human rights instruments.

This was a cue for lawmakers to press ahead with the suspension of the Ministry of Information, Communication and Technology (ICT) in Parliament until government lifted the ban on members of parliament from having access to state broadcasters. Influenced by MISA Swaziland media literacy workshops, the ICT Ministry Parliamentary Portfolio Committee was behind the campaign against the ministry. Facing the dire prospect of a frozen budget and stalled projects, the ICT minister finally capitulated and lifted the ban imposed three years ago.

Without bothering about police surveillance and disturbance, civil society actors attended a one-day MISA Swaziland media literacy workshop at the Roman Catholic Caritas Centre at the end of March. For the first time, they could freely debate media issues on freedom of expression, media freedom and access to information. They unanimously agreed to collaborate with the media fraternity in all campaigns for freedom of expression, media professionalism, and access to information, media-led advocacy and liberalisation of the airwaves.

History was also made when government joined media practitioners, civil society actors, political activists, diplomats and the public to commemorate World Press Freedom Day on May 3, 2016. MISA Swaziland hosted a public debate on the topic *Locating freedom of expression within the justice system*. Panellists were drawn from the media, human rights defenders and the law society. The principal secretary in the ICT Ministry delivered an inspiring speech encouraging MISA Swaziland to continue organising media literacy workshops for the benefit of the citizenry, decision-makers, lawmakers and media practitioners.

The media fraternity scored a victory when government heeded calls for the reinstatement of journalism in the list of priority areas sponsored by the Swaziland Government Scholarship programme in institutions of higher learning. Efforts by MISA Swaziland and its media partners bore the desired fruits, with aspiring journalists enrolled for journalism at universities in Southern Africa. The Ministry of Labour and Social Security, responsible for training, had kept the programme on hold for five years.

To press government to liberalise the airwaves, the Swaziland Community Multimedia Network (SCMN) stepped up its campaign for the issuance of community radio licences. It formed the Broadcasting Bill Committee (BBC) to lobby legislators to speed up the process of passing the Swaziland Broadcasting Bill into law. In response to this campaign, the Information and Media Development Directorate drafted the Swaziland Broadcasting Bill of 2016. The ICT Ministry also issued two one-day provisional community broadcasting licences to community radio initiatives in the year under review.

To crown it all, there was a two-week People's Parliament held in the cattle byre at the traditional headquarters, Ludzidzini Royal Residence, in early August 2016. Swazis from all walks of life enjoyed their constitutional right of free speech. The leadership and government were criticised for poor governance. Speaker after speaker called on the powers-that-be to completely overhaul the non-partisan *tinkhundla*-based system of government. At the end, King Mswati III promised to implement the people's recommendations.

Notwithstanding positive developments, 2016 proved to be a mixed bag as there were few noticeable negative developments in the media sector. The security forces disregarded the royal command to allow every Swazi access to the cattle byre. As usual, they targeted journalists covering the People's Parliament. Journalists were refused entry into the royal byre. The police also tracked down people who criticised the authorities during the two-week People's Parliament.

On the media front, the Swaziland Television Authority (STVA) struggled to pay its staff members on time in the year under review. The television station was

reportedly under a heavy deficit of 40 million emalangeni. Hot on the heels of the financial woes, the ICT Ministry suspended the financial director and chief executive officer.

Both state broadcasters made headlines following under-reported stories of sexual harassment of female media practitioners. Instead of dealing with this serious matter, the ICT ministry and management of the state broadcasters swept it under the carpet. Even the Swaziland Editors' Forum (SEF) failed to raise this issue at its quarterly breakfast meetings with the prime minister.

After the collapse of salary negotiations between the Media Workers Union of Swaziland (MWUS) and the Swazi Observer Group of Newspapers, MWUS members embarked on a strike to press the media company to meet their demands for a salary hike. *Swaziland Shopping*, a weekly business newspaper, reported that one of the staff grievances was sexual harassment of female media workers perpetrated by one of the male media managers. No action was taken by media bodies, media owners and editors to investigate allegations of sexual harassment.

In 2016, two journalists working for the *Times of Swaziland* were arrested for corrupt practices. One was accused of taking money from a subject of his story in order to suppress his story. The other was accused of extorting money from people by impersonating investigators from the Anti-Corruption Commission (ACC). After a disciplinary hearing, the *Times* dismissed the former while the latter was arrested by ACC investigators.

Media Landscape

Instead of experiencing any appreciable growth, the Swazi media sector remained stagnant due to the shrinkage of advertising revenues. The two struggling tabloid newspapers, namely the *Swazi Mirror* and *Ingwazi News* had to close shop. In 2016, there were only two media start-ups, namely *Buzlink Sports*, a sports and business magazine, and a business weekly, *Business Express*. These privately owned publications were struggling as they could not command regular space in the newsstands.

The media environment favours the *Times of Swaziland* Group of Newspapers and *Swazi Observer* Group of Newspapers. The former publishes the *Times of Swaziland*, *Swazi News* and *Times of Swaziland Sunday* while the latter the *Swazi Observer, Observer on Saturday* and *Sunday Observer*. Small publications such as *Independent News* and *Swaziland Shopping* are struggling to keep afloat due to scarce advertising revenues. Swaziland has two monthly magazines: *The Nation* and *Agribusiness*, which are also limping along.

> Victory for media sector when government heeded calls for reinstatement of journalism in list of priority areas.

Two state broadcasters dominate the electronic media, namely the Swaziland Broadcasting and Information Service (radio) and Swaziland Television and Broadcasting Corporation (TV). A private television station, Channel Swazi, has been unable to maintain consistent broadcasts over the years. There are currently no commercial, public service and community radio stations in Swaziland. The Swaziland Community Multimedia Network have lobbied and applied for community radio licences to no avail. However, the ICT Ministry has agreed to issue one-day provisional broadcasting licences to SCMN members. They broadcast the King's Birthday and University of Swaziland Graduation Ceremony.

Media Regulation and Laws

In March 2016, the ICT Ministry Parliamentary Portfolio Committee lobbied other MPs in its campaign against the ICT Minister in the House of Assembly. Collectively, they got him to issue a public statement in the print media lifting the ban from the state broadcasters. This also stopped it from enforcing the Public Service Announcement Guidelines (PSA) which excluded them from accessing the airwaves at the radio and television stations.

Heeding calls for the liberalisation of the broadcasting industry, the Information and Media Development Directorate set in motion the tabling of the Swaziland Broadcasting Bill 2016 before Parliament. This sought to introduce a three-tier broadcasting regimen namely commercial, community and public service broadcasting.

The Directorate also organised a two-day consultative stakeholders' meeting in July 2016 to discuss the proposed Swaziland Broadcasting Bill 2016. This was followed by its validation by media stakeholders. This was welcome news to the Broadcasting Bill Committee, which has been pushing for the licensing of community radio stations and MISA Swaziland, which has been canvassing for the transformation of the state-broadcaster into a public service broadcaster.

Against this background in the kingdom of Swaziland, the Swazi High Court ruled in September last year that the Suppression of Terrorism Act and the Sedition and Subversive Activities Act were unconstitutional. It was a ruling welcomed by Swazi pro-democracy groups but one that might be challenged or simply annulled by royal proclamation.

> Swaziland Broadcasting Bill was tabled before Parliament.

Local Content Development

May 2016 saw the Information and Development Directorate bringing together the key players around a discussion table to deliberate on the issue of local content in the broadcasting sector. These included the Swaziland Independent Film and Television Producers Association (SIFTPA), SBIS, STVA, Voice of the Church, Channel Swazi, SCMN and MISA Swaziland. Its purpose was threefold. Firstly, to assess the capacity and capabilities of the producers. Secondly, to establish the local content quota at the state broadcasters. Thirdly, to identify the shortcomings of local content producers.

It was a huge success as the Directorate invited ICASA and SABC to share their

experiences with local content producers and media stakeholders. Soon after, the STVA went on a study tour to the SABC, which resulted in the signing of a Memorandum of Understanding. Within the scope of the MOU, the SABC started assisting the STVA in developing its local content quota strategy. They agreed on an employee exchange programme that would enable the SABC to train and mentor STVA employees.

Digital Migration

Having failed previously to meet the deadline agreed by the International Telecommunication Unions (ITU) for digital migration, Swaziland migrated on the 31 December 2016 deadline. By this set date, the ICT Ministry assured the public that the state broadcasters had successfully switched over to digital without any glitches. Reasons given for the delay were that the country had been held back by the delays experienced by its neighbours, Mozambique and South Africa. They had asked Swaziland to delay its switchover because they were not ready. This was meant to address the issues of frequency sharing and frequency coordination, common among neighbours.

The ICT Ministry, STVA and MVtel, a company selling the set-top-boxes (STBs), mounted a national campaign educating people about digital migration and the need to install the STBs that enable non-digital television sets to receive the digital signal. However, TV watchers and radio listeners made numerous complaints about the quality of the STBs and their failure at times to function properly on other television sets. They also complained that the price of STBs was prohibitively expensive for ordinary Swazis.

Violations of the Right to Freedom of Expression

Security forces continued to infringe on the constitutional right of freedom of expression and media freedom during the People's Parliament at the Ludzidzini Royal Residence cattle byre. Journalists were denied entry to the cattle byre and detained for an hour in August 2016. The security forces did not want the journalists to take their cameras into the venue, thus preventing them from taking pictures. However, they relented later after discussing the matter with the press control corps.

Senior *Times of Swaziland* journalist, Sibongile Sukati, seized the opportunity to voice his concerns on the harassment of journalists by the security forces in the line of duty. She reported the unabated violations of the right of media freedom to higher authorities. She mentioned that the harassment of journalists in the line of work amounted to denying the public the right to information as they too played a public service role of purveying information.

During the People's Parliament, police tracked down an elderly man from the Vuvulane area for criticising the King and Queen for their involvement in land evictions. An evicted Vuvulane smallholder farmer, William Nkhosiyemantjoli Mkhaliphi, was arrested shortly after for making scathing submissions at the People's Parliament. Reportedly, they questioned him about his statements in the cattle byre. This was, however, denied by the police, who claimed that his arrest was linked with theft of tractor parts belonging to the liquidated Vuvulane Irrigated Farms Company.

> Key players deliberate on the issue of local content in the broadcasting sector.

Access to Information Campaign

MISA Swaziland stepped up its national campaign for the enactment of the ATI law in the country. Its first port of call was the Information and Media Development Directorate responsible for media laws. The Institute brought to the attention of the Director, Phesheya Dube, that the Freedom of Information and Protection of Privacy Bill, 2007 was gathering dust. He assured the media fraternity that government had already engaged a media consultant to review it.

MISA Swaziland turned its attention to lobbying the ICT Ministry Parliamentary Portfolio Committee and other MPs to enact an ATI law. It organised two media literacy workshops for legislators in May 2016, with a focus on the benefits of access to information, which has a direct correlation with development. Civil society actors were also sensitised about the significance of access to information for achieving development goals. They pledged their support for the access to information campaign.

Safety of Journalists

Concerned about threats to the safety of journalists, the Institute hosted three separate seminars for civil society actors, journalists and editors in June 2016. The purpose was to create awareness about the threats to the safety of journalists. The Resident Coordinator of the United Nations addressed participants on the UN Plan of Action on the Safety and Protection of Journalists endorsed by the UN agencies in May 2012. As a way forward, civil society actors committed to the safety of journalists in the line of duty. Journalists called for the strengthening of the mechanisms available for the reporting of threats to the safety of journalists while editors promised to raise awareness of the safety of journalists

CONCLUSION

The move to create a media literate society is beginning to bear the desired fruits. Civil society actors and lawmakers have gained a better understanding of the benefits of a free, independent and pluralistic media. The adage: "It is time to engage not carp" has won MISA Swaziland the support of the ICT Ministry, Information and Media Development Directorate, lawmakers, civil society actors and media partners

In two years' time, the Institute intends to focus on the ATI campaign, media professionalism and liberalisation of the airwaves. It will rely on the collaboration of civil society actors, media partners, ICT Ministry Parliamentary Portfolio Committee and Information, ICT Ministry, and Information and Media Development Directorate to fast track the review of the Freedom of Information and Protection of Privacy Bill, 2007 and passage of the Swaziland Broadcasting Bill 2016 into law.

In addition, it will step up the advocacy campaign for media law reform aimed at repealing or amending archaic and draconian media laws to align them with the Constitution. A starting point would

be the five media bills drafted in 2007, which are still gathering dust in the ICT Ministry. There will also be a thorough review of the 33 laws that curtail media freedom.

With the dropping of journalism standards, the Institute sets out to strengthen media bodies such as SNAJ, MWUS and SEF. It intends to resuscitate the Media Women Association of Swaziland (MWASA) to tackle gender inequality issues in the newsrooms. Practical training courses will be organised to equip young journalists with journalistic skills. This is imperative in the wake of fake news and alternative facts. Investigative journalism and human rights training will form an integral part of the journalism training. Training in the safety of journalists will also be included to empower journalists in the line of duty.

As government tightens its grip on state-owned broadcast media, lawmakers and civil society actors now understand the need for a public service broadcaster, where the public speaks to itself. People are tired of the propaganda churned out by the state broadcasters. Finally, the mainstream media need to up their game if they are to withstand the competition posed by social media.



Tanzania

National Overview 2016
by MISA Tanzania

OVERVIEW

"The Newspaper titled "Mawio" shall cease publication permanently including any electronic communication as per the Electronic and Postal Communication Act, with effect from January 15th, 2016".

This statement appeared in the government notice no 55, published on January 15, evidence that the infamous Newspaper Act of 1976 had struck again, this time to de-register the privately owned weekly tabloid called *Mawio* and stop the publication from operating entirely, even through online platforms. Information Minister Nape Nnauye claimed that *Mawio* had demonstrated a culture of publishing inflammatory content and despite repeated warnings it had refused to tone down its "provocative" coverage.

Previously, the Act was used to ban publications that authorities claim were undermining the law of the land, including *Mawio*'s sister paper *MwanaHalisi* which was banned indefinitely in 2015. However, *MwanaHalisi* successfully challenged the ban in the High Court of Tanzania and was back in the streets in 2016. The same Act was used to suspend The East African, a weekly publication, in early 2015 for allegedly not "being properly registered," even though the paper had been operating in the country for more than two decades. In 2016 the government allowed the return of the East African.

Before the media had time to process the news of the closure of the paper, on Monday 18 January, just three days after *Mawio* was completely removed from the newsstands, the Government suspended 27 TV and Radio stations for three months for failing to fulfill their licensing requirements. With only three months in power, the 5th phase government had sent a clear message to the media in Tanzania that the next 57 months weren't going to be easy.

> A very challenging year for media freedom in the country...

Media Freedom

While the region and the world celebrate the presidency of John Magufuli in Tanzania, there is no doubt that 2016 has been a very challenging year for media freedom in the country.

It was marked with banning and suspension of many media outlets. Not only were media outlets attacked but also individual journalists were victims of press freedom violations all over Tanzania. The violations ranged from physical assaults, threats and intimidation, harassment and court cases over sedition charges, denial of access to information in public offices or access public events. Close to 40 cases of media freedom violations were recorded last year from all over the country.

Some of the notable ones were the abduction of the Zanzibar based Mwananchi newspaper reporter and Deutsche Welle (DW) correspondent Salma Said. Salma was flying from Zanzibar to Dar es Salaam and was abducted by a group of men travelling in an unmarked saloon car on exiting Julius Nyerere International Airport. She was released after three days from an unknown location where she had been held and tortured.

'TAKE ONE' a lifestyle TV show by *Clouds TV* was suspended for three months by the Tanzania Communications Regulatory Authority (TCRA) for allegedly airing programmes that promote prostitution and homosexuality. The suspension sparked mixed opinions among Tanzanians over the content of the programmes aired.

Once again, Information Minister Nape Nnauye ordered two privately owned stations, Radio Five of Arusha and Magic FM based in Dar es Salaam to cease their broadcasting over allegedly "seditious" content that could incite tpublic violence and disturb the peace.

Kagera-based *AZAM TV* reporter Junior Mwemezi was arrested by anti-robbery police in Kagera town towards the end of the year for allegedly possessing government documents illegally. Mwemezi had written a story on tax evasion by a company. According to Mwemezi the story showed some malpractice by several public officials and this angered them. Earlier on, Mwemezi had been given a tip on the matter and had these documents in his car when the anti-robbery squad arrested and took him to police station for interrogation. According to him he was handcuffed and beaten. He was released on bail after six days. With support from his lawyer, the issue of possessing public documents was taken off the table but he still has another case in court for allegedly impersonating a public official.

One of the biggest blows to press freedom in 2016 was the government decision to ban the live broadcasting of the Parliament Sessions in April 19. Despite public outcry in conjunction with journalists and human rights groups alike, the government turned a deaf ear. This wasn't only a challenge to the media but a direct denial of the public's right to information. The Government claimed that live broadcasting was expensive, and according to state officials it cost up to Tanzania Shillings 5 billion. When Tanzania Media Foundation (TMF) offered to cover the cost of live broadcasts, it was rejected. This led critics to believe that there was another motive behind the ban.

> The MSA has created a number of bodies which …. undermine the freedom of the media.

Even though perpetration of media violations include ordinary citizens, there is overwhelming evidence that in 2016, Government institutions and political leaders were the highest in number in terms of committing violations. Media monitoring reports from other organizations such as the Media Council of Tanzania (MCT), Tanzania Human Rights Defenders Coalition (THRDC) and others indicate that violations committed by government institutions (police, government officials) make up to 80 per cent of the violations reported.

New Media Law

The year under review also witnessed the enactment of the new media law in Tanzania - the Media Services Act (MSA) no. 12, 2016 and its regulations of 2017. This long-awaited law comes with stiff challenges and even bigger threats to the entire media industry, and this has triggered a national outcry from both media and human rights defenders and the public at large.

The MSA has created a number of bodies which in one way or another to undermine the freedom of the media. The Journalist Accreditation Board, whose members are appointed by the Minister under section 12 of the Law has the mandate to accredit and discredit journalists. This body however, works under the instruction of the Minister responsible for information. This is open to abuse, in that, a journalist critical to the government can be removed from the journalists' roll at any time.

Another body created by the Act is called the Independent Media Council under section 24 of the Act. On the surface it would seem that this body is run by journalists themselves and it has been given powers to, amongst other issues, develop a code of ethics and promote ethical and professional standards. However, all these duties have to be undertaken in collaboration with the Accreditation Board. In the other words, the Accreditation Board, which is under the Minister responsible for Information will act as overseer of the Independent Media Council.

Under Section 50(2) of the Act a journalist who operates without accreditation or who has failed to renew his or her license on time due to financial grounds will be liable to a fine of not less than five million shillings or a jail term of not less than three years. The act provides for minimum penalties and fines.

The MSA also introduced a new element - which gives the Director of Information Services under section 5(i) the mandate to coordinate all government advertisements and he has a power to determine where to publish on the same. This is excessive power he might use against private media if he feels they are not publishing stories which pleases the state.

Section 52(1) which then talks about "seditious intention" also punishes journalists who publish stories which are regarded seditious.The term is open to interpretation. This could have detrimental effect on investigative journalism.

The MSA criminalises defamation and this part of the law has been copied from the repealed News Papers Act, 1976. The intention of criminalization of journalists and media fraternity is built under part VII - Offences & Penalties.

In addition to the contentious clauses, the Media Services Act, 2016 and its Regulations have several areas which add value to the media industry. The Act also recognises journalism as a profession by setting standards for the qualifications of journalist. The minimum standards for one to be recognised as a journalist under this Act are to possess a Diploma in Journalism from a recognised institution.

The Act sets obligations for the print media - e.g. Journalists are required to uphold Tanzanians natural sovereignty, unit, security and both economic and diplomatic interests. The Act requires media to preserve Tanzania cultural value, identity and observe good taste and decency and public morality.

Journalists are also required to exercise great care when reporting incidents of torture, ill treatment of people or animals, dead or mutilated bodies, people in extreme pain or at the point of death, molestation or abusive treatment against children.

The Media Services Act, 2016 and its Regulations has a number of problematic clauses and numerous stakeholders which include the Media Council of Tanzania (MCT) and the Union of Tanzania Press Clubs, have filed a Constitutional case before the High Court of Tanzania and the East African Court of Justice to challenge the constitutionality of the Media Services Act.

> . . . this has triggered a national outcry from both media and human rights defenders.

In 2015, after a silence of almost a decade, push and pull between the media stakeholders and the government, there was a move by the latter to enact two bills, namely the Access to Information Bill 2015 and Media Services Bill 2015 under a certificate of urgency.

This move was vehemently opposed by stakeholders, and eventually the Parliament refused to continue with the enactment processes and asked the government to use normal route for enactment of laws which involves public consultations. It was through these consultations and pressure from both within and outside that the Ministries of Information, Culture, Artists and Sports, under Nape Nnauye and of Justice and Constitutional Affairs under Dr Harrison Mwakyembe were eventually able to table the two bills in 2016, and have them approved by Parliament and eventually passed.

Despite the fact that the two laws are not of the exact quality that stakeholders wished for, they do have certain sections that have somehow included stakeholders opinions.

Free Expression Online Under Massive Scrutiny

"Any person who publishes information, data or facts presented in a picture, text, symbol or any other form in a computer system where such information, data or fact is false, deceptive, misleading or inaccurate commits an offence, and shall on conviction be liable to a fine not less than three million shillings or to imprisonment for a term not less than six months or to both".

This is the infamous Section 16 of Tanzania's Cybercrime Act of 2015. Two citizens who know this law rather intimately are Maxence Mello of *Jamii Forums* and netizen Isaac Habakuk Emily from Arusha. The two and countless others have appeared in courts on charges of "insulting" the country's president, John Magufuli or for allegedly misusing the social media. Surprisingly, it has been hard for the state to prove malice in most of these cases, and subsequently their cases have been thrown out by the court. Undoubtedly, 2016 was the year of court cases related to online content.

CHALLENGES

Upholding media ethics

Ethical issues such as reporting of unsubstantiated rumours, sensationalism, stereotyping etc were once a highlight in the media sector in 2016. The challenges for the media result from having poorly trained journalists or corrupt editors on staff, a legal regime in place that enforces self-censorship, and the weak economic conditions many outlets operate under.

Most media are poorly financed and do not pay staff well or promptly, leading to what is commonly referred to as the "brown envelope syndrome", where media practitioners accept freebies from sources resulting in biased stories.

Critics propose training, both long term and short courses (classroom and in-house) and refresher courses, ensuring the adherence to the basic tenets of professional journalism standards.

Lack of unity among the media practitioners and stakeholders has been a great setback for achieving progressive media and related laws in Tanzania. Efforts to collaborate on policy formulation was acrimonious to the point that Nape Nnauye, the Minister of Information at the time, taunted the media by asking them to take over in leading the process and not leaving to the activists.

In looking ahead, it is clear that awareness training on the contents of the new media laws and its regulations is imperative if journalists are to survive and avoid jail terms and hefty fines in 2017.

This is so because struggle for a free, professional and independent media in Tanzania has yet to be bear tangible fruits. Success on this depends solely on the promptness and capability of the media to adequately develop of journalists.

Since 2016 highlighted the growing of mistrust between the Parliamentarians and the media, it is important for the media to enhance their professional and ethical reporting skills. More so, because politicians continue to suppress media freedom under the guise that they are curtailing "irresponsible journalism". They also continuously castigate the media on unbalanced or biased media coverage.

> MPs complained that "they have been hurt by the media".

Observers believe that this could be one of the contributing factors to the passing of the unfavourable media laws by the lawmakers. During several encounters between the two parties at the Parliament grounds, MPs would be heard complaining that "they have been hurt by the media". Perhaps this was one way of getting back at them despite the fact that MPs tend to use the media on their way up when they are vying for political posts).



Zimbabwe

National Overview 2016
by MISA Zimbabwe

INTRODUCTION

The year under review can be characterised by the succession battles which played out as factionalism within the ruling Zanu PF and evidenced by Twitter battles between different entities. Of more critical concern were the policy inconsistencies which took centre stage at the expense of the envisaged reforms to entrench constitutional democracy.

Zimbabwe continued grappling with its long-term economic stagnation characterised by rising unemployment, closure of companies, rising inflation, food insecurity, poverty, limited provision of basic services, power outages and lack of access to clean and safe water. The most severe of these was the cash crisis that started towards the end of 2015 and continued into 2016 and the subsequent introduction of bond notes into the financial ecosystem. It did little to ease the shortage of cash and the move from a hard and stable currency is rippling through the business sector, further pushing the country into its downward spiral.

This was further exacerbated by the continued depletion of resources and the paralysis of state parastatals directly linked to the high levels of corruption in the public service sector, most of which have been exposed in the media since 2014. Discrepancies in public sector expenditure have also been highlighted by the Auditor General in her annual report to Parliament.

Laws such as the discredited Access to Information and Protection of Privacy Act (AIPPA), used to license and regulate the media; the Official Secrets Act (OSA) to broadly embargo information held by public bodies and the Broadcasting Services Act (BSA), to hinder free establishment of radio stations, remained entrenched in the country's statutes. The Censorship and Entertainment Controls Act (CECA), also continues to be used to censor free artistic expression; as well as sections of the Criminal Law (Codification and Reform) Act , to criminalise media work and citizens' right to free expression.

In his State of the Nation Address on 6 December 2016, President Mugabe painted what can only be described as a discordant picture of an economy that is on the recovery path. The irony of that could not have been missed as the president went on to commend Zimbabweans for enduring the economic hardships since the land reforms in 2000.

Beyond mentioning the need to escalate policy reforms, the nation expected a progress update on the very same reforms as envisaged not only in terms of turning around the economy, but entrenching constitutional democracy. Instead, the Ministry of Justice, revealed its plans to amend Section 180 of the Constitution to expunge the public selection process of judges by the Judicial Services Commission to allow the president to appoint the Chief Justice, Deputy Chief Justice and Judge President of the High Court.

Key Events 2016

Former Vice President Joice Mujuru who was kicked out of the ruling party and removed from her post at the end of 2015 launched her political party, while a group of "concerned citizens" - as they have called themselves - proposed the idea of a non-political National Transitional Authority to allow for what they feel should be "an orderly transition from an extractive predatory status quo to a more democratic sustainable Zimbabwe," until there is a level playing field and fair elections can be held.

The cascading effect of all this was keenly felt by citizens, moreso than in previous years with the ensuing result of an amplification in citizen voice as sectors of society railed against further deteriorating socio-economic conditions and its impact on their lives.

Citizen discontentment took on various forms - with both sporadic and lone actions, along with organised and larger citizen action with an increase in social media activism which sparked a national shutdown. The amplification of citizen agency was met by equally swift and intense State response, so as the year progressed, the protests became subdued and went back from the streets to tweets. Riot police and the water cannon tanks were a constant presence on the streets during July and August and September.

The Public Order and Security Act was used throughout the year to arbitrarily ban or disrupt protests and demonstrations despite citizens' right to freedom of assembly and association, demonstrate and petition, including the right to freedom of conscience, as provided for by Sections 58, 59 and 60 of the Constitution. Attempts to use the judicial system to exercise their rights by activists were quashed as the marches were then prohibited.

Several journalists, civic and political activists were either assaulted by party members or arrested by the police during the nationwide demonstrations, in violation of constitutionally protected media rights and citizens' enjoyment of freedom of expression and access to information.

"Citizen discontentment took on various forms - with both sporadic and lone actions, along with organised and larger citizen action with an increase in social media activism which sparked a national shutdown.

Online activism was more pronounced through 2016 as activists took to Facebook and twitter to air their frustrations and anger at the State. WhatsApp messages became a favoured form of communicating information on a range of issues from the logistics of protest marches, to locations of police roadblocks to passing of news. There were a number of arrests related to online posts and comments.

The State responded by pushing through an ICT Policy and presenting a draft of the Computers and Cybercrime Bill that goes beyond the protection of citizens against cyber related crime and and instead goes further, to monitor as well as restrict online freedom of expression while criminalising the dissemination of

certain content unrelated to national security or to pornography.

Traditional print media faced a different form of threat from online media already grappling with high print costs, under-resourced newsrooms, reduced adspend, limited reach, consumer resistance and competing alternative online media platforms. Dumisani Muleya, editor of the Zimbabwe Independent during his World Press Freedom day address at the Bornwell Chakaodza Memorial Lecture told guests: "As we speak Zimbabwe's media sector is going through serious economic times …. current business models in Zimbabwe and elsewhere are being challenged by the new ways people communicate and consume content, thanks to hi-tech innovations."

While the Bill of Rights in Zimbabwe's 2013 constitution has widely been acclaimed as meeting international benchmarks on fundamental human rights, events on the ground speak to a government that is not too keen on respecting citizens' enjoyment of their constitutionally protected freedoms.

This was evidenced by the clampdowns witnessed in 2016 against journalists and citizens exercising their right to media freedom, freedom of expression, free artistic expression and freedom to demonstrate and petition.

Further evidence of this untenable situation is drawn from the fact that more than three years after the coming into being of the 2013 Constitution, the country is still to align a raft of laws that infringe on media freedom, freedom of expression and the right to access to information.

For instance, the media stakeholders retreat that had been scheduled for January 2016 as promised by the Ministry of Media, Information and Broadcasting Services for purposes of debating and framing a new media policy did not take off. The retreat would have been held in the context of the findings and recommendations of the government-sanctioned Information and Media Panel of Inquiry (IMPI) report which was released on 18 March 2015.

> Online activism was more pronounced through 2016 as activists took to Facebook and twitter to air their frustrations and anger at the State.

The 666-page report recommends 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 government thus continued behaving in a discordant manner by promising commitment to reforming the media while threatening to introduce harsh measures to deal with the independent media. The government's threats against media freedom also has a chilling effect on citizens right to free expression and access to information online as evidenced by its plans to enact laws that will hinder online activity under the guise of preventing cyber crimes.

This contradicts the tenets of constitutional democracy, enjoyment and enforcement of fundamental human rights as enshrined in Zimbabwe's Bill of Rights.

Instead, the government should demonstrate its commitment to the outstanding media reforms by coming up with exact timelines as to when it will implement the envisaged media reforms in line with the recommendations and findings of its very own sanctioned Information and Media Panel of Inquiry.

Arrests, threats and harassment of journalists

Through the year, 23 journalists were assaulted, harassed, arrested, or detained, most of them while reporting on protests. MISA-Zimbabwe recorded seven (7) assault cases, the previous year, so the year under review saw a shocking 130% and 71% increase in the number of journalists arrested and assaulted, respectively, while on duty.

Police arrested Garikai Chaunza, Edgar Gweshe, Chris Mahove, James Jemwa, and Khumbulani Zamchiya in June while they reported on a protest in Harare, detaining them for six hours before releasing them without charge. A month later police briefly detained journalists Elias Mambo, Tafadzwa Ufumeli, Richard Chidza, and Godwin Mangudya at Marimba Police Station while they were covering protests in Mufakose. Police ordered the journalists to delete all pictures and video footage of the protests from their cameras and mobile phones, before releasing them without charge.

On August 3, police used batons to beat up journalists Lawrence Chimunhu, Haru Mutasa, Tsvangirai Mukwazhi, Christopher Mahove, Tendai Musiyazviriyo, Bridget Mananavire, and Imelda Mhetu who were covering a protest in Harare.

> Public institutions in Zimbabwe still tend to be inaccessible and are also averse to placing information in the public domain, according to the findings of the MISA Transparency Assessment Survey on open and secretive public institutions in Southern Africa.

Later in the same month, a member of the anti-riot police in Harare harassed and beat journalist Lucy Yasin with a baton as she covered a protest. On the same day the police arrested journalist Tendai Mandimika and detained him for three weeks on false public violence charges before releasing him on bail.

A few days later, the police briefly de-

tained journalists Obey Manayiti and Robert Tapfumaneyi. The following day, police arrested photojournalist James Jemwa while covering protests in Harare. He spent a week in detention on public violence charges before being released on bail.

> Throughout the year, a number of citizens ranging from policemen, to musicians and journalists were arrested for insulting the President's office, under Section 33 of Zimbabwe's Criminal Codification and Reform Act. A person convicted for this offence could be jailed for up to a year or fined US$100.

At the same time, photojournalist James Jemwa, clocked almost a week in custody at Chikurubi Maximum Prison in Harare following his arrest on 26 August 2016 while covering demonstrations in Harare. He was detained by ruling party members after he had completed filming and had put away his equipment and was then taken to the police station.

On 1 September 2016, freelance photojournalist Crispen Ndlovu was taken to a private hospital in Bulawayo after he was reportedly assaulted and arrested by members of the riot police the day before. According to media reports, Ndlovu was arrested while taking pictures of the police as they allegedly assaulted Alfred Dzirutwe, spokesperson of the Bulawayo Youths Arise during protests against President Mugabe's leadership and rising unemployment.

Petition against police harassment of journalists

Concerned by the escalation of assaults and arrests of journalists by the police, MISA-Zimbabwe sent a letter to the Zimbabwe Republic Police Commissioner General Augustine Chihuri seeking an audience with him. Together with Zimbabwe Union of Journalists and Media Alliance of Zimbabwe representatives and led by the organisation's Trustees, Cris Chinaka, handed the petition to Senior Assistant Commissioner Charity Charamba (Commissioner-General Chihuri's delegated representative) expressing media practitioners' displeasure over their treatment by the police to. The petition was signed by more than 150 journalists drawn from both the state and private media as well as freelancers.

While acknowledging the journalists' concerns and expressing the police's commitment to ensuring the safety of journalists, Charamba also expressed the police's misgivings on some journalists' unprofessional conduct in covering events, especially those that involved the police.

The meeting came up with resolutions on how to bridge the gap and eliminate suspicion between the police and journalists. Participants pledged to implement them.

ACCESS TO INFORMATION

Public institutions in Zimbabwe still tend to be inaccessible and are also averse to placing information in the public domain, according to the findings of the MISA Transparency Assessment Survey on open and secretive public institutions in Southern Africa.

While the Tobacco Industry Marketing Board was considered the most open among the institutions surveyed, most of the public institutions surveyed still have a long way to go to achieve a modicum of transparency and opening themselves to public scrutiny. The Ministry of Primary Education followed by the Zimbabwe Republic Police were considered amongst the worst institutions in terms of accessing information. The ministry did not respond to written electronic or printed requests for information.

Generally, public institutions' websites are poorly managed as content is not regularly updated while some of them lack critical information on procedures on how to obtain information. In fact, this points to the deficiencies in AIPPA and its limiting effect on citizen participation in governance issues.

FREEDOM OF EXPRESSION

Citizen Agency

During the period under review, there was an increase in citizen agency as the growing frustration at the inability by Zimbabweans to provide basic needs for their families - food, shelter and education - played out in tweets and in the streets. The state reaction to tweets was both intimidatory and foreboding while the response to public protests was swift and brutal.

Early in the year, President Mugabe was giving a speech at the airport - as he often does - on his return home from a State visit to Japan, when he was interrupted by an elderly woman who shouted out in Shona - President, we are suffering. Taken by surprise, the President asked: "Suffering from what,". She immediately responded: "We are suffering from hunger." President Mugabe scanned the crowd trying to locate her and eventually said: "Put your grievances in writing and we will look into them."

The beatthepots# campaign spearheaded by Vice President of opposition MDC-T, Senator Thokozani Khupe saw women taking to the streets banging on their empty pots to protest the hunger and poverty they were facing.

Three journalists along with theatre producer and playwright Sylvanos Mudzvova were arrested outside Parliament in April. Details are sketchy but it is alleged that Mudzvova was attempting to stage a one-man play titled: Missing Diamonds, I Need My Share which he invited Parliamentarians to watch. He wrote the play following mention made by President Mugabe that Zimbabwe had failed to learn how to manage the revenue generated from resources and made specific reference to Botswana which he said had fared much better in earning substantive amounts of money from its diamond sales. "I don't think we have exceeded $2 billion, yet we think more than $15 billion has been earned." This statement was distorted and since then the media and the public have presented it as fact and often refer to the $15 billion dollars that went missing.

The board chairman of the National Vendors Association of Zimbabwe, Sten Zvorwada and a few other members staged a protest at a hotel in Harare, protesting Vice President Phelekezela Mphoko's stay in the luxury hotel since December 2014, saying this was profligacy by a government which says it has no money. They were dragged out of the hotel, assaulted and charged with threats to commit malicious damage to property. His activism and outspokenness resulted in him being hospitalised after being severely beaten by riot police, when he tried to present a petition to the Zimbabwe Republic Police to act against corrupt activities by a government minister.

Protestors set fire to a warehouse belonging to the national revenue authority at the bordering town of Beitbridge when they were prevented from importing goods ranging from basic essentials to luxury items that had been "banned".

War veterans' leaders Douglas Mahiya and Victor Matemadanda, were arrested in July 2016 on charges of insulting the Office of the President. They were arrested after an unsigned communiqué accusing the president of running down the country and making genocidal remarks and dictatorial statements was widely distributed.

Towards the end of the year, a proposed march against the introduction of the bond note (the idea of introducing a local currency was to replace the use of US dollars on the market and ease the cash crisis) was quashed when several activists were either abducted and assaulted or arrested ahead of the planned protest. However, a group of young Zimbabweans - Advocate Fadzayi Mahere, Nyasha Musandu, Henry Munangatire, Mudiwa Mahere, Talent Chademana and Thobekile Ncube who were going to be part of the bigger march went to Africa Unity Square and while sitting there peacefully, were arrested and charged with intent to promote public violence, breaches of the peace or bigotry as defined in Section 37 (1) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23 alternatively disorderly conduct in contravention of Section 41 of the Criminal Law (Codification and Reform) Act Chapter 9:23.

Throughout the year, a number of citizens ranging from policemen, to musicians and journalists were arrested for insulting the President's office, under Section 33 of Zimbabwe's Criminal Codification and Reform Act. A person convicted for this offence could be jailed for up to a year or fined US$100.

Social media platforms became an avenue of release for the frustrations and challenges people were facing and the second phase of the protests took the shape of what is referred as the # activism.

The complexion of civic activism took on different shades - with people sharing videos and articles criticising, analysing or mocking government through whatsapp messages or they took to Facebook to share videos or comment on corruption, scandals, mismanagement, policy inconsistency and even state aggression. There was an increase in the number of people who were either questioned or arrested for their whatsapp or Facebook messages.

At the beginning of the year policemen were questioned for their comments on the delay in payment of their salaries and bonuses. The whatsapp messages were seen as undermining the government and inciting other civil servants. A councillor was arrested for sending a message about the President which allegedly was "twisted to demean and attack the president."

On June 10 2016, police questioned Evangelical Fellowship of Zimbabwe leader Shingi Munyeza following his comments on social media on the proposed introduction of bond notes by the Reserve Bank of Zimbabwe.

> While the Bill of Rights in Zimbabwe's 2013 constitution has widely been acclaimed as meeting international benchmarks on fundamental human rights, events on the ground speak to a government that is not too keen on respecting citizens' enjoyment of their constitutionally protected freedoms.

The expression of discontent with the ruling party and its mismanagement of the economy expanded over online platforms more intensely during 2016.

The most well known social media campaign is that of Pastor Evan Mawarire for his 2 to 3 minute selfie type videos expressing his frustrations and encouraging citizens to become engaged and to hold government accountable.

He was astute enough to brand himself and the iconic image of him clasping his hands in front of his face with the Zimbabwe flag became the visual symbol of the #thisflag movement. Zimbabweans in the country and outside took to tying the flag around their necks or waists or knotting them into ties. Vendors at traffic lights donned them around the shoulders and sold them to motorists, while comedian Samm Monroe better known as Cde Fatso joked about the sales of flags on his weekly Zambezi News episode (a satirical news bulletin featuring topical issues) circulated via Facebook. People wearing and waving flags became a symbol of the marches and demonstrations pushing the government into banning them.

Through his daily messages, first posted on his Facebook page after Independence Day - April 18, Pastor Mawarire managed to grow his following from across the gender, cultural, racial, class lines with ease and his popularity increased because he was seen as an influential yet apolitical figure. He managed to bring in citizens who had previously been completely disengaged from the political scene and got them motivated to engage with the State. He even managed to cross borders and gathered strong following amongst the diaspora.

As a result he is often proclaimed as the architect of the first successful protest in the form of a national stayaway on July 6. However the success of the national shutdown - which saw business come to a standstill with only a few shops, banks and government offices operating

as normal - is far more complex when unravelled through an analytical and critical lens. It can be attributed to the action of the diverse groups coming together and acting collectively and campaigning done on the ground by activists and members of opposition parties. His rallying call came at an opportune moment, when dissatisfaction combined with timing translated into effective organising.

> As the 2018 elections draw closer, transformation of the Zimbabwe Broadcasting Corporation (ZBC) to ensure equal and equitable access by political parties and the generality of Zimbabweans despite their political affiliations, is now of imperative urgency.

There is no doubt that the #thisflag movement was the tangible force that captured people's hearts and imaginations and this was evidenced when he was arrested in July 2016 for inciting public violence and disturbing the peace which was later changed to subverting a constitutionally elected government. Over a hundred lawyers turned up to represent him, while hundreds of people kept vigil outside the magistrate court and riot police were called to "control the crowd." He was released without charge as his arrest was ruled unconstitutional.

The momentum that had been harnessed from certain sectors of society, petered out when Pastor Evan as he is better known, went into "temporary exile" because he was concerned about the safety of his wife and children.

Attempts to regain the momentum and following he previously had, with the support of fellow activist and legal representative Advocate Fadzayi Mahere, when he returned home several months later, did not gain traction.

In response to citizens dissatisfaction being expressed so volubly and so publicly, President Mugabe's language increased in aggression and ferocity. Riot police were consistently engaged by the state to assault protestors or to pose as an intimidating presence.

Legislation regulating online content

Since the extension and expansion of online activism was regarded as the spark that gave traction to mass protests, government responded through a series of actions meant to restrict citizens freedom expression through these platforms.

Access to messaging service whatsapp was closed down for several hours during the national shutdown and the next day the Postal and Telecommunications Regulatory Authority (POTRAZ) together with all telecommunications service providers issued a joint statement with telecommunications operators stating they had noted: " the gross, irresponsible use of social media and telecommunication services made through our infrastructure and communication platforms over the past few days".

The statement went on to say that: "all sim cards in Zimbabwe are registered in the name of the user. Perpetrators can easily be identified. We are therefore warning members of the public that from the date of this notice, any person caught in possession of, generating, sharing or passing on abusive, threatening, subversive or offensive communication messages, including WhatsApp or any other social media messages that may be deemed to cause despondency, incite violence, threaten citizens and cause unrest, will be arrested and dealt with accordingly in the national interest."

Soon after the march held in July, the government deferred to the Flag Act of Zimbabwe, 1980 and the regulations made in terms of the Act and effectively banned the use of the flag without prior permission. Statutory Instrument 194 of 1987 made it "a criminal offence for any person to burn, mutilate or otherwise insult the national flag or any reproduction thereof, in circumstances which are calculated or likely to show disrespect for the national flag or to bring the national flag into disrepute." The immediate effect was that vendors stopped selling flags and people stopped wearing them in public. It did nothing to quell people's rising activism.

Since that period, the Government launched the ICT Policy which amongst many issues will:

- facilitate the development of a single national data centre and internet exchange strategy and blueprint and
- establish a [single] national data centre, which allows Zimbabwe to centralize her information storage, management and protection, as well as take advantage of cloud computing opportunities.

> The Zimbabwean government has since conceded that AIPPA and the BSA should be replaced as they are not in sync with the new constitutional dispensation.

The enactment of the Computer and Cybercrimes Bill is at an advanced consultative stage and the push for this legislation comes as no surprised following warnings issued by POTRAZ, the Commander of the Zimbabwe Defence Forces General Constantino Chiwenga, Police Commissioner General Augustine Chihuri and Army Commander Lieutenant General Valerio Sibanda, against citizens 'abusing' social media to share information and organise protests.

Government's determination to curb expression by citizens on social media platforms is often framed as cyber terrorism. This is evidenced by the way in which the state media, notably The Her-

ald, The Sunday Mail and the national broadcaster, ZBC reported on the warnings issued by government and senior security officials. These reports gave the impression that expressing critical views on policy issues or holding government accountable are actually subversive, inflammatory and inciting messages akin to cyber terrorism. The state media went to the extent of naming and exposing some of the alleged 'cyber terrorists'.

The deliberate distortion of what is meant by cyber terrorism is aimed at instilling fear and self-censorship among citizens when exercising their rights to free expression, access to information and freedom of conscience.

> "Authorities should refrain from threatening the media as that has potential to trigger extra-legal violation of media freedom by political activists and other non-state actors.

MISA-Zimbabwe

The Zimbabwe chapter of the Media Institute of Southern Africa (MISA) working with the Digital Society of Zimbabwe, has come up with a position paper on the Computer Crime and Cybercrime Bill, which was introduced last year by government to curb cybercrime.

Of concern in the Bill, are some of its broadly couched provisions which pose a serious threat to access and dissemination of information.

In its unadulterated definition, cyber terrorism refers to crimes that are committed through the facilitation of a computer or online by sending computer viruses with the intention to destroy, damage disrupt or harm vital computer systems, critical infrastructure and innocent civilians.

For instance, expressing one's intentions to shoot or cause a war through a computer is simply terrorism and not cyber terrorism. That disjuncture and contradiction should be made very clear at law. This is of imperative importance particularly now when the government through its proposed Computer and Cyber Crime law is widely perceived as keen on curbing freedom of expression and access to information online.

The worsening economic environment continues to pose serious viability and sustainability challenges to newspaper companies in Zimbabwe with both the private and public media being forced to lay off workers including journalists. This has seen some of the publishing houses converging their newsrooms whereby individual journalists have to come up with diaries for the respective stables' various publications including the online versions to cut on costs.

While it is difficult to get the exact circulation figures, it is generally agreed that most of the mainstream national publications are not printing beyond 50 000 copies daily due to dwindling advertising and sales revenues. The situation is even worse for the weekly provincial publications, both public and privately owned, with most of them printing no more than 1 000 copies weekly.

MEDIA ENVIRONMENT

Print Media

Dumisani Muleya, editor of the weekly Zimbabwe Independent, captured the dire print media situation when he referred to what he termed the "current media upheavals". In a commemorative article to mark the 20th anniversary of his publication, Muleya attributed the upheavals to the harsh operating environment and the revolution in technology (digital age and advent of the internet), as having a bearing on journalism and its ethics.

"Due to technological advances and innovation in the digital space, media organisations are now struggling as audiences migrate online, while advertisers lag behind – creating a disequilibrium which brings instability in relation to the supply, demand and prices of media products," says Muleya. The convergence of media and entertainment on cyberspace … and the world of telecoms has triggered far reaching disruptions and accelerated changes in consumer and advertising distribution patterns.

Inadvertently, readership reach and access to information is compromised as newspapers reduce printing, sales and circulation costs. Media and civil society panellists who met in Nyanga in November 2015 for the sitting of the Africa Media Barometer (Zimbabwe session), lamented the restriction of news coverage to major urban areas such as Harare, Bulawayo and Mutare. As a result, not all voices are fairly represented with the elite enjoying greater representation while ordinary citizens are covered mostly in terms of crime stories.

During professional peer review and newspaper content review meetings convened by MISA-Zimbabwe, editors and journalists generally acknowledged the need to improve the quality of stories as some of them lacked the basic news values and elements and that headlines tended to be sensational and misleading.

The generally held view is that editorial independence is being compromised by state interference at public owned media in breach of Section 61 of the Constitution which stipulates that all state-owned media of communication should be free to determine independently the editorial content of their broadcasts or other communications. Corruption was highlighted as one of the issues compromising the quality of stories and inherently media professionalism and ethics amid allegations some editors were in the pockets of politicians and certain businesspersons.

It is trite to note, however, that despite the gloomy socio-economic political and restrictive media legislative environment, the media, both private and public, still managed to report on corruption, mismanagement and abuse of public funds in government institutions and parastatals. In fact, the media (private media in particular), demonstrated greater resolve to defend its democratic space as provided for in the constitution. Evidence of this resolve was in the upsurge of stories, interviews, editorials and opinion pieces pertaining to media freedom and citizens' right to free speech and access to information, thus keeping the need for media legislative reforms on the agenda.

Broadcasting/Telecommunications/ ICTs

As the 2018 elections draw closer, transformation of the *Zimbabwe Broadcasting Corporation* (ZBC) to ensure equal and equitable access by political parties and the generality of Zimbabweans despite their political affiliations, is now of imperative urgency.

Transformation of ZBC from a state-controlled entity into a truly independent public broadcaster is urgent given its strong bias and partisanship towards Zanu PF, which is afforded more airtime compared to other political parties. This also entails the repealing of the Broadcasting Services Act.

The Zimbabwean government has since conceded that AIPPA and the BSA should be replaced as they are not in sync with the new constitutional dispensation.

Appearing before the Parliamentary Portfolio Committee on Media, Information and Broadcasting Services in Harare on 18 February 2016, George Charamba, conceded as much when he said AIPPA and BSA should be replaced as they were not in sync with the new constitutional dispensation, macro technological changes and changing societal tastes.

"…we have a new Constitution which we embraced in 2013. It's the new rules book to which everything else must cohere to," he said. "Developments in the broadcasting sector have made the laws inadequate or inappropriate or simply odd, that's compelling reason enough to make a second look at those pieces of legislation.

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

This is also buttressed in the findings and recommendations of the government-sanctioned Information and Media Panel of Inquiry (IMPI) and also underscored as critical in terms of the SADC Principles and Guidelines on the Conduct of Democratic Elections.

Community Radio Stations

Despite the critical role played by community radio stations in filling the information gap in marginalised communities and socio-economic development, as of December 2016, the government was still to license a single station, 15 odd years after enactment of the BSA, which provides for community radios.

Digitisation

Appearing before the Parliamentary Portfolio Committee on Media, Information and Broadcasting Services in July 2016, the Minister of Finance Patrick Chinamasa, highlighted the challenges facing completion of digitisation. He said completion of Zimbabwe's migration from analogue to digital was at that time indefinite as the Finance ministry embarked on discussions and consultations on the resale of the digital dividend spectrum.

> Zimbabweans should not relent in demanding the entrenchment of constitutional democracy as provided for in the Constitution more so as it pertains to the exercise of their right to freedom of expression, access to information and privacy of communication.

He said his ministry had made available a bridging fund of US$ 30.5 million to the country's digital migration following the 'collapse' of a US$200 million agreement on the sale of the digital dividend spectrum to mobile network operator, Net-One. He noted that the bridge fund, which was not in the annual budget, was necessitated by the fact that a contract had been signed by the contractor, Huwaei.

"Clearly given my current fiscal challenges, I am not in a position to give any indication as to when we can find more resources to deploy to this project. Already, we have outstanding payments to the contractor of US$19 million," he said.

Chinamasa noted that the sale of the spectrum was the only alternative available for continuation of the project.

Later in September, during his presentation of the mid-term fiscal policy, the minister said funds would be 'borrowed' from and reimbursed to the Universal Services Fund. Mobile Network Operators contribute a 1.5% levied tax of their total annual income to the fund, which is aimed at increasing access to their services.

Mobile penetration/ telecommunications

In 2016, the country recorded significant growth in mobile subscriptions and internet penetration. This development not only had a bearing on the telecommunications sector, but also, significantly impacted on the broadcasting sector.

According to the Postal and Telecommunications Regulatory Authority of Zimbabwe (PO-TRAZ), mobile subscribers stand at more than 18,9 million, while the internet penetration rate stands at 49.8%. Mobile internet makes up about 95,6% of total internet accessed in the country with over the top (OTT) services making up the bulk of this use.

There was an increase in citizens producing and sharing audio and visual productions broadcast online via over the top (OTT) services, Whatsapp and Facebook. These platforms were more accessible to the citizenry owing to 'special' subsidised data costs charged by the Mobile Network Operators. These developments assisted in providing citizens with alternative sources and platforms for accessing information which is often not reported or covered by the state-controlled ZBC, in a country that is still to license community radio stations and privately owned television stations.

Recommendations for 2017

Zimbabweans should not relent in demanding the entrenchment of constitutional democracy as provided for in the Constitution more so as it pertains to the exercise of their right to freedom of expression, access to information and privacy of communication.

Government should urgently implement law reforms to entrench constitutional democracy and retain foreign direct investment critical to halting the worsening economic crisis that has negatively affected media operations.

Government must give due consideration to recommendations of the IMPI report, as enunciated by civil society at the April 2016 Media Law Reform Indaba, in undertaking the envisaged media law and policy reforms.

Authorities should refrain from threatening the media as that has potential to trigger extra-legal violation of media freedom by political activists and other non-state actors.

Government should formulate the cyber security framework in sync with national and regional principles that protect privacy of communication, private property and the right of all citizens to freedom of expression, media freedom and access to information.

Government should initiate a much more structured digitisation public awareness campaign that uses people-centric platforms to ensure citizens know what exactly will be at stake including the benefits of digital migration.

Authorities must ensure citizen participation in the transparent and democratic appointment process for the ZBC board, while securing and guaranteeing its independence and accountability in carrying out its public service mandate.

Government should ensure a safe working environment for the media and provide leadership within and outside government in raising awareness on the need to ensure the safety of journalists and media workers.

Government should address the sustainability challenges within the media industry by reviewing the multiple tax regimes to facilitate the viability of the media industry.

Zimbabwe 2016 violations & victories

ARRESTED/SUMMONED/QUESTIONED

5 January
Lovemore Meya, with *The Herald,* was arrested and his camera seized while covering clashes between commuter omnibus touts and residents in Harare's dormitory town of Chitungwiza.

7 April
Ernest Mudzengi, director of the Media Centre, was picked up from his offices by plainclothes police officers and interrogated for several hours at the Harare Central police station in connection with the stories published on *www.zimsentinel.com* website.

8 April
Malvern Mkudu, Media Centre's research and editorial consultant, was questioned by the police in connection with a story titled: "Pressure on Mugabe as another demonstration is set for…. as new party declares war on Mugabe".

12 April
Mlondolozi Ndlovu, journalist, was questioned over a story published by the online *Zimbabwe Sentinel* on a plot to bomb Gushungo Dairy, owned by President Robert Mugabe.
Journalists, Winston Antonio Shepherd Tozvireva and Itai Zengenya were arrested at the Parliament of Zimbabwe while covering playwright Sylvanos Mudzvova's one-man play titled: Missing Diamonds, I Need My Share.

13 June
Journalist, Wellington Mukanhire was summoned by the State to appear in court on charges of contravening Section 78 (20 of AIIPA which criminalises holding oneself as an accredited journalists without being so accredited).

27 June
Journalists Garikai Chaunza, Edgar Gweshe, Chris Mahove, James Jemwa and Khumbulani Zamchiya were arrested and detained for six hours at Harare Central Police Station. They were arrested while covering a demonstration against Vice President Phelekezela Mphoko's stay at the Rainbow Towers, Released without charges.

6 July
Alpha Media Holdings journalists Elias Mambo, Tafafdzwa Ufumeli, Richard Chidza and freelance journalist Godwin Mangudya were briefly detained at Marimba Police Station while covering protests in the high density suburb of Mufakose. They were released after being ordered to delete images of the protests.

11 August
Senior reporter with *NewsDay*, Richard Chidza was questioned by the police in connection with the source of a communiqué issued by Zimbabwe's war veterans denouncing President Mugabe as a dictator.

24 August
Freelance journalist Tendai Mandimika was arrested and detained while covering a march by opposition MDC-T youths in Harare. He was charged with public violence.

25 August
NewsDay reporter Obey Manayiti and freelance journalist Robert Tapfumaneyi were briefly detained by the police while covering a

Zimbabwe 2016 violations & victories

demonstration by church leaders in Harare.

26 August
Freelance journalist James Jemwa was arrested, detained and charged with public violence while covering protests in Harare.

31 August
Photojournalist Crispen Ndlovu was assaulted, arrested, detained and charged with public nuisance for taking pictures of the police as they reportedly assaulted Bulawayo Youths Arise spokesperson Alfred Dzirutwe during proyests in Bulawayo.

THREATENED



7 January
George Charamba, Permanent Secretary from the Ministry Media, Information and Broadcasting Services, threatened the private media against reporting on the security sector and dabbling in the Zanu PF's internal wars.

14 February
Anywhere Mutambudzi, Director of Urban Communications with the Ministry of Media, Information and Broadcasting Services threatened to clamp down on Community Radio Initiatives (CRIs) accusing them of being donor funded and operating illegally.

3 April
President Robert Mugabe threatened to introduce Chinese style internet censorship in Zimbabwe to stop abuse of the internet.

BANNED/CENSORED BARRED



12 February
The High Court barred the media from covering proceedings in the case of four men including two soldiers charged with plotting to bomb President Robert Mugabe's dairy farm.

10 March
The Censorship Board banned a documentary, Democrats, narrating the constitution making progress in Zimbabwe. The board alleged the film was unfit for viewership.

PUBLIC FREEDOM OF EXPRESSION



12 April
Sylvanos Mudzvova arrested outside the Parliament of Zimbabwe where he wanted to stage a one-man play titled: *Missing Diamonds, I Need My Share* following President Robert Mugabe's statement that $15 billion in diamonds revenue had gone missing from mining activities in the Marange district of Manicaland Province.

10 June
Evangelical Fellowship of Zimbabwe leader, Shingi Munyeza was questioned by the police following his comments on social media on the proposed introduction of bond notes by the Reserve Bank of Zimbabwe.

6 July
WhatsApp went down briefly in the wake of a strike by government workers.

27 July
War Veterans leader Douglas Mahiya was arrested on charges of insulting the Office of the President, after allegedly issuing an unsigned communiqué accusing President Mugabe of running down the country, making genocidal remarks and dictatorial statements.

LEGISLATED



12 January
Chris Mushowe, Minister of Media, Information and Broadcasting Services had urged the Broadcasting Authority of Zimbabwe (BAZ) to draft a bill to deal with private radio stations broadcasting from outside the country, saying Zimbabwe's airways should not be invaded by foreign based stations when the country has capacity to 'protect its territory'.

11 April
Government was reported as drawing up legal and policy instruments to govern Information Communication Technologies (ICTs) saying the measures are meant to protect citizens' rights following a surge in social media abuse through propagation odf falsehoods, defamation, character assassination and national security threats.

ARSON



24 August
Zimbabwe Broadcasting Corporation vehicle was torched in Harare central business district during march by MDC-T youths marking the launch of a campaign dubbed #My Zimbabwe.

ASSAULTED



25 January
Zimbabwe Broadcasting Corporation news crew, Francis Nyamutsamba and Vivian Bangamu, Dynamos coach Paulo Silva manhandled cameraperson Bangamu and sprained her wrist demanding she deletes footage she had captured in her camera while covering Dynamos' training session at Prince Edward grounds in Harare. The crew was ordered not to cover the club's training session.

19 June
Standard journalist, Albert Masaka was assaulted by ruling Zanu PF youths who were reportedly on the rampage in Harare's dormitory town of Chitungwiza.

27 July
Daily News journalist, Mugove Tafirenyika was assaulted by Zanu PF supporters while covering a meeting at the party headquarters in Harare.

3 August
Journalists Lawrence Chimunhu, Haru Mutasa, Tsvangirai Mukwazhi, Christopher Mahove, Tendai Musiya, Bridget Mananavire and Imelda Mhetu were assaulted by riot police while covering demonstrations against the government's plans to introduce bond notes.

24 August
Freelance journalist, Lucy Yasin was assaulted by riot police while covering a march by opposition MDC-T youths in Harare.

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 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

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 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

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-SecretaryGeneral 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, oneparty 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 duties, 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.

We 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 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;

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. 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 accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one-sided reporting and programming in regard to religion, political belief, culture, race and gender.

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 broad casters 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 broad casters should be made accessible to all broad casters 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' Eights;

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 prove 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 wrong-doing 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 People's 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 informationbased 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 Region (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 election 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 orbbroadcast 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 disabilities, 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 association, 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 addressing 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, stability 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.


FRIEDRICH
EBERT
STIFTUNG
fesmedia Africa