

ARTICLE 19's Submission to the UN Universal Periodic Review of The Republic of Zambia

14th Session of the Working Group of the Human Rights Council, October-November 2012

Executive summary

1. ARTICLE 19: Global Campaign for Free Expression is a non-governmental human rights organisation that works globally to promote and protect freedom of expression and information. ARTICLE 19 has observer status with ECOSOC. With this submission, ARTICLE 19 seeks to make a constructive contribution to the preparation process of the second cycle of the UPR for the Republic of Zambia. Given the expertise of ARTICLE 19, this submission focuses on Zambia's compliance with its international obligations in respect of freedom of expression.
2. ARTICLE 19 notes that during the first UPR cycle, the Zambian Government received a number of recommendations related to freedom of expression issues. Specifically, the Government was asked to consider taking steps to change the Defamation Act in the Criminal Code and to swiftly adopt its bill on freedom of information. Although the Government has not responded to these recommendations during the first UPR cycle review, this submission addresses the progress, or the lack of, on these issues. In addition, it provides further information on the developments since the first cycle, including:
 - the use of **restrictive legislation** to suppress freedom of expression,
 - incidents of **violence and harassment** against journalists and human rights defenders,
 - **media independence and censorship**,
 - restrictions on the **right to association** and
 - right to **peaceful protest**.

Legislation restricting freedom of expression

3. ARTICLE 19 is concerned about a number of restrictive provisions, in particularly those in the current Constitution and criminal law that are being used to suppress freedom of expression. In particular:
 - **Section 57** of the Penal Code gives wide discretionary powers to prosecute "seditious intention". This has, in effect, prohibited many activities that instrumental to a healthy democracy. For example, in 17 January 2011, for example, Mwala Kalaluka of *The Post* newspaper was charged with seditious intention and assistant station manager Nyambe Muyumbana was charged with the publication of seditious material while covering a secessionist movement in the west of the country. :
 - **Section 69** of the Penal Code provides for the protection of the President's reputation and the dignity of his office by ensuring that 'any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence' and liable for up to three years in prison. Since the section does not define what "defamatory" or "insulting" means in this context, this is amenable to a number of ordinary democratic activities. For example, bringing a case under this section, on 27 September 2008, for example, when President Rupiah Banda won an injunction restraining against *The Post* newspaper and any of its agents from publishing "defamatory" language against him.

- **Section 71** of the Penal Code makes it an offence for any person ‘without justification or excuse as would be deemed sufficient in the case of defamation of a private person’, to publish anything that has the effect of degrading, reviling or exposing ‘to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb the peace and friendship between Zambia and the country to which such prince, potentate, ambassador or dignitary belongs’.
 - **Section 116A** of the Penal Code deals with contempt of court. This has been criticised by the African Union’s Special Rapporteur on Freedom of Expression, Pansy Tlakula, as being incompatible with regional and international standards. This section was used on June 04 to sentence the editor of *The Post*, Fred M’mbembe, to four months’ hard labour for an article in which he criticised the prosecution of Chansa Kabwela and the decision of President Banda to order it. He was eventually released four days later following pressure from Pansy Tlakula, among others.
 - **Section 177(1)** of the Penal Code deals with ‘obscene matters or things’ and makes a person, if convicted, liable to imprisonment for five years. This offence includes making or being in possession of indecent writings or pictures tending to corrupt morals. This is again left without any definition or defence, making it easily open to abuse. In June 2009, for example, news editor Chansa Kabwela was charged under this section and sentenced to four months hard labour after she sent photographs of a woman giving birth in the street during a health workers’ strike to Zambia’s Vice-President, Health Minister, and various ministers in their departments to highlight an ongoing health-sector crisis (the baby later died of suffocation). Despite the fact that these photos were never published in a newspaper or otherwise distributed to the public at large, Kabwela was charged with “distributing obscene photos likely to corrupt public morals.
4. Other problematic laws include the archaic State Security Act of 1969. Since peace generally now prevails in the sub-region, the stringent nature of the law now seems unwarranted. The severity of the penalty under the Act (no less than 20 years) coupled with the broad framing of the offence (any person who gathers or publishes any document which *might* be intended to be directly or *indirectly* useful to a foreign power shall be guilty of espionage) has, for example, made civil servants reluctant to provide information about government operation to journalists. Section 9 of the Anti-Terrorism Act of 2007, meanwhile, makes anyone who collects, possesses or transmits information “of a kind likely to be useful to a person committing or preparing an act of terrorism,” liable for 10 to 20 years in prison. Finally, Section 19 of the National Assembly Act makes it an offence punishable by up to three months imprisonment to show disrespect in speech or manner towards the Speaker, or to commit any other act of intentional disrespect to or with reference to the proceedings of the Assembly. These provisions are all anathema to a healthy democracy and must either be repealed or fundamentally reviewed as soon as possible.
 5. The legal instrument most commonly used to stifle freedom of expression in Zambia is criminal defamation. Sections 191 to 198 of Zambia’s Penal Code provide the definition of defamation and extend rights of reputation to the dead. ARTICLE 19 is concerned that, not only these provisions are incompatible with international standards on freedom of speech, they are also being used to harass and intimidate journalists and to punish legitimate criticism of governmental figures. The possibility this allows for abuse was made clear by the case of Darius Mukuka, who was sentenced to 18 months in prison with hard labour under Section 69 of the Penal Code (“Defamation of the President”) on March 17 2010. Mukuka had been having a drink in a bar when an item concerning the President had come on the evening news. He had then referred to him by a derogatory Bemba epithet and expressed his opinion that the President was “lying to people” and “failing to govern the

nation.” Two months later Mukuka was pardoned by the President, but the broad provisions in the penal code which allow for arrests such as these remain.

Media independence and censorship

6. The government remains the dominant proprietor of media in Zambia. It continues to control the *Zambia Daily Mail* and the *Times of Zambia* which, along with the state-run Zambia National Broadcasting Corporation’s radio and television services, have the deepest and broadest penetration countrywide. These media providers are rarely critical of the government or of the governing, and with content being reviewed prior to publication, many journalists who work for state-run outlets routinely practice self-censorship.
7. While there are a growing number of private radio and television stations which broadcast freely alongside state-owned outlets, the Government has continued to use a number of means to impose control over these stations. This has included:
 - The use of police raids, such as the 17 June 2009 raid on Mobi TV: the officers, producing or warrant, demanded a copy of the live programme “Meet your MP”. This had featured commentary by outspoken opposition MP Chishimba Kambwili on the controversial reappointment of a former minister to the Education Ministry.
 - Official threats against outlets, such as that issued against *Sky FM* on 16 June 2010: the Ministry of Information instructed the station to put in writing its commitment to desist from running statements that had the potential to incite breaches of peace, and to submit it to the Ministry in 48 hours or face the revocation of its license.
 - The use of injunctions, such as that issued by the Attorney General in September 2011 on three privately-owned media houses, banning them from “printing, publishing, running or carrying speculative stories on the tripartite election results held on 20th September, 2011.”. The AG claimed he had heard reports that the papers were ‘letting out unconfirmed election results’ and that such reports could have ‘fuelled violence’ in the country. However, the only results that had been released were early results published by the Electoral Commission of Zambia.
 - The closure of phone-in programmes and the confiscation of their equipment for inciting violence, such as the closure of Radio Lyambai on January 18 2011, following the broadcasting of an advertisement for a banned meeting about the Barotse Agreement. The station’s managers subsequently went into hiding.

Violence and harassment of journalists and human rights defenders

8. Violence and intimidation of journalists and human rights defenders has become increasingly common in Zambia, creating a pervasive culture of self-censorship. Both media workers and listeners, via phone-in programmes (which the government has threatened to shut down), are apprehensive about expressing themselves for fear of victimisation. Some radio stations, especially those based in Lusaka, have moved away from phone-in programmes as a result of government intimidation.
9. ARTICLE 19 notes with concern that staff at the *Post*, the largest privately owned newspaper in Zambia - had frequently been singled out as targets of attacks. Many attacks have been attributed to supporters of the ruling parties, and in November 2010 a youth wing leader of the then ruling Movement for Multi-Party Democracy (MMD) party was convicted in connection with two assaults. Other assaults, meanwhile, have been perpetrated by public and state security officers. In 2009 at least seven attacks were recorded against *Post* employees, including:
 - On 29 July supporters of the MMD attacked journalists at Lusaka International Airport. The assailants hit reporter Chibaula Silwamba, who was there to cover President Banda’s arrival from neighbouring Uganda, several times in the stomach when they

recognised him as an employee of *The Post*, forcing him to leave. Three other journalists who had gone to cover the departure of the Zambian football team to Sudan were also attacked by the same group.

- On 06 February a group of 11 plainclothes police officers beat, pepper-sprayed, and detained *Post* photographer Abel Mambwe alongside reporter Mutana Chanda, after he photographed the police in question assaulting an unlicensed taxi driver.
- On 28 February supporters of the MMD assaulted *Post* photojournalist Thomas Nsama at Chipata International Airport, where Nsama had gone to cover the arrival of Jacob Zuma. The assailants threatened to "sort him out" if he did not leave. When he refused they beat him and threatened to kill him because he was from the *Post*.

10. While the government has generally tried to distance itself from these attacks, there was an implicit threat of future assaults when Information Minister Ronnie Shikapwasha declared at a May 2009 press conference that *'The Post newspaper is reaping what it sowed because you cannot have a newspaper that reports negatively about the republican president most of the time'*. Government sources have, meanwhile, frequently harassed members of the *Post* and other papers: in January 2011, for example, reporter George Zulu had a recording device taken away and the information erased by a government official in Kalomo, after Zulu attempted to record an event to which the private media had not been invited.

Restrictions on the right to association

11. Legislation passed in August 2009 requires all NGOs to register every five years and to supply annual reports on their activities, accounts, and sources of funding, along with the personal assets of their officials. Registration can be denied in the public interest, which is not defined in the law. A government-dominated NGO Registration board, meanwhile, has broadly-defined powers to influence NGO operations through a "code of conduct", with suspension or deregistration non-compliance.
12. The new law is particularly worrying in light of recent attempts to silence NGO critics through registration. The Southern Africa Centre for the Constructive Resolution of Disputes (SACCORD), for example - a persistent critic of abuses of power - was deregistered in 2010 after losing a 6 year legal battle, on the basis that it was "dangerous to State security."

Right to peaceful protest

13. While protected by the constitution and by the law, various regulations are applied to restrict the right to protest in practice and police are quick to use force against unauthorised or unruly public gatherings. *De facto* permits for rallies or demonstrations are required in the form of seven-day police notification under the Public Order Act, and the arbitrary reasons sometimes given for denial suggest that these are normally politically motivated.
14. Other more mundane laws have been deployed politically to restrict protest. For example nine people, including opposition MPs Jean Kapata and Mumbi Phiri, were detained for five days in October 2009 after noisily protesting the dismissal of corruption charges against former president Chiluba. The protesters were charged with unnecessarily sounding their horns under the Road Traffic Act, as well as disorderly conduct.

Freedom of information

15. While freedom of information is mentioned as an ancillary of freedom of expression in Article 20(1) of the current Constitution, there is no independent guarantee enshrined in the 1992 constitution. ARTICLE 19 was profoundly disappointed therefore by the decision of the NCC to remove a right to information clause in the draft constitution. While the wording of this clause left wide room for interpretation, it codified an important principle of open governance which has been repeatedly acknowledged by international and regional human rights instruments.

16. ARTICLE 19 was pleased to note that on 23 February 2012 Fackson Shamenda, the Minister of Information, Broadcasting and Labour, announced that Zambia's Freedom of Information (FOI) Bill would be tabled in Parliament by July of this year. Proposals to introduce such legislation have been under discussion and consideration since 2001, and the new NPP government had pledged to implement the FOI Bill soon after coming to power in September. However, on March 21 2012 President Michael Sata appeared to backtrack on this commitment, saying that it would be immature for the government to introduce and enact the FOI Bill since many people in rural areas are not yet sensitised on the matter.

Recommendations

17. Given these ARTICLE 19 calls on the Human Rights Council to urge the Zambia Government to:

- Ensure that the new Constitution of Zambia guarantees the right to freedom of expression and freedom of information fully in line with international standards;
- Repeal laws that unduly limit freedom of expression, in particular the provisions of the Penal Code on sedition, disaffection, and obscenity, and end the special legislative protection given to the reputations of the President and Speaker of the Parliament and give full recognition to the principle that public figures must tolerate a greater degree of criticism than ordinary citizens;
- Amend the law on contempt of court to bring it in line with international standards on freedom of expression;
- Amend the State Security Act and the Anti-Terrorism Act to comply with international standards on freedom of expression.
- Effectively and speedily investigate the attacks against the freedom of media and ensure that perpetrators are brought to justice;
- Repeal the restrictive NGO registration requirements passed in 2009;
- Reform the law to protect against the arbitrary denials of rally permits;
- Provide constitutional guarantees for the protection of freedom of information and pass comprehensive freedom of information legislation without delay.