



FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

OVERVIEW AND CONCLUSIONS ON THE ZAMBIAN SITUATION REGARDING THE UPCOMING ELECTIONS. (December 2006)

Background

Zambia held its last election in 2001. The next elections are expected to be held in December 2006. The date however is yet to be declared by the President. According to the Electoral Act 2006 this has to be done no later than 90 days from the date of the dissolution of Parliament.

Under the new law, the Electoral Commission of Zambia has been empowered to postpone the polling day for an election provided the commission is satisfied that such an act is necessary to ensure a free and fair election. Transparent ballot boxes are to be used during this year's general elections and new voter's cards are to be computerised and contain a photograph and the national registration card number of the holder.

The new law emphasises the need for candidates and their political parties to have their campaign propaganda reported in all public media in a fair and balanced manner.

Zambia has been a multi party democracy since 1991 and the constitution, recognises and protects freedom of expression, free and fair elections, and allowing the creation of an autonomous Electoral Commission. However, Freedom of expression and other basic rights have not been effectively protected by the Zambian government.

Zambian legislation limits freedom of expression and information especially through criminal defamation and insult laws that infringe on the expression of independent and critic views. Despite the coming into effect in December 2003 of the IBA and ZNBC Acts, which set up independent boards for the regulator and national broadcaster, they have not yet been fully implemented. To date therefore the regulation of broadcasting and the national broadcaster are still under the direct control and influence of the Minister of Information.

The existence of independent newspapers and broadcasters is negated by the government use of. The powerful state-owned media that includes ZNBC radio and television, three newspapers (Zambia Daily Mail, Times of Zambia, Sunday Times of Zambia) and of the news agency (Zambia News Agency: ZANA).

There are also increasing calls for freedom of information legislation to be passed before the upcoming elections. However a draft bill submitted in 2002 has been shelved by the government. In late 2005 recommendations from the Constitutional Review Commission, that proposed provisions on freedom of information as well as to

provide for freedom of all electronic and print media from interference, protect journalists from interference and protect journalists from disclosing their sources, was rejected by government.

Relevant Legislation

Defamation Act 1964 [restricts freedom of expression, among other things by criminalizing defamation]

State Security Act 1969 [limits free speech and media freedom -in the name of state security-, restricting the possibility to criticize the government and officials]

Telecommunication Act 1994 [establishes an authority which administrates radio frequency spectrum. However, the authority which finally approves licenses remains the Minister of Information and Broadcasting Services]

Electoral Commission Act 1996 [rules the Electoral Commission of Zambia established by the 1991 constitution, describes its functions and the presidential appointment of its members]

ZNBC Amendment Act 2002 [restructures the state-run company into a public service broadcaster, independently ruled. This act has not been implemented and the matter is before the courts, as of May 2005].

Independent Broadcasting Authority Act 2002 [sets up an independent regulatory body for broadcasting. This act has not been implemented, lengthening a state control on media. The matter is before the courts, as of May 2005].

Electoral Act 2006 [is controversial especially in allowing the president to decide of the date of election].

ARTICLE 19 Recommendations to the Zambian Government

- Stop immediately its attacks against independent journalists and media, including the use of criminal defamation and false news provisions that violate international standards on freedom of expression.
- Investigate and prosecute all acts of violence, intimidation or harassment directed against media personnel, or any act of destruction of the property or premises of a media outlet, particularly where there is any reason to believe that the act was motivated by an intent to interfere with media freedom, and to bring those responsible to justice.
- Repeal any laws that limit freedom of expression in breach of international law and standards, especially the Defamation and State Security Acts.
- Fully implement the ZNBC Amendment Act and the Independent Broadcasting Authority Act. Opening television airwaves, transforming state-run media into public service broadcasters and ensuring an independent monitoring of media are necessary steps to allow for the full expression of all voices in Zambia.
- Review the appointment procedure of members of the Electoral Commission of Zambia to ensure the body's independence from the government.
- Create, implement and promote access to information legislation and administrative measures to enhance the transparency of public administration and minimize official secrecy.
- Issue a clear statement to the public and private media that all media are encouraged to broadcast election-related programmes, and that the media will not be penalized in any way for broadcasting programmes merely because they are critical of the government, its policies or the ruling party.
- Introduce regulation to entrust the Electoral Commission of Zambia during the election period with deciding complaints that media coverage violated the general laws, including laws against defamation and incitement to hatred or violence. This body should be empowered to order a right of reply, correction or retraction, and its decisions should be subject to review by the courts.