



The State of Press Freedom in Southern Africa

2019/2020



Published by MISA Zimbabwe





Namibian journalists demonstrate in Windhoek to commemorate the International Day to End Impunity for Crimes against Journalists on November 2, 2020
CREDIT: NAMIBIA MEDIA TRUST

This document is based on country reports for Angola, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, Tanzania, Zambia and Zimbabwe. The country reports were commissioned by MISA Zimbabwe.

March 2021

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COVER PHOTO: Photojournalist Ruvimbo Muchenje gets into the back of a police pick-up truck over a face mask offence in April 2020.

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IMAGES: With special thanks to Idah Mhetu, Namibia Media Trust, Joel Konopo, Shepherd Tozvireva, CPJ, Independent News, Canal De Mozambique, The Economist and Lusaka Times for the use of images throughout the report. The pictures are accessed under a Creative Commons Licence and are acknowledged as such through this report.

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ENABLING A FREE, INDEPENDENT PLURALISTIC MEDIA

Journalists remain the major drivers and vehicles for advancing access to development information for the achievement of Agenda 2030 and AU Agenda 2063 ⁽¹⁾ (The Africa we want) ⁽²⁾.

AU Agenda 2063 sync with the 2014 Bali Road Map which advocated for the roles of the media in realising the future we want for all, The Bali Road Map ⁽³⁾ further recognised that peace and sustainable development increasingly depends on the participation of informed people, which requires a free flow of information and knowledge, and that this in turn depends on freedom of expression on all media platforms; the Road Map also affirmed the potential role of the media in underpinning how a country shapes development, sharing ideas and innovations, and holding powerful actors to account.

The Road Map further stresses that this can only be realised where the media is free, pluralistic and independent and where there is safety for actors producing journalism.

In Southern Africa, SADC's Vision for 2050 is for the Community to remain a peaceful and

stable region, enabling the further prioritisation, pursuit, and achievement of its objectives of socio-economic development, poverty eradication, and regional integration ⁽⁴⁾.

A free and secure media is needed to support the region in the provision of access to information for socio-economic development, poverty eradication, and regional integration.

MISA Zimbabwe reaffirms the crucial role of the media for the SDGs, Agenda 2063 and sustainable development.

Access to information is a fundamental right to free expression in Africa as in other parts of the world.

However, the safety of journalists and media workers continues to be a huge challenge with increasing reports of attacks such as arbitrary arrest and detention, jailing, physical assault, crippling fines, use of or introduction of laws that are inimical to freedom of expression and even killings, which are used as weapons to silence critical journalism in many countries around the world.

Through the Southern Africa Press Freedom Report, MISA Zimbabwe is presenting highlights of violations against journalists and media workers in line with SDG Goals 16.10.1 and 16.10.2.



SECTION 1: OVERVIEW AND ASSESSMENT

introduction

A VIBRANT and critical media is the hallmark of any democratic society. To achieve its fundamental watchdog role of holding those in power accountable, providing reliable information to the public and facilitating debate among citizens on issues of public importance, including democratic processes, the state must uphold and guarantee freedom of expression and access to information rights which enable journalists to do their work.

However, the landscape and operational environment for the media in Southern Africa has been characterised by upheavals, accentuated by the Covid-19 pandemic and the advent of the digital age, which have threatened the viability and sustainability of the media.

Many of the countries still possess obsolete legal and policy frameworks that unnecessarily hinder the work of journalists and media practitioners, despite having constitutional guarantees on freedom of expression, media freedom and access to information.

This has further been punctuated by physical and verbal attacks, harassment and assault of journalists and in some cases raiding of media houses.

REGIONAL AND INTERNATIONAL STANDARDS

In November 2019, the African Commission on Human and Peoples' Rights (the African Commission) adopted the Declaration of Principles of Freedom of Expression and Access to Information in Africa ⁽¹⁾ to safeguard the rights to freedom of expression and access to information as guaranteed under Article 9 of the African Charter. These Principles repealed the 2002 Declaration on freedom of expression which had become inadequate in so far as expounding on digital rights and the right to access information.

The Declaration expansively sets out and promotes principles on freedom of expression, access to information and internet rights in Africa, adopting international standards under Article 19 of the Universal Declaration on Human Rights and article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provide for the right to freedom of expression and access



to information, including the parameters of restriction. In particular, Article 19 of the ICCPR provides for everyone's right to freedom of opinion and the right to freedom of expression; and this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice ⁽²⁾. The article further introduces limitations under which these



MISA Lesotho chairperson
Nkoale Detsi Tsoana and
former chairperson Boitumelo
Koloi address a press con-
ference on LCA broadcasting
regulations
CREDIT: SECHABA MOKHETI

rights may be restricted only as provided by law and are necessary: a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals. ⁽³⁾

The Declaration establishes standards under which the rights to freedom of expression and access to information, both online and offline, should be enjoyed and the limitations therein,

drawing from international standards and best practices. Principle 1 emphasises the importance of freedom of expression and access to information as fundamental, crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights. Principle 2 provides for non-interference with freedom of opinion, Principle 3 sets out the standards on non-discrimination, Principle 5 lays out the



Photographers scramble to take a picture of investigative journalist Hopewell Chin'ono and opposition leader Job Sikhala at Harare Magistrates Court in August 2020
CREDIT: SHEPHERD TOZVIREVA

extent of protection of the rights to freedom of expression and access to information online and offline, while Principle 7 calls on states to take specific measures to address the needs of marginalised groups in a manner that guarantees the full enjoyment of their rights to freedom of expression and access to information. Further, the Declaration lays out justifiable limitations under Principle 9, and provides for media independence in Principle 12.

The Declaration also provides for standards on protection of journalists and other media practitioners under Principle 19, the safety of journalists and other media practitioners under Principle 20, protection of reputations in Principle 21, the right of access to information and procedures therein in Principles 26-36, access to the internet in Principle 37-39, privacy and the protection of personal information in Principle 40 and privacy and communication surveillance under Principle 41, among others, which we will apply to assess the frameworks on freedom of expression and access to information in Angola, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Tanzania, Namibia, Zambia and Zimbabwe.

Further, this report also makes reference, where practicable, to the United Nations' Sustainable Development Goal 16, specifically

target 16.10: on ensuring public access to information and protection of fundamental freedoms, in accordance with national legislation and international agreements. Indicator 16.10.2 records the number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information. ⁽⁴⁾ In the Southern African region Botswana, Eswatini, Lesotho, Namibia and Tanzania are yet to enact access to information laws.

FREEDOM OF EXPRESSION, LEGAL AND POLITICAL LANDSCAPE

There is a plethora of laws inimical to freedom of expression, access to information and media freedom in force in the countries under review. Most countries still have legal and policy frameworks that limit the media's mandate.

In 2017, **Angola's** legislature enacted a bundle of laws, dubbed the Social Communication Legislative Package, 2017, as amended, including the Broadcast Law, Television Law, Journalist Code of Conduct and the Press Law, aimed at advancing media freedom and freedom of expression.

The bundle of laws establishes the Social

Communication Regulatory Body (ERCA), which regulates journalists' conduct and investigates producers of online content without judicial oversight. The body is also mandated to suspend or ban websites that fail to abide by "good standards of journalism".

In addition, publication of hate speech, defamatory material and false news are offences. Angola's private media outlets are owned by high ranking state officials, thereby acting as the government's mouthpiece, and making it difficult to do critical reporting against the state. Despite this, there have been no known incidents of the government blocking or filtering online content during the reporting period.

Eswatini, formerly Swaziland, is an absolute monarchy.

In their 2013 report on the state of press freedom, the Committee to Protect Journalists reported that South African newspapers entering the country are thoroughly screened for information negatively depicting the king and if found, all copies are purchased by the government and destroyed.

The country has two newspapers; the *Eswatini Observer* (formerly *Swazi Observer*), indirectly owned by the king, while the *Times of Swaziland* is privately owned, but reported to be linked to the kingdom.

The country has approximately 32 laws that are restrictive to the media, like the Swaziland Television Authority Act 1983, Proscribed Publications Act 1968, Obscene Publications Act 1927, Books and Newspaper Act 1963 which regulates the registration of newspapers, Official Secrets Act 1968, Cinematograph Act 1920, and the Sedition and Subversive Activities Act 1938, which provides for the suppression of sedition and seditious publications and criminalises criticising the king or any member of the royal family.

The Computer Crime and Cybercrime Bill of 2020, if passed into law, will further criminalise publication of "fake news" that damages the country's image, with liability of a fine of up to 10 million SZL (about US\$620 000) or 10 years in prison. In September 2020, Mangqoba Khumalo, Minister of Commerce, Industry and Trade, stated that the law is not aimed at curtailing media freedoms, but protecting people online using globally benchmarked controls around the digital space ⁽⁵⁾.

In **Lesotho**, section 10(1) of the Printing and Publishing Act of 1967 makes it an offence to import, print, publish, sell, offer for sale, distribute, or reproduce statements which pose a danger to "public safety" and "public order".

The Official Secrets Act of 1967 also criminalises communication of information of "prohibited places" under section 4, while section 34 of the Internal Security (General) Act of 1984 punishes publications "that might reasonably be expected to result in the commission of public violence." The 1938 colonial Sedition Proclamation further criminalises in an overly broad manner the publication of seditious material.

At the start of 2020, Lesotho's *Informative* newspaper was fined heavily by the High Court in a default ruling against it in a defamation case over the Defence Director in a row over property.

In **Malawi**, 2019 was characterised by protests against the Electoral Commission for mismanaging the Presidential Elections. Here, we saw both the Constitutional and Supreme Courts recognising the importance of the media as an actor in the justice system, by allowing, for the first time, live coverage of the 2019 Presidential Elections petitions by mainstream national radio outlets. This bolstered the principle of open justice, and set a precedent, appreciating the media's role in covering and reporting judicial processes for the citizens.

Malawi, however, still has laws like 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, which have been used to hinder the work of journalists and to silence critics. In 2019, Bon Kalindo, a former Member of Parliament was arrested under the Protected Flags, Emblems and Names Act for allegedly insulting the then President, Peter Mutharika.

In terms of plurality, it is reported that Malawi has about 90 media outlets. The public



Police arrest photojournalist Santos Samu-esecca while he was covering an anti-government protest in the Angolan capital, Luanda, on October 24, 2020
CREDIT: CPJ



Lesotho journalists on duty
CREDIT: SECHABA MOKHETI

broadcaster, *Malawi Broadcasting Corporation*, is accused of being a mouthpiece of the state and of biased reporting ⁽⁶⁾. The media fraternity and the public, however, remain hopeful that President Lazarus Chakwera's political regime that came into power in 2020 will positively transform the public broadcaster.

Mozambique on the other hand has seen conflicts in the central and northern parts of the country, while the state of the media deteriorated due to arbitrary detentions, assaults, threats against journalists, and media break-ins, attributed to coverage of the conflict ⁽⁷⁾. Notably, two journalists Amade Abubacar and Germano Adriano were detained in January and February 2019 respectively for allegedly reporting on the conflict in Cabo Delgado province. Journalist Fernando Banze was charged and prosecuted for defaming the president for publishing a letter criticising the president.

In April 2020, journalist Ibraimo Mbaruco disappeared and has not been seen since. His last text message to colleagues was that he had been surrounded by soldiers.

In **Tanzania**, free expression and media

freedom have been on a decline as a result of the restrictive legal and policy framework ⁽⁸⁾. The enactment and implementation of several laws including the Media Services Act of 2016; Cyber Crimes Act and Statistics Act of 2015; and regulations such as the Electronic and Postal Communications Act's online and offline regulations create unfavorable conditions for journalists and media to freely exercise their obligations.

The media and journalists have been under constant attacks by powerful individuals and institutions because of their work ⁽⁹⁾. Suspension of newspapers; imposition of fines on radio and television stations; journalists' arrest and arbitrary detention; closure of online media; and verbal and written warnings issued to media and journalists have characterized the industry.

On 21 October 2020, the Tanzania Communications Regulatory Authority issued a directive suspending bulk short messaging (SMS) and bulk voice calling services from 24 October to 11 November 2020, citing the "adverse" impact they might have on the general elections. Internet throttling and social media censorship in the run-up to the elections were reported.



In 2020, Tanzania also introduced regulations barring local media from broadcasting content from foreign media without government permission. Harrison Mwakyembe, the Information Minister, argued that the government only wanted to know which stations in Tanzania have partnered with foreign media to air content, and that the regulations are not aimed at banning foreign media.

The Tanzania Communications Regulatory Authority sternly warned *Radio Free Africa*, a local radio station based in Mwanza region, for “not being balanced” while broadcasting an interview from the *BBC Swahili* service with opposition presidential candidate Tundu Lissu.

Namibia has for several years been praised for its progressive attitude towards upholding the rights to freedom of expression and media freedom, allowing journalists to freely practice their trade. This has put it at the fore in Africa’s rankings. Despite the state’s goodwill in guaranteeing these rights, residual restrictive laws inherited from the apartheid era are still in operation: the Official Secrets Act which gags the public from accessing information considered as secret by the state;

the Protection of Information Act (1982) and the Communications Act of 2009 which block government officials from giving information to journalists and allow for invasive communications surveillance; the Broadcasting Act (No. 9 of 1991) which grants the information minister wide discretionary powers to interfere with the state broadcaster’s editorial independence; and the Public Service Act (No. 13 of 1995 as amended), prohibiting civil servants from disclosing any information without the permanent secretary’s prior permission. The country awaits the passing of the Access to Information Bill of 2020 into law, which will ease media access to government information in the public interest.

Physical attacks on journalists are rare in Namibia, however, a spate of verbal attacks occurred, especially during coverage of contentious issues like elections and corruption ⁽¹⁰⁾. In 2019, in the run-up to the elections in November, Vita Angola, a freelance journalist had his licence cancelled by the state-owned *Namibian Press Agency (NAMPA)*, after he participated in a TV talk-show discussing corruption. In 2020, further intimidation, harassment from security agencies and verbal altercations from politicians have been reported.

Edward Mumbuu, a journalist at *NAMPA*, was referred to as a “disparager” by President Hage Geingob for asking a “difficult question about the president’s associates” unrelated to Covid-19 during a presser. Unfortunately, the management of *NAMPA*, instead of defending him, distanced itself from the journalist and his questions.

During the reporting period, **Zambia** has been facing acute electricity outages of up to twelve hours a day, which have reportedly had a dire effect on media operations and increased the cost of production. The state has, however, been advocating for journalism to be recognised as a profession and this led to a widely consultative process by the media which culminated in the Zambia Media Council (ZAMEC) Draft Bill, 2019, establishing and recognising the Zambia Media Council as the only media self-regulatory body in the country. The Bill, which was submitted to the Ministry of Information and Broadcasting Services, is viewed as a positive step towards professionalising the journalism industry and developing the media sector.

Zambia is, however, not devoid of media attacks. The law on defaming the president has been severally applied to gag the public from criticising the head of state. Martin Akende, the manager of *Millennium* radio station, was called to testify in a case of defamation of the President, following alleged defamatory remarks by a caller on one of the station’s programmes.

In February 2019, Frank Mwale, a Patriotic Front cadre attacked Grace Lungu, a *Breeze FM* journalist together with her driver during the Mkomba Ward by-election. In a positive outcome, the Lundazi Magistrate Court sentenced the perpetrator to two years in jail, as a deterrent to other perpetrators of political violence against journalists.

In January 2019, after the government in **Zimbabwe** announced a 150% hike in fuel prices, national protests broke out against the economic injustices. The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clement Nyaletsossi Voule, stated in his 2019 report on Zimbabwe that at least 843 people were detained and about 1,055 persons charged and tried for several protest related offences.

Civic space continues to shrink, with the arrest, destruction of media tools, blockage from accessing news scenes, harassment and arbitrary prosecutions of journalists while carrying out their duties.

Zimbabwe currently ranks 126 out of 180 countries assessed globally by the Reporters without Borders Press Index, a reflection of a hostile operational environment for journalists and freedom of expression in general.

This is ironic, given the fact that Zimbabwe is surrounded by countries like Namibia, South Africa and Botswana which are among the highest ranking in the world in terms of facilitating the enjoyment of media freedoms and freedom of expression.

A myriad of laws go against constitutional and international standards on freedom of expression, media freedom, access to information and privacy, including the Censorship and Entertainment Controls Act, Official Secrets Act, sections of the Criminal Law (Codification and Reform) Act, Interception of Communications Act, among others.

These laws, with a bearing on citizens' right to free expression and media freedom, continue to exist at a time when the government is in the process of "reforming the media legal framework" through enacting new laws.

Currently, the Cybersecurity and Data Protection Bill, and the Zimbabwe Media Commission Bill are in motion. Regarding media plurality, in February 2020, the Broadcasting Authority of Zimbabwe called for six television licence applications, 10 community radio station licences and 19 campus radio licences.

ASSESSMENT

Principle 1 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa calls upon States Parties to the African Charter (States) to create an enabling environment for the exercise of freedom of expression and access to information, including by ensuring protection against acts or omissions of non-State actors that curtail the enjoyment of freedom of expression and access to information. The Declaration, under Principle 5 further provides for the protection of the rights to freedom of expression and access to information online and offline, in accordance to relevant international standards.

The Declaration guarantees freedom of expression, 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 or medium, including across frontiers, as a fundamental and inalienable human right and an indispensable component of democracy under Principle 10.

It also lays down, in Principle 9, parameters in which States may limit freedom of expression and access to information, if the limitation: is prescribed by law; serves a legitimate aim; and is a necessary and proportionate means to achieve the stated aim in a democratic society.

Most of the restrictions to freedom of expression and access to information highlighted in the aforementioned countries, may be prescribed by law, however, they fail to serve a legitimate purpose and to meet the necessity and proportionality test, as some have inappropriate sanctions including jail terms for publishing criminal defamation. In this regard, these laws are not in conformity with the Declaration.

ATTACKS ON JOURNALISTS AND THE MEDIA

In January 2020, **Angolan** journalists from *TV Palanka* and *Angola Catholic Radio* were detained by law enforcement for about two hours and their material destroyed while covering a protest.

In **Botswana**, the Directorate of Intelligence and Security Services (DISS) have been accused

eSwatini National
Police Commissioner,
William Tsintsibala
Dlamini
CREDIT: INDEPENDENT
NEWS



of harassing journalists. In July 2019, detectives investigating the former intelligence boss, Isaac Kgosi on allegations that he unlawfully revealed the identity of intelligence agents, raided the home of Tsaone Basimane Botlhe, a political reporter for *Mmegi* media house, confiscating all her computers and mobile phones. She was being investigated for allegedly receiving “pictures of DISS agents”, cautioned against informing her editor of the raid, and her colleagues threatened with arrest for visiting her home.

This incident was strongly condemned by the Botswana Media and Allied Workers Union (BOMAWU) who expressed their worry regarding continued harassment of journalists by law enforcement agencies.

In April 2020, the Committee to Protect Journalists appealed to **Eswatini** police to stop intimidating and harassing local journalists for reporting critically on King Mswati III and his government, following a police raid on the home and confiscation of three mobile phones, a laptop and work documents of Eugene Dube, the editor and publisher of the privately owned news website *Swati Newsweek*.

The National Police Commissioner, William Tsintsibala Dlamini stated that the police would come down hard on journalists writing negatively

about the monarch. Some of these journalists have fled to South Africa, including Zweli Martin Dlamini, who is on the police’s wanted list for his March 2020 reports that King Mswati III had contracted Covid-19 and was in self isolation, and other articles portraying the contrast between the king’s lavish lifestyle and that of the impoverished citizens.

In **Malawi**, MISA documented 20 attacks on journalists between 2019 and the first half of 2020, prompting the media organisation to write an open letter to then President Peter Mutharika and the Inspector General of Police, highlighting violations which threatened the media’s work, and calling for the adoption of measures to ensure safety and security for journalists.

The security incidents included the May 2020 attack by thugs on a vehicle that *Zodiak Broadcasting Station (ZBS)* and *Times Group* reporters were travelling in during the then Tonse Alliance running mate Saulos Chilima’s tour of Mulanje and Phalombe. Cameraperson Hezekiah Namonde of *ZBS* suffered hand injuries during the assault whilst reporters Emmanuel Chibwana of *ZBS* and Jameson Chauluka and Lazarus Nedi of *Times Group* escaped unhurt.

In the same month, another group of thugs assaulted *Malawi Broadcasting Corporation (MBC)*

journalists Dick Shumba, Isaac Jali and William Zare with metal bars at Mponela in Dowa, while covering the campaign tour of then DPP and UDF Alliance running mate Atupele Muluze.

Other issues brought to the fore also included threats made by members of Parliament in February 2020 to beat up journalists accused of being spies and agents of the opposition, barring them from interviewing the Leader of the House and deleting footage of the proceedings of the House. MISA also called out the Malawi Police's continued assault of journalists, and arrests for covering the arrival of the European Union Elections Observer Delegation without permission.

In 2020, about 32 violations of media rights were reported in **Mozambique**, linked to the military conflicts in Cabo Delgado. Ibraimo Mbaruco, a journalist working with *Palma* radio and television, was reportedly abducted by security forces for his coverage of the conflict. His whereabouts still remain unknown.

Another journalist, Amade Abubacar was arrested by soldiers, kept incommunicado for eleven days in violation of the "48-hour rule" and allegedly tortured, before being presented to an investigating magistrate, where he was accused of "possessing a list of names of youth who operate with Al-Shabaab".

He was denied legal representation, however, MISA Mozambique fought for his release on bail in April 2019, although he continues to face several

restrictions. In September 2020, Luciano da Conceição, a correspondent of *DW* in Inhambane, was apparently kidnapped and badly assaulted, his identity documents, two mobile phones, and a tape recorder taken. His assailants allegedly gave him a stern warning against his reporting.

In August 2020, unidentified individuals attacked and set ablaze weekly paper *Canal de Mocambique*, known for its critical coverage of state excesses. An attempt had also been made to kidnap its editor, Matias Guente, on 31 December 2019. The paper is under investigation for violating "state secrets" due to its publication of a series of reports exposing apparently illegal contracts linking the former defence and interior ministers to security and protection contracts for petroleum companies in Cabo Delgado, where the military insurgency is taking place.

In **Zambia**, several attacks against journalists and media were recorded. On January 29, 2019, *Prime TV* journalists Njenje Chizu and Toliwe Banda Chanda were sent away from a briefing by the ruling Patriotic Front Secretary General Davies Mwila from the party secretariat, on accusations of "not covering the party".

In May 2019, Tobias Daka, a journalist with Radio Maria Zambia was attacked and harassed by Patriotic Front party supporters after he participated in a political talk-show. Several other journalists were attacked between July 2019 and January 2020 for their coverage, or lack thereof, of different stories.



The offices of independent newspaper *Canal de Moçambique* after an arson attack August 23, 2020, in Maputo
CREDIT: CANAL DE MOÇAMBIQUE

Media houses including *Power FM* radio and *Pasme* radio were also attacked during live shows in April and October 2019 respectively, for hosting divergent views. Civil society condemned these practices, warning that they will lead to self-censorship of the media. They advocated for tolerance of views, and called upon authorities including the Zambia Police to hold perpetrators accountable.

ASSESSMENT

The destruction of journalistic tools and arbitrary arrests of journalists in Angola and harassment of journalists by investigating authorities in Botswana and e-Swatini and violent attacks against Malawian, Mozambican and Zambian journalists go against Principle 6 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, which provides for protection of journalists exercising their rights to freedom of expression and access to information, and Principle 20 which calls for States to guarantee the safety of journalists and other media practitioners and take measures to prevent attacks on journalists and other media practitioners.

ACCESS TO INFORMATION

The right to access to information is a fundamental human right that enables citizens to make informed decisions and effectively participate in the governance process, while holding duty bearers accountable. A robust access to information regime not only safeguards against abuse by public officials but also permits the public to play a role in shaping the policies of the state.

In **Malawi's** constitution under section 37, the National Access to Information Policy (2014) and the Access to Information Act (2017) provide a framework for the actualisation of the right to access information. However, since the enactment of the ATI legislation in 2017, the state only recently set a commencement date for the law, with the Information Minister Gospel Kazako, gazetting it on 30 September 2020. This prolonged delay is an indication of political unwillingness to facilitate citizens' access to information possessed by the state. Notwithstanding a supporting framework, MISA Malawi has reported several incidents where journalists have been barred from accessing information at state house, government meetings and courts, stifling the principle of open justice.

In July 2020, suspected members of the opposition Democratic Progressive Party (DPP) barred Nation Publications Limited's investigative reporter Golden Matonga from covering court proceedings of former President Peter Mutharika's bodyguard. In March, DPP and United Democratic Front (UDF) supporters also barred reporters from *Zodiak Broadcasting Station (ZBS)* from covering a parade the two parties had organised in Lilongwe, and on February 18, 2020, during the first session of Parliament for 2020, Members of Parliament barred journalists from covering proceedings.

In **Lesotho**, the Prime Minister Moeketsi Majoro on September 14, 2020 announced the government's move to classify some of its information as "confidential government information" and prosecute media houses that publish such information. He added that "... anybody who is not authorised to be in possession of classified government documents is committing an offence", and that it is "illegal for the media to be in possession of classified documents".

The lack of an access to information law in Lesotho further makes it difficult for the media to execute their mandate. In a 2020 Transparency Assessment, it was revealed that 70% of the sampled ten public institutions and government ministries denied access to reasonable information requested, or acted with high levels of secrecy. According to the study, only 30% of the institutions displayed an average level of openness in allowing access to public information.

For allowing live broadcasts of their proceedings, in December 2019, the Public Accounts Committee of Lesotho's Parliament was lauded by MISA Lesotho for promoting Access to Information and Press Freedom.



Zimbabwe National
Army Commander
Lieutenant-General
Edzai Chimonyo
CREDIT: ONLINE

Namibia's Access to Information Bill is currently still pending. In this regard, the state has withheld public information on the premise of "national security", forcing media houses to seek legal redress. In 2019, Namibia's Supreme Court ruled that the government could not use national security as a pretext for preventing the courts from deciding whether the media could reveal certain information.

The state has also been accused of providing preferential treatment to state owned media and denying access to private media. It was reported that during the Covid-19 lockdown, the *Namibian Broadcasting Corporation* received privileged access to government press conferences ⁽¹¹⁾.

In April 2019, a judge in **Eswatini** banned the publication of investigative news articles detailing how Farmers Bank was issued an operating licence under unclear circumstances, on grounds that documents used in the news articles were unlawfully obtained and, therefore, could not be used, even in the interest of the public.

In **Zimbabwe**, despite the enactment of the Freedom of Information Act, the state has made moves to infringe on privacy rights of the citizens. In March 2020, the Zimbabwe National Army Commander Lieutenant-General Edzai Chimonyo said that the military "would soon start snooping into private communications between citizens to guard against subversion, as social media has become a threat to national security". The Cybersecurity and Data Protection Bill has been faulted for failing to meet international standards and best practices in as far as guaranteeing these rights; and for the lack of safeguards for whistleblowers who expose individuals in the public interest.

On 19 March 2019, the **Zambian** Minister of Information and Broadcasting Services, Dora Siliya tweeted that the cabinet had approved the Access to Information Bill aimed at proactive and organised dissemination of information. However, the Bill is still pending, while the government continues to stifle media entities.

In April 2020, the government of Zambia withdrew the broadcasting licence of Prime TV. The Independent Broadcasting Authority argued that the closure was necessary for the protection of public safety, security, peace, welfare and good order. This followed a 30-day suspension in March 2019 on grounds of "unprofessional elements, unbalanced coverage, opinionated news, and material likely to incite violence and use of derogatory language".

The closure of the media house denies citizens information and defeats the Information Ministry's agenda to "facilitate the development of the media industry in order to enhance the free flow of information and freedom of expression for national development." The Information Minister refused to restore the licence on grounds that the station's licence had expired prior to its cancellation, despite their assertion of prior renewal.

ASSESSMENT

Through enactment of an access to information policy and legal framework, Malawi recognizes the importance of the fundamental right to access to information as protected under the African Charter and other international human rights laws and standards. This is enunciated under Principle 1 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, which urges States to ensure the respect, protection and fulfilment of access to information rights as it is crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights. Further, Malawi is in compliance with Principle 26, which provides that the right of access to information shall be guaranteed by law.

However, it is not enough to have an access to information legal framework. It is incumbent upon States to ensure the proper implementation of these laws, without unnecessary and illegal restrictions. Principle 26 (1) of the Declaration enshrines every person's right to access information held by public bodies and relevant private



Zambian Minister of Information and Broadcasting Services, Dora Siliya
CREDIT: DORA SILIYA
via TWITTER

bodies expeditiously and inexpensively. The blockage of journalists from covering court proceedings of former Malawian President Peter Mutharika goes against the principle of accessing information from public bodies in the public interest, and the standards of open justice and open parliament which require journalists to cover courts and parliaments on behalf of the public. Principle 28 also calls for maximum disclosure, stating that access to information may only be limited by narrowly defined exemptions, which shall be provided by law and shall comply strictly with international human rights law and standards.

Under Principle 33 of the Declaration, information may only be legitimately withheld where the harm to the interest protected under the relevant exemption demonstrably outweighs the public interest in disclosure of the information, and such information may only be withheld for the period that the harm could occur. Further, it is a requirement to put in place laws that would allow exemptions including classification of information, which shall stipulate the maximum period of the classification and restrict classification only to the extent necessary, and not indefinitely. In order to legitimately withhold information, it must be proven that as a result of the disclosure, substantial prejudice may be caused to third parties including national security and safety of individuals. In this regard, Lesotho failed to meet the legal standards on classification of information, as stated under Principle 33.

Despite having no access to information law in place, Lesotho conformed to Principle 29 of the Declaration through ensuring proactive disclosure by the Parliamentary Accounts Committee. Under proactive disclosure, public bodies are required, even in the absence of a specific request, to proactively publish and disseminate through available mediums, information of public interest, including information about their functions, powers, structure, officials, decisions, budgets, expenditure and other information relating to their activities. However, following the Transparency Assessment, where many public institutions denied citizens access to information, it is recommended that Lesotho enacts access to information laws as stipulated under Principle 26 of the Declaration, and further establishes an independent and impartial oversight mechanism to monitor, promote and protect the right of access to information and resolve disputes as per Principle 34.

Namibia and Zambia's efforts to enact access to information bills is a welcome step towards fulfilling Principle 26 of the Declaration, although we urge that these laws are in tandem with regional and international standards on access to information. However, Namibia's preferential treatment of state media goes against Principle 14, which provides that States shall promote a diverse private media as vehicles for the development and dissemination of a variety of content in the public interest. Further, Zambia's closure of media houses, and Eswatini's ban on news articles also offends basic tenets of the right to freedom of expression and access to information under Principle 10, which includes the right to seek, receive and impart information and ideas, through any other form of communication or medium, including across frontiers.

Under Principle 40 all have the right to privacy, including the confidentiality of their communications and the protection of their personal information. Any indiscriminate surveillance of personal communication, as threatened by Zimbabwe would infringe on Principle 41 of the Declaration which provides that States shall not engage in or condone acts of indiscriminate and untargeted collection, storage, analysis or sharing of a person's communications.

IMPACT OF THE PANDEMIC

Covid-19 has posed a threat to the already existing sustainability and viability issues faced by media houses. The pandemic led to significantly reduced budgets due to a slump in advertising revenue; and increased cost of production which has caused several lay-offs of journalists and media workers. Media houses have painfully had to suspend or downsize their print operations, with some opting for online operations and distribution, amidst technological challenges. The pandemic has also further revealed safety vulnerabilities of journalists, with some struggling to adapt to digital trends to curb the pandemic, while others lack safety gear.

In **Angola**, Grupo Medianova, a privately owned media house, dismissed several journalists citing financial difficulties despite Presidential Decree 18/20, which prohibited dismissals during the state of emergency caused by the pandemic. The lack of personal protective equipment also reportedly led to eight journalists contracting the novel coronavirus in the capital, Luanda.

In **Botswana**, the *Botswana Gazette*, after



appearing in weekly print editions for three and a half decades, had to quit print production and shifted to digital platforms. Botswana's Parliament put in place a State of Emergency law, empowering the President to rule by decree until March 2021. The decree provides for a jail term and a fine of up to US\$10,000 for publishing information with "the intention to deceive" the public about Covid-19 or measures taken by the government to address the disease. This provision has a negative impact on the media which is mandated to ensure that the public remains informed about the pandemic. The decree further directs that journalists only "source Covid-19 related information from the Director of Health Services or the World Health Organisation" when reporting on the pandemic or be sentenced to a fine of US\$10 000 or five-year jail term.

On 31 March 2020, **Mozambique** also enacted a State of Emergency law, viewed by many as authoritarian and restrictive to media practice. The decree failed to recognise the media as providers of essential services, and imposed sanctions on media publishing information contrary to "official information" on Covid-19. Two journalists, Arcénio Sebastião and Jorge Malangaze, working for *DW* in Beira, had become state targets and were being persecuted under this decree, although due to lack of evidence, were released without any charge after spending two days in detention on allegations of flouting the decree. The economic impact on media outlets was also apparent with three national newspapers suspending their printed newspapers, and shifting to digital versions. Media houses reportedly laid-off employees due to financial constraints.

Lesotho also declared a national emergency, with a lockdown from March 29 to April 21, 2020. It is said that several journalists kept attending government briefings on the pandemic without protective gear. Reports also show that in as much as journalists wanted to gather information through online platforms and telecommunication to curb the spread of the pandemic, their employers were unable to adequately provide them with internet connection and airtime, prompting most to rely on traditional information gathering methods, which put them at risk of contracting the disease. MISA Lesotho led an appeal to the Covid-19 National Emergency Command Centre to stop holding physical gatherings for journalists, and further partnered with the command centre to train journalists on Covid-19 reporting and safety measures.

On August 12, 2020, Lesotho's Deputy Leader of the National Party (BNP) and Deputy Minister of Foreign Affairs and International Relations, Machesetsa Mofomobe, referred to the Zimbabwean editors of the *Lesotho Times* paper in a derogatory manner for publishing a story about embezzlement of Covid-19 funds under his watch. His hateful remarks were strongly condemned by the media. *Mafeteng Community Radio* also reportedly faced threats and harassment by district administrators of the Covid-19 Command Centre, for requesting information on the handling of patients at the Mafeteng Covid-19 centre. The district further sued the station for defamation demanding close to US\$10,000. The case was, however, resolved out of court.

In **Zambia**, the state passed Statutory Instrument (SI) No. 22 of 2020 which restricted public gatherings and promulgated various regulations aimed at curbing the spread of the virus. The pandemic adversely affected journalists' sources of information due to the contact restrictions. Media houses also stated that the mandatory provision of personal protective equipment for their journalists placed a heavy financial burden on them, leading to some journalists being laid-off. Media leaders argued that the state should classify them as front-line workers and further provide protective equipment to ensure that journalists are safe in the field while gathering information in the public interest.

Namibia also enacted a State of Emergency decree, criminalising the intentional spreading of fake news: any person who publishes false or misleading information in relation to the coronavirus on social media, is liable to a fine of about US\$122 or a prison term of up to six months. So far, one person has been convicted under the provision for circulating a WhatsApp voice note

ZimLive editor
Mduduzi Mathuthu
CREDIT: MDUDUZI
MATHUTHU via
TWITTER



alleging that FP du Toit Transport employees had tested positive for the novel coronavirus. Two journalists from the *Namibian Sun* and *The Namibian* respectively, were assaulted by President Geingob's security personnel at the Windhoek Central Hospital, while he officially opened the Covid-19 isolation facility. The two journalists have since filed an assault case against the police VIP Protection Directorate.

In **Zimbabwe**, despite the recognition as essential service providers, up to 52 journalists were harassed, assaulted, arrested and detained, in many instances beyond the legally prescribed time, during the nationwide lockdown and the Covid-19 period. In April 2020, the High Court in Zimbabwe ordered police to desist from arresting, detaining or interfering with the work of journalists providing coverage during the Covid-19 lockdown, in response to a petition filed by MISA Zimbabwe and Panashe Makufa, a journalist, who were challenging continued police harassment and arrest of journalists while on duty. The judge directed the police to inform the other enforcers of the lockdown to recognise the validity of the 2019 media press card, and allow

journalists to do their work.

Other notable cases include freelance journalist Terence Sipuma, who was reportedly assaulted by members of the army and the police at the Kuwadzana roundabout in Harare while on his way to Chegutu to report on the Covid-19 lockdown. The journalist Hopewell Chin'ono was first arrested on 20 July 2020 for allegedly inciting people to participate in a gathering with intent to promote public violence, breaches of peace, bigotry or alternatively incitement to commit public violence. He was released from custody by the High Court on 2 September 2020; but was arrested again in November on charges of obstructing justice. These cases are still pending before the courts. It is said that Chin'ono had investigated and uncovered allegations of corruption in the procurement of Covid-19 equipment. In a related incident, police raided the home of *ZimLive* editor, Mduduzi Mathuthu, who they accused of promoting violence. Mathuthu immediately went into hiding, but the police arrested his relatives in an effort to smoke him out. His nephew, Tawanda Muchehiwa was abducted by state security agents and tortured

for three days. Muchehiwa was only released after MISA Zimbabwe filed a habeas corpus appeal, with a judge ordering that the state present him to court within 48 hours.

The media in Zimbabwe also suffered financial setbacks, which led the chairperson of MISA Zimbabwe Golden Maunganidze, to write to the Minister of Information, Publicity and Broadcasting Services, requesting the government to come up with a media sustainability bailout package, proposing tax exemptions and moratoriums on newsprint and other mass media production and distribution equipment.

Tanzania's restrictions on media and freedom of expression during the pandemic have been dire, expounded by the denial of Covid-19 by the late former President Pombe Magufl, whose government unnecessarily controlled the release of any Covid-19 related information. In April 2020, The Tanzania Communications Regulatory Authority issued a notice banning the *Mwananchi* newspaper for six months under the old Online Content Regulations of 2018, for allegedly publishing false and misleading information on Covid-19, further fining it US\$2 175. A search for the newspaper's website displays that "we are unavailable". The Regulatory Authority also suspended *Kwanza Online TV* on July 9, 2020, for 11 months, for publishing on its Instagram page a US embassy report depicting Tanzania's Covid-19 situation.

In April 2020, Ibrahim Bukuku, a first-year student at the University of Dodoma and resident of Nyasa district in Ruvuma region was arrested and charged for allegedly disseminating false and misleading information through a WhatsApp group about an alleged cure for Covid-19.

Similarly, Albert Msando, a prominent lawyer in the Arusha region, was arrested on 28 April 2020 for his remarks about the worsening coronavirus situation in Arusha. Msando was interrogated by the police and later charged for misinformation. His arrest came only hours after Arusha Regional Commissioner Mrisho Gambo had directed the police force to arrest any citizen disseminating conflicting public information on Covid-19.

In May 2020, two journalists, Kaleria Shadrack and Clinton Isimbu of Kenyan based *Elimu TV* were arraigned by the police in Arusha for illegal entry and working without proper permits. The two journalists were arrested while interviewing local residents on the status of the Covid-19 pandemic in the country. They were temporarily detained at the Longido police station and later charged in court. They pleaded guilty and were ordered to pay a fine or serve a three-year jail term.

ASSESSMENT

Under Principle 22 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, States are urged to review all criminal restrictions of content to ensure that they are justifiable and compatible with international human rights law and standards and to repeal laws that criminalise sedition, insult and publication of false news.

However, Botswana, Mozambique, Namibia, Zimbabwe and Tanzania imposed criminal sanctions for reporting the pandemic, and in some cases incarcerated journalists for publishing false news, falling short on Principle 22. The Declaration emphasises in Principle 19 the right to express oneself through the media by practising journalism, which shall not be subject to undue legal restrictions.

Due to the economic hardships caused by the pandemic, States are called upon, under Principle 24 of the Declaration, in such circumstances, to promote a conducive economic environment in which all media can flourish, including through the adoption of policies for the provision of financial or other public support for the sustainability of all media through a fair, neutral, independent and transparent process, and based on objective criteria.

MEDIA AND GENDER

In **Malawi**, sexual harassment in the newsroom is a growing concern, with reports of women being forced into relationships or risk losing their jobs. MISA Malawi together with the Association of Women in Media and Women Lawyers Association have teamed up to support and empower female journalists to fight sexual abuse and harassment in the workplace. The initiative involves commencing both criminal and civil proceedings against the perpetrators as one way of ensuring a conducive working environment for women.

In **Namibia**, despite its conducive environment for the practice of journalism as earlier highlighted, women are under-represented in senior management of media houses where male journalists dominate leadership roles. It is also reported that female journalists are significantly underpaid compared to their male colleagues, compounded by anecdotal evidence of entrenched misogyny leading to a toxic culture



Botswana Guardian
female investigative
journalist Yvonne
Mooka
CREDIT: YVONNE
MOOKA via TWITTER

in some newsrooms. Women journalists are also prone to attacks as shown by the “manhandling” of two female journalists, Charmaine Ngatjiheue and Jemima Beukes by the police. These realities are reflected in the 2020 Global Gender Gap Report which states that “there is still a 31.4% average gender gap that remains to be closed globally”.

In **Lesotho**, the rise of sexual harassment cases in the newsroom has been attributed to meagre remuneration. With no minimum wage standards for journalists, salary rates are often determined on the strength of negotiations with the employer. One of the female journalists interviewed for this report stated that “women find themselves easily sexually harassed, including by sources, because their employers inadequately remunerate them”.

Sources often promise them stories at “private meetings” and because of the pressures to deliver in a male-dominated industry, they end up in places where they can easily be harassed. Majirata Latela, a female journalist working with *The Reporter*, stated that a source once asked her what she would “give in exchange for the information”, but the story was later dropped after she told her editor. Others argue that some of the female journalists succumb to sexual advances to “retain information channels”, while some simply want to put food on their table, given the poor pay of media workers.

Anna Shale, the Board Chairperson of *Mose-Ho-Seaka* community radio said some male managers

take advantage of their female employees due to their privileged power positions. In August 2019, MISA Lesotho partnered with the Lesotho National Insurance Group to launch Women in Media Awards to recognize outstanding female journalists and motivate them to remain professional in their quest to challenge the status quo of male-dominated leadership in the media.

According to the World Association of News Publishers, gender representation in newsrooms in **Botswana** has hardly improved in the past decade. From the editorial leadership of nine mainstream newspapers, only two women — the editor of *The Voice* and managing editor of *Weekend Post* — are in positions of power and influence. The work environment is generally not conducive for women, accentuated by low salaries and misconceptions of labeling women as “lazy” and unable to take on certain tasks.

This has relegated female journalists to entertainment reporting, while their male colleagues are assigned politics and investigative segments. Female journalists who disregard these stereotypes and attempt to thrive in the male-dominated sectors are more often castigated than their male counterparts. Yvonne Mooka, a female investigative journalist with the *Botswana Guardian* was trolled and harassed online for her expose of a “prophet”. The absence of gender policies in media houses has further normalized these stereotypes.

ASSESSMENT

Principle 3 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa provides for non-discrimination, wherein everyone has the rights to exercise freedom of expression and access to information without distinction of any kind, on one or more grounds, including race, ethnic group, colour, sex, language, religion, political or any other opinion, political association, national and social origin, birth, age, class, level of education, occupation, disability, sexual orientation, gender identity or any other status. Principle 7 further calls on States to take specific measures to address the needs of marginalised groups in a manner that guarantees the full enjoyment of their rights to freedom of expression and access to information on an equal basis with others. Marginalised groups include women and sexual or gender minorities.

It is also incumbent upon States, as prescribed under Principle 20, to guarantee the safety of journalists and other media

Zambia Information
ministry permanent
secretary Amos
Malupenga
CREDIT: MISA ZAMBIA
via FACEBOOK



practitioners through measures that prevent attacks on journalists and other media practitioners, including ill-treatment among others, and take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners, and ensure that victims have access to effective remedies. Specifically, Principle 20 (6) provides that States shall take specific measures to ensure the safety of female journalists and media practitioners by addressing gender-specific safety concerns, including sexual and gender-based violence, intimidation and harassment.

CENSORSHIP, DIGITAL SPACES AND INTERNET SHUTDOWNS

Angola's Electronic Communications and Information Society Services Act of 2011 empowers the government to conduct

surveillance. The law has also been found to be overly broad and vague. It has been observed that generally there is self-censorship, caused by years of state repression, and fear that state security agents are embedded within newsrooms.

In October 2020, *TV Zimbo* refused to broadcast an investigative story by a journalist highlighting allegations against the director of the office of the president, for fear of reprisals. On a positive note, in 2019, access to the internet was enhanced through price reductions.

On 15 January 2019, the government of **Zimbabwe** ordered telecommunication companies to shut down the internet and social media platforms in order to regulate protesters and block them from accessing information.

This shutdown was challenged in court and it was ruled that the directive issued by the Minister of State for National Security to block the internet was unlawful under the Interception of Communications Act, ordering for the immediate

reinstatement of the internet.

In his September 2019 report, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clement Nyaletsossi Voule recommended that the government of Zimbabwe should refrain from introducing restrictions on access to and use of the Internet, including shutdowns.

However, in July 2020, there were reports that the government of Zimbabwe had throttled the internet, after activists called for nationwide demonstrations on 31 July 2020 and the government responded by slowing down the speed of the main internet gateway, TelOne ⁽¹²⁾.

Zambia has repeatedly stated its intentions to regulate cyberspace, especially to deal with “fake news”. The debate on regulation of online spaces has been rife, culminating into three Bills in the process of enactment.

The Data Protection Bill, the E-Commerce Bill and the Cybersecurity Bill are aimed at addressing what is being called “social media lawlessness”. These proposed laws, if not aligned to international standards and best practices, may inhibit freedom of expression and media freedom. Censorship of the media in Zambia is also prevalent. In January 2020, the Permanent Secretary, Ministry of Information Amos Malupenga barred the media from using any statement from Zambian missions abroad without prior clearance from the Ministry of Foreign Affairs, in a letter he wrote to the *Zambia Daily Mail*, *Times of Zambia*, *ZNBC* and *ZANIS*. He argued that this would ensure “proper organisation, coordination and consistency in dissemination of information to the public.”

Earlier, in March 2019, the Ndola High Court through an ex-parte order of interim injunction gagged the *Daily Nation* newspaper from reporting on the emerald mining scandals involving Gemcantion Emerald Mine. The order granted to Wolle Mining Limited restrains the paper from publishing injurious articles.

And in June 2020, it is reported that members of the ruling Patriotic Front disrupted a live telephone interview at *Kwenje* radio featuring opposition UPND leader Hakainde Hichilema by tampering with the power supply system.

In July 2020, **Tanzania** passed the Electronic and Postal Communications (Online Content) Regulations that control online platforms, ahead of its Presidential elections on 28 October 2020. These regulations introduce exorbitant licence fees for online content service providers and internet service providers.

The motive and timing of the regulations

raise concerns as the operational environment for the enjoyment of civic rights in the country is shrinking further, especially as regards the enjoyment of freedom of expression, media, access to information and the right to assemble online.

Malawi's Cybersecurity and Electronic Transaction Act (2016) seeks to regulate online transactions and in the process limits online expression. The legislation has a number of clauses that affect media freedom and freedom of expression. Section 24 provides for restriction of online communication 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.”

Most free speech advocates believe that these clauses are broad and fail to provide a clear framework of what amounts to “human dignity...,” “public order and national security” or “technical restrictions.” In addition, section 31 requires online content producers and editors to publish their identity and other details of their publication. This has a chilling effect and promotes self-censorship.

The **Lesotho** Communications Authority issued a draft of their Internet Broadcasting Rules, 2020, aimed at regulating social media. The Rules mandate all users with more than 100 followers to register with the Authority and obtain an “internet broadcasting allowance”. The proposed Rules also give the Authority power to remove posts.

These rules are said to be targeting social media critics. In a report released by AfroBarometer in October 2020, 51% of Basotho say that access to the internet and social media helps people to be more informed and active, and should be unrestricted. The study also discovered that only about 35% of Basotho supported internet regulation by the government.

On 31 January 2020, **Eswatini's** National Commissioner of Police, William Dlamini, stated that it had come to their attention that there were “highly insolent and morality devoid characters disseminating seditious, slanderous and very insulting statements about the country's authorities via social media”, adding that they would harshly deal with such perpetrators.

Namibia does not have adequate oversight mechanisms to enable legitimate, proportionate and necessary communication surveillance in the digital age. The current legislative regime including the Namibia Central Intelligence Services Act of 1997 and the Communications Act

of 2009 (especially part 6, section 70-77) raise serious concerns about infringement of privacy and surveillance.

The unclear role of Chinese telecommunication giants especially ZTE and Huawei Technologies in the Namibian telecommunications sector, acquisition of surveillance technologies, the push by the government for the roll-out of the Single Internet Gateway system and the existence of interception centres is worrisome ⁽¹³⁾.

Absence of judicial authorisation and transparent oversight mechanisms over the intelligence agencies and the proposed Electronic Transactions and Cybercrime Bills in absence of a data protection law also raise concerns.

ASSESSMENT

In response to online surveillance practices, the Declaration of Principles on Freedom of Expression and Access to Information in Africa states under Principle 20 (2), that States must take measures to prevent attacks on journalists and other media practitioners, including threats and unlawful surveillance undertaken by State and non-State actors. Principle 25 (3) provides that States shall not circumvent the protection of confidential sources of information or journalistic material through the conduct of communication surveillance except where such surveillance is ordered by an impartial and independent court and is subject to appropriate safeguards.

Principle 41 lays down limits on state surveillance, providing that States shall only engage in targeted communication surveillance that is authorised by law, that conforms with international human rights law and standards, and that is premised on specific and reasonable suspicion that a serious crime has been or is being carried out or for any other legitimate aim, and ensure that any law authorising targeted communication surveillance provides adequate safeguards for the right to privacy.

States must conform to Principle 22 (5), which provides that freedom of expression shall 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.

Internet disruptions, policy and legislative frameworks that restrict expression and

access to information under the guise of national security do not meet the requisite international standards.

In terms of internet access, Principle 37 requires states to facilitate the rights to freedom of expression and access to information online and the means necessary to exercise these rights, by recognising that universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights.

It further necessitates States to co-operate with all relevant stakeholders, adopt laws, policies and other measures to provide universal, equitable, affordable and meaningful access to the internet without discrimination.

In addition, Principle 38 calls for non-interference with the right of individuals to seek, receive and impart information through any means of communication and digital technologies, through measures such as the removal, blocking or filtering of content, unless such interference is justifiable and compatible with international human rights law and standards.

It stipulates that States shall not engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population, and calls on States to only adopt economic measures, including taxes, levies and duties, on internet and information and communication technology service end-users that do not undermine meaningful access to the internet and that are justifiable and compatible with international human rights law and standards.

references

- (1) See Annexure with full text of the Declaration, sourced from African Commission on Human and Peoples' Rights Legal Instruments (achpr.org)
- (2) UN General Assembly Res. 2200 A (XXI) December 16, 1966, entered into force on March 23 1976, Article 19(1) and (2)
- (3) Id, Article 19(3)
- (4) See, SDG Indicators — SDG Indicators (un.org)
- (5) <https://ewn.co.za/2020/09/04/eswatini-govt-says-new-cybercrime-bill-won-t-limit-press-freedom>
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A military sniffer dog
at Parliament Building
in Harare, Zimbabwe, in
November 2019
CREDIT: SHEPHERD
TOZVIREVA



DIGITAL RIGHTS IN SOUTHERN AFRICA



By Nompilo Simanje

INTRODUCTION

The internet has revolutionised the exercise of freedom of expression and of the media Africa and the rest of the world by providing channels for information sharing by both individuals and the media, fast and easier ways for communication and also the means for general public to organise itself for different causes.

However, governments have also tried to control and or regulate the internet through legislation and also administrative conduct, in most instances contributing to the low levels of internet penetration and use by individuals and self-censorship.

The concept of digital rights is yet to be fully embraced in Southern Africa, not only by governments but also by the general public. Several conversations relating to digital rights, have centred on whether or not digital rights are human rights. The United Nations Human Rights Council resolution of 2018 on the promotion, protection and enjoyment of human rights on the internet aptly describes and unpacks digital rights and highlights that the same human rights that people have offline must be protected online. ⁽¹⁾

Digital rights, also described as internet rights, are, therefore, the same human rights that people have and are entitled to offline. These include media freedom and freedom of expression, access to information and the right to privacy. The internet has also provided the platform for the exercise of freedom of association and the right to demonstrate as has been seen from several online campaigns like

#ZimbabweanLivesMatter Campaign in 2020 ⁽²⁾ against human rights violations in Zimbabwe and also the #DataMustFall Campaign ⁽³⁾ against high costs of mobile data.

The international standards and best practices set out in instruments like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights as well as the African Charter on Human and People's Rights are still applicable and relevant to digital rights.

Exercise of digital rights is, therefore, centred by the capacity of individuals to exercise their human rights through technology and the internet, electronic devices and or communication networks.

It should be noted that the thematic issues impacting exercise of digital rights vary with the countries in the Southern African Region for instance affordability of the internet is a key concern in Malawi while in Mauritius it is not. Also, exercise of digital rights varies among different societal groups like women, young people and the elderly.

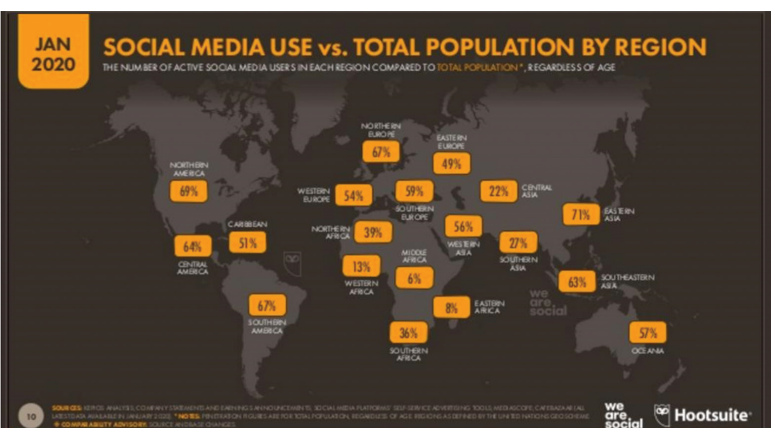
According to After Access Report 2018, cost, network service, access to devices, language barriers and low levels of skills limit the experiences of young people and the elderly to make use of the internet. Woman also face the additional barriers of cultural and gendered norms that hinder their access or mobile phone technology and to the internet.

This report will, therefore, elaborate on the several factors that are influencing the exercise of digital rights in Southern Africa which include legislative provisions, internet access and affordability, surveillance and censorship, disinformation and propaganda among others. The specific target countries in Southern Africa, which shaped this report include Zimbabwe, Zambia, Tanzania, Malawi and Lesotho. Examples were also drawn from other countries in the region.

ENABLERS FOR THE EXERCISE OF DIGITAL RIGHTS

INTERNET ACCESS

Internet access is a key enabler for the exercise of digital rights. In 2020, the internet penetration rate in Africa stood at 39.3 percent,



As aforementioned, there have been several attempts by governments in Africa to regulate or censor the internet space. The law, more so the legislative wheel has been relied on as a vehicle to impact the exercise of rights online. Countries in Southern Africa have relied on both old and existent legislation and also new laws to regulate enjoyment of digital rights.

For instance in Zimbabwe, the government has relied on laws like the Criminal Law Codification and Reform Act (Criminal Law Code) to inhibit the exercise of freedom of expression online. The specific provisions that have been notorious include:

- Section 22(2) (a) (iii) on subverting a constitutional government and in the alternative, of the Code after expressing his displeasure against fuel shortages and price hikes which matter was also dismissed.
- Section 31 (a) (iii) on publishing or communicating falsehoods prejudicial to the State.
- Section 33 on undermining the authority of or insulting the President
- Section 36(1) (a) on inciting the public to commit public violence

Similarly, in Zambia such provisions exist in the Penal Code. The Penal Code grants the president absolute discretion to ban publications regarded as contrary to public interest and also the criminalisation of publication of false news with intent to cause fear and alarm.

These provisions from both Zimbabwe and Zambia infringe on media freedom and freedom of expression especially the capacity by individuals to demand transparency and accountability. These also prevent the citizens from criticising the government or the president yet the capacity to do that is what forms the basic tenets of democracy.

With regards to new and or proposed legislation, Zimbabwe gazetted a Cybersecurity and Data Protection Bill in May 2020, which allows the use of forensic tools like keystroke loggers that are highly invasive tools without providing for judicial oversight on the use of such tools. ⁽¹⁰⁾ The Bill also has provisions that criminalise communication of false information despite that there is a Constitutional Court order from the case of Chimakure and two others v Attorney General where false news offences were regarded as unconstitutional as they infringe on freedom of expression and promote self-censorship.

The framing of such provision, which is wide and vague will also potentially resuscitate criminal defamation, which was similarly outlawed in the case of Madanhire and Another versus the

Attorney General. ⁽¹¹⁾

The above clearly indicates an attempt by governments to limit exercise of digital rights by entrenching surveillance and providing loopholes in legislation that create room for government monitoring and tracking of citizens and subsequently violation of the right to privacy. This, however, does not wish away the importance of developing cybersecurity and data protection frameworks.

ARRESTS FOR ONLINE COMMUNICATION

In the enforcement of the above laws, governments in Southern Africa have arrested and detained citizens, activists and journalists on charges based on their online communication on platforms like Facebook and Twitter.

Of note in Zimbabwe, were the three arrests between July 2020 and January 2021 of prominent freelance journalists Hopewell Chin'ono, who is popularly known for exposing corruption related to the procurement of Covid-19 materials in Zimbabwe. The exposures led to the sacking and the arrest of the then Minister of Health Obadiah Moyo. On the three occasions Chin'ono was arrested on charges of inciting public violence, obstructing the course of justice and communicating falsehoods. ⁽¹²⁾

This serves to explicitly show the weaponisation of the legal and justice system by the government in Zimbabwe to silence opposition and or critics of the government. This also points to the monitoring of social media platforms by the government thus contributing to the fear by citizens to freely express themselves online.

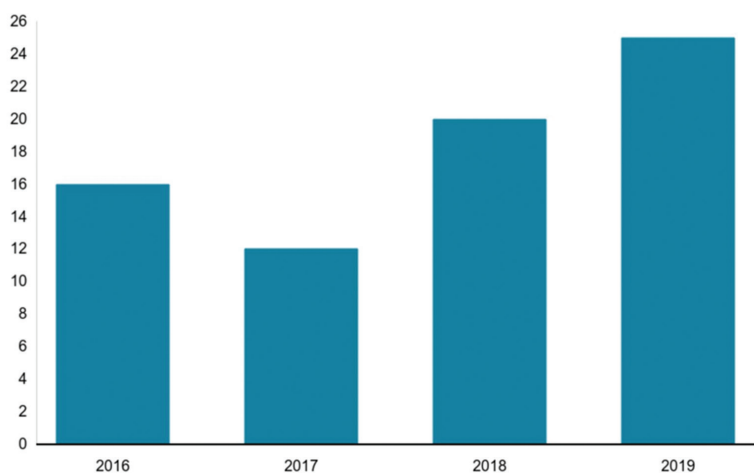
In April of 2019, Tumpale Makibinga, a Malawian young man, was arrested for a meme he posted on social media, which according to the prosecutor, ridiculed and undermined First Lady Gertrude Mutharika. Makibinga was arrested for insulting the modesty of a woman, cyber violation and offensive communication. ⁽¹³⁾ By arresting the likes of Makibinga, the security forces were setting a bad precedent not only on the exercise of digital rights but also presenting the public officials as persons beyond reproach and thus a law unto themselves.

There were a number of government critics that were arrested in Tanzania ⁽¹⁴⁾.

INTERNET SHUTDOWNS

Governments in Southern Africa are also relying on internet shutdowns or throttling of the internet as a way of limiting freedom of expression. Such mechanism is mostly effected during elections or protests. The governments have done this through directives to ISPs and MNOs, ordering to limit access to or shut down the internet altogether. An internet shutdown typically involves the deliberate disruption of internet or electronic communications, to the extent they become inaccessible or unusable, generally targeting a particular population or within a specific location with the objective of exerting control over the free flow of information. ⁽¹⁵⁾

Internet shutdowns in Africa



This includes complete outages, social media shutdowns and throttling.

Source: Access Now and KeepItOn Coalition



In October 2020, Tanzania, during the presidential elections, access to social media platforms was restricted. It is reported that the Tanzania Communications Regulatory Authority (TCRA) ordered the country's telecommunications service providers to suspend access to mass messaging (SMS) and voice services, leaving millions of people without access to reliable communication tools. ⁽¹⁶⁾

Similarly, in Malawi, during the Presidential elections in May 2019, an internet outage of several hours happened and according to Netblocks, Malawi Telecommunications Limited, fibre optic network SimbaNET and ICT infrastructure operator Malswitch were affected, while access appeared to remain generally available via privately-owned internet providers. ⁽¹⁷⁾

In Zimbabwe, on 31 July 2020, a day when an anti-corruption protest had been planned, it was reported that there had been a partial internet shutdown, with the internet speed being throttled by TelOne, which provides the country's internet gateway. ⁽¹⁸⁾ In January 2019,

Zimbabwe had implemented a six-day internet shutdown in the midst of protests against the hiking in fuel prices and basic commodities. Internet access was eventually restored after MISA Zimbabwe and the Zimbabwe Lawyers for Human Rights filed an urgent chamber application at the High Court of Zimbabwe which resulted in the court ordering that the Minister of State for National Security had acted unlawfully by issuing a directive in terms of the Interception of Communications Act for the shutting down of the internet. ⁽¹⁹⁾

Having highlighted the above pattern of internet shutdowns in Southern Africa, it is very clear that such conduct by states unjustifiably and disproportionately infringes on the digital rights of citizens particularly their right to access information and also to freely express themselves.

The Special Rapporteur on Freedom of Expression and Access to Information in Africa released an updated draft of the Declaration of Principles on Freedom of Expression in Africa which provides that:

"States shall not interfere with the right of individualsto seek, receive and impart information through any means of communication and digital technologies, through measures such as removing, blocking and filtering of content, unless such interference is justifiable and compatible with international human rights law."

States shall not engage in the wholesale disruption of access to the internet and other digital technologies for segments of the public or an entire population." ⁽²⁰⁾

Internet shutdowns are, therefore, a violation to digital rights and should be advocated against in Southern Africa.

CENSORSHIP AND SURVEILLANCE

The component on legislative provisions addressed the issue of censorship and surveillance that is being done through the law for instance in cybersecurity laws and also through Interception of communications laws and provisions.

It should be noted that surveillance and or interception of communications can be lawfully done in instances where it is lawful, proportionate and necessary, where it is justifiable in an open and democratic society to promote public interest or public order or national security. In so doing, judicial oversight is also a key mechanism to also ensure that rights are protected.

However, it has also been noted the proportionality test relies heavily on the good faith of the state, and the ability of a court to convincingly weigh the competing interests at stake. Yet several examples from a variety of jurisdictions demonstrate that courts and tribunals are often compelled to offer the state wide discretion. ⁽²¹⁾ In Southern Africa, it has been demonstrated that public interest and national security are vague terms that have been abused by state authorities to infringe on rights.

Of note, is the absence of data protection laws in the region to regulate the collection, processing, transmission, storage and use of data which has resulted in increased surveillance.

with NSO Group, which develops the oft-abused Pegasus spyware. ⁽²²⁾

ONLINE GENDER-BASED VIOLENCE

Apart from the aforementioned cultural and gendered norms that limit women's access to mobile technology and the internet, in instances where some women have that access, their exercise of digital rights is further hampered by online gender based violence as noted through hate speech and cyberbullying.

A recent Plan International survey of over 14,000 young women and girls found that 58% of respondents have experienced online harassment, including abusive language and cyberbullying. And research by the Web Foundation and the World Association of Girl Guides and Girl Scouts found that 84% of young women think the problem of online abuse is getting worse. ⁽²³⁾ A 2020 survey by Women at Web also indicated that in Tanzania 70% of women suffer from mental stress and anxiety due to online violence. This therefore clearly shows how online violence towards women is infringing on their freedom of expression online for fear of being victimised online.

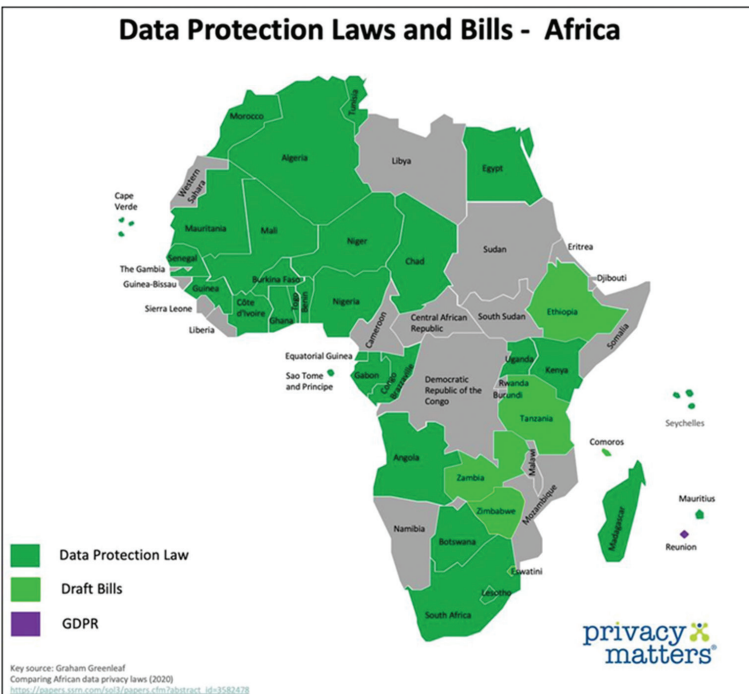
DIGITAL RIGHTS DURING COVID-19 IN SOUTHERN AFRICA

The advent of Covid-19 in the Southern African region also introduced further dynamics with regards to the exercise of digital rights. South Africa and Zimbabwe were some of the first countries in the region to institute national lockdowns in response to the pandemic. As a result, adult citizens were restricted to working from home and operating virtually while children resorted to e-learning.

This further elaborated on the existing digital divides. When schools closed to curb the spread of the coronavirus, 67 million children in East and Southern Africa — nearly half of those regions' students — were unable to access remote learning programmes, according to a report by the United Nations children's agency UNICEF.

Internet access and affordability was, therefore, one critical issue that was brought to the fore. In Zimbabwe the mobile network operators continued to increase the prices of data tariffs despite the evident overreliance on

Data Protection Laws and Bills - Africa



From the above map, it can be noted that in Southern Africa over 10 countries have not yet enacted data protection laws and this includes Zimbabwe, Zambia, Tanzania, Malawi, Eswatini and Mozambique among others. South Africa, Lesotho, Botswana and Angola are part of the countries with data protection frameworks in place.

This is, therefore, very concerning and obviously a grave threat to exercise of digital rights especially in countries like Zimbabwe where there is no transparency with regards to the acquisition, use and deployment of surveillance. Zimbabwe, Zambia and Botswana were recently reported to be customers of Circles a surveillance firm that reportedly exploits weaknesses in the global mobile phone system to snoop on calls, texts, and the location of phones around the globe. Circles is affiliated

the internet and the need to access Covid-19 related information that was critical at the time. This resulted in stakeholders under Media Alliance of Zimbabwe instituting a #DataMustFall Campaign to advocate against further increases in prices of data tariffs.

Commendably, in South Africa, Telkom has zero-rated educational websites URLs to support learning and teaching. These include the National Institute for Communicable Diseases website and the SA government's coronavirus information website to drive accurate information for infection control. ⁽²⁴⁾ On the other hand, Vodafone also announced a five-point plan to help the communities in which it operates which included:

- Maintaining the quality of service of networks.
- Providing network capacity and services for critical government functions.
- Improving dissemination of information to the public.
- Facilitating working from home and helping the small and micro businesses within its supply chain.
- Improving government's insights into people's movements in affected areas.

Another key digital rights issue related to the Covid-19 regulations that were also enacted during that time. The Tanzanian government did not acknowledge that Covid-19 existed in Tanzania.

This, therefore, greatly impacted the public's access to information, any potential advocacy initiatives by CSOs and also media freedom and freedom of expression on anything related to Covid-19.

The Covid-19 regulations that banned sharing of information on Covid-19 was used by the government to prevent citizens or the media from reporting or commenting on the pandemic

The Tanzanian government also enacted the Electronic and Postal Communications (Online Content) Regulations which negatively impacted digital rights at individual and institutional levels.

Further, during Covid-19, the World Health Organisation also declared what was termed an 'infodemic' referring to the overabundance of information. This overabundance of information resulted in the high spread of disinformation particularly relating to Covid-19.

This, therefore, posed a great threat to online access of genuine and accurate information by citizens. In response to the prevalence of disinformation, government responses also

resulted in further infringement on freedom of expression as people were afraid to communicate, fearing arrest.

For instance, in South Africa, in terms of the Disaster Management Act 57 of 2002, it is a criminal offence to publish false information about Covid-19 and the offence is punishable by a fine or six-month imprisonment or both.

Eight people were arrested for allegedly disseminating false information about the pandemic, while a man was arrested for discrediting the Covid-19 tests kits that the government intended to use in its massive testing campaign and discouraged people from participating in the testing exercise. ⁽²⁵⁾

In Swaziland, Section 29 of the Covid-19 Regulations ⁽²⁶⁾ criminalises the spreading of any rumour or unauthenticated information regarding Covid-19; publishing any statement, through any medium, including social media, with the intention to deceive any other person about Covid-19; using print or electronic media on the Covid-19 infection status of any person; or spreading of any rumour or unauthentic information regarding any measure taken by the government to address Covid-19.

The offence is punishable by a fine not exceeding 20,000 emalangeni (US\$1,173.71) or imprisonment for a term not exceeding five years. Eugene Dube, Editor of the *Swati Newsweek* and reporter Mfomfo Nkhambule were arrested for contravening Covid-19 regulations on the publication of false news. After seven hours of interrogation, Dube was released without charge.

Prior to the arrest, the *Swati Newsweek* had published articles that were critical of the king⁽²⁷⁾. The article that Nkhambule wrote criticised the kingdom's approach in their Covid-19 response.

In other countries in the region, tracking and or tracing applications were also developed and deployed, which applications were aimed at assisting with the containment of the Covid-19 virus.

In the process, however, such applications were monitoring and tracking citizens which would be described as mass surveillance and also collecting so much data about the users. From the broader African region, countries like South Africa, Botswana, Tunisia and Morocco adopted such tracking application.

Privacy advocates flagged concerns around the use of location tracking services that they warned could be used by the government for

future surveillance on citizens' movements and activities.

One of South Africa's applications, COVID Alert, for example, was reportedly downloaded by over 1 million people since its launch in September 2020, allows users to determine whether they have come into contact with someone who had tested positive for Covid-19.

While the application is anonymous, digital rights researchers noted that there are questions around the security of users' personal data and that greater transparency is needed to protect individuals' digital freedoms now and in the future. ⁽²⁸⁾

The above, therefore, clearly highlights how governments' responses to Covid-19 in the region impacted digital rights.

CONCLUSION AND RECOMMENDATIONS

It is clear that digital rights are human rights. Digital rights are attainable and advocacy towards their protection is not technical or complex.

This report has elaborated on the state of digital rights in Southern Africa particularly the entrenched factors that continue to infringe on the exercise of these rights.

Internet access and affordability remain a critical issue especially the noted digital divides over gender, location, income levels and age.

Governments also have a key task to play with regards to evaluating the existing legislative provisions, which need to be informed by the set international standards and best practices towards the promotion of digital rights especially freedom of expression and the right to privacy.

A multi-stakeholder approach to internet governance is the foundational basis for the creation of an optimum environment for the exercise of digital rights.

In that regard, governments, through policy makers and enforcement officers and the judiciary have a critical role to play through the legal and justice system to remedy the existing unjustifiable limitations to digital rights, while civil society actors, players in the telecommunications industry and the regulators as well should undertake initiatives towards digital inclusion and digital literacy.

Going forward the following recommendations are worth considering for the region:

- There is a need to influence and support the enactment of legislative and policy interventions that bridge the digital divide
- Civil society organisations should advocate for the promotion of a culture of cybersecurity in both public and private institutions
- Women should be made aware of policies and product features that they can rely on promote online safety
- Scoping of rural and marginalised communities for purposes of infrastructure development towards the promotion of internet access
- Facilitate trainings in rural and marginalised communities on the use of ICTs so as to promote digital inclusion
- Legislative provisions should be guided by international standards and best practices as earlier discussed including that limitations to rights should be lawful, proportionate and necessary.
- For purposes of curbing disinformation, governments should desist from the use of wide and vague laws that promote self-censorship and instead tackle it through adequate provision of substantive information and encouraging and embracing the use of fact checking and information verification tools.

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GENDER IN THE MEDIA: FEMALE JOURNALISTS AND WOMEN IN MEDIA



By Belinda Ndlovu and Delta Milayo Ndou

INTRODUCTION

The Media Institute of Southern Africa (MISA) in its 2001 gender policy and action plan ⁽¹⁾ reasoned that gender equality is implicit in the notions of a “pluralistic press”; “reflecting the widest possible range of opinion within the community”; “the fulfilment of human aspirations”; “freedom of the press” and “freedom of association” as espoused in the Windhoek Declaration.

It was MISA’s contention that the failure to explicitly state that gender equality is intrinsic to a pluralistic and free press had led to the gross gender disparities in the media not receiving adequate attention.

Since then, gender equality in and through the media has proved elusive, affirming the Gender Links’ view that the media is one of the most difficult institutions to transform ⁽²⁾.

Gender equality is entirely consistent with freedom of expression since nothing is more central to this ideal than giving voice to all segments of the population ⁽³⁾.

The examination of gender and media has two main dimensions ⁽⁴⁾ which are:

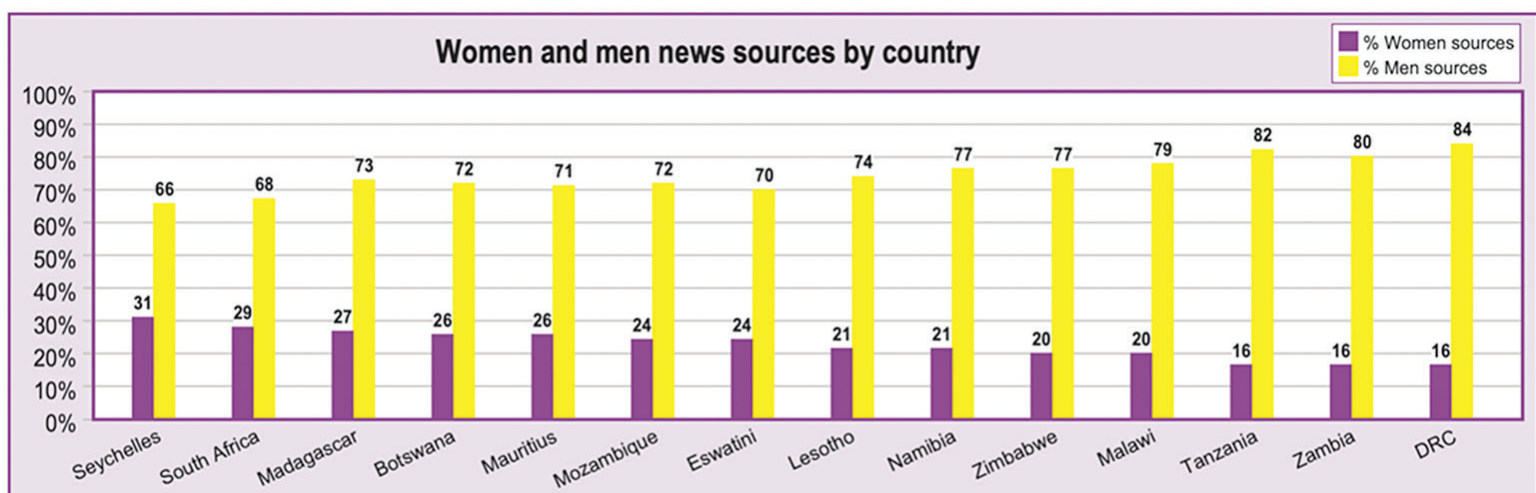
- The balanced representation of gender in media houses as professionals; which is related to the proportion of men and women employed in the media, the type of assignments they are given, the role women have in decision making, and opportunities given for men and women professionals.
- the politics of gender representation in media contents; which relates to portrayal of women and men, their reported role as active participants or passive observers, low or high-profile sources, their attribution as offenders or survivors, and their representation in the news and current affairs or in the other soft news.

The state of gender and media in the Southern Africa press will be discussed in line with these two dimensions. Attention will also be given to how Covid-19 has impacted on gender in and through the media.

GENDER REPRESENTATION IN MEDIA CONTENT

Media across the region fall short when measured against gender equality indicators ⁽⁵⁾ such as:

- proportion of women as sources of news (voice ⁽⁶⁾)
- proportion of stories leading with women as protagonists (visibility)



- coverage of gender equality issues (salience)

Since its inception in 2003, the findings from Southern Africa's largest and longest-running research on gender equality in the news – the Gender and Media Progress Study (GMPS) – show a consistent under-representation of women's voices in the news media. The GMPS 2020 ⁽⁷⁾ reveals that across the region women constituted 21% of the voices heard, read about or seen in print, television and radio news, going up by merely one percentage point from 20% in 2015 to 21% in 2020.

According to the GMPS report, across all topics, ⁽⁸⁾ women's voices dominate only in news about gender equality (52%), which supports the notion that ⁽⁹⁾ women are particularly underrepresented in the 'most prestigious' category of news reporting: politics and government.

These findings indicate that women in Southern Africa are disproportionately and unfairly represented in editorial content of the media ⁽¹⁰⁾, even though gender equality is intrinsic to a pluralistic and diverse media ⁽¹¹⁾.

Gender representation in Covid-19 media content: A 'Monitoring trends in the Regional Media's coverage of the Covid-19 Pandemic' – which covered nine countries in the region namely Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, Zambia and Zimbabwe – showed that there was low representation of women's voices in all media platforms monitored ⁽¹²⁾.

This finding confirms similar conclusions arrived at in a 2020 Southern Africa focused ⁽¹³⁾ report on the effects of Covid-19 on freedom of expression.

The report revealed that women (in countries like Botswana, Lesotho, Eswatini, Zambia, Malawi and Zimbabwe) are not getting heard in the media ⁽¹⁴⁾, along with other marginalised groups such as those living with disabilities, children, indigenous persons, poor persons and workers in unprotected work.

The absence of women's perspectives in Covid-19-related news coverage means that women have limited influence over the framing of the crisis in the news and consequently, limited influence over policy-making directions ⁽¹⁵⁾.

When women are denied equal representation in media content, their ability to enjoy and exercise freedom of expression is constrained, which places them at ⁽¹⁶⁾ ever-greater risk of being further marginalised amid the most

significant global health crisis of our lifetimes.

In Southern Africa, it can be surmised that the gender equality dimension has been lacking from news coverage during the Covid-19 pandemic ⁽¹⁷⁾, mainly because there is no gender parity in news sourcing and hence no equal gender representation in media content.

In a year where the Covid-19 pandemic dominated the region's news, the suppression of women's voices was ⁽¹⁸⁾ exacerbated by journalists' tendency in a time of crisis to refer back to 'established sources' who are significantly more likely to be men.

In Southern Africa, governments were the main sources of information because they were responsible for testing their citizens for Covid-19 and countries such as Botswana and Zambia placed restrictions on use of sources outside government resulting in very few experts speaking about the virus ⁽¹⁹⁾ – further marginalising women's voices.

GENDER REPRESENTATION IN THE MEDIA WORKFORCE

The lack of gender parity in news sourcing within Southern Africa mirrors the lack of gender representation in the region's media workforce as none of the countries in the region have attained equal proportion of women in decision-making positions.

This reality underscores the fact that women in Southern Africa are disproportionately under-represented in the institutional structures ⁽²⁰⁾ within the media industry which maintains journalism as a male-dominated industry (as attested by country reports from Tanzania, Eswatini, Zambia, Zimbabwe, Mozambique and Malawi, amongst others).

Sexism and patriarchal attitudes persist and new threats and impediments are also raised; wage gaps between men and women in the news media have widened and worrying trends with regard to online harassment of female journalists and "cyber misogyny" have emerged through social media ⁽²¹⁾.

The low status of women within the media entrenches gender inequality and disadvantages female journalists in a number of ways.

- *Unequal opportunities in work allocation:* Editors, who are mostly male, have the tendency to assign 'soft news' like entertainment and lifestyle to female journalists and 'hard news' such as politics, economics, and sports to male journalists ⁽²²⁾.

This is the pattern across the region as men dominate in beats that are prominent, and that offer high profile assignments which enhance chances of gaining professional recognition (e.g through awards) and accelerate career progression toward decision-making roles.

Since the majority of managers are male, the status of women in the media is largely determined (and maintained) by men.

- *Unequal remuneration:* There are generally no minimum wage standards for journalists in most countries in the region leaving the issue of remuneration open to manipulation by male-dominated newsrooms at the expense of females. In countries like Lesotho, journalists' salaries are determined by negotiations with employers, who are males in most cases ⁽²³⁾ and in Zambia ⁽²⁴⁾ female journalists contend with poor salaries and rare promotions.

- *Sexual harassment on the job:* Gender-based violations such as sexual harassment are a significant impediment to the work of female media practitioners across the region. Sexual harassment refers to unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature ⁽²⁵⁾ from within media institutions as well as from sources.

Within the region, sexual harassment is a cause for concern in countries where newsrooms are overwhelmingly male-dominated and include perpetrators of sexual abuse among their staff ⁽²⁶⁾.

The non-reporting of sexual harassment gives rise to the general impression that workplace sexual harassment is not common or serious, yet, it is a significant problem that continues to remain largely invisible, shrouded in secrecy, stigma, shame and fear of retaliation and is a vicious cycle that ought to be continuously addressed ⁽²⁷⁾.

This reality is further stressed in a study by the United Nations Human Rights High Commission ⁽²⁸⁾, which revealed that gender based violence against women journalists has been increasing over the past decade and continues to form part of the daily routine of women journalists and media workers who are subjected to intimidation, threats of rape, threats against family and sexual harassment.

- *Gender-based discrimination:* Pregnancy and motherhood ⁽²⁹⁾, are frequently used as factors upon which women are discriminated against and denied employment or promotion.

These are unfairly perceived to be obstacles to a woman's ability to perform professionally. They are also anticipated as potential threats to a woman's long-term commitment to a job.

This discrimination is compounded by the prevalence of working structures, norms and practices that function to disadvantage women relative to men.

ANALYSIS OF DIFFERENTIAL IMPACT OF COVID-19 ON FEMALE JOURNALISTS

The media hierarchy places men as the major decision makers since most managerial positions are occupied by males. This means decision-making about how to operate during the pandemic largely excluded women's input since women in the media occupy a low status in institutional structures.

- A ⁽³⁰⁾ study of covering seven Southern Africa countries revealed that female journalists reported feeling the impact of Covid-19 lockdowns because they were expected to put in extra hours, whilst working from home meant that their unpaid care responsibilities had also increased.

There is no evidence of consultation within media organisations to solicit the input from employees regarding how best to transition to remote working set ups.

This suggests that decisions were made at managerial level and largely failed to factor in how female staff might be affected by unpaid care duties at a time when children would have been forced to stay home for weeks on end, requiring parental supervision.

- The Covid-19 crisis reinforced women's marginalisation within media decision-making. Although Covid-19 was largely covered using politicised news frames, it remained within the domain of health reporting which, as a 'soft beat' which would have more likely had a higher proportion of female reporters.

Female health reporters, were assigned to be on the frontlines of covering Covid-19 sometimes without personal protective equipment (PPE) placing them at increased risk (e.g journalists in Botswana were forced to quarantine with together with members of Parliament after a nurse who was assisting at Parliament tested positive ⁽³¹⁾).

In some countries such as in South Africa and

Botswana protective equipment was supplied by employers, however that was not the case in countries such as Malawi, Lesotho, and Zimbabwe ⁽³²⁾.

- It was difficult for female journalists to gather news, particularly in countries where journalists were not classified as part of 'essential services' such as in Zimbabwe and South Africa ⁽³³⁾.

Since resources are more likely to be allocated by seniority, female journalists who occupy a low status in their newsrooms would have received less support in the form of data, airtime and equipment to gather news remotely whilst working from home.

- As Covid-19 continues to spread across Southern Africa, Amnesty International has reported that governments are targeting journalists and media houses that are critical of their handling of the pandemic ⁽³⁴⁾.

The targeting of journalists creates a difficult operating environment, which could deter female journalists from covering Covid-19 related information out of fear.

The strong irony in this particular instance is that the health beat has traditionally been considered as one of the 'softer' news beats reserved for women.

- Since the Covid-19 story is not just a health story female journalists who have mostly covered the health beat now possibly face competition from male journalists (who likely have more seniority) in the 'hard' news beats as they are more likely to be given high-profile Covid-19 related assignments.

This may be a challenge where media institutions need to prioritise and allocate resources as male journalists (by virtue of seniority or gender biases such as a perception of greater competence) might be preferred.

Such scenarios could also account for why it has mostly been male journalists that have been victims or targets of state-sanctioned harassment and intimidation in the censoring of Covid-19 related news within the region.

Covid-19 is the biggest story in the newsrooms and it is mostly male journalists who are seemingly entrusted with telling it because ⁽³⁵⁾ news coverage of Covid-19/coronavirus is mostly framed in hard factual terms, leaving little space for the human-centered journalistic approach.

remote working likely affected female journalists more than their male counterparts because seniority in media institutions affords benefits and preferential access to resources.

Thus ⁽³⁶⁾ reporters who are more established (and most likely male) tended to have their own transport and equipment and fared better with remote working than journalists who were still junior (and mostly likely female).

- Challenges faced by journalists such as lack of transport, equipment, high data costs and travel bans that prohibited inter provincial travel impacted negatively on news production under Covid-19 lockdown regulations, which affected media houses' capacity to deliver news and triggered waves of retrenchments in various newsrooms that were already struggling financially – leaving skeletal staff with the task of newsgathering ⁽³⁷⁾.

- Female journalists are likely more vulnerable to retrenchments and salary cuts as well as other measures to cut cost owing to the low status they occupy in media institutions, where decision-makers are mostly male and might be more inclined to save their own jobs first.

The pandemic worsened working conditions for female journalists in traditionally difficult media environments such as Zimbabwe, Malawi, Lesotho and Swaziland, with many incidences of harassment, intimidation and detention of journalists having been reported and where many female journalists face violence in a number of forms inclusive of sexual abuse and harassment in the workplace (as detailed in the country reports).

The growing trend in violence against women journalists online, through attacks that are often gendered and sexualized is causing major damage to women's participation online, as such female journalists sit at the epicentre of risk as the digital, psychological and physical safety threats confronting women journalists are overlapping, converging and inseparable ⁽³⁸⁾.

One study indicated that gender inequalities in media work deepened during the pandemic with female journalists highlighting increased stress from working in isolation, bullying from bosses, family caring and home schooling, domestic tensions, increased workload and the usual tight deadlines, long working hours, psychological impact of Covid-19 coverage, fear of job loss ⁽³⁹⁾.

In Southern Africa, women have little voice within the media industry owing to the low status they occupy in male-dominated newsrooms and

- Challenges relating to equipment for

women also have little voice in media content both as news subjects and sources of news. Press freedom can only be realized to its full extent when all citizens have equal access to the media ⁽⁴⁰⁾, and gender research in Southern Africa has shown that in the case of women, no country in the region has as yet achieved this goal.

ASSESSMENT

All SADC countries guarantee the right to freedom of expression, according to the SADC gender protocol 2018 barometer, yet gender inequalities in and through the media persist.

The rights envisioned in Article 9 of the African Charter on Human and Peoples' Rights (ACHPR) which states that every individual shall have the right to receive information and every individual shall have the right to express and disseminate his/her opinions within the law, are not yet enjoyed by women as they are underrepresented and misrepresented in and through the media.

The prevalence of 'tabloidisation' of the media, weak ethical practices, entrenched male dominance, violations of women's rights, and failure by the media to implement gender mainstreaming are some of the factors impeding realization of gender equality in and through the media.

The slow rate of change within the regional media and delay in transforming its editorial content, work practices and institutional cultures account for the Southern Africa media's failure to comply with the provisions of the Southern African Development Community (SADC) Protocol on Gender and Development, particularly expressed through Article 29.

The regional media needs to promote gender equality through adopting exemplary institutional practices and systematically taking gender considerations into account in all dimensions of its work, in order to conform to the letter and spirit of the press freedom values of a "pluralistic press"; "reflecting the widest possible range of opinion within the community" espoused in the Windhoek Declaration.

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SECTION 2: COUNTRY REPORTS 2019/2020

Note: These are condensed versions of the full country reports, which are available

ANGOLA

CENSORSHIP, DIGITAL SPACES AND INTERNET SHUTDOWNS



By Amanda Manyame

INTRODUCTION

Angola has 13 newspapers and nine radio stations. There are several television stations including *Palanca TV*, *RTP África*, *Televisão Pública de Angola* (the national broadcaster)

and *TV Zimbo*; and about 23 online publications in the country. ⁽⁵⁾

Historically, Angola has received a poor world ranking for press freedom and access to information both online and offline, as evidenced by its Reporters Without Borders (RFS) rankings since 2013. ⁽⁶⁾ The poor ranking has been attributed to several factors including the weak mechanisms in upholding constitutional guarantees and due process. ⁽⁷⁾

RSF's 2020 Barometer had reported that 247 journalists, 119 citizen journalists and 14 media assistants were imprisoned. In addition, reports on human rights and media freedom by Freedom House, ⁽⁸⁾ RSF ⁽⁹⁾ and AllAfrica ⁽¹⁰⁾ indicate that the media in Angola effectively operate under state censorship.

MEDIA OWNERSHIP

Many private outlets are owned by senior officials of the ruling MPLA and are reported to act as mouthpieces of the current regime. ⁽¹¹⁾ The largest privately owned media outlet Grupo Medianova is owned by a conglomerate of former MPLA government officials, former Vice President Manuel Vincente and two others. ⁽¹²⁾

Despite media houses largely belonging to politicians; there are also dissenting voices amongst the Angolan media community. For instance, *Maka Angola* is said to hold opposing views, and so are foreign news outlets, including Portuguese news agency *Lusa*, French news agency *RFI*, and *Voice of America (VOA)*, all of

Traditional media still under control

The installation of a new president, João Lourenço, in September 2017 ended four decades of rule by the Santos family, but the four TV channels, 17 radio stations and 20 or so newspapers and magazines are still very largely controlled or influenced by the government and ruling party. Censorship and self-censorship, a hangover from the years of repression under the former regime, is still widespread. It was seen in the state media's failure to report that opposition parliamentarians held up yellow cards during the president's address to the nation in October 2019. Only a handful of radio stations and websites manage to produce independent and critical reporting. The exorbitant cost of radio and TV broadcast licences holds back pluralism and prevents the emergence of new media actors. A series of laws passed in 2016

Follow the news on Angola

FOLLOW



Share the information



106

in the 2020 World Press
Freedom Index

RANKING

+3
109 in 2019

GLOBAL SCORE

-1.04
34.9% in 2019

Ranking since 2013

CONTACTS

Facebook

RSF_Africa

RSF_pt



0

journalists killed in
2021

0

citizens journalists
killed in 2021

0

media assistants
killed in 2021

which are widely read within Angola. ⁽¹³⁾

Small and medium size media outlets as well as those in remote and rural areas with limited reach are often vulnerable, should they suffer any harassment or have their funding or advertising revenue withdrawn.

MEDIA FREEDOM

The 2020 Freedom in the World Report on Angola ⁽¹⁴⁾ ranked Angola as “not free” with a score of 32/100 and in similar fashion Reporters without Borders’ World Press Freedom Index, 2020 has rated Angola 106/180. ⁽¹⁵⁾ The organisation ⁽¹⁶⁾ has also noted that as a result of years of repression under the former regime, Angolans have become accustomed to practicing self-censorship, attributed to the fear of retribution as was perpetuated by the previous administration — and unfortunately still being perpetuated albeit not always widely reported or publicised.

Opposition party UNITA has expressed concern over limitations to freedom of expression and the media, ⁽¹⁷⁾ noting that there is a “growing practice of censorship in other public bodies, especially amongst the public television and radio, where there is no equal treatment of political forces and sectors of civil society of the regime”. ⁽¹⁸⁾

During January 2020 an incident of violence against journalists covering a protest action happened when journalists from *TV Palanka* and *Angola Catholic Radio* were detained by law enforcement officers for about two hours and had their material destroyed.

Despite the general practice of self-censorship, instances of individuals criticising the government, particularly on social media, have been noted. ⁽¹⁹⁾

SDG 16

The SDG dashboard for Angola in the 2020 UN Sustainable Development Report ⁽²⁰⁾ ranks Angola as having moderately improved in its achievement of SDG 16, to promote just, peaceful and inclusive societies, including public access to information. The Index highlighted that “major challenges remain” in the country which include reports of state censorship and repressive laws discussed in the report. Further, Freedom House ⁽²¹⁾ noted that the judicial system fails the media when it comes to access to affordable legal services to protect their



right to press freedom when detained by law enforcement.

Moreover independent and private media journalists in small towns are denied access to enter events planned by or hosted by the government, thereby limiting the access to direct information about the particular event. In so doing, the government contradicts SDG target 16.10 in their denial of access to information to journalists in small towns. These denials and control of who has access to attend the government organised events and activities also amount to censorship of the media.

ONLINE FREEDOM

Angola’s ranking in press freedom as well as freedom on the internet, have improved since President Joao Lourenco took over the presidency. ⁽²²⁾ It is further reported that online journalism has expanded, with journalists publishing more on corruption, police brutality, land grabs and abuse of power. ⁽²³⁾ The increase in journalism online is attributed to the transparency and anti-corruption campaign that President Lourenco has embarked on, encouraging journalists to report on and publish such content. ⁽²⁴⁾

Freedom House (2020) noted concentration of internet access in urban areas hampers regional and ethnic representation.’ ⁽²⁵⁾ Several factors are said to affect the uptake of the internet in the more remote provinces of Angola, such as poor infrastructure, which significantly hampers information and communications technology (ICT) access as the country’s fractured electricity system only serves 73.7% of the urban population and only 8% of the rural population as of 2015. Internet speeds are limited by the ADSL technology used for fixed-broadband connections. ⁽²⁶⁾ In addition, traditional forms of media are mostly controlled by the government and the ruling party.

No incidents of the government blocking or filtering online content have been reported

in Angola, however restrictions on the type of information exchanged through digital media technologies were reported during the coronavirus pandemic, with journalists and others being cautioned about publishing information about the government's responses to the virus. ⁽²⁷⁾ To date one person, Armando Chicoca, was charged with insulting a public authority when he criticised state agents on social media for their treatment of another journalist. ⁽²⁸⁾

In addition, the Cell Identification or Location and Electronic Surveillance legislation came into effect during May 2020. It is reported that the law expands 'government's legal authority to conduct electronic surveillance, including through spyware and telecommunications interception technology, with minimal safeguards'. ⁽²⁹⁾ Furthermore, a surveillance and data integration centre was opened during December 2019 in the capital city of Luanda. This centre was reportedly linked to sophisticated surveillance technology. ⁽³⁰⁾ These developments could assist the government to spy on its citizens and journalists and disrupt or intercept communications.

During October 2019 the Secretary of State for Mass Media proclaimed that plans were underway to amend the Social Communication Legislative Package ⁽³¹⁾ in an attempt to increase freedom of the press and freedom of expression in Angola, support democracy and to help future mayors in their electoral campaigns by using local media.

IMPACT OF THE PANDEMIC

Several media outlets such as the Grupo Medianova cited financial difficulties during Covid-19 and consequently dismissed 30 journalists. ⁽³²⁾ This is contrary to the Presidential Decree 18/20; which stated that dismissal of employees during the period of the national state of emergency are prohibited. Reports of journalists contracting the coronavirus have been reported in the country. ⁽³³⁾ This has been attributed to the lack of alcohol based sanitisers and other personal protective equipment.

Amnesty International reported in May 2020, that journalists were threatened and prevented from reporting freely about the government's response to the coronavirus. ⁽³⁴⁾

This is a result of a statement by the Minister of Health, Sílvia Lutucuta, condemning the spreading of misinformation on medical assistance and conditions in facilities earmarked for the treatment of coronavirus by persons

that have not and are not receiving treatment in these facilities and thereby do not have first-hand information about the conditions. ⁽³⁵⁾

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; moderately improving
- Freedom House report
- RSF World Press Freedom Index ranking

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BOTSWANA



By Joel Konopo

INTRODUCTION

The media industry in Botswana is going through trying times. Devastating effects of prolonged Covid-19 lockdowns have left a trail of destruction in its wake on southern African economies. Plummeting advertising revenue, dwindling sales, as well as shrinking budgets have been the bane of the Botswana media.

In a country where data costs are prohibitive ⁽³⁶⁾ relative to salaries — (it costs \$10.49 to get 1 gigabyte of data in Botswana compared to \$0.09 in India, according to a 2019 study on the cost of internet) — internet inequality has impacted negatively on unemployed youth. The decline of newspapers in Botswana also means that the public will lose much of the engagement with trusted sources of information.

With shrinking budgets, newsrooms have announced staff layoffs, suspended or cancelled their print operations, and downsized significantly. Sadly, this has impacted the media ability to inform the public leading to overdue demands for media reform and transition to digital platforms. Courageous and independent watchdog reporting is on the wane, based on numbers alone; there simply are fewer professional reporters holding those in power accountable.

MEDIA FREEDOM

While Botswana has maintained a lofty position in terms of good governance in the Ibrahim Index for African Governments and the Freedom House ranking, these ratings have not translated into human rights gains. In 2020, international journalism watchdog Reporters without Borders has ranked Botswana at a global position of 39, a 5 step increase from 2019.

On the other hand, the 2020 Freedom House findings award the country 72% in terms of general freedoms but condemns the government for maintaining a hostile relationship with the media despite a change of guard. ⁽³⁷⁾

A spate of threats and arrests of journalists on vague charges continues today. In June 2020, two journalists for *Weekend Post* newspaper were detained by the country's intelligence services accused of photographing a building linked to the Directorate of Intelligence and Security, the country's domestic and international intelligence agency, according to the New York-based Centre for the Protection of Journalists.

Journalists have previously been threatened with the little-used Cyber Crime Act after putting up various posts on Facebook that alleged a minister was involved in a sex scandal.

President Mokgweetsi Masisi has been accused of paying lip service to press freedom. ⁽³⁸⁾ In July 2020, the ruling Botswana Democratic Party's members of parliament rejected a motion that called for the government to repeal the Media Practitioners Act which was passed in 2008, but was never implemented mainly because the Law Society of Botswana declined to participate in its implementation saying the act was draconian.

State-run media outlets dominate the broadcasting sector and have exhibited a pro-government bias in their programming.

Botswana is still without a freedom of information law, and this limits government transparency. The recent refusal to repeal the Media Practitioners Act by Members of Parliament confirms the uneasy relationship between the press and government. Additionally, section 44 of Botswana's corruption watchdog law, the Directorate on Corruption and Economic Crime (DCEC) Act, prohibits journalists from divulging information on ongoing DCEC investigations.

MEDIA AND GENDER

Gender representation in newsrooms in Botswana has hardly improved in the past decade, according to the coordinator of the World Association of News Publishers in Botswana. Out of nine mainstream newspapers, only two have women in positions of power and influence — the editor of *The Voice* and the managing editor of *Weekend Post*.

The work environment is also generally not conducive to women, including low salaries and the absence of gender policies in the male

dominated newsrooms.

Incidents of female photographers being harassed, especially in courts by accused persons, have also occurred. Women who try to break the proverbial glass ceiling and carry out accountability journalism have become objects of scrutiny and derision. For example, a *Botswana Guardian* investigative journalist, Yvonne Mooka, who exposed a prophet was trolled online and harassed by those who did not like her investigative story. This does not often happen to her male counterparts in the newsroom.

IMPACT OF THE PANDEMIC

The impact of the Covid-19 pandemic on the media industry is being felt acutely around the SADC region and Botswana in particular. The *Botswana Gazette*, a weekly newspaper had to abandon printing for the first time in three and a half decades and shifted to digital platforms. Other newspapers have hinted at closing down.

The pandemic was just a catalyst for the further decline of the already ailing Botswana media, which has been struggling to keep up with technological innovation, as well as an upsurge of social media and declining revenue from advertising. For instance, on the eve of the general election in 2014, the government introduced an advertising ban on some critical media, which undermined their financial health and also led to job losses. For one newspaper, *Mmegi*, this resulted in losing nearly a quarter of its staff between 2013 and 2016. Despite government denial, the ban remains in force.⁽³⁹⁾

CENSORSHIP

An August 2020 study by AfroBarometer, a research network that measures public attitudes on economic, social and political matters, found that the news media in Botswana is generally seen as free, and that the media can report without government interference in Botswana more than in most African countries.

But the advent of the Covid-19 pandemic has pointed to limits of journalistic freedom and censorship by the government.

Parliament had extended a State of Emergency law that gives Pres Masisi sweeping powers to rule by decree for another six-month period until March 2021. It was bulldozed through by the majority BDP despite opposition protests that putting power in the hands of one man will breed corruption and infringe on the powers of other



Botswana President
Mokgweetsi Masisi
CREDIT: BLOOMBERG VIA GETTY IMAGES

branches of government.

One alarming provision of the president's emergency powers is the introduction of a prison term of up to five years or a \$10 000 fine for anyone publishing information with "the intention to deceive" the public about Covid-19 or measures taken by the government to address the disease.⁽⁴⁰⁾ The powers under the state of emergency prohibits journalists from using "source(s) other than the [Botswana] Director of Health Services or the World Health Organisation" when reporting on Covid-19. Journalists who use other sources potentially face a fine of \$10 000 or a five-year jail term.

The national director of the Media Institute of Southern Africa (MISA) Botswana Chapter, Tefo Phatshwane had objected to the Emergency Powers Act, saying that it is prohibiting independent journalists from holding those in power to account.

EMERGENCY POWERS AND CITIZEN JOURNALISM

There are well-grounded fears that emergency powers extend the government's grip on supposedly independent media institutions.

In June 2020, a schoolteacher was arrested after challenging the government's claim that a health worker who was screening lawmakers

A new president more sympathetic to press freedom?

Under the previous president, Ian Khama, press freedom declined alarmingly, investigative journalists were arrested, a news website was subjected to a massive cyber-attack and Botswana fell eight places in the World Press Freedom Index from 2013 to 2018. However, press freedom violations have declined under his successor, Mokgweetsi Masisi, who has at least given frequent press conferences, unlike Khama, who gave none during his ten years as president. Nonetheless, there is still no law on access to information, which journalists have long been demanding. State-owned media still falls far short of providing a public news service and continues to be under the government's sway, to the point that they are now directly supervised from the president's office.

Follow the news on Botswana

FOLLOW



Share the information



39

in the 2020 World Press Freedom Index

RANKING

+5
44 in 2019

GLOBAL SCORE

-1.53
2509 in 2019

Ranking since 2013

CONTACTS

RSF
RSF_Africa
RSF_Eu



0

journalists killed in
2021

0

citizens journalists
killed in 2021

0

media assistants
killed in 2021

during a heated parliamentary debate on the state of emergency had tested positive for Covid-19. On his Facebook page, the teacher (who uses a pseudonym, Field Marshal Mracoville) also questioned why people infected with Covid-19 in hospital were not developing further complications or recovering. Police said the teacher's arrest is part of a larger effort to crack down on alleged "misinformation" under section 30 of the Emergency Powers Act. His lawyer complained in local media that the government is trying to criminalise the airing of opinions. ⁽⁴¹⁾

The Botswana police also arrested Justice Motlhabane — the spokesperson of Botswana Patriotic Front, an opposition party with ties to former president Ian Khama — for "degrading and maligning the leadership". The charges were labelled "worrying" by the Botswana Federation of Public, Private and Parastatal Sector Unions. Several other people have been charged under the Emergency Powers Act.

The ruling Botswana Democratic Party has always treated independent media with open hostility and created barriers — through sedition laws and the absence of access to information laws — designed to ensure that the private media fails.

However, the private media has been resilient and the advent of social and online media has helped amplify the voice of the private media and citizens. Facebook has increased access to news in remote areas that traditional media has for decades been struggling to reach.

The coronavirus pandemic has handed

authorities a free reign to further entrench control of the media using laws such as the Emergency Powers Act. Out of fear, some media houses have resorted to self-censorship during Covid-19. Lack of transparency around procurement has led to incidences in which journalists write speculative stories around Covid-19, creating a climate of mistrust and building a fertile ground for misinformation.

Women in newsrooms still face an uphill battle. For this to change, Botswana media must introduce and commit to gender policy as a first step to promote participation of women in leadership positions in the media.

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; moderately improving
- Freedom House report
- RSF World Press Freedom Index ranking

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ESWATINI

MEDIA AND DEMOCRATIC CONTEXT



By Simbarashe Nembaware

There is a handful of media outlets in Eswatini which include one state-owned television station and the national radio station, the *Swaziland Broadcasting and Information Services (SBIS)*, which broadcasts in English and Siswati and functions as a government department, ⁽⁴²⁾ and several online news publications including *The Swati Newsweek*, *Swaziland News* and Swazi Media Blog. Online publications or digital media platforms are not required to register or to obtain permission from state authorities to operate. ⁽⁴³⁾

In 2005, the country adopted a new constitution. This constitution is silent on political parties and anything relating to multi-party democracy but it does provide for the right of association and freedom of speech.

MEDIA FREEDOM

Eswatini is ranked 113 out of 180 countries on the Transparency International Corruption Perceptions Index (CPI) with a meagre score of 34 from a possible 100. Reporters Without Borders gave the country 45 points which translated to position 141 out of 180 countries. ⁽⁴⁵⁾ The 2020 Sustainable Development Report marked the country red noting that “major challenges remain,” ⁽⁴⁶⁾ with a score of 53.4 and a ranking of 144 from 193 countries.

Eswatini has no free press that holds the government accountable. Media in Eswatini is controlled by the king. With the exception of a

radio station devoted to religious programmes, radio and television are government departments under the king’s control. ⁽⁴⁷⁾

Journalists are constrained and cannot work freely, while courts are not permitted to prosecute representatives of the monarchy. ⁽⁴⁸⁾ Transparency International notes that citizens are unable to speak out, demonstrate or associate with organisations without fear of the consequences. ⁽⁴⁹⁾ This crisis of democracy is punctuated by government actors that often silence independent media.

A Committee to Protect Journalists (CPJ) Report ⁽⁵⁰⁾ on the attack of journalists in Eswatini reported that South African newspapers entering Eswatini are thoroughly screened and should an edition contain information that paints the government or the king in bad light, that whole edition is bought by the government and all the copies destroyed.

ONLINE FREEDOM

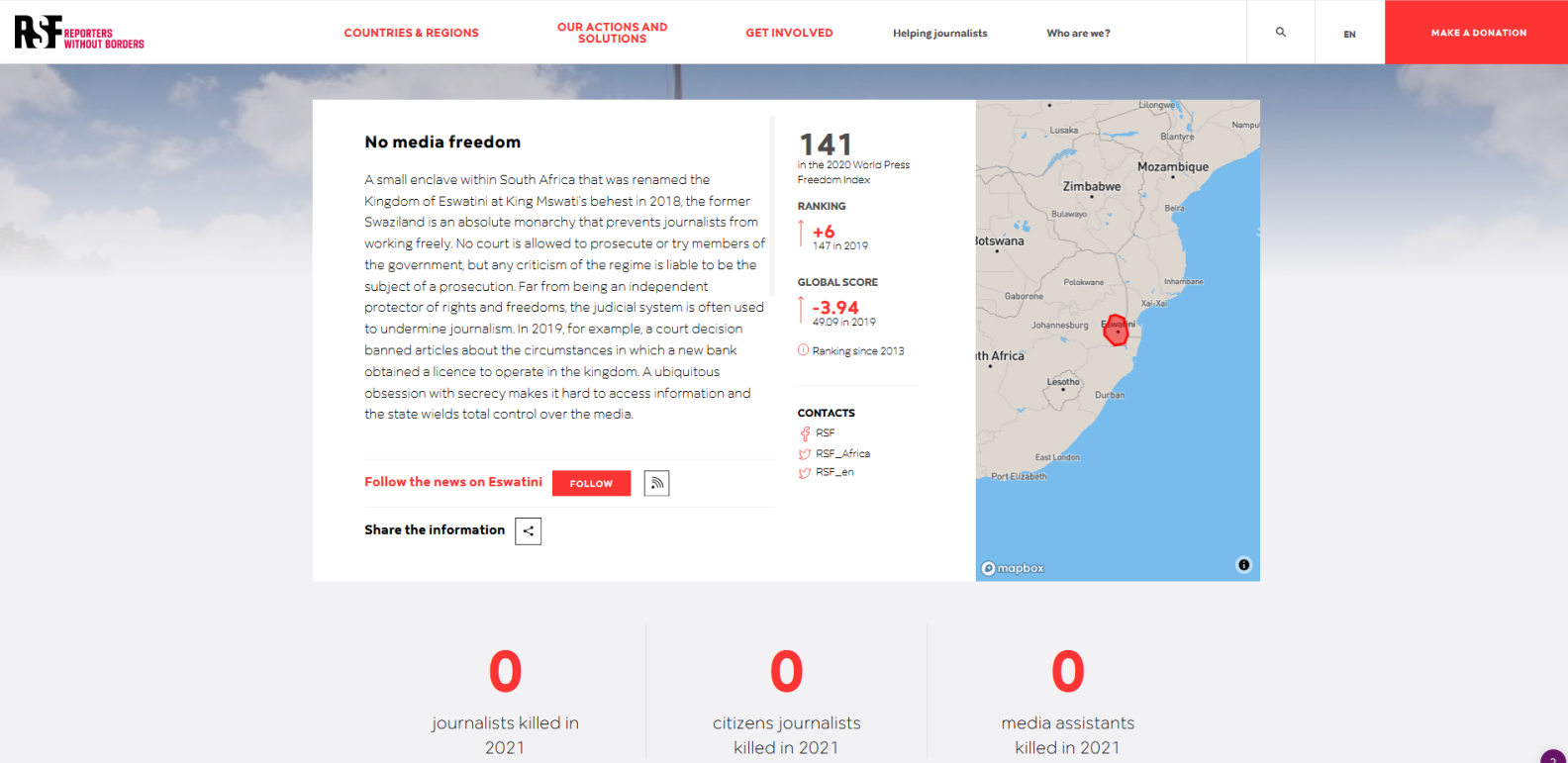
In 2020, the government had sought to pass the Computer Crime and Cybercrime Bill whose section 19 criminalises the publication of “fake news”. The Bill proposed that people found guilty of publishing information that damages the country’s image, be liable to fines of up to R10-million (about US\$700 00) or 10 years in prison. The Bill is said to further stifle freedom of speech in the country.

However, given the shifting terrain in Swazi media, independent online news options are increasing, although they have a limited reach. Mobile data is generally unaffordable for the majority of citizens as a consequence of the high internet tariffs set by the Eswatini Posts and Telecommunications Corporation (EPTC formerly SPTC) for internet use.

A gig of data costs US\$8.36, which is a huge price drop compared to US\$21.99 a few years ago. However this is still expensive for the majority of the population. As at January 2020, there were 542,000 internet users, representing a 23% penetration. ⁽⁵¹⁾

The only space for divergent views is on the online news sites with limited reach and where the readers tend to already broadly agree that there needs to be democracy in the kingdom.

Eswatini has no access to information law but the Media Institute of Southern Africa (MISA) Swaziland continues to advocate for media freedom in the country. ⁽⁵²⁾



CENSORSHIP

Constitutional rights to free expression are severely restricted, with the media and journalists working hard to remain on the right side of the law. Security agencies monitor personal communications, social media and public gatherings, and criticism of the king or other elements of the regime can be punished under laws such as the Sedition and Subversive Activities Act, the Suppression of Terrorism Act, and the Public Order Act. ⁽⁵³⁾

According to the Reporters Without Borders' World Press Freedom Index for 2020, Eswatini ranks 141 out of 180 countries, ⁽⁵⁴⁾ a slight improvement from 2019 when the country was ranked 147th. Activists say this slight improvement in ranking does not mirror what is happening on the ground. A number of journalists and activists have gone into exile for fear of arrests and harassment.

Self-censorship ⁽⁵⁵⁾ has become the guiding principle for journalists working in Eswatini. The risk for arrests, harm, abduction and being shut down for publishing anything is extremely high.

In its 2020 report for Eswatini, Freedom House noted that the absence of an access to information law fuels the culture of no proactive disclosure of government information. ⁽⁵⁶⁾ The judicial system in Eswatini is often used by authorities to undermine media freedoms such as access to information and free expression.

In April 2019, Judge Nkosinathi Maseko banned the publication of investigative news articles detailing how the Farmers Bank was issued an operating licence under unclear circumstances. ⁽⁵⁷⁾ The court ruled that documents used in the news articles were unlawfully obtained and therefore could not be used even in the interest of the public.

The editorial independence of private media is compromised by editors and media owners who have a cosy relationship with the monarchy, big corporations and the government. ⁽⁵⁸⁾ Journalists in these media houses are by extension compromised as they cannot work on articles their editors and publishers will not publish.

PERSECUTION OF JOURNALISTS

A number of arrests of journalists and editors have been reported. These include:

- the October 2020 case of Mbongeni Mbingo, editor of *Eswatini Observer*, who was suspended following reports that he was part of a group that has allegedly formed a political party to oppose King Mswati III. ⁽⁵⁹⁾

- the April 23, 2020 case when police officers raided the home of Eugene Dube, the editor and publisher of the privately owned news website *Swati Newsweek*, and seized his three mobile phones, a laptop and work documents. Dube fled to South Africa, although he has since returned to Eswatini.



Former editor of the
Swaziland News, Zweli
Martin Dlamini
CREDIT: CPJ

journalists was organised by MISA Swaziland to equip journalists with skills on how to report on the virus. The acting Minister of ICT, Senator Manqoba Khumalo, who attended the workshop, said it was critical that media practitioners disseminate balanced, factual and credible information on the precautionary measures of Covid-19. ⁽⁶¹⁾

A month later, on 23 April, Eugene Dube, journalist and editor of *Swati Newsweek Online*, was detained for seven hours by police following his publication of an article about the king's public health strategy in the face of Covid-19. ⁽⁶²⁾

A former editor of the *Swaziland News*, Zweli Martin Dlamini, also went into exile in South Africa because in Eswatini, police wanted to arrest him for a story that he covered. ⁽⁶³⁾ He had written that the king was sick and had contracted Covid-19.

The state denied temporary broadcasting licences to Shiselweni Community Radio and Lubombo Community Radio to raise awareness of Covid-19 and improve health education in their constituencies. ⁽⁶⁴⁾ In denying the licence applications, the Eswatini Communications Commission cited the Covid-19 lockdown, the Broadcasting Guidelines of 2017 and the lack of a Broadcasting Act as the reason it could not issue licences. ⁽⁶⁵⁾

MEDIA AND GENDER

One of the key objectives in the country's National Development Strategy (NDS) 2022 is to promote equality and empower women. While women are in the majority, they are marginalised and underrepresented in leadership and decision-making positions.

Noxolo Nkabinde, a female journalist in Eswatini cited by MISA in 2015 as one of the women to watch, said there are no female role models in the media industry and without successful women in media to look up to, women in media may be extinct in the future. ⁽⁶⁶⁾ It is not clear how many media houses have gender policies within their organisations. ⁽⁶⁷⁾

Women remain vulnerable and exposed to abuse by fellow colleagues, powerful business people and also government officials. Allegations raised against the late former Prime Minister Barnabas Dlamini, are that he demanded sex from female journalists during international trips.

- Zweli Martin Dlamini, the editor of *Swaziland News*, an online publication, also fled to South Africa following his arrest and torture by the police. ⁽⁶⁰⁾

In light of these persecutions, Dewa Mavhinga, the Southern Africa Director of Human Rights Watch (HRW), called on activists and journalists to vigorously petition international bodies to which Eswatini belongs, including SADC, African Union, ILO, UN HRC, Commonwealth; and key neighbouring countries like South Africa with significant economic and political influence over Eswatini, as a way to protect themselves.

IMPACT OF THE PANDEMIC

During the pandemic, a workshop for

MEDIA SUSTAINABILITY

Diverse, free and independent media is under severe threat as the onset of the Covid-19 pandemic has negatively impacted the financial viability of media outlets in the region. (68) Eswatini is struggling economically and many businesses are not doing so well. The media industry has not been spared. The bulk of advertising is taken by established media houses at the expense of smaller companies. Small publications like the weekly *Independent News* and the monthly magazine *The Nation* struggle to remain afloat because of scarce advertising. (69)

In addition to the banking and telecommunication sectors, the Eswatini government is the biggest advertiser. Media practitioners say this often leads to self-censorship, with media houses preferring sustainability to impartial journalism. Media houses are also often accused of being in the pockets of powerful individuals as they seek to secure income that will help sustain them. (70) And because of poor working conditions across the media industry, journalists are accused of taking bribes from politicians and business people.

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; stagnating
- Freedom House report
- RSF World Press Freedom Index ranking

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LESOTHO



By Sechaba Mokhethi

The media landscape in Lesotho is made up of about 40 media houses ranging from broadcasting with 27 radio stations, print media with nine newspapers and three magazines.

The 2020 Freedom House study of political rights and civil liberties reported that Lesotho is partly free and freedom of the press in Lesotho is only indirectly protected under constitutional guarantees of freedom of expression. ⁽⁷¹⁾

In protecting the political rights and civil liberties that include free and independent media, and freedom of expression, the country scored 63 out of 100 points.

According to the World Press Freedom Index, Lesotho dropped eight places from 78 in 2019 to 86 out of 180 countries in 2020.

CENSORSHIP

Lesotho journalists are subject to threats and intimidation from authorities as well as from private citizens. State and private media outlets have also been accused of open bias.

Additionally, journalists face statutory barriers that interfere in their work, including criminal code provisions that bar sedition and offenses against the "dignity of the royal family." ⁽⁷²⁾

The constitution provides legal protection for freedom of expression. However, political violence in recent years has discouraged some open political debate.

The Penal Code, adopted in 2010, allows police officers to force journalists to reveal their sources. This environment has forced Lesotho journalists to resort to self-censorship for their own safety.

On August 12 2020, the Deputy Leader of the Basotho National Party (BNP), who is also Deputy Minister of Foreign Affairs and International Relations, Machesetsa Mofomobe, made a derogatory statement against editors of foreign origin.

This was after the *Lesotho Times*, whose editors are Zimbabweans, published a story about the embezzlement of Covid-19 related funds under the watch of the Minister of Communications, Science and Technology.

During a media briefing, Mofomobe referred to the editors as "makoerekoere" — an offensive term. Mofomobe's utterances were condemned by MISA Lesotho as tantamount to hate speech and likely to ignite xenophobia in Lesotho.

At the beginning of 2020, *Informative* newspaper was fined M180 000 (equivalent to US\$12 000) in defamatory damages by the High Court for publishing an article titled "Defence Director in row over property".

Lebona Mokopanela, the director in question, filed a defamation lawsuit against the *Informative* seeking M1-million (US\$6 800) for publishing what he termed false and grossly defamatory allegations.

Mokopanela received a default judgment against the newspaper after *Informative* failed to present its argument before the court.

MEDIA FREEDOM

Media practice in Lesotho is constricted and there is no guarantee for freedom of expression, despite the constitution spelling out that freedom of expression is acceptable.

The hiring of untrained journalists by media houses is said to have led to shoddy reporting, giving grounds for the authorities to descend heavily upon the same institutions, thereby threatening freedom of expression.

On September 14 2020, Prime Minister Moeketsi Majoro announced that the government was working on classifying some of its information and that any media house which publishes "confidential government information" will be liable to prosecution.

The Prime Minister also said, "anybody who is not authorised to be in possession of classified government documents is committing an offence..." ⁽⁷³⁾

Growing pressure

In 2018, Lesotho joined the still very small club of countries that have declared the criminalization of defamation to be unconstitutional, but the authorities have continued to step up pressure on the media and journalists. The government brought a complaint against a radio station for 'incitement to violence' in 2018 after a series of critical reports, while the army accused an investigative reporter of spying when she reported the demands for compensation being made by soldiers previously charged with planning a mutiny. Soldiers who are accused of trying to murder the editor of the Lesotho Times in 2016 have meanwhile yet to be brought to trial. Intimidation of the media has increased to the point that some journalists have had to flee to South Africa while those that have stayed often censor themselves. Newspapers and

Follow the news on Lesotho

FOLLOW



Share the information



86

in the 2020 World Press
Freedom Index

RANKING

-8
78 in 2019

GLOBAL SCORE

+0.71
29.74 in 2019

○ Ranking since 2013

CONTACTS

RSF
RSF_Africa
RSF_en



0

journalists killed in
2021

0

citizens journalists
killed in 2021

0

media assistants
killed in 2021

Beyond the Prime Minister's statement, Lesotho has several laws that impinge on media freedom and freedom of expression, such as the Printing and Publishing Act of 1967, section 10 (1); the Official Secrets Act of 1967, section 4; the Internal Security (General) Act of 1984: section 34; the Sedition Proclamation 44 of 1938 and the Obscene Publications Act of 2012.

ACCESS TO INFORMATION

There is no access to information law in Lesotho and this makes it difficult for both private and public media to fulfil their role. The constitution does not guarantee direct access to information.

Attempts to legislate access to information started with the Access and Receipt of Information Bill of 2000, to effect the constitutional right of freedom of expression. ⁽⁷⁴⁾

However, 20 years after its drafting, the Bill has not been passed into an Act of Parliament, despite several campaigns by civil society organisations.

Accessing public information in the country is very difficult. The ability to access it depends on the willingness of officials working in public institutions.

The Lesotho 2020 Transparency Assessment revealed that 70% of the sampled ten public institutions and government ministries denied access to reasonable information requests, or acted with high levels of secrecy.

According to the study, only 30% of the institutions displayed an average level of openness in allowing access to public information.

ONLINE FREEDOM

In January 2020 there were over 900 000 internet users in Lesotho. Internet penetration in the country stood at 44% against 20% (430 000) social media penetration.

During the period under review, the Lesotho Communications Authority introduced rules that will subject users of the internet, social media and bloggers to the Lesotho Telecommunications Authority (Broadcasting) Rules of 2004, which gives the LCA powers to impose a fine or penalty to licence holders who fail to comply with their licence conditions.

The LCA also issued a draft of its Internet Broadcasting Rules 2020. The authority invited the public and media industry stakeholders to submit comments on the proposed rules. ⁽⁷⁵⁾

Through these rules, the government is seeking to regulate online behaviour, compelling social media users with more than 100 followers to register with the communications authority and obtain an internet broadcasting allowance.

Under the proposed bill, an internet broadcaster is anyone who posts any text, image, or photograph accessible to at least 100 users. The proposed rules would also give the LCA powers to remove internet users' posts.

According to AfroBarometer findings issued on October 9, 2020 more than half (51%) of Basotho say that access to the internet and social media helps people to be more informed and active citizens, and should be unrestricted. The study also discovered that only about one-third (35%) of Basotho supported internet regulation by the government. ⁽⁷⁶⁾

IMPACT OF THE PANDEMIC

Like other countries, Lesotho declared a national emergency and subsequently announced a three-week country lockdown spanning from March 29 to April 21, 2020. Several organisations, particularly government ministries, continued to call and congregate journalists for press briefings without PPEs.

Some journalists have revealed that information gathering on the internet and by phone, to avoid Covid-19 exposure, has been an alternative, but their employers do not provide them with enough data and call bundles.

MISA Lesotho and partners organised an intensive training course for journalists to improve Covid-19 media coverage and encourage coordinated dissemination of information about the pandemic.

MEDIA AND GENDER

Meagre remuneration is the main cause of harassment among women journalists in Lesotho. There are no minimum wage standards for journalists and remuneration is mostly determined via negotiations with the employer.

Despite these challenges, in August 2019 MISA Lesotho partnered with the Lesotho National Insurance Group to launch the Women in Media Awards in recognition of female journalists who showed outstanding performance in media advocacy, social issues, sports, business and economy; and to celebrate African Women's month as well. Although the initiative was intended to become an annual event, it was not celebrated in 2020.

COMMUNITY MEDIA

Lesotho has four community radio stations and analysis of the three that formed the sample for this research, common problems are unpaid work and resistance emanating from

lack of understanding of journalists' work by the communities within which the radio stations are based.

Community journalists find themselves reporting on issues that at times anger some of the members of the communities within which they live. "At times they ask why we keep exposing their secrets while we never say a word about our own secrets," said one of the journalists.

MEDIA REFORMS

During the period under review, Lesotho established the National Reforms Authority (NRA) to oversee the implementation of constitutional, parliamentary, security sector, judicial sector, economic and media reforms.

With the country's constitution under article 14 (1) only implicitly protecting press freedom, MISA Lesotho seeks for an amendment to introduce a constitutional provision explicitly guaranteeing media freedom, ensuring robust protection of the press and creating a conducive media policy and legislative environment.

Without meaningful reform of the kingdom's draconian laws, the state of media freedom in Lesotho will be subject to the ever-changing position of government on access to information and freedom of expression.

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; stagnating
- Freedom House report
- RSF World Press Freedom Index ranking

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MALAWI



By Aubrey Chikungwa

The year 2019 and the first half of 2020 will go down in the history of Malawi as a triumph for rule of law, media freedom, freedom of expression and democracy more broadly.

This period saw Malawi's Constitutional Court nullify the 2019 Presidential Elections for gross irregularities and order fresh polls. The period also witnessed the most widespread, consistent and popular protests against the Malawi Electoral Commission (MEC) for mismanaging the 2019 Presidential Elections.

The implementation of the Malawi Access to Information Act (2017) concluded 17 years of advocacy for MISA Malawi and other human rights activists. The enactment and operationalisation of the ATI Act is a fundamental milestone that will go a long way in promoting media freedom, freedom of expression and access to information for the media and citizens generally.

Overall the media operating environment in 2019/20 remained risky, exploitative and retrogressive in some aspects with members of the media having been physically assaulted when covering public functions, protests and court proceedings, while several practitioners have received anonymous threats for carrying stories critical of the state or the ruling elite.

MEDIA FREEDOM

Malawi has one of the most progressive constitutions in the region with clear and independent guarantees on freedom of expression in section 35, media freedom in section 36 and access to information in section 37.

The country, however, has both old and new laws that are retrogressive and negate these constitutional guarantees.

Malawi has also recently enacted laws that limit media freedom and freedom of expression, such as the Cybersecurity and Electronic Transaction Act (2016) that seeks to regulate online transactions, but in the process limits online expression.

This legislation has a number of clauses that affect media freedom and freedom of expression: sections 31, 32, 69 and 70 have a direct chilling effect on online users. Section 31 requires online content producers and editors to publish their identity and other details of their publication.

The act also promotes self-censorship on a platform that usually offers hope to societies with restrictive environments. However, the fear of imprisonment and fines for failing to publish an apology within 24 hours is enough for online content producers to practice self-censorship.

The presence of cyber inspectors as provided for under sections 69 and 70 and their mandate to search and confiscate computers and other gadgets also instils fear and promotes self-censorship.

ACCESS TO INFORMATION

Malawi has three main instruments that guarantee the right to information: section 37 of the Republican Constitution, the National Access to Information (ATI) Policy (2014) and the Access to Information Act (2017).

It is, however important to note that despite the fact that Malawi has three important instruments that guarantee the right to information, access to information is still a challenge for most Malawians due to several factors, including the following:

- The ATI Act was finally gazetted on September 30, 2020, heralding the commencement date three years after the law was adopted — a clear indication of lack of interest on the part of the government to implement the act.

- Despite the new administration's demonstrated willingness to operationalise the ATIA, it is important to note that it is still possible for the new government to frustrate the process and develop policies and subsidiary regulations that limit rather than promote access to information.

— Lack of capacity on the part of public bodies to meet the requirements of an ATI regime, including poor record keeping and lack of understanding of ATI as a right.

— Illiteracy and lack of awareness on the part of Malawians to demand information as a right, is also a likely stumbling block.

PERSECUTION OF JOURNALISTS

The most important concern of Malawian journalists revolves around safety and security, based on continued attacks and threats levelled at journalists by state functionaries. MISA Malawi has documented 20 attacks on journalists between 2019 and the first half of 2020 and has prompted MISA to write an open letter to then President Peter Mutharika and the Inspector General of Police, calling for commitment and adoption of measures to ensure safety and security for journalists.

These attacks are disturbing and a threat not just to the journalists, but also to press freedom in general. The police and even cabinet ministers and MPs, who are supposed to be exemplary in their conduct and defenders of the law, are found wanting as perpetrators of media freedom violations. Such actions interfere with access to accurate and credible information necessary for Malawians to make informed decisions.

PUBLIC AND PRIVATE MEDIA

Malawi has roughly 90 media outlets, with over 80 broadcasters — 40 of which are community, and three public broadcasters. The MISA Malawi Media Monitoring report on coverage of the 2019 Tripartite Elections showed that the private and independent media were broadly neutral and balanced.

Regrettably, the country's public broadcaster, *Malawi Broadcasting Corporation (MBC)*, with *Radios 1* and *2* and *Television*, still operates as a propaganda tool for the party in power. The recent change in government has brought hope that these outlets would change and operate in the interest of all sectors of society. The current administration has promised to loosen government's grip on the *MBC*, however, with no evidential change yet.

The amended Communications Act (2016), which subjects all presidential appointments of the *MBC* and the Malawi Communications Regulatory Authority (MACRA) board members

to parliamentary confirmation, became effective on June 1, 2017, but critics doubt the new law will change how the *MBC* has been operating, if the *MBCs* conduct during the 2019 elections is anything to go by.

MEDIA AND GENDER

Sexual harassment has become a growing concern in the Malawi media, with reports of women being forced into relationships or risk losing their jobs. As a result, MISA Malawi has teamed up with the Association of Women in Media and Women Lawyers Association to support female journalists to fight sexual abuse and harassment in the workplace. This initiative involves commencing both criminal and civil proceedings against the perpetrators as ways of ensuring a conducive working environment for women.

MEDIA AND DEMOCRACY

The developments in the Malawi media in 2019 and first half of 2020 should be looked at as milestones towards a mature democracy. The media showed resilience in troubled times and continued to undertake their task of informing Malawians and holding those in power accountable. The media continue to actively participate in nation building even under hostile political and economic strangulation. The advocacy and resolve to defend media freedom are clearly influencing the development of positive policy reforms evident in the enactment and commencement of the access to information legislation.

The new administration has brought hope, however, past administrations equally started on a positive and commendable note but ended up taking deliberate steps to strangle the media. It is therefore important for the media to rise to the occasion and guard against impunity by the ruling elite, advocate for the repeal of old and new laws that limit free speech and media freedom, and build strong safeguards and institutions to protect Malawi's nascent democracy.

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; moderately improving
- Freedom House report
- RSF World Press Freedom Index ranking

MOZAMBIQUE



By Ernesto C Nhanale

INTRODUCTION

Since 2018 and 2019, Mozambique has been facing setbacks in the exercise of freedom of the press and expression. The sixth round of the African Media Barometer shows that, although the media operate in a legally free environment in Mozambique, there were serious violations of press freedom and freedom of expression, characterised by kidnappings, death threats, preventing journalists from accessing information and covering relevant events, seizing of work equipment, assaults on newsrooms, arrests and bribing of journalists, politicians and academics.⁽⁷⁷⁾

The political and military conflicts in the centre and north of the country, Covid-19, generalised corruption, the resurgence of organised crime and the trend to state authoritarianism, mark the overall context in which the freedoms of the press and of expression have suffered abuses in Mozambique.

MEDIA FREEDOM

MISA Mozambique, in the "State of Press Freedoms,"⁽⁷⁸⁾ has reported on 20 cases of violations against journalists of which many are characterised by detentions, assaults, threats against journalists, and theft and vandalising of media offices.

A further 16 cases of violations against journalists and press freedoms⁽⁷⁹⁾ were reported from the Cabo Delgado region, where a journalist has disappeared without a trace. The burning down of the weekly paper *Canal de Mocambique* is a landmark event in the culmination of offences against press freedoms in Mozambique.⁽⁸⁰⁾

Both the MISA Mozambique⁽⁸¹⁾ and Freedom House reports,⁽⁸²⁾ indicate that there has been great deterioration in democracy, particularly due to a rise in authoritarianism, military conflicts and the war in Cabo Delgado; and the increase in corruption cases marked by the discovery of undeclared debts which deeply indebted the Mozambican state; and also from the impact of Covid-19, which significantly stimulated the appetites of government members to control the press.

PERSECUTION OF JOURNALISTS

The media environment in Mozambique is increasingly volatile. There is a need to democratise the country, as well as work for a change in behaviour to ensure greater respect for the freedoms of expression and of the press.

Serious violations against press freedom are going unpunished, observed in silence by the national authorities who, on many occasions, are connected to, or allegedly even order some crimes against the media.

The armed conflict involving Islamic extremists and the Mozambican forces in Cabo Delgado province has made the practice of journalism dangerous. It is seen by soldiers as an enemy activity and from 2017, cases began to be reported of detentions of journalists and confiscation of their equipment. Journalists were also obliged to supply their emails and passwords, in flagrant violation of their privacy.

On 7 April 2020 the journalist and newsreader on *Palma* radio and television, Ibraimo Mbaruco, was kidnapped in Palma town itself⁽⁸³⁾ and



Missing journalist
and newsreader
Ibraimo Mbaruco
CREDIT: MISA
Mozambique

was never seen again. The Mozambican state has still not taken steps or explained this case. Furthermore, human rights defenders and those who raise their voices to denounce the serious humanitarian situation in Cabo Delgado, have been victims of harassment.

In 2015, the scandal of the illegal indebtedness, later known as the “hidden debts”, became public knowledge through the international press revealing that the government had contracted heavy debts without prior consultation with parliament, and in violation of the norms of budgeting and of contracting debt.⁽⁸⁴⁾

One of the causes of the attack against press freedoms is the fact that the media, particularly the independent newspapers (*Savana* and *Canal de Moçambique*) which triggered the issue, put it on the agenda, and pushed for society to become aware and debate this case. Editor and journalist Lazaro Mabunda explained that after discovery of the hidden debts, “the political system has become more nervous and aggressive and does not want people to talk about the debts and make contradicting proposals.”⁽⁸⁵⁾

Mozambique has been recording falls in the main indicators that measure the quality of democracy since February 2015. As of 2019, the country has become an authoritarian country, according to the Democracy Index of Freedom House (2019).⁽⁸⁶⁾

Authoritarianism cannot be dissociated from the environment of corruption, discussed above in the case of the “hidden debts”, because where acts of corruption and organised crime are predominant, there is always a tendency to radicalise the actors involved.

IMPACT OF THE PANDEMIC

The first announcement and the State of Emergency Decree published by the state were proof of the leaning towards authoritarianism, dictatorship and control over the media. In Law 1/2020 of 31 March, which established the State of Emergency, the press was not regarded as an essential service.

The same law imposed restrictions and made it obligatory for the media to use solely official sources on Covid-19.⁽⁸⁷⁾ Article 27, paragraph 5 of the law states: “during the State of Emergency mass media which express information on Covid-19 contrary to the official information, are sanctioned”.

Direct incidents of abuse of power and of authority have happened since the declaration of

the state of emergency, in which journalists were victims of violations and arbitrary detentions. In the city of Beira, two journalists were victims of a trap staged by a local businessman, who accused them of violating the State of Emergency. The reporters were eventually not charged for lack of evidence.⁽⁸⁸⁾

In the context of the pandemic, three national newspapers have since declared they were interrupting distribution of printed newspapers to rely on digital versions. Many media companies, including private television stations, had to reduce the size of their staff, and sack some of their workers.

POLITICAL CONTROL OF THE MEDIA

In Mozambique journalists work in an environment undermined through various forms of pressure, kidnapping, intimidation and violence. Many of the forms of pressure on journalists result from political and economic control and lawsuits against the media.

Political control in the public sector media, Radio Mozambique (RM) and Television of Mozambique (TVM), has been achieved through the appointments by the government of the chairpersons of their boards of directors, and with a strong influence of the dominant party, Frelimo.

Generally, political debate programmes on public radio and television have problems with lack of pluralism and balance, and are dominated by individuals connected to the ruling party. On the few occasions that members of opposition parties participate, they are stigmatised.

Since the Mozambican media depend heavily on advertising, and the advertising companies are mainly owned by a business sector controlled by agents linked to the ruling party, the most common way to control the independent media is through advertising restrictions. Furthermore, the state does not offer any kind of incentive or protection for the media industry.

ACCESS TO INFORMATION

Even with a freedom of information law, passed in December 2014, the level of openness of institutions towards providing information remain very low.⁽⁸⁹⁾ Because of a dominant authoritarian culture and corruption, official sources of information remain closed to journalists, and many requests for information have not been

answered.

On many occasions, incidents have been reported where journalists were barred from covering events, and their working materials were taken from them, thus restricting access to information.

With digitalisation and the growing use of the internet there are concerns that citizens, in addition to having their freedoms controlled, will consume politically and culturally damaging products, as the country does not possess consistent normative instruments for the defence of digital rights, and for fighting hate speech and disinformation, as well as ensuring strong regulation of broadcast content, which are growing exponentially with the process of digitisation.

MEDIA AND GENDER

There is a relatively small number of women in the media, and few are in positions of editorial leadership. Many, if not all of the newsrooms do not have gender policies or do not regard gender questions as relevant in their editorial planning or in their human resource management.⁽⁹⁰⁾

The media themselves, as agents of change, are doing little about gender representation in Mozambique. Often reports represent women in a negative way, and place them in socially deprived situations, depicting women as faces of social problems, such as poverty, illness and neglect.

MEDIA SUSTAINABILITY

According to Media Barometer (2018)⁽⁹¹⁾, there is a reasonable environment for media sustainability in Mozambique, although its capacity for profitable companies is limited. There are evident constraints on the functioning and sustainability of the media sector which begins with low level of consumption and accessibility of media services, marked by purchasing capacity, low internet coverage and low literacy, especially for printed products.

Another relevant aspect that limits the sustainability of the media referred to in Media Barometer is that the state has no policies to support the media sector and they are very dependent on advertising, in a very limited and poorly regulated market.

Press law also imposes limitations on foreign investment by requiring participation of no more

than 20% of foreign capital. This is in itself a contradiction for a country whose economy depends on foreign investment.

Faced with an environment of impunity, one of the demands for the judicial authorities is to guarantee investigation and due punishment of crimes against press freedom. Holding the violators responsible for their acts is one of the fundamental paths for holding back the trend of crimes against the press.

One of the reasons why crimes against journalists have been on the increase in Mozambique, is the impunity of those who commit them and the lack of action by the authorities when faced with such events.

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; stagnating
- Freedom House report
- RSF World Press Freedom Index ranking

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NAMIBIA



By Philip Santos

Namibia has an enabling and free media environment, however over the past years verbal attacks on journalists by members of the executive branch of government may have created a chilling environment that undermines democratic politics.

While Namibia's constitution explicitly provides for the freedom of the press and other media, there are still restrictive laws inherited, especially from the apartheid era, stifling freedom of expression and the press.

Namibia has been generally lacking in terms of providing legal guarantees of access to information in the absence of enabling legislation. As it stands, the country is still working towards having the Access to Information Bill passed into law. As a result, there is asymmetrical access to information between private and public media in favour of the latter.

The major challenge faced by journalists is a lack of a collective body that can advance their interests and protect them from abuse by their employers and other powerful stakeholders. However, plans are at an advanced stage to establish a national union of journalists.

MEDIA FREEDOM

Namibia has consistently topped Africa on the Press Freedom Index ⁽⁹²⁾ for years, owing to its progressive constitution and general tolerance towards freedom of expression and assembly. Although the constitution is praised as one of the most progressive pieces of legislation in Sub-Saharan Africa, there are restrictions based on spurious terms such as 'morality' and 'decency' that are broadly defined, hence subject to a

multiplicity of interpretations (African Media Barometer, 2018) ⁽⁹³⁾.

There are also restrictive colonial laws such as the Official Secrets Act ⁽⁹⁴⁾ and the Protection of Information Act, ⁽⁹⁵⁾ which somehow have a constraining effect on media freedom and freedom of expression. In the same vein, parts of the Communications Act of 2009, Broadcasting Act (No. 9 of 1991), Public Service Act (No. 13 of 1995 as amended) and the Protection of Information Act (No. 84 of 1982) have been singled out as undemocratic and a danger to press and internet freedom.

However, this does not suggest that political and economic interference does not regularly occur. In the recent past, The Patriot newspaper had to go to court to force the Namibia Central Intelligence Service (NCSIS) to release certain public interest information ⁽⁹⁶⁾.

Additionally, private media has also complained about the government's withdrawal of advertising budgets as a way of forcing them to report in a positive light. ⁽⁹⁷⁾

Some of the press freedom concerns in Namibia have become worse during the Covid-19 global pandemic. In addition, the issue of media sustainability and viability has also been compromised due to the increasing role of the internet and the decreasing reliance on traditional media. During Covid-19, media houses have had to also resort to producing electronic copies of their newspapers.

PERSECUTION OF JOURNALISTS

Although physical attacks on journalists are generally rare in Namibia, civil society organisations have raised concern about the growing spate of verbal attacks on journalists covering contentious issues such election, and corruption. ⁽⁹⁸⁾

In 2019, Reporters Without Borders condemned a wave of verbal attacks on journalists by government officials in the run-up to the November elections in Namibia, and the state-owned *Namibian Press Agency's* decision to suddenly cancel freelance journalist Vita Angula's contract after he participated in a TV discussion about corruption (Reporters Without Borders, 2019).

The verbal attacks happened at a time when the ruling party, SWAPO, has seen their two thirds majority in parliament significantly slashed in the previous election and have been described by analysts as a subtle attempt to

muzzle journalists' freedoms and rights to practice their trade without undue influence.

The situation has continued to deteriorate in 2020 with media reports suggesting that Namibian journalists have endured intimidation, manhandling by police and state security as well as verbal attacks by politicians.

The first case involves Edward Mumbuu, a journalist at the Namibia Press Agency who was publicly castigated by President Hage Geingob after he asked the president whether he was going to distance himself from his personal lawyer pending corruption allegations against him.

Another case involved Jemima Beukes (from the *Namibian Sun*) and Charmaine Ngatjiheue from *The Namibian*,⁽⁹⁹⁾ who were manhandled by the president's security detail at the Windhoek Central Hospital where President Geingob was officially opening an isolation facility for Covid-19 patients. The two journalists have since filed an assault charge against the police VIP Protection Directorate.

ONLINE FREEDOM

Namibia respects the rights of citizens online.⁽¹⁰⁰⁾ The country has yet to experience internet shutdowns or throttling despite the political economy of the telecommunications sector, where the government owns total shareholding in the major internet service providers.

At the height of Covid-19, the government has come up with state of emergency regulations, which criminalised the intentional spreading of "fake news".⁽¹⁰¹⁾ According to the regulations, people publishing any false or misleading statement in connection with the coronavirus disease on social media, are committing an offense for which they can be fined up to N\$2000 (about US\$135) or be given a prison term of up to six months.

Although article 13 of Namibia's constitution protects the right to privacy, there are several controversial clauses in other laws that impact on communications privacy. There is also evidence that the state engages in communications surveillance despite the fact that key provisions in its main interceptions law (the Communications Act of 2009) are not yet in operation.⁽¹⁰²⁾

MEDIA AND GENDER

Article 10 of the Namibian constitution provides for "equality and freedom from discrimination" for its citizens. Furthermore, the constitution protects citizens' rights to human dignity, noting in article 8 sub-article 1, that "the dignity of all persons shall be inviolable". These provisions imply that all Namibians, including women, must be treated equally and with dignity in all spheres of life including in, through and by the media.

There seems to be a paucity of information about the positions and experiences of women in the newsroom in Namibia. This is a huge anomaly considering that the country records significant levels of gender-based violence such as rape, domestic violence, sexual harassment and forced marriages, every year.⁽¹⁰³⁾

As intimated earlier, the same patterns of violence get reproduced in the media sphere as exemplified by the police's manhandling of two female journalists, Charmaine Ngatjiheue and Jemima Beukes.

Anecdotal evidence also indicates that misogyny is an entrenched and toxic culture in the country's newsrooms where male journalists dominate leadership positions in the media. This situation is compounded by huge salary gaps between editors and journalists which, by deduction, implies that female journalists are generally poorly paid as they do not belong to the privileged editorial elite, in the main.

ACCESS TO INFORMATION

The 2020 World Press Freedom Report ranks Namibia first in Africa and 23rd in the world, in terms of press freedom, a key ingredient of democratic politics.⁽¹⁰⁴⁾ This is because article 21 of the Namibian constitution guarantees "freedom of the press and other media", which right "is often defended by the courts when under attack from other quarters within the state or by vested interests".

A significant development noted by the report is when Namibia's Supreme Court "ruled in 2019 that the government could not use national security as a pretext for preventing the courts from deciding whether the media could reveal certain information," in a case that involved the country's intelligence services.⁽¹⁰⁵⁾

However, despite a protracted process aimed at passing the Access to Information Bill into law, Namibia still does not have a law that guarantees access to publicly held information by the media.

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Real freedom but frequent threats

Press freedom has a firm hold in Namibia, Africa's best ranked country in RSF's World Press Freedom Index, and enjoys solid guarantees. It is protected by the constitution and is often defended by the courts when under attack from other quarters within the state or by vested interests. The supreme court ruled in 2019 that the government could not use national security as a pretext for preventing the courts from deciding whether the media could reveal certain information. The right to information was recognized in a case brought by the Namibia Central Intelligence Service (NCIS) against a newspaper that reported that former NCIS members had acquired property illegally. The NCIS case was based on laws dating back to the 1980s and 90s imposing major restrictions on the dissemination of information

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23
in the 2020 World Press Freedom Index

RANKING
= 0
23 in 2019

GLOBAL SCORE
+0.30
18.95 in 2019

Ranking since 2013

CONTACTS
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0
journalists killed in 2021

0
citizens journalists killed in 2021

0
media assistants killed in 2021

Although the bill under consideration was “jointly drafted by civil society and government,”⁽¹⁰⁶⁾ a coalition of civil society organisations in the country objected to some aspects of the new Access to Information Bill that was tabled in parliament in June 2020.

IMPACT OF THE PANDEMIC

The Namibian government responded to the spread of the pandemic by putting in place measures that sought to control the spread of the virus in the country. These measures severely restricted human mobility and commercial activity for all but essential services.

Journalism was classified an essential service and media organisations, in observation of these measures and out of their own initiative, organised their news work and operations in ways that sought to ensure the safety of journalists. Among other things, most journalists were now required to work from home, observe social distancing, wear face masks as well as sanitise and wash their hands.

These measures resulted in the decongestion of newsrooms and minimised exposure of journalists to infections during field work in the few instances that they had to go out for stories.

In sum, Namibian news media took significant steps to protect their employees, in particular journalists, from infection and provided extra

support where needed. However, this does not mean that journalists were not infected by the disease.⁽¹⁰⁷⁾

Following severe losses of revenue, some news media ended up shedding some of their workers which, predictably, raised the levels of anxiety in the sector.⁽¹⁰⁸⁾

Furthermore, at the height of the fight against the global pandemic,⁽¹⁰⁹⁾ government had been accused of only inviting the *Namibia Broadcasting Corporation* (NBC radio and television services), the *Namibia Press Agency* (NAMPA) and *One Africa TV* for press updates.⁽¹¹⁰⁾ The rest of the media houses were encouraged to get the feed from the NBC and NamPresidency social media handles.⁽¹¹¹⁾

DIGITAL RIGHTS

Although there are concerns around the prevalence of unnecessary and disproportionate communication surveillance, reports by Freedom House suggest that Namibians enjoy digital rights. Statistics from the Internetworldstats (2019) indicate that there were 1,347,418 internet users by 31 December 2019. This represents approximately 53.0% of the total population.⁽¹¹²⁾

While these statistics are encouraging, it is noteworthy to highlight that penetration is lower in most rural and peri-urban areas due to

relatively high costs and lack of infrastructure. Social stratification variables such as gender, age, race, ethnicity, geographical region and educational status have a deterministic role in terms of availability and access to the internet and social media in Namibia.

There have been no cases of internet shutdowns or throttling in Namibia. However, there are concerns that the duopoly in the telecommunications sector, where the government is the majority shareholder of MTC and Telecom Namibia, presents a situation where partial or total internet shutdowns can be affected.

Furthermore, part 6 of the Communications Act of 2009 compels internet intermediaries to install surveillance mechanisms in their telecommunication infrastructure.

There are also concerns that the proposed bills dealing with data protection, cybersecurity and electronic communications might be used to throttle online activism and criminalise the spread of false and misleading information. At the moment, there are no laws that infringe on the exercise and enjoyment of digital rights.

KEY CHALLENGES

Although Namibia has consistently topped the press freedom rankings in Africa over the last few years, there are political, legal and cultural factors which impact negatively on the enjoyment of press freedom.

This report shows that although Namibia has an enabling and free media environment, the verbal attacks that journalists continue to receive from members of the executive branch of government may create a chilling environment which undermines democratic politics.

While Namibia generally enjoys a free and enabling environment for media freedom, as reflected in its favourable ranking on continental and world indicators, women generally experience the worst of the state of the media in the country.

Not only are they under-represented in senior management, they are also significantly underpaid as a result of that under-representation, since junior journalists are significantly underpaid.

Namibia has also been generally lacking in terms of providing legal guarantees of access to information in the absence of an enabling act.

Over the years, a major challenge faced by journalists had been the lack of a collective body that can advance their interests and protect them from abuse by their employers and other powerful stakeholders.

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; stagnating
- Freedom House report
- RSF World Press Freedom Index ranking

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TANZANIA



By Sengiyumva Gasirigwa

In recent years Tanzania has witnessed tremendous changes in the number of media outlets in the country as a result of technological advancement and the eagerness of people to own, collect and share information.

Over 230 publications have been registered by February 2020 and these include daily and weekly newspapers, periodicals, magazines and journals.

Records also show that over 180 radio stations, 43 TV stations, 26 simulcasting radio services, 21 online radio services, six simulcasting TV services, 264 online TV services, 85 online blogs, 30 web blogs and six online forums have been licenced by mid-2020.

About 15 publishing companies and 20 advertising companies/ agencies are operating in Tanzania.

By late 2018, internet penetration in Tanzania had reached 43%, with about 49% of mobile phone subscribers using the internet, translating into 23.14 million out of 43.62 million mobile subscribers.

GUARANTEES ON MEDIA FREEDOM

Media freedom in Tanzania is guaranteed under article 18 of the constitution that stipulates that "every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers, and also has the right to freedom from interference with his communications."

The government has enacted some legislation which guarantees and support media freedom, such as the Access to Information Act of 2016 and the Media Services Act, No 12, 2016. It is these and other laws such as the Statistics Act and Cybercrime Act, both of 2015, that critics question and challenge that they do not conform to international standards.

CENSORSHIP

Free expression and media freedom in Tanzania have been on decline resulting from both external and internal factors. External factors include problems with the implementation of media and access to information laws, policy and media regulation enforcement, physical and verbal harassment.

Internal factors include lack of unity among media practitioners, low levels of professionalism, minimal or no engagement from academia and inadequate support from stakeholders.


Numerous cases of violations of the basic rights of media and journalists have created uncertainties in the media and resulted in restrictions to journalists' freedom of expression, threats, and insecurity. ⁽¹¹³⁾ These cases are documented by media organisations locally and abroad. ⁽¹¹⁴⁾

Tanzania has dropped 25 places on the World Press Freedom Index ⁽¹¹⁵⁾ since 2018. This is largely due to the unfriendly legal framework that has caused the shrinking space of freedom of expression and media in the country. The enactment and implementation of the legislation listed above has enabled online and offline regulations, ⁽¹¹⁶⁾ and created unfavourable conditions for journalists and media to freely exercise their obligations. ⁽¹¹⁷⁾

Consequently, media and journalists exercise strict self-censorship to avoid contradicting the government agenda and attacks from powerful individuals. Overall, there is a lack of diversity of views in the media; journalists and media are free to praise but hardly question or criticise the bureaucrats. ⁽¹¹⁸⁾


Journalists in small towns, community media practitioners and citizen journalists in rural areas often work without necessary 'accreditation' documents, neither from the media houses they represent nor the country's body responsible for issuing press cards, the Tanzania Information Services.

In most cases, journalists in these areas work without any contracts stipulating their rights such




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
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"Bulldozing" the media

Tanzania has become increasingly authoritarian since John Magufuli's election as president in 2015. None of the 180 countries ranked in RSF's World Press Freedom Index has suffered such a precipitous decline in recent years. Nicknamed the "Bulldozer," Magufuli tolerates no criticism of himself or his policies. **Erick Kabendera**, an investigative reporter, paid a high price for his articles criticizing the economy, the government and corruption, spending a total of seven months in prison following his arrest in July 2019. The charges brought against him changed three times, with one hearing after another being held without any examination of the substance of the case against him because the prosecution kept on requesting more time for further investigation. The justice system's inability to stand up to the

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124

in the 2020 World Press Freedom Index

RANKING

-6

118 in 2019




GLOBAL SCORE


+3.97

36.28 in 2019

Ranking since 2013

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  RSF_en



0

journalists killed in 2021

0

citizens journalists killed in 2021

0

media assistants killed in 2021

as remuneration and insurance cover in case of accidents or any other occurrences. Media houses often seem reluctant to provide assistance when these journalists encounter miserable situations in the course of performing their duties.

The country has witnessed suspension of newspapers; imposition of fines on radio and television stations; journalists' arrests and arbitrary detainment; closure of online media; and verbal and written warnings issued to media and journalists. These are signs of deteriorating freedom of expression and media in the country over the last decade.

MEDIA AND GENDER

Media freedom also lies in how the media portray women and men. A study conducted by the Media Council of Tanzania on Women in the Newsroom (2019) ⁽¹¹⁹⁾ have shown that "women sources are few compared to men."

In general, the media in Tanzania continues to present both women and men in stereotyped ways that limit perceptions of human possibilities. The number of women editors or managers in newsrooms has been very small over the years. For example, there are only four women media executives (owners/directors) to date. However, the trend is changing for the better. A number of managers and editors are being appointed owing to better education and development of gender media policies.

IMPACT OF THE PANDEMIC

In its initial response to the Covid-19 pandemic, the government of Tanzania announced a series of measures including the suspension of all social and formal gatherings, including seminars, workshops, music concerts, political rallies and travel for 30 days, as a way of curbing the spread of the Covid-19 pandemic.

The ban was later extended in April for an unspecified period of time due to the increase in transmission cases.

However, unlike other countries which quickly adopted lockdown policies, this was not the case in Tanzania. It was categorically stated by the president that Tanzania will neither close its borders nor subject its citizens to lockdowns because of economic reasons.

Tanzanian media seemed to lack both proper information on Covid-19 and the means to protect themselves while dealing with the pandemic. This lack of knowledge of the disease led to shallow and uninformed media reports on the pandemic. Apart from the messages from the ministry of health, ⁽¹²⁰⁾ there was no in-depth coverage of the pandemic.

A number of journalists and media houses have been victimised over the dissemination of Covid-19 related messages.



Covid-19 pandemic critics had urged authorities to proactively provide important information to the media. This will help the public in getting reliable information on the pandemic, instead of being misinformed by unverified content producers, particularly on social media.

Tanzania has been in the international spotlight for not taking stern measures in fighting the pandemic as it is done by its neighbors, especially when it stopped daily updates on Covid-19. This decision may have led to speculation and a rise in mis/disinformation among the public. The last time Tanzania issued statistics on Covid-19 was on 29 April 2020, when the number of cases stood at 509.

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; moderately improving
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ZAMBIA



By Thomas Zulu

OVERVIEW

The last four years were arguably the most turbulent period in the history of the media in Zambia in terms of state interference and outright violations against the media's independence and freedom to conduct itself in a safe and conducive environment.

This is due to the unprecedented heavy handedness by the state that resulted in the suspension of broadcasting licences for three broadcast stations by the Independent Broadcasting Authority (IBA) in 2016. ⁽¹²¹⁾

The country has continued to witness high levels of political intolerance towards media freedom and freedom of expression. There have been reports of media houses being attacked for featuring those with opposing views.

MEDIA FREEDOM AND CENSORSHIP

Growing government pressure on the media in recent years has led to increased self-censorship among journalists, both online and offline. Journalists, social media users and bloggers increasingly write anonymously or pseudonymously to avoid harassment or the threat of legal action, ⁽¹²²⁾ particularly on issues regarding politics and corruption involving government officials.

In 2019, the *Daily Nation* newspaper reported on 2 August that the Inspector General of Police, Kakoma Kanganja had instructed all police commissioners to deal with people abusing their freedom of expression on the internet to insult,

use hate speech and incite citizens to rise against a legitimately elected government.

While the concerns on cyberbullying and criminality happening online are welcome, it is also important that this should not be taken advantage of to clamp down on critical voices or dissenting opinions expressed online mainly due to shrinking freedoms in the conventional space. ⁽¹²³⁾

Despite internet data prices in Zambia being significantly lower than in other African countries, they remain unaffordable to the majority, with only 14% of the Zambian population using the Internet. ⁽¹²⁴⁾

IMPACT OF THE PANDEMIC

The novel coronavirus outbreak was reported in Zambia in March 2020. ⁽¹²⁵⁾ The progression of the pandemic prompted government to pass Statutory Instrument (SI) No. 22 of 2020 ⁽¹²⁶⁾ which restricted public gatherings and in turn had a great impact on journalists who have to interact with news sources and guest contributors.

The health measures put in place, therefore, inhibited media activities as journalists had to work on a rotational basis while adjustments had to be made in terms of gathering information from sources.

Unlike other workers, the media in Zambia were not classified as front-line workers, which could have enabled them to receive personal protective equipment as well as other resources to help in their day-to-day operations.

MEDIA LEGISLATION

Government called on the media to consider a law to allow for the fraternity to regulate itself for professional recognition. ⁽¹²⁷⁾ This call came at a time when the media in Zambia was said to have a lot of media practitioners without a media background.

On 29 January 2019, the then Information Permanent Secretary Chanda Kasolo gave the media an ultimatum of three months to come up with a self-regulatory framework or face statutory regulation. ⁽¹²⁸⁾

The calls for self-regulation have culminated into the media overwhelmingly resolving to adopt a statutory self-regulatory framework after a two-day conference in Lusaka that drew participation from over 250 media personnel from across the

country. ⁽¹²⁹⁾

The journalists drafted a statutory media self-regulatory framework that resulted in a draft called the Zambia Media Council (ZAMEC) Draft Bill in November 2019.

The bill is currently with the Ministry of Justice and is yet to be presented to Cabinet for approval before being presented to parliament. Representatives of the Media Liaison Committee have been engaging the ministries of justice and information on the bill.

ACCESS TO INFORMATION

An access to information bill has been a subject of debate since the year 2002. The first quarter of 2019, however, presented hope on the enactment of the bill into law.

On 19 March 2019, the *Zambia Daily Mail* carried a headline, "Access to Information Bill Approved," ⁽¹³⁰⁾ signaling cabinet approval, but no further movement has been recorded.

MEDIA FREEDOM

The government has been advocating for the regulation of cyberspace, especially in relation to "fake news". In August 2018, the cabinet approved for review the draft Cybersecurity and Cybercrimes Bill. ⁽¹³¹⁾

The bill was received with mixed feelings by the public, with many claiming this was a way for the government to curtail free expression online, adding to the already heavily controlled mainstream media.

Civil society organisations expressed immediate concern about the bill's potential to impinge on internet freedoms. ⁽¹³²⁾

The legislation has not been made available for public scrutiny and has not been debated in the parliament.

ACTION AGAINST BROADCASTERS

In March 2019, the Independent Broadcast Authority suspended Prime Television's broadcasting licence for 30 days for exhibiting unprofessional elements in its broadcasting through unbalanced coverage, opinionated news, material likely to incite violence and use of derogatory language. ⁽¹³³⁾

On the same day, the authority also suspended Valley FM's broadcasting licence for 60 days "due to unprofessional conduct".

The station is said to have failed to balance and moderate a discussion programme. The radio station was directed to conduct in-house training for management and engage trained journalists.

The closure of *Prime TV* in early 2020 stems from a breakdown of relations between the television station and the government as a result of a speech delivered by *Prime TV* proprietor, Gerald Shawa at a meeting between the Ministry of Information and media owners.

Shawa, who spoke on behalf of the media owners, admonished Information Permanent Secretary Amos Malupenga in response to his request for media houses to air public service messages on a pro bono basis. ⁽¹³⁴⁾

Shawa asked that the government should first settle outstanding dues owed to the media institutions before it could engage them in providing free airspace for sensitising people on the coronavirus.

It seems this did not sit well with the government and led to the government breaking off all and any dealings with the TV station. This has led to 30 journalists losing their jobs.

LEGAL ACTION

A number of cases painting a restrictive legal environment have been reported during the period under review. These include:

- In April, 2020 a Patriotic Front cadre was found guilty of assault and theft and sentenced to two years imprisonment after assaulting *Breeze FM Radio* reporter Grace Lung, who was covering elections in the Mkomba area in 2019. ⁽¹³⁵⁾

- In June 2019, a Lusaka magistrate acquitted *News Diggers* Editor-in-Chief Joseph Mwenda and reporter Zondiwe Mbewe in a matter involving Patriotic Front cadre Newton Ngwira, who had dragged them to court for allegedly defaming Housing and Infrastructure Minister Ronald Chitotela and misrepresenting facts in a court matter. ⁽¹³⁶⁾

This was after Ngwira told the court that he had decided to withdraw the case.

- Another case involves *Millennium Radio* station manager, Martin Akende who testified in a case of defamation of the president, following alleged defamatory remarks made by a caller on

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Independent media harassed

An increase in political tension following President Edgar Lungu's reelection in 2016 has been used as a pretext for drastically restricting the freedom to inform and gagging the independent press. The authorities closed the most important independent newspaper, *The Post*, in June 2016 and arrested members of its staff. Several radio and TV stations also had their licences withdrawn. Prime TV, a popular commercial TV channel that had been one of the government's biggest critics, was suspended for a month in 2019 after being accused of contributing to the ruling party's defeat in a parliamentary by-election. To prosecute journalists, the government either uses financial pretexts (such as non-payment of taxes in the case of *The Post*) or the various laws regulating defamation and sedition. A newspaper editor who had

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120
in the 2020 World Press Freedom Index

RANKING
↓ **-1**
119 in 2019

GLOBAL SCORE
↓ **+0.62**
36.39 in 2019

🕒 Ranking since 2013

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journalists killed in 2021

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citizens journalists killed in 2021

0
media assistants killed in 2021

one of the station's programmes. ⁽¹³⁷⁾

The law on defamation of the president is deemed to be inimical to freedom of expression as it places arbitrary discretion on law enforcement agencies to determine what should constitute defamatory matter or what not.

The law is further ambiguous as it places a criminal caveat on comments, whether negative or positive.

On 20 December 2018, the Supreme Court of Zambia jailed *Rainbow* news editor Derrick Sinjela for 18 months for contempt. The Court sentenced Sinjela for his remarks in an article titled "Zambian supreme court verdict in the Savenda and Stanbic case questionable." ⁽¹³⁸⁾

Sinjela claimed the judges were corrupt, suggesting among other things that they had received bribes from Stanbic to reverse a lower court ruling. In the initial ruling, the High Court found that the bank had wrongly referred Savenda for defaulting on a bank loan.

Observers described Sinjela's jailing as an indictment of the government, lamenting that it was shameful for the government to silence citizens using the courts. Sinjela was released on 12 November 2019 after 327 days in detention. ⁽¹³⁹⁾

MEDIA AND GENDER

The Ministry of Information and Broadcasting Services (MIBS) in the first quarter of 2020, instructed public media institutions to stop featuring statements and appearances on media programmes by Zambian ambassadors and high commissioners, except with prior clearance from the Foreign Affairs ministry.

This came against the backdrop of a litany of statements from press secretaries from Zambian missions abroad.

It is for this reason that civil society institutions like MISA Zambia have been advocating for independence of public institutions, to avoid situations where the government is seen to have undue influence on their operations.

CENSORSHIP

There has been a reduction of female journalists in various newsrooms in Zambia, especially in community media. Some newsrooms do not even have female journalists; while many have left to join other professions.

Poor salaries and rare promotions for female journalists are some of the main factors why women journalists leave newsrooms.

The patriarchal culture of masculine domination and attitudes and opinions on women in newsrooms are still lagging behind the realities

Prime TV proprietor,
Gerald Shawa
CREDIT: ONLINE



of the modern world.

One very clear red flag is too few female role models in the profession.

CHALLENGES AHEAD

Press freedom in Zambia is generally unstable, despite certain gains in the technological environment. Of major concern is the state of freedom online, given the vicious attacks and undermining of media freedom. It is almost certain that such occurrences will increase as the country heads to the polls.

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; decreasing
- Freedom House report

— RSF World Press Freedom Index ranking

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ZIMBABWE



By Nyasha Nyakunhu

Zimbabwe's new government's push to amend the constitution prior to the alignment of several laws that are not in sync with the country's supreme law, casts aspersions on its sincerity to implement fundamental law and policy reforms.

Proposed amendments follow the first amendment to the 2013 constitution which came into effect on September 7, 2017 and gave the president unilateral powers to appoint key judicial officials.

This move is widely viewed as being aimed at centralising the president's powers, ⁽¹⁴⁰⁾ contradicting the principle of separation of power to allow for democratic checks and balances.

Harassment, arrests and assaults of journalists, human rights activists and members of opposition political parties by state security agents continue with impunity, despite the new Zanu PF government's vow against violence.

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association's recent report ⁽¹⁴¹⁾ noted that Zimbabwe was suffering from political polarisation and poor governance at a time when the worsening economic environment has added to people's discontent with President Emmerson Mnangagwa's government.

The report added that the civic space continues to deteriorate, re-establishing an environment of fear and persecution.

The African Commission on Human and Peoples' Rights (ACHPR) has raised concerns about the alarming situation in Zimbabwe following its 66th Ordinary Session held between 13 July and 7 August 2020. ⁽¹⁴²⁾

Report ⁽¹⁴³⁾ has highlighted continuous socio-economic and political meltdown, bringing into question the government's commitment to undertake fundamental legislative and economic reforms.

Several journalists were caught in the crossfire of the implementation of the initial 21-day national lockdown, with some being harassed, assaulted or detained by the police and soldiers, despite the media being declared an essential service in terms of the Covid-19 regulations. ⁽¹⁴⁴⁾

On the other hand, in July 2020 the Freedom of Information Act has been signed into law ⁽¹⁴⁵⁾ and the Cybersecurity and Data Protection Bill (seen to be strong on surveillance of citizens and weak on balancing cybersecurity with the enjoyment of fundamental rights such as free expression online, privacy and protection of personal data ⁽¹⁴⁶⁾) has been gazetted.

MEDIA FREEDOM

Reporters Without Borders' 2020 World Press Freedom Index ⁽¹⁴⁷⁾ has positioned Zimbabwe at 126 out of 180 countries ranked globally, noting that extremely harsh media laws are still in effect and, when new laws have been adopted, their provisions are just as draconian as those they replaced.

Following the Covid-19 regulations introduced on 30 March 2020, within months MISA Zimbabwe recorded 30 cases involving the arrests, assaults and harassment of journalists and newspaper vendors.

The ongoing human rights violations have resulted in MISA Zimbabwe successfully filing for a High Court order barring the police and any other state security agents from arresting, detaining or interfering with the work of journalists. ⁽¹⁴⁸⁾

By the end of 2020 the Zimbabwe Media Commission Bill was still making its way through Parliament, while the proposed Broadcasting Services Amendment Bill and Protection of Personal Information Bill were still to be gazetted.

If passed in its current defective state, the Media Commission Bill is feared to pose the greatest threat to the enjoyment of fundamental rights such as free expression, access to information and citizens' right to privacy, as provided for in Zimbabwe's Bill of Rights.

MEDIA SUSTAINABILITY

The MISA Zimbabwe 2019 State of the Media

NewZimbabwe.com
journalist Leopold
Munhende
CREDIT: ONLINE



The future of the media in Zimbabwe is on the verge of bankruptcy due to the socio-economic situation in the wake of declining revenue streams and incomes.

In dealing with the effects of Covid-19, MISA Zimbabwe chairperson Golden Maunganidze has pleaded ⁽¹⁴⁹⁾ with the government to consider coming up with a media sustainability bailout rescue package and asked that the government consider reducing the registration and licensing fees for media houses, amongst others.

When implemented, provisions of the Freedom of Information Act are expected to go a long way in giving effect to sections 61 and 62 of the constitution which provide for freedom of expression, media freedom and access to information.

More remains to be done though, as the country is still faced with a plethora of restrictive laws such as the Official Secrets Act, Censorship and Entertainment Controls Act, Interception of Communications Act and certain sections of the Criminal Law (Codification and Reform) Act, which have a bearing on the exercise and

enjoyment of the right to freedom of expression, media freedom and access to information.

IMPACT OF THE PANDEMIC

Following the Covid-19 Regulations on 30 March 2020, the country has witnessed an upsurge in the number of journalists that were harassed, intimidated, assaulted and detained by members of the police and the army while executing their lawful professional duties.

Of the 22 alerts issued on media violations by MISA Zimbabwe between January and June 2020, 19 of the cases occurred between 30 March and the end of June 2020.

Some notable cases include:

— The assault of freelance journalist Terence Sipuma, ⁽¹⁵⁰⁾ who was reportedly accosted by members of the army and the police at the Kuwadzana roundabout in Harare while on his way to Chegutu to report on the Covid-19 lockdown

Page not yet turned on Mugabe era

Installed as president in November 2017 and then elected to the position in July 2018, Emmerson Mnangagwa, Robert Mugabe's former vice-president, pledged to reinforce the pillars of democracy including the media, which were harassed and gagged for 37 years under his dictatorial predecessor. However, Mnangagwa was notorious for suppressing dissent when he was national security minister and his first steps with regard to press freedom have been marked more by promises than concrete progress. Access to information has improved and self-censorship has declined, but many journalists were subjected to violence during the 2018 presidential elections, often by members of the security forces and sometimes by political activists. The security apparatus has not yet lost the habit of harassing journalists and

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126

in the 2020 World Press
Freedom Index

RANKING

+1
127 in 2019

GLOBAL SCORE

-1.28
42.23 in 2019

Ranking since 2013

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RSF_en



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journalists killed in
2021

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citizens journalists
killed in 2021

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media assistants
killed in 2021

— Munashe Chokodza and Leopold Munhende, journalists with *263Chat* and *NewZimbabwe.com*, respectively, who were assaulted with military whips by soldiers at Warren Park shopping centre in Harare for allegedly disobeying lockdown regulations

— Journalist Hopewell Chin'ono, ⁽¹⁵¹⁾ who was first arrested on 20 July 2020 on allegations of incitement to participate in a gathering with intent to promote public violence, breaches of peace or bigotry or alternatively incitement to commit public violence. He was in custody for more than a month and finally granted bail on 2 September 2020 by a High Court judge; but was arrested again in November on charges of obstructing justice.

— On 30 July 2020 police raided and ransacked ⁽¹⁵²⁾ the home of *ZimLive* editor, Mduduzi Mathuthu in Bulawayo, reportedly looking for information on subversive materials linked to protests and accusing him of using his mobile phone to encourage people to demonstrate. Mathuthu's nephew, Tawanda Muchehiwa then went missing until 1 August 2020 when he was dropped off at his place of residence with serious injuries after being assaulted by suspected state security agents.

Both Chin'ono and Mathuthu had investigated and uncovered alleged corruption in the procurement of Covid-19 equipment.

A myriad of laws that are in violation of the constitution, including the Censorship and Entertainment Controls Act (1967), Official Secrets Act (2004), sections of the Criminal Law (Codification and Reform) Act (2004), Interception of Communications Act (2007), have a bearing on citizens' right to free expression and media freedom.

The gazetting of the Cybersecurity and Data Protection Bill has been widely criticised, ⁽¹⁵³⁾ locally, regionally and internationally for leaning heavily on mass surveillance of citizens as opposed to balancing cybersecurity with the enjoyment of fundamental rights.

Remarks by Zimbabwe National Army Commander Lieutenant-General Edzai Chimonyo in March 2020, addressing senior military commissioned officers at the Zimbabwe Military Academy in Gweru, that the military would soon start snooping into private communications ⁽¹⁵⁴⁾ between citizens to "guard against subversion" as social media has become a threat to national security, are telling in that regard.

Among its contentious provisions is the proposed use of forensic tools such as keystroke loggers, with no clarity on how and under what circumstances it would be used; the failure to provide for judicial oversight or other accountability measures for monitoring and reviewing the potential abuse of such intrusive technologies, ⁽¹⁵⁵⁾ and that it does not have specific safeguards for whistleblowers which exposes individuals providing information in the public interest.

In crafting this Bill, Zimbabwe should be

LEGISLATION

guided by African regional standards that include the SADC Model Law on Computer Crime and Cybercrime, SADC Model Law on Data Protection, the African Convention on Cybersecurity and Data Protection, and African Declaration on Internet Rights and Freedoms.

BROADCASTING

After more than 40 years, the Zimbabwe Broadcasting Corporation's monopoly on television broadcasting has finally been broken with the licensing of six new players in the sector. In October 2020, the Broadcasting Authority of Zimbabwe (BAZ) held interviews culminating in the granting of licences for six new players, which ordinarily should be cause for celebration.

BAZ announced that it had licensed *Acacia Media Limited*, *Channel Dzimbahwe*, *Fairtalk Communications*, *Jester Media*, *Rusununguko* and *Zimpapers Television Network (ZTN)*.

However, it was noted that a number of the shortlisted applicants already have radio licences and had links to the government and the ruling Zanu PF, ⁽¹⁵⁶⁾ that the licensing procedure had only consolidated the ruling elite's grip on the broadcasting sector, and that the licensing regime lacked diversity and promoted a homogeneity of views. ⁽¹⁵⁷⁾

This raises the need for due regard and attention to section 61 of the constitution which states that broadcasting and other electronic media of communication have freedom of establishment.

This freedom of establishment should, among others, be subject to state licensing procedures that are independent of control by government or by political or commercial interests.

While the country now has "private" commercial radio stations, it was still to licence community radio stations during the first six months of 2020.

Commendably, in May 2020, Great Zimbabwe University in Masvingo Province, became the first university in Zimbabwe to get a campus radio broadcasting licence.

REFORMS NEEDED

The government, through the Ministry of Information should live up to the letter and spirit of the constitution through genuine and democratic media law and policy reforms in line with regional and international instruments it is a state party to.

In addition, the government should ensure that its proposed cybersecurity regulations are informed by its constitution, the revised principles of the ACHPR Declaration on Freedom of Expression and Access to Information and the African Declaration on Internet Rights and Freedoms, among other regional and continental instruments.

The government should unequivocally condemn media freedom violations and take all necessary steps to ensure the safety and security of journalists in defence of media freedom and ultimately citizens' right to free expression and access to information.

Note: this is a condensed version of the full country report, which can be accessed online.

See also:

- SDG 16 assessment and trend: major challenges remain; decreasing
- Freedom House report
- RSF World Press Freedom Index ranking

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- (157) GOVERNMENT GRANTS NEW TV LICENCES, DIVERSITY CONCERNS LINGER <https://zimbabwe.misa.org/2020/11/20/government-grants-new-tv-licences-diversity-concerns-linger/>

SECTION 3: MEDIA FREEDOM VIOLATIONS

SELECTED MEDIA FREEDOM VIOLATIONS IN THE COUNTRIES UNDER REVIEW

COMPILED BY: MISA Zimbabwe

COUNTRY	YEAR	Assaulted / Attacked	Threatened / Harassed / Injured	Banned / Censored / Barred	Detained / Arrested / Wanted	Arson	Abducted / Fled	Suspended / Closed / Fined	Legislated / Sued / Regulated	Seizure of equipment	Summoned for questioning	Denied adverts
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ANGOLA



2019

2020

2

3

BOTSWANA



2019

2020

1

ESWATINI



2019

2020


1

1

1

2

1

LESOTHO	
	2019
	2020
1	3

MOZAMBIQUE	
	
2019	2
2020	1
	2

COUNTRY	YEAR	Assaulted/ Attacked	Threatened /Harassed/ Injured	Banned/ Censored/ Barred	Detained / Arrested / Wanted	Arson	Abducted / Fled	Suspended / Closed / Fined	Legislated / Sued / Regulated	Seizure of equipment	Summoned for questioning	Denied adverts
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TANZANIA



2019	1				7							
2020		3					3		2			

ZAMBIA



2019	9	4	3				2	3	1	1		
2020	2	8	4	4			1	2		1	1	

ZIMBABWE



2019	9	11	3	4								
2020		18	2	18	3	2					2	

ANNEXURE

DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

**Adopted by the African Commission on Human and Peoples' Rights
at its 65th Ordinary Session held from 21
October to 10 November 2019
in Banjul, The Gambia**

Arrangement of Principles

Part I: General Principles

- Principle 1. Importance of the rights to freedom of expression and access to information
- Principle 2. Non-interference with freedom of opinion
- Principle 3. Non-discrimination
- Principle 4. Most favourable provision to prevail
- Principle 5. Protection of the rights to freedom of expression and access to information online
- Principle 6. Protection of human rights defenders and others
- Principle 7. Specific measures
- Principle 8. Evolving capacities of children
- Principle 9. Justifiable limitations

Part II: Right to Freedom of Expression

- Principle 10. Guarantee of freedom of expression
- Principle 11. Media diversity and pluralism
- Principle 12. Media independence
- Principle 13. Public service media
- Principle 14. Private media
- Principle 15. Community media
- Principle 16. Self-regulation and co-regulation
- Principle 17. Regulatory bodies for broadcast, telecommunications and the internet
- Principle 18. Complaints
- Principle 19. Protection of journalists and other media practitioners
- Principle 20. Safety of journalists and other media practitioners
- Principle 21. Protecting reputations
- Principle 22. Criminal measures
- Principle 23. Prohibited speech
- Principle 24. Economic measures
- Principle 25. Protection of sources and other journalistic material

Part III: Right of Access to Information

- Principle 26. The right of access to information
- Principle 27. Primacy
- Principle 28. Maximum disclosure
- Principle 29. Proactive disclosure
- Principle 30. Duty to create, keep, organize and maintain information

- Principle 31. Procedure for accessing information
- Principle 32. Appeals
- Principle 33. Exemptions
- Principle 34. Oversight mechanism
- Principle 35. Protected disclosures in the public interest
- Principle 36. Sanctions

Part IV: Freedom of Expression and Access to Information on the Internet

- Principle 37. Access to the internet
- Principle 38. Non-interference
- Principle 39. Internet intermediaries and access providers
- Principle 40. Privacy and the protection of personal information
- Principle 41. Privacy and communication surveillance
- Principle 42. Legal framework for the protection of personal information

Part V: Implementation

- Principle 43. Implementation

PREAMBLE

The African Commission on Human and Peoples' Rights (African Commission):

Affirming its mandate to promote human and peoples' rights in accordance with Article 45 of the **African Charter on Human and Peoples' Rights** (the African Charter);

Recalling Resolution 222 (ACHPR/Res.222 (LI) 2012) calling on the African Commission to modify the **Declaration of Principles on Freedom of Expression in Africa** of 2002 (the Declaration) to include access to information, Resolution 350 (ACHPR/Res.350 (EXT.OS/XX) 2016) mandating the African Commission to revise the Declaration and Resolution 362 (ACHPR/Res.362 (LIX) 2016) requesting the Special Rapporteur on Freedom of Expression and Access to Information in Africa to take note of developments in the internet age during the revision of the Declaration;

Recognising the need to revise the Declaration to consolidate developments on freedom of expression and access to information, including by taking account of African Union treaties and soft law standards, the emerging jurisprudence of judicial and quasi-judicial organs of the African Union, as well as the need for the elaboration of the digital dimensions of both rights;

Reaffirming the fundamental importance of freedom of expression and access to information

as individual human rights, as cornerstones of democracy and as means of ensuring respect for other human rights;

Recalling that freedom of expression and access to information are fundamental human rights guaranteed by Article 9 of the African Charter, and that those rights are also affirmed in the **African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, the African Union Convention on Preventing and Combating Corruption, the African Charter on Statistics, the African Youth Charter, the African Charter on Democracy, Elections and Governance, the African Charter on Values and Principles of Public Service and Administration, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;**

Noting the adoption by the African Commission of relevant soft law standards, such as the **Model Law on Access to Information for Africa** of 2013 and the **Guidelines on Access to Information and Elections in Africa** of 2017;

Noting further the adoption of the **African Union Convention on Cyber Security and Personal Data Protection;**

Recognising that the **Universal Declaration of Human Rights** and the **International Covenant on Civil and Political Rights**, as well as other international instruments and national constitutions, also guarantee the rights to freedom of expression and access to information;

Conscious that freedom of expression and access to information are cross-cutting rights that are important for the realization of all other human rights, including socio-economic rights, and of the potential of both rights to contribute to the socio-economic transformation of the continent;

Recognising the need to protect and promote the right to freedom of expression and access to information of marginalised groups and groups that face multiple discrimination, including women, children, persons with disabilities, older persons, sexual and gender minorities, refugees and internally displaced persons;

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

Noting that local languages are critical in optimizing the realization of access to information by communities and for the effective realization of freedom of expression;

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

Aware of the particular importance of 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;

Recognising the role of new digital technologies in the realization of the rights to freedom of expression and access to information and the role of open government data in fostering transparency, efficiency and innovation;

Affirming that the same rights that people have offline should be protected online and in accordance with international human rights law and standards;

Acknowledging that the exercise of the rights to freedom of expression and access to information using the internet are central to the enjoyment of other rights and essential to bridging the digital divide;

Conscious that freedom of expression and privacy are mutually reinforcing rights that are essential for human dignity and the overall promotion and protection of human and peoples' rights;

The African Commission adopts the **Declaration of Principles on Freedom of Expression and Access to Information in Africa** to replace the Declaration on Principles of Freedom of Expression in Africa of 2002.

PART I: GENERAL PRINCIPLES

Principle 1. Importance of the rights to freedom of expression and access to information

1. Freedom of expression and access to information are fundamental rights protected under the African Charter and other international human rights laws and standards. The respect, protection and fulfilment of these rights is crucial and indispensable for the free development of the human person, the creation and nurturing

of democratic societies and for enabling the exercise of other rights.

2. States Parties to the African Charter (States) shall create an enabling environment for the exercise of freedom of expression and access to information, including by ensuring protection against acts or omissions of non-State actors that curtail the enjoyment of freedom of expression and access to information.

Principle 2. Non-interference with freedom of opinion

Freedom of opinion, including the right to form and change all forms of opinion at any time and for whatever reason, is a fundamental and inalienable human right indispensable for the exercise of freedom of expression. States shall not interfere with anyone's freedom of opinion.

Principle 3. Non-discrimination

Everyone shall have the rights to exercise freedom of expression and access to information without distinction of any kind, on one or more grounds, including race, ethnic group, colour, sex, language, religion, political or any other opinion, political association, national and social origin, birth, age, class, level of education, occupation, disability, sexual orientation, gender identity or any other status.

Principle 4. Most favourable provision to prevail

Where a conflict arises between any domestic and international human rights law, the most favourable provision for the full exercise of the rights to freedom of expression or access to information shall prevail.

Principle 5. Protection of the rights to freedom of expression and access to information online

The exercise of the rights to freedom of expression and access to information shall be protected from interference both online and offline, and States shall interpret and implement the protection of these rights in this Declaration and other relevant international standards accordingly.

Principle 6. Protection of human rights defenders and others

The protections accorded to journalists and other media practitioners in this Declaration shall apply, as necessary, to every human rights defender and any other individual or group exercising their rights to freedom of expression and access to information through any medium.

Principle 7. Specific measures

States shall take specific measures to address the needs of marginalised groups in a manner that guarantees the full enjoyment of their rights to freedom of expression and access to information on an equal basis with others. Marginalised groups include women, children, persons with disabilities, older persons, refugees, internally displaced persons, other migrants, ethnic, religious, sexual or gender minorities.

Principle 8. Evolving capacities of children

States shall recognise and respect the evolving capacities of children, and shall take measures that enable children, including adolescents, to exercise the rights to freedom of expression and access to information. In all such actions, the best interest of the child shall be a primary consideration.

Principle 9. Justifiable limitations

1. States may only limit the exercise of the rights to freedom of expression and access to information, if the limitation:

- a. is prescribed by law;
- b. serves a legitimate aim; and
- c. is a necessary and proportionate means to achieve the stated aim in a democratic society.

2. States shall ensure that any law limiting the rights to freedom of expression and access to information:

- a. is clear, precise, accessible and foreseeable;
- b. is overseen by an independent body in a manner that is not arbitrary or discriminatory; and
- c. effectively safeguards against abuse including through the provision of a right of appeal to independent and impartial courts.

3. A limitation shall serve a legitimate aim where the objective of the limitation is:

- a. to preserve respect for the rights or reputations of others; or
- b. to protect national security, public order or public health.

4. To be necessary and proportionate, the limitation shall:

- a. originate from a pressing and substantial need that is relevant and sufficient;
- b. have a direct and immediate connection to the expression and disclosure of information, and be the least restrictive means of achieving the stated aim; and
- c. be such that the benefit of protecting the stated interest outweighs the harm to

the expression and disclosure of information, including with respect to the sanctions authorised.

PART II: RIGHT TO FREEDOM OF EXPRESSION

Principle 10. Guarantee of freedom of expression

Freedom of expression, 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 or medium, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

Principle 11. Media diversity and pluralism

1. State or private monopoly over print, broadcast and online media is not compatible with the right to freedom of expression.

2. State and government-controlled broadcasters shall be transformed into public service broadcasters, accountable to the public through the legislature or other mechanism for public accountability.

3. States shall take positive measures to promote a diverse and pluralistic media, which shall facilitate:

- a. the promotion of free flow of information and ideas;
- b. access to media and other means of communication, including by marginalised groups, linguistic and cultural minorities;
- c. access to non-discriminatory and non-stereotyped information;
- d. access to the media by poor and rural communities, including by subsidising household costs associated with digital migration;
- e. The promotion of transparency and diversity in media ownership;
- f. The promotion of local and African languages, content and voices; and
- g. The promotion of the use of local languages in public affairs, including by the executive, legislature and the judiciary.

Principle 12. Media independence

1. States shall guarantee the right to establish various forms of independent media, including print, broadcast and online media.

2. Any registration system for media shall be for administrative purposes only, and shall not impose excessive fees or other restrictions on the media.

3. States shall develop regulatory environments that encourage media owners and media practitioners to reach agreements

to guarantee editorial independence and to prevent commercial and other considerations from influencing media content.

Principle 13. Public service media

1. States shall establish public service media governed by a transparently constituted and diverse board adequately protected against undue interference of a political, commercial or other nature.

2. The senior management of public service media shall be appointed by and accountable to the board.

3. The editorial independence of public service media shall be guaranteed.

4. Public service media shall be adequately funded in a manner that protects them from undue interference.

5. Public service broadcasters shall ensure that their transmission systems cover the whole territory of the State.

6. The public service ambit of public broadcasters shall be clearly defined and include an obligation to ensure that the public receive adequate and politically balanced information, particularly during election periods.

Principle 14. Private media

1. States shall promote a diverse private media as vehicles for the development and dissemination of a variety of content in the public interest.

2. States shall encourage broadcast, print and online media to publicly disclose all forms of media ownership and any subsequent acquisitions or change in ownership.

3. States shall establish an independent regulatory body to issue broadcasting licenses and to oversee the observance of license conditions.

4. States shall ensure that licensing processes for private media are fair and transparent, and promote diversity in broadcasting by:

- a. mandating full public disclosure of all forms of media ownership and any subsequent acquisitions or change of ownership; and
- b. taking preventive measures against the undue concentration of private broadcasting ownership, including through non-award of licenses and non-approval of subsequent acquisitions or change of ownership.

5. States shall ensure that the process of frequency allocation for private broadcasting use is fair and transparent.

6. States shall ensure that the process for the acquisition of broadcasting rights imposes such conditions as are necessary for ensuring diversity in the private broadcasting sector.

7. States shall encourage private broadcasting services to promote interoperability of platforms and facilities.

Principle 15. Community media

1. States shall facilitate the establishment of community media as independent non-profit entities, with the objective of developing and disseminating content that is relevant to the interests of geographic communities or communities sharing common interests such as language and culture.

2. The regulation of community broadcasting shall be governed in accordance with the following principles:

a. The ownership, management and programming of community broadcasters shall be representative of the community.

b. Licensing processes shall be simple, expeditious and cost effective, and guarantee community participation.

c. Licensing requirements shall fulfil the objectives of community broadcasting and shall not be prohibitive.

d. States shall allocate a fixed percentage of available radio frequency spectrum to community broadcasters to encourage diversity.

Principle 16. Self-regulation and co-regulation

1. States shall encourage media self-regulation which shall be impartial, expeditious, cost-effective, and promote high standards in the media.

2. Codes of ethics and conduct shall be developed by the media through transparent and participatory processes and shall be effectively implemented to ensure the observance of the highest standards of professionalism by the media.

3. Co-regulation may also be encouraged by States as a complement to self-regulation, founded on informed collaboration between stakeholders including the public regulatory authority, media and civil society.

Principle 17. Regulatory bodies for broadcast, telecommunications and the internet

1. A public regulatory authority that exercises powers in the areas of broadcast, telecommunications or internet infrastructure shall be independent and adequately protected against interference of a political, commercial or other nature.

2. The appointment process for members of a public regulatory body overseeing broadcast, telecommunications or internet infrastructure shall be independent and adequately protected against interference. The process shall be open, transparent and involve the participation of relevant stakeholders.

3. Any public regulatory authority that exercises powers in broadcast, telecommunications or internet infrastructure

shall be accountable to the public.

4. A multi-stakeholder model of regulation shall be encouraged to develop shared principles, rules, decision-making procedures and programmes to shape the use and evolution of the internet.

5. The powers of regulatory bodies shall be administrative in nature and shall not seek to usurp the role of the courts.

Principle 18. Complaints

1. Public complaints systems for print, broadcast, online media and internet intermediaries shall be widely accessible and determined in accordance with established rules and codes of conduct.

2. Any regulatory body established to adjudicate complaints about media content shall be protected against political, commercial or any other undue interference.

Principle 19. Protection of journalists and other media practitioners

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

2. Journalists and other media practitioners shall be free to organise themselves into unions and associations.

Principle 20. Safety of journalists and other media practitioners

1. States shall guarantee the safety of journalists and other media practitioners.

2. States shall take measures to prevent attacks on journalists and other media practitioners, including murder, extra-judicial killing, torture and other forms of ill-treatment, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, threats and unlawful surveillance undertaken by State and non-State actors.

3. States shall take measures to raise the awareness and build the capacities of journalists and other media practitioners, policy makers and other stakeholders on laws and standards for ensuring the safety of journalists and other media practitioners.

4. States shall take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners, and ensure that victims have access to effective remedies.

5. States shall be liable for the conduct of law enforcement, security, intelligence, military and other personnel which threatens, undermines or violates the safety of journalists and other media practitioners.

6. States shall take specific measures to ensure the safety of female journalists and media practitioners by addressing gender-specific

safety concerns, including sexual and gender-based violence, intimidation and harassment.

7. In times of armed conflict, States shall respect the status of journalists and other media practitioners as non-combatants in accordance with international humanitarian law.

Principle 21. Protecting reputations

1. States shall ensure that laws relating to defamation conform with the following standards:

a. No one shall be found liable for true statements, expressions of opinions or statements which are reasonable to make in the circumstances.

b. Public figures shall be required to tolerate a greater degree of criticism.

c. Sanctions shall never be so severe as to inhibit the right to freedom of expression.

2. Privacy and secrecy laws shall not inhibit the dissemination of information of public interest.

Principle 22 Criminal measures

1. States shall review all criminal restrictions of content to ensure that they are justifiable and compatible with international human rights law and standards.

2. States shall repeal laws that criminalise sedition, insult and publication of false news.

3. States shall amend criminal laws on defamation and libel in favour of civil sanctions which must themselves be necessary and proportionate.

4. The imposition of custodial sentences for the offences of defamation and libel are a violation of the right to freedom of expression.

5. Freedom of expression shall 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.

Principle 23. Prohibited speech

1. States shall prohibit any speech that advocates for national, racial, religious or other forms of discriminatory hatred which constitutes incitement to discrimination, hostility or violence.

2. States shall criminalise prohibited speech as a last resort and only for the most severe cases. In determining the threshold of severity that may warrant criminal sanctions, States shall take into account the:

- a. prevailing social and political context;
- b. status of the speaker in relation to the audience;
- c. existence of a clear intent to incite;
- d. content and form of the speech;
- e. extent of the speech, including its

public nature, size of audience and means of dissemination;

f. real likelihood and imminence of harm.

3. States shall not prohibit speech that merely lacks civility or which offends or disturbs.

Principle 24. Economic measures

1. States shall promote a conducive economic environment in which all media can flourish, including through the adoption of policies for the provision of financial or other public support for the sustainability of all media through a fair, neutral, independent and transparent process, and based on objective criteria.

2. States shall ensure that the allocation of funds for public advertising is transparent and subject to public accountability, and they shall not abuse their power over the placement of public advertising.

3. States shall adopt effective measures to avoid undue concentration of media ownership, whether horizontal or vertical. Such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

Principle 25. Protection of sources and other journalistic material

1. Journalists and other media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except where disclosure has been ordered by a court after a full and fair public hearing.

2. The disclosure of sources of information or journalistic material as ordered by a court shall only take place where:

a. 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;

b. the information or similar information leading to the same result cannot be obtained elsewhere; and

c. the public interest in disclosure outweighs the harm to freedom of expression.

3. States shall not circumvent the protection of confidential sources of information or journalistic material through the conduct of communication surveillance except where such surveillance is ordered by an impartial and independent court and is subject to appropriate safeguards.

PART III: RIGHT OF ACCESS TO INFORMATION

Principle 26. The right of access to information

1. The right of access to information shall be guaranteed by law in accordance with the following principles:

a. Every person has the right to access information held by public bodies and relevant private bodies expeditiously and inexpensively.

b. Every person has the right to access information of private bodies that may assist in the exercise or protection of any right expeditiously and inexpensively.

2. For the purpose of this part, a relevant private body is a body that would otherwise be a private body but is owned partially or totally, or is controlled or financed directly or indirectly by public funds, or a body that carries out a statutory or public function or a statutory or public service.

Principle 27. Primacy

Access to information laws shall take precedence over any other laws that prohibit or restrict the disclosure of information.

Principle 28. Maximum disclosure

The right of access to information shall be guided by the principle of maximum disclosure. Access to information may only be limited by narrowly defined exemptions, which shall be provided by law and shall comply strictly with international human rights law and standards.

Principle 29. Proactive disclosure

1. Public bodies and relevant private bodies shall be required, even in the absence of a specific request, to proactively publish information of public interest, including information about their functions, powers, structure, officials, decisions, budgets, expenditure and other information relating to their activities.

2. Proactive disclosure by relevant private bodies shall apply to activities for which public funds are utilised or public functions or services are performed.

3. Information required to be proactively disclosed shall be disseminated through all available mediums, including digital technologies. In particular, States shall proactively publish information in accordance with internationally accepted open data principles.

Principle 30. Duty to create, keep, organise and maintain information

Public bodies, relevant private bodies and private bodies shall create, keep, organise and maintain information in a manner that facilitates the exercise of the right of access to information.

Principle 31. Procedure for accessing

information

1. Access to information shall be granted as expeditiously and inexpensively as possible, and in accessible formats and technologies.

2. No one shall be required to demonstrate a specific legal or personal interest in the information requested or to provide justification for a request.

3. Every person shall be assisted in making requests for information orally or in writing and in conformity with processing requirements. Appropriate support shall be provided to non-literate persons and persons with disabilities to make requests for information on an equal basis with others.

4. No fees shall be payable other than the reasonable reproduction cost of requested information. The cost of reproduction shall be waived where the requester is indigent.

5. Any refusal to disclose information shall be provided timeously and in writing, and it shall be well-reasoned and premised on international law and standards.

Principle 32. Appeals

Any refusal to disclose information shall be subject to an expeditious internal appeal process at no cost to the applicant. The right of further appeal against the outcome of an internal appeal process shall lie to the oversight mechanism and, ultimately, the courts.

Principle 33. Exemptions

1. Information may only be legitimately withheld where the harm to the interest protected under the relevant exemption demonstrably outweighs the public interest in disclosure of the information. Such information may only be withheld for the period that the harm could occur.

2. Where a portion of a document containing requested information is exempted from disclosure, the exempted portion shall be severed or redacted and access granted to the remainder of the document that is not exempted from disclosure.

3. Laws governing classification of information shall stipulate the maximum period of the classification and restrict classification only to the extent necessary, never indefinitely.

4. Information may only be legitimately withheld as an exemption if its release would:

a. result in the unreasonable disclosure of the personal information of a third party;

b. cause substantial prejudice to a legitimate commercial or financial interest of relevant stakeholders or other third party;

c. endanger the life, health or safety of an individual;

d. cause substantial prejudice to the national

security and defence of the State;

e. causesubstantialprejudicetointernational relations where the information relates to information required to be held in confidence under international law, the position of the State with respect to international negotiations, and diplomatic or official correspondence with States or international organisations and diplomatic or consular missions;

f. cause prejudice to law enforcement, in particular, the prevention and detection of crime, apprehension or prosecution of offenders and the administration of justice;

g. result in the disclosure of confidential communication between medical practitioner and patient, lawyer and client, journalist and sources, or is otherwise privileged from disclosure in legal proceedings; or

h. jeopardise the integrity of a professional examination or recruitment process.

Principle 34. Oversight mechanism

1. An independent and impartial oversight mechanism shall be established by law to monitor, promote and protect the right of access to information and resolve disputes on access to information.

2. The independence of the oversight mechanism shall be guaranteed in law which shall stipulate a transparent and participatory appointment process, a clear and specific term of office, adequate remuneration and resourcing, and ultimate accountability to the legislature.

3. Public bodies and relevant private bodies shall recognise decisions of the oversight mechanism as formally and legally binding in all matters relating to access to information, including resolving access to information disputes.

Principle 35. Protected disclosures in the public interest

1. No person shall be subject to civil, criminal, administrative or employment-related or other sanctions or harm, for releasing information on wrongdoing or which discloses a serious threat to health, safety or the environment, or whose disclosure is in the public interest, in the honest belief that such information is substantially true.

2. States shall adopt laws to establish protected disclosure regimes and independent institutions to oversee the protected disclosure of information in the public interest.

Principle 36. Sanctions

1. The failure of an information holder to proactively disclose information or to grant a request for information shall be established as offences punishable by law.

2. The wilful destruction, damage, alteration,

concealment or falsification of information and the obstruction or interference with the performance of the duties of an information holder or of an oversight mechanism, shall be established as offences punishable by law.

PART IV: FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION ON THE INTERNET

Principle 37. Access to the internet

1. States shall facilitate the rights to freedom of expression and access to information online and the means necessary to exercise these rights.

2. States shall recognise that universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights.

3. States shall, in cooperation with all relevant stakeholders, adopt laws, policies and other measures to provide universal, equitable, affordable and meaningful access to the internet without discrimination, including by:

a. developing independent and transparent regulatory mechanisms for effective oversight;

b. improving information and communication technology and internet infrastructure for universal coverage;

c. establishing mechanisms for regulating market competition to support lower pricing and encourage diversity;

d. promoting local access initiatives such as community networks for enabling the increased connection of marginalised, unserved or underserved communities; and

e. facilitating digital literacy skills for inclusive and autonomous use.

4. In providing access to the internet, States shall take specific measures to ensure that marginalised groups have effective exercise of their rights online.

5. States shall adopt laws, policies and other measures to promote affordable access to the internet for children that equips them with digital literacy skills for online education and safety, protects them from online harm and safeguards their privacy and identity.

Principle 38. Non-interference

1. States shall not interfere with the right of individuals to seek, receive and impart information through any means of communication and digital technologies, through measures such as the removal, blocking or filtering of content, unless such interference is justifiable

and compatible with international human rights law and standards.

2. States shall not engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population.

3. States shall only adopt economic measures, including taxes, levies and duties, on internet and information and communication technology service end-users that do not undermine universal, equitable, affordable and meaningful access to the internet and that are justifiable and compatible with international human rights law and standards.

Principle 39. Internet intermediaries

1. States shall require that internet intermediaries enable access to all internet traffic equally without discrimination on the basis of the type or origin of content or the means used to transmit content, and that internet intermediaries shall not interfere with the free flow of information by blocking or giving preference to particular internet traffic.

2. States shall not require internet intermediaries to proactively monitor content which they have not authored or otherwise modified.

3. States shall require internet intermediaries to ensure that in moderating or filtering online content, they mainstream human rights safeguards into their processes, adopt mitigation strategies to address all restrictions on freedom of expression and access to information online, ensure transparency on all requests for removal of content, incorporate appeal mechanisms, and offer effective remedies where rights violations occur.

4. States shall not require the removal of online content by internet intermediaries unless such requests are:

- a. clear and unambiguous;
- b. imposed by an independent and impartial judicial authority, subject to sub-principle 5;
- c. subject to due process safeguards;
- d. justifiable and compatible with international human rights law and standards; and
- e. implemented through a transparent process that allows a right of appeal.

5. Law-enforcement agencies may request intermediaries for the expedited or immediate removal of online content that poses imminent danger or constitutes real risk of death or serious harm to a person or child, provided such removal is subject to review by judicial authority.

6. States shall ensure that the development, use and application of artificial intelligence, algorithms and other similar technologies by internet intermediaries are compatible with international human rights law and standards,

and do not infringe on the rights to freedom of expression, access to information and other human rights.

Principle 40. Privacy and the protection of personal information

1. Everyone has the right to privacy, including the confidentiality of their communications and the protection of their personal information.

2. Everyone has the right to communicate anonymously or use pseudonyms on the internet and to secure the confidentiality of their communications and personal information from access by third parties through the aid of digital technologies.

3. States shall not adopt laws or other measures prohibiting or weakening encryption, including backdoors, key escrows and data localisation requirements, unless such measures are justifiable and compatible with international human rights law and standards.

Principle 41 Privacy and communication surveillance

1. States shall not engage in or condone acts of indiscriminate and untargeted collection, storage, analysis or sharing of a person's communications.

2. States shall only engage in targeted communication surveillance that is authorised by law, that conforms with international human rights law and standards, and that is premised on specific and reasonable suspicion that a serious crime has been or is being carried out or for any other legitimate aim.

3. States shall ensure that any law authorising targeted communication surveillance provides adequate safeguards for the right to privacy, including:

- a. the prior authorisation of an independent and impartial judicial authority;
- b. due process safeguards;
- c. specific limitation on the time, manner, place and scope of the surveillance;
- d. notification of the decision authorising surveillance within a reasonable time of the conclusion of such surveillance;
- e. proactive transparency on the nature and scope of its use; and
- f. effective monitoring and regular review by an independent oversight mechanism.

Principle 42 Legal framework for the protection of personal information

1. States shall adopt laws for the protection of personal information of individuals in accordance with international human rights law and standards.

2. The processing of personal information shall by law be:

- a. with the consent of the individual concerned;
 - b. conducted in a lawful and fair manner;
 - c. in accordance with the purpose for which it was collected, and adequate, relevant and not excessive;
 - d. accurate and updated, and where incomplete, erased or rectified;
 - e. transparent and disclose the personal information held; and
 - f. confidential and kept secure at all times.
3. States shall ensure, in relation to the processing of a person's personal information, that the person has the rights to:
- a. be informed in detail about the processing;
 - b. access personal information that has been or is being processed;
 - c. object to the processing; and
 - d. rectify, complete or erase personal information that is inaccurate, incomplete or prohibited from collection, use, disclosure or storage.
4. Every person shall have the right to exercise autonomy in relation to their personal information by law and to obtain and reuse their personal information, across multiple services, by moving, copying or transferring it.
5. Any person whose personal information has been accessed by an unauthorised person has the right to be notified of this fact within a reasonable period and of the identity of the unauthorised person, unless such identity cannot be established.
6. The harmful sharing of personal information, such as child sexual abuse or the non-consensual sharing of intimate images, shall be established as offences punishable by

law.

7. Every individual shall have legal recourse to effective remedies in relation to the violation of their privacy and the unlawful processing of their personal information.

8. Oversight mechanisms for the protection of communication and personal information shall be established by law as independent entities and include human rights and privacy experts.

PART V: IMPLEMENTATION

Principle 43. Implementation

1. States shall adopt legislative, administrative, judicial and other measures to give effect to this Declaration and facilitate its dissemination.

2. When States review or adopt legislation on access to information, they shall be further guided by the African Commission's Model Law on Access to Information for Africa.

3. When States adopt measures related to elections, they shall be further guided by the African Commission's Guidelines on Access to Information and Elections in Africa.

4. In accordance with Article 62 of the African Charter, States shall, in each Periodic Report submitted to the African Commission, provide detailed information on the measures taken to facilitate compliance with the provisions of this Declaration.