



PEN Zambia and PEN International

Contribution to the 28th session of the Working Group of the Universal Periodic Review

Submission on Zambia

30 March 2017

I. INTRODUCTION

1. PEN Zambia and PEN International welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Zambia. This submission focuses on the situation of the right to freedom of expression and association in Zambia in the period November 2012 to March 2017.

II. EXECUTIVE SUMMARY

2. During the 2012 UPR process, Zambia received four recommendations in regards to freedom of expression and freedom of assembly, of which they accepted one from the United States, thereby committing to “ensure that the freedoms of assembly and expression are upheld and [to] respect the 2003 Supreme Court ruling stating that these freedoms are fundamental”¹.

3. Zambia also noted the recommendations made by Iraq, Ireland and the United Kingdom, related respectively to calling for the repeal of laws limiting freedom of expression in the media; ensuring that the legal system is in full compliance with its international obligations in respect of freedom of expression and that media and journalists are able to freely carry out their work; and calling for the amendment of the Public Order Act in order to ensure the fullest possible freedoms of association and expression.²

¹ “Ensure that the freedoms of assembly and expression are upheld and respect the 2003 Supreme Court ruling stating that these freedoms are fundamental.” (United States) Available at: https://www.upr-info.org/database/index.php?limit=0&f_SUR=193&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly ; 2003 Supreme Court ruling, ‘Resident Doctors Association Of Zambia and Others VS The Attorney General,’ Supreme Court Sakala, CJ, Lewanika, DCJ, and Mambilima, JJS 26th September, 2002 and 28th October, 2003 (SCZ Judgment No. 12 of 2003), available at: www.zambialii.org/zm/judgment/supreme-court/2003/31/31.rtf

² “Repeal any law limiting the right to free expression in the media.” (Iraq); “Take the necessary steps to ensure that its legal system and policies are in full compliance with its international obligations in respect of freedom of expression and that the media and journalists are guaranteed the necessary freedoms to carry out their work independently and without fear of prosecution.” (Ireland); “Make the necessary legislative changes, including restricting the scope of the Public Order Act, to ensure the fullest possible freedoms of association and expression, and to ensure the police enforce these and other laws in a proportionate manner, including in

4. The Public Order Act seeks to regulate assemblies, public meetings, and processions. It provides under sections 4 and 5 that every person who intends to assemble or convene a public meeting, procession, or demonstration shall give police at least seven days' notice of that person's intention to assemble or convene such a meeting, procession, or demonstration.³ This act has been used selectively to clamp down on dissenting views.⁴

5. PEN International and PEN Zambia note that in 2014 the Zambian Human Rights Commission developed an implementation and monitoring framework for the actualization of the recommendations that the country accepted, among them, the recommendation from the United States in regards to freedom of expression. However, the coalition regrets that at the time of compiling this report the only notable commitment towards making progress on this recommendation were public pronouncements made by Minister of Justice Given Lubinda at a Civil Society UPR consultative forum in February 2017. He stated that the Ministry of Justice was actively considering the access to information bill, and that the Ministry had requested several stakeholders to make submissions on the improvement of the Public Order Act in Zambia.⁵

6. The coalition welcomes the Zambian government's 2017 announcement that the Access to Information bill is ready for further scrutiny by civil society and other interest groups.⁶ PEN International and PEN Zambia also appreciate the Zambian government's open attitude and approach to the national UPR process as civil society has been invited and engaged in the process, though quite late as the first major meeting only took place in February 2017, one month before the UPR shadow report deadline, having been initiated by civil society.

7. The coalition regrets that the failure of a national referendum on 11 August 2016, held alongside the presidential elections, was a missed opportunity to improve freedom of expression and access to information in the country. The referendum, which was designed to ensure the inclusion of a bill of rights in the amended national constitution, could have provided for the enactment of access to information and

Western Province." (United Kingdom) Available at: https://www.upr-info.org/database/index.php?limit=0&f_SUR=193&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

³ The Laws of Zambia, Government of the Republic of Zambia, The Public Order Act, Chapter 113 of the Laws of Zambia, available at:

<http://www.parliament.gov.zm/sites/default/files/documents/acts/Public%20Order%20Act.pdf>

⁴ U.S. Department of State, Bureau of Democracy, Human rights, and Labor, "2014 Country Report on Human Rights Practices-Zambia," available at: <https://www.state.gov/j/drl/rls/hrrpt/2014/af/236420.htm>

⁵ *Lusaka Times*, "Government is still keen on delivering the Access to Information Bill-Given Lubinda," 9 February 2017, available at:

<https://www.lusakatimes.com/2017/02/09/government-still-keen-delivering-access-information-bill-given-lubinda/>

⁶ MISA Zambia, "MISA Zambia welcomes justice minister's pronouncement on ATI; calls for a roadmap for the process," 10 February 2017, available at:

<http://misa.org/featured-on-home/misa-zambia-welcomes-justice-ministers-pronouncement-ati-calls-roadmap-process/>

media freedom. On account of the failure of the referendum, Zambia was unable to take the necessary steps to ensure that its legal system and policies are in full compliance with its international obligations in respect of freedom of expression.

8. Contrary to the prospect of compliance with the United States' recommendation from the 2012 UPR to ensure that the freedoms of assembly and expression are upheld and urging respect for the 2003 Supreme Court ruling stating that these freedoms are fundamental, the coalition regrets that freedom of expression in Zambia has remained restricted over the past four years, with a notable deterioration in advance of the 2016 presidential elections. Zambia continues to rank low in the World Press Freedom ratings- in Reporters Without Borders 2016 World Press Freedom Index Zambia ranked 114, out of 180, down one point from 2015.⁷

9. The coalition is also concerned that while the constitution of Zambia guarantees freedom of expression, the Penal Code (Chapter 87 of the Laws of Zambia), enacted in 1937 provides for a code of criminal law which contains several penalties for offenders and comprises in detail sections that curtail freedom of expression. These include criminal defamation laws, sedition and obscenity laws. The Public Order Act, (Cap. 113) and certain provisions of the State Security Act (Cap 111) also restrict freedom of expression to some extent.⁸

III. RELEVANT ISSUES

(a) Press Freedom

10. Since the 2012 UPR review of Zambia, there have been numerous cases of harassment and intimidation of the media. Journalists, especially from private media, are routinely harassed by political party cadres, mainly from the ruling party. Some journalists have been detained and have appeared in court, especially on charges of defamation of the President of Zambia. The legal process is often inconveniencing and destabilising to the journalist and the publication for which they work.

Harassment and intimidation of journalists and the media

11. In the period under review, several journalists were arrested or charged due to their work, including **Clayson Hamasaka** who was arrested alongside **Thomas Zgambo** on suspicion of sedition in 2013. They were accused of writing for independent news website *Zambian Watchdog*. Hamasaka was later charged with 'possession of obscene material' but on 11 August 2015, the charges against

⁷ Reporters Without Borders, "Zambia" Available at: <https://rsf.org/en/zambia>

⁸ Freedom House, "Freedom of the Press 2016-Zambia," <https://freedomhouse.org/report/freedom-press/2016/zambia>

Hamasaka were dropped.⁹ The sedition charges against Zgambo were also dropped.¹⁰ **Wilson Pondamali** was also arrested on 16 July 2013 reportedly in connection with the arrest of Hamasaka and Zgambo and links with the *Zambian Watchdog*.¹¹ He was later acquitted.¹² **Richard Sakala** and **Simon Mwanza**, managing editor and production editor of the opposition newspaper *The Daily Nation*, respectively, were arrested on 10 December 2013 in connection with the publication of an interview with former journalist and executive director of Foundation for Democratic Process (FODEP). On 4 December 2014, the Lusaka High Court ruled in Sakala and Mwanza's favour, holding that Zambia's 'false news' law violates the right to freedom of expression and is therefore unconstitutional.¹³ **Fred M'membe**, editor in chief of *The Post* newspaper was accused in 2015 alongside reporter **Mukosha Funga**, of disclosing classified information for an investigative article he wrote alleging corruption within the Patriotic Front (PF).¹⁴ The case was still in court at the time of compiling this report.

12. There were also reports of harassment and other violations against the media in the lead up to the 2015 election; MISA Zambia recorded six reports of harassment and media rights violations. These include attacks on two Post photojournalists, two attacks on Muvi TV reporters and the storming of Zambia National Broadcasting Corporation (ZNBC) newsroom by some politicians.¹⁵

13. PEN International and PEN Zambia note with particular concern the increased restrictions of media freedom in advance of and after the 2016 elections. In June 2016, Zambia's leading independent newspaper, *The Post*, was raided by armed police on allegations of tax non-compliance, but was seen to be linked to attempts to silence independent voices in the media in the run up to the August 2016 national elections.¹⁶ The newspaper has since been placed under liquidation. Furthermore, the Independent Broadcasting Authority (IBA) suspended the broadcasting licenses for Muvi TV, Komboni Radio and ItezhiTezhi Radio

⁹ Lusaka Times, "Journalist Clayson Hamasaka acquitted, evidence was planted", 11 August 2015, <https://www.lusakatimes.com/2015/08/11/clayson-hamasaka-acquittedevidence-was-planted/>

¹⁰ *Zambian Watchdog*, "State drops charges against Zgambo", 3 October 2013, available at: <https://www.zambianwatchdog.com/state-drops-charges-against-zgambo/comment-page-1/>

¹¹ Committee to Protect Journalists, "In Zambia, harassment of Watchdog site continues," 17 July 2013, Available at: <https://cpj.org/2013/07/in-zambia-harassment-of-watchdog-site-continues.php>

¹² Zambia Reports, "Journalist Wilson Mpondamali Acquitted," 1 August 2014, available at: <https://zambiareports.com/2014/08/01/journalist-wilson-mpondamali-acquitted/>

¹³ Media Legal Defence Initiative, "Marshal Muchende on getting Zambia's 'false news' law struck down," 12 October 2014, available at: <http://www.mediadefence.org/news/marshal-muchende-getting-zambias-false-news-law-struck-down>

¹⁴ MISA Zambia, "Fred M'membe, Mukosha Funga case adjourned", 26 January 2016. Available at: <http://misazambia.org/fred-mmembe-mukosha-funga-case-adjourned/>

¹⁵ MISA, "MISA Zambia Statement: Stop Beating Journalists and Acts of Censorship", 15 December 2014. Available at: <http://misa.org/media-centre/press-releases/misa-zambia-statement-stop-beating-journalists-and-acts-of-censorship/>

¹⁶ PEN International, "Zambia: Closure of Independent Newspaper a Worrying Affront to Media Freedom," 27 June 2016, available at: <http://www.pen-international.org/newsitems/zambia-closure-of-independent-newspaper-a-worrying-affront-to-media-freedom/>

respectively on 22 August 2016 for "unprofessional conduct posing a risk to national peace and stability", citing section 29 (1)(j) of the IBA amendment act of 2010.¹⁷ These events indicate the heavy handedness with which the Zambian government has been dealing with independent media.¹⁸

14. The coalition appreciates the Zambian government's reinstatement of the broadcast licences of both Komboni Radio, Itezhitezhi Radio and Muvi TV. However, the coalition is concerned by reports that on 5 October 2016 **Lesá Kasoma Nyirenda**, the station's director, was beaten by six armed policemen who prevented her from accessing the premises. She was also further charged with assaulting a police officer.¹⁹ The case was still in court at the time of compiling this report.

Threats from officials

15. PEN International and PEN Zambia are concerned by reports that the independent media receives regular threats and harassment by government officials. For example, in the last quarter of 2015, Information Minister Chishimba Kambwili reportedly threatened to close Radio Phoenix, accusing the opposition United Party for National Development (UPND) of having a hand in the running of the station. This was a direct infringement of the station's freedom of expression.²⁰ In another incident, in July 2015, armed PF supporters prevented the UPND president from speaking on a programme on Radio Icengelo.²¹ In March 2016, Radio Mano was threatened with violence by PF leaders and cadres, and their operations were suspended.²²

Restrictions on internet freedom

16. From July 2013 to April 2014, there were reports of news websites being blocked, as well as arrests of several journalists suspected of their affiliation with the blocked

¹⁷ Section 29 (1) (j), Independent Broadcasting Authority (IBA) amendment act of 2010, states that "the IBA board may cancel a broadcasting license if the cancellation of the license is necessary in the interest of public safety, security, peace, welfare or good order". MISA Zambia, "State of the Media in Zambia, Third Quarter (July-September 2016)", p. 8. Available at <http://misa.org/wp-content/uploads/2016/11/State-of-the-media-Zambia-Third-Quarter.pdf>

¹⁸ MISA Zambia, "State of the Media in Zambia, Third Quarter (July-September 2016)", available at: <http://misa.org/wp-content/uploads/2016/11/State-of-the-media-Zambia-Third-Quarter.pdf>

¹⁹ Amnesty International, Zambia Report 2016/2017. Available at: <https://www.amnesty.org/en/countries/africa/zambia/report-zambia/>

²⁰ Zambian Eye, "Kambwili threatens to close Radio Phoenix," 21 October, 2015, available at: <http://zambianeye.com/kambwili-threatens-to-close-radio-phoenix/>

²¹ Freedom House, "Freedom of the Press 2016-Zambia," available at <https://freedomhouse.org/report/freedom-press/2016/zambia>

²² Freedom House, Lynn Fredriksson, "As Elections Near, Zambia Faces Rising Violence," 28 July 2016, available at <https://freedomhouse.org/blog/elections-near-zambia-faces-rising-violence>

news outlets. The coalition notes however that in subsequent years there have been fewer restrictions on internet freedom.²³

Media Ownership

17. PEN International and PEN Zambia are concerned about the Zambian government's continued ownership of the main media institutions, which include the Zambia National Broadcasting Corporation, the *Times of Zambia* and the *Zambia Daily Mail*. The political party in power, the Patriotic Front (PF) dominates these media institutions to the disadvantage of opposition political parties. This has been more evident during election years as demonstrated in a media monitoring report compiled by the Media Institute of Southern Africa (MISA) Zambia in the post 2016 general election. The report concluded that the PF was given more media coverage than the other opposition parties during the 2016 elections.²⁴ The PF government pledged upon taking power in 2015 to free the public media consisting of ZNBC, *Zambia Daily Mail* and *Times of Zambia* from government control, but these media outlets continued to report along government lines.²⁵

(b) Access to information

18. Various international bodies have recognised the importance of freedom of information as a human right, including the United Nations and the African Commission.²⁶ Since 2002, governments have made several pronouncements of their commitment to enact the legislation but regrettably nothing has been done and the country is still without the legislation. The national Freedom of Information Bill 2002 was withdrawn from Parliament in 2002 with the Government citing various issues, in particular national security, which needed to be addressed before the bill could be returned to Parliament. In 2015 President Edgar Lungu was reported to have vowed not to enact the access to information legislation because some media houses had become irresponsible.²⁷

19. The coalition welcomes the pronouncement by Justice Minister Given Lubinda at the 2017 Universal Periodic Review Stakeholders meeting that the Access to

²³ Freedom House, "Freedom on the net-Zambia 2015," available at: <https://freedomhouse.org/report/freedom-net/2015/zambia>

²⁴ MISA Zambia monitored coverage in a report released after the 2016 elections and found that ... ' the PF was given undue coverage across all public media as nearly half of the coverage was dedicated to it. UPND received less than 30% of the coverage across all public media outlets with ZNBC TV1 and ZNBC Radio 2 allocating the least coverage to it." 2016 MISA Zambia Media Monitoring Report phase 3-Campaign period, as quoted in "State of the Media in Zambia, Third Quarter (July-September 2016)", MISA Zambia, p 11. Accessed at <http://misa.org/wp-content/uploads/2016/11/State-of-the-media-Zambia-Third-Quarter.pdf>

²⁵ Freedom House, "Freedom of the Press 2015-Zambia," available at: <https://freedomhouse.org/report/freedom-press/2015/zambia>

²⁶ For example, the African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa. 2002, Accessed from

<https://www.article19.org/resources.php/resource/3024/en/international-standards:-right-to-information>

²⁷ State of Right to Information in Africa Report, September 2015, produced by Africa Information Freedom , 89

Information bill is ready and that government is working on systems that will readily avail the information to the public and urge that this be enacted without delay.²⁸

(c) Laws Restricting freedom of expression

20. PEN International and PEN Zambia regret that freedom of expression in Zambia remains criminalised by laws created in the country's colonial times designed to crush dissent. As noted above, several laws in the Constitution of Zambia criminalise freedom of expression. In particular the Penal Code (Chapter 87 of the Laws of Zambia), enacted in 1937 (27 years before Zambia's independence in 1964) provides for a code of criminal law which contains several penalties for offenders and comprises in detail sections that curtail freedom of expression, including provisions relating to Prohibited Publications (Sec 53); Defamation of the President (Sec. 69); Seditious Practices (Sec. 60); and Obscenity (Sec. 177). Other provisions such as the State Security Act (Cap. 111) and the Public Order Act (Cap. 113) also restrict freedom of expression to some extent.²⁹

21. Consequently, opposition politicians such as **Eric Chanda**, President of 4th Revolution Party as well as journalists **Funga Mukosha** and **Joan Chirwa** were jointly arrested in March 2016 and charged with defaming the president in 2015.³⁰ They had written an article quoting Chanda's allegations that former president Lungu had used taxpayers' money for his vacation.³¹ Creative artists such as the musician **Fumba Chama (Pilato)** have also been arrested for expressing dissent. Pilato was arrested and detained on 8 June 2015 for 'conduct likely to cause breach of the peace' in connection with his satirical song 'A Lungu ana bwela.' The song –a parody of Nashil Pichen Kazembe's song entitled, 'A Phiri ana bwela' – is said to have defamed President Edgar Lungu by accusing him of drinking too much and being incompetent.³²

²⁸ MISA, "MISA Zambia welcomes Justice Minister's pronouncement on ATI", 10 February 2017. Available at: <http://misa.org/featured-on-home/misa-zambia-welcomes-justice-ministers-pronouncement-ati-calls-roadmap-process/>

²⁹ Freedom House, "Freedom of the Press 2016-Zambia," <https://freedomhouse.org/report/freedom-press/2016/zambia>

³⁰ International Press Institute, "Zambia journalists charged with defaming country's president," 13 April 2016, available at: <http://www.freemedia.at/zambia-journalists-charged-with-defaming-countrys-president/>

³¹ International Press Institute, "Zambia journalists charged with defaming country's president," 13 April 2016, available at: <http://www.freemedia.at/zambia-journalists-charged-with-defaming-countrys-president/>

³² PEN International, Case List 2015-Zambia, available at: <http://www.pen-international.org/wp-content/uploads/2016/05/CASE-LIST-January-December-2015.pdf>

(d) Freedom of assembly (Public Order Act)

22. PEN International and PEN Zambia remain concerned that despite the ruling Patriotic Front's promises prior to assuming power in 2011 to review and improve the Public Order Act - the act still remains in its pre-independence form with the result that dissent, especially by opposition political party leaders and cadres, is crushed through arrests and threats of arrests of those critical of the authorities (see UK recommendation, noted by Zambia.)³³

23. For example, on 5 October 2016 UPND leaders **Hakainde Hichilema** and **Geoffrey Mwamba** were arrested and charged with unlawful assembly and seditious practices following a brief meeting with party supporters at a village in Mpongwe District. They were released on bail pending trial in October.³⁴

IV. RECOMMENDATIONS

24. On account of the concerns raised above, PEN International and PEN Zambia make the following recommendations to the Zambian Government:

- In line with Ireland's original recommendation to ensure that the legal system is in full compliance with its international obligations in respect of freedom of expression and that media and journalists are able to freely carry out their work, Zambia should ensure that the media and journalists are guaranteed the necessary freedoms to carry out their work independently and without fear of prosecution or harassment.;
- Investigative threats from officials against the media and ensure the prompt, thorough and effective investigation and appropriate punishment of such acts;
- In accordance with international standards, promote media diversity and prevent undue media concentration by rescinding its dominance over the country's major media institutions including the Zambia National Broadcasting Corporation, the *Times of Zambia* and the *Zambia Daily Mail* ;
- Initiate consultation with the public and civil society on the content of the Access to Information (ATI) bill before it is tabled in parliament. Once adopted the bill should be swiftly implemented ;

³³ Amnesty International, Zambia Report 2016/2017. Available at: <https://www.amnesty.org/en/countries/africa/zambia/report-zambia/>

³⁴ Amnesty International, Zambia Report 2016/2017. Available at: <https://www.amnesty.org/en/countries/africa/zambia/report-zambia/>

- In line with Iraq’s recommendation to repeal laws limiting freedom of expression in the media as well as the recommendations of the UN Special Rapporteur on freedom of expression, Zambia should repeal all laws that are inimical to freedom of expression such as the criminalisation of defamation;
- In line with the United Kingdom’s recommendation, Zambia should expedite the process of reviewing and reforming the Public Order Act in consultation with stakeholders, including opposition political parties, the police, the Law Association of Zambia and the general citizenry; and amend the Public Order Act in order to ensure the fullest possible freedoms of association and expression by ensuring the inclusion of measures to strengthen oversight mechanisms and institutions responsible for implementing the Public Order Act to establish a regulatory system that accords with international rights standards and gives priority to protecting the rights to freedom of expression and peaceful assembly.