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# The Historicity of Media Regulation in Zambia; Examining the Proposed Statutory Self-Regulation

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## ABSTRACT



The media in Zambia have been in a state of uncertainty since Zambia reinstated democratic governance in the early 1990s. Despite promising initial steps to deregulate the media that started under President Chiluba's government in the mid-1990s, achieving these objectives in successive years has proved difficult. Successive governments have exhibited increasing aversion towards free and independent media, instead increasing efforts to regulate. This is significant, because comparisons with Kaunda's autocratic era before 1991 cast the state in a friendlier light towards the media, defying normative theories. After both the Media Ethics Council of Zambia and Zambia Media Ethics Council (ZAMEC) failed as self-regulatory mechanisms in the mid to late 2000s, current state efforts have turned to create a hybrid statutory self-regulatory framework. This is a challenge because Zambia's democracy has come under pressure from increasing political intolerance. Furthermore, while media professionals support the idea of regulation to strengthen professionalism, they often disagree on the value of statutory self-regulation and its implications. This study used the In-Depth Interview approach on 23 media professionals and documentary analysis to sketch the history and future implications of media regulation efforts in Zambia. Results show a checkered past but present an even more complicated future. The history of the Independent Broadcasting Authority shows that the proposed statutory self-regulatory framework presents more challenges to the media than ever before. This paper aims to contribute to global media studies and specifically the problems of regulation, the state, and media freedom in an African context.

## KEYWORDS

Media regulation;  
democracy; self-regulation;  
Zambia; press freedom;  
ZAMEC

## Introduction

Media regulatory frameworks the world over usually occur within specific social–political contexts that vary according to the prevailing political system (Mattoni and Ceccobelli

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2018; Hulin 2014). Thus, it is as commonplace to find repressive regulatory regimes in authoritarian states as it is to find more accommodating ones in liberal democracies. However, even under these disparate political systems, the media are not always guaranteed to operate as per normative theoretical propositions. There are bound to be variances with the theoretical underpinnings and practices as they relate to different political systems, media systems, and legal or regulatory regimes. This paper analyses contemporary media regulation in Zambia with a historical context to it (Kamwengo 2009; Rajkhowa 2015), premised on the fact that Zambia has embraced the liberal democratic system. As part of a broader project whose key objective is to investigate the nature of Zambian media's political representation during elections, this paper addresses a key question of how policy, regulatory and legislative measures affect the media's ability to carry out this civic function. At independence in 1964, Zambia was democratic before regressing to a one-party autocratic state between 1973 and 1990. The current democratic system is the second attempt at democracy in the Southern African nation, which has continued since 1991.

Scholarly literature posits that regardless of the political system in place, media ownership or control often presents regulatory conundrums that are hard to ignore or avoid. Scholars observe that some media models advance democracy while others do not. Additionally, three principle regulatory forms have been identified. The first is the "state monopoly ownership and media control", which permits alternative voices only with tacit consent from the state authorities; the second is the "public service monopoly", which is associated more with broadcasting systems and exhibits sufficient autonomy from the state; the third is "private ownership", which comes with varying levels of state regulation or intervention. Gradually, the three systems combine in diverse mixtures or hybrids as states go through different transitions (Price and Krug 2002: 3). Zambia's media regulatory system is a mix of the first and third models, although others contend that the public service monopoly still exists. Mattoni and Ceccobelli (2018: 548–550), however, note that citizen participation in media regulation has become more relevant, especially in the age of the Internet and increasing citizen participation in media systems.

For most democracies, such as Zambia, there are continued state excesses that impede media independence. Often, media businesses become targets for indirect assaults over several matters including allegations of non-adherence to regulations, non-compliance, or tax evasion as well as legal suits such as defamation, libel, publishing seditious material, espionage, etc. Whether these legal battles are genuine or not, authorities use them as tools compelling media owners to align with the ruling class for purposes of appropriation of political power. The case of the defunct *The Post* newspaper is informative on this score as its checkered 25-year history is laden with cases of direct and indirect state assault in efforts to intimidate it (MISA Zambia 2016). Similarly, the closure of *Prime Television*<sup>1</sup> in the

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<sup>1</sup>The Independent Broadcasting Authority closed Prime TV, an influential station, early in 2020 when the state accused the station's owner of spurning their requests to broadcast free public service announcements on the TV station in the wake of the COVID-19 pandemic breaking out in Zambia. However, the TV station was singled out due to its growing influence in the political discourse, as it had been the leading publicity platform for opposition and alternative political voices. <https://www.themastonline.com/2019/03/07/prime-tv-suspension-shows-how-dead-govt-leaders-consciences-have-become-church/>; <https://www.themastonline.com/?s=Prime+TV+closed>; <https://diggers.news/opinion/2020/05/03/how-shall-i-mourn-the-demise-of-prime-tv-on-this-world-press-freedom-day/> (accessed 18 November 2020).

wake of the COVID-19 pandemic on 9 April 2020 is another instance that speaks to the terrain of evolving regulatory efforts in Zambia since the mid-1990s.

Therefore, with this background, the paper casts these regulatory efforts in a historical context spanning the last three decades and examines current efforts to formulate and implement regulatory frameworks. These efforts propose a Statutory Self-Regulation (SSR) model whose effectiveness or fairness scholars have questioned, especially in emerging or transitioning democracies (Hulin 2014; Iglesias n.d.). Keen media scholars and observers, both local and international, have expressed concern that the Zambian media's operating space has been in a state of constant flux in recent years, with press freedom quickly regressing over the last decade more than at any other time in the country's 57 years of independence.

## Methodology

The research used a multi-method research approach. As Bryman (2012) argues, "multi-method research ... has increasingly been stretched to include the collection of qualitative data". Grounded theory was the principal framework of both data collection and analysis because it allowed us to provide thick descriptions of what is happening (Charmaz 1996: 34). Other scholars note that it allows for "thick description without necessarily looking for thick description that refines theoretical concepts" (Geertz 1973). To answer the research question, I relied on In-Depth Interviews (IDIs) and Critical Discourse Analysis approaches to collect and analyse the data. This involved 23 journalists using the snowball sampling method (Chama 2014; Iorio 2004). I used semi-structured questionnaires to interview the journalists, editors and officials. Out of the total sample, three are retired, with an average of over 30 years' work experience, and gave a historical perspective to the question. The rest are active and were drawn from private (nine) and public media (14), with an average of 10 years' experience. The sample consisted of only four females. Additionally, I reviewed the ZAMEC Constitution of 2010 among other original documents produced during the media fraternity's initial self-regulatory efforts. For their safety and as per ethical clearance requirements, the participants' identities have been anonymised (Bryman 2012) and only codes were used in presenting the data.

## Theoretical underpinnings

### *Habermas' public sphere theory*

In media research scholarship, a significant amount of literature about regulation is premised on state–society relationships. The state's contestation of media efforts to open state processes and institutions to public scrutiny and accountability is often characterised by efforts aimed at blunting these efforts. However, in democratic settings, media watchdog efforts are essential. When assessed from a political theory perspective, "there are considerable intellectual, political and social challenges faced as the state seeks to balance the protection of public interests in the face of powerful economic" and media business interests that "exert long-term pressures towards deregulation" (Lunt and Livingstone 2012: 4). The more citizens can examine state decisions and get answers, the more this symbiotic relationship between the state and the governed

enhances democratic participation. In attempts to limit media efforts the state often impedes media from opening governance processes to public scrutiny. To achieve these objectives, the state often turns to regulatory measures that effectively numb media's potential in that regard.

Freedman (2012) posits that two questions must be addressed to understand what motivates regulation: what are the objectives of media regulation and in whose interests is it exercised, and what is the relationship between specific forms of regulation and the wider political environment from which it emerges? In attempting to answer these considerations, one must observe the political environment and the relationship between the state and the media. In the case of Zambia, this relationship has increasingly become adversarial, with several attempts to introduce formal regulations since the mid-1990s. Further, recognizable state attitudes and actions against press freedom are insightful. Habermas' theory of the public sphere is equally insightful to understanding the rationality of these regulatory measures. Broadly speaking, the theoretical underpinnings of the concept are steeped in the struggle between bourgeoisie and the proletariats over dominance and control of society and its affairs. This public space has always provided a vital platform for the vigorous interrogation of competing ideas. Schulz (1997) has characterized it as "an intermediary system which links the base with the top of the political system" or "the private and collective actors of the periphery with the political institutions in the centre" (Habermas 1991: 57). This nexus between two perpetually opposing sides makes it a fascinating area of investigation to understand how it functions and is in a continual transformative mode as factors change.

Habermas identified "concurrent deformations of the public sphere ... turning the press into an agent for manipulation". He notes: "It became the gate through which privileged interests invaded the public sphere" (1991: 185). Elites realised how powerful and politically influential this space had become. They devised mechanisms to undercut the public sphere through regulation. This is evident in contemporary times where the state in many democracies attempts to control media using laws and regulatory policies. Politicians wish to control the public sphere, which would allow them to control the public discourse in ways inimical to the purpose of the public sphere. As scholars Roberts and Crossley (2004: 2) map a genealogy of Habermas' conceptualisation of the public sphere, they note Habermas claims that "conditions effectively served to undermine this public space almost the moment it had come into being". Thus, today's political ruling class has devised ways to undercut the public sphere through either direct ownership or control or regulatory provisions. Zambia's political environment, and the political economy of the media, aptly fits this characterisation.

### ***The social responsibility theory and media regulation***

The theory is seen as a critic of classical liberalism, which promotes a monopoly of the media in society over an "inattentive and unconcerned" audience (Nerone 1995). Critics accuse them of threatening democratic values (Kanh and Minnich 2005) and for most in the developing world, they see the media as a threat even to national unity, peace and national development agenda (Aimufua 2007). Oftentimes, in African capitals, politicians criticise especially tabloid media as being overly divisive in their style, with what politicians describe as destructive negative news content. Many governments point to

this deficiency of positive information as the reason for continued participation in the media to promote unity. Just like much of eighteenth-century media of Europe and North America, African media in emerging democracies has positioned and touted themselves as the “foundation of democracy” (Christians et al. 2010: 53) and thus guardians in the same measure. However, political elites constantly guard against media power and influence over citizens to limit media enthusiasm.

In 2002, the Zambian parliament passed the first regulatory piece of legislation, the Independent Broadcasting Authority (IBA) Act of 2002<sup>2</sup> that introduced formal regulatory mechanisms over broadcast media. The Act was later amended under the IBA Amendment Act of 2010,<sup>3</sup> removing progressive clauses from the original Act. As a result, the intervening period between 2002 and 2009 saw media come together to oppose the measures and propose self-regulation instead. As scholars have argued, “nothing arouse[s] the press’s antagonism more than the threat of government intervention. The moral high ground of the press was that the freedom from government control or any form of censorship was essential for democracy”. In principle, the media’s rebuff of these government measures was largely informed by their desire for self-regulation. Media wanted “its in-house reforms under the principle of ‘social responsibility’” (Christians et al. 2010: 53).

Scholars observe that the need “to resolve the conflicting moral claims of media autonomy, with accountability remains one of the thorniest issues of normative theory of public communication” (Van Cuilenburg and McQuail 2003). To this end, three attempts at self-regulation by the Zambian media have failed. According to one member of the Media Liaison Committee (MLC), “efforts to introduce regulation have been there before. The first attempt started in 2002. In 2004, the Media Ethics Council of Zambia (MECOZ) was formed. However, due to lack of financial support, this failed” (Retired Journalist (C1), July 2019).

## Literature review

### *Zambian media landscape and operating environment*

Although Zambia has recorded exponential media growth from the early 1990s, from one state-owned broadcaster (the Zambia National Broadcasting Corporation), two daily state-owned broadsheets (the *Zambia Daily Mail* and *Times of Zambia*) and one major private independent tabloid (*The Post*) and one major independent private radio station (Radio Phoenix 1996 Limited), among others, Zambia today sits at more than 200 radio and television stations. However, research shows that some of Mancini and Hallin’s “structure of media markets” propositions of media systems do not fit the theoretical framework of the emerging media system. Mutsvairo (2018: 202), for instance, argues that in Africa “commercialization and privatization are taken as a step towards media independence; however, cases such as Angola have demonstrated that there can be commercialization and privatization in the media system without real political and economic independence”. The case of Angola is much like that of Zambia, which

<sup>2</sup><https://zambialii.org/zm/legislation/act/2002/17/ibaa2002349.pdf> (accessed 20 November 2020).

<sup>3</sup>[https://www.iba.org.zm/downloads/IBA2010\\_act.pdf](https://www.iba.org.zm/downloads/IBA2010_act.pdf) (accessed 20 November 2020).



has seen exponential growth in both commercial and privately owned media since the mid-1990s. However, this growth has not translated into a freer operating environment.

Analysis of the current steps towards SSR, as well as recent actions by state institutions such as the IBA, suggest what the media might experience should it be implemented. Additionally, there already exists a difference of opinion between the state and journalists. For the state, it is about combating what it terms fake news, as President Edgar Lungu<sup>4</sup> and his government officials<sup>5</sup> have been stating. In practice, however, most critical news is viewed to be fake by the state. On the other hand, media professionals supporting the SSR see it as an opportunity to weed out unprofessional elements. One respondent noted,

All along, I was for self-regulation because I believe journalism is a profession that should never be gagged. However, because of the proliferation of social media, where people can create a website and start writing fake stories in the name of journalism, we are reaching a point where the public cannot distinguish between journalistic content and citizen-generated stories. Therefore, I agree with the resolution in Lusaka to have statutory self-regulation to help cleanse the profession. (Journalist (B1) (1), 2019).

What we find in between these two extremes and possibly irreconcilable positions are views of most media observers, researchers, academics and other journalists who are worried that these steps towards SSR are a recipe for a far worse operating environment for the media. Another respondent observed, “Politicians have been pressing for SSR for the simple reason that SSR is oppressive and is against democracy since the state wants to control the media and information” (Retired Journalist (C2), July 2019). This senior journalist, who worked for over 40 years at one of the state-owned daily broadsheets, further observed that the reason why the government has found listening ears within the media fraternity is the polarisation amidst media instigated by politicians. He laments, “The problem we have in Zambia is that the media is divided. We have so many organisations, PAZA, ZUJ, ZAMWA, associations, etc. That works to the benefit of politicians because all these groups are not speaking with one voice” (Journalist (C2), July 2019).

What is clear from the foregoing is that media regulation presents challenges for both the state and the media. The Zambian experience so far has been fraught with false starts, apprehensions and disappointments along the way. In their attempts to get it right this time, the media fraternity has proposed a hybrid model that allows the SSR framework. Perhaps, realising the daunting task ahead, industry leaders have turned to the Lord Justice Leveson Report<sup>6</sup> to inform their current efforts to achieve media regulation in Zambia. Hulin (2014: 1) writes, “Oscillating between co-regulation and self-regulation, his [Justice Leveson] report recommended a system of media self-regulation underpinned by a statutory recognition body”. Other scholars propose “more elaborate mechanisms for

<sup>4</sup><https://www.themastonline.com/2019/06/14/lungu-directs-chipampe-to-sanitise-media-of-fake-news/> <https://www.facebook.com/Timesofzambia/posts/its-fake-news-lungu-speaks-out-on-mukula-dealings-allegations-by-chusa-sichonepres/2677004609057440/> <https://www.lusakatimes.com/2019/12/09/mukula-cartel-is-fake-news-reporters-should-rise-above-fake-news-and-return-to-professional-reporting-president-lungu/> (accessed 20 November 2020).

<sup>5</sup><https://www.endcode.org/post/zambia-to-legislate-against-fake-news> (accessed 20 November 2020).

<sup>6</sup>Lord Leveson’s Executive Summary No. 73 stated as follows “Despite what will be said about these recommendations by those who oppose them, this is not, and cannot be characterised as, statutory regulation of the press. What is proposed here is independent regulation of the press organised by the press, with a statutory verification process to ensure that the required levels of independence and effectiveness are met by the system for publishers to take advantage of the benefits arising because of membership. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/229039/0779.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/229039/0779.pdf) (accessed 20 November 20).



self-control” (Cohen-Almagor 2014: 202–203) or a “co-regulatory system” (Mbaine 2020: v), while others posit that the Leveson inquiry has given impetus to many “Southern African governments to institute statutory regulation” (Duncan 2014: 167). With the current fragile and intolerant political environment within Zambia, the proposed SSR will most likely raise similar challenges for the media.

### ***The historicity of the media–state relations and regulations post-independence***

Since independence from 1964 to 2016, the media have had a prescribed role under successive governments. For example, Pitts (2000: 269) writes, “Kenneth Kaunda established a government based on a political philosophy called *Humanism* and the role of the press as a tool for national development”. Most of Kaunda’s interactions with the press must be understood within this context. The *Zambia Daily Mail*, *Times of Zambia* and the *Zambia National Broadcasting Corporation* had this mandate as part of the larger national institutional responsibility. Much of the post-independence decades witnessed diminishing media freedoms as the UNIP government tightened its control. After the declaration of the one-party rule in 1973, all forms of press freedom all but vanished. Mushingeh (1994: 129) writes, “During the one-party rule, there was a systematic attempt not only to curb press freedom but also to intimidate, harass and monitor activities of journalists”.

History shows that what began as a democratic experiment with a “one-party participatory governance system” soon degenerated into an authoritarian regime stifling free expression and press freedom. It has been argued that the “one-party rule consolidated the regime’s authoritarianism” (Horowitz 1993: 26) because “architects of one-party rule sought to establish ‘democracy’ by removing political choice, eroding the significance of parliament and the judiciary, and stifling the press” (Mushingeh 1994: 118–120). The implications of these constitutional changes were far-reaching, bringing many sectors including the press under the UNIP. This takeover and subsequent stifling of a once vibrant and critical media outlet were endemic among newly independent African states during the 1960s into the 1970s. These actions continue defining contemporary state–media relations, which unfortunately persist in the twenty-first century in several countries across Africa. There remains an authoritarian hangover across many African countries.

From the foregoing, Kaunda conceived the media as a tool for communicating government information. The propaganda, according to them, was based on the “rationale that one-party rule would enhance popular participation in the country’s political economy, thereby accelerating peace, progress and stability” (Mushingeh 1994: 117). Ndawana (2012: 3) argues that, “the media were perceived as a facility for political power consolidation and as an instrument for national development programming”. Similarly, Kasoma (1998: 111) records that the media was used as an “instrument for telling people positive news about the President in form of speeches”. This state control closely fits with Siebert’s authoritarian theory of the press. There was hardly any private media of note except for one church-run bi-weekly newspaper, *The Mirror*. It was the assumption during the one-party rule period that allowing private media was not “politically desirable or feasible to allow divergent views on the important national matters that would threaten the ‘One Zambia, One Nation’ unity advocated for by Kaunda’s government” (Kasoma 1998: 111).

### ***Media-state relations under the Movement for Multiparty Democracy (MMD) era 1991–2010***

The state of the media under the third republic, from 1991, was mixed, experiencing periods of optimism and downturns. However, aside from the ideological shift from an authoritarian socialist (*humanism*) regime to liberal democracy, the mind-set and governance structures hardly transcended their perception of the media. Second Republican President Frederick Chiluba is credited with initiating measures shortly after his ascendancy to power in 1991 aimed at liberalising the media. This ushered in a period of exponential growth in the media sector. Soon after, several private news outlets such as *The Post* newspaper flourished and became influential. Broadcast outlets emerged shortly after and the proliferation continued to gather pace over time.

The liberalisation of the airwaves came about with the enactment of the new Constitution of Zambia. It provided protection for the rights and freedoms of the individual and the freedom of expression, as well as the enactment of the ZNBC (Licensing and Regulations) Act of 1991, and the Radio Communications Act of 1994. Radio Phoenix was registered in 1994 as the first private commercial radio station in Zambia. Several other stations followed. (Simutanyi et al. 2015: 5)

However, a critical analysis of the government policy during this period showed little had changed. Except, unlike his predecessor, “Chiluba’s government was concerned with what it called ‘cleaning the image of the country’ and the MMD government, it claimed, was being tarnished by the private media, particularly the independent newspapers” (Ndawana 2012: 4).

Thus, besides the quantitative growth of media outlets increasing, the policy and regulatory environment was chequered. Although Chiluba had initiated progressive legislation such as the IBA Act of 2002, the Zambia National Broadcasting Corporation (ZNBC) Amendment Act, 2002, and the Freedom of Information Bill of 2002 (currently called the Access to Information Bill), he had running battles with private media such as *The Post*, among others. A controversial implementation of the ZNBC Act followed under President Rupiah Banda between 2008 and 2010 after court battles between the state and media associations over the ZNBC board appointments process. An amended IBA Act of 2010 was only implemented under President Sata’s Patriotic Front. In 2010, the ZNBC Act was amended, removing progressive clauses.<sup>7</sup> Other scholars such as Chirwa (1996: 36) echo this analysis: “*The Post* newspaper survived the predatory behaviour of President Frederick Chiluba (1991–2001) who used several political attempts to eliminate it from the political scene”. The newspaper’s editor in chief and part owner Fred M’membe clashed with Chiluba over several issues, including questions over the corruption in his government, misuse of public resources, and a general slump in the economy under Chiluba’s watch. More crucially, M’membe accused Chiluba of demonstrating autocratic tendencies. *The Post* labelled Chiluba a thief for abusing public resources to further his political ambitions. This put the newspaper and especially M’membe at loggerheads, which resulted in him facing defamation suits, a criminal indictment under Zambian laws.

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<sup>7</sup>ZNBC A. Act No. 16 of 2010, [http://www.parliament.gov.zm/sites/default/files/documents/amendment\\_act/ZNBC%20%28Amendment%29%20Act.PDF](http://www.parliament.gov.zm/sites/default/files/documents/amendment_act/ZNBC%20%28Amendment%29%20Act.PDF)

Several other extra-judicial harassments targeted the newspaper and M'membe over several years under Chiluba's government as well as his successors, Levy Mwanawasa and Rupiah Banda. A serious attempt to formally regulate the media through policy or legislation started in 1996 when Chiluba's government drew a draft communication policy which has never been finalised, however, despite several revisions over the past three decades by successive governments. The current attempts at formal regulation of the media are a continuation of this protracted effort by the state. While the earlier effort aimed at providing broad policy measures that would incentivise media sector growth, the current efforts seek to enact laws and regulations that target the operations of media as already shown through the operationalization of the IBA in 2013. What has become clear is that the IBA<sup>8</sup> is noticeable for its punitive approach without the incentives espoused in the earlier efforts than positive interventions.

### ***Media regulatory efforts under the Patriotic Front government, 2011 to date***

Most African leaders have remained averse to independent media decades after independence. Zambia was among the first few countries to embrace the new wave of democracy that swept across sub-Saharan Africa so much was expected. Several policies promised an overhaul of the autocratic system under the Kaunda regime by liberalizing the economy, including the media. However, despite the exponential growth of media, press freedom remains elusive. As Kasoma (1995: 537–538) has observed, "Ministers have regarded independent media as 'opposition press', which limits of press freedom. Government officials claim that criticism and dissent in the media threaten political stability and national unity". Similarly, Phiri (1999: 55) has argued, "instead of free media, what characterized the MMD era was continued control of the state-owned press and an overt hostility toward and relentless intimidation of the independent media".

This was true about the MMD (from the late 1990s to the early 2000s), as it is true about the ruling Patriotic Front (PF) Party government since 2011. Chama (2014: 133–134) suggests that President Sata was friendly to *The Post*, which supported him to victory during the 2011 elections. This election largely continued until Sata's demise in late 2014, when a new crop of PF leaders emerged led by President Edgar Lungu. Soon after (2015–2016, when it was shut under allegations of tax related charges), the paper stopped the PF government. The newspaper reported on state extravagancy and corruption. This explains the worsening hostility towards media by government, which has resulted in closures and suspensions<sup>9</sup> of media operations as late as 2016 on politically motivated grounds.<sup>10</sup> Media advocacy groups such as Media Institute of Southern Africa (MISA) reported that "the IBA suspended the broadcasting licenses for MUVI TV, Komboni Radio and Itezhi Tezhi Radio, respectively, on 22nd August 2016 for what it termed as 'unprofessional conduct posing a risk to national peace and stability'".<sup>11</sup> *Prime TV*<sup>12</sup> became the latest media outlet to be closed in April 2020.

<sup>8</sup><https://www.lusakatimes.com/2019/03/11/iba-and-the-curse-the-founders-foresaw/> (accessed 20 November 2020); [http://www.xinhuanet.com/english/2018-05/04/c\\_137156619.htm](http://www.xinhuanet.com/english/2018-05/04/c_137156619.htm) (accessed 20 November 2020).

<sup>9</sup><http://misa.org/wp-content/uploads/2016/11/State-of-the-media-Zambia-Third-Quarter.pdf>

<sup>10</sup><https://www.amnesty.org.uk/press-releases/zambias-closure-post-newspaper-attack-media-freedom>

<sup>11</sup>IBA Press Statement of 22 August on the suspension of broadcast licences of MUVI TV, Komboni Radio Station and Itezhi tezhi Community Radio Station (<https://cpj.org/2016/08/zambia-suspends-licenses-of-three-broadcasters.php>, <http://crm.misa.org/upload/web/state-of-the-media-2016-q3-final.pdf> (accessed 28 October 2019).

The Zambian media industry has become more polarised in the last decade, which has further weakened their collective position to challenge any arbitrary state threats of legislation or regulatory measures. The closure of *The Post* in 2016 by the government was a blow to the media fraternity. The sustained harassment of journalists and licence suspensions across the country has left the media seemingly under “siege”. The response from a few media associations that rise to their defence has been feeble at best or non-existent at worst. This has left the media fraternity vulnerable to state abuse. However, despite this gloomy picture and trends over the recent past, there have been flashes of promise that resistance against state dominance and influence within the media industry and among individual journalists continues to be present and has the potential to grow.

As results show, there has been resistance from journalists working within state-owned and -controlled media, as well as among journalists working in private media firms. One journalist working in state media had this to say, “We have run stories here to the point where the powers in authority begin to question our loyalty” (Journalist (B1) (1), 2019). From past incidences where controversial and critical journalists have been targeted by the state, this action by the “resistance” speaks to the opposition that any regulatory measures will meet. Other journalists, however, argue that “Government does not influence operations. They have already given us guidelines on how to operate within given parameters. We run the organisation without any influence from any quarters, of course, fully aware of public shareholder interests, which does not infringe on the editorial policy and independence” (News Editor (B2) (7), 2019).

This attitude has equally been noticed in the private media where journalists speak of their efforts to achieve more independence. As one of the editors at the defunct *The Post* recalls, “In the past, we were not as free as we are now, because at that time Fred [former owner and managing editor of *The Post*] was with us, monitoring us. Now he is no longer with us, thus we are very independent, even management is independent. We make our own choices of what front and cover stories we have and the collection of stories from different sectors” (Former News Editor (A2) (4), 2019). These and other sentiments among journalists across the media demonstrate a resilient attitude that will most likely continue under the SSR regime if it is eventually implemented. Therefore, it is important for the media to continue asserting their independence and continually defend this right because scholars have argued that “statutory media self-regulation in non-democratic countries is problematic because of the risks of transforming self-regulation into a compulsory system controlled by political interests” (Hulin 2014: iiv).

## Results, discussion and analysis

### *Anticipated SSR provisions, mandate and response from the media and journalists*

The process to enact the law that will culminate into the SSR framework has gathered pace since 2018. When Permanent Secretary in the Ministry of Information and

<sup>12</sup><https://www.lusakatimes.com/2019/03/04/iba-shuts-down-prime-tv-for-30-days/> <https://diggers.news/lifestyle/2020/04/11/lungus-strategic-march-to-2021-the-shutdown-of-prime-tv/> <https://diggers.news/local/2020/04/09/iba-cancels-prime-tv-license/> <https://diggers.news/opinion/2020/05/03/how-shall-i-mourn-the-demise-of-prime-tv-on-this-world-press-freedom-day> (accessed 20 November 2020).

Broadcasting Chanda Kasolo issued the 90-day ultimatum to the media to come up with a draft bill for statutory self-regulation in early 2019, the media led by the MLC advised the government to withdraw it because they had initiated the process months prior. One interviewee observes; “we are proposing Statutory-Self Media Regulation (SSR). Early this year (2019) the Ministry of Information issued 90 days ultimatum for journalists to produce a regulatory framework or else the state would produce its draft law for statutory self-regulation” (Retired Journalist (C) (1), 2019).

Others within the media expressed concern at government arm-twisting, especially with IBA’s poor record. One of those opposed to the SSR, a retired journalist, argued “my view on self-regulation is that it must be driven by journalists themselves. The government should not have a hand” (Retired Journalist (C) (2), 2019). Another journalist added, “Zambia is among countries with the most restrictive laws targeting control of the media; therefore, introducing another layer of control will not make journalists’ work any easier” (Journalist (A2) (4), 2019). Other sources, however, have argued that “If we [media] had been objective, even the government would not have been pushing for regulation” (Journalist (B2) (7), 2019).

Perhaps what captures the mood of the journalism fraternity is one journalist who once worked for the closed *The Post*. In her remarks, the journalist cast a tone of despair and resignation to the fact that one way or another the state is determined to introduce the SSR. She notes,

Look at the environment in which we operate, most journalists in Zambia report for the public media. Whatever they will be pushing for will be in line with what the public media and the state wants. Nevertheless, the background is that if we fail to do this, the government already had a written document, which they would enact into law and use to regulate us anyway. (Journalist (A2) (3), 2019)

Another journalist agrees with these sentiments, noting, “Among us, we have those who do not trust their colleagues, those for self-regulation while others are for statutory regulation. This is because we have allowed this polarisation to happen. We are not united. We have allowed the politicians to divide us” (Journalist (B1) (1), 2019).

In assessing the proposed bill, one notices clauses that if enacted by parliament present themselves as progressive. We highlight several of them and show how they may give the media fraternity relief, although caution will be necessary for dealing with the state as experiences have shown. Among the clauses examined are the following.

Part II of the proposed bill deals with several to do with the establishment, membership, superiority and the formulation of the ZAMEC constitution. Per the Superiority Act No. 17 of 2002, Cap. 154, Section 5, the proposed ZAMEC Bill states that “subject to the Zambian Constitution, the IBA Act of 2002 and the ZNBC Act of 2002, where there is any inconsistency between the provisions of this Act and the provisions of any other written law, the provisions of this Act shall prevail to the extent of the inconsistency”. Further, Section 6 guarantees the independence of ZAMEC; “The ZAMEC shall not be subject to the direction or control of a person or an authority in the performance of its functions”. In their natural meaning, without reference to the operating environment and precedence under similar laws, these provisions seem to aver autonomy upon ZAMEC. However, experience has shown that the state often abuses laws to achieve its ends. The examples above of progressive media laws that were hastily

amended before their implementation give insights into what could become of this proposed law.

Lessons from the IBA Act of 2002<sup>13</sup> and the ZNBC Amendment Act 2002 Section 4<sup>14</sup> expressly provided for how to constitute the ZNBC Board. Section 4(7) stated “Except as otherwise provided in this Act, the Board shall not be subject to the direction of any other person or authority”. Additionally, the section provided for an autonomous ad hoc appointments committee to oversee the recruitment of board members. However, when the first ad-hoc committee was constituted in December 2002 and recruited the first “independent” ZNBC Board, the Minister of Information at the time, rejected some of the names without any legal basis. Subsection (2) of the Act states, “The Board shall consist of nine part-time directors appointed by the Minister on the recommendation of the appointments” while Subsection (5) notes that “An appointments committee shall determine its procedure”. Media bodies sued the minister and won the case in the High Court to compel her to take the names to the National Assembly. The state, however, appealed to the Supreme Court, which set the judgement aside. In 2010, the ZNBC Act was amended, removing progressive clauses.<sup>15</sup> A similar process occurred concerning the IBA Act of 2002 before it was amended under the IBA Act of 2010<sup>16</sup> before operationalisation in 2013. The likelihood of the ZAMEC Act going through a similar fate as demonstrated is high. Proponents and opponents therefore will do well to be alive to these possibilities.

Another progressive provision is Section 7(1), which states “ZAMEC shall, by a vote of at least two-thirds of the ZAMEC members voting at an Annual General Meeting, adopt a constitution and may, in the like manner, amend it. (2) Subject to the other provisions of this Act, the ZAMEC constitution shall regulate the conduct of the affairs of ZAMEC.” Despite the law sounding good, the practical implications of this provision are wide-reaching. Membership to this statutory ZAMEC, although mandatory will most likely have an inbuilt majority of state media journalists. Widespread polarisation has rendered a divided and weakened media fraternity as illustrated earlier. Thus, any ZAMEC constitution passed by the membership will most likely be one that favourable to the state.

Even where there are genuine member interests without external influence, the enforceability of such a constitution on state media will prove challenging, as the *Zambia Daily Mail* case<sup>17</sup> demonstrated. Therefore, the proposed Act provisions may be an exercise that targets the private media to the exclusion of state- media, as precedence shows. The second attempt to implement ZAMEC in 2006<sup>18</sup> revealed a deep-seated animosity

<sup>13</sup> IBA Act No. 17 of 2002, <http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20%20Independent%20Broadcasting%20Authority%20Amendment%29%20Act%20No%2018%20of%202017.pdf>

<sup>14</sup> ZNBC Amendment Act of 2002, <http://www.parliament.gov.zm/sites/default/files/documents/acts/Zambia%20National%20Broadcasting%20Act%20No.%2020%20of%202002.pdf>

<sup>15</sup> ZNBC A. Act No. 16 of 2010, [http://www.parliament.gov.zm/sites/default/files/documents/amendment\\_act/ZNBC%20%28Amendment%29%20Act.PDF](http://www.parliament.gov.zm/sites/default/files/documents/amendment_act/ZNBC%20%28Amendment%29%20Act.PDF)

<sup>16</sup> The 2002 IBA Act was modified in 2010, granting the information minister powers of direct appointment for the board of the IBA, the broadcast media regulator, which is responsible for issuing licenses. <https://www.refworld.org/docid/559fbf2624.html> (accessed 23 November 2020).

<sup>17</sup> According to a high-ranking source interviewed for this research, in 2004 Mr Binwell Mwale served as the first and only MECOZ Ombudsman. A member of the public lodged a complaint that he felt injured by some story in the *Zambia Daily Mail*. When MECOZ summoned the *Zambia Daily Mail*, he was asked to apologise on the front page where the story had appeared. The newspaper refused, probably because they did not feel obliged to be accountable ethically or professionally. They left ZAMEC and that was how ZAMEC failed at the first attempt. (Interview with a member of Media Liaison Committee, 2019.)



between the government and *The Post* which made it impossible to progress. Both are widely blamed for the collapse of the process to actualise ZAMEC and MECOZ. These scenarios on record are possibilities that are likely to repeat.

Besides the above provisions and their likely impact, part V Section 14(3) of the proposed Act states “All Media Houses and Media Outlets shall upon the effect of this Act register as members of ZAMEC”. Section 24(1) states that “The media shall, in a free and independent manner, inform the public on issues of public interest and importance in a fair, accurate and unbiased manner whilst distinctly isolating opinion from fact”. These proposed provisions, while hinging on the demand for professionalism in the media, are susceptible to abuse by the state using mechanisms and membership manipulation I highlighted earlier. Despite the commonly held universal meaning the operationalisation of such terms *as professional, ethical and unbiased coverage* could mean different things in practice within the Zambian media landscape. Evidence on record shows how governments averse to criticism such as the current Patriotic Front and Chiluba’s MMD targeted critical media under the guise of enforcing the law and professionalism. The IBA,<sup>19</sup> for instance, has on several occasions censured or closed media stations under the guise of enforcing compliance to ethics and professionalism, while the real reasons were the state’s discomfort with criticism by private media. Besides, the most obvious culprit in all these, the state media, are most unlikely to be sanctioned, as has been the practice, for erring on any of these provisions. Effectively, what this amounts to are statutory regulations targeting private media only.

Perhaps the most revealing clause in the proposed Act is the one that deals with *Jurisdiction over acts committed outside Zambia* under Section 23(1) of part VII which reads, “The ZAMEC shall have jurisdiction over its members for any act or complaint committed outside Zambia which, if it had been committed in Zambia, would have been an offence or professional misconduct”. Further, Subsection (2) reads, “Any proceedings against a media practitioner under this section which would be a bar to subsequent proceedings against a media practitioner for the same offence. If the offence had been committed in Zambia, shall be a bar to further proceedings against a media practitioner under any written law relating to the extradition of persons, in respect of the same offence outside Zambia”. The intent of this section removes any doubt about the proposed Act being to merely facilitate setting up a self-regulatory mechanism modelled along the Leveson Commission propositions, for instance. What is clear here is that it lays necessary grounds to prosecute erring journalists and extradition should they commit offences outside Zambia or indeed flee to seek refuge from the state. One of the key informants I interviewed observed, “Our [ZAMEC]’s major emphasis is on corrective rather than punitive measures unless someone has gone to the extreme. ZAMEC is not the ultimate; we

<sup>18</sup>The government through the ministry of information just said, “We are pulling out”, meaning that public media are pulling out. Why? Because they realised *The Post* was also in the forefront of this initiative. They thought *The Post* had another agenda. The minister then General Ron Shikapwasha in his wisdom just said the public media is pulling out. As government, we are pulling out. (Interview with a member of MLC, 2019.)

<sup>19</sup>Freedom of the Press 2015 report, Zambia—the IBA remains under the control of the government and continues to make politicized threats. In March, the information minister at the time, Mwansa Kapeya, warned *Radio Mano*, a community station in Northern Province, that its licence would be revoked unless it could guarantee “professional” and not “inflammatory” programming. The station, which had hosted several opposition figures, was the subject of several acts of harassment and intimidation by regulators and officials throughout 2014. In May 2014, the IBA issued a warning to privately owned Hot FM for airing discussions of Sata’s health; in June, the Lusaka police delivered a similar rebuke to the independent MUVI TV. <https://www.refworld.org/docid/559fbf2624.html> (accessed 23 November 2020).



are just there to correct media houses and journalists to be operating ethically, professionally” (Retired Journalist (C) (1), 2019). This is similar to the original intent of the overall objective espoused in the ZAMEC Constitution of the 2000s to “Regulate the professional and ethical conduct of media practitioners in Zambia”.<sup>20</sup>

What this further reveals is that rather than creating a statutory self-regulation framework, the proposed Act will create a hybrid model of statutory and self-regulation (see Hallin and Mancini 2004; Lund and Berg 2009). Opportunities in such a scenario are few while the model is fraught with risks for journalists. A scenario where certain ethical errors or professional omissions are criminalised is not a far-fetched possibility, especially under the current political environment in Zambia. With the 2021 general elections less than 12 months away, and the 2016 experience of the closure of *The Post* newspaper and that of Prime TV in 2020 widely viewed as politically motivated, the proposed Act seems could only set the stakes higher.

However, the mixed reactions to the proposed Act indicate an apprehension among sections of the media despite the characterisation of unanimity on the adoption of the statutory self-regulation during the May 2019 journalists’ *Insaka* (consultative conference). Pessimists argue that the real intent of these state efforts is to suppress the media further. One of them, a former journalist in the private media observes,

President Lungu instructed him [Presidential Press Aide] to end the fake news spreading on social media. When you combine such issues as fake news crackdown, statutory self-regulation, the *Cybercrime Act* coming in, and the Zambia Police Headquarters crack squad working with ZICTA, you can see that they are targeting social media [and] journalism practice. For them, fake news is anything that threatens their hold on power. Statutory self-regulation will just increase their aggression towards the media. (Journalist (A2) (2), 2019).

These sentiments are based on the increasing aggression by the government against private media, which has worsened in the last decade with wanton closures of critical media such as *The Post*<sup>21</sup> in 2016 and Prime TV<sup>22</sup> in 2020. Further, President Edgar Lungu has demonstrated intolerance towards press freedom by urging his surrogates and statutory bodies to go after what he terms “fake news”.<sup>23</sup> Going by his government’s clampdown on media, many doubt the label of fake news to be the actual reason why there is increased focus on press freedom and the state’s desire to target media. As one former journalist wondered, it is not far from the truth that the state does not mean well in its push for statutory media regulation. He contends, “There can never be statutory and self-regulation in the same jurisdiction. It is either self-regulation or statutory regulation. There can never be a hybrid of the two systems” (Retired Journalist (C) (2), 2019). Further, he notes, “If we had a statutory regulatory regime, media houses such as the *Times of Zambia* or *The Post* would have been out of business. Statutory [regulation] is punitive”.

<sup>20</sup>ZAMEC Constitution 2010, original copy. Much of the current efforts of the current efforts to formulate ZAMEC heavily rely on this original document with exceptions and inclusions as noted earlier which seek to codify and legislate initially corrective measures into legally binding law.

<sup>21</sup><https://www.iol.co.za/dailynews/opinion/tribal-ties-played-down-in-zambia-2055050> (accessed 9 November 2020). <https://africasustainableconservation.com/2016/06/23/zambia-critical-post-newspaper-closed-over-tax-problems/> (accessed 10 September 2020).

<sup>22</sup><https://diggers.news/opinion/2020/05/03/how-shall-i-mourn-the-demise-of-prime-tv-on-this-world-press-freedom-day/> (accessed 9 November 2020).

<sup>23</sup><https://www.themastonline.com/2019/06/14/lungu-directs-chipampe-to-sanitise-media-of-fake-news/> (accessed 9 November 2020).

This will likely result in an environment with unreliable alternative news sources, a plausible assumption because such an environment encourages audiences to seek alternative sources of information according to “individual needs and gratification-seeking motives” (Lee 2013: 301). For an unskilled citizenry, unable to separate untruths from fact, this situation could be precarious. As the uses and gratification theory posits, Littlejohn (1992: 365), audiences’ “beliefs about what a medium can provide an evaluation of the medium’s content” determines their choice of sources of information. Another scholar, Kaye (2007: 129) argues that “uses and gratifications studies investigate how the audience uses the media rather than how the media use the audience”. However, one of the key assumptions by Bucy et al. (2007: 149), “that media compete with other sources of need satisfaction”, is quite instructive in this regard. The audience is likely to find alternative sources of information once the mainstream media are deemed irrelevant to their information needs.

In view of these mixed sentiments, lessons in the region such as Uganda where “in 1995 the government introduced statutory regulation for journalists, [while] Ugandan journalists later in 2006 also started a self-regulatory system to run alongside the statutory one” (Mbaine 2020: 1) is instructive. In the case of South Africa, research concluded that “while the [SSR] system proved to be very effective in monitoring and adjudicating ethical breaches, it has been implicitly designed to cause minimal offence to the industry” (Duncan 2014: 1–4). Further, it is important to have a negotiated approach that ensures wider acceptance of such interventions when implemented. Learning from the Ugandan experiment, Mbaine suggested that the dual system of statutory and self-regulatory frameworks failed as it was not implemented with the broadest possible consensus. He notes “statutory regulation of journalists in Uganda failed despite having the backing of the law, because it was opposed by the journalists and ignored by the very government that set it up. Furthermore, weak journalism structures, corporate media interests and government high handedness against journalists might have undermined the social responsibility model of self-regulation” (Mbaine 2020: v). Thus, we suggest that the Zambian mediascape can borrow from these experiences.

## Conclusion

Keen observers of media in Zambia will be keen to understand the process. What this paper has achieved for now is to map out the media regulatory efforts that the Zambian media fraternity has made since the mid-1990s to date. The state’s continuing efforts to regulate has meant this process is inorganic and could present many challenges. Therefore, the paper’s situating of this decades-long process in context and mapping out the complexities of the current process perhaps sets a benchmark for further research.

What we have established is that most of what goes on within the media must be viewed through the prism of the political economy of communication and the political environment. For many emerging democracies, this process of refinement can be pernicious and tedious. Often, it threatens the very progress of democratic growth. What remains clear is that the relationship between the media and the state is more conflictual than cooperative in a democratic dispensation. The continual efforts by citizens to hold their governors to account, usually through public sphere tools, including the media

and the civil society present a battleground of ideas. The state is equally in a perpetual obstructive stance to prevent the media from prying into its business.

In the end, as Habermas has rightly observed in his seminal works, we conclude by agreeing with his argument that. "A self-regulating media system must maintain its independence vis-à-vis its environments while linking political communication in the public sphere with both civil society and the political center" (Habermas 2006: 420). This must be the maxim that the media fraternity in Zambia, and indeed elsewhere as demonstrated by media in the region, must adopt even as they seek to restrain the state's incessant efforts to regulate them.

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