

Joint submission to the Universal Periodic Review of Zimbabwe by the Media Institute of Southern Africa (MISA) and the Media Alliance of Zimbabwe (MAZ)



About MISA Zimbabwe

The Media Institute of Southern Africa (MISA) is a non-governmental organization with national chapters in 8 of the Southern Africa Development Community (SADC) countries. It was officially launched in 1992 and focuses primarily on the need to promote free, independent and diverse pluralistic media, as envisaged in the 1991 Windhoek Declaration on Promoting Free and Independent Press.

The Zimbabwe Chapter of MISA (MISA Zimbabwe) was formed by a Trust on August 27 1995 and established as a fully-fledged secretariat in August 1997. MISA Zimbabwe has paid-up members comprising media practitioners and houses and persons with an interest in media freedom and freedom of expression.

MISA Zimbabwe's work is guarded by the following strategic pillars:

- Freedom of Expression and Access to Information
- Broadcasting Diversity and Information Communication Technologies
- Professional and Ethical Practices
- Holistic Safety and Security of Media Practitioners
- Institutional Strengthening
- Regional coordination

About MAZ

The Media Alliance of Zimbabwe (MAZ) is an alliance of media support organisations including the Media Monitors Zimbabwe, Media Institute of Southern Africa (Zimbabwe Chapter), Zimbabwe Union of Journalists (ZUJ), Zimbabwe National Editors' Forum (ZINEF), Gender and Media Connect (GMC), the Media Centre, the Zimbabwe Association of Community Radio Stations (ZACRAS), the Voluntary Media Council of Zimbabwe (VMCZ), and the African Community Publishing Development Trust (ACPD). MAZ work focuses on four key areas which are:

- Freedom of Expression
- Right to Information
- Media Freedom
- Media Law and policy Reform

1. The Media Institute of Southern Africa (MISA) Zimbabwe Chapter and the Media Alliance of Zimbabwe are honoured to make a submission to the Universal Periodic Review on Zimbabwe. This submission follows the 2nd Cycle UPR Recommendations, A/HRC/34/8/Add.1 - Para. 17) and 131.19 (2nd Cycle UPR Recommendations, A/HRC/34/8 - Para. 131).

In this submission, MISA and MAZ assess Zimbabwe's compliance with its human rights obligations relating to the right to freedom of expression and information, including their

intersection with the right to privacy.

2. The presentation will follow this structure:

- The regulatory environment governing freedom of expression in Zimbabwe
 - The State of digital rights
 - Media freedom and self-regulation
 - Safety and security of journalists
 - Privacy and data protection
3. Zimbabwe committed to ensuring that its legislation is in line with the 2013 Constitution and the rights concerning freedom of expression and freedom of media under Section 61, making it prudent for the State to repeal the Access to Information and Protection of Privacy Act (AIPPA), the Broadcasting Services Act (BSA), sections of the Criminal Law (Codification and Reform) Act and the Public Order and Security Act (POSA) and coming up with a framework for the licensing of independent broadcasters.
4. In accordance with Recommendation 132.62 (2nd Cycle UPR Recommendations, A/HRC/34/8/Add.1 - Para. 17) and 131.19 (2nd Cycle UPR Recommendations, A/HRC/34/8 - Para. 131), Zimbabwe embarked on the process to amend the AIPPA, which inhibited free speech, citizens' right to access to information and free practice of journalism in Zimbabwe.¹ Zimbabwe planned to replace AIPPA with three laws -- the Freedom of Information Act, the Zimbabwe Media Commission Act and the Protection of Personal Information Bill which was subsequently adopted within the framework of the Cybersecurity and Data Protection Bill.
5. The enactment of the Freedom of Information Act is seen as a positive step, however, the government is yet to put in place mechanisms that operationalise the law. For example, the law compels government bodies to have designated personnel to deal with information requests and produce reports thereof, something that is yet to be put in practice. The accountability mechanisms in instances where one would have been denied information remains weak, with some cases that have been brought before the Zimbabwe Media Commission (ZMC) yet to be finalized. This concern was raised by MISA and MAZ during the public hearings of the Bill, wherein submissions were made to the effect that appeals ought to have been handled by the Zimbabwe Human Rights Commission given its broader mandate on the protection of human rights, of which the right to access to information is one such fundamental right. The right to information goes beyond the media and is intertwined with a plethora of rights, including the right to life and as such must be dealt with by a body established to protect and promote human rights as per the mandate of the Zimbabwe Human Rights Commission.
6. The government has also come up with new bills, the Cybersecurity and Data Protection Bill and has since adopted the principles of a Patriotic Bill, which have the effect of clawing back on the provisions of the Freedom of Information Act. The Cybersecurity and Data Protection Bill criminalises the publishing of falsehoods which the

¹ The Access to Information and Protection of Privacy Act: Two Years On
<https://www.article19.org/data/files/pdfs/publications/zimbabwe-aippa-report.pdf>

Constitutional Court had already decriminalised. It also imposes surveillance on citizens and the media and this has the potential to infringe on freedom of expression, association and of the media.² If enacted, the Patriotic Bill will criminalise freedom of expression and journalism to an extent that the enjoyment of media freedoms will be constricted.

Broadcasting Sector

7. In terms of the UPR 132.93 (2nd cycle UPR recommendation, A/HRC/34/8/Add.1 - Para. 18), Zimbabwe has since licensed a number of TV and community radio broadcasters. However, MISA and MAZ are concerned that the licencing process does not provide for a fair awarding of licences as the requirements are tilted in favor of state-controlled media enterprises. While Zimbabwe may seem to be complying with the recommendation to open up the media space to other actors, what is obtaining is pluralism without diversity.³ This is exacerbated by the fact that the Broadcasting Services Amendment Bill is yet to be brought to parliament, and the current cosmetic steps towards opening the sector are done using executive orders, bypassing parliamentary laws.

The Criminal Codification and Reform Act

8. Some sections of the Criminal Law (Codification and Reform) Act (The Code), impede on freedom of expression and of the media. For example, while the publishing of falsehoods prejudicial to the state was decriminalised by the Constitutional Court⁴, the state continues to rely on that provision to prosecute journalists under the guise that the new constitution brought back those provisions.⁵ There is concern that even where prospects of victory are non-existent, the government will continue to rely on old laws as a way to persecute rather than prosecute journalists.
9. The Code also criminalises insulting the president (Section 33 of The Code). This is problematic because such laws can be used to shield those in power from scrutiny. On the other hand, this Act has the effect of instilling self-censorship and, thereby, impeding journalists from holding those in power to account.
10. The Broadcasting Services Act is still law despite assurances that date back to 2018 to introduce an amendment bill. The proposed Broadcasting Services Act Amendment Bill is yet to be gazetted.

State of digital rights

² The Patriot Bill: A Threat To Freedom Of Expression? <https://www.humanrightspulse.com/mastercontentblog/the-patriot-bill-a-threat-to-freedom-of-expression>

³ Government grants new TV licences, diversity concerns linger <https://zimbabwe.misa.org/2020/11/20/government-grants-new-tv-licences-diversity-concerns-linger/>

⁴Chimakure v. Attorney General <https://globalfreedomofexpression.columbia.edu/cases/chimakure-ors-v-the-attorney-general/>

⁵Chin'ono arrested on allegations of publishing falsehoods <https://zimbabwe.misa.org/2021/01/08/chinono-arrested-on-allegations-of-publishing-falsehoods/>

11. Pursuant to Recommendations 132.91 (2nd cycle UPR recommendations, A/HRC/34/8/Add.1 - Para. 22) and 132.66 (2nd cycle UPR recommendations, A/HRC/34/8/Add.1 - Para. 19), Zimbabwe is in the process of coming up with a cybersecurity and data protection law. The Cybersecurity and Data Protection Bill does not explicitly provide for the protection of the privacy of citizens. In the event of a security breach, the proposed law does not provide for notification to the affected citizen.
12. Zimbabwe does not have substantive provisions for whistle blower protection, which means citizens are often unable to hold the government accountable.
13. Following the COVID-19 outbreak, the government came up with regulations that criminalised publishing of falsehoods. Statutory Instrument 83 of 2020 which provides for Covid-19 prevention, containment, treatment, and national lockdown, criminalises the publication or communication of false news “about any public officer, official or enforcement officer involved with enforcing or implementing the national lockdown” or “about any private individual that has the effect of prejudicing the State’s enforcement of the national lockdown.” The offense is punishable under Section 31 of the Criminal Law (Codification and Reform) Act. MISA and MAZ are of the impression that such provisions have the effect of inculcating a culture of self-censorship and infringe on the right to expression. Therefore, there is need for the government to provide a timeline for when such laws would be repealed.
14. In 2020, Zimbabwe and other Southern African nations came up with a resolution to deal with the publishing of falsehoods on social media⁶. This resolution is chilling as it could be the harbinger to clampdown on social media usage in Zimbabwe and in the region. The Zimbabwean government should be urged to recant this resolution and ensure that it is not party to resolutions that have the effect of infringing on freedom of expression and of the media.
15. The Zimbabwe National Army (ZNA) Commander Edzai Chimonyo (now deceased), warned that the army was monitoring social media⁷ to “guard against subversion.” This again has the effect of inculcating and promoting a culture of self-censorship among citizens, and let alone, the media.
16. The government has in the past resorted to internet shutdowns and throttling the internet when faced with protests. In January 2019, the government shut down the internet for several days, while in July 2020, the internet was throttled.

Safety and Security of Journalists

17. In respect to Recommendations 131.97 (2nd cycle UPR recommendations, A/HRC/34/8 - Para. 131) and 131.63 (2nd cycle UPR recommendations, A/HRC/34/8 - Para. 131), there is a noticeable sustained culture of violations against journalists and media workers in Zimbabwe. Journalists are subjected to all forms of violence, including verbal threats, harassment, physical abuse, unlawful detentions and arrests. These cases escalate when there are high stake political contestations in the country.

⁶ Communique of the 40th Ordinary Summit of SADC Heads of State and Government https://www.sadc.int/files/8115/9767/2537/Communique_of_the_40th_SADC_Summit_August_2020_-_ENGLISH.pdf

⁷ Army to monitor social media <https://www.newsday.co.zw/2020/03/army-to-monitor-social-media/>

18. In 2020, MISA Zimbabwe recorded 52 cases of violations of journalistic and media freedoms. All these crimes against journalists are committed with impunity.

New Developments: Media Freedom and Self- Regulation

19. The Constitution of Zimbabwe entrenches statutory regulation through conferring the powers to regulate the media with the Zimbabwe Media Commission (ZMC). There is, however, an industry led and driven self-regulatory body, the Voluntary Media Council of Zimbabwe (VMCZ). The government of Zimbabwe, through a Cabinet resolution adopted the principle of co-regulation as a framework for regulating the media, wherein the industry led self-regulatory would be the first port for enforcing a code of conduct for the media and receiving complaints, while the ZMC becomes the appellant body.
20. The principle of co-regulation has stakeholder buy-in and there is a proposed framework, which is the Zimbabwe Media Practitioners Bill developed by MISA and MAZ that is being considered by Parliament in consultation with other stakeholders. MISA and MAZ are closely monitoring these developments with a view to defend the self -regulation of the media. Any framework that will further entrench statutory regulation of the media would be tantamount to resuscitating the widely condemned AIPPA.

Recommendations

21. The government must commit to upholding the constitutional rights of freedom of expression, of the media and the right to access to information – specifically through the:
 - a) The unbundling of the Cyber Security and Data Protection Bill and come up with a holistic framework for the protection of digital rights, the protection of citizens right to access information and the right to privacy. The recommendations should be underpinned by the submissions and recommendations made by MISA Zimbabwe (Annex 1).
 - b) The enactment of a Media Practitioners Bill that will give effect to the co-regulation of the media (as obtained in the draft framework submitted by MAZ and MISA and submitted to the Parliament of Zimbabwe).
 - c) The proposed Patriotic Bill should not be enacted as the principles to this Bill do not conform with provisions of the Constitution on freedom of expression and freedom of association.
 - d) The Broadcasting Services Act should be amended to reflect the principles of a democratic regulatory framework (as obtained in the Model Broadcasting Regulatory Framework crafted by MISA Zimbabwe)
22. The government must commit to the principles of the African Declaration on Internet Rights and Freedom⁸, through the recognition of internet freedom as a human right in legislation that will be enacted to regulate the internet.

⁸ African Declaration on Internet Rights and Freedoms <https://africaninternetrights.org/>

23. The government must commit to the principles of the revised Declaration of Principles of Freedom of Expression and Access to Information in Africa⁹, through a ratification process of these principles and adoption thereof by the Executive and Legislative arms of government.
24. Zimbabwe should enact whistle blower protection laws that promote transparency, accountability and access to information.
25. The Zimbabwe Media Commission should finalise the access to information appeal cases that have been brought before body.
26. The government should provide a clear timeline on when emergency laws that were promulgated in the aftermath of the COVID-19 outbreak would be repealed as they have the effect of infringing on freedom of expression.
27. The Zimbabwean government should be urged to recant the SADC resolution on taking pre-emptive measures against the so-called abuse of social media and ensure that it is not party to resolutions that have the effect of infringing on freedom of expression and of the media.
28. The government must not resort to shutting or throttling the internet at any time as this is an infringement on fundamental human rights, digital rights, the right to free expression and the right to free assembly.

⁹The revised Declaration of Principles on Freedom of Expression and Access to Information
<https://www.achpr.org/legalinstruments/detail?id=69>