



MISA-Zimbabwe: Submission and Position Paper on Broadcasting in Zimbabwe.

1.0 Introduction.

Broadcasting as an industry and as a practice is an integral mechanism for the promotion of freedom of expression and access to information by members of the public. Its expansion over the last years and improvements in technology has seen it rise to the pinnacle as a critical tool for the passing on of information as well as the promotion of freedom of expression the world over, more so in Africa where media density remains low and millions remain without access to media products. The Broadcasting industry is a major employer in most countries and also plays a critical role in developing artistic talent and showcasing a nation's culture and traditions to the world. Broadcasting stations, be they private or state should carry a national outlook and contribute to the development of any given nation state.

Radio and Television remain one of the most important ways in which citizens of a given country can communicate with each other or express themselves in as public a manner as possible. In Zimbabwe, the broadcasting industry has not expanded in any significant manner since the country attained its independence in 1980. There has been one state

broadcaster that has dominated Zimbabwe's airwaves with some private players being allowed to use the second free to air broadcasting frequency for a brief period in the late 1990's.¹ These subsequently had their broadcasting 'licenses'² terminated allegedly after failure to pay outstanding fees to the Zimbabwe Broadcasting Corporation (ZBC). The restructuring of the ZBC through the Zimbabwe Broadcasting Corporation Commercialization Act and the and the passage into law of the Broadcasting Services Act meant that the new Zimbabwe Broadcasting Holdings (ZBH) can no longer enter into agreements with others players such a Joy TV.

Apart from the laws cited above, Zimbabwe broadcasting area has remained stagnant. In the medium of radio there has been no expansion save for one extra radio station that was introduced after independence called Radio 4. Added to this is that there have been no private radio operators licensed to broadcast in Zimbabwe.

In 2001, the Government of Zimbabwe promulgated the Broadcasting Services Act with the assumed intention of correcting the lack of private players in Zimbabwe's broadcasting industry. This was done against the backdrop of a constitutional challenge in the Supreme Court of Zimbabwe by newly founded *Capitol Radio*, which was subsequently closed following its attempt to broadcast in the capital city of Harare.

On the basis of the aforementioned, MISA Zimbabwe regards the broadcasting industry in Zimbabwe not only to be severely underdeveloped but, in lieu of the current state of affairs where there is currently one broadcaster in both fields of television and radio, not working in tandem with the principles of promotion of freedom of expression as well as access to information in the country. MISA Zimbabwe therefore submits the following as the fundamental issues that need to be addressed for the much-needed improvements in the broadcasting sector in Zimbabwe.

¹ These were Joy TV, Mhunumutape Broadcasting Corporation, LDM TV

² Licenses is used here not in the strict broadcasting license term that is apparent in the Broadcasting Services Act. These 'licenses' were more or less leases to the broadcasters from the then state broadcaster Zimbabwe Broadcasting Corporation (ZBC)

1.1 Principles of Freedom of Expression and Information as the Foundation stones for Broadcasting Law Reform in Zimbabwe.

The African Charter on Broadcasting of 2001 posits that freedom of expression is an integral part of broadcasting by stating:

The legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas as well as a three tier system for broadcasting: public service, commercial and community.³

This is also in line with the African Charter on Human and People's Rights Article 9 wherein it is stated that:

Everyone shall have the right to receive information... Every individual shall have the right to express and disseminate his/her opinions within the law.

These declarations are also to be read in tandem with the Universal Declaration on Human Rights where it is stated in Article 19:

Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

It is MISA Zimbabwe's view that freedom of expression and access to information should be at the cornerstone of broadcasting in Zimbabwe, both in line with the aforementioned international conventions and declarations as well as in line with Section

³ African Charter on Broadcasting. Part 1.

20 of Zimbabwe's Constitution which provides for the protection of freedom of expression and freedom of information. As such, it is important to note that broadcasting, though technical as it is when it comes to its practice, must be established and operated within a framework that recognizes the significance of the right to freedom of expression and access to information. Freedom of expression however does not refer to political messages as has been demonstrated by the practice of the Zimbabwe government but is comprised of various and differing forms of communication that enable one to be heard on a number of issues. These include among many, the land reform exercise, HIV-Aids issues and debate, educational programming, health, and entertainment among many others. The current health programmes such as dealing with the cholera outbreak, anti-corruption drive, disaster preparedness, council election political campaigns among many other issues, can best be articulated at a local level through mediums of communication such as community radio. It is for this reason that broadcasting can play a developmental role and not be categorized as a political tool only, as is the case in Zimbabwe. All these issues would enhance freedom of expression, which is the cornerstone of social, political and economic development.

In Zimbabwe's specific context, there is however a dearth in understanding the necessity for broadcasting to be guided by the principles of freedom of expression and access to information. Whilst *Section 20* of the *Constitution of Zimbabwe* guarantees freedom of expression, the policy direction that the government has taken has not been conducive to the realization of this right within the media sector, either in the broadcasting or print media industry.

It is important for the government and the responsible Ministry to revisit its policy position on freedom of expression and freedom of information, which currently hinges around 'nationalism against imperialism' as the sole legitimating claim to seek freedom of expression. Zimbabwe is a country with many voices and these must be allowed to express themselves as part of a holistic nation-building project that does not hold one view as better than all the rest.

1.3 Problematic Areas within the Current Legal Framework for Broadcasting in Zimbabwe.

The legislative framework for broadcasting is based on four primary acts and these came into existence in the same order in which they are stated: the Zimbabwe Broadcasting Act, the Broadcasting Services Act, the Zimbabwe Broadcasting Corporation Commercialization Act. These acts provide the technicalities of how either the state broadcaster, Zimbabwe Broadcasting Holdings or any private commercial broadcaster can/shall operate or acquire a broadcasting license. It is MISA Zimbabwe's considered view that the current legislative framework does not augur well for the development of the country's broadcasting industry both in the spirit of freedom of expression/information as well as in the technical dimensions of how a broadcasting industry should operate. MISA Zimbabwe notes the problematic areas in the sections below.

1.3.1 Broadcasting law must be democratic both in its wording and in its practice:

The Broadcasting Act of 2001 is not a democratic act in that it has a government appointed Broadcasting Authority of Zimbabwe that is accountable to none but the responsible Minister in government. In the appointment of members of the BAZ there is no public involvement either in relation to public hearings or public nominations. The same can be said for the board of governors of the state broadcaster ZBH. Such a situation seriously compromises the independence and the impartiality of regulatory authorities. There is therefore need for appointments of board members of an independent regulatory authority to be done through a public process. Board members of such institutions should have the trust of the people and act fairly in their conduct of business.

1.3.2 The need for one independent telecommunications regulator:

This is most salient in that the government has continued to seek a fragmented regulation of the electronic media. There are at least three regulators of the electronic media in

Zimbabwe. These being the Post and telecommunications Regulatory Board which essentially allocates frequencies for every medium of electronic communication, the Broadcasting Authority of Zimbabwe whose role is to allocate licenses to potential broadcasters, the ZBH board of governors that regulates the state broadcaster, the Transmedia Board of Directors which is expected to ensure that there are adequate facilities for transmission for both radio and television. This situation is not only inefficient but it also confuses members of the public as to who is really accountable for broadcasting in Zimbabwe. There is need for an act of parliament setting up an Independent Broadcasting and Communications Regulatory Authority to oversee issues of frequency allocation, monopolies and the technological convergence-taking place in this industry. Without such an independent authority, it remains unclear how Zimbabwe will benefit from new content distribution channels such as fibre optic, satellite and cable channels, that new technologies offer together with how the telecommunications industry, especially mobile wireless communication can assist in the development of rural economies, education or health. While the government looks at broadcasting in terms of frequencies only and current laws are modeled towards that, this industry have benefited from technological developments that makes Zimbabwe's broadcasting laws not only archaic but also evidently regressive. While the government sees it as politically beneficial to protect its space, this is no longer possible as a result of the new technologies; the challenge then is to support locals to develop a ZIMBABWEAN BROADCASTING MEDIA, however critical it might be of those in power, it still remains a Zimbabwean mean. This necessitates a relook at the current laws, licensing of private players, promotion of local content and programming and restructuring the ZBH into a true public broadcaster representative of all voices in our society.

1.3.3 Barring of Foreign Direct Investment into broadcasting:

The Broadcasting Services Act disallows any form of foreign direct investment in a broadcasting venture. Given the necessity of importing broadcasting equipment from out of the country as well as the attendant foreign currency required for this, it is not practicable to totally refuse foreign investment in the media. The state broadcaster, ZBH,

has however, and with government acquiescence, been seeking foreign direct investment for its radio and television stations whilst the government through the Broadcasting Services Act has been denying potential broadcasters the same opportunity in this capital-intensive industry. MISA-Zimbabwe supports the policy that whilst the majority shareholding of any broadcasting media should be in the hands of Zimbabweans room must be left for foreigners so that Zimbabwe not only benefits from foreign currency injection but also from the new technology.

1.3.4 Maximum 10 percent ownership in a broadcasting venture:

This is problematic in two respects. Firstly that there is no serious investor who would seek to invest in as expensive a venture as either a radio or television station only to be limited by the provisions in the Broadcasting Services Act which limit ownership to a maximum of 10%. This is a tedious and unnecessary provision in that it does not encourage investor confidence in the industry. Whilst there is a need to guard against one person wholly owning a television or radio station, in Zimbabwe's case there is a dire need to review legal provisions concerning ownership to at least allow an initial investor a controlling ownership of the commercial broadcasting concern, both for the purposes of profitability as well as sustainability. The other provision in the Broadcasting Services Act that insists that no one can have shareholding unless they are Zimbabwean presents a barrier in terms of foreign direct investment in the industry. There must be permitted a certain percentage by which a foreign investor in the industry can expect to gain from his/her investment. Limits on foreign ownership in relation to controlling percentage ownership can be discussed with stakeholders but this must not however be provided for in an Act of Parliament but regularly reviewed and published within statutory instrument frameworks.

1.3.5 Definitions of 'National interest, national security':

In Zimbabwe's broadcasting law the definitions of 'national interest' 'national security' tend to be narrowly defined and limited to the governments interests only. These narrow definitions of the aforementioned themes are problematic in that they serve as an excuse

for government to clamp down on freedom of expression citing violations of the ‘national interest.’ The criminalisation of not following the ‘national interest’ in broadcasting content serves to undermine freedom of expression as well as to foster a culture of state impunity within the broadcasting industry. Potential broadcasters should merely be subjected to an independent regulatory broadcasting complaints commission that will receive complaints from members of the public and censure a broadcasting company as opposed to seeking to imprison the staff at the same said broadcaster. Moreover any specific unbecoming conduct in the programming or broadcasts should be subject to civil law as opposed to criminal law. It is noted that an agreed code of conduct should be developed, for would be broadcasters, that address issues of their day to day conduct, promotion of gender equality in programming, avoidance of hate messages and how elections can be covered fairly and equitably among other issues.

1.3.6 1 hour Cumulative Time to the Government and 70% Local Content:

In the Broadcasting Services Act there is provision for a mandatory and cumulative one hour per week for usage by the government for its own messages. This provision is inimical to editorial independence of broadcasters as well as a serious infringement on freedom of expression. This is because the government’s aim is to merely explain its policies to the nation. The government like any other stakeholder in Zimbabwe indeed has an obligation and right to communicate its policies, a practice that has been done through press conferences and releases. The choice of which government press release or pronouncement to cover is an editorial decision that should be left to media workers in a given broadcasting station. Should government policy pronouncements be of public interest, such as announcing a cholera outbreak and measures to avoid it, this becomes newsworthy enough for it to be carried by any broadcasters. Rather than force itself on would be a broadcaster, the licensing process of any broadcasting player must carry a mutually agreed provision on what public role such a broadcasters would play. It is under the public role mandate of any broadcaster that government policies that are in the public interest would be carried. Putting such a provision in an act of parliament is however interference with the editorial independence of the broadcaster.

There is also provision for the establishment of 70-80% local content in all broadcast material by broadcasters in the Broadcasting Services Act. This figure should not be in the Act but be subject to review on a regular basis with due cognizance being taken on the capacity of local productions either in film or drama and any other areas of entertainment made in Zimbabwe. Whilst a benchmark must be set on local content programming, the real figures might vary from one would be broadcaster to another hence the need to negotiate local content issues with each respective potential broadcaster. Local content programming should also be seen in the same breath with training needs of the artistic industry and availability of equipment. If these are not addressed, there is no way would be broadcasters can meet local content needs. It is further submitted that by opening the broadcasting industry to other players, the government will in turn have promoted the arts and cultural industry of Zimbabwe as a result of demand for such programmes and also the remuneration artists can generate. As things stand, the ZBH fails to pay local artist and because there is no competition in the industry, some of Zimbabwe's best talent is redundant or in foreign countries or alternatively working for peanuts in Zimbabwe.

1.3.7 Transforming the State Broadcaster into a Public Broadcaster:

The legal framework in which the Zimbabwe Broadcasting Holdings operates is inimical to the functioning of a true public broadcaster. The government, through the responsible ministry is directly responsible for the state of affairs at the ZBH, yet it is funded by public funds, in the form of listener's licenses as well public support through the ZBH Debt Assumption Act and other grants. For ZBH to become a true public broadcaster there is need to repeal both the Zimbabwe Broadcasting Act and the Zimbabwe Broadcasting Corporation Commercialization Act. The subsequent Act should then be framed to ensure that the board of governors are not directly appointed by the government but are subject close scrutiny by the public and legislature, as well as that the charter of the public broadcaster is democratically arrived at with partisanship becoming a thing of the past. The new act should demand that measures be taken to expand the

public broadcaster into communities that are currently not receiving its frequencies, promote local languages and artistic talent and also cover such national issues as general and local elections fairly. The ZBH must be made accountable to a parliamentary committee where it presents its annual reports of finances and programming. And also have a mechanism by which it deals with complaints by members of the public in an open manner. This used to happen at the former ZBC, where members of the public could write letters commenting on programmes and other issues. This promotes openness on the part of the public broadcaster and trust on the part of the listener/viewer.

The ZBH must take a lead in technological investment and also cover those programming areas that commercial broadcasters shy away from or which community broadcasters might not have capacity to cover. These include investing in public interest educational programmes as well as other areas of broadcasting such as the Internet and satellite broadcasting.

1.3.8 Distinction between Private and Public Community Broadcasting:

There is a need to distinguish between private community broadcasting as opposed to public community broadcasting. The Broadcasting Services Act does not make any specific differentiation between the two and, therefore, the pegging of license fees. Moreover, community broadcasting must be distinctively licensed, as it does not operate on the basis of profiteering but rather on providing an invaluable community service. The current moves by the Ministry to set up information huts, should not extend to Community radio as such stations become mere extensions of the Ministry and not community broadcasters. Community broadcasting should be owned by the community and carry all views in a fair manner. Information huts are welcome should they provide public information in health, agriculture, education, internet connectivity, video and DVD services for both education and entertainment and carry all publications such as state owned and private newspapers. The Information Huts should not be centers of propaganda but centers of accessing information that is representative of all voices in society.

2.0 Conclusion:

MISA Zimbabwe recommends that the Government of Zimbabwe seriously consider the repealing of the Broadcasting Services Act and the subsequent promulgation of legislation to establish an Independent Communications Regulatory Authority. This would entail the merging of the regulatory work being undertaken by the Post And Telecommunications Regulatory Board, the Broadcasting Authority of Zimbabwe and the Transmedia Board of Directors. This would also entail a legislative framework that is democratic and disallows any undue government interference in the broadcasting industry in Zimbabwe. There is also urgent need to transform the current Zimbabwe Broadcasting Holdings into a public as opposed to a state or government broadcaster. MISA-Zimbabwe recommends that a public national enquiry be carried out to ascertain the broadcasting needs of Zimbabwe and views of citizens in all their economic, racial, political, and religious and gender diversity. MISA-Zimbabwe implores the government to see the enormous benefits of a free broadcasting media, that goes beyond simple political issues but plays a part in the development of the whole society. We owe it to posterity that the media in Zimbabwe be developed for the benefit of all and not a single political party nor leadership. Above all else and central to MISA Zimbabwe's position on broadcasting in Zimbabwe is the ostensible truth that whatever reforms are made, there should be a clear understanding of broadcasting being a tool for the promotion of freedom of expression, access to information, economic and social development, political tolerance and empowerment of citizens.

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