



Embassy
of the Federal Republic of Germany
Lusaka

Check against delivery

MISA ZAMBIA STATE OF THE MEDIA 3rd QUARTER REPORT LAUNCH

Lusaka, 29th January 2016

Remarks by German Ambassador Bernd Finke

Here in Zambia there is hardly an institution – be it a ministry, a school, a university, a civil society organization, a business representation – which has not come up with a special vision and mission statement.

The mission and vision of Zambia's Ministry for Information and Broadcasting Services is (I quote) to have a highly educated, technologically competent and well-informed Zambia in which citizens have full access to all forms of media, and where people fully and actively participate in democratic governance. According to its mission statement, the Ministry also commits itself to effectively facilitate the development of a media industry in order to enhance the free flow of information and freedom of expression. I suppose that we all agree that this is a very noble mission and very worthy of our support.

At the same time, however, we are presented today with a new MISA report which claims that the media in Zambia continues to face intimidation and harassment. Other international institutions such as Freedom House and Reporters without Borders come to similar conclusions. They refer to attempts at censorship by the government, police retaliation against reporters, and denial of equal access to the media for opposition parties. As a result, Zambia's international freedom-of-the-media-rankings have continuously deteriorated over the last few years.

How does this fit together: The Government's commitment to freedom of expression, freedom of the media, freedom of information on the one hand, and the findings to the contrary by civil society and other non-governmental organizations on the other hand. Is someone lying or distorting the facts? Or are we rather dealing with some kind of a misunderstanding?

Let me try to address these questions from a human rights perspective.

My first observation is: Nobody says no to the human right to freedom of expression and, following from that, freedom of the media.

In fact, the human right to freedom of expression is enshrined in all major United Nations and regional human rights declarations, conventions and treaties, among them the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights or the African Charter on Human and Peoples' Rights. In addition, the human right to freedom of expression is guaranteed in most national constitutions, among them the constitutions of Germany and Zambia.

To this end there are numerous political statements from leaders around the globe acknowledging the importance of the freedom of expression and the media. Let me quote three of them:

The first quote is from UN Secretary General Ban Ki Moon. He said “that freedom of expression and press freedom are critical to the successful implementation of good governance and human rights around the world. Everyone must be free to seek, receive and impart knowledge and information on all media, online and offline.”

The second quote comes from Nelson Mandela. He pointed out that “a critical, independent and investigative press is the lifeblood of any democracy”.

The third quote is from President Lungu who, in his inauguration speech, stressed that the PF Government had guaranteed free speech, freedom of association, freedom of assembly and many other civil and political liberties, which enable the Zambian democracy to survive the challenges the nation faces.

As mentioned: Nobody says no to the human right to freedom of expression and, following from that, freedom of the media.

This is the good news.

The not-so-good news is that while everybody says “yes” to human rights we are at the same time confronted with numerous attempts at human rights relativism. I'd like to call it the “Yes, but”-

approach. It refers to the countless efforts to justify human rights violations and restrictions or at least to justify looking the other way. To give you two examples:

- We cite culture, tradition or religion to undermine the universal validity of human rights, especially the right to non-discrimination.
- We dismiss international criticism of human rights violations by disqualifying it as interference in internal affairs.

What about the right to freedom of speech and freedom of the media. Which attempts at relativism are we facing here? Looking at ongoing discussions in Zambia I would say that we can identify three major arguments aimed at limiting freedom of expression and the media:

The first argument goes that the guarantee of freedom of expression and the media is dependent on (what is called) “responsible behaviour” of journalists.

This line of thinking suggests that criticizing the Government is irresponsible behaviour, and therefore not protected by the right to freedom of expression.

The second argument goes that the human right to freedom of expression finds its limits in a deeply rooted Zambian tradition according to which it is inappropriate to criticize elders or authorities such as parents, chiefs or the Head of State and Government.

The third argument goes that freedom of speech and the media must not be allowed to undermine or jeopardize national interest, public order or public moral. In this context criticism of the government is almost considered to be an act of high treason.

From a human rights perspective I’d like to offer the following comments on these attempts at relativism: Regarding the relationship between freedom of expression and the media and “responsible behaviour” of journalists: While we should consider a free press to be an indispensable element of any democracy, it goes without saying that freedom of the media is not a blank cheque for journalists to operate without any restrictions. Media work must be guided by overriding ethic principles, such as respect for the truth, preservation of human dignity, protection of other peoples’ human right to reputation, and accurate informing of the public.

In reporting there should also be a clear distinction between news and commentaries, something which I often miss in the Zambian press. There are also journalists who fail to check their facts before going public. There are still others whose work seems to be inspired not just by the pure search for truth. Such journalists not only compromise the name of the profession but also give politicians arguments for limiting freedom of expression.

The media has to agree on principles of professional self-monitoring. Effective self-monitoring makes third party control by the state superfluous and, thus, ensures the freedom of the press from the state. If the professions of the media ensure order in their own ranks themselves, there is no need for the state to intervene. Self-monitoring is better than state monitoring.

It is the right of a Government to portray its work in the brightest colours, and to stress achievements instead of admitting to unredeemed pledges. All governments act like this. But it is the right and responsibility of a free press to challenge governments' perspectives. It is not part of the responsibility of the media to join the chorus of uncritical public adulation of a government's performance.

There are countries where free expression is threatened by defamation laws that provide special protection for the reputation of public officials, above that of "ordinary" citizens. While most people agree that defamation laws serve a legitimate purpose, political bodies and public figures often abuse these laws to silence their critics.

For instance, the threat of a prison sentence or of having to pay disproportionately high fines or damages can effectively discourage the media from exposing corruption and other wrongdoings in society. That is, in fact, self-censorship forced upon journalists. An open discussion, free of intimidation, on the definition of "responsible behaviour of journalists", should be part of a country's freedom-of-the-media-credentials.

Speaking of responsibilities: While governments are quick to evoke responsible behaviour of journalists, they often seem to forget about their own human rights responsibilities and obligations: Let me recall them:

The States' obligations under international human rights law are three fold. States have the obligation to respect, to protect, and to fulfil human rights. This means for example that States must refrain from interfering with or curtailing the enjoyment of freedom of expression. It also means that

States must take positive action to facilitate the enjoyment of freedom of expression and impartial access to information. Doing so is not a question of political choice but a required response to an international legal obligation.

Regarding the relationship between freedom of expression and the Zambian culture or tradition to withhold criticism of elders, such as the Head of State and Government.

I am aware of such a tradition. But from a human rights defender's perspective I would like to see Zambia overcoming what I perceive to be a false notion of citizen or media loyalty towards authorities: Criticising one's political leadership and questioning its actions is not an act of lese-majesty or high treason but an indispensable element of a vibrant democracy and a functioning system of checks and balances. It is an essential part of the democratic dispute about the right track when it comes to advance social and economic development and progress.

Of course, freedom of expression has its limitations. It is not a blank cheque for insults or defamation. The human right to reputation is as important as the right to freedom of speech, and journalists must protect the honour and reputation of others by following rules of professional conduct. What is obviously needed is to strike an appropriate balance between freedom of expression and injury to the honour and reputation of others. That is no easy task.

But there are some guidelines: For instance, when we talk about protecting reputations, we only mean reputations that are deserved. It follows, therefore, that if a statement is actually true, then it cannot be defamatory.

Speaking in particular of the protection of the reputation of politicians: Freedom of the press provides us, the citizens, with one of the best means of discovering and forming an opinion of the ideas and attitudes of our political leaders. The limits of acceptable criticism are, accordingly, wider as regards a politician as such than as regards a private individual. Unlike private individuals, politicians consciously expose themselves to close scrutiny by both journalists and the public at large. It comes with the job. Politicians must therefore display a greater degree of tolerance, especially when they make public statements that are susceptible of criticism.

Most of us do not like to being criticized, especially not in public. But we must accept that freedom of expression it is applicable not only to information or ideas that we receive favourably or regard as

inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.

Regarding the relationship between freedom and expression and the safeguarding of national interests, public order and moral.

International human rights law is based on the premise that in a democratic society, freedom of expression must be guaranteed and may be subject only to narrowly drawn restrictions which are necessary to protect legitimate national interests.

It is not sufficient for a government simply to invoke “national security” and then restrict the freedom of the media. Any restriction on the freedom of expression must observe the principle of proportionality. Proportionality means that the methods used to fulfil the national interest must not undermine the very essence of the right to free speech.

While the press must not overstep the bounds set, inter alia, for the protection of vital interests of the State such as national security against the threat of violence or the prevention of disorder or crime, it is nevertheless incumbent on the press to impart information and ideas on political issues, including divisive ones.

Not only has the press the task of imparting such information and ideas; the public has a right to receive them. The whole of society suffers the consequences when journalists are gagged by pressure of this kind. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion.

In conclusion:

Freedom of the press provides us, the citizens, with one of the best means of discovering and forming an opinion of the ideas and attitudes of our political leaders. On the other hand, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society. A free press therefore makes a nation stronger and more successful. And it makes leadership more effective because it demands greater accountability.

As John F Kennedy once said: “Governments must not be afraid to entrust the people with unpleasant facts, foreign ideas, alien philosophies, and competitive values. For a nation that is afraid to let its people judge the truth and falsehood in an open market is a nation that is afraid of its people.”

No doubt, many governments have the power and the instruments to limit the freedom of the media. But using these instruments of power is not an expression of strength, it is most often a sign of weakness, insecurity and fear – the fear to lose power. Those who govern should understand and accept that the ruling power cannot and must not dictate to the press the type of information that would suit it best. We have to recall that democracy is a government "of the people, by the people, and for the people", as Abraham Lincoln phrased it.

The media have the right, even the duty, to raise queries and to challenge those wielding the power vested in them by the people.

I'd like to finally conclude my remarks on the issue of freedom of expression by quoting Voltaire, one of the leading French philosophers of the age of Enlightenment and a staunch advocate of human rights and democracy:

Voltaire said: “I might disapprove of what you say, but I will defend to the death your right to say it.”

Thank your for your attention.