State of the Media Report 2011

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Introduction

The signing of the Global Political Agreement GPA) by Zimbabwe’s three main political parties namely Zanu PF and the two MDC formations on 15 September 2008 paved way for the passing of Constitutional Amendment No 19 in December 2008 resulting in the subsequent formation of the inclusive government in February 2009.

The GPA as underpinned by Constitutional Amendment No 19 binds and commits the inclusive government to undertake fundamental socio-economic and political reforms as well as a comprehensive all-inclusive constitution making process.
Under Article 19.1 of the Agreement which deals with freedom of expression and communication, the parties agreed among other issues that:

*The government shall ensure the immediate processing by the appropriate authorities of all applications for re-registration and registration in terms of both the Broadcasting Services Act (BSA) as well as the Access to Information and Protection of Privacy Act.*

Three years after the signing of the agreement, is Zimbabwe any closer to fulfilment of the hitherto commitments to undertake comprehensive socio-economic and political reforms that foster citizens’ rights to freedom of expression and access to information under a new democratic constitution?

**Political Context and Key Events of 2011**

As reported in our State of the Media Report for 2010, the formation of the inclusive government brought about relative economic stability mirrored by improved availability of goods, inflation decline, pockets of improved service delivery, the opening of schools and hospitals, among other indicators of measured success.

The country continued to enjoy relative peace during the first six months of 2011 notwithstanding the sporadic cases of political violence. Economic growth was thus projected at 9.4 percent in 2012 against the background of improved performance in sectors such as agriculture, mining, tourism, social sectors, finance and electricity against the 2011 projection of 9.3 percent.

This prognosis of the socio-economic political environment is gleaned against the backdrop of the violence that preceded the June 2008 presidential election run-off. The violence which forced Morgan Tsvangirai, the leader of the MDC-T, to pull out of the presidential election run-off, threatened to push the country to the precipice of civil strife and unprecedented lawlessness.

It would, however, be remiss of MISA-Zimbabwe if tribute is not paid to the mediation efforts of the Southern African Development Community (SADC) through its point-person in the form of South African President Jacob Zuma.

SADC and the African Union (AU) are the guarantors of the GPA which was brokered by Zuma’s predecessor and former South African President Thabo Mbeki. The political context to the relative peace and economic stability cannot therefore be attributed to commitment by the Zimbabwean signatories to the letter and spirit of the agreement, but more to nudging by SADC.
The SADC and Zuma’s mediation team to the Zimbabwean crisis continue to be seized with their facilitation role. This steadfastness on the part of President Zuma and his mediation team to a great extent averted collapse of the inclusive government in the wake of the incessant disagreements by the perennially feuding political players.

The Lusaka SADC Troika Summit is indeed telling in that regard. The Troika Organ on Politics Defence and Security Co-operation came on the backdrop of spirited efforts by Zanu PF to scuttle the regional body’s facilitation efforts on the basis of alleged bias by President Zuma and his mediation team.

The communiqué aptly noted the polarised political environment characterised by resurgence in violence, hate speech, arrests and intimidation as hampering progress in implementation of the Global Political Agreement.

It was also resolved that the inclusive government should thus complete all the steps necessary for the holding of fresh elections including the finalisation of the constitution making process and the subsequent referendum.

It was further noted that SADC should assist Zimbabwe to formulate guidelines that would assist in holding an election that is peaceful, free and fair in accordance with SADC Principles and Guidelines Governing Democratic Elections.

The Troika of the Organ would thus appoint a team of officials to join Zuma’s facilitation team and work with the local Joint Monitoring and Implementation Committee (JOMIC) to ensure monitoring, evaluation and implementation of the GPA.

The Troika would also develop the terms of reference, time frames and provide regular progress reports, the first to be presented during the next SADC extraordinary summit.

“The summit shall review progress on the implementation of the GPA and take appropriate action,” read the Communiqué in part.

Media Environment

Regulation of the media

While SADC insisted on implementation of the GPA in its Lusaka Troika communiqué which was reiterated at the full regional summit held in August in Luanda, Angola, no meaningful attention was paid to the envisaged media reforms that would allow citizens to enjoy the right to freedom of expression, association and assembly in terms of Article 19 of the GPA which deals with freedom of expression and communication.
For instance on 6 December 2011, the police raided the offices of the Media Monitoring Project of Zimbabwe (MMPZ) and arrested its co-ordinator Andy Moyse. They seized copies of compact discs and DVDs which they alleged contained material which could be used to incite members of the public. Moyse was released after the police recorded a statement from him. The raid followed the arrest on 24 November 2011 in Gwanda of MMPZ officers Fadzai December, Molly Chimhanda and Gilbert Mabusa on allegations of holding a meeting without notifying the police.

The three who were still being detained as of 12 December 2011, are being charged under Section 25 of POSA which criminalises the organising of a gathering without notifying the police and section 37 of the Criminal Law (Codification and Reform) Act which outlaws the distributing of materials likely to breach peace.

Meanwhile, the state had also since amended the charges to include an additional charge of insulting the person of the President under section 33 of the Criminal law (Codification and Reform) Act.

Save for the licensing of more than 20 publications in the print media, repressive legislation such as AIPPA, Criminal Law (Codification and Reform) Act, Interception of Communications Act and the Broadcasting Services Act (BSA), remained firmly entrenched in the country’s statutes.

The broadcasting media environment in particular remained clamped with the state-controlled Zimbabwe Broadcasting Corporation (ZBC) retaining its stranglehold on the airwaves as the sole single monopoly broadcaster.

This is despite the controversial granting of the first ever two national free-to-air commercial broadcasting licences to AB Communications and the state-controlled Zimpapers Talk Radio by the Broadcasting Authority of Zimbabwe (BAZ) on 24 November 2011.

The government’s reluctance to undertake comprehensive media reforms is amply demonstrated by the lack of movement towards the tabling of the Media Practitioners Bill as well as the touted Freedom of Information Bill. In July 2010 President Mugabe announced that the Media Practitioners’ Bill, as per recommendations of the All Media Stakeholders Conference held in Kariba in May 2009, would be among 23 Bills constituting the legislative agenda of the next parliamentary session.

He said then the Media Practitioners Bill seeks to “repeal the part of the Access to Information and the Protection of Privacy Act (AIPPA), which deals with the registration of journalists and privacy issues”. This licensing and registering of journalists and media houses is done by the statutory Zimbabwe Media Commission.
Former Deputy Information Minister Jameson Timba had earlier mentioned plans to replace AIPPA with this Bill together with the Freedom of Information Bill to try and ease the current stringent media regulations.

However, more than a year later, President Mugabe did not allude nor update the nation on progress regarding either of the two proposed bills in particular the Media Practitioners Bill, when he officially opened the Fourth Session of the Seventh Parliament of Zimbabwe.

The fact that there are no definitive timelines to the proposed reforms speaks volumes on the government’s commitment to implement the proposed media reforms. Even more telling is the fact that the parties to the GPA committed to implement the same proposed media reforms within 30 days after the SADC summit held in Windhoek in August 2010. The commitments were contained in the implementation matrix publicised after the Windhoek meeting.

This perhaps demonstrates government’s reluctance to repeal AIPPA in its entirety as well as a raft of other repressive laws that continue to inhibit media freedom and Zimbabweans’ right to freedom of expression and access to information.

Expectations on clear policy pronouncements in that regard were in fact dampened when the Minister of Media, Information and Publicity Webster Shamu on 10 September 2011 warned foreign and private media organisations that the government would withdraw their licences if they continue abusing their journalistic privileges by denigrating and vilifying the country’s leadership.

Shamu accused the foreign and private media of denigrating President Robert Mugabe and the First Family for unjustifiable reasons premised on falsehoods. He said the country would use its laws to deal with the foreign and private media and claimed that Britain has more than 50 media laws that gagged the media but nobody made a fuss about it.

His remarks worryingly came on the backdrop of similar warnings by the statutory Zimbabwe Media Commission (ZMC) through its chairperson Godfrey Majonga. Majonga said foreign newspapers circulating in Zimbabwe risked being banned if they fail to register with the ZMC in terms of the draconian Access to Information and Protection of Privacy Act (AIPPA). South African newspapers, the *Mail and Guardian* and *Sunday Times* are among some of the foreign newspapers circulating in Zimbabwe.

These developments smack of machinations to intimidate or silence the private media from shining the spotlight on the conduct of public figures which goes against the dictates of transparency and accountability as should be the case in an open and free society.

**Arrests, harassment of journalists**
While cases of harassment, arrests and intimidation of journalists relatively declined in the previous year during which MISA-Zimbabwe issued a total of 27 alerts, a worrying trend in the repression of media freedom emerged during the course of the year under review.

At the time of writing this report in December 2011, MISA-Zimbabwe had issued 39 alerts of which a substantial number are linked to the arrests of journalists for criminal defamation under the Criminal Law (Codification and Reform) Act.

The harassment and threats through the Criminal Law (Codification and Reform) Act have seen the police visiting and conducting searches in the newsrooms of privately owned newspapers.

In 2011 a total of six journalists were either detained, arrested or prosecuted under the law in question as well as the Official Secrets Act (refer to 2011 media violations statistics table below).

The cases in question involve the arrest of Golden Maunganidze, then editor of The Mirror who was arrested and detained in Masvingo in January on allegations of criminally defaming a Zanu PF politician. In June Nevanji Madanhire and Patience Nyangove, editor and journalist with the privately owned The Standard weekly were arrested and charged with criminal defamation.

The charges were drawn in terms of Section 96 of Criminal Law (Codification and Reform) Act and section 31 which criminalises the publishing or communication of false statements prejudicial to the state and statements “undermining public confidence in a law enforcement agency.

In November the police arrested Madanhire together with reporter Nqaba Matshazi on a different matter but on similar charges of criminal defamation. Meanwhile, Vincent Kahiya, the editor-in chief of Alpha Media Holdings and Constantine Chimakure, editor of the Zimbabwe Independent, were in March 2011 eventually removed from remand.

The fact that their case was still pending before the courts and remains inconclusive two years after their arrest in 2009, clearly demonstrates the state’s reluctance to open itself to scrutiny and public accountability. In the meantime the two are awaiting a Supreme Court ruling on the constitutionality of Section 31 of the Criminal Law (Codification and Reform) Act under which they are being charged.

Alpha Media Holdings are the publishers of the Zimbabwe Independent, Standard and Newsday.

On 2 December 2011 Stanley Gama and Xolisani Ncube, editor and reporter with The Daily News respectively, were arrested on criminal defamation charges over a story published in the paper’s edition of November 10.

The story titled: Chombo brags about riches, claimed Local Government minister Ignatius Chombo bragged about his wealth during a meeting with visiting officials from the Bill and Melinda Gates Foundation.
Meanwhile, during the course of the year, unknown suspects broke into the offices of Newsday in Harare and stole the editor's laptop, computer hard drives and other components from computers used by senior reporters. The offices of The Mirror in Masvingo were similarly ransacked by unknown criminals who tempered with computers and laptops before stealing a memory card from an editorial camera. No one had been arrested in connection with the two break-ins at the time of the writing of this report in December.

In the midst of these worrying developments, unruly youths suspected to be supporters of Zanu PF, during the course of the year went on the rampage harassing vendors and tearing copies of the Newsday. In Masvingo soldiers from 42 Infantry Battalion allegedly banned vendors from selling copies of The Mirror.

The weekly had published a story alleging army personnel had assaulted people at Mupandawana growth point.

In the ensuing mayhem and wanton acts of impunity and lawlessness, Levi Mukarati, then a journalist with the privately owned Financial Gazette, Nqaba Matshazi and Aaron Ufumeli journalists with the Standard weekly were assaulted and harassed in July. The assaults, again by suspected supporters of President Mugabe’s Zanu PF happened under the police’s watch at Parliament Building. The rowdy youths were part of a public hearing on the Zimbabwe Human Bill.

Intriguingly, none of the culprits were arrested despite the publishing in newspapers of photographs of some of the suspected assailants. The assaults prompted strong condemnation by civic and media groups. President Zuma weighed in and urged the Zimbabwean government to respect the rule of law and adhere to the spirit and letter of the Global Political Agreement.

The continued retention of these repressive laws restricts the right of journalists to receive, process and disseminate information in the public interest and enhancing the citizens’ right to access information that fosters transparency and accountability in both public and private institutions.

In civilised and democratic societies aggrieved parties seek redress through self-regulatory media complaints bodies or civil suits which are not in short supply in Zimbabwe as evidenced by the existence of the Voluntary Media Council of Zimbabwe and the country’s civil laws.

The culture of criminalising the right to free speech and inherently that of media freedom is against democratic tenets and has been denounced by the African Commission on Human and People’s Rights. All the cited cases involve public officials who are more than determined to suppress the watchdog role of the media on the three arms of the state.

This media onslaught and continued harassment if not persecution of journalists particularly those working for the Standard weekly newspaper, brings urgency on the need for comprehensive media reforms and the repealing of archaic and undemocratic laws which impinge on media freedom and freedom of expression.
Access to Information

The Banjul Declaration on the Principles of Freedom of Expression in Africa sets the benchmarks for the enactment of laws governing the right to information through adherence to the following principles:

- **Everyone has the right to access information held by public bodies**
- **Everyone has the right to access information held by private bodies that is necessary for the exercise and protection of any right**
- **Any refusal to disclose information shall be subject to appeal to an independent body and/or courts**
- **Public bodies shall be required even in the absence of a request to actively publish important information of significant public interest**
- **No one shall be subject to any sanction for releasing in good faith information on wrongdoing or that which would disclose a serious threat to health, safety or the environment, except where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society.**
- **Secrecy laws shall be amended as necessary to comply with Freedom of Information principles.**

In the Zimbabwean context, AIPPA remains a misnomer to citizens’ right to access to information as it retains restrictive provisions that are cumbersome to the exercise of that fundamental right more so in the context of the media’s watchdog role over the three arms of the state i.e. Executive, Legislature and Judiciary.

Access to information is intrinsically linked to citizens’ right to freedom of expression and association – rights which are still a difficult proposition in Zimbabwe. Peaceful demonstrations and the inherent right to freedom of expression and association, are still restricted through the Public Order and Security Act (POSA) and a host of other repressive laws.

Members of the Women of Zimbabwe Arise continued to be at the receiving end through arrests while taking part in peaceful demonstration against the social, economic and human rights situation in Zimbabwe.

Many of those arrested were later released without charge, but some were charged under POSA and the Miscellaneous Offences Act (MOA). This obviously has a bearing on the public’s right to receive alternative information through public gatherings and free assembly and association.
Despite the cosmetic 2008 Amendments to AIPPA, the law still retains the provision among others, which gives public bodies 30 days within which to respond to requests for information.

Zimbabwe is thus still far from opening its public institutions to scrutiny and public accountability. This could be evidenced by the deafening silence by way of policy pronouncements on what steps the government planned on taking following the adoption of the Africa Platform on Access to Information (APAI Declaration). This is also worsened by inconsistencies in policy statements.

For instance, the Secretary for Media, Information and Publicity George Charamba, told the Parliamentary Portfolio Committee on Media, Information and Communication Technology in July 2011 that AIPPA amendments had been put on the back burner ostensibly because government must first complete the drafting of a new constitution.

He was, however, contradicted by the Minister of Justice and Legal Affairs Patrick Chinamasa who defended AIPPA and the Public Order and Security Act (POSA) during a Human Rights Council session in Geneva, Switzerland. Chinamasa said the two laws do not violate any fundamental freedoms as long as their letter and spirit is followed.

Principles of the Declaration adopted at the Africa Information and Media Summit (AIMS) in Cape Town on 19 September 2011 are that:

- Information is a fundamental right accessible to everyone.
- There should be maximum disclosure, limited exemptions and whistleblower protection.
- The right should be established in law, and it is applicable to public and private bodies.
- There should be a clear and unambiguous process in accessing information, overseen by independent bodies.
- Governments have an obligation to publish information.
- Information should be accessible in peoples languages.

Although the constitution of Zimbabwe provides for an express guarantee on freedom of expression, the same does not hold true for the right to freedom of information. The right to freedom of expression is, however, characterised by broad claw back clauses that have the effect of taking away the same right. On the other hand media freedom is also not expressly guaranteed by the constitution.

There is also the Official Secrets Act of 1970 which makes it difficult for the citizens and media to access information held by government and public institutions. The other laws are the Public Order and Security Act (POSA) which restricts freedom of association and freedom of assembly.
Sections of the Criminal Law (Codification and Reform) Act also make it a criminal offence to communicate in any way any statement that undermines the president, his/her office or his/her personal capacity, among other offences.

The battery of restrictive laws make it difficult for members of the public let alone, the media to access information held by public institutions as evidence by the research conducted by MISA-Zimbabwe under the 2011 Right to Know Campaign.

Eight institutions were researched namely: National Social Security Authority (NSSA), Consumer Council of Zimbabwe (CCZ), Zimbabwe Schools Examinations Council (Zimsec), Sports and Recreation Council (SRC), Zimbabwe Tourism Authority (ZTA), National AIDS Council, Zimbabwe National Water Authority (ZINWA) and National Arts Council of Zimbabwe (NACZ).

The research generally revealed the difficulties in accessing information held by public institutions in Zimbabwe. The institutions were generally not forthcoming with information and overly secretive. This makes it very difficult for citizens to exercise their constitutional right to access information held by public bodies.

Although seven of the eight sampled institutions had websites, only two of these had up-to-date information. Five had very little or completely outdated information while one, Zimsec, did not have a website.

Zimsec was thus deemed the most secretive institution for 2011 while the National Arts Council was arguably the most open and transparent institution in Zimbabwe.

❑ Print Media

The 20th anniversary of the 2001 Windhoek Declaration on promoting an independent and pluralistic African press, came at a time when Zimbabwe is enjoying relative diversity in the print media. This followed the licensing of more than 20 publications by the statutory Zimbabwe Media Commission as of 2011 dating back to 2010.

This development has seen citizens’ accessing information from a diversified and competitive print media sector notwithstanding the closure of one of the newly launched publications, The Mail, due to business viability problems.

However, plans were reportedly underway to resuscitate the daily newspaper under a new ownership and management before the end of the year.

However, competition arising from the entry of several publications onto the market has seen ethics and professionalism being compromised amid disturbing allegations of some journalists receiving bribes from potential news sources.
This prompted MISA-Zimbabwe in conjunction with the Voluntary Media Council of Zimbabwe (VMCZ) to convene a Media Ethics Indaba as part of efforts to address growing concerns on the deterioration of Zimbabwean media ethics and professionalism.

Veteran journalist Chris Chinaka who facilitated the workshop said the brand of Zimbabwean journalism in the wake of the entry of more players in a highly charged political environment, had reduced some newspapers to commentary sheets with opinion pieces making up 70 percent of their content while only 30 percent can grudgingly be classified as news.

“IT is a form that thrives on hate language, defends its conduct in a rather pathetic manner and celebrates mediocrity in its ranks,” said Chinaka.

Journalists in attendance acknowledged the decline in journalism ethics and professionalism in Zimbabwe saying corrective measures needed to be instituted as a matter of urgency. Delegates agreed that there was urgent need to retain respectability to the profession through strict adherence to the cardinal rule of reporting truthfully without bias or embellishments. Others, attributed the decline in professional standards to pressure from publishers to make money.

Embedded journalism is slowly creeping into the Zimbabwean media landscape with journalists becoming friends of politicians and businesspersons which tends to cloud their professional neutrality when it comes to reporting accurately and truthfully.

Publishers were also blamed for employing ill-trained journalists whom they pay low salaries. On the other hand, editors were accused of failing to provide leadership and guidance to cadet reporters who were often heaped with responsibilities beyond their abilities.

The meeting also noted with regret that several editors from both the private and public media had been unable to attend the indaba. In that regard, MISA-Zimbabwe is working on a follow-up meeting for early next year possibly with publishers and editors based on the recommendations from the Media Ethics Indaba.

**Broadcasting and Telecommunications**

**Regulatory Framework**
The more things change, the more they remain the same, aptly captures developments in the broadcasting sector in Zimbabwe.

This is viewed against the context of the calls for reforms in the broadcasting sector in the face of the continued monopoly of the airwaves by the state-controlled Zimbabwe Broadcasting Corporation.
Expectations for a break in that monopoly were raised by the Broadcasting Authority of Zimbabwe (BAZ) following its calls in May 2011 for applications for licences for free-to-air commercial radio stations of which two licences would be issued to successful applicants.

Among the shortlisted applicants were Hotmedia (Pvt) Ltd trading as Kiss FM, AB Communications, Vox Media and the state-controlled Zimpapers Talk Radio.

It is trite to note that since enactment of the Broadcasting Services Act in 2001, BAZ had only called for similar applications in 2005. However, none of the applicants were successful owing to the stringent provisions under the BSA thus perpetuating monopoly of the airwaves by the state-controlled Zimbabwe Broadcasting Corporation.

The current BAZ board, notwithstanding the fact that the legality of its status is among the outstanding issues requiring redress, announced AB Communications and Zimpapers Talk Radio as Zimbabwe’s first ever licensed national commercial radio stations.

The announcement on 23 November 2011 sparked widespread condemnation by media groups and political parties on the grounds of alleged bias on the part of BAZ considering the state’s 51 percent controlling stake and the widely held view that the government calls the shots at Zimpapers through the Ministry of Information. As for AB Communications, its major shareholder Supa Mandiwanzira, is alleged to be closely linked to President Mugabe’s Zanu PF.

To add fuel to the fire, one of the board members of BAZ, Susan Makore, works at Mandiwanzira’s Mighty Movies company. Although Makore is said to have recused herself from the public hearings into AB Communications, this position only helped in fanning the fires of bias on the part of BAZ whose chairperson is a known Zanu PF apologist.

Also in contention is why the BAZ was only in a position to issue two licences when the country’s broadcasting spectrum can cater for an additional four and 94 television and radio stations respectively.

According to the International Telecommunications Union (ITU), Zimbabwe has the capacity to register 56 district (community) radio stations; 31 commercial radio stations; three national television stations and two national commercial FM radio stations.

Also of great concern is the fact that BAZ is still to call for applications for community radio stations since the enactment of the BSA in 2001. This prompted one of the initiatives, Community Radio Harare (CORAH) to file an application with the High Court in April 2011 seeking a relief to have its broadcasting licence application considered. The matter is still pending before the courts.

In submissions made before the Parliamentary Portfolio Committee on Media Information and Communication Technologies in July, BAZ which was represented by the Chairperson, Dr
Tafataona Mahoso and Chief Executive Officer, Engineer Obert Muganyura, submitted that the calling for applications for more players in the industry is hampered by the lack of infrastructure and equipment to regulate the industry’s technical and content issues.

He said BAZ was currently monitoring broadcasting in the industry with rudimentary receivers loaned from the POTRAZ, and increasing the number of players would be difficult.

BAZ also submitted that the call for free-to-air commercial radio licenses was informed by a survey carried out in 38 centres in the country which prioritised commercial radio over all the other classes of broadcasting licenses. Engineer Muganyura, submitted that because government had failed to avail resources to the authority to assist in the processing of applications, the current exorbitant application fees are as a result of the transfer of costs to the applicants. The authority said that the next class for licensing would be that for community radio stations.

Currently the Broadcasting Services Fund, BAZ submitted, was unable to fund any activities in the industry as the only licensed broadcaster in the country, the Zimbabwe Broadcasting Holdings (ZBH), contributions are in arrears. Engineer Muganyura submitted that ZBH has over the years only made payments for frequency fees.

With regards to progress on private commercial television stations, BAZ submitted that most of its activities are currently focusing on the digital migration of Zimbabwe from analogue, which the International Telecommunication Union has set a 2015 deadline. He said that currently they are working on the regulatory framework to cater for the migration and that some training is currently taking place to ensure that there is some progress.

Meanwhile the legal status of the current BAZ also remains unresolved since its illegal constitution by the Ministry of Information ministry in 2009.

In calling for the urgent reconstitution of the BAZ board in terms of the law, MISA-Zimbabwe wrote a letter of appeal to President Robert Mugabe, Prime Minister Morgan Tsvangirai and his Deputy Professor Arthur Mutambara.

The letter noted that it was common cause that the current BAZ board which proceeded to issue the two licenses in question was not procedurally constituted as required in terms of the law as its members were unilaterally appointed by the Ministry of Media, Information and Publicity on 30 September 2009.

In terms of the BSA as amended in 2007, the President is vested with the powers to appoint nine nominees to the BAZ after consultation with the minister and the parliamentary Standing Rules and Orders Committee. The other three (3) are appointed by the President from a list of six (6) nominees submitted to the President by the same committee.

MISA-Zimbabwe further noted that both the President and the Prime Minister are on record confirming and conceding that indeed this legal procedure was not duly followed and that the
matter should be revisited. The matter remained unresolved up to the time of the issuance of the two licences rendering the new licenses in question invalid.

In fact, the reconstitution of the board is among the issues the inclusive government agreed to resolve within 30 days at the SADC Summit held in August 2010.

No progress had been made in that regard by December 2011.

Thus the state controlled ZBC continued to maintain its monopoly of the airwaves despite spirited calls for its transformation into a truly independent public service broadcaster as stipulated under the ACB.¹ This untenable situation is directly linked to the restrictive provisions of the BSA.

It is widely acknowledged that the BSA as a broadcasting regulatory framework has serious defects and flaws which fall far short of meeting regional and international benchmarks pertaining to the regulation and management of the broadcasting sector and thus impacts negatively on the right and enjoyment of freedom of expression, press freedom and access to information.

An independent regulatory body is therefore critical in that regard as opposed to the current status of the Broadcasting Authority of Zimbabwe. The Banjul Declaration states:

- Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.

- The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society and shall not be controlled by any political party.

- Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

ICTs and telecommunications

There were marked improvements in terms of developments in the Information Communications Technology in Zimbabwe as indicated by the International Telecommunication Union (ITU) global ICT pricing and penetration data report released in September 2011. The report, which ranks 152 countries according to their level of ICT access, use and skills, rated Zimbabwe 124 in 2010, four places from its number 128 position in 2008.

¹The ACB states that 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.
In 2011, Zimbabwe continued to increase its mobile penetration rate by more than 30%. Econet Wireless mobile subscribers reportedly reached 5 million, Econet Wireless CEO Douglas Mboweni attributed the increase in the subscriber base to continued network expansion.

Similar developments were noted in other African countries such as Rwanda, Senegal and Tanzania. As a result of the jump in mobile penetration the ITU noted that globally, Zimbabwe is in the top ten economies with the greatest 2008-2010 change in the ICT

Other notable developments in the telecoms industry include the announcements of the connection of state owned fixed telephone operator, TelOne and largest cellular network, Econet, through Mozambique and Durban, respectively to the SEACOM submarine cable systems.

SEACOM is a privately owned and operated pan-African ICT enabler that is driving the development of the African internet. The country’s largest cellular network providers, Telecel Zimbabwe and Econet introduced mobile banking facilities in October 2011, a facility which allows customers to use their phones as a mobile wallet.

Kingdom Bank and Teträd Investment Bank were the first innovators with their virtual mobile-banking packages. Both the Kingdom CellCard and Teträd's E-Mali offer customers a platform to transact using mobile phones.

Amid these developments the Minister of Finance allocated US$15 million for the fibre-optic cable for Harare-Bulawayo-Beitbridge and Harare-Masvingo-Beitbridge in his budget statement for 2012.

Meanwhile, in June 2009, the government announced that an Information Communications Technology Bill was in the offing. The bill would merge the BAZ and Postal and Telecommunications Authority of Zimbabwe (POTRAZ) and create the National Information and Communications Technology Authority of Zimbabwe.

However, by December 2011 the bill had still not been tabled before parliament.

The last that was heard of the Bill was in October 2011 when the Minister of Information and Communication Technology Nelson said it would be Information be tabled before Cabinet after concerns raised by other ministries and government departments were addressed.

In his oral evidence before the Parliamentary Portfolio Committee on Media, Information and Communication Technology Chamisa, said there had been delays in finalising the Bill as government ministries sought convergence on some contentious issues.

The Posts and Telecommunications Act, Access to Information and Protection of Privacy Act (AIPPA) and the Broadcasting Services Act (BSA) are identified as some of the laws that will
be taken into consideration towards the development of a national ICT Bill. The initial bill also envisaged the amendment of AIPPA and the repeal of the Postal and Telecommunications act and BSA.

In revising the Bill, MISA-Zimbabwe urges the government to take into consideration several regional and continental covenants such as the African Charter on Broadcasting (ACB), African Union (AU) Declaration on Principles of Freedom of Expression in Africa, SADC Protocol on Culture, Information and Sport, Millennium Development Goals, and the World Summit on Information Societies held in Tunis, Tunisia in 2005.

These regional and international instruments stress among other fundamental principles governing regulatory bodies, the need to ensure access to usage of tools of communication such as the Internet, fixed telephones and mobile telephone networks by ordinary people. Further, all formal powers in the areas of broadcasting and telecommunications should be exercised by public authorities that are protected against interference, particularly of a political or economic nature.

It is MISA-Zimbabwe’s strong submission that in their present state the laws in question and BSA and AIPPA in particular, do not even meet the benchmarks for the enactment of a progressive and democratic national ICT legislation more so as it relates to the establishment of an independent converged broadcasting, ICT, cellular and telecommunications regulatory authority.

As highlighted in our 2010 State of the Media Report, the long term viability of the broadcasting, telecommunications and ICT sectors lies in securing the independence of their regulatory frameworks.

**Digital Migration**

Commitment towards fulfilling migration from analogue to digital broadcasting in compliance with regional and international broadcasting deadlines of 2013 and 2015 as stipulated by the International Telecommunications Union appear to exist only on paper. No meaningful steps were taken towards that eventuality during the year under review.

Zimbabwe could thus be far –far-off from meeting the ITU deadline. About US$ 16 million is required for the full switchover from analogue to digital.

Meanwhile, national radio coverage improved from 55 percent to 90 percent while television coverage rose from 45 percent to 75 percent under refurbishment and expansion of the transmitter network programme.

❖ **Way Forward in 2012**
With Zimbabwe poised to hold its next elections in 2012 or 2013, the SADC should insist on full implementation of the envisaged reforms more so as they pertain to media reforms to ensure the elections in question are held in terms of the regional guidelines on the conduct of democratic elections.

Fundamentally linked to that is the urgent need to revisit the status of BAZ and ensure that it is constituted procedurally and in accordance with the law. The current BAZ board should thus be dissolved and the two licenses it awarded to AB Communications and Zimpapers Talk Radio declared invalid.

A new and lawfully constituted BAZ should be put in place as a matter of urgency and tasked with re-opening or calling for new applications for national commercial radio station licenses as the ones issued in November are undoubtely invalid.

Transformation of the state-controlled Zimbabwe Broadcasting Corporation overseen by an independent board answerable to parliament should be prioritised to insulate ZBC from political interference and abuse. Any attempts to diversify the broadcasting sector should thus be preceded by the repealing of the BSA and the increasing pressure to transform the ZBC into a truly independent public broadcaster.

In pushing for these fundamental reforms in the broadcasting sector, MISA-Zimbabwe is unequivocally guided by its World Press Freedom Day theme for 2011-2012, Broadcasting Reforms on the Agenda. Free the Airwaves Now! Equally, the Mass Media Trust should be resuscitated to shield Zimpapers from government interference with its editorial policies. These processes should be conducted openly and transparently.

The SADC through its point-person President Zuma of South Africa, should press the Zimbabwean government to set strict timelines for implementation of the envisaged media reforms as paramount to the convening of the next elections.

To enhance the citizens’ right to access to information, MISA-Zimbabwe insists on the repealing and replacement of AIPPA with a democratic Freedom of Information Law. The Freedom of Information Law should of necessity include provisions that compel public institutions to periodically release information about their operations; establish monitoring mechanisms on public bodies compliance; create penalties for the breach of the law, among other provisions that are in line with international instruments on freedom expression and access to information.

Pursuant to that should be intense but well co-ordinated freedom of information awareness campaigns targeted at government institutions and members of the public to pressure the institutions to readily provide information in the public interest and safety.

❖ Conclusion
Fundamentally, MISA-Zimbabwe resolutely remains guided by the resolutions of the All Stakeholders Media Conference of December 2008 which were buttressed by the sequel second all stakeholders’ conference held in 2010.

The resolutions hinge on the need for constitutional provisions that explicitly guarantee media freedom and citizens’ right to access to information held by both public and private bodies.

The ongoing constitution making process therefore offers immense opportunity for redress of the deficiencies and shortcomings of the Zimbabwean constitution as it pertains to explicit guarantees on media freedom, freedom of expression and the right to access to information held by both public and private bodies.

The benchmarks are clearly stated in terms of the African Charter on Human and Peoples Rights (ACHPR), Windhoek Declaration, Banjul Declaration on Principles of Freedom of Expression in Africa and the African Charter on Broadcasting (ACB).

Ultimately and more so as it pertains to Zimbabwe’s unresolved socio-economic and political, President Zuma’s international adviser Lindiwe Zulu, was spot-on when she said in a media interview, the African Union and SADC needed to be transformed into effective institutions.

“It is important for them to be strong so that the world takes them seriously. They should be able to deal with African challenges and quickly take decisions. The slow pace at which decisions are implemented in a fast-moving world is not acceptable,” said Zulu who is part of President Zuma’s mediation team on Zimbabwe.

End

Media violations statistics 2011

At the time of writing this report in December 2011, MISA-Zimbabwe had issued 39 alerts of which a substantial number are linked to the arrests of journalists for criminal defamation under the Criminal Law (Codification and Reform) Act.

The harassment and threats through the Criminal Law (Codification and Reform) Act have seen the police visiting and conducting searches in the newsrooms of privately owned newspapers.

In 2011 a total of six journalists were either detained, arrested or prosecuted under the law in question as well as the Official Secrets Act.

Arrests/media law/litigations
<table>
<thead>
<tr>
<th>Victim/concerned party</th>
<th>Issue</th>
<th>Date</th>
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<tbody>
<tr>
<td>Nqobani Ndlovu-A reporter with <em>The Standard</em> newspaper, Nevanji Madanhire –Editor of <em>The Standard</em> newspaper</td>
<td>Ndlovu was arrested on 14 November, 2010 over a story he wrote alleging that police promotional examinations were being scrapped to facilitate the absorption of war veterans and retired police officers in the police force ahead of the 2011 elections. The case of Ndlovu was transferred to Harare Magistrates Courts where he will be jointly charged with Nevanji Madanhire. They are being charged with breaching Section 31 of the Criminal law (Codification and reform Act) which deals with the publication of false statements prejudicial to the state. The matter was remanded to 23 February 2011 at the Harare Magistrates Courts.</td>
<td>25 January 2011</td>
</tr>
<tr>
<td>Sydney Saize- a freelance journalist</td>
<td>He was arrested by members of the Zimbabwe Prison Services while taking pictures of three armed robbers who allegedly tried to escape from lawful custody at Mutare Magistrates Court. He was released from police custody on the same day after paying a $10 fine for being a criminal nuisance.</td>
<td>21 February 2011</td>
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<tr>
<td>Golden Maunganidze- Editor with the privately owned <em>The Mirror</em></td>
<td>Maunganidze was arrested in Masvingo on allegations of criminally defaming a senior Zanu PF politician. The police questioned and detained him</td>
<td>23 February 2011</td>
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<tr>
<td>Name</td>
<td>Details</td>
<td>Date</td>
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<tr>
<td>Nqobani Ndlovu</td>
<td>A reporter with <em>The Standard</em> newspaper, Nevanji Madanhire – Editor of <em>The Standard</em> newspaper. The two journalists applied for their case to be referred to the Supreme Court challenging the constitutionality of Section 31 of the Criminal Law (Codification and reform) Act that they are being charged under. The section deals with publication of statements that undermine public confidence in law enforcement agencies.</td>
<td>23 February 2011</td>
</tr>
<tr>
<td>Golden Maunganidze</td>
<td>He was freed by the courts after the state declined to prosecute him for defaming ZANU PF Masvingo Provincial Chairman Lovemore Matuke.</td>
<td>24 February 2011</td>
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<tr>
<td>Nakonekone</td>
<td>They were removed from remand on allegations contravening Section 31 of the Criminal Law (Codification and Reform) Act. The two were also granted application for referral of their case to the Supreme Court after the state failed to oppose the application.</td>
<td>28 February 2011</td>
</tr>
<tr>
<td>Vikazi Mavhudi</td>
<td>He was denied bail when he appeared before a Bulawayo magistrate after he was arrested for expressing his approval of citizens’ uprisings in Egypt through a <em>facebook</em> posting on the Prime Minister Morgan Tsvangirai’s wall.</td>
<td>16 March 2011</td>
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<tr>
<td>Event</td>
<td>Description</td>
<td>Date</td>
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<tr>
<td>Remand</td>
<td>He was remanded in custody to 25 March 2011.</td>
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<tr>
<td>Viki Mavudzi</td>
<td>Zimbabwe Lawyers for Human Rights (ZLHR) filed an appeal with the High Court challenging a Bulawayo magistrate’s denial of bail to Vikazi Mavudzi facing charges of attempting to overthrow the government through comments posted on Prime Minister Morgan Tsvangirai’s facebook wall.</td>
<td>17 March 2011</td>
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<tr>
<td>Two suspected Zanu PF activists</td>
<td>They were arrested in Harare after they tore copies of the privately owned daily, Newsday. The suspects were detained at Harare Central police station and were scheduled to appear in court on 22 March 2011.</td>
<td>Between 19 and 20 March 2011</td>
</tr>
<tr>
<td>Viki Mavudzi</td>
<td>He was granted US $200 bail by a High Court judge Justice Ndou after spending more than one month in jail. He is facing charges of attempting to overthrow the government through comments he posted on Prime Minister Morgan Tsvangirai’s facebook wall.</td>
<td>31 March 2011</td>
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<tr>
<td>Nevanji Madanhire, Patience Nyangove, Editor and journalist with the private weekly, The Standard and Loud Ramakgapola- company representative</td>
<td>The trio was arrested in connection with the publication of a story carried in the edition of June 26 – July 2, 2011 titled: “MDC-T fears for missing Timba”. They are being charged with criminal defamation under section 96 of the Criminal Law Codification and Reform Act and section 31 which</td>
<td>29 June 2011</td>
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<tr>
<td>Event</td>
<td>Details</td>
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<tr>
<td>An act of law that criminalises the publishing or communication of false statements prejudicial to the State and statements “undermining public confidence in a law enforcement agency”</td>
<td>The four journalists were arrested and detained in Ntabazinduna where they had travelled to cover the eviction of a policeman from his house at Ntabazinduna police station. The policeman had reportedly been found in possession of a music file in his computer containing songs praising the Movement for Democratic Change.</td>
<td>15 July 2011</td>
</tr>
<tr>
<td>Standard reporter Bulawayo-based Nqobani Ndlovu, Pamenus Tuso, Oscar Nkala and Pindai Dube</td>
<td>The four journalists were arrested and detained in Ntabazinduna where they had travelled to cover the eviction of a policeman from his house at Ntabazinduna police station. The policeman had reportedly been found in possession of a music file in his computer containing songs praising the Movement for Democratic Change.</td>
<td>15 July 2011</td>
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<tr>
<td>Blessed Mhlanga, correspondent with Newsday in Kwekwe.</td>
<td>Arrested in Kwekwe while taking pictures of people that had converged to witness the launch of an organisation known as Midlands Youth Dialogue. He was taken to Kwekwe Central police station where the pictures he had taken were deleted from his camera.</td>
<td>20 July 2011</td>
</tr>
<tr>
<td>Zimbabwe Independent editor Constantine Chimakure and senior political reporter Wongai Zhangazha</td>
<td>Police questioned the two journalists on the sources of the story titled: Ministers rejected Kasukuwere plan, which appeared in the weekly’s edition of 8 July 2011.</td>
<td>29 August 2011</td>
</tr>
<tr>
<td>Vikas Mavhudi</td>
<td>Bulawayo magistrate Rose Dube ruled that it was appropriate to have the accused removed from remand and charges withdrawn if the evidence was not produced.</td>
<td>20 September 2011</td>
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<td>Date</td>
<td>Event</td>
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<tr>
<td>13 October 2011</td>
<td>Minister of Justice and Legal Affairs&lt;br&gt;Access to Information and Protection of Privacy Act (AIPPA) and the Public Order and Security Act will not be amended. Chinamasa said the AIPPA and POSA do not violate any fundamental freedoms as long as their letter and spirit is followed.</td>
<td></td>
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<tr>
<td>25 October 2011</td>
<td><em>The Standard</em> journalists, editor Nevanji Madanhire, reporter Patience Nyangove&lt;br&gt;The trial of <em>The Standard</em> journalists, editor Nevanji Madanhire, reporter Patience Nyangove and Alpha Media Holdings (AMH) group human resources manager Loud Ramakgapola — representing the company — failed to take off again.</td>
<td></td>
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<tr>
<td>27 October 2011</td>
<td><em>The Standard</em> journalists, editor Nevanji Madanhire, reporter Patience Nyangove&lt;br&gt;Magistrate Kudakwashe Jarabini deferred the trial date to 12 December 2011</td>
<td></td>
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<tr>
<td>15 November 2011</td>
<td><em>The Standard</em> journalists, editor Nevanji Madanhire, Nqaba Matshazi&lt;br&gt;Arrested on charges of Criminal Defamation and theft of documents from Green Card Medical Aid Society in Harare. They were granted bail and are to appear in court on the 21st of December.</td>
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<tr>
<td>Date</td>
<td>Event Description</td>
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<td>29 November 2011</td>
<td>The defamation case in which <em>The Masvingo Mirror</em> is being sued by retired Colonel Claudius Makova case commenced in the High Court on 29 November 2011.</td>
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<tr>
<td>30 November 2011</td>
<td>Harare High Court judge Justice Susan Mavhangira on 30 November 2011 postponed judgment without assigning a day for further judgment in the defamation case in which retired Colonel Claudius William Makova is claiming US $ 100 000 from <em>The Masvingo Mirror</em>.</td>
<td></td>
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<tr>
<td>2 December 2011</td>
<td>Daily News Editor, Stanley Gama, Reporter, Xolisani Ncube Arrested in connection with an article that appeared in the paper last month which was titled: <em>Chombo brags about wealth</em>. They are likely to be charged with criminal defamation under the Criminal Law (Codification and Reform) Act. They were still being interviewed by the police at Harare Central Police Station as of 2pm on 2 December 2011.</td>
<td></td>
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<tr>
<td>5 December 2011</td>
<td>Fadzai December and Molly Arrested and detained in</td>
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</table>
Chimhanda, advocacy officers with the Media Monitoring Project of Zimbabwe (MMPZ) and Public Information Rights Forum Committee for Gwanda, Gilbert Mabusa. connection with a community meeting on public information rights held on 24 November in Gwanda. The two are being charged under Section 25 of the Public Order and Security Act which criminalises the organising of a gathering without notifying the police and section 37 of the Criminal Law (Codification and Reform) Act which outlaws the distributing of materials likely to breach peace. The duo is expected to appear in court on 6 December 2011.

Molly Chimhanda, advocacy officers with the Media Monitoring Project of Zimbabwe (MMPZ), Gilbert Mabusa, the chairperson of MMPZ’s Public Information Rights Forum Committee for Gwanda.

Gwanda magistrate Blessing Gundani on 7 December 2011 reserved judgment to 9 December on following an application for bail by detained Media Monitoring Project of Zimbabwe (MMPZ) employees Fadzai December, Molly Chimhanda and Gilbert Mabusa.

Media Monitoring Project of Zimbabwe (MMPZ) employees Fadzai December, Molly Chimhanda and Gilbert Mabusa.

The state on 9 December 2011 invoked section 121 of the Criminal Procedure and Evidence Act granted bail of US$ 50.

Meanwhile the state has amended the charges being levelled against the trio to include an additional charge of insulting the person of the President under section 33 of the Criminal law (Codification and Reform) Act.

7 December 2011

9 December 2011
### Beaten/Bombed

<table>
<thead>
<tr>
<th>Victim</th>
<th>Incident/issue</th>
<th>Date</th>
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<tbody>
<tr>
<td>Newspaper vendors selling the independent daily <em>Newsday</em></td>
<td>Vendors were attacked by demonstrators’ who were part of a Zanu PF youth demonstration against foreign business people in Harare. A large number of the Newsday copies were destroyed and confiscated by the youths saying it was anti-government and anti-Zanu PF. Vendors are continuously being attacked and harassed by suspected Zanu PF supporters.</td>
<td>7 February 2011</td>
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<table>
<thead>
<tr>
<th>Victim</th>
<th>Incident/issue</th>
<th>Date</th>
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<tbody>
<tr>
<td>Paidamoyo Chipunza - a journalist with the state controlled national daily, <em>The Herald</em></td>
<td>She was assaulted while on duty by a student nurse, Ignatius Zuze, who boasted of being related to a Central Intelligence Organisation (CIO) director. The assailant was arrested by the police on charges of assault a journalist and damaging a company vehicle and a camera.</td>
<td>2 March 2011</td>
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</table>

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<thead>
<tr>
<th>Victim</th>
<th>Incident/issue</th>
<th>Date</th>
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<tbody>
<tr>
<td>Paidamoyo Chipunza, a six-month pregnant reporter with <em>The Herald</em>.</td>
<td>She was assaulted while on duty at Harare Hospital by a student nurse, Ignatius Zuze, on 2 March 2011 who boasted of being related to a Central Intelligence Organisation (CIO) director.</td>
<td>20 April 2011</td>
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</tbody>
</table>

### Harassed / Threats/Kidnapped

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<thead>
<tr>
<th>Victim</th>
<th>Incident</th>
<th>Date</th>
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<tbody>
<tr>
<td>Vendors selling Alpha Media</td>
<td>They were reportedly being</td>
<td>Month of February 2011</td>
</tr>
<tr>
<td>Holding/Event</td>
<td>Description</td>
<td>Date</td>
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<tr>
<td>Holdings (AMH) independent newspapers and other leading South African publications</td>
<td>Harassed by suspected Zanu PF supporters and state agents. Vendors are now unwilling to sell the private owned papers fearing for their lives.</td>
<td></td>
</tr>
<tr>
<td>Alpha Media Holdings-publishers of the independent daily, Newsday</td>
<td>Newsday copies were torn in Harare by a group of suspected Zanu PF Youths on their way to an anti-sanctions campaign. Two suspected Zanu PF activists who were part of the group were arrested by the police.</td>
<td>2 March 2011</td>
</tr>
<tr>
<td>Stallholders at Mbare Market in Harare</td>
<td>They were reportedly threatened with eviction from their market stalls by suspected Zanu PF youths if and when seen reading the independent daily newspaper, Newsday.</td>
<td>12 April 2011</td>
</tr>
<tr>
<td>Newsday, a privately owned newspaper published by Alpha Media Holdings.</td>
<td>Unknown criminals broke into the offices of Newsday in Harare and stole the editor’s laptop, computer hard drives and other components from computers used by senior editorial staff.</td>
<td>25 April 2011</td>
</tr>
<tr>
<td>The Masvingo Mirror</td>
<td>The weekly publication was ransacked by unknown criminals who broke into its offices and tampered with computers and laptops before stealing a memory card from an editorial camera.</td>
<td>15 June 2011</td>
</tr>
<tr>
<td>Levi Mukarati journalist with Financial Gazette and Nqaba Matshazi and Aaron Ufumeli, journalists with the Standard newspaper.</td>
<td>Assaulted and harassed under the police’s watch at Parliament Building in Harare by suspected Zanu PF supporters who part of a public hearing on the Zimbabwe</td>
<td>23 July 2011</td>
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</tbody>
</table>
Banned/Deported/ Denied work permit

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<thead>
<tr>
<th>Victim</th>
<th>Case</th>
<th>Date</th>
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<tbody>
<tr>
<td>The Mirror-Independent weekly newspaper</td>
<td>Soldiers from 42 Infantry Battalion in Gutu allegedly banned vendors from selling the newspaper, after it published a story alleging army personnel had gone about beating up people at Mupandawana growth point on Christmas eve. The Mirror was back in circulation on the 17th of January.</td>
<td>14 January 2011</td>
</tr>
<tr>
<td>The Sunday Times, Mail and Guardian, Business Day and Financial Mail which are published in South Africa as well as The Zimbabwean and Zimbabwean on Sunday, among others,</td>
<td>Foreign newspapers circulating in Zimbabwe risk being banned if they fail to register with the statutory Zimbabwe Media Commission (ZMC)</td>
<td>26 August 2011</td>
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Victory

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<tr>
<th>Parties</th>
<th>Matter</th>
<th>Date</th>
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<tbody>
<tr>
<td>Vincent Kahiya- Editor-in-Chief of Alpha Media Holdings(AMH) and Constantine Chimakure-Editor of The Zimbabwe Independent</td>
<td>They were finally removed from remand by Harare magistrate Lazarus Ndiroweyi. The duo were arrested in 2009 over a story published by the Zimbabwe Independent naming security agents that were allegedly involved in the abduction of human rights and opposition political activist. Were awaiting the Supreme Court ruling on the</td>
<td>18 March 2011</td>
</tr>
</tbody>
</table>
constitutionality of Section 31 of the Criminal Law (Codification and Reform) Act under which they are being charged.