

# MISA-Malawi wants repeal of media laws

By Gregory Gondwe: @Kalipochi

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The Malawi chapter of the Media Institute of Southern Africa (MISA-Malawi) has asked government to consider repealing all laws that are inconsistent with the constitution and those considered as an insult to the media fraternity in Malawi.



Anthony Kasunda, MISA-Malawi chairperson

## Celebrating World Press Freedom Day

This is part of the chapter appeals in the [World Press Freedom Day](#) (WPFD) commemoration statement issued on May 3, 2012 by MISA-Malawi chairperson Anthony Kasunda.

"As we celebrate World Press Freedom Day, MISA-Malawi is appealing to the current administration led by Her Excellency Mrs. Joyce Banda to consider making the environment freer to journalists, media workers as well as advocates of media freedom and freedom of expression..." said Kasunda.

The statement dwelt on the positive and negative developments which the media has experienced between WPFD last year to now and suggested solutions to some.

Kasunda said as nations the world over are commemorating the day, MISA-Malawi wanted like to highlight some developments that have occurred over the past year, as they had impacted either positively or negatively on the media industry especially on its freedom and freedom of expression.

## Media versus the government

The MISA-Malawi chair went straight to a issues between government and the media since 2011.

He says MISA Malawi has been raising concern on the amendment of Section 46 of the [Penal Code](#) which empowers a minister to ban publications deemed 'not in the public interest.'

He said although government argues that the amended clause is in line with Malawi's democratic values, the stand of MISA-Malawi as a media freedom watchdog has always been that the section negates on media freedom as stipulated in or constitutional.

Kasunda first quotes the old section which reads:

*"If the Minister is of the opinion that the importation of (a) any publication (b) all publications published by any person would be contrary to the public interest, he may in his absolute discretion, by order, prohibit the importation of such publication or publications and in the case of a periodical publication may by the same or subsequent order prohibit the importation of any past or future issues thereof."*

He then compares it with the amended section which states:

*"If the Minister has reasonable grounds to believe that the publication or importation of any publication would be contrary to the public interest, he may, by order published in the gazette prohibit the publication or importation of such publications".*

"The operative word in the old section was importation. The amended version may have removed the minister's 'absolute discretion' and replaced it with 'reasonable grounds' but in essence the amendment expanded the minister's powers to ban not just importation of certain materials but local publications as well," argues Kasunga.

He argues further, that the minister remains with power to ban publications without any guiding framework.

## **A threat to the media?**

He said this amendment is of great concern to advocates of media freedom and freedom of expression because the minister can decide to ban any publication critical of the state on the pretext of safeguarding public interest.

Kasunda argues further that this is a serious threat to media freedom and fails to satisfy the test on limitations on rights as provided for under Section 44 (2) of the Malawi Constitution which requires that any law that seeks to limit the exercise of human rights should be "reasonable", "recognised by international human rights standards" and "necessary in an open and democratic society."

"Section 46 of the Penal Code, as amended, clearly fails this test," he concludes.

## **Working in the media environment**

Turning to the working environment for a journalist in Malawi, Kasunda says it has also been hostile for journalists and media workers who have often times been accused of unprofessionalism.

"Both members of the public and some overzealous politicians have accused sections of the media of bias towards one camp or another," bemoans Kasunda.

But he says MISA-Malawi would also like to use the WPFDC celebrations to remind government of the body's concern in the way presidential press conferences were being held whenever the late president Bingu Wa Mutharika would be returning from abroad.

"Presidential press conferences were being conducted in open and hostile environment risky and dangerous for the media practitioners," said Kasunda. "We believe that presidential press conferences should be held in secluded places such as

the VVIP lounge at the airport as has been the case in the past or at state residences where journalists would feel secure and safe from party zealots."

Such press conferences he said should also be restricted to the media.

"We believe such an arrangement would protect journalists from some overzealous political party members renowned for intimidating and threatening the media during such conferences," he said.

## **The 20 July 2011 demonstrations**

The other negative point of highlight in the period under review is what happened on 20 July 2011 during anti-government demonstrations.

He said the media experience on the day was also a nightmare and a reminder of the repressive environment the media were operating under.

"Journalists and members of the general public were subjected to unnecessary mental and physical harm which should not have been the case in a democratic state worth the name," he recalls.

He says the citizens, as well as the media, were merely exercising their constitutional right over the worsening economic and governance situation in the country.

"The constitutional violation by government was of great concern to MISA Malawi and all media freedom and freedom of expression advocates across the region and indeed the entire world," says Kasunda.

He discloses in the WPFDD statement that the chapter submitted a list of up to 23 victimized journalists assaulted during the 20-21 July demonstrations to a commission of inquiry which is handling the matter.

"We hope that the commission will not turn into a white elephant and that it will execute its duties with professionalism," he says.

## **Journalists denied access to information**

The area which Kasunda says disturbed the chapter is on experiences where journalists were being denied access to cover government as well as civil society functions.

As MISA-Malawi, he says they would like to call upon all stakeholders including civil society organisations to adopt constructive strategies in advocating for change rather than being at the fore in infringing on constitutional provisions, which clearly provides for journalists' right to access information.

"Barring reporters from covering a news briefing is retrogressive and unwarranted in any democracy worth the name," he says "Barring some sections of the media from covering functions would also easily be construed as lack of tolerance and deliberate and strategic to deny Malawians access to opposing and critical information on our actions and plans."

He says such actions could further mean that some organisations only want to deal with media outlets that promote their cause, which is unhealthy and regrettable in a democracy. Kasunda then says Malawians need all sides to an issue to make informed decisions and true democracy depends on the extent to which leaders tolerate opposing views.

## **Government urged address the challenges**

"As we celebrate WPFDD 2012, we would therefore like to appeal to the current administration led by Her Excellency Mrs. Joyce Banda to address the challenges the media in the country have been experiencing in the past two years," says

Kasunda.

He said MISA-Malawi is appealing to government and specifically the President to ensure that all repressive pieces of legislation are repealed in defense of media freedom and freedom of expression.

"In the same vein, we would like to state that MISA Malawi does not condone biased reporting and neither does it encourage irresponsible journalism," he says.

MISA-Malawi has also chided government for failure to take care of its department of information as well as mismanaging the state broadcaster Malawi Broadcasting Corporation (MBC).

He however says the chapter will continue to engage government to promote the country's state broadcaster into a public broadcaster and address other concerns on unprofessional conduct of reporters.

"The chapter is very optimistic that MBC will strive to be very professional in its reporting, now that the broadcaster is under new management," says Kasunda.

MISA-Malawi says journalists both from public and private media need to remain professional and avoid serving the interests of one section of society.

"Our appeal also goes to government to consider allocating adequate resources to the Ministry of Information which is very crucial in information dissemination," he says.

Kasunda says as a line ministry, journalists and media workers look up to the Ministry of Information for guidance and policy direction but of late, the ministry has been failing to fulfill some critical assignments due to lack of financial, material and technical support.

## **The emergence of new media**

Turning to positive developments the media fraternity has experienced under the period in review Kasunda says MISA-Malawi has noted the emergence of new media such as online publications which have and continue to offer Malawians and other information seekers an opportunity to have a wider choice of news and information sources.

Kasunda says MISA-Malawi also acknowledges the freedom of information dissemination through blogging, Facebook and Twitter, among other new media.

"This is the reason why the chapter, with financial support from the Public Affairs Section of the US Embassy, has introduced new categories of media awards to recognise excellence that has come with the emergence of new media," he says.

## **The issue of broadcasting agencies**

Then he observes in the statement that following public outcries for the Malawi Communications Regulatory Authority (MACRA) to advertise more frequencies, the communications regulatory body did so in November 2011.

"MACRA awarded new broadcasting licenses, for both radio and television to applicants two years after the regulatory body advertised for new applications for radio and television licenses," he says.

He however added that what was disheartening was that out 30 applicants for television and radio licenses, only 8 were successful following an evaluation process which the regulatory body said was still going on.

He also named new television stations that have been awarded licenses that included: Galaxy TV, African Bible College

(ABC) TV, Channel for All Nations (CAN) TV and Gateway TV.

"It was not clear as to who owns Gateway TV or Galaxy TV. There was widespread speculation; however, that Galaxy belongs to the late president Mutharika's family," observed Kasunda.

And said much as MISA-Malawi appreciates the granting of licenses to these new applicants, it has noted with great concern that some notable institutions who applied for broadcasting licenses were left out.

Those that were glossed over include MISA-Malawi which applied for a community radio station on behalf of the community in Mulanje, privately owned Zodiak Broadcasting Station (ZBS), Blantyre Printing and Publishing Company; Joy Radio owned by former president Bakili Muluzi, were among applicants.

"We are, therefore, appealing to MACRA to consider exercising transparency when scrutinizing applications. MACRA should also consider expediting the process of scrutinizing applications for broadcasting licenses to enable more players in the broadcasting sector," he said.

He pointed out that in the view of MISA-Malawi, the country continues to experience incidences of pirate broadcasting due to delays in granting frequencies in areas where signals for some mainstream broadcasters are not available.

## **The Access to Information Bill**

Turning to the campaign for the enactment of Access to Information (ATI) Bill, Kasunda says MISA-Malawi applauds government, specifically the Ministry of Information for spearheading the process of drafting a policy on ATI.

"We strongly believe that once the policy has been fine tuned, the bill will be taken to cabinet and finally to parliament for debate," he said, adding that the chapter has now the full support of civil society organisations campaigning for the ATI bill from various thematic areas.

"It needs not to be overemphasized that the ATI Bill is not only for the media, but for members of the public as well," said Kasunda who also acknowledges the financial, technical and material support we are getting from partners such as the Open Society Initiative for Southern Africa (OSISA) and UNESCO to sustain the campaign for the enactment of the ATI bill.

He says at this time of WPFDD commemoration, MISA-Malawi extends its heartfelt appreciation to the Malawi Human Rights Commission (MHRC), civil society organisations led by the Human Rights Consultative Committee (HRCC) and the Centre for Human Rights and Rehabilitation (CHRR) among other institutions, for having remained steadfast in their fight for media freedom and freedom of expression in the country.

"The chapter is aware that some human rights defenders and advocates of media freedom and freedom of expression in the country have undergone torture through arrests, intimidation, physical and verbal attacks, including death threats," he says.

## **Celebrate the fundamental principles of press freedom**

MISA-Malawi celebrated WPFDD in all the three regions of the country since 2010 in collaboration with various partners to offer an opportunity to both the media and members of the public to grace these activities.

Kasunda observes that the United Nations set aside 3 May as WPFDD to celebrate the fundamental principles of press freedom in the world and to pay tribute to journalists who have lost their lives while on duty.

"The day also offers an opportunity to media practitioners and the citizenry to reflect on the role the media plays in social and economic development of their respective countries," he says.

He points out that freedom of expression is one of our most precious rights. It underpins every other freedom and provides a foundation for human dignity.

"Free, pluralistic and independent media is essential for its exercise," he declares.

Before adding that media freedom entails the freedom to hold opinions and to seek, receive and impart information and ideas through any media and regardless of frontiers, as stated in Article 19 of the Universal Declaration of Human Rights.

"This freedom is essential for healthy and vibrant societies," he says.

## ABOUT GREGORY GONDWE: @KALIPOCHI

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