

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL ZMB 2/2016:

19 October 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the attacks on press freedom through the closing of the newspaper *The Post*, the seizure of its assets, the charges brought against two of its editors, Mr. **Fred M'membe** and Mr. **Joseph Mwenda**, the charges brought against Mr. M'membe's wife, Ms. **Mutinta Mazoka M'membe**, the arrest of and charges brought against staff members of *Muvi TV* staff members, Mr. **John Nyendwa**, Mr. **Mubanga Katyeka**, Mr. **Joe Musakanya**, and Mr. **William Mwenge**, as well as pressure exerted against media and journalists ahead of the general elections in Zambia.

According to the information received:

Concerning Mr. Fred M'membe, Ms. Mutinta Mazoka M'membe and Mr. Joseph Mwenda

On 21 June 2016, the Zambia Revenue Authority (ZRA) ordered the closure of the independent newspaper *The Post* and the seizure of its properties for alleged tax evasion amounting to approximately 68 million kwacha (approximately USD 6 million). ZRA officers raided the offices of *The Post*, forcing employees to leave, locking the premises and stationing armed police guards outside. The shutdown was disputed by the editors of the newspaper, who claimed the outstanding bill was part of a court dispute, and an audit to ascertain the amount of money owed had not yet been completed when *The Post* was served with the closure notice.

The Revenue Appeals Tribunal subsequently issued an order compelling the ZRA to allow *The Post* to reopen its offices. On 27 June 2016, in response to the tribunal's ruling, the President of Zambia issued a statement condemning the actions of the tribunal.

On 28 June 2016, *The Post's* editor-in-chief, Mr. Fred M'membe, his wife Ms. Mutinta Mazoka M'membe, and the deputy managing editor, Mr. Joseph Mwenda were arrested. The arrest reportedly took place when the three tried to enter the

head office of *The Post* following the order from the Revenue Appeals Tribunal. The police refused to recognize the order. Mr. Mbembe, Ms. Mazoka M'membe, and Mr. Mwenda, were released on bail the following day, but were charged with criminal trespass and uttering a false document. Prosecutors maintain that the court order of the Revenue Appeals Tribunal was illegally obtained, and therefore can be classified as a false document.

The shutdown of *The Post* is reportedly the latest in a series of increased pressure against the newspaper. In April 2016, two of *The Post*'s journalists were charged with defamation of the President after having reported an opposition politician's allegation that the President used taxpayer's money to vacation at a holiday resort. Mr. M'membe has also been the subject of several defamation suits in the past.

In 2015, the Minister of Information had threatened *The Post* with closure. On July 15 of that same year, the authorities had brought criminal charges against Mr. M'membe for allegedly having disclosed classified information in an investigative piece about corruption in the ruling political party.

Concerning allegations of undue limitations to press freedom in connection with the general elections and the arrest of and charges brought against Mr. John Nyendwa, Mr. Mubanga Katyeka, Mr. Joe Musakanya, and Mr. William Mwenge

It has been reported that the June 2016 actions taken against *The Post* and the above named individuals were politically motivated, since they aimed to stifle one of the few independent and critical newspapers before the general elections of 11 August, 2016. In early June, an independent news outlet, *Open Zambia* published what appeared to be a leaked Government document dated April 4, 2016, in which the ruling political party outlined the strategy to influence election results through, among other things, media control.

International election observers noted that opposition parties have allegedly been prevented from campaigning through selective enforcement of the Public Order Act, which gives the police the ability to suspend campaign events. Further, on 9 July 2016, the Electoral Commission of Zambia suspended political campaigning for ten days in crucial voting bases following inter-party violence.

On 22 August 2016, Zambia's Independent Broadcasting Authority (IBA) suspended the licenses of *Muvi TV*, the country's largest privately owned television station, as well as two other privately owned stations, *Komboni Radio* and *Radio Itezhi Tezhi*. The IBA alleged that the three were guilty of misconduct and posed a risk to national peace and stability before and after the presidential elections. According to the IBA Amendment Act, the IBA is required to give broadcasters notice of complaint and an opportunity to respond before suspending their licenses. No notice was given. The licence was reportedly reinstated after the radio station acknowledged that it had committed wrongdoings.

On that same day, police also arrested four *Muvi TV* staff members. Mr. John Nyendwa, Mr. Mubanga Katyeka, Mr. Joe Musakanya, and Mr. William Mwenge were arrested for criminal trespass when the workers entered the *Muvi TV* office in Lusaka after the police and officials from the Zambia Information and Communications Technology Authority had taken control of the office. The four staff members were later released, but are still facing charges of criminal trespassing.

On 12 September 2016, the suspension of the license of *Muvi TV* was lifted by the IBA. *Komboni Radio's* suspension is reportedly still in place.

We express concern at the arrest, detention, and charges against Mr. M'membe, Ms. Mazoka M'membe, and Mr. Mwenda, which appear to be directly related to the legitimate exercise of the right to freedom of expression in the performance of their duties at *The Post*. We are similarly troubled by the arrests of and charges brought against Mr. Nyendwa, Mr. Katyeka, Mr. Musakanya, and Mr. Mwenge, which likewise appear to be inseparable from their professional duties at *Muvi TV*.

We are similarly concerned at the suspension of broadcasting licenses, as well as the shutdown of the operations of *The Post* and the lack of recognition of the order of the Revenue Appeals Tribunal to reopen *The Post's* offices. We express further concern at the larger impact of continued pressure being placed on the media ahead of the elections, which may have impacted the election results and, in general, contribute to a chilling effect on media entities, stifling reporting on issues of public interest, particularly those expressing dissenting opinions, and restrict the legitimate exercise of the right to freedom of expression, including the right to information.

We would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of expression in accordance with fundamental principles set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Zambia on 10 April 1984. We reiterate the principle enunciated in Human Rights Council Resolution 12/16 which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate, engaging in election campaign, and expression of opinion and dissent.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above mentioned allegations.

2. Please provide information about the justification and legal basis for the arrest, detention and charges against Mr. M'membe, Ms. Mazoka M'membe and Mr. Mwenda. In particular, please explain how this is compatible with the order issued by the Revenue Appeals Tribunal. Please provide information on measures taken to ensure the named persons a fair trial in accordance with Zambia's obligations under international human rights law.

3. Please provide detailed information on the legal grounds invoked for the decision to shut down the Zambia Post and seize its property before the judiciary has had the opportunity to fully consider the matter, indicating how this is compatible with international human rights norms and standards, in particular article 19 of the ICCPR.

4. Please provide information about the allegations of media control to influence the election results. Please also provide detailed information about the justification for the decision by the Electoral Commission to suspend political campaigning in a number of voting bases.

5. Please indicate what measures have been taken to ensure that journalists and those working in the media in Zambia are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and article 19 of the ICCPR, , which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." We would like to remind your Excellency's Government that any restriction to this right shall be provided by law; may only be imposed on one of the narrow grounds set forth in paragraph 3 of article 19; and must conform to the strict tests of necessity and proportionality.

The Human Rights Committee has also stated in General Comment No. 34 that "The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression" (CCPR/C/GC/34, para. 42).

We would also like to refer your Excellency's Government to paragraph 79 of the 2012 report of the previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, where he expresses his concern "at the continuing existence and use of criminal laws against journalists and members of the media, which are often used by authorities to suppress 'inconvenient' information and to prevent journalists from reporting on similar matters in the future" as well as the "chilling effect which stifles reporting on issues of public interest." The Special Rapporteur has recommended in paragraph 104 of this report that States should, "as part of their positive obligation to promote the right to freedom of expression, ... give full political support to strengthening media freedom and ensuring that independent, plural and diverse media can flourish. Any laws regulating the work of the media should adhere to the highest international standards on freedom of opinion and expression and allow uninhibited debate in the media, in line with principles of diversity and plurality" (A/HRC/20/17).

We also wish to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

- article 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; and

- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.