

Malawi using archaic laws to persecute media

By Gregory Gondwe: @Kalipochi

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The regional secretariat of the Media Institute of Southern Africa (MISA) has observed that the Malawi government is using archaic pieces of legislation to persecute the media and it has since asked government to stop the tendency and provide a more enabling environment for media freedom, freedom of expression and ultimately citizen empowerment.

Acting regional director for MISA, Zoé Titus made the observations in a statement issued on Friday, 9 March 2012, which was in response to a statement released on the same day by state house press officer, Albert Mungomo, titled *Civil Society Organisations and Media Conduct Inciting Anarchy in the Country*.

Government finds fault with the media

The statement, from the president faulted the media for writing stories and using words that it claimed are demeaning and insulting to Bingu wa Mutharika, and warned that government will not hesitate to revoke pieces of legislation that protects the president from such acts by prosecuting media practitioners deemed to be doing the acts.

The statement says the laws of Malawi provide for the total respect and protection of the head of state.

It Section 3 (2) of the protected Flag, Emblems and Names states that: "Any person who does any act or utters any words or publishes any writing calculated to or liable to insult or to show disrespect to or with respect to or with reference to the President...shall be liable to a fine of 1000 pounds and to imprisonment for two (2) years."

Is the law archaic?

Titus observes that this law that the media are said to be in breach of, is archaic and serves more to provide evidence for the need for critical reform than anything else.

"That the law still quotes a fine to be paid in Pound sterling and not in Malawi Kwacha elucidates the fact that this piece of legislation remains stuck in the time warp of colonial and repressive tradition and also proves the urgency with which legal reforms must take place in Malawi, forty-eight years after independence.

He then went further to cite several other laws of this nature and age which still exist in Malawi like the Official Secrets Act (1913), the Printed Publications Act (1947) and the Censorship and Control of Entertainment Act (1968).

"Still, there exists also Section 46 of the Penal Code, which empowers the minister of information to ban any publication

that may be deemed not to be in the public interest, as defined by that minister," said Titus. "Clearly, these laws have no role to play in a democracy and while we are fully aware that some of them have been referred to the Law Commission for review, the fact that they still remain active while under review does not inspire confidence, as they may be permanently condemned to the review process."

Media freedom, freedom of expression in Malawi

He then started responding to most points that were raised by Mutharika's press officer in his statement which the regional secretariat of MISA says it noted with profound distress, as it is indicating the growing intolerance of media freedom and freedom of expression in Malawi.

"Ordinarily, a statement such as the one we received today would not warrant this kind of response. Yet, coming as it does from a country that is facing serious democratisation and governance challenges, we would like to express our deepest concern over what we consider serious threats to media freedom and freedom of expression in Malawi," said Titus who added that it was MISA's hope that the government of Malawi, president Mutharika in particular, will be able to consider the media body's point of view on the same issues.

Titus begins with a strong disagreement with the suggestion that the media in Malawi are making it their vocation to demean and insult president Mutharika.

In a democracy, he says the media should be concerned with 'shaping public opinion, mediating the debate between the state and civil society, but also acting as a watchdog over public process, against private gain.

He says free media is therefore a prerequisite to development in the promotion of democracy, human rights and governments as stated in a communiqué issued in Lusaka, Zambia, by the 7th Regional Meeting of the African, Pacific and Caribbean-European Union (ACP-EU) Joint Parliamentary Assembly in February 2012, where Malawi was represented.

"We find it odd, therefore, that the government of Malawi does not share, or indeed, recognise that based on the above, democracy should be about empowering citizens so that they are able to take ownership of their own growth and development objectives, harmonising them with national aspirations after interacting and engaging with differing views," says Titus.

Adding that this sacrosanct activity is guaranteed and protected by the Constitution of Malawi and is facilitated, on a daily basis, by the media.

Titus says MISA is also shocked that the government of Malawi is insisting that president Mutharika 'has never ordered the arrest' of media practitioners and human rights defenders.

"This is not the first time that this claim is being made. We are aware of cases where journalists have been threatened at press conferences for 'asking the wrong questions,' verbally assaulted and threatened by senior government officials, and had their company vehicles torched, to list but a few incidents. We deeply regret, therefore, to note how this government defines what constitutes a media freedom violation," explained Titus.

Singling out of media

Another concern of MISA is where it singles out phrases used by leading opinion writers in Malawi to refer to president Mutharika.

"If the singling out of these phrases does not constitute a threat then nothing else does," says Titus, who says one of the columnists targeted is BBC Correspondent, Raphael Tenthani, who is famous for using the phrase 'Big Kahuna' to refer to Mutharika.

Tenthani is said to have told MISA that this phrase is actually respectful, "It means 'the Big Boss.' I don't know how it begins to be demeaning to the president. I have met the president several times and we have joked about it for I use it almost every week in my column. But I won't stop using it because doing so would be unwittingly admitting I have been disrespecting my president all these years," Tenthani is quoted as saying.

Titus then says MISA is aware also that the 20 July 2011 mass demonstrations, the Malawi Communications Regulatory Authority (MACRA) ordered all radio stations that were carrying live broadcasts of the lawful demonstrations to stop all live broadcasts.

He pointed out that the statement from the state house chooses to ignore this fact by alleging sensational reporting on the part of the radio stations which fell victim to this directive shows, we are afraid, the signs of a government that may not be prepared to hear and confront the truth from its people.

The last and fourth point raised by Titus is also concerned with the use of social networks, where the statement claims that the state house monitors carefully such networks that are hostile and probably careless in demeaning the state president.

"We are extremely worried that the government of Malawi may be conducting some illegal surveillance of internet use in Malawi based on their faulty perception that social networks are inherently hostile," says Titus, who observes that this, in itself, reveals a profound lack of understanding of what the internet is and its role in a democracy.

"We will continue to pay close attention to the tone and language directed at internet use in Malawi as we believe, based on the statement, that there exists a significant threat to freedom of expression in cyberspace in Malawi," he says.

Titus says when all is said and done he still believes that the relationship between the government and the media in Malawi would be beneficial from a process of mutual engagement.

"We are most willing to further open room for lasting dialogue between the government and media," he says.

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