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# POLICY BRIEF

## on the Independent Broadcasting Authority (IBA)







# **Policy Brief**

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Authority (IBA)

# Preface

This Policy Brief on the Independent Broadcasting Authority (IBA) in Zambia is a product of Panos Institute Southern Africa, with input from our partners in civil society, the media and cooperating partners.

This Policy Brief has been produced as part of Panos' ongoing efforts to contribute to an enabling media policy, legal and regulatory framework, creating an environment where different stakeholders, including policy implementors, contribute to the enjoyment of the right to freedom of expression, access to information.

The Policy Brief is expected to contribute to ensuring that any new regulation, licensing, and advertisement rules and processes meet international standards, and do not violate citizens rights, especially the right to freedom of expression, assembly, and association.

The Policy Brief gives an overview on the role of the Independent Broadcasting Authority (IBA) as a statutory body responsible for regulating the broadcasting industry in Zambia, by ensuring the promotion of a pluralistic and diverse broadcasting industry. The Policy Brief also provides an overview of the functions of the IBA, which include the granting, renewal, suspension, and cancelation of radio and TV broadcast licenses.

The Policy Brief also provides details on the appointment procedure and structure of the IBA overseen by a Board that appoints and supervises the Director General who leads the day to day operations of the Authority. The Policy Brief further makes recommendations to shield the IBA from unnecessary political influence, and creating an environment where the Authority can independently execute its mandate.

The contents of this Policy Brief may not be exhaustive, but we trust it will be a useful resource for the IBA, as well as decision makers like government line ministries and Members of Parliament, the media, lawyers, civil society, and other stakeholders.

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The right to independent media free from government interference is founded within the right to know, which is also a component of freedom of expression. The public enjoys the right to know when the media and the public enjoy the right of freedom of expression through media regulation that is in tandem with international and best practices.

Freedom of expression is protected under the Constitution of Zambia and also by international and regional human rights law such as the Universal Declaration on Human Rights<sup>1</sup>, the International Covenant on Civil and Political Rights<sup>2</sup>, the African Charter on Human and Peoples Rights<sup>3</sup>, the Declaration on the Principles of Freedom of Expression in Africa<sup>4</sup>. These provisions are all based on Article 19 of the Universal Declaration, which states:

*“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.”*

However, freedom of expression is best enjoyed under a media regulatory environment free from the strong hand of the state in controlling the media. In an environment where the state controls the media through regulation, there is less enjoyment of freedom of expression as the media is subjected to self-censorship, and those media houses that do not subject themselves to self-censorship are closed by the state. And ultimately, human rights and essential freedoms in a democracy suffer the greater consequences.

## What is the Independent Broadcasting Authority (IBA)

The Independent Broadcasting Authority IBA was created by the Independent Broadcasting Authority (IBA) Act No.17 of 2002, which was amended through the IBA (Amendment) Act No. 26 of 2010 and IBA Act No. 18 of 2017. The IBA became operational in July 2013

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<sup>1</sup> [https://www.ohchr.org/en/udhr/documents/udhr\\_translations/eng.pdf](https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf)

<sup>2</sup> <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>3</sup> <https://www.achpr.org/legalinstruments/detail?id=49>

<sup>4</sup> <https://www.achpr.org/pressrelease/detail?id=490>

The IBA is responsible for regulating the broadcasting industry in Zambia, by ensuring the promotion of a pluralistic and diverse broadcasting industry. The functions of the IBA include among, others, to grant, renew, suspend, and cancel radio and television broadcast licenses.

The Authority is overseen by a Board consisting of nine nonexecutive members. All board decisions are executed by the Director General (DG). The DG is supported by an executive team with expertise in law and enforcement, economics, technical and engineering, information technology, journalism, and finance.

## What is the Mandate of IBA?

The mandate of the IBA is to provide for the control and regulation of broadcasting services in Zambia. This mandate is provided for in section 5 of the Act in the following manner.

5. (1) Subject to the provisions of this Act and the Radio Communications Act, the functions of the Authority shall be to regulate the broadcasting industry in Zambia...

(d) to grant, renew, suspend, and cancel licenses and frequencies for broadcasting and diffusion services in an open and transparent manner;<sup>5</sup>

Even if section 5 is couched in a manner that shows that IBA regulates the broadcasting industry in Zambia, the fact is that the IBA does not regulate the whole broadcasting industry in the same way. The IBA mostly regulates private broadcasting stations. When it comes to the Zambia National Broadcasting Corporation (ZNBC), IBA may issue advisory opinions or recommendations relating to broadcasting standards and ethical conduct. It cannot cancel the license of ZNBC as it can for private stations.

This variance in media regulation makes the IBA not impartial and not independent in its regulatory function of the broadcasting industry in Zambia. The IBA regulates the private broadcasting sector with a heavy hand while merely giving advisory directives or recommendations to ZNBC. This makes the level playing field in the broadcasting industry in Zambia very uneven.

The IBA is also mandated to set standards to be followed by radio and television stations and monitor licensees to ensure that they comply with the set broadcasting standards. To achieve this, the IBA has set up an Inspectorate and a Consumer Affairs unit that receives all public complaints concerning radio and television stations or content that the stations broadcast.

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<sup>5</sup> Section 5(1), Independent Broadcasting Act No.17 of 2002

During the 3rd Universal Periodic Review (UPR) cycle, it was recommended by the participating States of the United Nations Human Rights Council that Zambia should ensure the impartiality of the Independent Broadcasting Authority.

“Ensure the impartiality of the Independent Broadcasting Authority.” **Government position: *Supported*.**

The government supported this position and committed itself to reviewing the IBA Act. However, it is almost five years since the government of the Republic of Zambia was recommended to review the IBA Act. Still, to date, there has been no movement in this direction.

The IBA, lacks the necessary safeguards in the Act to make the institution an autonomous and independent regulator of the broadcasting industry in Zambia. This lack of autonomy and independence in the IBA can be contemplated through the appointment mechanism provided for in the IBA Act, particularly in the appointment of the Board of IBA and that of the Appointments Committee.

## Appointment of the board

The power to appoint the members of the Board of IBA is heavily and exclusively vested in the Minister responsible for broadcasting in Zambia.

However, to reflect a truly independent broadcasting regulator in Zambia, there is a need for a change in the IBA law to include broader participation in the appointment of the members of the Board of IBA.

Section 7 of the IBA Act No. 17 of 2002 vests the authority to appoint members of the Board of IBA to the Minister.

**7.** (1) There is hereby constituted the Independent Broadcasting Authority Board which shall, subject to the provisions of this Act, perform the functions of the Authority under this Act.

(2) The Board shall consist of nine part-time members appointed by the Minister, on the recommendation of the appointments committee, subject to ratification by the National Assembly.<sup>6</sup>

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<sup>6</sup> Section 7(1), Independent Broadcasting Act No.17 of 2002

The Minister, on recommendations of the Appointments Committee appoints the members of the board of the IBA. However, the Appointments Committee also lacks independence as the Minister constitutes it.

**8.** (1) The Minister shall, for the purposes of section seven, constitute an ad hoc appointments committee consisting of the following:<sup>7</sup>

This provision compromises the autonomy and independence of IBA from political influence as the Minister is a political appointee to fulfill a political end. An independent Committee selected by Parliament can best be tasked with this responsibility and guarantee that the IBA is independent and impartial.

Even if the IBA Act provides that the IBA shall not be under the control of any other person or authority as provided under section 6, however, this perceived independence is watered down by the powers given to the Minister under section 7 and section 8 of the Act to appoint the members of the board, which are nominated on recommendations of the Appointments Committee which the Minister also appoints.

6. Except as otherwise provided in this Act, the Authority shall not be subject to the direction of any other person or authority.

The IBA as a regulator falls short of the required international standards, which dictates that States have to ensure that “there is regular independent monitoring and evaluation of the state of media pluralism in their jurisdictions based on a set of objective and transparent criteria to identify risks to the variety in ownership of media sources and outlets; the diversity of media types; the diversity of viewpoints represented by political, ideological, cultural and social groups; and the diversity of interests and viewpoints relevant to local and regional communities.” (Recommendation CM/Rec (2018)1)

The Minister responsible for broadcasting is also given too much power to exempt any person or institution from the provisions of this Act. This unlimited power may arm the Minister to exempt on political lines any radio or television station that supports the government from being regulated by IBA. Section 19(5) states that.

(5) The Minister may, in consultation with the Authority, by Statutory instrument, exempt any person, institution, or organization from any of the provisions of this section.

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<sup>7</sup> Section 8(1), Independent Broadcasting Act No.17 of 2002



One of the contentious provisions in the IBA Act, which the government has used to silence independent and private broadcasting stations, is section 30 of the Act. Suffice to state that section 30(1) applies only to the independent broadcasting stations and does not apply to ZNBC which is under a separate Act of Parliament. Section 30 states that.

**30.** (1) Subject to the other provisions of this section the Authority may suspend or cancel a license issued under this Act if— <sup>8</sup>

Below are the instances when independent broadcasting stations have fallen victim to the provisions of section 30 of the IBA Act. Most of these broadcasting stations were critical of the government in their editorial and programming.

*“Zambia’s Independent Broadcasting Authority (IBA) has suspended the broadcasting licences of the country’s biggest independent TV station as well as two radio stations for “unprofessional conduct posing a risk to national peace and stability” before, during and after the 2016 elections.*

*The broadcasting regulator justified its actions against Muvi TV, Komboni Radio and Itezhi Tezhi Radio by pointing to section 29 (1)(j) of the IBA Amendment Act of 2010, which states that “the IBA board may cancel a broadcasting license if the cancellation of the license is necessary in the interest of public safety, security, peace, welfare or good order”.<sup>9</sup>*  
*March 4, 2019.*

*“IBA Board Chairperson Chanda Kasolo who is also Ministry of Information Permanent Secretary says the decision to suspend Prime TV was made after thorough consultations and engagement with stakeholders. He said there was no political interference involved and the decision comes after thorough consultations and engagement with other stakeholders.*

*IBA has also issued 22 radio licences, suspended two including Prime TV and Valley FM and revoked another two licences of Ngoma of Luanshya and Kafue radio stations.*

*Valley FM Radio License of Nyimba is suspended for 60 days due to unprofessional conduct. The station is said to have failed to balance and moderate a discussion program and has during the suspension period been directed to conduct in house training for management and engage trained Journalists.”*

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<sup>8</sup> Section 30(1), Independent Broadcasting Act No.17 of 2002

<sup>9</sup> Independent TV Station and Two Community Radio Stations Suspended Amid Disputed Elections in Zambia: Global Voices

# Appointment of the Director General of IBA

Further, the Director General of IBA is appointed by the Board, who are appointed by the Appointments Committee that is selected by the Minister as provided by section 17 of the IBA Act.

(1) The Board shall appoint the Director-General on such terms and conditions as the Board may, with the approval of the Minister, determine.

Therefore, the IBA should fall under the necessary international standard requirement of independence and impartiality that a broadcasting regulator ought to have. The Executive has or can exercise so much influence and power over IBA because of the way the Board and the Director General of IBA are appointed.

To reflect a true independent regulator of broadcasting in Zambia, there is a need for a review, repeal, and replace the IBA Act to include broader participation in the appointment of the members of the Board of IBA independent from the current political situation wholly dependent on the Minister. The Appointments Committee, which is responsible for appointing members of the Board, should be appointed by an independent Committee of Parliament.

Ends

Several sections in the IBA Act give power to the IBA and influence the decisions that IBA can make towards an independent broadcasting station. **With the powers available to the Minister in the IBA Act, the Minister can abuse his powers by selecting an Appointments Committee from political party cadres who will later appoint board members from their sphere.** The selected sections below compromise **the independence of IBA from political influence premised on the power and influence that the IBA Act gives to the Minister responsible for broadcasting.**

Section 7(2), Section 8(1), Section 8(2), Section 10(4), Section 13, Section 17(1), Section 18(1), Section 18(2), Section 18(3)

**To shield IBA from unnecessary political influence, there is a need for an independent Committee selected by Parliament to be responsible for appointing the members of the board of the IBA.**

Even the other IBA staff appointed by the board of IBA have to do with the approval of the Minister. The provisions of the IBA Act literary makes IBA a department in the Ministry responsible for broadcasting as opposed to being an independent regulator.





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