

An Assessment of Artistic Freedom: Zambia



SELAM

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Foreword

The year 2022 was significant for Selam; We celebrated our organisation's 25th anniversary, which gave us an opportunity to put together our five-year plan for the continent. This plan includes advocacy and lobbying strategies inspired by the African Union's Plan of Action on Cultural and Creative Industries, whose objectives include, among others, Fostering creativity and innovation for socio-political development, job and wealth creation, and Creating an enabling environment for the growth of Africa's cultural and creative industries. As part of our efforts to contribute to an enabling environment for creatives to freely express themselves, we carried out research in eight African countries to assess the state of artistic freedom in order to understand the lobbying and advocacy strategies required to advocate for creatives' freedom of expression.



The research was part of our Pan African Network for Artistic Freedom project, which was launched in 2021 to promote artistic rights through research, capacity building, network building, and lobbying governments for better policies for the sector. PANAF is being implemented in collaboration with culture and civil society organisations in Nigeria, Kenya, Rwanda, Ethiopia, Uganda, Mozambique, Zambia and the Gambia. The researchers examined the legal frameworks that govern artistic expression, identified the major government agencies, national stakeholders, and artistic unions to be engaged in the lobbying process, and provided an overview of how copyright laws protect artistic works and whether practising artists benefit from them.

The reports note that authorities limit this right across the eight countries, particularly with regard to artists perceived to be government critics. Through direct and indirect means, these artists' ability to perform, display, or disseminate their work is constrained. As a result, few artists remain willing to publicly express their critical opinions or explore contentious themes in their work as a result, and those who do risk facing harsh repercussions. The methods used by the authorities to stifle critical artistic expression, include harassment, intimidation, threats, interference, legal pressure, arrest, imprisonment, and torture with a majority of victims being musicians, film-makers and cartoonists. Finally, the report contains a number of recommendations to authorities and other stakeholders for concrete steps needed to improve the situation of artistic freedom of expression in each country. This report is very essential as it will help sustain Freedom of expression which is at the heart of artistic practice and mission. The sustainability of artistic freedom of expression is critical to the continent's democracy; increasing transparency and accountability within the governments and leaders.

Selam is proud of our partners and researchers for overcoming the challenges and completing this research, especially given the sensitivity of the subject matter. We also want to express our gratitude to all the stakeholders and artists who took part in the data collection process. And finally, the results and achievements of our work are simply not possible without the support of our donors, the Swedish Arts Council. To that end, Selam will continue to work with its partners and other cultural organisations to lobby governments to make it possible for artists to freely express themselves and distribute their work in the interests of socioeconomic development and job creation. In addition, this year will see the launch of a literature review and study to provide context for the challenges faced by women in the cultural and creative sectors, as well as feasible recommendations for achieving gender equality.

A handwritten signature in black ink that reads "Teshome Wondimu". The signature is fluid and cursive, with a long horizontal stroke at the end.

Teshome Wondimu

Founder and Executive Director - Selam

April, 2023



***Expression!on
is a Right***

Acknowledgements

The People's Action for Accountability and Good Governance in Zambia (PAAGZ) wishes to thank SELAM for their support in the implementation of the Pan-African Network for Artistic Freedom (PANAF) Chapter in Zambia and particularly the development of this report. A special thanks is given to the consultants that led the research and drafted this report, Mr. Muleta Kapatiso and Mr. Mathew Tembo. PAAGZ is also indebted to the team that was part of the report validation meeting and those whose valuable input helped shape the report into what it is. The members and institutions include:

- National Arts Council of Zambia
- Ministry of Youth Sports and Arts
- Zambia Association of Musicians
- Modzi Arts
- Chapter One Foundation
- Wordsmash Poetry
- Comedians Association of Zambia
- National Media for Arts (NAMA)
- Maiko Zulu
- 2wice

Executive Summary

Freedom is the lifeblood of democracy, and it entails the demand that in a free society, we should promote and protect those things that are inherently part of being human, namely human rights. Artistic freedoms guarantee that artists can express themselves artistically without interference and contribute to the development of the society in which they live and beyond, as far as their artistic signatures can go.

Artistic freedom is the offspring of something that is universally regarded as inherent in human existence: freedom of expression. The ability of an artist to express themselves through art, whether for the purpose of participating in social, political, or cultural discourse or simply to earn a living, is referred to as artistic freedom. In Zambia, as in many other countries around the world, artists are among the most courageous human rights defenders and social justice advocates. They have not missed the opportunity to participate and use their influence for social causes and defending human rights through art in any form, whether it is musical lyrics, poetry, drawing, paintings, photography, or expressions of folklore. Despite the enormous contributions of artists to the growth and vibrancy of our democracy through their artistic expressions, they continue to face political opposition, arrests, and court prosecutions as a direct result of their work.

The work of artists who identify as activists and human rights defenders is constantly denied wide coverage or broadcast time in mainstream media due to media censorship; artistic freedoms are under threat from such systemic and politically coordinated attacks. This study has attempted to assess artistic freedoms in Zambia by conducting an overview of the legal and institutional frameworks related to artistic freedoms in the Zambian context. The study gives the reader an understanding of freedom of expression as it relates to artistic freedoms in Zambia, as well as the international and regional foundations of artistic freedoms.



A stylized, handwritten signature in black ink, consisting of several loops and curves.

Muleta Kaptiso

Lawyer, Activist, Consultant

Acronyms and Definitions

AU	African Union
UNESCO	United Nations Education, Scientific and Cultural Organisation
UN	United Nations
UDHR	Universal Declaration on Human Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
NAC	National Arts Council

Definitions

Artist	For purposes of this research, an artist is defined to mean any person who creates or gives creative expression to, or re-creates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association
Constitution	The Constitution of Zambia Chapter 1 of the Laws of Zambia as amended by Act Number 2 of 2016
African Charter	African Charter on Human and People's Rights, 1986

Table of Contents

Foreword	4
Acknowledgements	6
Executive Summary	7
Acronyms and Definitions	8
1. Introduction	10
2. Legal and Institutional Framework on Artistic Expression In Zambia	12
2.1 The legal framework pertaining to artistic expression	12
2.2 Institutional framework pertaining to artistic expression	22
3. Situational Analysis	27
4. Recommendations	29

1. Introduction

- 1.1 Democratic governance, the most prevalent form of governance in the world, is premised on the protection of human rights and fundamental freedoms. Among these rights and fundamental freedoms, few are as essential to a functioning democracy as are the right to freedom of expression and the right to self-determination. These rights are the lifeblood of a democracy and form the foundation of people's full enjoyment of the other rights and freedoms in a polity. They also spawn a plethora of other rights and freedoms which include artistic freedoms. Artistic freedoms comprise a bundle of rights, liberties and freedoms relating to artistic expression. This bundle comprises several elements including the right to freely: (a) Generate artistic works, individually or in collaboration with others; b) Benefit, monetarily and by way of recognition from such expressions; and c) To move to distribute or enjoy such expressions.

The importance of the rights to freedom of expression and self-determination, and the right to artistic expression is evident in the fact they are contained in nearly all of the major international and regional multilateral treaty instruments and soft law.

- 1.2 As a democracy, the freedom of expression and artistic freedoms by expression are important to Zambian life and governance. This can be gleaned from constitutional provisions and provisions of subordinate statutes which guarantee these rights and set up or facilitate the establishment of institutions intended to facilitate and encourage the enjoyment of these rights.

- 1.3 Artistic freedoms face inwards and outwards. The outward face comprises the freedom to imagine, create and distribute diverse cultural expressions free of governmental censorship, political interference, or the pressures of non-state actors. Simultaneously, the outward face covers the right of all people in a polity to access artistic works as part of their general right to economic, social, cultural and political participation in their societies. Viewed this way, artistic freedoms are better expressed as a bundle of rights and freedoms which include the right to:
- a. Create without censorship or intimidation.
 - b. Have artistic work supported, distributed, remunerated.
 - c. Freedom of movement.
 - d. Freedom of association.
 - e. Protection of social and economic rights.
 - f. Participate in cultural life.



2. Legal and Institutional Framework on Artistic Expression in Zambia

2.1 The legal framework pertaining to artistic expression

2.1.1 Zambia as a country is party to and has ratified several international instruments. Zambian law on fundamental rights and freedoms is heavily influenced by international and regional instruments that form part of our international human rights law framework alongside its own domestic laws. Accordingly, there are several instruments recognised as having the force of law in Zambia. These instruments can be placed at three (3) levels, that is, the international, regional and domestic (national) level.

a. Artistic expression at the international level

2.1.2 At the international level, artistic freedoms are captured in treaty instruments issued under the auspices of the United Nations (“UN”) and soft law instruments. The main UN treaty instruments relative to artistic freedoms are the Universal Declaration of Human Rights, 1948 (“UDHR”), the International Covenant on Civil and Political Rights, 1966 (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights, 1966 (“ICESCR”). In terms of soft law instruments, the main one is the United Nations Educational, Scientific and Cultural Organization (UNESCO), ‘Recommendation Concerning the Status of the Artist’ (1980).

2.1.3 As a starting point, Article 27 of the Universal Declaration of Human Rights 1948 (UDHR) provides that everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. It also provides that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author. From this provision of the UDHR 1948, artistic expressions or freedoms find their roots in this very fundamental instrument in the history of human rights globally.

2.1.4 Though Zambia has not domesticated economic, social, and cultural rights in its Bill of Rights, a reading of human rights jurisprudence shows that our courts do acknowledge the extent of application and guidance of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR). Article 15.3 of the International Covenant on Economic, Social and Cultural Rights also provides for the protection of artistic freedoms when it states that the States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. The work of creatives finds its roots of protections from this international instrument. In a more broader sense of protecting art as part of the protection to the freedom of expression, article 19.2 of the International Covenant on civil and political rights 1966 (ICCPR) also provides that everyone shall have the right to freedom of expression and 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. Most world written constitutions and legislation defining freedom of expression has taken this as a pillar for defining the parameters of freedom of expression.

2.1.5 The UNESCO Recommendation concerning the Status of the Artist¹ speaks directly in addressing artistic freedoms and requires States to take certain actions to facilitate the enjoyment of artistic freedoms and remedy the challenges faced by artists and creatives. Guiding principle 3 of these recommendations provides that:

1 United Nations Educational, Scientific and Cultural Organization (UNESCO), ‘Recommendation Concerning the Status of the Artist’ (1980) p 13 accessed online on 6 October 2022 <https://en.unesco.org/creativity/sites/creativity/files/passeport-reco1980-en.pdf>.

“Member States, recognizing the essential role of art in the life and development of the individual and of society, accordingly, have a duty to protect, defend and assist artists and their freedom of creation. For this purpose, they should take all necessary steps to stimulate artistic creativity and the flowering of talent, by adopting measures to secure greater freedom for artists, without which they cannot fulfill their mission, and to improve their status by acknowledging their right to enjoy the fruits of their work”.

- 2.1.6 In the same vein, guiding principle 6 of the UNESCO Recommendation concerning the Status of the Artist also provides that “since freedom of expression and communication is the essential prerequisite for all artistic activities, Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights”.²
- 2.1.7 Currently, in 2022, UNESCO has an ongoing consultation on the implementation of the 1980 Recommendations Concerning the Status of the Artist. For purposes of these UN recommendations, an artist is defined to mean any person who creates or gives creative expression to, or re-creates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association³. Zambia is a Member State of UNESCO and attained this membership status on 9th November 1964 when it just gained independence. Zambia therefore subscribes to the objectives and guiding principles of UNESCO, which it is expected to implement.
- 2.1.8 Table snapshot of international framework

Name of instrument	Relevant provision	Implication on artistic freedoms
UN Treaty Instruments		
UDHR	Article 27	Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.
ICCPR	Article 19.2	Everyone shall have the right to freedom of expression and 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.
ICESCR	Article 15.3	States Parties must respect the freedom indispensable for creative activity.

² Ibid at 15

³ Ibid at 9

Soft law Instruments		
UNESCO Recommendations Concerning the Status of the Artist (1980)	Guiding principle 3	Member States: <ul style="list-style-type: none"> • Have a duty to protect, defend and assist artists and their freedom of creation. • Should take all necessary steps to stimulate artistic creativity and the flowering of talent, by adopting measures to secure greater freedom for artists, without which they cannot fulfill their mission, and to improve their status by acknowledging their right to enjoy the fruits of their work.
	Guiding principle 6	Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights.

b. Artistic expression at the regional level

- 2.1.9 At the continental level, artistic freedoms are captured in treaty instruments issued under the auspices of the African Union (“**AU**”) and soft law instruments. The main AU treaty instrument relative to artistic freedoms is the African Charter on Human and People’s Rights, 1986 (the “**African Charter**”). In terms of soft law instruments, the main instruments are the African Charter on Human and Peoples Rights Declaration of Principles of Freedom of Expression and Access to Information in Africa, 2019 (“**African Declaration of principles of Freedom of Expression**”) and the African Charter on Democracy, Elections and Governance (the “**African Charter on Democracy**”).
- 2.1.10 The rights of artists and creatives in Africa to fully enjoy their freedom of expression has been under attack for many years as our infant democracies are still ironing intolerance and insulation from criticism. Dictatorial and authoritarian regimes in Africa abhor the works of performing artists, poets, comedians, cultural performers, and other artistic creatives who through their artistic expressions speak truth to power. Struggling democracies in Africa can be identified from the level of State push-back, prosecutions and discrimination against those whose artistic expressions bring to the fore the many issues that affect their countries. Satire is being used by many brave artists to address social, political, and cultural issues that affect the general wellbeing of citizens. Satire is being widely used to speak truth to power by questioning government decisions that are not in the public interest, it is an artistic and creative of holding duty bearers accountable through expressions of art. The consequences of this have been that such artists no longer enjoy their freedom to perform and exhibit their art as a source of living. A direct attack of their earning abilities and an infringement on their freedom of expression. Those who fight back and stand their ground against State sanctioned oppression have found themselves in the walls of prison. Beyond just State sanctioned oppression, most artists who express themselves through satire as part of their artistic freedom have found themselves amid politically orchestrated violence as victims.

- 2.1.11 One would think that all this is happening because of the lack of a legal framework that guarantees artistic freedom, however, the African Charter on Human and Peoples Rights adequately covers the freedom of expression in a very sense. Article 9 of the African Charter on Human and Peoples Rights provides that every individual shall have the right to express and disseminate their opinions within the law. The African Charter on Human and Peoples Rights was adopted by the organization of African Unity (OAU) on 27th June in 1981 and entered into force on 21st October 1986. Zambia is not an exception to the provisions of the African Charter on Human and Peoples Rights; the freedom of expression is part of Zambia's Bill of Rights, and it is an entrenched right in the constitutions of most African countries.
- 2.1.12 The African Charter on Human and Peoples Rights Declaration of Principles of Freedom of Expression and Access to Information in Africa (2019) provides an updated standard interpretation of the freedom of expression for African Member States. The African Commission on Human and Peoples Rights adopted this revised declaration at its 65th Ordinary Session in November 2019. The declaration gives an expanded understanding of the freedom of expression and access to information as should be understood when reading Article 9 of the African Charter on Human and Peoples Rights. Principle 10 of the Declaration of Principles of Freedom of Expression and Access to Information in Africa provides a wide definition of the freedom of expression to mean the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art or through any other form of communication or medium, including across frontiers and further goes on to state that this is a fundamental and inalienable human right and an indispensable component of democracy.
- 2.1.13 Clearly, from an African regional human rights perspective, the freedom of expression can be enjoyed through oral communications, written communications, printed communications, artistic communications or indeed as broad as it could possibly be, through any other communication or mediums. The freedom of artists to express themselves and express ideas or opinions through art is a recognised human rights under the umbrella of the freedom of expression which is an indispensable component of democracy. Artists that use artistic expressions to defend their artistic freedoms or other fundamental human rights are human rights defenders except they use art or satire to communicate their opinions or build solidarity around social justice and human rights causes.
- 2.1.14 Artists like any other profession are expected to participate fully in the affairs of their respective countries and this participation is not limited to composing music, poetry, comic scripts or paintings for entertainment or financial gain alone. Artists like any other citizens can use their skills and creative talents to bring social, political, cultural, and economic or religious issues to the attention of fellow citizens and the government. African States have an obligation to respect and protect the role artists like any other citizen play in the development of their countries. Article 3 of the African Charter on Democracy, Elections and Governance⁴ provides that States implementing the Charter shall do so in conformity with the principle of effective participation of citizens in democratic and development processes and in governance of public affairs. This already gives legitimacy to all artists on the African soil to fully enjoy their artistic freedoms even when their expressions are used to effectively participate in democratic and development processes and in governance of public affairs in their countries.

4 African Charter on Democracy, Elections and Governance adopted on the 30th of January 2007 and came into force on 15th February 2012 accessed online on 09 October 2022 at <https://au.int/en/treaties/african-charter-democracy-elections-and-governance>.

2.1.15 Table snapshot of regional frameworks

Name of instrument	Relevant provision	Implication on artistic freedoms
AU Treaty Instruments		
African Charter	Article 9	Every individual shall have the right to express and disseminate their opinions within the law.
Soft law Instruments		
African Declaration of principles of Freedom of Expression	Principle 10	Provides a wide definition of the freedom of expression to mean the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art or through any other form of communication or medium, including across frontiers and further goes on to state that this is a fundamental and inalienable human right and an indispensable component of democracy.
The African Charter on Democracy	Article 3	States implementing the Charter shall do so in conformity with the principle of effective participation of citizens in democratic and development processes and in governance of public affairs.

c. Artistic expression at the national/domestic level

2.1.16 Zambia has an obligation under the Vienna Convention on the Law of Treaties to implement the obligations it undertakes when ratifying international and regional treaty instruments. Accordingly, it has taken steps to domesticate some of the provisions of international and regional instruments just discussed through several instruments including the Constitution, Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act No. 16 of 2016, National Arts Council Act, Chapter 170 of the Laws of Zambia, The Copyright and Performance Rights Act Chapter 406 of the Laws of Zambia (as amended by Act No 25 of 2010), Theatres and Cinematograph Exhibition of films Act, Chapter 158 of the Laws of Zambia, Penal Code Act Chapter 87 of the Laws of Zambia and, the Cyber Security and Cyber Crimes Act No. 2 of 2021. It is important to note that Zambian law on artistic freedom is both facilitative, in the sense of facilitating the enjoyment of artistic rights, and regulatory, in the sense of establishing a system of rules and institutions intended to ensure that artistic rights are fully enjoyed but in such a way that their enjoyment does not interfere with either others' enjoyment of their basic rights and civil liberties or the public interest.

d. Analysis of Zambia's legal framework pertaining to artistic freedoms

2.1.17 The right to express oneself and air one's opinions is what distinguishes between slaves and the free. An environment where the freedom of expression is stifled is usually viewed as one characterised by a rule by authoritarian or imperial dictators, a shrinking civic space where the operations of civil society, the media and activists are curtailed and, in most situations, where criticism of government is met with stringent application of archaic laws enacted to insulate from criticism and public scrutiny those in public leadership. Countries where the right to the freedom of expression is under threat are characterised by arrests of media practitioners, civil society members, opposition political parties, artists and creatives and ordinary members of society.

2.1.18 The full enjoyment of artistic freedom in Zambia is met with various limitations that threaten its expansion among many Zambian artists and creatives. Artistic expressions in Zambia face the same threats that come with the limitations to the freedom of expression. Laws that derogate from the freedom of expression remain a threat to the promotion and safeguarding of artistic freedoms therefore limiting the extent to which artists participate in the promotion of democracy, human rights, and good governance. For fear of arrests and losing a source of living by fully expressing themselves using their talents, many

artists in Zambia shun from commenting on social, political, economic, religious, or cultural issues that may be viewed as anti-government or anti any power structures in the country. Those who defy the fears of arrest still find themselves being intimidated through police arrests and court prosecution and, in some instances, are at risk of being restricted in their freedom of association and right to movement for fear of being attacked by political party cadres.

- 2.1.19 The arrests in Zambia are usually on charges of sedition, criminal defamation, hate speech and several other related criminal offences and, until recently, defamation of the President was the most used provision for stifling artistic freedoms. This is designed not only to insulate public leaders from accountability and public scrutiny but to also intimidate and cower the public from critically engaging in a manner that is likely to discredit the government in the eyes citizens who are their voters or, the international community.
- 2.1.20 Before its repeal in 2022, the provisions of the **Penal Code Chapter 87 of the Laws of Zambia** such as section 69 provided for the offence of defamation of the President and remained one of the biggest threats to artistic freedoms in Zambia. The law made it a criminal offence to intentionally bring the President into hatred, ridicule, or contempt through publication of any defamatory or insulting matter, whether such matter is by writing, print, word of mouth or in any other manner. The offence carried a penalty of imprisonment for a period not exceeding three years once a person was found guilty. Attempts have been made in the past to remove this provision from our statute book by declaring it unconstitutional but unfortunately, the courts have justified this provision as being reasonably justified in a democratic society, a view which some citizens have rejected as not meeting the demands of our current democratic dispensation. The reign of this provision ended when the National Assembly of Zambia, unlike the Courts, agreed with the people and repealed it.
- 2.1.21 In the case of **M'membe & Another v People (Fred M'membe Masautso Phiri Goliath Mungonge v People)**⁵, the Supreme Court of Zambia had occasion to determine an appeal challenging the constitutionality of section 69 of the **Penal Code** which created the offence of defamation of the President. By way of a background, the appellants in this case, were charged with the offence of defamation of the President and were brought before the Subordinate court to answer to the charges levelled against them of having defamed the President, contrary to section 69 of the Penal Code. When the matter came up in the Subordinate court, they requested that the magistrate refers the matter to the High Court to determine the constitutionality of section 69 of the Penal Code. In the High Court, the court heard the arguments on the issue of whether section 69 contravened articles 20 and 23 of the Constitution of Zambia, the court found that the section did not offend article 20 and 23 of the Constitution. When the case went on appeal, the appellants submitted that the criminal provision in the Penal Code which creates criminal defamation of the President violated against right to freedom of expression in article 20 and that it was discriminatory and in breach of section 23 of the Constitution of Zambia.
- 2.1.22 The Supreme Court in the case of *M'membe & Another v People (Fred M'membe Masautso Phiri Goliath Mungonge v People)* concluded that the freedom of speech was a right to be enjoyed side by side with the public interest of maintaining the public character of public men in the proper conduct of public affairs which will require that they be protected from destructions through attacks on their honour and character and that where the public person was the President, the public interest to be protected was more and self-evident. By this view, the court found that there was nothing in article 20 of the Constitution which immunised defamation and that then in section 69 of the Penal Code met the test of being reasonably required in protecting the interests listed in article 20(3) of the Constitution. The court justified the relevance of section 69 of the Penal Code and that there was nothing in the section which poses a threat to the freedom of expression. The court in this case was essentially balancing between the need to allow people to express themselves and air their displeasure against those in public office against the need to protect those in public office from attacks on their reputation which would, in the courts view, distract them in their conduct of public duties. The court deemed it necessary to insulate the President

5 (S.C.Z. Judgment 4 of 1996) [1996] ZMSC 8..

- from criticism and gave its justification for it. For artists, such provisions of the Penal Code continue to be the reason why there is self-censorship among artistic creatives for fear of being arrested for criticising the President through their song lyrics, paintings, comedy, or satirical writings. There are currently discussions and commitments from government to have this provision of the Penal Code repealed through a government sponsored Bill amending the Penal Code Chapter 87 of the Laws of Zambia.
- 2.1.23 For artists, such provisions of the Penal Code continued to be the reason why there is self-censorship among artistic creatives for fear of being arrested for criticising the President through their song lyrics, paintings, comedy, or satirical writings. This provision has since been repealed, a landmark decision by the government through the various amendments to the Penal Code Chapter 87 of the Laws of Zambia. However, criminal defamations, otherwise known as libel, remains on the statute book and may serve the same purpose that section 69 served until its repeal in 2022 by the National Assembly of Zambia.
- 2.1.24 The Zambian Penal Code also has provisions on indecent matters or things. Section 177 of the Penal Code Chapter 87 of the Laws of Zambia is dedicated to offences relating to indecent matters or things. Section 177 (1) makes it a crime to make, produce or have in one's possession any one or more writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematography films or any other object which is considered obscene and tending to corrupt morals. Upon conviction, a person found guilty of the offence faces a five-year jail term or a fine not less than fifteen thousand penalty units which is about K4,500 and not more than seventy-five thousand penalty units which translates into K22,500. This section is particularly a threat to the expression of artistic freedom by cartoonists, painters, photographers, film producers and other creators of artistic contents. The difficulty with this provision is that it cannot be known at face value whether the artistic works of an artistic are obscene and tending to corrupt morals, this is because what is obscene or what can possibly corrupt morals has not been defined and is too broad to assign one single definition. This causes self-censorship among visual artists and limits their artistic freedom and therefore, artists fail to participate fully and effectively using their artistic expressions in shaping Zambia's democratic, human rights and governance environment. Self-censorship by artists only works to the advantage of authoritarian and anti-democratic regimes.
- 2.1.25 The **Cyber Security and Cyber Crimes Act No 2 of 2021** law is also a threat to the expansion of artistic freedoms Zambia. On the face of it, the Act appears to be a progressive intention but when read in relation to the freedom of expression under Article 20 of the Constitution of Zambia and the right to privacy under Article 17, there are problematic provisions worth paying attention to. Section 65 of Cyber Security and Cyber Crimes Act No 2 of 2021 criminalizes hate speech and once found guilty and convicted, the convict gets a sentence of 500,000 penalty units or imprisonment for a period not exceeding 2yrs or both. Section 2 of the Act defines hate speech and conduct to mean "*verbal or non-verbal communication, action, material whether video, audio, streaming or written, that involves hostility or segregation directed towards an individual or particular social groups on grounds of race, ethnicity, antisemitism, tribalism, sex, age, disability, colour, marital status, pregnancy, health status and economic status, culture, religion, belief, conscience, origin.*"
- 2.1.26 For artists whose artistic works criticise government officials or individuals who are close to power, a religious implementation of such a vague and broad definition of hate speech provisions would see many such artists and human rights defenders being arrested merely because their music lyrics, paintings or drawings involves hostility or segregation directed towards individuals even though it may not be on any grounds listed in the Act. The purpose of such arrests would not really be to secure a conviction sometimes but to merely intimidate the artist and prevent them fully expression themselves artistically. Such provisions with vague definitions could easily be used to crack down on satirical content created by artists and spreading fear among citizens and the creative industry.
- 2.1.27 Section 54 of the Act prohibits the publication of information which is "false, deceptive, misleading, inaccurate" which is done with the "intent to compromise the safety and security of another person". There is no express immunity from prosecution for satirical content or comedy, the content will still be sieved through the same legal provisions. The Zambian Courts have not yet embraced satire fully, they still express reservations over satirical content which may be obnoxious. We however have a case

example where the courts despite not being happy with satirical content, they still did not accept that someone should be punished for it.

Proper case example when satire was excused from the wrath of the law was when Zambian-based British satirist who was given 24 hours to leave the country after caricaturing the then President Mwanawasa as 'a foolish elephant' and calling his cabinet members 'long-legged giraffes and red-lipped baboons', was freed by the Court even though the Supreme Court did not still accept his satire as falling within the protection to the freedom of expression. Other users of satire like Fumba Chama⁶ have been arrested before because of satirical content and have had their own freedom to produce content, earn a living and perform their music censored with political threats of violence should they continue producing music with satirical content criticising politicians.

- 2.1.28 In the case of The **Attorney General v Roy Clarke**⁷ the High Court held that, even though it considered the article "overstretched satire, irritating and insulting" (para. 10), Clarke's rights to freedom of expression and protection of the law had been infringed by the decision to deport him. The High Court highlighted that as no action had been taken against the newspaper editor, Clarke had been individually targeted, and discriminated against on the grounds of his origin and race. The Court stated that "freedom of expression is one of the strong attributes of a democratic society and that to the extent permitted by the Constitution itself, freedom of expression must be protected at all costs and that those who hold public offices must be prepared to suffer, and be tolerant, of criticism." The Attorney General appealed against this decision to the Supreme Court, the Supreme Court agreed with the High Court on quashing the deportation order but on the aspects of freedom of expression, the Supreme Court had this to say:

"We are constrained to comment here that the Media must be careful with people like the Respondent who have hidden agendas. It is not our intention to tell the Media what to publish and what not to publish. That is entirely the right of the Media. We appreciate the need for and importance of a free Media. This we have repeatedly said in our judgments. What we are saying here is that the Media should be circumspect to avoid people with evil intentions destroying our cultural values and norms and our way of life, using evil intentions cloaked in the freedom of expression and freedom of the press, noble ideals which, we Judges always strive to protect."

- 2.1.29 The Supreme Court did not perceive the article by Mr Clarke as pure freedom of expression and freedom of the press, the Supreme Court felt the article was a malicious article rubbed with evil intentions of destroying Zambia's cultural values and norms and way of life. These sentiments have continued to console political players whenever someone criticises their management of public affairs through their practice of politics, raising the flag of respect, culture, and morals to insulate them from criticism.
- 2.1.30 This is not all, several provisions in our Zambian cyber security and cyber-crimes law provide wide discretion that could be used to deprive controversial artists of their rights to property through seizure and forfeiture of their production equipment on mere suspicions of the likelihood of a crime being committed. Such provisions could easily become basis for self-censorship for many arts studios for fears of being deprived of property and artists who are also human rights defenders may not be able to create content for a livelihood because studios, radio and Television stations may not accept working with them.

6 Fumba Chama is an activist, artist, lyrical satirical content creator and Executive Director of the Peoples Action for Accountability and Good Governance in Zambia (PAAGZ) popularly known as Pilato in the arts circles.

7 Appeal No. 96A/2004

2.1.31 Table snapshot of national framework

Statute	Provision	Implications
Constitution of Zambia, Chapter 1 of the Laws of Zambia	<p>Article 19</p> <p>Article 20</p>	<ul style="list-style-type: none"> • Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought ... , either alone or in community with others, and both in public and in private...” • Constitution of Zambia shows that artistic freedoms are the offspring of the right to freedom of expression. This right is the source of all the privileges and protections that accrue to members of the media, artists and creatives and every person found within the Zambian jurisdiction. The right to freedom of expression is contained in Article 20(1).
Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act No. 16 of 2016	Preamble	<ul style="list-style-type: none"> • Expressions of Folklore are protected and they can be registered under intellectual property rights.
Copyright and Performance Rights Act		<ul style="list-style-type: none"> • This statute guides the management of the Copyright Office. The office falls under the Ministry of Commerce, Trade, and Industry. Prior, the Ministry of Information and Broadcasting Services guided the office. The Copyright Society has mandated Zambia Copyright Society (ZAMCOPS) rights to independently enforce copyright law. The Copyright Office's roles include registration of copyright and related rights (performance), registration of collecting societies as well as monitoring societies, providing information on copyright matters, and advising the DPP when infringement of copyright occurs. • Apart from the Copyright Office registering creative works, it gives collective societies the license to operate.

<p>National Arts Council Act, Chapter 170 of the Laws of Zambia</p> <p>Statutory Instrument 129 of 1995 (National Arts Council of Zambia Rules)</p>	<p>Section 5</p> <p>Rules 14, 26, 31,</p>	<ul style="list-style-type: none"> • National Arts Council functions as the supreme advisory body at national level on policy and decisions on all forms of arts in the country and providing quality artistic leadership in performing and visual arts. The National Arts Council is responsible for the registration and affiliation of arts associations or groups in the country, associations not registered with the Council are not recognised as arts associations in the country. • Artistic activities without a licence are prohibited. • Foreign artists or arts dealers require clearance to perform or exhibit artistic works in Zambia. The clearance given can be cancelled if the continuation of the artistic activity is, in the opinion of the Council, repugnant to, or inconsistent with, the provision of any law for the time being in force in Zambia or that the artistic activity is contrary to public interest.
<p>Theatres and Cinematograph Exhibition of films Act, Chapter 158 of the Laws of Zambia</p>	<p>Section 7</p>	<ul style="list-style-type: none"> • Establishes Film Censorship Boards, a statutory body which seats under the Ministry of Youth, Sports and Arts. The view of this is to censor content by requiring prior approval. There has not been news of appointment of such a Board by a Minister in a long time. This creates an invisible political hand to censor what the public can consume.
<p>Penal Code Act Chapter 87 of the Laws of Zambia</p>	<p>Section 177</p>	<ul style="list-style-type: none"> • Makes it a crime to make, produce or have in one's possession any one or more writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other object which is considered obscene and tending to corrupt morals.
<p>Cyber Security and Cyber Crimes Act No. 2 of 2021</p>	<p>Section 2</p> <p>Section 54</p>	<ul style="list-style-type: none"> • Defines hate speech and conduct to mean "verbal or non-verbal communication, action, material whether video, audio, streaming or written, that involves hostility or segregation directed towards an individual or particular social groups on grounds of race, ethnicity, antisemitism, tribalism, sex, age, disability, colour, marital status, pregnancy, health status and economic status, culture, religion, belief, conscience, origin." • Prohibits the publication of information that is "false, deceptive, misleading, inaccurate" with the "intent to compromise the safety and security of another person."

2.2 Institutional framework pertaining to artistic expression

a. Regulatory Bodies

- i. **The Ministry of Youth Sport and Arts (“MYSA”)** is responsible for the development and implementation of youth, sport and arts development programmes in an effort to facilitate the realization of the youths’ full potential. Through the Artists Empowerment and Development Program, MYSA funds artistic programs through NAC.
- ii. **The Ministry of Tourism (“MOT”)** was established in 2011 after the realignment of government ministries by Michael Sata, president of Zambia at the time. The ministry’s mission is to promote sustainable tourism and arts development, and cultural preservation for socio-economic development. The arts are a significant component of Zambia’s culture, which the MOT aims to display to the rest of the globe. However, it is important to note that the ministry censors the arts they present on international platforms to make them palatable to the patrons on those platforms.
- iii. **The Ministry of Commerce, Trade and Industry (“MCT”)** is responsible for administering national policy for private sector development. It coordinates industrial, commercial, and trade matters and dialogues with other stakeholders to facilitate the implementation of government policies related to trade and industry. The Ministry’s function to ensure that every creative is entitled to copyrighting his or her art empowers the artist financially and protects them against having their music copied without their concern. The protection enables the artist to freely exercise their artistic freedoms.
- iv. **The National Arts Council (“NAC”)**, established in 1994 under Act No. 31 of the Laws of Zambia oversees all the art associations (Copyright Ministry of Legal Affairs, Government of the Republic of Zambia, 1994). Other functions of NAC include:
 - Serve as the supreme advisory body at the national level on policy and decisions on all forms of arts in the country,
 - Provide quality artistic leadership in performing and visual arts,
 - Develop, promote, regulate and encourage all forms of amateur and professional arts on a national basis in conjunction with the associations and the government,
 - Assist financially or otherwise any group or individual in representing Zambia in any artistic activity within or outside Zambia, and
 - Regulate and monitor all national arts programmes presented in Zambia.

As the supreme advisory body that influences policy and decisions at the national level, and develops, promotes, nurture, and fund artistic activities, NAC contributes to artistic freedom by providing a platform and facilitating artistic expression in Zambia. At the time of this research, the National Arts Council indicated that they were working on an arts policy which would domesticate some of the provisions in the UNESCO 1980 Recommendations Concerning the Status of the Artist. This is progressive seeing that the recommendations are over 40yrs old, and countries have been slow in their implementation of such progressive global recommendations.

- v. **The Independent Broadcasting Authority (“IBA”)** is located at Mass Media Complex. Its roles are fourfold: to license broadcasters, to set up broadcasting standards, to enforce compliance, and to protect consumers. Section 47 of the IBA Act 2002 mandates the Authority to recommend regulations to the Minister of Information and Broadcasting Services. IBA Amendment Act (2010) recommends that the IBA’s Inspectorate undertakes inspection of broadcast infrastructure and regulates content. In regulating content, the authority monitors radio and television content including music, comments, and language of presenters, announcers, and Disc Jockeys (DJs). Language and messages in songs are monitored to ensure conformity with the general cultural setup of Zambia. Considering its roles, the IBA directly impacts artistic freedoms. Zambia is a conservative society. In 1991, Frederic Chiluba, right after taking over government from Kenneth Kaunda’s United National Independent Party (UNIP) declared Zambia as a Christian nation. Five years later, the Declaration was granted constitutional status, making Zambia an even more conservative society. As a result, language and content in songs are cautiously monitored.

Although censorship is most prevalent in government media houses, private ones are cautious too in fear of having their broadcasting licenses revoked by the government of the day since the IBA regulates both private and public media houses. It is more of self-censorship for most private media companies. However, there is considerable freedom of expression on the internet, particularly social media, which has become an alternative space for artists to market and display their art.

- vi. Patents and Companies Registration Agency (“PACRA”), a statutory body under the Ministry of Commerce and Industry was established under the Patents and Companies Registration Agency Act No. 15 of 2010. The agency’s existence has continued under the new Patents and Companies Registration Agency Act No. 4 of 2020. PACRA’s main mandate is to provide Business Registration and Intellectual Property protection services. Through its Copyright Society Office, the agency contributes to artistic freedom by offering Intellectual Property protection to artists regardless of their political affiliation as well as collecting, collating, and disseminating information on the law relating to the Copyright and Performance Rights Act. The Copyrights Office’s main challenge is that not many artists know the office exists. The few artists that know of their existence do not fully understand their role. Like any other public institution, rarely do they carry out information sensitisation programmes.
 - vii. The hierarchical structure of courts in Zambia, from the lowest to the highest, consists of the local court, Subordinate Court (also known as Magistrate Court), High Court, Court of Appeal and the Constitutional Court and Supreme Court. Other courts outside the three outlined here also exist. The High Court is the most relatable wide covering court to the artist because it has unlimited jurisdiction on both civil and criminal matters. The Subordinate Court however is the most congested as most criminal cases commence there and most civil matters involving amounts not more than K100,000.
- b. Civil society:
- i. Zambia Association of Musicians (“ZAM”) was first established in 1979 as Zambia Union of Musicians (ZUM). When the National Arts Council 1994 Act 31 was enforced, ZUM registered as an arts association (Ano Shumba, 2016). ZAM’s roles are to promote Zambian music, mobilize resources for music research and performance projects, facilitate networking among musicians, and nurture partnerships between the association and other stakeholders. ZAM contributes to artistic freedoms by indiscriminately providing a platform for all its members regardless of their political inclination. Davison Musanda, president of ZAM (personal communication 9 November 2022) lists a myriad of challenges facing the association. As an affiliate to NAC, the association’s funding is whatever NAC allocates to it, which usually is not enough for the association to run effectively. Musanda further notes that there is no political will on the part of the government as evidenced by the weak art policy in the country. The government does not collaborate with ZAM on state functions. For example, selection of musicians to perform at state events favor artists aligned to the government of the day and the selection process does not involve ZAM. The 2021 Artists Stimulus Packages were given to non-ZAM members who worked with the government even though the requirement was that artists be members of ZAM. Government’s deliberate lack of will to work with the association makes it easier for government to censor musicians negatively impacting the artists’ freedom of expression. Musanda recommends that to improve the situation in Zambia’s music scene, there is need to enlighten artists on what the music profession is about. He further demands that membership to the association should be mandatory so as to encourage artists to subscribe to the association.
 - ii. Visual Arts Council (VAC) was established in 1989 by visual artists Martin Phiri, Agness Yombwe, and William Miko. The three formed the first interim national executive committee. VAC promotes Zambia’s visual arts as well as coordinating and facilitating arts exhibitions. The association also coordinates exhibitions of artists with other arts organizations abroad. According to visual artist Lombe Nsama (personal communication 10 November 2022), not so many Zambians appreciate visual arts. The targeted market is mostly foreign. There is need to refocus efforts to promote the genre among local Zambians. Over the years, funding has also been an issue. Nsama proposes that art education should be promoted at tertiary level. He is optimistic that the art policy under discussion by government will improve the situation. Lumba Hilda (2016) records that the National Theater Arts Association of Zambia (NATAAZ) was founded in 1988. The association had one of the biggest numbers of registered members before schools and colleges formed a splinter association ZASAAZ (National Schools Arts Association

of Zambia). NATAAZ worked on uplifting the standards of theatre and film in the country. The association contributed to artistic freedom by facilitating festivals where theatrical performances were presented with less censorship as compared to those that were presented on national media. Boyd Kaindi (personal communication 10 November 2022) explains that although NATAAZ was vibrant in its inception, the market for theater has dwindled. Kaindi attributes the situation to limited spaces where to perform as most of theaters have been converted to churches. He also observes that theater is being overshadowed by other entertainment genres such as music that are more accessible via social media and other online platforms. Also, the fact that theatrical productions are more expensive than other genres of music has made it difficult for theatrical productions to be made available to audiences. The absence of the arts policy has made it difficult to attract the corporate world to invest in theater. Kaindi is excited about the arts policy proposed by the government. He hopes that the policy will stimulate sustainable theater growth and help renovate the run-down infrastructure.

- iii. Comedians Association of Zambia (COAZ) was founded in 2012 (Mwila Mwala, 2012). An affiliate of NAC, the association's vision is to promote comedy in Zambia and facilitate networking among comedians. The association has contributed to artistic freedoms by providing a platform where comedians can display their art. Using satire, artists have enjoyed their freedom of expression without getting in trouble with the law. The genre of comedy has not been spared censorship by government institutions. Chibwe Katebe, a stand-up comedian (personal communication 10 November 2022), explains that he got in trouble for a production that was deemed political some government wings. He further observes that religion and tradition inhibit artists to freely express themselves. Political, homosexuality and sometimes sexual jokes are often not received well because tradition and religion are against speaking about such themes in public. To improve the situation, Katebe recommends that artists and other stake holders should be educated on matters to do with artistic expression.
- iv. Zambia Copyright Society (ZAMCOPS) copyrights creatives' original works (Lisa Gwede, personal communication September 2022). By registering with ZAMCOPS, artists give the mandate to the society to protect their music by ensuring that no one else plagiarizes their creative works and collects royalties on their behalf. Gwede further explains that ZAMCOPS protects all its members regardless of the lyrical content. The protection of an artist's piece of work begins right after a piece of work has been created. By law, any creative or right holder of a piece of work has the right to register with ZAMCOPS. Artists who are registered with the society benefit financially through royalties. ZAMCOPS pays royalties to its members twice a year; in April and September. Institutional support is needed for the society to effectively carryout its mandate. At the moment, ZAMCOPS is mandated to collect royalties on behalf of its members. However, it needs to be protected and supported by the relevant government structures to be able to collect more royalties and enforce anti-piracy programs. For example, the society cannot arrest those found pirating music or non-compliant members who do not pay royalties on time because it has no mandate to do so. It can only advise government security wings to do so. With over eight thousand members, the society has the largest subscription among arts organizations in Zambia. While the society has performed tremendously well in some areas, its thriving in the midst of challenges. ZAMCOPS realizes that most artists do not understand their artistic rights, a scenario which has negatively impacted its membership. It is for this reason that it has embarked on a countrywide awareness programme to educate artists on their intellectual property rights, as well as performance rights, regardless of the artists' membership status to the society. So far, the society has conducted workshops in Eastern, Western, North-Western and Central regions of the country and it hopes to cover more ground to ensure many artists have access to information relating to their artistic rights. The national wide awareness programme the society has embarked on require space, relevant literature and human resource, which has been difficult time and again. Dealing with non-compliant members who do not pay their royalties on time is another challenge. Late or non-payment of royalties negatively impacts the running of ZAMCOPS.

- v. National Association for Media Arts (“NAMA”), an NGO, was established in April 2008 with funding from the Finish Embassy in Zambia after artists realized that there was a need to improve the quality of film production in Zambia. Its objective is to facilitate capacity building and networking in Zambia’s film industry through collaborations, workshops, and training in order to improve the quality of film in Zambia. According to Bridget Malumba (personal communication 9 November 2022), the association faces many challenges ranging from funding, lack of film equipment such as cameras and editing suites, infrastructure, cinemas that can exclusively show local movies, film schools to facilitate education in acting and film production, and high taxes on actors’ compensation. These challenges have in turn limited artists’ freedom of expression as most of them, especially the upcoming, do not have access to a platform where they can present their work. She hopes that the proposed art policy that the current government is expected to put in place will give direction and improve the situation.
 - vi. MISA-Zambia was founded in 1996 (MISA-Zambia, www.zambia.misa.org) Membership subscription to the organization is open to both institutions and individuals. The organization’s objective is to ensure freedom of expression and media freedom for all. It also strives to facilitate research, capacity building, and advocacy that strengthens media freedom and expression, and democracy and good governance in Zambia. MISA-Zambia’s objectives are not always easily attainable as governments always monitor and sometimes restrict their operations. Although none of the artists arrested for their advocacy work has received support from MISA Zambia in the past, the organization’s work is relatable to them.
 - vii. Chapter One Foundation, named after Chapter One of the Laws of Zambia, was founded in July, 2019 with a mission to promote and protect human rights, human rights defenders, constitutionalism, and the rule of law through litigation, advocacy, and civic education. Artists who use their talents to advance human rights or hold government accountable are Human Rights Defenders (HRDs) and are eligible to receive legal support and solidarity from Chapter One Foundation.
- c. Analysis of the institutional framework

Kalumbu Lumpa, staff in the Content Acquisition Office at Zambia National Broadcasting Corporation (ZNBC) [personal communication September, 2022] explains that “content that opposes the government of the day reservedly airs.” Lumpa’s observation is echoed by music artists Maiko Zulu, Chama Fumba, and Callen Chisha, all of whose music reservedly plays on radio and TV.

It is expected that government institutions, including the Ministries that have been assigned to work with arts organizations, will not fund artists who openly display artistic works that seem to oppose the agenda and position of the government of the day. Institutions in the private sector, whose agenda is to protect and defend human rights, focus on national politics. In an effort to protect their job, some staff in government media houses take it upon themselves to frustrate artists involved in advocacy and activism works. It is pertinent therefore that training highlighting the importance of upholding freedom of expression in the arts is given to those who work in the media.

Artistic Rights First



3. Situational Analysis

3.1 Gender Representation

Discussing gender disparity in the arts in Zambia, Hadassah Louis (21 March, 2018) observes that the gender gap is evident in the arts sector. Data collected after interviewing six chairpersons of some of the arts organizations indicate that membership in most of these organizations is at 40 percent female and 60 percent male. Towera Tembo, administrator at NAC (personal communication September, 2022) notes that this is an improvement in comparison to what the situation was a few years ago.

Christianity, and tradition have continued to marginalize women in decision-making processes both at household and national levels. Scott Scott D. Taylor (2006:92) observes that “women were always regarded as inferior to men in Zambia, even before the coming of colonial powers...Nonetheless, a number of powers were available to women or a woman’s family. These were altered by colonialism and the arrival of Christianity, which diminished the role of the bride/wife while elevating the role of the father/husband.” Several scriptures in the bible align to Taylor’s observation: The book of Ephesians 5:21-33 reads, “Wives, submit to your own husbands as to the Lord. For the husband is the head of the wife even as Christ is the head of the church... Now as the church submits to Christ, so also wives should submit in everything to their husbands.” 1 Corinthians 11:9 declares, “Neither was man created for woman but woman for man.” Titus 2:4-5 instructs, “And so train the young women to love their husbands and children, to be self-controlled, pure, working at home, kind, and submissive to their own husbands, that the word of God may not be reviled.” First Timothy 2:12 rebukes, “I do not permit a woman to teach or to exercise authority over a man. Rather, she is to remain quiet.” These scriptures propose that man dominate female-male relationships. The third chapter of Genesis, goes further to suggest that man be the sole provider of the household.

The marginalization of women in Zambia’s art scene can be attributed to at least three factors: Traditionally, the role of providing what Eileen Boris and Rhacel Salazar (2010) call intimate labor is ascribed to women. As intimate laborers, women have been required to perform a range of duties including household up keeping, family maintenance in the form of cooking, cleaning, and bathing children. These duties have historically confined women to home spaces where the chores are mostly carried out. Secondly, tradition and religion have allotted the role of provider to men. Such a gendered role has, while excluding women, given men more access to capital, space, and technology. Thirdly, the mostly male-dominated art spaces discourage female artists to fully participate in them, some citing sexual abuse by their male counterparts and media personalities, including Disc Jockeys (DJs) as the draw back. For example, singer-song writer Mutinta Mwanza aka Mutinta (personal communication 2017) charges that some music producers, who are usually male, ask for sexual favors in exchange of studio time or production work. In an interview with Akwasi Sarpong of BBC, singer Wezi Mhone, aka Wezi, observes that “for a female artist to have mainstream play [on radio], you need to befriend a lot of men and sometimes they (men) really do want to compromise you. The DJs will request more than they ask from male artists...ask for sexual favours. I have had friends who have experienced that and I also have had personal encounters where someone would insinuate...” (Akwasi Sarpong, 2018). Observations by Mutinta and Wezi are a reflection of what most female artists experience in the arts. It is these experiences that discourage most of them from participating in the arts. Davison Musanda, chairperson ZAM (personal communication 8 November, 2022) proposes a need for arts programmes designed at highlighting female artists. These can be in form music festivals or art exhibitions. Mutinta is confident that art spaces specifically designed for women artists’ career developmental projects can bridge the gap in the gender disparity that exists in Zambia’s art sector. Also, a strong legal awareness campaign that can educate female artists on their rights and ensure safer practising spaces will promote professionalism and encourage women to participate more in the arts.

3.2 Government Censorship

- 3.2.1 Musicians in Zambia have always had their music censored, especially by state-controlled media. Some of them have been arrested and their music banned on the radio for singing opposing views to those advanced by the government of the day.
- 3.2.2 Maiko Zulu⁸ (personal communication 12 October, 2022) explains that he has faced challenges in his career because of the anti-establishment lyrical content associated with his music. Zulu's "President's Daughter," released in 1993, was the first of his works to be banned on national media, particularly radio and television. In the song, Zulu narrates how his girlfriend, the President's daughter, told her all the state secrets, including the illicit deals that the government was involved in. It is important to note that "President's Daughter" was released two years after the introduction of multi-party politics by Frederic Chiluba's Movement for Multi-Party Democracy (MMD) government. In 2008, a day after appearing on Frank Talk, a Zambia National Broadcasting Corporation TV programme, Maiko was arrested for use of marijuana. He believes that the arrest was connected to his appearance on Frank Talk where his music and activism work was discussed. When he was arrested, Maiko did not get any legal representation from any organization or individuals. He observed that even the civil society that claims to defend human rights shied away from providing him the necessary support. He notes that state-controlled media, particularly ZNBC, only invites him to feature on their programming when the government is seeking pro-government messaging support from him. State print media and broadcasting organisations have continued to censor his music.
- 3.2.3 Callen Chisha⁹ (2twice hereafter) [personal communication 17 October, 2022] was not the government's favorite when he published "Tomato Balunda" (The Price of Tomato Has Gone Up) in 2000. It was still Chiluba's MMD government in power at the time. After the album was released, 2twice hoped to be signed by Mondo Music, the biggest record label at the time. However, the label's proprietor Chisha Folotiya declined to sign him citing the anti-government connotations in 2twice's music. When Alec Mugala, featured "Tomato Balunda" on his TV show Explosion, he was warned by his bosses at ZNBC never to feature 2twice on national TV ever. The censorship did not only end within the media circles. Instead, it extended to 2twice's live performances. When he was invited to perform at the Afronet's event at Lusaka Museum in 2001, 2twice was threatened by two men who claimed to be government officials. It was Afronet's Managing Director Mwanajiti who rescued him. AfroNet was a non-governmental organization (NGO). Its main objective was to audit the state's governance. On 16 September, 2000 when he went to perform at the Brown Frog, a restaurant that also served as a music venue in the capital Lusaka, Dawson Lupunga, Community Development Minister at the time, asked 2twice to leave the stage and blamed the organizers of the event, Don Bosco, for inviting him to perform at an event he was officiating. On 23 March, 2001, 2twice was arrested for possession of marijuana at City Market in Lusaka and remanded at Remand Prison in the Kamwala neighbourhood of Lusaka.
- 3.2.4 Musical artist and activist Fumba Chama aka Pilato (personal communication 12 October, 2022) has had similar experiences since "Bufi" (Lie), produced at By the Way Records in Ndola in 2013. At the time, Michael Sata's Patriotic Front (PF) was the government of the day. It was "a Lungu Anabwela" (Mr. Lungu Has Returned) a satirical rendition of Nashil Pitchen Kazembe's "a Phiri Anabwela" that got Pilato in trouble with the PF government. The song, produced in 2015 at By the Way Records in Ndola, highlights Lungu's incompetence in his leadership despite his humble beginnings in the Chawama neighborhood of Lusaka. It was concluded by the PF that Pilato was referencing President Edgar Chagwa Lungu in the song. In June 2015, Pilato got arrested for "a Lungu Anabwela" and was charged with defamation of President Edgar Chagwa Lungu. The release of "Koswe Mum'poto" (Rat in the Pot) in 2018 made his relationship with the PF government even worse. He continued to receive threats from PF sympathizers. He had to leave his hometown of Ndola for Lusaka and eventually to South Africa where he lived in exile for five and half months. Amnesty International supported his stay in South Africa.

8 Maiko Zulu is a renowned Zambia's reggae musician, human rights activist and child ambassador with the International Labor Organization in Zambia.

9 Callen Chisha is a musician and visual artist. The lyrical content in his music is considered controversial and political.

- 3.2.5 According to Kalumbu Lumpa, Zambia National Broadcasting Corporation (ZNBC) staff in the Content Acquisition Office (personal communication 21 September, 2022), his office is responsible for acquiring content for the corporation. The content they scout for includes films, documentaries, and music videos. ZNBC falls under the Ministry of Information. Content received by the Content Acquisition Office is scrutinized and sometimes censored by the Evaluation Committee. The Content Acquisition Policy stipulates that content that opposes the government of the day may be broadcast but reservedly. An interview with Lumpa confirmed that ZNBC makes deliberate choices about what or what not to broadcast.
- 3.2.6 Zulu and 2wice (personal communication October, 2022) argue that it is immoral for artists to see a wrong in society and not sing about it. As 2wice notes, art reflects society. Pilato (personal communication October, 2022) explains that the need to participate in governance motivates him to compose the music he does. Artists, therefore, play a significant role by providing checks and balances to the government of the day for the betterment of society. However, the situation in Zambia is that artists that seem to have an opposing view to the government's agenda or highlight corruption and other vices by the government in their art get arrested. If artists are to continue to keep the government in check, then they need to be protected. As Pilato, Zulu, and 2wice note, the sad reality is that a structure that protects artists' freedom of expression does not exist in Zambia. 2wice observes that while there is some democracy at the national level, art spaces are not as democratized. Furthermore, he argues that there is a need for people who work in the media to be educated on the significance of artists' freedom of expression. Zulu proposes a collective network of artists and a support system to facilitate legal representation when an artist needs it. Towera Nyirenda at NAC narrated how the Ministry of Youth Sport and Art censors NAC's affiliated members; musicians and filmmakers being the most affected. However, she observes that there is a need to create and strengthen already existing systems that would legally protect the artists.

4. Recommendations

- 4.1 The study findings, the analysis of artistic experiences, the analysis of legal frameworks applicable to Zambia and the various interviews with various players the industry of art, democracy, and human rights, have many recommendable actions that will help protect, promote, and entrench artistic freedoms in Zambia. The following recommendations are beneficiary driven and speak to the local context.
- 4.2 As a sign of progress in the promotion and protection of artistic freedoms in Zambia, the National Assembly of Zambia through the Committee on Energy, Water Development and Tourism, in the fifth session of the twelfth National Assembly, in May 2021, submitted a report to the National Assembly proposing the ratification of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions which was adopted at the 33rd Session of the United Nations Education, Scientific and Cultural Organisation (UNESCO) General Conference on the 20th October, 2005 in Paris, France.¹⁰ This convention offers wider protection to artistic creativity and freedoms, if ratified and domesticated, the Zambian arts and creative industry would benefit a lot from both intellectual property protection, freedom of expression and opportunities to enhance the ability of artists to acquire exchange knowledge and earn a living from their artistic work without discrimination and intimidation. It is recommended that a follow up be made to ensure the ratification and domestication of this convention.
- 4.3 It is recommended that there be educative programmes to raise awareness on artistic freedoms for media practitioners and artists, to enhance coverage of artists that speak truth to power and comment on topics that promote human rights, democracy, and social justice. As is the case with Zulu's or 2wice's music, Pilato's does not receive airplay on most radio stations. Media personalities will not play the music that bears some political connotations on the radio for fear of losing their jobs. Privately owned radio stations won't play their music for fear of having their broadcasting licenses revoked by the government.

¹⁰ Report of the Committee on Energy, Water Development and Tourism on the proposal to ratify the Convention on the Protection and Protection of the Diversity of Cultural Expressions, May 2021 (National Assembly of Zambia).

- 4.4 There is a need to have a collective network of artists involved in activism and advance artistic freedoms. Such a network will promote solidarity and exchange learning within the country and outside the borders of Zambia.
- 4.5 There is a clear need to have female artist centric programmes to find solutions to the prevailing fears for sexual harassment and sexual objectification to get to the top of the music industry. Women rights, especially in the arts industry must be emphasised and protected.
- 4.6 There is need to create a legal services hub for artists in the activism space that will promptly respond to the various challenges faced by artists in Zambia as they navigate the legal environment to protect their artistic freedoms and the freedom of expression generally.
- 4.7 Participation in legal reform processes by artists is another way of safeguarding artistic freedom in Zambia. There are current reforms around repealing defamation of the President provisions and other provisions that inhibit the enjoyment of human rights in Zambia, artists should have a voice on it and be recognised as key players in legal reforms. Such involvement of artists would require organisational mobilisation of both rural and urban artists to effectively participate in the governance affairs of the country for the betterment of the arts industry and for the general good of society.
- 4.8 There is need to also conduct a review of the National Arts Council of Zambia and refocus it to addressing the current challenges in the arts industry and find ways in which it can be a more useful tool for promoting artistic freedoms in this democratisation phase that Zambia embarked on from the 1990s. Such reviews may result into institutional reforms that are beneficiary driven and adds value to the success of the arts industry in Zambia.
- 4.9 To address the issues attributed to the National Arts Council (NAC), stakeholders from the arts industry submitted various recommendations to guide institutional transformation at NAC level. They submitted that NAC programmes must be adequately publicised to allow effective participation of artists in Zambia, especially those outside provinces like Lusaka and the Copperbelt province. After lamenting that little has been done to recognise the origin of all human resource in modern day film crews in the arts industry, it was recommended that NAC must recognise independent film makers through award shows such as Ngoma Awards by introducing short film categories and workshops that will enable newcomers to be properly educated on film production and in doing so, the institution would be a true reflection of arts promotion. In the same vein, it is recommended that NAC awards and programmes recognise cartoonists and poets in the arts, especially spoken word poets who performing on stage, these have been given little or not recognition despite being flag bearers for the country through art. It is recommended that categories of such nature and other emerging arts should be added to NAC's work.
- 4.10 Given that the NAC works more closely with associations than individual artists, it is recommended that the institution be deliberate about reaching out to more artists to join associations or form new ones that will better represent that area of art. Reach out programmes must include creation of educational programmes for artists to strategically grow the industry.
- 4.11 Being a link between government and artists countrywide, the NAC is urged to be blind to the political or any other associations of artists in their promotion of arts. Artists like any other citizens have their freedom of association guaranteed and the NAC must not use political affiliation of an artist as a scale for involving them in activities or relating with them as part of their statutory mandate to promote art.
- 4.12 Stakeholder also expressed desire to see more advocacy programmes that advance artistic freedoms in Zambia. In this vein, it is recommended that organisations such as Peoples Action for Accountability and Good Governance (PAAGZ) carry out robust advocacy around artistic freedoms through their educational and civic engagement activities, this will create solidarity for many artists from various categories of art to use art as both a tool for good governance and human rights promotion and, to earn a living.



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