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# UNDERSTANDING THE LAWS ON JOURNALISTIC SOURCES IN ZAMBIA

## INTRODUCTION

This Guide provides journalists with a practical understanding of the legal framework on news sources in Zambia. This awareness will empower journalists to understand their legal rights and obligations and continue to report on issues of vital public interest. The Guide assesses the recognition of news sources in law, the protection of news sources as well as search and seizure relating to journalists' gadgets and information.

## 1. WHO IS DEFINED AS A JOURNALISTIC SOURCE?

There is currently no law defining a journalistic source in Zambia. However, it can be inferred that journalistic sources are individuals who have knowledge pertinent to a story. Sources also include documents that contain relevant information for journalistic work.

## 2. WHICH LAW PROTECTS JOURNALISTIC SOURCES?

Zambia does not currently have legislation that speaks directly to the protection of journalistic sources, however, the [Constitution of the Republic of Zambia, as amended by the Constitution of Zambia \(Amendment\) Act No 2 of 2016](#) (the Constitution) grants every person the right to freedom of expression. This right extends to the right to hold opinions, receive ideas, communicate ideas and information without interference.

The [Public Interest Disclosure \(Protection of Whistle-blowers\) Act No. 4 of 2010](#) (the Public Interest Disclosure Act) applies to disclosures in government agencies, private or public companies, institutions or organisations. It protects public interest disclosures, which are disclosures of information made by any person or an employee, regarding any conduct of any person or an employer relating to public wastage, danger to the environment or public health, a criminal offence, breach of a legal obligation or any other miscarriage of justice (section 11).

The protections granted under the Public Interest Disclosure Act include the following:

- a. anonymity and confidentiality in relation to the person who disclosed the information (section 12);
- b. protection from reprisal/retaliation against the person who makes the disclosure (any person who retaliates is guilty of an offence and is liable to a fine and/or imprisonment for a period not exceeding 2 years) (section 42);
- c. no legal liability for such disclosure (section 43); and
- d. protection from any kind of disclosure of identity of the person who made the disclosure.

However, it is noteworthy that the Public Interest Disclosure Act does not cover disclosures made to journalists.

### 3. IS THERE A CONCEPT OF JOURNALISTIC PRIVILEGE? DOES THE LAW PROTECT ME FROM REVEALING MY SOURCES? IN WHAT INSTANCES MIGHT I BE REQUIRED TO REVEAL A SOURCE?

The [Penal Code](#) provides guidance on instances when publications will be privileged hence exempt from criminal defamation:

Section 195 provides that some publications are absolutely privileged and these are:

- a. materials published by the President, Cabinet, the National Assembly or a fair report of anything said or done in Cabinet or the National Assembly;
- b. materials published by a person subject to military or naval discipline where it relates to his/her conduct in such capacity;
- c. materials in the course of judicial proceedings; or
- d. where the person publishing the material is legally bound to publish it.

Section 196 of the Penal Code notes that a publication of a defamatory matter is privileged (exempt from liability) on condition that it was published in good faith. If there is proof that the publication was made with malice, a charge for defamation will be accepted.

The [Defamation Act](#) provides guidance on the types of publications that are privileged and exempt from civil defamation. A fair and accurate newspaper report of publicly heard court proceedings is absolutely privileged.

The publication of newspaper reports of proceedings in or concerning the following, are presumed to be privileged unless proved to be made with malice (Schedule to the [Defamation Act](#)):

- a. international organisations of which the UK or Zambia is a member or sends a representative;
- b. the International Court of Justice or other judicial or arbitral tribunal deciding disputes between states;
- c. a public body or person appointed to hold a public inquiry by the Government;
- d. an extract of a register kept under any written law, open to inspection by the public;
- e. an advertisement published by or on the authority of a court or judge within Zambia;
- f. a fair and accurate report of the findings or decisions of an association in Zambia;
- g. a fair and accurate report of the proceedings at any public meeting or sitting in any part of Zambia;
- h. a fair and accurate report of the proceedings at a general meeting of a company; and
- i. a fair and accurate report or summary of any notice or other matter issued for information of the public by or on behalf of the Government of Zambia, a local authority or a superior police officer.

There is no express law in Zambia that requires journalists to reveal their sources.

## 4. WHAT RIGHTS DOES A SOURCE HAVE?

The [Constitution](#) gives all persons, including journalists, the right to freedom of expression which includes the freedom to receive or impart information or ideas (Article 34).

The [Public Interest Disclosure Act](#) provides for disclosure of conduct unfavourable to the public interest in the private and public sectors (whistle blowing). It entitles every person including journalists to anonymity, confidentiality, freedom from liability and protection from retaliation.

## 5. WHAT SHOULD I BE WARY OF WHEN DEALING WITH A JOURNALISTIC SOURCE?

There are no specific laws in Zambia that govern the relationship between a journalist and their sources. However, it is important to ensure that the source is reliable, fair, accurate and truthful and not providing information with malicious intent.





SHUTTERSTOCK / Jeff Daniels

## 6. CAN I FACE LEGAL ACTION IN MY INTERACTIONS WITH A SOURCE, AND IN WHAT CIRCUMSTANCES?

While conducting research for a publication, a journalist must ensure that the publication is fair, accurate and truthful. The risk of a failure to observe these responsibilities may result in a lawsuit for defamation. It is possible to face legal action when interacting with a source.

Some sources are confidential or protected by lawyer-client privilege. Other sources of information require a data subject's consent. According to the [Data Protection Act, 2021](#) (the DPA), consent is required where the information sought to be obtained contains data which relates to an individual who can be directly or indirectly identified (by name, an identification number, location data, an online identifier, or one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that natural person). Consent is not necessary if the processing of the data falls within the journalistic exemption where it is necessary for or relevant for a journalistic purpose. Failure to obtain such consent can result in a fine of up to ZMW 90, 000 (approximately USD 5, 625) or to imprisonment for a term of up to three (3) years, or to both a fine and imprisonment.

It is also possible to face legal action if a source is bribed, coerced or threatened into giving information.

## 7. IN WHAT INSTANCES MAY I RECORD A SOURCE?

The Independent Broadcasting Authority of Zambia (IBA) developed the [Standard Operating Procedures for Broadcasting in Zambia](#) (SOP), which is an ethical guideline for licensees, covering standards in programmes, sponsorship, advertising, fairness and privacy, among others.

As a general rule in the SOP, journalists may record telephone calls with news sources if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case) unless it is warranted not to do so. If the journalist did not inform the news source that the recording will be broadcast at the time of the call, the journalist must seek consent from the news source before they can broadcast, unless it is warranted not to do so.

Media are prohibited from obtaining or seeking information, audio, pictures or an agreement to contribute through misrepresentation or deception (such as clandestine filming or recording) (para 7.2.3 of the SOP).

However:

- a. it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means;
- b. where there is no adequate public interest justification, for example, with unsolicited wind-up calls or entertainment set-ups, consent must be obtained from the individual and/or organisation concerned before the material is broadcast;
- c. if the individual and/or organisation is/are not identifiable in the programme then consent for broadcast will not be required;
- d. material involving celebrities and those in the public eye can be used without consent for broadcast, but it must not be used without a public interest justification if it is likely to result in unjustified public ridicule or personal distress. Therefore, such contributions should be pre-recorded.

Clandestine filming or recording is only warranted in the SOP if (para 8.2.3.5):

- a. there is *prima facie* (face value) evidence of a story in the public interest;
- b. there are reasonable grounds to suspect that further material evidence could be obtained; and
- c. it is necessary for the credibility and authenticity of the programme.

The media is also prohibited from doorstepping (filming or recording an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning) for factual programmes unless:

- a. a request for an interview has been refused or it has not been possible to request an interview; or
- b. there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep.

However, media may, without prior warning, interview, film or record people in the news when in public places.

The [State Security Act](#), prevents people from recording or communicating any classified information to another person without authorisation. This information includes any code, password, sketch, plan, model, note or other document, article or information which relates to or is used in a protected place, or which is held by a government official. Where the consent of a data subject is required by the DPA, such source can only be recorded with their express consent particularly when it relates to personally identifiable information.

## 8. CAN THE POLICE CONFISCATE MY DOCUMENTS/ GADGETS FOR INVESTIGATION? WHEN CAN THEY DO SO?

Generally, a law enforcement officer can seize property which the officer has reason to believe was used to commit an offence. The [Penal Code](#) allows a police officer to seize property lawfully believed to be used in a crime.

Other laws that allow for search and seizure include:

- a. Section 23 of the [Criminal Procedure Code Act, Chapter 88 of the Laws of Zambia](#) which gives police officers the authority to search and detain any vessel, aircraft or vehicle that is believed to contain anything stolen or unlawfully obtained.
- b. Section 10 of the [DPA](#) which allows a law enforcement officer to seize and detain property which the inspector has reason to believe was used to commit an offence under the Act. Additionally, section 15 of the [Prohibition and Prevention of Money Laundering act No. 14 of 2001](#) allows a police officer to seize property which that officer has reasonable grounds (sufficient reason) to believe is property derived or acquired from money laundering.
- c. The [Forfeiture of Proceeds of Crime Act No. 19 of 2010](#) which authorises police officers to deprive any person of any proceed, benefit or property derived from the commission of an offence.

## 9. CAN THE POLICE CONFISCATE MY DOCUMENTS ONLINE? CAN THE POLICE TAP MY COMMUNICATION WITH SOURCES, INCLUDING VIA SECURE/ ENCRYPTED PLATFORMS?

The police can confiscate documents online provided they have a warrant issued pursuant to section 75 of the [Cyber Security and Cyber Crimes Act](#) No. 2 of 2021 (Cyber Crimes Act). This allows a law enforcement officer undertaking a search to seize, or similarly secure, computer data accessed during the said search.

The Cyber Crimes Act permits wiretapping (or “interception” as phrased in the Cyber Crimes Act). Where a law enforcement officer has reasonable grounds to believe that an offence has been committed or is likely to be committed, such officer can apply to a judge of the High Court for an *ex parte* (without the other party being heard) interception of communications order. Such law enforcement officer also needs the written consent of the Attorney-General before making such application to the High Court (section 28).

The Cyber Crimes Act permits a law enforcement officer to intercept communication without a court order where a law enforcement officer has reasonable grounds to believe that an emergency exists. In such an instance, the officer will only need to request, even orally, an electronic service provider to grant such interception. The circumstances under which an emergency is said to exist are as follows:

- a. where there is a threat of infliction of bodily harm or infliction of bodily harm;
- b. threat of suicide or threat to kill another;
- c. threat of damage of property or damage to property; and
- d. threat of financial loss to a bank or financial institution or actual loss.



Immediately after such interception, the law enforcement officer is required to furnish a judge of the High Court with a copy of the written confirmation of the request for interception made to the electronic service provider (which should set out the information given by the officer in the request). The electronic service provider is also required to submit an affidavit (a written statement made under oath) explaining the steps taken in giving effect to the officer's request. The judge will be required to keep a record of the confirmation and affidavit. However, in a situation where the judge determines that the interception was unlawful, such judge may make an order deemed appropriate for the person whose communication has been intercepted (section 30).

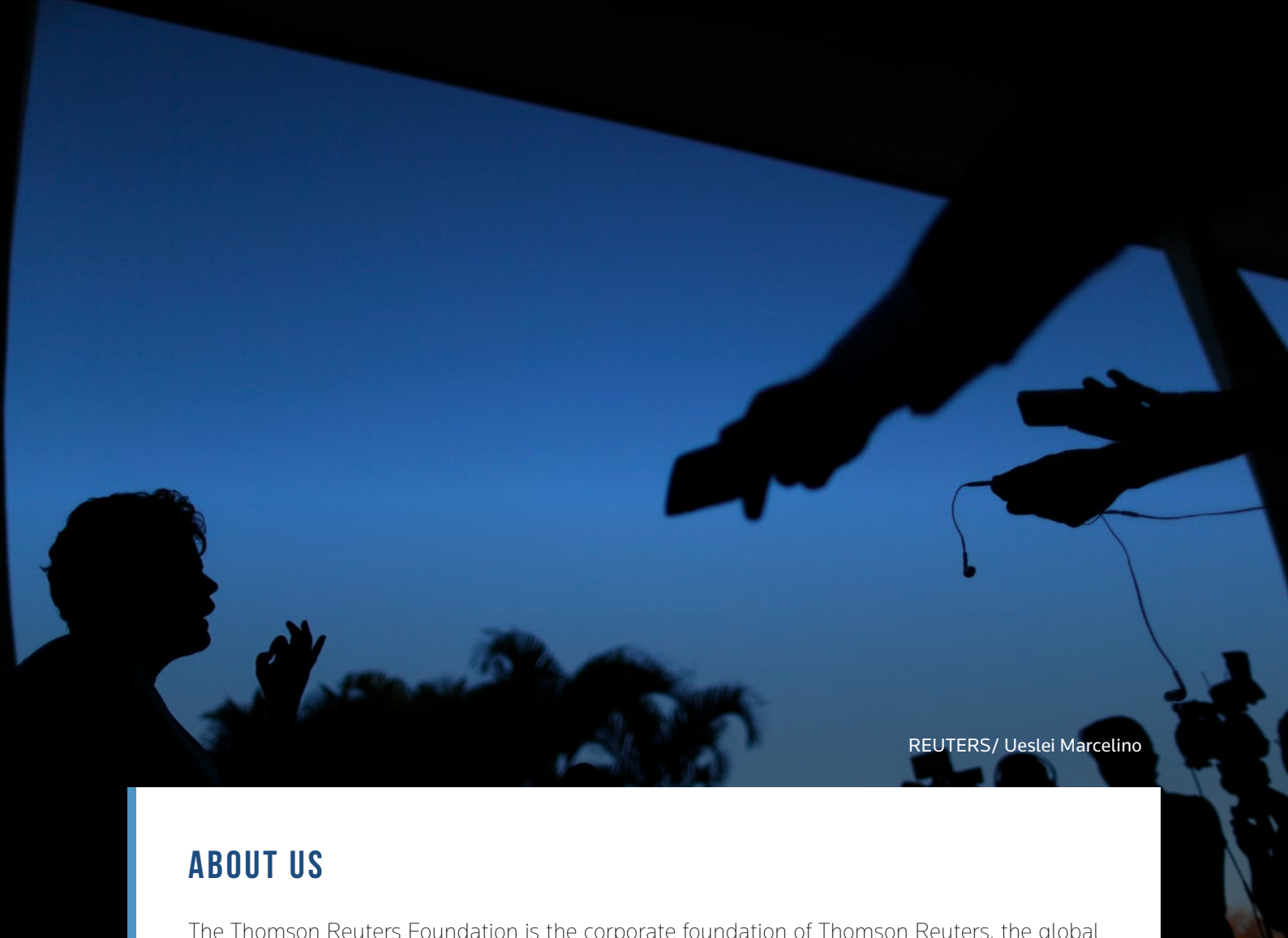
## 10. IN WHAT INSTANCES CAN POLICE CONFISCATE MY JOURNALISTIC DOCUMENTS?

Journalistic documents are not privileged by virtue of being documents obtained or held by a journalist. The Penal Code allows the police to confiscate property where they have reason to believe it was used to commit an offence.

## 11. WHAT PROCEDURE MUST THE POLICE FOLLOW TO INTERCEPT MY COMMUNICATION OR CONFISCATE MY DOCUMENTS?

A police officer is required to obtain an order from the High Court before intercepting your communication or confiscating your documents. A police officer is also required to obtain the written consent of the Attorney-General before applying for such order from the High Court.

A police officer can confiscate your documents if they have reasonable grounds to believe that an offence has been committed, is likely to be committed or is being committed.



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