

**“FREEDOM OF THE PRESS AND
THE CONSTITUTION IN ZAMBIA”**

**MISA ZAMBIA’S POSITION PAPER ON THE AMENDMENT OF THE
REPUBLICAN CONSTITUTION AS AGREED AT THE WORKSHOP ON
“FREEDOM OF THE PRESS AND THE CONSTITUTION” HELD AT FAIRVIEW
HOTEL IN LUSAKA ON 26 SEPTEMBER 2003**

1.1 PROTECTION OF PRESS FREEDOM UNDER THE CONSTITUTION

Press freedom has been protected by the Constitution in varying degrees since the attainment of Political Independence in 1964. In the first place, the independence Constitution provided that no person shall be hindered in the enjoyment of his/her freedom of expression. There was thus no specific provision for the protection of press freedom in the independence Constitution.

1.2 THE CHONA COMMISSION

The National Commission on the Establishment of a one party participatory democracy in Zambia or what is popularly referred to as the Chona Commission was appointed on 3rd March 1972. In its terms of reference, the Chona Commission was urged to protect the fundamental rights and freedoms, as provided under Chapter III of the Constitution of Zambia. As a result, the provisions on freedom of expression contained in the independence Constitution were re-enacted into the 1973 One Party State Constitution without any changes whatsoever.

1.3 THE MVUNGA COMMISSION

The Mvunga Constitutional Review Commission was appointed on 24th September 1990. One of the terms of reference stipulated that the Commission was to examine and determine a system of political pluralism that would ensure and assure the protection of personal liberties. Petitioners submitted to the Mvunga Constitutional Commission that the law concerning protection of press

freedom was inadequate. As a result, the Mvunga Commission recommended that the fundamental right of freedom of expression contained in the Constitution be extended to include a specific reference to freedom of the press. The government accepted the recommendation. Accordingly, the Constitution now provides that no law shall make provision that derogates from freedom of the press.

1.4 MWANAKATWE COMMISSION

The Mwanakatwe Constitutional Review Commission was appointed on 22nd November 1993. One of the terms of reference of the Commission was to recommend appropriate arrangements for the entrenchment and protection of human rights. The Mwanakatwe Constitutional Review Commission noted in particular, that a free press was necessary for a democracy. Thus, the commission made the following recommendations:

- (a) that every person should have the right to freedom of the press, media and artistic creativity;
- (b) that press material or other communications should not be subjected to any form of censorship;
- (c) that public owned media should be managed in a manner that ensures impartiality and expression of a diversity of opinions;
- (d) Journalists should not be compelled to divulge their sources of information;

- (e) the registration or licensing of any media should not be unreasonably withheld, withdrawn or refused;
- (f) the National Assembly should pass no law abrogating the freedom of the press;
- (g) that the right of access to information be made a justifiable right;
- (h) Persons who are involved in the production and dissemination of ideas should be protected; and
- (i) no person should be hindered in the enjoyment of academic and intellectual freedom.

These recommendations were rejected by the sitting government. The media fraternity at its meeting held on Friday 26th September 2003, considered and deliberated on the protection press freedom under the Constitution and resolved as follows:

- (a) that every person should continue to enjoy the right of expression;
- (b) that media freedom should be protected independently as a fundamental right and freedom (the media should have the right to report and publish freely within Zambia and abroad and to be accorded the fullest possible facilities for access to public information).
- (c) that the derogation clause should either be abridged or deleted;
- (d) that no law shall be valid if it contains any provision that derogates from freedom of the media;

- (e) that journalists should not be compelled to divulge their sources of information;
- (f) that the registration or licensing of any media should not be unreasonably withheld, withdrawn or refused;
- (g) that there should be no censorship;
- (h) the right of access to information should be protected as a fundamental and justiciable right;
- (i) that journalists should be protected from unwarranted searches and other forms of harassment; and
- (j) Access to state resources, including the placement of state advertisements should always be provided in a fair and non-discriminatory manner.