



**SUBMISSION BY THE MEDIA INSTITUTE OF SOUTHERN
AFRICA (MISA) ZAMBIA TO THE COMMITTEE ON
INFORMATION AND BROADCASTING SERVICES**

TOPIC: PRESS (MEDIA) FREEDOM IN ZAMBIA: IS IT REALISTIC?

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PRESS FREEDOM DEFINED

The term “press freedom” was traditionally used to refer to the freedom of newspapers “the printed press” to gather and report information without interference. Its use was unquestioned until new forms of communication media, initially radio, then television, emerged and begun to assume a place equally important if not more important than newspapers. Over time, the term “press freedom” has ceased to refer strictly to liberty of newspapers to publish, and is often used as a generic term referring to freedom of different types of communication media to publish information without hindrance. It is now commonplace to speak of “media freedom” as opposed to “press freedom” because the former term is more encompassing. Thus, for the purpose of this submission, the terms “media freedom” and “press freedom” will be used interchangeably.

According to Wikipedia, the free Internet Encyclopaedia¹:

Freedom of the press implies that all people should have the right to express themselves in writing or in any other way of expression of personal opinion or creativity

Freedom of the media manifests itself in form of newspapers, magazines, radio stations, television stations, Internet web sites or any other communication media used to convey information from person to person. . However, these media which are regulated by law, can only flourish as much as the law, especially the constitution, provides. In any country where there is freedom of the media, journalists should not be subjected to licensing. Their conduct should only be limited by laws of libel and defamation, as well as their professional ethics.

MEDIA FREEDOM AND THE CONSTITUTION

In Zambia, unlike in the United States and South Africa, freedom of the press is **not** explicitly guaranteed in the constitution. However, it is provided for by way of inference in Article 20 (1) relating to freedom of expression, which provides that:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or

¹ http://en.wikipedia.org/wiki/Freedom_of_the_press

class of persons, and freedom from interference with his correspondence².

The First Amendment of the United States Constitution provides that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances³.

In the South African Constitution, freedom of the press is explicitly granted in Section 16(1)(a) which says:

Everyone has the right to freedom of expression, which includes... freedom of the press and other media⁴

The freedoms provided in Article 20(1) of the Zambian Constitution are, for all intents and purposes, all taken away in Article 20(3) which provides sweeping derogations by providing that:

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision:

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or

(c) that imposes restrictions on public officers; and except so far as that provision or, the thing done under the authority thereof as the

² <http://www.thezambian.com/Constitution/1996partiii.aspx#20>

³ <http://www.barefootsworld.net/article1.html>

⁴ <http://www.polity.org.za/html/govdocs/constitution/saconst02.html?rebookmark=1#16>

case may be, is shown not to be reasonably justifiable in a democratic society⁵

The 2005 draft constitution written by the Mung'omba Constitution Review Commission has remedied this by providing generously for freedom of the media in Article 57(1) which says:

There shall be freedom of the press and other media⁶

Article 57(2) forbids the enactment of any law which derogates from freedom of the media by providing that:

Subject to this Constitution, a law shall not make any provision that derogates from freedom or independence of the press and other media⁷.

Article 58 protects journalists from having to disclose their sources except when they are called as witnesses in court while Article 59 gives independence to the state-owned media.

If these provisions are enacted into law as proposed by the Mung'omba Constitution Review Commission, Zambia will have one of the strongest protections of media freedom in the world.

MEDIA FREEDOM IN ZAMBIA

It is more accurate to say that there is a **semblance** of media freedom in Zambia rather than to say that there actually **is** media freedom in the country. We say semblance because that perceived media freedom that is manifested in the number of newspapers, magazines, radio stations and television stations that are in operation in the country, is subject to the whims of the President and government in power.

For example, though the media was liberalised during the rule of former President Frederick Chiluba, giving rise to a multiplicity of newspapers, radio and television stations, that government was equally ruthless in dealing with journalists, especially those from the private media, who were deemed to be a threat to its survival through their exposes of bad governance and human rights abuses, and giving the opposition and civil society a platform to express their often critical views. It may not be an exaggeration to say that during the 10 years of the Chiluba government, more journalists were arrested, detained and taken to court than during the 27 years of Dr. Kenneth Kaunda's rule.

⁵ <http://www.thezambian.com/Constitution/1996partiii.aspx#20>

⁶ Constitution of Zambia Bill 2005.

⁷ *Ibid*

There are a number of laws, particularly in the Penal Code, which criminalise journalism and severely restrict freedom of the media. Laws such as Section 69 relating to “defamation of the president” and Section 67 relating to “publication of false news with intent to cause fear and alarm to the public” immediately come to mind. Two thorough audits of laws that impinge upon media freedom in Zambia, the 1993 Media Law Reform Committee and the 1999 Task Force on Media Law Reforms, were commissioned by the government, and made wide-ranging recommendations on media law reforms which in most cases have not been implemented. There is need for government to speedily implement the suggested law reforms for the sake of democracy and good governance in the country.

MEDIA LAW REFORM MEASURES

Some of the recommendations of the 1993 and 1999 audits on media law reform touched on the Constitution and as has been mentioned already, the Mung’omba CRC has addressed the problem. Once the new Constitution is in place, it will pave the way for the amendment or repeal of all anti-media laws in Zambia. In addition, it will facilitate the enactment of new laws to conform with the democratic agenda. For example, the Mung’omba Constitution draft in Article 56 has provided for a right of Access to Information as a fundamental human right. In Article 57(3) it has provided for the establishment of a body to regulate broadcasting.

Thus, once the new constitution is enacted it will be easy to have the Freedom of Information Bill which has been pending for almost four years to be enacted into law. In addition, the Independent Broadcasting Authority (IBA) will have to be established quickly because it will be a constitutional requirement. Once the IBA is in place, along with the provisions protecting the independence of the public media in the draft constitution, ZNBC is less likely to be influenced by ruling party politicians the way it is today.

CONCLUSION

A free and independent media is a safeguard for democracy which in turn could lead to general prosperity in the country. Therefore, there is need for the government to speedily implement media law reforms. The enactment of a new constitution along the lines proposed by the Mung’omba CRC will provide the impetus to proceed with the media law reform process with resolve. Given the reluctance of the Chiluba and Mwanawasa governments to proceed boldly with media law reforms, it seems a new constitutional dispensation will provide the required impetus. It is imperative that the new constitution is enacted quickly if press freedom is to be realised in Zambia.