Access to Information and Protection of Privacy Act

Broadcasting Services Act

Fact Sheet One:

History and purpose of the Act

Background:

In Zimbabwe, the electromagnetic transmission of audio and video signals and the available frequency spectrum is regulated by the Broadcasting Services Act (BSA) [Chapter 12:06], which was passed in April 2001 under controversial circumstances.

Until the latter part of 2000, broadcasting in Zimbabwe was regulated by the Broadcasting Act [Chapter 12:01] (1957). The 1957 Act guaranteed, under Section 27, the monopoly of the then Zimbabwe Broadcasting Corporation (ZBC) on broadcasting (television) services. In addition, Section 14 of the Radio Communications Act also guaranteed the ZBC’s monopoly of broadcasting (radio) services.

However, late in the year 2000, Capital Radio, under the directorship of Michael Auret (Jnr) and Gerry Jackson, challenged Section 27 of the Broadcasting Act in the Supreme Court, arguing that it contravened Section 20 of the Zimbabwean Constitution which guarantees the right to receive, impart and share information without hindrance.

In the historic judgment of 22 September 2000, the Supreme Court of Zimbabwe ruled that indeed the monopoly of ZBC violated the constitutional right of freedom of expression by unduly limiting the public’s right to “...hold opinions and to receive and impart ideas and information without interference...”. Thus both Sections 14 of the Radio Communications Act and Section 27 of the Broadcasting Act were declared null and void. Further, the court argued that in the absence of any regulating framework in the sector, Capital Radio (or anyone else for that matter) was at liberty to establish and run a broadcasting service.

Following this, Capital Radio went on air on 28 September 2000, but the government quickly responded by raiding its offices, closing it down and confiscating its equipment. In a rush to fill the legal vacuum created by the Supreme Court judgment, the government hurriedly promulgated the Presidential Powers (Temporary Provisions) Broadcasting Regulations 2000 in October, under the Presidential Powers (Temporary Measures) Act. These Regulations provided for the regulation of the broadcast media in the country, including the requirement for all broadcasters to be licensed and establish a regulatory authority to undertake this task, the Broadcasting Authority of Zimbabwe (BAZ).

The government justified the use of the Presidential Powers (Temporary Measures) Act on the basis that the Supreme Court decision had created a hazardous legal void in the sector. Therefore, the situation created by the unregulated use of the frequency spectrum needed to be contained by the urgent and immediate promulgation of law. The various independent radio stations that sprang up during this commotion were illegally and immediately switched off-air and their equipment seized.

Because the temporary provisions could only last six months, and the government did not want another vacuum soon after they lapsed, the Broadcasting Services Bill was tabled before Parliament. Despite strong criticism from national and international groups and an adverse Parliamentary Legal Committee report, which cited eight sections of the Bill as
unconstitutional, the Broadcasting Services Act (BSA) was passed by Parliament on 4 April 2001.

**Purpose of the Act:**

Ostensibly, the BSA seeks to, among other things, “to provide for the planning, management, allocation, regulation and protection of the broadcasting frequency spectrum and the regulation and licensing of broadcasting services and systems; to provide for programme standards; to regulate and license signal carriers; to encourage and develop the creative arts through broadcasting content standards… [and] to create a Broadcasting Fund to help finance local broadcasting.”

However, a closer analysis of the Act shows that, in fact, the BSA seeks to maintain a monopoly of the Zimbabwe Broadcasting Holdings (ZBH) in the provision of broadcast media services. This is because most of the provisions in the Act are not only unconstitutional as they place undue restrictions on individuals' rights to receive and impart information, but make onerous demands on potential players in the industry, thus effectively discouraging entry. The Act is a façade, meant to fool Zimbabweans and the rest of the world into believing that Zimbabwe has liberalised its broadcast media sector, when in fact it is a piece of legislation crafted to ensure absolute government control over the dissemination of information via the broadcast media. For example, since its enactment in 2001, not a single broadcaster has been granted permission to operate a broadcast media service in the country!

Some of the key problems with the Act are as follows:

1. the regulatory body that it establishes, the Broadcasting Authority of Zimbabwe (BAZ), is firmly under government control via the Minister of Information and Publicity;
2. the licensing system is controlled by the minister in his/her discretion – the Minister is free to use his/her discretion to amend, cancel or suspend a broadcaster if they violate various vaguely-worded sections of the Act;
3. no broadcasting licensee will be allowed to be a signal carrier, meaning that they will still be dependent on the government to broadcast their material;
4. licensees are obliged to allocate one hour a week to the government, as well as to carry any messages of “national interest”, as directed by the Minister;
5. the Act imposes impossible provisions for limiting foreign ownership and employment; and,
6. the Act gives the Minister unfettered powers to determine the programme content of private broadcasters.

Thus, the broadcasting monopoly of the ZBH deemed illegally by the Supreme Court in 2000 was reinstated through the provisions of the BSA. This clearly constitutes a deliberate, and contemptuous disregard of an order of the Supreme Court on the part of the government. While it is true that the frequency spectrum is limited and needs to be regulated by any national government, the airwaves are also public property which the government must protect on behalf of the public, not for its own uses. It is actually the government’s duty, as a trustee of the citizens, to provide an efficient allocation of this precious public resource so that people can exercise their fundamental right to communicate and share ideas, no more, no less.

The African Charter on Broadcasting, to which Zimbabwe is signatory to, states that the legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulations, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas, as well as a three-tier system for broadcasting that includes public service broadcasting, commercial broadcasting and community broadcasting. The Charter also stipulates that: “All formal powers in the areas of broadcast and telecommunications regulation should be exercised by public authorities who are protected against interference, particularly of a political nature, by among other things, an appointments process for members which is open, transparent, involves the participation of civil society, and is not controlled by any particular political party”. Further, the Constitution of Zimbabwe (section 20(2)(b) states that any regulation of the means of communication should
be only be geared towards “the technical administration, technical operation or general efficiency of telephony, telegraphy, posts, wireless broadcasting or television or creating or regulating any monopoly in these fields”.

Any legislation that regulates access to the media (be it broadcast or print) must be done via a representative independent authority that is accountable to the public via parliament, otherwise it leads to a monopolistic broadcasting, which is vulnerable to political meddling such as the situation in Zimbabwe. By its nature, a broadcasting monopoly restricts the free flow, quality, quantity and nature of information available to the citizens of the country, and thus is unconstitutional as it violates their freedom to receive and impart ideas without interference.

Ends.