Access to Information and Protection of Privacy Act
Fact Sheet Four:
Accreditation (registration) of journalists

Introduction:

Sections 78 to 84 of the Access to Information and Protection of Privacy Act [Chapter 10:27] (AIPPA) deal with the accreditation of journalists.

Journalists are broadly defined in Part XI of the Act as anyone who “gathers, collects, edits or prepares messages and materials for the office of a mass media” (see section 63). These sections require that journalists must obtain accreditation and prohibits mass media outlets from employing anyone as a journalist who is not accredited (sections 79 (1) and 83). Accreditation lasts for just 12 months, but may be renewed after the cycle (section 84). No journalist will enjoy the rights of journalists as set out in section 78 unless he/she is accredited.

If registration of journalists was a mere formality and retained as a statistical database utilised by the government to identify the number of persons that practice as journalists in Zimbabwe, the requirement would not be adverse. However, registration assumes sinister qualities when it is mandatory and is a prerequisite to practicing as a journalist.

The procedure and requirements:

The MIC is responsible for overseeing the accreditation of all journalists operating in Zimbabwe. All journalists must make the application for accreditation or the mass media service that they work for may apply for accreditation on their behalf (section 79(3)). A person who is not a citizen or permanent resident of Zimbabwe can only be accredited for a period not exceeding 30 days (section 79(4)).

AIPPA states that no one may be accredited as a journalist if one does not possess the “prescribed qualifications” (section 79(5). Representatives of foreign mass media may be accredited for a limited period (section 79).

However, the Act does not clearly define what these “prescribed qualifications” are, which leaves it to the Commission’s discretion as to who may, or may not be allowed to practice. These “qualifications” can be viewed...
as a hindrance to a journalist’s right to receive and impart information as guaranteed by the Constitution of Zimbabwe. Besides journalists, this section violates all individuals’ rights to freedom of expression, because the state, via the MIC, may place impossible conditions for private individuals seeking to express themselves through the media.

In addition, this violates labour laws as the livelihoods of journalists are effectively placed in the hands of the Commission that can use its discretion as to which journalist can be employed and which one cannot be employed. This decision should ultimately rest with the media owners themselves not a government-appointed commission.

The registration of journalists should be a technical issue which facilitates the identification of journalists and speeds up their news collection routines, not a way of determining who can work as a journalist and who cannot. Prohibiting certain journalists from earning a living, amounts to an abridgment of freedom of expression and is, therefore, unconstitutional.

As a direct consequent of compulsory accreditation, the Minister of Information is effectively granted the discretionary power to prohibit journalists from practising through deregistration, or forcing them to engage in self-censorship through other less drastic means of censure.

It is common cause that the use of discretion to interfere with the right to freedom of expression is unconstitutional. It is possible that the Minister – who is a political appointee – may impose qualifications that are onerous and unreasonable, disqualifying many people that are currently practicing.

Read together with sections 82 and 83(1), it is clear that if an individual does not register/accredit with the MIC, then he/she would be committing a criminal offence, punishable by up to two years in prison or a fine, or both.

According to Section 20 of the Zimbabwean Constitution, every individual has the right to receive and impart information and views. These sections violate this constitutional guarantee in that they restrict the exercise of the right to freedom of expression only to those that the Minister of Information decides to accredit. This means that people need licenses in order to speak and to disseminate what they write.

The capacity of individuals to express themselves through the media, as journalist, is therefore proscribed. The Constitution clearly states that no person, and even the state, has the right to interfere with the correspondence of individuals, unless if this interference is “in the interests of defence, public safety, public order, the economic interests of the State, public morality or public health” (section 20(2) (a)) or for the protection of the reputations and freedoms of private individuals (section 20(2) (b).

Specific offences that journalists can commit:

Abuse of journalistic privilege
In the mindset of the Zimbabwean government, the practice of journalism is a privilege, and not a right, hence the commission of any of the stated offences is considered to be a breach of “journalistic privilege” (section 80). According to this section, a journalist commits an offence if he breaches any of the provisions of AIPPA. This restriction is too general and broad to constitute a limitation "authorised by law."

The provision assumes, and erroneously so, that every provision of AIPPA is material and that it relates to journalists. In addition, it also assumes that a violation of any section of AIPPA constitutes an abuse of freedom of expression, and is therefore a grave offence punishable by a fine or imprisonment or both.

Section 83(1) of AIPPA states that: 

no unaccredited journalist may practice, be employed, hold him/herself out in any manner, or pretend to be, a journalist.

This is impractical because it means that in reality, even after the expiration of the certificate of accreditation after the 12 month cycle, and during the time when the MIC is considering applications for renewal of accreditation, all journalists’ contracts with their employers must be rendered invalid and that no one should collect or disseminate news in that period.

In fact, any personal documentation (like curriculum vitae and passports) indicating that the individual is a journalist must be changed, or else the concerned individual will be fined or arrested or both fined and arrested for pretending to be a journalist! Besides the ridiculousness of this provision, the section’s insistence on the accreditation of journalists prior to practicing amounts to a violation of individuals’ rights to freedom of expression which is enshrined in the country’s Constitution.

Falsifying or fabricating information

Falsifying or fabricating information is an offence punishable by a fine, imprisonment (two years), deregistration, or suspension from practising for a specific period, or by a simple caution (Section 80). In order to be convicted of contravening this section, the state must prove that the accused journalist intended to falsify or fabricate information. The latter point raises the problem.

The state must establish from the facts, a culpable state of mind, and convincingly argue that notwithstanding any protestations of innocence, the journalist invented information. In other words, the journalist must have intended to lie. This is problematic especially in the absence of a legally agreed to definition of ‘lies’ or ‘false’ information in the Act.

For example, if a journalist reports that 10 people died from a certain accident, when in fact 11 died, is this a lie or simply an inaccurate piece of information? If it is a lie, is it a crime deserving a fine and imprisonment?

In any event, the country has enough laws on libel and slander to cover cases where journalists maliciously spread information that is intended to injure or hurt the reputation of private individuals. This section, therefore, becomes
redundant! The consequences of failure to prove truth are civil damages, not the rigorous sanction of criminal conviction and imprisonment as prescribed by AIPPA.

**Moonlighting without authority**

Save for freelance journalists, it is an offence for a journalist to collect and disseminate information on behalf of a person other than his mass media service employer, without permission from the employer. This offence is another example of the unnecessarily intrusive nature of the provisions of AIPPA. This is surely a contractual issue that should be between an employer and the employee journalist.

It is inappropriate for the government to involve itself in what are essentially private disputes between individuals. But to ban the individual, for life, from earning a livelihood as a result of the commission of such a commonplace misdemeanour is clearly oppressive.

With the current hyper-inflationary environment obtaining in Zimbabwe, and with many people earning salaries that are barely enough to cater for their shelter, clothing and food requirements, many professionals have been forced to resort to other forms of self-employment to supplement their meagre incomes. Under AIPPA this is punishable by a fine or imprisonment, or both. It has been argued by many that this provision was inserted by government in order to prevent local journalists from selling information/stories to foreign news agencies, many of whom whose reporters are routinely denied licences to collect news within Zimbabwe’s borders.

There is no reason, in principle, why a person who is not a freelance journalist should be prohibited from writing for two or more newspapers. The use of criminal sanctions on the breach of a private employer-employee relationship is not justifiable in any democratic society and this particularly so, as little, if any, prejudice to society is likely to be occasioned by a breach of contract as stated in section 20(2) of the Constitution of Zimbabwe.

**Code of conduct:**

Section 85(1) provides for the MIC to develop a code of conduct for journalists after consultation with a body that it “considers to be representative of journalists”. This clause is dubious in the context of the Zimbabwean situation where the media polarisation in the country means that there are two journalist associations, the Zimbabwe Union of Journalists (ZUJ) and the Independent Journalists Association of Zimbabwe (IJAZ). This means that it is left to the MIC to determine which organisation is “representative” of the interests of journalists between the two.

Further, the ZANU (PF) government has been known to sponsor parallel ‘union’ organisations if it feels that those that have already been established by the stakeholders themselves are not toeing the official party line. Examples that come to mind here include the Zimbabwe Federation of Trade Unions (ZFTU) that was formed to counter the Zimbabwe Congress of Trade Unions
(ZCTU). This clause, therefore, gives the government, via the MIC, the power to enter into discussions with only unions or industry organisations that are aligned to it.

Section 85(2) states that the MIC shall be responsible for enforcing its own code of conduct. The MIC develops the law that regulates journalists and at the same time enforces it! Further, subsections (3) and (4) say that the ‘errant’ journalists will be disciplined after an appeal before the MIC. This means that MIC is the complainant, the prosecutor and the judge.

This violates section 18(2) and (9) of the Zimbabwean Constitution which stipulates that every individual has a right to a fair hearing before an impartial tribunal. The government is a player in the mass media service. The MIC is appointed and answerable to the government through the Minister of Information. Thus, it cannot be expected to be fair and objective. Further, the discretionary powers granted to the MIC are open to political abuse to the detriment of mass media practitioners, especially those in the privately-owned media, whom the government has always been known to detest.

While journalists, like is the case with most professionals such as doctors, accountants and lawyers, definitely need a code of conduct to guide their practice. It is therefore natural that this code is developed by the journalists themselves and the disciplinary measures to be taken if one violates this code should be carried out by a self-regulating body that represents all stakeholders in the profession.

However, as it is currently constituted, the MIC’s power to discipline journalists unlawfully restricts the exercise of the right to freedom of expression guaranteed by the country’s Constitution.

Ends.