Access to Information and Protection of Privacy Act

Fact Sheet Seven:

Application of AIPPA to date

Introduction:
Since its enactment on 15 March 2002, the Access to Information and Protection of Privacy Act [Chapter 10:27], commonly known as AIPPA, has resulted in the arrest of journalists, photographers, vendors and even newsroom drivers – as well as owners and publishers of media houses, and the closure of several media outlets in the sector.

As if to vindicate those who insist– despite government denials to the contrary – that AIPPA was promulgated to muzzle the private media, AIPPA has only been enforced with unerring rigidity on non-state-owned media journalists and media houses.

While there have been numerous charges against private media journalists and media houses, to date, not even one single journalist in the state media has been charged under the controversial law. The closure of four private newspapers – the Daily News, the Daily News on Sunday, The Tribune and the Bulawayo-based Weekly Times rank as AIPPA’s severest blows against freedom of expression and freedom of the press in Zimbabwe to date.

Technical administration or tool for political control?

It would appear that AIPPA is in fact a licensing system for the media in Zimbabwe, and not a technical registration system (as the Zimbabwe Constitution would allow), the latter which is normal the world over as a way of keeping records of how many mass media services and workers a country has at a given time.

As a licensing system AIPPA, is contrary to international conventions that the Zimbabwean government is signatory to, like the United Nations’ Universal Declaration of Human Rights (UDHR) (Article 19), The African Charter on Human and Peoples’ Rights (ACHPR) (Article 9) and Windhoek Declaration (Article 9), that guarantee every individual the right to receive and impart information through the media.

Further, the AIPPA violates section 20 of the Zimbabwe constitution, which guarantees everyone the right to receive and impart information without hindrance or interference. AIPPA constitutes a hindrance to Zimbabweans receiving and sharing information amongst each other through the mass media.
Section 20(b) of the Zimbabwean Constitution states that the only form of governmental control on freedom of expression must be for the purposes of "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". It is clear that the licensing system established by AIPPA is neither for the technical administration of the media nor for regulating monopolies.

**Cases:**

In its first year of enactment alone, 44 media practitioners were arrested and charged under AIPPA, with 13 of those arrests coming in the first 10 weeks of its life. In May 2002, for example, 11 private media journalists were arrested. Bornwell Chakaodza, editor of *The Standard*, was charged on five occasions in one week for allegedly publishing falsehoods.

However, only two of the 44 arrests in 2002 have proceeded to prosecution and been concluded, while in six of the cases the state withdrew its charges, while 22 media workers who had been arrested were released without charge. One was deported and a further 13 had cases still pending by the end of its first full year in operation. In most cases, journalists were just detained over weekends only to be released without charge.

It is significant to note that not even one journalist or editor working for the state media has so far been arrested or charged under this controversial piece of legislation.

The infamous story of the Magunje woman who was allegedly beheaded in front of her daughters by ZANU (PF) militia that was carried by the *Daily News* in April 2002 also had its casualties. A reporter with the *Daily News* was arrested and detained for a whole weekend after writing a follow-up story to the original one, which was written by his workmate, Lloyd Mudiwa.

However, it is interesting to note that Andrew Meldrum, a correspondent for the UK-based *Guardian* newspaper was cleared by the courts of any wrongdoing under section 80 of AIPPA (abuse of journalistic privilege) when he carried the same story for the *Guardian*. The High Court found Meldrum not guilty of publishing falsehoods with the intention of tarnishing the image of Zimbabwe. The court found that Meldrum had actually taken reasonable steps to verify the facts by contacting the police spokesman, who declined to comment on the allegations. After being acquitted, Meldrum was immediately served with deportation orders by immigration authorities. The court then suspended the order pending appeal but, despite this, Meldrum was kidnapped and deported on 16 May 2003.

By 2004, the trends were clear that AIPPA was being selectively applied to against sections of the media viewed as being imperialist lackeys and a threat to Zanu PF’s hold on power. For example, in January of that year, three journalists working for *The Zimbabwe Independent* were arrested and detained for two nights for a story alleging that President Robert Mugabe had
commandeered an Air Zimbabwe jet to travel to the Far East with his family. The three were each charged with criminal defamation and released on bail.

Closures:
The closure of four private newspapers – the Daily News, the Daily News on Sunday, The Tribune and the Bulawayo-based Weekly Times, however, still rank as AIPPA’s severest blows against freedom of expression and freedom of the press in Zimbabwe to date.
The closure of the two Associated Newspapers of Zimbabwe (ANZ) publications, the Daily News and the Daily News on Sunday, in particular, was a clear indication that AIPPA was a law that was always going to be applied with rigidity against the perceived opponents of the government. The only independent daily newspaper in the country, The Daily News was a constant thorn in the government’s flesh, exposing corruption and other abuses of power by high-ranking government and ruling Zanu PF officials.

Its closure resulted in the narrowing of the space for freedom of expression with the government-controlled dailies dominating the media landscape.

The closures, coming after the Media and Information Commission (MIC) charged that the ANZ publications were illegal since they were not registered, were affected by the Supreme Court on 11 September 2003.
The court ruled that the publishing group could not challenge the constitutionality of AIPPA since it had approached the Court with “dirty hands”. The government moved in swiftly and closed the newspapers the next day and subsequently seized the ANZ’s equipment. Two days later, the ANZ applied to the MIC for registration but was refused, and a series of court battles followed.

The newspaper challenged the refusal by the MIC to register it before the Administrative Court, and the seizure of its equipment by the police before the High Court. It was successful on both fronts.
The Administrative Court ruled that the MIC was improperly constituted and had wrongly denied ANZ registration while the High Court ordered the police to vacate the premises and return the seized equipment.

The Daily News, which had been off the streets since 12 September, briefly came back into production on 22 January 2004, after the police finally responded to High Court orders to vacate the ANZ offices. It was, however, closed again after 5 February 2004, when the Supreme Court, in a separate case, upheld the AIPPA requirement for journalists to be accredited.

The MIC then refused to accredit ANZ journalists on the basis that they were working for an unregistered newspaper. The closure of the two ANZ publications put 350 workers out of employment, with close to 150 of these being journalists.

The MIC was to flex its muscles once more when it suspended the licence of The Tribune newspaper, owned by a Harare businessman and former ZANU (PF) parliamentarian, Kindness Paradza. The suspension of The Tribune was not also without controversy. The newspaper group was accused of not
having notified the MIC in terms of Section 71(4) of AIPPA of the merger of two of its publications, the *Business Tribune* and the *Weekend Tribune*, published on Tuesdays and Saturday respectively, into *The Tribune* that was published on Saturdays. In addition, the publishers were also accused of failing to notify the Commission of the change in ownership of the newspaper, from U.K.I. (Pvt) Ltd to Africa Tribune Newspapers (Pvt) Ltd (ATN).

The publishers were accused of committing “gross violations” and were charged with contravening sections 67 and 71(1) (a) of AIPPA and thus their license was suspended.

The closures were to continue in 2006 when the newly founded *The Weekly Times*’ licence to operate was suspended for one year in February after the MIC ruled that the company had violated the registration procedures under AIPPA by misrepresenting certain information in its application.

The MIC argued that the newspaper had promised to make social issues a priority but had instead focused on “political issues and advocacy”.

It is trite to note that the definition of what constitutes “political issues and advocacy” is not clearly and explicitly defined under AIPPA. This means that the ultimate discretion lies with the authorities and this amounted to restricting the newspaper owners’ right to receive and impart ideas.

Ends.