Access to Information and Protection of Privacy Act

Fact Sheet Three:
The Media and Information Commission (MIC)

Introduction:

The Access to Information and Protection of Privacy Act [Chapter 10:27] (AIPPA) establishes a Media and Information Commission (MIC) and gives this body a wide range of regulatory powers over the media, including refusals to disclose information, registration (and de-registration) of mass media services, accreditation (and de-registration) of journalists and monitoring media content.

The Commission is governed by a Board whose members are appointed by the Minister of Information and Publicity. Significantly, the previous requirement that three of the five members of the MIC should be nominated by journalists or media associations following subsequent amendments to the Act.

The composition of the MIC:

In terms of AIPPA, the body responsible for registering mass media services, accrediting and disciplining journalists is the Media and Information Commission (MIC). The Commission is controlled and managed by a Board consisting of not less than five and not more than seven members appointed by the Minister of Information and Publicity, after consultation with the President (section 40). The Minister also appoints both the chair and the vice-chair of the Board.

However, the Fourth and Fifth Schedules of AIPPA give the Minister of Information broad powers over members of this Commission, including the ultimate power to set their terms of office; as well as other terms and conditions, including allowances. The Minister is also vested with the power to determine the agenda of the MIC board meetings; and when and where these meetings should be held, and the power to dismiss a Commissioner.

The general power of the MIC to regulate mass media services is contained in section 71(6) and (9) of AIPPA. This section empowers the Commission to issue any order, if it is satisfied that a mass media service provider “…has contravened or is likely to contravene any of the provisions of this Act…”
The order in question may be accompanied by a monetary penalty imposed at the discretion of the Commission. This means that the Commission can determine any amount that it may want to impose on an 'offending' media house. Also implicit in this provision is the assumption that every provision of AIPPA is capable of being breached by mass media organisations.

Such a restriction is too general and imprecise.

There are several unconstitutional problems with the set-up of the MIC and the powers accorded to it. First, the power granted to the Commission is illegitimate because the Commission itself is not independent, and therefore, there is a very real possibility its powers can be used against those mass media organisations that are not toeing the official government line.

Secondly, several sections of AIPPA clearly violate international covenants (on the rights of individuals to access information and to express themselves freely) that may unfortunately be used by the Commission to discipline journalists or to cancel the registration certificates of mass media organisations.

Thirdly, the Commission is granted semi judicial power to regulate the conduct of mass media service providers. This violates section 18(2) and (9) of the Constitution of Zimbabwe, which states that every individual or entity has the right to be afforded “a fair hearing within a reasonable time by an independent and impartial court”. It will be demonstrated below that the MIC is an inherently compromised and biased institution that cannot exercise any judicial power over the mass media and journalists.

The Commission simply has no right to regulate (or control) mass media service providers in the country in that it is not independent. Members of the MIC have no security of tenure as the Minister of Information has the ultimate power to hire or fire the commissioners on terms set by him/her without recourse to law or other independent authority. AIPPA does not provide for the appointment process of the commissioners or the circumstances of their dismissal to be made public. The Minister is not accountable to any person other than the person that appointed him/her to his/her post of Minister, i.e., the President of the country.

The Commission is, therefore, not immune from political control and influence of the party that is represented by the President. Further, orders from the Minister to the Commission are binding and have the force of law. This reduces the Commission to the status of the proverbial toothless bulldog, which merely works to rubber stamp the whims of the Minister of Information and his boss. In such circumstances, the MIC cannot occupy the post of neutral and objective arbiter as required by the Constitution of Zimbabwe.

In addition to the Commission being politically compromised, it is not representative of the very industry that it seeks to regulate. In particular, the 2003 amendments to AIPPA that struck off the requirement that at least three of MIC’s board members should be appointed by an association of journalists,
means that now the government can appoint its own apologists to the Commission who will always act in the government’s interests, and not in the interests of the citizens of the country

The **Declaration of Principles on Freedom of Expression** in Africa (Principle VII (1)), in relation to broadcast authorities states that: *Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.*

The same principle applies to regulatory bodies with powers over all forms of media. Clearly the MIC lacks the required independence.

Ends.