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The Access to Information and Protection of Privacy Act: Two Years On

ARTICLE 19/MISA-ZIMBABWE

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TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>AIPPA: OVERVIEW AND CRITIQUE</u>	2
II.1	<u>FREEDOM OF INFORMATION</u>	3
II.2	<u>THE MEDIA AND INFORMATION COMMISSION</u>	4
II.3	<u>REGISTRATION OF THE MASS MEDIA</u>	5
II.4	<u>ACCREDITATION OF JOURNALISTS</u>	6
II.5	<u>CONTENT RESTRICTIONS</u>	7
III.	<u>THE OVERALL CONTEXT</u>	7
III.1	<u>OTHER REPRESSIVE LEGISLATION</u>	7
III.1.1	<u>POSA</u>	7
III.1.2	<u>The Broadcasting Services Act</u>	8
III.2	<u>CONTROL OVER THE PUBLIC MEDIA</u>	9
III.3	<u>GENERAL HARASSMENT OF THE MEDIA</u>	10
IV.	<u>CONTENT RESTRICTIONS</u>	11
V.	<u>NEWSPAPER REGISTRATION: CLOSURE OF THE DAILY NEWS</u>	13
V.1	<u>CHRONICLE OF THE ANZ CASE</u>	13
V.2	<u>ANALYSIS OF THE ANZ JUDGMENT</u>	16
VI.	<u>ACCREDITATION OF JOURNALISTS: THE IJAZ CASE</u>	17
VII.	<u>CONCLUSION</u>	19
	<u>ANNEX: TABLE OF VIOLATIONS</u>	20
	<u>LAW ENFORCEMENT: ARRESTS/DETENTIONS/RAIDS/CHARGES</u>	20
	<u>ATTACKS/HARASSMENT</u>	26

I. Introduction

The Access to Information and Protection of Privacy Act, commonly referred to as AIPPA, was passed by the Parliament of Zimbabwe on 31 January 2002 and signed into law by President Mugabe on 15 March 2002. It may accurately be described as the leading weapon of the government and the ruling ZANU PF party in their ongoing campaign to stifle independent media reporting in Zimbabwe.

Crafted by the Minister of State for Publicity and Information in the President's Office, Jonathan Moyo, AIPPA's trail of destruction can be traced to its enactment in 2002 and the plethora of arrests, intimidation, harassment and measures of control, which immediately followed. These have been directed at media workers of all sorts – journalists, photographers, vendors and even drivers – as well as media outlets and, in particular, the independent print media. The closure, on 12 September 2003, of Associated Newspapers of Zimbabwe (ANZ), publishers of *The Daily News* and *The Daily News on Sunday*, ranks as AIPPA's severest blow against freedom of the press in Zimbabwe.

A brief history of the adoption of AIPPA provides some context as to why such a repressive piece of legislation was adopted. An important part of the context is the growing challenge within Zimbabwe to ZANU PF's political dominance. By 1999, ZANU PF was confronted with an increasingly popular opposition party, the Movement for Democratic Change (MDC), as well as an increasingly independent and assertive print media. This led to an intensification of attempts to muzzle the independent media.

The 22 February 2000 Constitutional Referendum marked a turning point in the fortunes of the ZANU PF party and was an important milestone in the political history of Zimbabwe. In the Referendum, the people resoundingly rejected the government-sponsored draft constitution, the first time that ZANU PF had ever been defeated in an election. A key concern was that, even though the Constitutional Commission that produced the draft had been handpicked by the government, the executive insisted on a number of clauses in the draft constitution, including one mandating official acquisition of land, on a compulsory basis and without compensation. The referendum loss was the first indication that ZANU PF was starting to lose its erstwhile almost total grip on political power. It also heralded in a period of political violence and economic decline, after a period of relative calm and prosperity.

The Referendum was followed by parliamentary elections in June 2000. The MDC won a significant number of parliamentary seats, close to an overall majority of those which were openly contested (the president appoints 20 members of parliament directly), becoming the first party outside of government to wield parliamentary influence since the 1987 unity agreement between ZANU PF and PF ZAPU.

After near defeat in the parliamentary elections of 2000, ZANU PF, as governing party, put in place a number of measures to increase its control over the media, access to information and the electoral process. These measures intensified in the lead-up to the presidential election of March 2002, although AIPPA was passed into law only after Mugabe had been declared the victor in that election.

A particular aspect of these measures was the emergence on the Zimbabwe political scene of a new breed of State-sponsored militias, created to terrorise political dissent, regardless of the form it took. The government trained youths in military strategy under the guise of the controversial National Youth Training Service. The brutal violence perpetrated by these militias is well known and more than 180 people were reportedly murdered in the name of land redistribution and the oft-abused concept of sovereignty between February 2000 and March 2002.

The government also acted to further tighten its already considerable control over the government media, both print and broadcast, including the Zimbabwean Broadcasting Corporation (ZBC), as well as leading newspapers such as *The Herald* and *The Chronicle*. Measures included changing the governance systems to give it more direct influence and removing independent-minded editors and senior journalists.

At the same time, there was a sharp increase in attacks against the independent media, both verbal and physical. *The Daily News*, for example, suffered two very serious bomb attacks, one against its premises on 22 April 2000, just before the parliamentary elections and another on 28 January 2001, which destroyed its printing presses. Numerous copies of independent newspapers have been seized by pro-government groups, journalists and readers of the independent media have been attacked and beaten, and independent newspapers have even been banned from entering certain areas. These 'unofficial' actions have taken place

in the context of repeated lambasting by officials, including the executive, of the independent media, suggesting that the latter are not only trashy and full of libel but also injurious to the national interest and even security.

The government also introduced a number of repressive laws, starting with the Broadcasting Services Act 2001, passed on 3 April 2001, which gives the government very extensive control over any future private broadcasters, should licences ever be issued (so far, none have). This was followed by the Public Order and Security Act (POSA) 2002, adopted on 10 January 2002, shortly before the presidential elections and then, more-or-less concurrently, by AIPPA. POSA imposes a number of stringent content restrictions on the media and also poses strict limits on demonstrations and public gatherings.

AIPPA itself seeks to control the independent media in a number of key ways. It grants wide-ranging powers to a Media and Information Commission, which is firmly under government control, and imposes registration/licensing requirements on both media outlets and individual journalists. It also imposes a number of strict content restrictions on the media.

These measures have, cumulatively, resulted in a high degree of control on the part of the government over the flow of information and a corresponding shrinking of the space for freedom of expression in Zimbabwe. They have also coincided with an extremely severe economic crisis, which has seen unprecedented contraction in the economy, as well as a period of serious social and political unrest, and violence.

This report focuses on the first two years of AIPPA, describing the legislation, critiquing it and providing an overview of the way in which it has been implemented and the impact this has had on the free flow of information and ideas in Zimbabwe. It also provides an overview of the context in which AIPPA operates, including other repressive laws and measures, which prevent independent perspectives from being voiced.

II. AIPPA: Overview and Critique

The Access to Information and Protection of Privacy Bill was first published in an Extraordinary Government Gazette on 30 November 2001 and then submitted to the Parliamentary Legal Committee for its consideration. Despite widespread criticism from both the Parliamentary Legal Committee and a wide range of other local, as well as international, bodies, the Bill was passed by the Parliament of Zimbabwe on 31 January 2002, over the objections of the opposition MDC party, and signed into law by President Mugabe on 15 March 2002.

Amendments to AIPPA were signed into law on 13 October 2003. The main importance of the amendments for current purposes was twofold. First, the requirement for three of the five members of the Media and Information Commission to be nominated by journalists' or media associations was removed. Second, the amendments tightened up provisions relating to the publication of false news, which had already been declared unconstitutional by the Supreme Court in May 2003.

AIPPA was, as has been noted, subject to much national and international criticism. On 29 January 2002, just two days before it was passed, the Parliamentary Legal Committee roundly criticised the Bill as being unconstitutional (see Parliamentary Debates Volume 28, No 46, starting at column 4166). The Chairman of the Committee, Dr Eddison Zvobgo, described the original version of the Bill as "the most calculated and determined assault on our (constitutional) liberties, in the 20 years I served as Cabinet Minister". He went on to assail the constitutionality of 16 provisions in the Bill. The version that was finally adopted differed only slightly from the version that was subjected to such serious criticism by a Parliamentary Committee dominated by members of the governing party.

As its name implies, AIPPA does formally establish a right to access information held by public bodies. However, this right is so limited by exclusions and exceptions that its practical impact has been extremely limited. AIPPA does also impose limits on the collection of personal information by public bodies and the uses to which such bodies may put this information. However, the bulk of the provisions in AIPPA have nothing to do with either access to information or privacy. Instead, they impose a range of harsh restrictions on media freedom.

Some of the more problematical aspects of AIPPA from the perspective of freedom of expression and of the media include the following:

- ❖ It allocates very substantial regulatory powers over media outlets and individual journalists to the Media and Information Commission (MIC), a body which is subject to extensive direct and indirect government control.
- ❖ All media outlets and any business disseminating media products must obtain a registration certificate from the MIC.
- ❖ Accreditation must be obtained from the MIC before anyone may work as a journalist, effectively a form of licensing.
- ❖ Foreigners and non-resident Zimbabweans are precluded from owning shares in Zimbabwean media outlets, although they may be minority shareholders in companies which own media shares.
- ❖ Local and foreign media outlets may only employ Zimbabwean citizens or permanent residents.

AIPPA also includes two sections limiting the content of what may be published, section 64, titled “Abuse of freedom of expression”, and section 80, titled “Abuse of journalistic privilege”. These sections are now effectively identical in terms of the limits they impose on what may be published or broadcast. However, in the original version (before the October 2003 amendments), section 80 was broader and criminalised, among other things, the publication of ‘falsehoods’, with the possibility of imprisonment for up to two years.

The Parliamentary Legal Committee identified some 20 sections that were the ‘most offending’ of the Constitution and substantively critiqued many of these. It was highly critical of the broad powers allocated to the MIC, although it did not specifically criticise the fact that this body is effectively government controlled. The Committee was also highly critical of the registration regime for newspapers, stating that; “the only possible reason for this provision is to impose control by government over mass media owners and their products.” It went on to note that the rules relating to registration – which include a two-year renewal period, grounds for suspending registration, such as a failure to pay certain charges, and a requirement of re-registration for even minor changes, such as an extension of distribution – made it practically impossible to operate a media outlet. The Committee was similarly dismissive of the rules regarding accreditation of journalists, noting that any such attempt violated the constitutional guarantee of freedom of expression. Regarding the wide restriction on foreign ownership of the media, the Committee noted that there were hundreds of Zimbabweans who owned foreign newspapers and that it was clear, “beyond any reasonable doubt”, that the restriction was unconstitutional. The Committee also criticised the equivalent of what is presently section 64, as well as section 80, stating, in relation to the latter, that, “it is apparent that no regard was taken of the imperatives of Section 20 of the Constitution [guaranteeing freedom of expression].” All of these criticisms by the Parliamentary Legal Committee find support in international guarantees of the right to freedom of expression.

II.1 Freedom of Information

AIPPA establishes a general right to access information held by public bodies (section 5). This is a welcome development. However, the regime of exceptions is so comprehensive as to render any right to information largely illusory. Furthermore, any review of a refusal to disclose information is heard by the Media and Information Commission, a body controlled by the government, rather than by an independent body.

Several provisions in AIPPA provide for exceptions. The First Schedule lists a number of categories of documents to which the Act does not apply (pursuant to section 4). These include, among others, records containing teaching materials or research information of employees of a post-secondary educational body, any record that is protected in terms of the Privileges, Immunities and Powers of Parliament Act and material placed in the National Archives or the archives of a national body by or for a person or agency other than a public body. Section 9(4)(c) provides that public bodies do not have to provide information where granting access “is not in the public interest”. Sections 14 – 25 provide for a comprehensive regime of exceptions from the duty to disclose information. Exceptions include all cabinet documents, including draft legislation; advice or recommendations provided to public bodies (with some exceptions) and information whose disclosure would affect relations between different levels of government or which may result in harm to the economic interest of the public body.

Pursuant to section 5, non-citizens and any mass media outlet, which is not registered, do not have the right to request information under the Act. The Media and Information Commission is responsible for reviewing, upon request, any refusal to grant access to information (sections 9(3) and Part X).

The right to access information held by public bodies is part of the general right to freedom of expression, which includes the right to seek and receive information. In 2002, the African Commission on Human and Peoples' Rights adopted the *Declaration of Principles on Freedom of Expression in Africa*, which states:

*IV
Freedom of Information*

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
 - everyone has the right to access information held by public bodies;
 - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
 - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
 - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
 - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
 - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

To the extent that AIPPA guarantees the right to information, it is welcome. However, the right to information as provided for is so thoroughly undermined by the very broad regime of exclusions and exceptions, as described briefly above, as to render the right essentially nugatory.

Many of the exceptions are seriously overbroad. An example is section 9(4)(c), which relieves public bodies of their obligation to disclose information whenever this is deemed not to be in the public interest. This reverses the normal approach, favouring openness, whereby information must be disclosed where this is in the public interest (see below). Furthermore, many exceptions do not require harm, termed "class exceptions", contrary to international standards in this area. For example, section 18(1)(a)(i) provides that information shall not be disclosed where this would "affect" relations between the government and a municipal or rural district council. Under this provision, no harm is required; indeed the effect on the stipulated relations might be entirely salutary.

It is now widely accepted that exceptions in a freedom of information law must be subject to a general public interest override, whereby the information must be disclosed, even where such disclosure will harm a legitimate interest, where the public interest in having the information outweighs this harm. AIPPA does not contain a public interest override.

Any refusal to disclose information should be subject to appeal to an independent body. Unfortunately, as detailed below, the Media and Information Commission, to whom appeals lie under AIPPA, is firmly under government control and therefore lacks sufficient independence to undertake this important and politically sensitive task.

It may be noted that, given the fact that the bulk of AIPPA is devoted not to the matter of access to information but rather to regulating and controlling the media. Tainted in this way, few will be interested in using AIPPA's access provisions.

II.2 The Media and Information Commission

AIPPA establishes a Media and Information Commission (Article 38) and gives this body a wide range of regulatory powers over the media, including in relation to refusals to disclose information, registration of the media, accreditation of journalists and monitoring media content (Articles 9(3) and 39). The Commission is

governed by a Board, all of whose members are appointed by the Minister responsible for information, after consultation with the President (Article 40). Significantly, the requirement that three of the five members of the Media and Information Commission should be nominated by journalists' or media associations was removed by the 13 October 2003 amendments.

The Minister sets the term of office, as well as other terms and conditions of office, including allowances, appoints both the chair and the vice-chair, and may remove a member on a number of grounds, some of which are highly subjective (for example, where the member has conducted him- or herself in a manner which "renders him unsuitable") (Fourth Schedule, pursuant to Article 40(3)). The Commission has broad investigative powers, more-or-less equal to those granted under the Commission of Inquiry Act (section 50) and, as detailed below, has broad powers to impose severe sanctions, including termination of a media outlet's registration or of a journalist's accreditation.

It is well established that bodies, which exercise direct powers in relation to the media, must be protected against political interference (i.e. that they must be independent of government). The reasons for this are obvious; otherwise there is a very real risk that media freedom will be undermined for political reasons, to the detriment of the public's right to know and democracy. The greater the powers of the body, the more important is the need for independence. As stated in the *Declaration of Principles on Freedom of Expression in Africa*, in relation to broadcast authorities:

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. (Principle VII(1))

The same principle applies with greater force to regulatory bodies with powers over all media. Clearly the Commission lacks the required independence.

II.3 Registration of the Mass Media

AIPPA requires all bodies, which disseminate mass media products to obtain a certification of registration (section 66). Dissemination is defined to include "sale, subscription, delivery, diffusion or distribution". Furthermore, mass media products are defined to include an advertisement, any part of a periodical publication, "any electronically transmitted material, or audio or video recorded programme". As a result, this formally includes Internet providers, very small circulation, such as NGO publications, any store that rents videos, or even sells newspapers or music tapes, newspaper vendors and so on.

The certificate of registration must be obtained from the Media and Information Commission, and renewed every two years (sections 66(2) and (5)). The registration fee is set by the Minister, who is given broad discretion to apply higher fees to certain types of media services (section 70).

Only individuals who are citizens and companies where citizens have a controlling interest may own mass media outlets. Strict rules also relate to owning shares in media services restricting this to citizens, permanent residents and companies controlled by citizens or permanent residents. This means that residents may invest in mass media services, but not own them. Non-resident foreigners may invest in the mass media, but only indirectly, through companies controlled by Zimbabwean citizens or permanent residents (section 65).

The Commission is given broad powers to terminate or suspend the activities of a mass media service upon upholding a complaint against it or for breach of the law (section 71). Individuals who operate mass media services without a registration certificate are guilty of an offence and may be fined up to Zim\$300,000 (value in US\$ varies) and/or imprisoned for up to two years. In addition, a court may declare any equipment used in connection with the offence forfeited to the State (sections 72(2) and (3)). News agencies are also required to obtain a registration certification, with similar consequences in case of breach (section 74).

Foreign mass media may set up representative offices only with the permission of the Minister (section 90).

Technical registration requirements for the mass media and/or news agencies are not, *per se*, a breach of the guarantee of freedom of expression. However, such requirements are unnecessary and hence discouraged and they will fall foul of international guarantees if they are subject to political interference or if they are too broad in application. As the three specialised international mandates for protecting freedom of

expression – the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression – stated in a Joint Declaration of 18 December 2003:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems, which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies, which are not independent of government, are particularly problematical.

The system established by AIPPA, overseen by the Commission, with certain powers, for example in relation to fees, given to the Minister, clearly lacks sufficient protection against political interference. This problem is exacerbated by the excessively short registration period of only two years, which means that political interference can be brought to bear at regular intervals. The registration requirement is massively overbroad, covering all publications, no matter how small or irregular, and all forms of electronic communication, including the Internet.

Most serious, however, is the power of the Commission to refuse to register a media outlet, as it has in the case of *The Daily News*. This transforms it into a licensing system, not a technical registration system, which, at least for the print media, is quite clearly contrary to international law.

Ownership rules relating to broadcasting in other countries illustrate the illegitimacy of the AIPPA restrictions. For example, in South Africa, “foreign persons” are barred, directly or indirectly, from exercising control over a private broadcasting licensee, from owning more than 20% of the financial or voting interests in a licensee or from holding more than 20% of the directorships (*Independent Broadcasting Authority Act*, No. 153 of 1993, section 48). In Malawi, for non-community licences, the independent regulatory body, MACRA, may limit the financial or voting interest in the licence held by one or more foreign persons to forty per cent, as long as the restriction applies to all such licensees (*Communications Act 1998*, section 51(3)). In both of these countries, even less restrictive rules relate to ownership of the print media.

There are also serious problems with the system of sanctions for non-registration, and for other breaches of the law, in particular that it is excessively harsh and grants discretionary powers to the Minister, a political actor. Suspension and termination are, for media outlets, the most extreme sanction possible and should be applied, if at all, only after repeated and gross abuse of the law, as determined by a court. Similarly, for individuals the threat of imprisonment for non-registration, particularly where the scope of the registration requirement is so broad and unclear, is bound to exert a chilling effect on freedom of expression.

II.4 Accreditation of Journalists

AIPPA only defines a journalist for purposes of Part XI (dealing with registration of the mass media), where they are defined broadly as anyone who “gathers, collects, edits or prepares messages and materials for the office of a mass media” (section 63). AIPPA does establish some rights for journalists, mainly in relation to access to information and to report in a manner consistent with their conscience (section 78). However, it also requires journalists to 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 (section 84).

The Media and Information Commission is responsible for overseeing the process of accreditation (section 79). No one may be accredited as a journalist who does not possess the “prescribed qualifications” or who is not a resident citizen of Zimbabwe, although representatives of foreign mass media may be accredited for a limited period (section 79).

The Commission has broad powers to discipline journalists for breach of the code of conduct, including to terminate or suspend accreditation, to impose fines of up to Zim\$50,000, to impose such conditions as it deems fit on their right to practise, and to refer them for prosecution (section 85).

Any obligation on individuals to be accredited as a journalist is incompatible with the right to freedom of expression. In an Advisory Opinion concerning a licensing scheme for journalists in Costa Rica, the Inter-American Court of Human Rights clearly stated the principle:

[T]he compulsory licensing of journalists does not comply with the (right to freedom of expression) because the establishment of a law that protects the freedom and independence of anyone who practices journalism is perfectly conceivable without the necessity of restricting that practice only to a limited group of the community. (*Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, 13 November 1985, Series A, No. 5, para. 79)

This problem is exacerbated by the requirement that journalists must have certain “qualifications”. The right to freedom of expression, which applies to all media, means that the State may not place conditions on individuals seeking to express themselves through the media, as the above quotation makes clear.

Furthermore, as has already been stressed, no powers in the area of the media should be exercised by bodies, which are not independent. This condition is clearly not met in relation to accreditation of journalists, given the extensive roles of both the Commission and the Minister. Again, this problem is exacerbated by the excessively short accreditation period of only 12 months.

The powers of the Commission to discipline journalists for breach of the code of conduct are unjustifiable not only because the Commission is not independent, but also because they apply in largely undefined circumstances and are excessively harsh. The only conditions placed on these powers are that there be a breach of the code of conduct and that the Commission gives the journalist a fair hearing. The power to terminate or suspend the right to practise journalism for breach of professional rules can never be legitimate.

II.5 Content Restrictions

Section 80(1) imposes a number of restrictions on journalists, including:

- publishing falsehoods; and
- collecting and disseminating information on behalf of someone other than his or her mass media employer, unless he or she is a freelance journalist.

Breach of these provisions can lead to a fine of up to Zim\$100,000 or imprisonment for up to 2 years.

As has been noted, the first and most serious of these prohibitions was substantially amended in October 2003. As originally adopted, it represented a clear breach of the right to freedom of expression and ran directly counter to a recent ruling of the Supreme Court of Zimbabwe to this effect (see *Chavunduka and Choto v. Minister of Home Affairs & Attorney General*, 22 May 2000, Judgment No. S.C. 36/2000, Civil Application No. 156/99). The amended provisions are less clearly abusive but are still unnecessary and hence open to challenge.

III. The Overall Context

AIPPA, although repressive enough of itself, does not operate in isolation but, rather, represents one element in a concerted attack against freedom of expression and political freedom. It is, as has been noted, supported by other repressive legislation, as well as informal measures designed to prevent independent media reporting and the expression of political dissent. This part of the report describes those measures in more detail.

III.1 Other Repressive Legislation

III.1.1 POSA

The Public Order and Security Act (POSA) was enacted on 10 January 2002, just before the presidential elections of that year. It is largely a reincarnation of the notorious Law and Order (Maintenance) Act (LOMA), which was introduced by the Colonial authorities in 1960. LOMA was widely used by the Rhodesian authorities to suppress civil dissent and many nationalists, including President Robert Mugabe, were victims of this repressive legislation, being detained for periods ranging up to many years. POSA was condemned by lawyers, human rights activists and journalists on the grounds that it contained several of the anti-democratic features of LOMA. The Act severely restricts freedom of assembly and movement, and provides the police with wide discretionary powers.

Some of the key features of POSA are:

- ❖ The police may prohibit demonstrations in an area for up to three months if they believe this is necessary to prevent public disorder.
- ❖ Public gatherings will not be allowed unless seven days notice is given to the police.

- ❖ The police are allowed to take measures, including lethal measures, to suppress an unlawful public meeting.

POSA also contains a number of provisions restricting freedom of expression. Section 15 effectively repeats the false news provision found in AIPPA, making it an offence to publish or communicate false statements which may be prejudicial to very broadly defined State interests, in the absence of reasonable grounds for believing they are true. Section 16 makes it a crime, punishable by imprisonment of up to a year, to make statements “knowing or realising that there is a risk or possibility” of engendering feelings of hostility towards, or cause hatred, contempt or ridicule of, the president. It is quite clear under international law that special protection for public officials, and in particular senior public officials like the president, breach the right to freedom of expression; these officials should tolerate more, not less, criticism. This provision goes quite far in the opposite direction and, indeed, would prohibit much of what is considered normal electioneering in a democratic context.

III.1.2 The Broadcasting Services Act

Until 2000, broadcasting in Zimbabwe was legally a State monopoly pursuant to section 27 of the Broadcasting Act, 1957. Capital Radio sought to obtain a broadcasting licence and, as part of this process, challenged the State broadcasting monopoly before the Supreme Court of Zimbabwe. In a judgment of 22 September 2000 (*Capital Radio (Private) Limited v. The Minister of Information, Posts and Telecommunications*, Judgment No. S.C. 99/2000, Constit. Application No. 130/2000), the Court held that the monopoly violated the constitutional right of freedom of expression by unduly limiting the public’s right to receive and impart information. The Court lamented the fact that the parties had failed to agree on a regulatory framework for broadcasting and, in light of this, ordered that the applicant be allowed to proceed to set up a broadcasting service.

Capital Radio started broadcasting on 28 September 2000 but the government quickly responded by raiding its offices and closing it down. It also promulgated the Presidential Powers (Temporary Provisions) Broadcasting Regulations, 2000, in early October, under the Presidential Powers (Temporary Measures) Act. Under the latter, Regulations have a duration of six months. These Regulations set up a framework for broadcast regulation, including by requiring broadcasters to be licensed, and established a regulatory authority to undertake this task, the Broadcasting Authority of Zimbabwe (BAZ), under effective government control. Up until the present, no private broadcaster has been licensed under this legislation.

After the regulations expired in March 2001, the government tabled the Broadcasting Services Bill before Parliament. Despite strong criticism from national and international groups and an adverse Parliamentary Legal Committee report, which said eight sections of the Bill were in breach of the Constitution, the Bill was passed by Parliament on 4 April 2001.

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

- ❖ The regulatory body, the Broadcasting Authority of Zimbabwe, is firmly under government control.
- ❖ The licensing system is controlled by the minister in his or her almost complete discretion; BAZ simply makes recommendations regarding licenses.
- ❖ Licensees are required to allocate one hour a week to the government, as well as to carry any messages of national interest, as directed by the minister.
- ❖ Only one national free-to-air broadcasting service for each of radio and television may be licensed, not including services provided by a public broadcaster.
- ❖ Only resident citizens may invest in or hold a directorship of a licensed service.
- ❖ No one is permitted to hold more than 10% of the shares of a licensed service, meaning that ownership of any broadcasting outlet must be shared among at least 10 different parties.
- ❖ For television stations, at least 75% of all programming must be from local or African sources, unless BAZ directs otherwise, and at least 40% of the local programming must come from independent sources; the rules for radio are even stricter.
- ❖ 10% of all programming must be in national languages other than Shona or Ndebele.
- ❖ The broadcasting of any false or misleading news is prohibited.

Capital Radio challenged the Act in a hearing before the Supreme Court in July 2002. Judgment was only rendered in the case over a year later, on 19 September 2003 (*Capital Radio (Private) Limited v. the Broadcasting Authority Of Zimbabwe; the Minister of State for Information and Publicity, and the Attorney-General of Zimbabwe*, Judgment No S.C. 128\02, Civil Application No 162\2001). The Court, under a new

Chief Justice since the 2000 broadcasting judgment had been rendered, did strike down some of the more egregious provisions of the Act, including the following:

- section 6, providing that the minister, and not BAZ, should be the final licensing authority;
- section 9(1), limiting to one the number of national free-to-air broadcasting services for each of radio and television;
- section 9(2), providing that only one signal carrier licence could be issued; and
- section 9(3), providing that only a public broadcaster could hold both a broadcasting and a signal carrier licence.

The Court, however, upheld all of the other challenged sections of the Act. It specifically held that BAZ was a legitimate regulatory authority, even though it is clearly not independent – the minister appoints the members of its Board, after consultation with the president. This is inconsistent with international standards in this area, which, as noted above, quite clearly require bodies with regulatory powers over the media to be independent of government, for fairly obvious reasons.

III.2 Control Over the Public Media

After the shock of the June 2000 parliamentary elections, the government moved to strengthen its control over the public media, both print and broadcast. Jonathan Moyo, appointed Minister of Information and Publicity in the President's Office and Cabinet after that election, played a key role in these developments, as well as in the legislative developments described above.

In September 2000, the government dissolved the Zimbabwe Mass Media Trust (ZMMT), which had managed the government majority equity in Zimpapers, publishers of *The Herald*, *The Sunday Mail*, *The Chronicle* and a number of provincial newspapers. The ZMMT, a trust, was intended to provide a buffer between the government and the newspapers, offering some protection to the latter against direct government control and ensuring a partial degree of editorial independence, although in practice the government had always exerted a varying degree of influence over these newspapers. As a result of the dissolution of ZMMT, both Zimpapers and the Community Newspapers Group (CMG), now called New Ziana (it now runs a news agency and various local newspapers) came under the direct control of boards appointed by Moyo. Through the boards, the government controls the appointment of senior editorial staff and influences policy.

Several editorial changes were instituted at Zimpapers, resulting in the removal of veteran journalists like Bornwell Chakaodza, *The Herald* editor, Funny Mushava of *The Sunday Mail* and Ednah Machirori of *The Chronicle*. These were replaced by relatively inexperienced journalists believed to be Moyo loyalists.

Similar structural changes were instituted in relation to the Zimbabwe Broadcasting Corporation (ZBC). On 13 November 2000, the Department of Information and Publicity gazetted a new law for the ZBC, the Zimbabwe Broadcasting Corporation Commercialisation Act. This law splits the ZBC into two companies, one concentrating on transmission and the other on broadcasting and programming. The former, the transmission company, is called Transmedia, while ZBC Holdings performs the latter function. Both are wholly owned and controlled by the State. Subsection 3 of the Act states: "In the performance of their functions, the successor companies (ZBC holdings and Transmedia) shall give priority to serving the needs of the state, to the extent that it is compatible with sound business practice." It is thus clearly a State, rather than a public, broadcaster. Section 8 of the ZBC Commercialisation Act gives the minister the power to supervise and direct the transition and future operations of the ZBC and Transmedia. The board and senior management of ZBC are appointed by the minister of information, in consultation with the president. As in the print sector, several veteran journalists and broadcasters were retrenched from ZBC and replaced by individuals loyal to the governing party.

The importance of broadcasting in a country like Zimbabwe cannot be overestimated. Much of the population is illiterate or semi-literate and, for this reason, cannot access newspapers. Furthermore, newspapers are excessively expensive for many people and distribution in the rural areas is difficult. This no doubt helps explain why the government has been so reluctant to license private broadcasters.

There are numerous examples of biased reporting by the public media, as well as examples of them routinely echoing statements and positions of the government. The murder of Bulawayo war veterans' leader, Cain Nkala, is a good example of the way in which the State-controlled media seeks to serve the interests of the ruling party by inflaming government supporters against the opposition and, inevitably, the

independent press. On 5 November 2001, Nkala, a senior war veteran and member of the ruling party, was abducted from his home in Zimbabwe's second city of Bulawayo, Magwegwe West suburb, by a group of armed men and killed, allegedly by being strangled. Nkala had earlier been arrested and charged in connection with the disappearance of an MDC election agent.

In relation to this story, *The Herald's* political editor, Phillip Magwaza, wrote:

Minutes before Bulawayo war veterans chairman Cde Cain Nkala was killed, he pleaded with his abductors to let him pray.

The gag around his mouth was removed, in Biblical style, like what Jesus Christ did, Cde Nkala asked that God should forgive his captors because they did not know what they were doing.... As the shallow grave was dug, Cde Nkala began to sing. Irrked by his singing, the kidnappers put on the gag again. The dreaded shoelace was then tightened like a noose around his neck. Slowly and painfully, he struggled for breath.

If this account is taken at face value, it is an extraordinary scoop. Magwaza could only have gathered this information by either witnessing Nkala's death or interviewing eyewitnesses, presumably the murderers. Magwaza, now deceased, gave no indication of who his sources were. Another possibility is that Magawaza made the whole story up, basing it on the fragments of information that were available. Certainly it is not in the style of objective reporting and seems designed to provoke an emotional response. An MDC activist was charged with the killing but the High Court dismissed the State's case on the basis that the police evidence was inadequate. Significantly, the police did not try to put Magawaza on the stand.

Another example of the State media undermining the opposition involves allegations that presidential candidate Morgan Tsvangirai was involved in a conspiracy to murder President Mugabe. The story, which broke on 13 February 2002, during the heat of the presidential election campaign, involved allegations that Tsvangirai had approached a former Israeli intelligence officer, Ari Ben Menashe, now with a Canadian consulting firm, Dickson and Madson, to arrange the assassination. ZTV carried extensive coverage of the story – amounting to some 35 minutes over 5 days – but allocated only 70 seconds to MDC denials of its veracity. In its coverage, ZTV omitted to mention that Dickson and Madson were at that time employed by the ZANU PF government on a consultancy basis to undertake promotional work for them. (*Media Under Siege: Media Monitoring Project of Zimbabwe Report on media coverage of the 2002 Presidential and Mayoral Elections in Zimbabwe, 2003, Harare*)

III.3 General Harassment of the Media

The independent media have been subjected to wide ranging forms of harassment in recent years. These have included harsh verbal attacks involving officials including right up to the President, as well as direct physical attacks, such as bombing of media premises, beatings of journalists and readers, destruction of copies of newspapers and even blocking independent newspapers from reaching certain parts of the country, mostly rural areas. These physical attacks have, for the most part, not been carried out directly by officials but rather by supporters of the ruling party, such as so-called war veterans and student groups.

The verbal attacks, which have involved a wide range of officials, as well as the government media itself, represent a concerted attempt to undermine the credibility of the independent media and, indeed, to create a climate of hatred towards them. Journalists working for the independent press have been referred to variously as agents of imperialism, sell-outs, enemies of the State and lapdogs of the former colonial master, Britain, bent on derailing the land reform programme. These verbal attacks have provided the context, and arguably the impetus, for the physical attacks.

A few examples give a sense of the flavour of these verbal attacks, which frequently contain veiled threats of serious consequences, employ language, which suggests violence, and/or contain allegations of treason or undermining State security. In December 2001, President Mugabe told church leaders that those journalists who wrote "libellous reports" would be arrested, stating:

The media has been assaulting the integrity of private citizens. In my view, an assault on one's integrity is even worse than an assault in physical terms. (*The Herald*, December 18 2001).

On 5 September 2003, Minister Jonathan Moyo lambasted the independent press at the launch of the New Ziana, a multi-media organisation charged with publishing government information, stating: "These papers are trash, and they injure our national interests."

A none too veiled threat to the independent media was echoed by the now retired commander of the Zimbabwe Defence Forces, General Vitalis Zvinvashe. At a press conference in Harare on 10 January 2002 he stated:

The statements (in the foreign and local private media) have caused insecurity, uncertainty and confusion and tarnished the credibility of the country's security arms. (reported in both *The Daily News* and *The Herald* on 11 January 2002)

The statements in question were reports that the army had organised illegal farm seizures while the police stood by and watched, a matter of some public interest.

The war veterans and the State-controlled media have branded the independent press, together with the MDC, as sell-outs, traitors and stooges. These groups have even demonstrated against the independent media. For example, on 24 January 2001, hundreds of war veterans and ruling ZANU PF supporters, led by war veteran leaders the late Chenjerai Hunzvi (aka Hitler) and Joseph Chinotimba, demonstrated against *The Daily News* in central Harare.

These verbal attacks provide the background for the direct physical actions against the independent media and journalists. For example, during the mass action on 1-6 June 2003, called by the Opposition, alleged ZANU PF supporters beat readers of independent newspapers such as *The Daily News*, *The Financial Gazette* and *The Zimbabwe Independent*. Thousands of copies of these newspapers were destroyed during this period and war veterans and other pro-government militias "banned" the independent press from certain areas of the country.

An example of the hazards faced by journalists working for the independent press was the beating of four staffers of *The Daily News* – Collin Chiwanza, Mduduzi Mathuthu (both reporters), Urgania Mauluka (photographer) and Trust Masola (driver) – at a farm near Hwedza on 31 November 2001. The four, who had visited the farm to report on attacks on farm workers by alleged ZANU PF supporters, were punched and kicked resulting in them seeking medical attention. Police officers were present when the attack took place but took no action.

A number of bombings have also been perpetrated against the independent media and, in particular, against *The Daily News*. Its offices were bombed on 22 April 2000, shortly before the parliamentary elections, and its presses were destroyed in a bombing on the night of 27-28 January 2001. A further bomb attack targeted its Bulawayo offices on the night of 10-11 February 2002. Significantly, no one has been arrested and brought to justice for these attacks. Following the bombing of *The Daily News'* printing presses, in an apparent attempt to deflect criticism, the war veterans association told the ZBC that, "the Rhodesian elements which support the MDC and the Daily News were behind the attack." (29 January 2001).

Similarly, the bombing of the offices of the radio station, *Voice of the People*, on 29 August 2002, remains a mystery, with no one having been charged.

IV. Content Restrictions

As noted above, both AIPPA and POSA contain restrictions on the content of what may be published or broadcast. The main content provision in AIPPA is section 80, which originally prohibited the publication of falsehoods. As detailed below, many journalists have been detained and/or charged under section 80.

The history of section 80 of AIPPA is both interesting and significant. In the case of *Chavunduka and Choto v. Minister of Home Affairs & Attorney General*, decided on 22 May 2000 (Judgment No. S.C. 36/2000, Civil Application No. 156/99), the Supreme Court of Zimbabwe held that the false news provision at section 50(2) of the Law and Order (Maintenance) Act (LOMA) was manifestly unconstitutional. It is, then, surprising that less than three years later the government sought to introduce a similar – indeed broader – restriction. Section 80 was quickly challenged by journalists as being in breach of the Constitution and, on 7 May 2003,

the Supreme Court ruled that it was indeed unconstitutional (Judgment No. S.C. 280/2002). As a result, all of the charges, which had been laid under this section, had to be dropped.

The government quickly introduced amendments, including to this section, in October 2003. The false news offence was retained, but substantially narrowed, so that it is now only an offence to publish false information if the author knows it is false or does not have reasonable grounds for believing it is true and if he or she publishes it recklessly, or with malicious or fraudulent intent. This is still constitutionally suspect, but less obviously a breach than its predecessor. This amendment to section 80 of AIPPA has made it more difficult for the government to bring content-related charges under AIPPA, leaving POSA and other criminal rules, such as criminal defamation provisions, as the preferred means of limiting criticism.

Since March 2002, more than 80 media workers have been arrested or detained under AIPPA, POSA and other laws such as criminal defamation. Brief details of these cases are provided in the attached Annex: Table of Violations. In 2002 alone, 44 media practitioners were arrested, 13 journalists in the first 10 weeks after AIPPA was enacted. In May 2002, for example, 11 independent journalists were arrested. Bornwell Chakaodza, editor of *The Standard* (formerly of *The Herald*), was charged on five occasions in one week for allegedly publishing falsehoods.

Only two of the 44 arrests in 2002 have proceeded to prosecution and been concluded. In six, the charges were withdrawn, in 22 those arrested were released without charge, one person was deported and 13 cases are still pending. In some cases, journalists were detained over weekends only to be released without charge, in an apparent attempt to intimidate them. It is significant that not one journalist or editor working for the State media has so far been arrested or charged under these laws, although in many cases those media reported on the same stories that attracted arrests of independent journalists.

The barrage of cases against independent journalists seems set to continue judging by events in the first part of 2004. On 10 January 2004, for example, 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 airplane to travel to the Far East. The three – Iden Wetherell, Vincent Kahiya and Dumisani Muleya, the weekly publication's editor, news editor, and chief reporter, respectively – were each charged with criminal defamation and released on \$20 000 bail.

On 21 May, Chakaodza, editor of *The Standard*, and Valentine Maponga, a reporter, were arrested over a story headlined "Family of slain boss blames government officials", which alleged that relatives of a slain mine boss accused government officials of involvement in the murder. In its case outline, the State argued that the two had published false news that was likely to cause public disorder, incite public violence and endanger public safety. The claim of falsity is based on the State claim that the relatives of the slain mine boss deny ever speaking to the paper. The police also argue that they have since arrested the murder suspects, who also deny the involvement of any senior government official in the murder. The police allege the story was meant to tarnish the image of the government and has charged the two under section 15 (1) of the Public Order and Security Act (POSA). Chakaodza and Maponga, however, insist their story is true and that they can quote the names of the relatives they talked to. The matter is still before the court.

The facts of some of these cases provide a clear indication of the abuse to which these repressive content restrictions are put. For example, Collin Chiwanza, of *The Daily News*, was detained overnight for a story in which he had played no role whatsoever publishing. On 23 April 2002, *The Daily News* carried a story alleging that two young girls had witnessed the beheading of their mother in the rural area of Magunje, supposedly by ZANU PF supporters and allegedly for having supported the opposition MDC. The story turned out to be untrue – it had been based on reports by someone claiming to be the husband of the woman and who claimed to have witnessed the incident – and the paper published an apology on 27 April 2002. Chiwanza's role was limited to follow-up. After the story had been dismissed by the police, but before the apology was published, Chiwanza was dispatched to Magunje to check the facts. The story was in fact written by Lloyd Mudiwa.

An interesting, related case is that of Andrew Meldrum, correspondent for the UK-based *Guardian* newspaper, who was charged under section 80 of AIPPA on 20 June 2002 for abuse of journalistic privilege and, in particular, for publishing falsehoods, in relation to the same 'beheading' story published in *The Daily News* on 23 April 2002. The story was later published in the *Guardian*, having been reported by Meldrum. The High Court found Meldrum not guilty of publishing falsehoods with the intention of tarnishing the image of Zimbabwe. The court found that he had 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 deported on 16 May 2003.

V. Newspaper Registration: Closure of *The Daily News*

The closure of *The Daily News* is without doubt the most significant blow to freedom of expression in Zimbabwe under AIPPA. The only independent daily newspaper in the country, *The Daily News* was a constant thorn in the side of the government, exposing its abuses and providing a platform for political voices other than ZANU PF. Its closure has led to a significant narrowing of the space for freedom of expression, leaving only government-controlled dailies in place.

Under AIPPA, all newspapers were required to register with the Media and Information Commission. On 19 October 2002, a meeting was organised by MISA-Zimbabwe, in conjunction with the Zimbabwe Union of Journalists, the Independent Journalists' Association of Zimbabwe, the Media Monitoring Project Zimbabwe, the Federation of African Media Women in Zimbabwe and the Foreign Correspondents Association, to discuss how to respond to issues regarding the registration and accreditation of mass media outlets and media practitioners, respectively, under AIPPA. Over 120 media practitioners attended this meeting.

Those present at the meeting were largely of the view that, although AIPPA was designed to muzzle the independent press, it would be strategic to register first and then to fight the legislation in various ways, including from newsrooms and editorial offices. The management of Associated Newspapers of Zimbabwe, which published *The Daily News* and *The Daily News on Sunday*, however, decided not to register with the Media and Information Commission and, instead, to challenge the constitutionality of AIPPA in the Supreme Court. Furthermore, its journalists did not apply for accreditation. All the other leading independent newspapers, together with their journalists, were duly registered/accredited in accordance with the provisions of AIPPA.

In a decision of 11 September 2003, the Supreme Court ruled that it would not hear the ANZ challenge because the newspaper had approached it with 'dirty hands', having refused to apply for registration. The government closed the newspaper down the next day and subsequently seized most of its equipment. ANZ then applied to the Media and Information Commission (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, with the Administrative Court ruling that the MIC was improperly constituted and had wrongly denied ANZ registration and the High Court ordering the police to vacate the premises and return the seized equipment.

The Daily News, which had been off the streets more-or-less constantly since 12 September, briefly came back into production on 22 January 2004, after the police finally responded to High Court orders to vacate the property. In a cruel twist, however, it closed again after 5 February 2004, when the Supreme Court, in a separate case, upheld the AIPPA requirement for journalists to be accredited, which the ANZ journalists were not. Furthermore, in a manipulative move, the MIC then refused to accredit ANZ journalists on the basis that they were not working for a registered newspaper.

In March, the Supreme Court heard the various cases relating to the ANZ newspapers but reserved judgment, effectively maintaining the status quo, which is that the newspapers are effectively banned. There are fears that the Court might take some time to resolve this situation, given the long time it took to come to decisions in the broadcasting and registration of journalist's cases.

V.1 Chronicle of the ANZ Case

11 September 2003

Supreme Court refuses to hear ANZ case

The Supreme Court refused to hear the ANZ case, on the basis that the newspaper publisher had approached it with 'dirty hands' by refusing to apply for registration in the first place.

12 September 2003

Government bans *The Daily News* and *The Daily News on Sunday*

The government closed *The Daily News* and *The Daily News on Sunday*, as police armed with automatic rifles burst into the newspapers' offices in central Harare at about 5pm and ordered all staff to leave. Nqobile

Nyathi, the editor, and Simon Ngena, the production manager, were arrested and taken to Harare Central Police Station. They were later released. Tafataona Mahoso, Chair of the Media and Information Commission, was quoted as saying he would have been surprised if the police had not taken any action because "the Daily News does not exist in terms of the laws of the country". (*The Herald*, 13 May 2003). These actions were widely condemned by both local and international actors as being a serious violation of media freedom.

15 September 2003

ANZ newspapers apply for registration

The ANZ newspapers applied for registration with the Media and Information Commission.

16 September 2003

Police seize The Daily News' equipment

The Daily News was charged under AIPPA for operating without a licence; police confiscated computers and other equipment at *The Daily News* offices, saying the equipment would be retained as exhibits. ANZ, in turn, applied to the High Court for an order for the equipment to be released because the police did not have a court order to seize the exhibits.

18 September 2003

High Court rules paper may resume operations

High Court judge Justice Yunus Omerjee ruled that ANZ could resume publication. This followed an urgent application by the newspaper organisation to have its equipment returned and to be allowed to resume publication. Omerjee noted that the Supreme Court judgment had not convicted the paper of a criminal offence but had merely declared that the newspaper was acting outside of the law. The company's equipment could only be seized pursuant to a court order. The judge further noted that ANZ had started operating within the law from the day it lodged its application for registration with the Media and Information Commission.

19 September 2003

MIC refuses to register the ANZ newspapers and police defy High Court order

The MIC unanimously refused the ANZ newspapers' registration application on the basis that it had not met the 31 December 2002 deadline, had been operating in breach of the law and had openly stated it would not register.

Armed police officers refused to vacate the paper's offices and prevented staff from accessing its offices. The police also refused to return *The Daily News*' computers and other equipment, allegedly seized as exhibits.

23 September 2003

ANZ applied to Administrative Court for review of MIC registration denial

The ANZ appealed to the Administrative Court against the refusal of the MIC to register its newspapers.

1 October 2003

Journalists charged for practising without being accredited

Six *The Daily News* journalists, Philemon Bulawayo, Margaret Chinowaita, Kelvin Jakachira, Sydney Saizi, George Muzimba and Lawrence Chikuvira, were charged with practising without being accredited. This brought to 15 the number of journalists from the Associated Newspapers of Zimbabwe who have been charged for this offence under AIPPA. The other nine, charged on 25 September 2003, are Luke Tamborinyoka, Pedzisai Ruhanya, Fanuel Jongwe, Precious Shumba, Chengetai Zvauya, Conelias Mabasa, Conway Tutani, Gladwin Muparutsa and Darlington Makoni and Francis Mdlongwa.

24 October 2003

Court orders Media and Information Commission to grant ANZ licence

Judge Michael Majuru, President of the Administrative Court, held that the refusal of the MIC to register the ANZ newspapers was illegitimate, including because the MIC was improperly constituted and could not therefore issue or deny certificates of registration. He held that if, by November 30, the MIC was not properly constituted and, in that capacity, had not ruled on the ANZ case, the ANZ newspapers would be deemed duly registered to operate a media business.

25 October 2003

The Daily News publishes again

The Daily News hit the newsstands again for a day following its successful Administrative Court appeal, only to be reoccupied by the police within hours.

1 November 2003

MIC appeals Administrative Court ruling

The MIC appealed to the Supreme Court against the Administrative Court ruling, arguing that Justice Majuru and his two assessors erred in their finding that the Commission was not properly constituted.

13 November 2003

ANZ directors' application dismissed

Magistrate Mishrod Guvamombe dismissed an application by four ANZ directors asking the Court to reject the case in which they were charged with publishing *The Daily News* in breach of the law, in light of the Administrative Court ruling that the MIC should be properly constituted by 30 November 2003 or the ANZ would be deemed duly registered. Guvamombe said there was reasonable suspicion that the four had committed an offence by publishing before the 30 November deadline. The four directors, Samuel Sipepa Nkomo, Stuart Mattinson, Brian Mutsau and Rachel Kupara, who are on \$50 000 bail each, were ordered to appear in court on 6 February 2004, but this hearing was further remanded.

24 November 2003

Hearing of ANZ application deferred

An application by ANZ to the Administrative Court asking for its newspapers to be allowed to publish pending the outcome of the MIC appeal against its ruling of 24 October is postponed to the next day.

25 November 2003

Judge Majuru recuses himself from the ANZ case

On the morning that the Administrative Court's president, Michael Mujuru, was expected to preside over the ANZ application, the government-controlled daily, *The Herald*, reported that authorities were investigating his conduct pertaining to the pending application. The paper reported that the judge had allegedly told some members of the public of the decision he was going to make on the ANZ application. The ANZ case was postponed after Majuru recused himself as the presiding judge in the matter. He said it would be improper for him to hear the matter given the reports carried by *The Herald*.

25 November 2003

MIC files an urgent application with the Supreme Court

As the drama pertaining to Majuru's recusal unfolded, the MIC filed an urgent application with the Supreme Court seeking to bar the Administrative Court from hearing the ANZ application. In his application, Mahoso, the MIC chairman, said the Administrative Court had no jurisdiction to hear the application as it had already passed judgment in favour of ANZ on 24 October.

30 November 2003

Administrative Court reserves judgment

The Administrative Court reserved judgment in the ANZ case against the Media and Information Commission. Administrative Court judge Selo Nare said he was satisfied that the Court had jurisdiction to hear the application. The judge, however, reserved judgment on whether the ANZ newspapers could begin publishing, saying he needed more time to study submissions from the two parties.

19 December 2003

Administrative Court rules ANZ newspapers may publish but police continue to occupy its premises

Administrative Court judge Selo Nare ruled that the ANZ newspapers may publish, pending proper constitution of the MIC in accordance with the Court's 24 October ruling. Despite this, the police refused to vacate the premises.

9 January 2004

Police defy order to vacate banned newspapers premises

The High Court ordered the police to vacate premises of ANZ but the police refused to comply.

22 January 2004

The Daily News hits the streets against

The Daily News, banned since 12 September 2003, reappeared on the streets again, following a High Court order on 21 January again ordering the police to leave the ANZ premises.

2 February 2004

ANZ journalists apply for accreditation

A number of journalists working for the ANZ newspapers apply for accreditation with the MIC.

5 February 2004

IJAZ judgment causes The Daily News to cease publishing

The IJAZ judgment, released on 5 February 2004, upheld the provisions of AIPPA, which require journalists to be accredited to practice. ANZ journalists had previously refused to file for accreditation, just as their newspaper had not applied for registration, on the basis that the law was unconstitutional. At the time of the IJAZ judgment, ANZ journalists were not registered. As a result, they had no choice but to cease working until they gained accreditation. As a result, *The Daily News* stopped publishing.

11 February 2004

MIC rejects ANZ journalists' applications for accreditation

The MIC rejected ANZ journalists' applications for accreditation on the basis that they had not met the requisite conditions, which include either working for a registered media house or proving that they are freelance journalists.

4 March 2004

Supreme Court reserves judgment in the ANZ case

The Supreme Court reserved judgment in three cases involving the ANZ newspapers – *The Daily News* and *The Daily News on Sunday* – and the Media and Information Commission (MIC) and the Minister of Information, Jonathan Moyo. These include the substantive constitutional challenge to the provisions of AIPPA, which require newspapers to register, and the appeal against the refusal of the MIC to register the ANZ newspapers.

V.2 Analysis of the ANZ Judgment

On 11 September 2003, the Supreme Court refused to hear ANZ's substantive constitutional challenge to the IAPPA registration regime on the basis that ANZ had approached it with 'dirty hands'. This decision has led directly, through the sequence of events outlined above, to the effective banning of *The Daily News* and *The Daily News on Sunday*, a catastrophe for freedom of expression in Zimbabwe. It has been criticised by legal experts and human rights lawyers as illogical, strange and of grave concern to all those concerned with human rights in Zimbabwe.

In essence, the Supreme Court dismissed the ANZ case on the basis of the 'dirty hands' doctrine because the company had failed to comply with AIPPA's requirement that all newspaper companies should be registered with the government-appointed Media and Information Commission (MIC) by 31 December 2002. The Court ruled that the ANZ application could only be entertained upon compliance with the law in question, even though they had applied for review prior to the 31 December 2002 deadline.

The 'dirty hands' doctrine requires those wishing to challenge a law, or more commonly its interpretation or application, to first comply with the law and then to challenge it. The logic behind the doctrine is obvious for otherwise, anyone could dispute the application of any legal rule in any given case. It is designed to prevent a situation where by mere challenge of a rule or its application renders it of no force or effect.

It is, however, equally obvious that rather different considerations apply to questions involving constitutionally guaranteed rights where, if the law is in fact unconstitutional, compliance would, or at least could, represent a breach of one's fundamental rights. In other words, forcing initial compliance with constitutionally suspect laws, unlike compliance with other laws, risks breach of the State's fundamental obligations to respect rights. This is very apparent on the facts of this case, whereby formal application of the law has resulted in a situation whereby the MIC was able to ban the newspaper, a clear breach of its right, as well as that of all Zimbabweans, to freedom of expression.

All constitutional matters present a different aspect of this rule. As section 3 of the Constitution of Zimbabwe notes: "This Constitution is the supreme law of Zimbabwe and if any other law is inconsistent with this

Constitution that other law shall, to the extent of the inconsistency, be void.” Such pronouncements are understood as meaning that the law is void *ab initio*, or from the beginning, so that anything flowing from it is automatically void. This is based on the lexical superiority of the Constitution; to allow an inconsistent law to have had any force would imply that it is, to that extent, above the Constitution, which is impossible. This is quite different from an impugned interpretation or application of a mere law, which may well be upheld, notwithstanding that it was in fact wrong.

In its ruling that one must first comply with the law before challenging it, the Court relied heavily on the English case of *F. Hoffman-La Roche and Co A.G & Others v. Secretary of State for Trade and Industry* ([1975] AC 295). That case involved a statutory order made by the Secretary of State regarding the price of drugs being sold. The plaintiff disputed the power of the Secretary to make such an order and, in the meantime, refused to comply with it. This is a classical application of the ‘dirty hands’ doctrine. Had the matter involved either a constitutional challenge or an issue where compliance would cause irreparable harm to the plaintiff, however, the decision may have been different.

According to some legal experts, the Supreme Court should instead have relied on the case of *The Minister of Home Affairs v. Bickle and others* ([1983] (2) Zimbabwe Law Reports 400 (Supreme Court Judgment). In that case, the Minister of Home Affairs ordered Bickle’s property forfeited to the State on the basis that he was an enemy of the State, an order Bickle challenged as a violation of his constitutional rights. The Minister argued that Bickle had no right to claim this relief, as he was a fugitive from justice. The Supreme Court ruled that if the courts are to fulfil their constitutional obligations, they cannot, except in the “most exceptional circumstances”, deny an aggrieved person access.

Exceptional circumstances might apply where the State or some other individual would suffer irreparable harm should the law not be observed pending constitutional review. There is no question of that in this case. If the law were upheld, no harm would have been occasioned by the temporary unregistered operation of the newspapers. On the other hand, if the law is held to be unconstitutional, it is obvious that ANZ has suffered irreparable harm. It may be noted, furthermore, that ANZ did not simply ignore the law; it applied to the Supreme Court for an assessment of its constitutionality, before the December 2002 deadline.

It is also unclear whether the Constitution of Zimbabwe permits the Court to refuse to hear an application in these circumstances. Section 24(1) gives everyone a right to apply to the Court when they allege that their constitutional rights have been, are being, or are likely to be infringed. Pursuant to section 24(4), the Supreme Court has original jurisdiction in such cases and may make any order, “it may consider appropriate for the purpose of enforcing or securing the enforcement of the Declaration of Rights”. It says nothing about a power to refuse to hear such a case, which is largely the opposite of enforcing rights.

Even if the Supreme Court was of the view that, legally, the ANZ newspapers should have registered before challenging the law, that does not justify their refusal to hear the case. This has simply delayed resolution of the question of the constitutionality of the registration provisions of AIPPA, thereby contributed to the banning of *The Daily News*, a clearly unconstitutional outcome.

VI. Accreditation of Journalists: The IJAZ Case

AIPPA makes it illegal for anyone to practise journalism without being accredited by the Media and Information Commission (section 83). Only citizens and permanent residents may be accredited and the MIC may refuse to accredit anyone who does not possess, “the prescribed qualifications” (section 79). Accreditation, once obtained, lasts for one year (section 84). Pursuant to section 85, the MIC shall develop and police a code of conduct for journalists; anyone who fails to observe the conditions of the code may have his or her accreditation revoked.

Regulations adopted in 2002 provide for accreditation to be approved by the minister, as well as for an annual fee of Zim\$6,000 for journalists working for local media and US\$1050 for journalists working for foreign media.

As noted above, ANZ journalists were recently denied accreditation on the basis that the newspapers had not been registered, forcing the newspapers to cease publication. Prior to that, the main impact of the accreditation rules had been on foreign journalists, who have also been targeted through visa rules. As far back as early 2001, Mercedes Sayagues, correspondent for the *Mail and Guardian*, had her application for renewal of her residence permit refused. As a result of accreditation and visa measures, both before and

since AIPPA, there are no longer any foreign correspondents based in Zimbabwe. Andrew Meldrum, journalist with the British-based *Guardian*, expelled in May 2003, was the last one.

The issue of foreign journalists continues to be an active one, although now it revolves around visiting correspondents, given that there are no foreign correspondents based in Zimbabwe. In April of this year, two journalists attempting to cover a cricket tournament – Mihir Bose and Telford Vice – were expelled from Zimbabwe on the grounds that they had applied late for accreditation. The real reason is almost certainly interest sparked by a strike on the part of Zimbabwean players about a player selection dispute.

The Independent Journalists' Association of Zimbabwe (IJAZ) challenged sections 79, 80, 83 and 85 of AIPPA as impinging on freedom of expression and freedom of the press. It argued that the accreditation system for journalists, which is actually a licensing system, not a system of accreditation, failed to pass constitutional muster for a number of reasons. First, it did not promote any legitimate government objective or, in legal terms, the measures adopted were not rationally connected to any legitimate aim. Although the promotion of professional standards is a laudable goal, it is neither appropriate nor effective to attempt this through licensing of journalists. The Constitution does not allow for restrictions on freedom of expression on this ground, but only on the much narrower ground of protecting the rights of others.

Second, the measures adopted, even if they did serve a legitimate goal, were not carefully tailored to achieve this goal so as to impair freedom of expression as little possible. If the aim was to protect the rights of others, this could be achieved through carefully drafted rules on content, such as defamation laws and rules relating to privacy. As the experience in other countries shows, there is no need to institute a licensing system for journalists to protect the rights of others.

Third, the harm to freedom of expression inherent in the licensing system is disproportionate to any possible benefit. The possibility that an individual may be banned from practising, as a journalist through a refusal to provide him or her with a license simply cannot be justified. This has been the clear conclusion of international, as well as national courts, including from the region. It is also reflected in a range of authoritative international statements and the practice of countries around the world, including States in Southern Africa.

IJAZ also argued that the MIC lacks the independence from government required of a body with regulatory powers over the media. In particular, the fact that a politically controlled body has the discretion to refuse to license a journalist is open to serious abuse.

The full impact of the licensing system has been demonstrated quite clearly in the case of *The Daily News*, where, in a cruel twist of fate, it has effectively prevented the newspaper from publishing.

On 5 February 2004, over a year after the matter had been heard, the Supreme Court finally rendered judgment in the IJAZ case. Chief Justice Godfrey Chidyausiku, together with three other Supreme Court justices, upheld the sections relating to the licensing system as constitutional. In a dissenting judgment, Justice Wilson Sandura found all of the contested sections to be unconstitutional.

The majority judgment held that it was necessary to accredit (license) journalists for public order reasons. Unfortunately, the Court provided no reasoning whatsoever to support this conclusion, apart from referencing a Sri Lankan case which deals with regulation of the broadcast media, a totally different matter, and which does not in any case suggest that such regulation is justified by reference to public order.

In a minor victory for freedom of expression, the Court effectively re-wrote part of the Act, substituting 'must' for 'may' in relation to section 79(5), which states that the MIC may accredit journalists who meet the conditions listed. This should at least partially limit the discretion of the MIC to refuse accreditation.

The Court found that although the power to prescribe qualifications for obtaining accreditation is apparently unfettered, any such qualifications would have to be set out in regulation and, should such regulation be unconstitutional, it might be challenged directly. This totally fails to recognise the well-established principle that it is illegitimate to grant undue discretion to officials where there is a possibility that this might be used in such a way as to limit a guaranteed right. Instead, the primary legislation should provide clear parameters for the exercise of such discretion. In this case, it would have been a simple matter to provide at least a framework set of required qualifications.

Importantly, it also fails to take into account the fact that setting any conditions on who may practise journalism breaches the right to freedom of expression. That right, which applies to everyone and through any medium, clearly rules out State imposed restrictions on access to the media or on working as a journalist.

The Court also upheld the provisions regarding the code of conduct, again without providing any reasoning.

Regarding the issue of the independence of the MIC, the Court held that the matter was not properly before it, since the relevant sections had not formally been challenged. In any case, the Court referred to its judgment in the Broadcasting Services Act case for the proposition that this was not a constitutional problem. In that case, the Court found that the direct powers over licensing exercised by the Minister were unconstitutional and, in the present case, the Court again noted that the direct ministerial powers, found in the regulations, were constitutionally suspect and could be challenged. However, the Court declined to address this issue on the narrow technical ground that these provisions had not been challenged. This highly formalistic approach is quite inappropriate to constitutional interpretation, given the fact that the exercise of fundamental rights is in question. It is particularly illegitimate in this case, given that the matter of undue political control was directly in question and that the Court had just held a very similar power to be unconstitutional in the broadcasting case.

VII. Conclusion

The sad chronicle of events outlined above clearly shows how successful AIPPA has been in undermining freedom of expression in Zimbabwe, promoting government control over even the independent media and giving repressive elements tools of intimidation. The only independent Zimbabwean daily, *The Daily News*, has effectively been banned and the likelihood of its returning to the streets in the foreseeable future seems remote. Dozens of journalists have suffered direct legal harassment, mostly in the form of short-term detention, and this has had an impact on the profession as a whole. The system of licensing for journalists has recently been constitutionally affirmed by the Supreme Court, and it is likely to play an increasing role in direct targeting of those who dare to criticise the ruling party and government.

The closing down of the space for freedom of expression in Zimbabwe is part of a clear strategy. The whole framework of repressive legislation – the Broadcasting Services Act, POSA and AIPPA – has been carefully crafted to achieve precisely these ends. Cynically named, AIPPA does anything but guarantee access to information. Its limited access provisions are almost entirely undermined by a broad system of exclusions and exceptions. The vast bulk of its provisions deal not with access to information but with control of the media.

As a matter of law, AIPPA, along with related legislation such as POSA and the Broadcasting Services Act, is quite clearly in serious breach of the right to freedom of expression as guaranteed under international law in a number of key ways. It signally fails to strike a balance between the legitimate interests of the State, for example in preserving national security and public order, and the rights to freedom of expression and democracy. The registration and accreditation systems are illegitimate and the regulatory body is under firm government control. AIPPA has been condemned as illegal and undemocratic not only by the authors of this report, the Media Institute of Southern Africa-Zimbabwe and ARTICLE 19, but also numerous other organisations including the European Union, the Commonwealth and Amnesty International, Zimbabwe Lawyers for Human Rights, National Constitutional Assembly, Crisis in Zimbabwe Coalition, the Media Monitoring Project of Zimbabwe and other organisations.

Unfortunately, the Supreme Court of Zimbabwe appears to have largely reneged on its obligation to uphold the Constitution, producing rulings that clearly flout established understandings of the scope of the right to freedom of expression and that have led to very serious breaches of this right in practice.

If Zimbabwe wishes to re-establish itself as a democratic, human rights respecting country, one of the first steps must be the repeal of AIPPA, as well as of POSA and the Broadcasting Services Act. Repressive laws like these have no place in a democracy; they seriously limit freedom of expression, and undermine participation, good governance and accountability, as well as the exposure of other human rights abuses. Zimbabweans deserve better than this.

ANNEX: Table of Violations

Law Enforcement: Arrests/Detentions/Raids/Charges

Name/Affiliation	Action/Charge	Date and Status
Thabo Kunene (BBC correspondent)	Arrested in Lupane and released after one hour	29 January 2002 No charges laid
Rhodah Mashavane and Foster Dongozi (<i>The Daily News</i>) and Cornelius Nduna (<i>The Standard</i>)	Arrested and released after four hours; charged under POSA for participating in a demonstration	30 January 2002 The journalists have not yet been taken to court
Basildon Peta (former Secretary General of Zimbabwean Union of Journalists)	Arrested and charged under POSA for allegedly organising a demonstration	4 February 2002 Matter dropped
Edwina Spicer and Jackie Cahu (freelance film and documentary producer)	Arrested while filming the MDC leader who had been summoned to the police station, near State house but released after 5 hours; camera taken; charged under the Protected Areas Act for allegedly filming State house	18 February 2002 Police to proceed by way of summons; the two are yet to be taken to court
Newton Spicer (Spicer Productions)	Arrested and detained while covering an opposition demonstration; released after five hours; video camera confiscated but returned 6 days later	19 February 2002 No charges laid
<i>Radio Dialogue</i>	Promotional show in Plumtree stopped by the police on grounds that it was not sanctioned by the police as required under section 24 of POSA	21 February 2002
Book Café	Banned by the police from hosting public meetings that might include political discussions as defined under POSA.	28 March 2002
Peta Thornycroft (Zimbabwean citizen and foreign correspondent for <i>The Daily Telegraph</i> and VOA)	Arrested in Chimanimani while on course of duty and released 4 days later on 31 March; charged under AIPPA and POSA for operating as a journalist without accreditation and also writing subversive material as defined under section 15 of POSA.	27 March 2002 Police to proceed by way of summons; yet to appear in court
Geoff Nyarota (<i>The Daily News</i> , editor-in-chief)	Arrested and charged under AIPPA for publishing a story that the Registrar General misrepresented figures on the Presidential election	15 April 2002 Police to proceed by way of summons; yet to appear in court
Dumisani Muleya (chief reporter) and Iden Wetherell (editor) (<i>The Zimbabwe Independent</i>)	Arrested and charged under AIPPA for allegedly lying that the first lady was involved in a bid to take over a company	15 April 2002 (Criminal defamation); 17 April 2002 (AIPPA) Police to proceed by way of

	with her brother; Muleya was also charged with criminal defamation	summons; both are yet to appear in court
Radio Dialogue Bulawayo	Raided by the police, searched and some documents and tapes confiscated	16 April 2002 No charges laid
Geoff Nyarota, Lloyd Mudiwa and Collin Chiwanza (<i>The Daily News</i>)	Arrested and charged under AIPPA for writing that an opposition member had been beheaded by ruling party supporters; released on bail on 2 May; the story proved to be false and the paper apologised; referred to the Supreme Court on 24 July	30 April 2002. Supreme court ruled that section 80 is unconstitutional on 7 May 2003
Andrew Meldrum (UK <i>Guardian</i> newspaper, correspondent)	Arrested and charged under AIPPA (see above case)	1 May 2002 Found innocent on 15 July 2002 Ordered to leave Zimbabwe by Immigration but that order was set aside on 17 July 2002 by the High Court Finally deported on 16 May 2003 even though the High Court ordered that the deportation should not proceed
Pius Wakatama (<i>The Daily News</i> , columnist)	Charged under AIPPA for commenting on the alleged incompetence of the Registrar General's office concerning the vote counting	6 May 2002 Police to proceed by way of summons; has yet to appear in court
Assel Gwekwerere and Aaron Ufumeli (<i>The Daily News</i>)	Arrested while taking photographs of an arrested criminal and released after hours of interrogation; film confiscated; police thought the two were part of a gang they had waylaid in an undercover operation	7 May 2002 No charges laid
Brian Mangwende (<i>The Daily News</i>)	Arrested for allegedly writing a false story that teachers were being harassed and released after two hours	10 May 2002 No charges laid
Bornwell Chakaodza and Farai Mutsaka (<i>The Standard</i>)	Arrested and released on bail two days later on 17 May; charged under Section 80 of AIPPA for writing that the police have bought anti-riot gear	15 May 2002 Matter dropped after Section 80 was ruled unconstitutional by the Supreme Court
Bornwell Chakaodza and Fungayi Kanyuchi (<i>The Standard</i>)	Arrested and released on bail two days later on 17 May; charged under AIPPA for writing that the police were involved in "sex for freedom deals" with sex workers	15 May 2002 Police to proceed by way of summons; journalists have yet to appear in court

Foreign Correspondents Association	Supreme court rules that its challenge of AIPPA will not be heard as an urgent matter	16 May 2002
<i>The Daily News</i> and <i>The Standard</i>	Sued by Police Spokesperson Assistant Commissioner Wayne Bvudzijena for defamation over stories that said that he once served in the colonial force	21 May 2002 The Standard agreed to pay Z\$800 000 in an out of court settlement
Bornwell Chakaodza (editor) and Fungayi Kanyuchi (entertainment editor) (<i>The Standard</i>)	Arrested and charged under the Censorship and Entertainment Controls Act for publishing picture captions of semi naked alleged sex workers accompanied by a story on the police's "sex for freedom deals" with sex workers.	21 May 2002 Police to proceed by way of summons; the journalists have yet to appear in court
Bornwell Chakaodza and Farai Mutsaka (<i>The Standard</i>)	Arrested and charged under section 80 AIPPA for writing that the Department of Information is mooting editorial changes at the state owned media	23 May 2002 Matter dropped as Section 80 was ruled unconstitutional on 7 May 2003
Bornwell Chakaodza and Fungayi Kanyuchi (<i>The Standard</i>)	Arrested and charged under AIPPA for writing a story that the police were unfairly arresting independent media journalists; the story, entitled 'The Private Media's burden', was partly a narration of Kanyuchi's experiences in police cells	28 May 2002 As above
Iden Wetherell (<i>The Zimbabwe Independent</i> , editor)	Charged under the Censorship Act for publishing a picture of semi-naked Amazonian man playing football in his traditional attire	30 May 2002 Police to proceed by way of summons; has yet to appear in court
Guthrie Munyukwi (reporter), Urgurnia Mauluka (photographer) and Shadreck Mukwecheni (driver) (<i>The Daily News</i>)	Arrested and beaten and released a day later on 17 June 2002; charged under POSA while covering a pro constitutional reform demonstration in Harare	16 June 2002 Police to proceed by way of summons
Chris Gande (<i>The Daily News</i> , Bulawayo)	Arrested and charged under AIPPA for allegedly publishing falsehoods about the Vice President	4 July 2002 Police to proceed by way of summons; has yet to appear in court
Voice of the People (VOP) Communications Trust (A short-wave radio station)	Raided by the police and tapes and files confiscated but later returned	4 July 2002 No charges laid
Stanley Karombo (freelance journalist)	Harassed and detained for five hours while covering a mayoral election in the town of Kadoma	25 July 2002 No charges laid
Tawanda Majoni (<i>The Daily Mirror</i>)	Arrested and detained for two days charged under section 80 AIPPA and the Police Act for	12 September 2002 Sentenced to 3 months in prison on 12 September 2002

	having written falsehoods on the health of the Police Chief and for having improperly resigned from the police	
Henry Makiwa (reporter), Aaron Ufumeli (photographer) and Trust Maswela (driver) (<i>The Daily News</i>)	Arrested and detained by the police for one and a half hours whilst covering a demonstration by students in Harare; film confiscated	21 October 2002 No charges laid
Henry Makiwa and Gally Kambeu (photographers) and Trust Maswela (<i>The Daily News</i>)	Arrested and detained for four hours while covering an anti rape demonstration in Harare	19 November 2002 No charges laid
Nqobile Nyathi (<i>The Financial Gazette</i> , editor-in-chief)	Arrested under Section 16 of POSA in relation to adverts that were placed by a civic activist group in the paper	15 January 2003 Police to proceed by way of summons should they decide to take her to court
Willis Muponda (<i>The Sun</i> , editor and publisher) (a weekly community publication in the city of Gweru)	Harassed by the police in the city after police demand a registration certificate from him as prescribed under AIPPA	15 January 2003 No charges laid
Tsvangirayi Mukwazhi (<i>The Daily News</i> , chief photographer) and Americans Dina Kraft (Associated Press) and Jason Beaubien (National Public Radio)	Arrested for allegedly entering the Grain Marketing Board depot in Bulawayo illegally; released eight hours later	29 January 2003 No charges laid
Pedzisayi Ruhanya (<i>The Daily News</i> , deputy news editor) and Ishmael Mafundikwa (freelance journalist)	Arrested at the High Court for allegedly obstructing police duties	3 February 2003 No charges laid
Peter Muringisanwa (soundman) and Tawanda Mugwendere (driver) (SABC) and Tsvangirayi Mukwazhi (freelance photographer)	Arrested while covering an MDC demonstration at the Nigerian High Commission	7 February 2003 No charges laid
Lloyd Mudiwa (Reporter) and Aaron Ufumeli (photographer) (<i>The Daily News</i>), Tsvangirayi Mukwazhi (SABC, correspondent), Brian Hungwe and other unidentified photographers	Arrested while covering a women's march against violence on Valentine's day and released after two hours	14 February 2003 No charges laid
Raymond Bouuman and Pim Hauinkels (Dutch TV Journal ITL5, Dutch journalists)	Arrested for about 1 hour for taking pictures of a bread queue in Bulawayo	26 February 2003 No charges laid
Geoff Nyarota (<i>The Daily News</i> , former editor-in-chief)	Warrant of arrest issued by the magistrate's court in Harare for failing to appear in court	28 February 2003 Nyarota is now in exile in the USA
William Nyamangara (Managing Director) and Mhlabene Bhebhe (Origination Manager) (Sovereign Publishers)	Arrested under POSA for allegedly printing subversive materials	11 March 2003 Police to proceed by way of summons
Philemon Bulawayo (photographer) and Gugulethu Moyo (corporate lawyer) (<i>The</i>	Bulawayo was arrested while covering protest demonstrations in a Harare	18 March 2003 Police to proceed by way of summons; has yet to appear in

<i>Daily News</i>) and Alec Muchadehama (Legal Practitioner)	high density suburb while Moyo and Muchadehama were arrested when they visited the police station to seek his release	court
Stanley Karombo (freelance journalist, Mutare)	Arrested under AIPPA for allegedly practicing as a journalist without accreditation, detained for 5 days, beaten and had mobile phone and recorder confiscated	19 March 2003 No charges laid
Lloyd Mudiwa (<i>The Daily News</i> , former reporter)	Charged with contempt of court for allegedly writing a story that undermined the judiciary	9 April 2003 Matter still before the courts but journalist now in exile
Norna Edwards (<i>The Masvingo Mirror</i> , editor)	Charged for having published a false story contrary to Section 80 of AIPPA	2 June 2003 Charges dropped after Section 80 of AIPPA was held unconstitutional by the Supreme Court on 7 May 2003
Shorai Katiwa, Martin Chiminya and John Masuku (VOP Communications Trust, journalists)	Beaten by war veterans and ruling party supporters while covering the opposition mass protest; detained at ZANU PF headquarters and later taken to police station; recorders and mobile phones taken; the police also searched Masuku's home, and confiscated files and a computer	3 June 2003 No charges laid
Edwina Spicer (journalist and film producer)	Home raided by eight police officers; guards, gardener and maid beaten and gardener admitted to hospital for a day; cameras, videos and other equipment taken, including Z\$50,000	6 June 2003 No charges laid
Edwina Spicer (journalist and film producer)	Home raided for the second time in as many days; police officers with a search warrant confiscate more equipment and six loaves of bread	7 June 2003 No charges laid
Francis Mdlongwa (editor-in-chief, <i>The Daily News</i>)	Arrested and charged under not used anywhere else POSA for allegedly publishing adverts that undermined the dignity of the President in 2002 when Mdlongwa was still with the Financial Gazette	11 June 2003. Police to proceed by way of summons; has yet to appear in court
Bill Saidi (<i>The Daily News on Sunday</i> , editor)	Charged under section 16 of POSA for allegedly publishing a story in the <i>Daily News</i> in 2002 that President Robert Mugabe visited South Africa; the story proved to be incorrect	24 June 2003 Police to proceed by way of summons; has yet to appear in court
Nqobile Nyathi (<i>The Daily News</i> , editor)	Charged under Section 16 of POSA for allegedly publishing	26 June 2003 Police to proceed by way of

	advertises denigrating the president; the adverts were placed by the opposition MDC	summons; has yet to appear in court
Sam Sipepa Nkomo (CEO) and Moreblessings Mpofu (advertising executive) (<i>The Daily News</i>)	Arrested and charged under POSA section 16 for allegedly publishing adverts denigrating the President	30 June 2003 Police to proceed by way of summons; has yet to appear in court
Gugulethu Moyo (<i>The Daily News</i> , legal advisor)	Arrested and charged under section 19 of POSA for allegedly inciting demonstrations for accompanying Sipepa Nkomo and Moreblessings (see above) to the Harare Central police stations when the police indicated that they were looking for her as well; she was also initially denied access to a lawyer	30 June 2003 Police to proceed by way of summons; has yet to appear in court
<i>Daily News</i>	Banned by the Media and Information Commission and police after a Supreme Court judgment that the paper was operating illegally; police move into newsrooms and offices on 16 September and seize equipment and charge executives and journalists for operating without registration and accreditation; MIC denies the ANZ a license. (See chronicle of ANZ case)	11 September 2003: Supreme Court judgment 12 September 2003: paper banned
Tsvangirai Mukwazhi (<i>Associated Press</i>) and Paul Cadenhead (<i>Reuters</i>)	Arrested at the offices of the <i>Daily News</i> for allegedly obstructing police work; charged under the Miscellaneous Offences Act	15 September 2003 Paid admission of guilty fines and released
Philemon Bulawayo, Margaret Chinowaita, Kelvin Jakachira, Sydney Saizi, George Muzimba and Lawrence Chikumbira (<i>The Daily News</i> , reporters)	Charged for practicing without accreditation by the Media and Information Commission	1 October 2003 Police to proceed by way of summons; the journalists have yet to appear in court
19 Media Workers (<i>The Daily News</i>)	Police raid the <i>Daily News</i> offices and arrest the 19 media workers	26 October 2003 Police to proceed by way of summons; the journalists have yet to appear in court
Brian Mutsau, Stuart Mattinson, Samuel Nkomo, Rachel Kpara and Washington Sansole (<i>The Daily News</i> , Directors)	ANZ directors were arrested for publishing without an operating licence	27 October 2003 Matter still before the courts
Gift Phiri (<i>Weekend Tribune</i> , journalist)	Detained by Bulawayo police for breaching the Public Order and Security Act (POSA) and released the same day	1 November 2003 Police to proceed by way of summons; has yet to appear in court
Martin Chimanya (VOP Communications Trust, journalist)	Arrested and recorder and tapes confiscated; charged under Section 79 of AIPPA for	8 December 2003 Matter dropped before plea

	practicing as a journalist without accreditation	
Father Nigel Johnson	Arrested by police for filming musical dances, detained overnight and released	5 January 2004 Police to proceed by way of summons; has yet to appear in court
Iden Wetherell (editor), Vincent Kahiya (news editor) and Dumisani Muleya (chief reporter) (<i>The Zimbabwe Independent</i>)	Detained for publishing an alleged defamatory story entitled 'Mugabe grabs plane for far East Holiday'	10 January 2004 Granted bail \$20 000 each on 12 January
Raphael Khumalo (Managing Director) and Itai Dzamara (reporter) (<i>The Zimbabwe Independent</i>)	Charged with criminal defamation after publishing a story alleging that President Robert Mugabe had commandeered a plane to the Far East.	15 January 2004 Remanded out of custody

Attacks/Harassment

Name/Affiliation	Action	Date/Outcome
<i>The Daily News</i> and <i>The Financial Gazette</i>	Copies of these newspapers were destroyed by ZANU PF youths on their way to the airport	10 January 2002
Shepherd Ngundu (teacher in the rural area of Mount Darwin)	He was beaten to death for possessing a copy of the <i>Daily News</i>	5 February 2002
<i>The Daily News</i> Offices in Bulawayo	Campaign posters of President Mugabe are pasted all over the outside walls of the building	8 February 2002
<i>The Daily News</i> offices in Bulawayo and the Daily Press printing company (unrelated)	Both were petrol bombed in Bulawayo	11 February 2002 No report of the investigation has so far been released and no arrests have been made
Tongai Manomano and Munyaradzi Mapingo (<i>The Daily News</i> , vendors)	They were beaten and their newspapers destroyed by 15 ruling party youths in the town of Rusape	20 March 2002 No arrests have been made
Geoff Nyarota (<i>The Daily News</i> , editor-in-chief)	Threatened with arrest by Information and Publicity Minister Jonathan Moyo over a story that appeared in the <i>Daily News</i>	27 March 2002
Patrick Jemwa (ZBC, cameraperson)	He was beaten and seriously injured by soldiers while covering a pro constitutional reform demonstration in Harare	6 April 2002 Zimbabwe National Army apologised
<i>The Daily News</i>	Information Minister urges government departments and parastatals to stop advertising in the paper	29 April 2002
<i>The Daily News</i>	The State-owned Bulawayo based newspaper, The	3 May 2002

	Chronicle, calls for the banning of the Daily News in a front page lead story	
<i>Joy TV</i>	"Banned" from featuring BBC news in its programmes. Joy TV was leasing ZBC studios and frequency. The station was forced to operate without a news programme, broadcasting only entertainment programmes.	8 May 2002
<i>The Daily News</i>	ZANU PF threatens to sue the paper for writing that its supporters beheaded a woman; the paper apologised saying it was misled	13 May 2002
National Development Association (NDA)	NDA programme, 'Talk to the nation' banned by ZBC in 2001	30 May 2002 High Court ordered ZBC to bring back show on 30 May 2002; ZBC appealed against this decision on 22 August 2002 but the appeal is yet to be heard
<i>Joy TV</i>	Contract with ZBC ends and is not renewed and station is closed.	31 May 2002
independent media and journalists	In a Sunday Mail story Information Minister Moyo threatens that media houses and journalists who do not register will be arrested	23 June 2002
Chris Gande (<i>The Daily News</i> , Bulawayo)	Thrown out of court by prison officers	28 June 2002
Precious Shumba (<i>The Daily News</i>) and Peta Thornycroft (UK based <i>The Telegraph</i>)	Held hostage by war veterans and ruling party supporters for five hours together with a commercial farmer they were interviewing at a farm 26 km to the west of Harare	14 August 2002
VOP Communications Trust	Their offices in Harare were bombed and property worth millions of dollars was lost	29 August 2002 No report of the investigation has so far been released and no arrests have been made
ZBC	Bomb threat made in a phone call at the Mbare Studios but a search reveals no bomb	13 September 2002
<i>The Daily News</i>	Information Minister Moyo calls on advertisers and readers to abandon the paper after a story that President Mugabe was snubbed by his colleagues at a regional meeting	8 October 2002
<i>The Daily News</i>	450 Newspapers confiscated by youths from the Border Gezi National Service Programme in Mutare and the vendors threatened; these	9 October 2002

	incidents continue throughout the year and many are not recorded	
<i>The Financial Gazette</i> and its Assistant Editor, Abel Mutsakani, and Political Editor, Sydney Masamvu	Attacked by Information Minister Moyo and his Permanent Secretary George Charamba and threatened with arrest over two stories that appeared in the paper on 24 October	25 October 2002
Blessing Zulu (<i>The Zimbabwe Independent</i>) and Pedzisai Ruhanya (<i>The Daily News</i>)	Threatened with shooting by police Assistant Inspector Dowra at the home of deceased MDC MP Learnmore Jongwe	25 October 2002
Radar Private (Ltd) and independent media	Threatened by Chimanimani based Central Intelligence Operative Joseph Mwale that he will not allow an aerial media tour of its (Radar) fire destroyed plantations because independent media journalists are not welcome	26 October 2002
Independent Media	Information Minister castigates independent media alleging that it is unpatriotic	18 November 2002
Shadreck Pongo (<i>The Standard</i> , photojournalist)	Severely assaulted by police while covering a ZCTU demonstration	20 November 2002
Simon Briggs (UK <i>The Telegraph</i> , sports reporter)	Barred from entering Zimbabwe to cover a world cup cricket match and sent back to South Africa	19 February 2003
<i>The Daily News</i>	Reporters barred from covering parliament as officials claimed they had not been accredited	26 February 2003
Nqobile Nyathi (editor), Abel Mutsakani (managing editor), Sydney Masamvu (assistant editor) and Luke Tamborinyoka (news editor) (<i>The Daily News</i>)	The Chairperson of the MIC, Tafataona Mahoso, wrote to them saying they must surrender accreditation cards they were given while working for the <i>Financial Gazette</i> ; Mahoso said that the cards cannot be used at <i>The Daily News</i> since the paper is not registered.	14 May 2003
<i>The Daily News</i> , <i>The Financial Gazette</i> , <i>The Zimbabwe Independent</i> , <i>The Standard</i> and <i>The Mirror</i>	ZANU PF supporters destroy thousands of copies of the papers in all towns during a week long mass protest called for by the opposition	2-6 June 2003
Dolores Cortes Meldrum (wife of deported Guardian correspondent Andrew Meldrum)	Flees Zimbabwe after being ordered to report to the Department of Immigration	12 June 2003
Mopani Junction Radio programme on HIV-AIDS	Banned by the ZBC with no reasons given	27 July 2003

awareness		
Bright Chibvuri (<i>The Worker</i> , editor)	Kidnapped overnight on 30 November and released on 1 December in the town of Kadoma while covering elections	30 November 2003



ARTICLE 19 takes its name and purpose from Article 19 of the Universal Declaration of Human Rights.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE 19's mission statement is:

ARTICLE 19 will work to promote, protect and develop freedom of expression, including access to information and the means of communication. We will do this through advocacy, standard setting, campaigns, research, litigation and the building of partnerships. We will engage global, regional and State institutions, as well as the private sector, in critical dialogue and hold them accountable for the implementation of international standards.

ARTICLE 19 seeks to achieve its mission by:

- strengthening the legal, institutional and policy frameworks for freedom of expression and access to information at the global, regional and national levels, including through the development of legal standards;
- increasing global, regional and national awareness and support for such initiatives;
- engaging with civil society actors to build global, regional and national capacities to monitor and shape the policies and actions of governments, corporate actors, professional groups and multilateral institutions with regard to freedom of expression and access to information;
- promoting broader popular participation by all citizens in public affairs and decision-making at the global, regional and national levels through the promotion of free expression and access to information; and
- applying a free speech analysis to all aspects of people's lives including public health, poverty, the environment and issues of social exclusion.

ARTICLE 19 is a non-governmental, charitable organisation (UK Charity No. 327421). For more information please contact us at:

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THE MEDIA INSTITUTE OF SOUTHERN AFRICA: ZIMBABWE CHAPTER

The Media Institute of Southern Africa (MISA) is a voluntary, non-profit making organisation launched in 1992 mainly by the independent media in the SADC member states. MISA – Zimbabwe is part of the larger MISA family, which has its headquarters in Windhoek Namibia, and has 12 chapters in 12 SADC countries.

MISA is a dynamic, member-driven network of national chapters co-coordinated by a professional regional secretariat which seeks through monitoring, training, capacity building, research and the distribution of information to foster free, independent and diverse media throughout southern Africa in service of democracy and development. This is in accordance with the 1991 Windhoek Declaration on an Independent and Pluralistic African Press, which highlights the vital role free and pluralistic media play in social, political and economic development.

The role of MISA is primarily one of a coordinator, facilitator and communicator, and for this reason MISA aims to work together with like-minded organisations and individuals to achieve a genuinely free and pluralistic media in Southern Africa.

The Guiding Principles of MISA – Zimbabwe are to:

- Promote media freedom and enhance independent and ethical journalism for the benefit of society.
- Improve the skills base among media workers and to allow for more effective use of the media by all its citizens.
- To create an environment in which there is dedicated professionalism and which promotes openness, independence and pluralism.

The Mission and Vision of MISA – Zimbabwe are based on values that seek to:

- Advance the aims and objectives of the Windhoek Declaration.
- Promote a self-reliant, non-partisan and independent media that informs, entertains and educates.
- Promote an environment in which media freedom can be turned and in which journalists can work in a professional way.

MISA – Zimbabwe is involved in:

- Advocacy work and Media Law reform: MISA-Zimbabwe advocacy work revolves around entrenching media freedom, freedom of speech and free flow of information. This entails monitoring media violations on a day-to-day basis and lobbying the relevant authorities so that problems that are faced by journalists and any other media personnel are solved amicably and expediently.
- Training MISA – Zimbabwe aim to have well trained media practitioners. To achieve this training programmes that develop the capacity of media practitioners are held constantly. This is done because there is a wide recognition of the fact that for media houses to report accurately, analytically and informatively the journalists need to be diversified and conversant with the various aspects of a nation's life.
- Networking and Lobbying: MISA – Zimbabwe's role in promoting media freedom, diversity and pluralism in the media cannot be effective without the formation of alliances with other civic organisations with an interest in such matters and so a deliberate policy is followed to pursue a wide networking and linkages programme.

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