

The impact of Zimbabwean Media Laws on the work of Journalists and Media organizations

Mr John Mpofu and Mr Sylod Chimhenga

Abstract: *A law referred to as Access to Information and Protection Act (AIPPA) and Broadcasting Services Act (BSA) have had a negative effect on the operations of media organizations and journalists. These acts were enacted immediately after 2002 presidential elections at a time when the private media had gathered momentum and was critical of government by exposing various ills and malpractices in both government and the private sector. Civic organizations and media personnel expressed frustration at the red tape they had to go through in order to access government information. BSA also made it difficult if not impossible to open more broadcasting stations in the country as this is evident on the ground by the fact that no private broadcaster has been registered since the law came into force.*

AIPPA has made it difficult for journalists to investigate corruption and the abuse of power while ZBC's monopoly over the air waves has led to poor quality of programs. As a result most Zimbabweans are resorting to watching DSTV, SABC, and other international channels that are broadcast through satellite. The research used a descriptive case study method to extract information from journalists and discuss through focus group discussions the challenges the journalists grapple with as they work in the media organizations. The views of journalists and ordinary viewers of media was that AIPPA and BSA laws contravene the Zimbabwe constitution that protects the right of citizens to freedom of association as well as freedom of speech. The majority of respondents believed that there is need to reform the media laws in order to let citizens enjoy their right to freedom of expression.

Submitted Date 18 June 2013

Accepted Date: 24 June 2013

I. Introduction

Media plays a critical role in the development of a country and its citizens. Zimbabwe's mass media, the press, radio, television and other multi-medias are an important source of information. The media provides news and analysis about what is happening inside the country and beyond our borders. Since the colonial period the media has always been strictly and tightly controlled and restricted in Zimbabwe. Some of the laws that have been used against the media include the Law and Order Maintenance Act (LOMA Chapter 65) now called Public and Order Security Act (Chapter 11:17), the official Secret Act (Chapter 97), the Censorship and control of Entertainment Act (Chapter 78), and the Privileges Immunities and Powers of Parliament Act (Chapter 10). Most of these media laws were enacted during the colonial period and they are still in the statutes of the Zimbabwean government thirty years after independence. These laws were enacted in order to consolidate power by the minority white regime. The white government used these laws to curtail the free flow of information and denying the Zimbabwean citizens their rights to free expression and opinion. It is therefore unfortunate that thirty years after independence, such laws should be used against Zimbabwean citizens. Media freedom is linked to democratic governance and this cannot be achieved where the media and media practitioners operate under oppressive legislation. The Law and Order Maintenance Act (LOMA) of 1960 infringed on people's freedom of association, assembly, movement and expression.

Historical background

During the period 1965-1980 in pre-independent Zimbabwe, one of the main aims of the struggle was for a free press, both supported by the Zimbabwe People's Liberation Army and Zimbabwe African National Liberation Army which both claimed would repeal several media laws. Independent press had struggled to report in the country for many years, with many restrictive laws imposed by the minority government of Ian Smith; such as the Official Secrets Act, which made it a crime to report on "classified information" and the Law and Order Maintenance Act (LOMA), where the state could take action against individuals—including 20 years imprisonment. Such acts were used to impose a media blackout on reporting on the heavy casualties suffered by the Rhodesian Government Forces. Media was ordered to focus on casualties on the other side and to report on their retreats to Zambia and Mozambique.

After independence in 1980, President Robert Mugabe did not implement the proposed media reforms carried over from the colonial years. The only act to be repealed was the Powers, Privileges, and Immunities of Parliament Act, which had made it illegal for media to report on debates in parliament. In January 1981, the government set up the Zimbabwe Mass Media Trust (ZMMT) as part of the government's new media policy, under widespread criticism of the national media, which at the time was inherited from foreign control. It was originally intended to serve as an authority to oversee the transition of the media from white minority control to Zimbabwean society as a whole and to regulate the media. The government emphasized that the media be free, non-partisan, mass-orientated and serve the national interest; however, a growing presence of the Ministry of Information into the media effected its original function.

Despite difficult working conditions for the media, they have contributed to improved governance in Zimbabwe. In 1987, despite threats from the Zimbabwe National Army where the disease was taking its toll, the *Financial Gazette* newspaper published its first article on AIDS. The topic was vigorously covered in the private media, which later led to the government's decision to facilitate maximum publicity and education on the disease. Around the late 1980s, while the government was favoring a one-party state based on its alliances with other communist states, independent media launched a campaign against this style of governance, which was later joined by the public, churches and opposition groups. By 1988, the concept was abandoned and continued in its multi-party form. In 1989, *Chronicle* editors Geoffrey Nyarota and Davison Maruziva exposed what was known as the Willow gate scandal which exposed corruption of the authorities during a shortage of foreign currency in Zimbabwe. It emerged that foreign vehicles were sold at cheaper prices compared to the public which were sold the vehicles at highly inflated prices. Media coverage led to the resignation of six government officials. This was followed by further scandals in the 1990s which involved the looting of funds set aside for government projects by government officials, which the media brought to the attention of parliament. The government responded with corrective actions.

All news media in the country are careful to reflect the government line when reporting by self-censorship. Private press still exists, however since the 2002 Access to Information and Protection of Privacy Act (AIPPA) was passed, (which replaced LOMA from 40 years earlier a number of outlets were shut down by the government, including *The Daily News*). As a result, many press organizations have been set up in both neighboring and Western countries by exiled Zimbabweans. However, because the internet is currently unrestricted, many Zimbabweans are allowed to access online news sites set up by exiled journalists. Reporters Without Borders claim the media in Zimbabwe involves "surveillance, threats, imprisonment, censorship, blackmail, abuse of power and denial of justice are all brought to bear to keep firm control over the news. Opposition views are often skewed, scantily covered or not mentioned in the state media, which has also criticized demonstrations and strikes against the government. Until July 2009, a Zambian newspaper, *The Post*, was the only foreign newspaper allowed to work in the country, along with the Associated Press, Agence France-Presse, Al Jazeera and SABC news agencies.

After a power sharing deal was agreed by ZANU PF and the opposition MDC T in February 2009, Morgan Tsvangirai announced he was to democratize the state media and repeal many strict laws in order for the media to have a more meaningful role in the rebuilding of the country. The MDC T had accused the state media of "gutter journalism" and biased reporting against the party. In April 2009, the coalition government planned to review media restrictions, including the removal of bans for some foreign news agencies and to create a new media commission to issue licenses. ZANU PF Minister of Justice Patrick Chinamasa said there was an agreement to review the media policy so as to create a political climate where divergent voices will be heard. The media environment is slowly improving in Zimbabwe, on July 28, 2009, Zimbabwean journalists set up a rights body, the Zimbabwe Journalists for Human Rights to defend media freedom in the country and the establishment of a new government body, the Zimbabwe Media Commission to replace the defunct Media and Information Commission. Three papers – the previously banned *Daily News*, *Financial Gazette* and *NewsDay* were to prelaunch. A license was issued to the Associated Newspapers of Zimbabwe (ANZ) that publishes *Daily News* which the government previously banned, was now free to operate.

Relations with foreign media and governments

The Zimbabwean press at times has strained relations with foreign press and governments. Governments from neighboring countries such as Botswana and Zambia, as well as Tanzania who have a tense relationship with Zimbabwe, have regularly protested against attacks on their countries by Zimbabwean state media. The government also banned many foreign broadcasting stations from Zimbabwe, including the BBC, CNN, Sky News, CBC, Australian Broadcasting Corporation, Channel Four, ABC and Fox News. However, restrictions were lifted in July 2009, meaning the BBC and CNN could again operate in the country, however other aforementioned Western news media organizations are still forbidden to operate. News agencies and newspapers from other Western countries and South Africa have also been banned from the country. Other stations that were allowed into Zimbabwe, such as Al Jazeera, were told to be more objective in their reporting by the Zimbabwean government during the presidential election.

Rising media fees for reporting in the country have also caused condemnation from foreign journalists claiming that freedom of expression will deteriorate. The Ministry of Information claimed the rising costs were necessary to prevent foreign journalists for distorting stories.

Statement of the problem

AIPPA and BSA are critical and comprehensive legislations of media that directly deals with issues of media and journalism. The research sought to investigate the impact of the legislation of AIPPA and BSA media landscape in Zimbabwe. The focus was to evaluate the effect of these laws on the operations of media organizations and journalism in Zimbabwe. The research study intended to come up with proposals that would be directed at policy makers and foster good relations between government and media practitioners through crafting agreed media policies that enhance development and provide an environment where citizens have freedom of expression.

Research questions

- What are the provisions of AIPPA and BSA in terms of regulating media in Zimbabwe?
- To what extent is AIPPA and BSA affecting the operations of journalists and media organizations?
- Evaluate the effects of AIPPA and BSA on media operations in Zimbabwe.

II. Literature Review

According to the handbook human rights and the Media (2003:43) universal declaration (1948) Article 19 state that “everyone has the right to freedom of opinion and expression, his rights include freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. On the same note, the International Convention on Civil and Political rights article 19 states that ‘ Everyone has the right to freedom of expression , this right shall include freedom to seek, receive, and impart information of all kinds, either orally , in writing or in print, in the form of art or through any other media of his choice.’

The provision of these instruments encourages all countries that are signatories to uphold freedom of expression as a democratic ideal. All instruments should be binding as well as enforceable in the countries that ratified them. Zimbabwe is a signatory of these instruments and hence it is obliged to fulfill all the demands of the declarations.

The concept of freedom of information has received a severe battering in recent years particularly with the advent of AIPPA. The government of Zimbabwe has vigorously tightened media laws in a bid to stifle criticism. AIPPA governs the operations of and general conduct of the media. Chiweshe (2003:55 states that,

“ The situation on the ground in Zimbabwe is that the law seems to weigh too heavily against media and journalists freedom. Zimbabwe’s media is subjected to far too many legal restrictions, which make it difficult to pursue its watchdog role in the public interest”

Placing too many barriers in the way the media functions and operates limits the information that is imparted to the public. Members of the public need information about matters of governance. Lack of access to adequate information hinders popular participation in political and other purposes. Uninformed people cannot make informed decisions and political choices. Critics of AIPPA further state that currently there is little room for investigative journalism. A journalist cannot effectively carry out that role without risking or breaching one law or another.

The Law	Effects
Section 6 of AIPPA stipulate that in order to obtain information from a public body, one has to make an application to the Head of such a body in custody of the record who has not later than 30 days to respond to such applications.	This procedure is cumbersome and tedious. There is no justification for a 30 day response period. Such a law does not take into account that some issues are topical and that if the relevant information is to be obtained later, the public will have forgotten or even lost interest in the story.
Section 38.39 of AIPPA gives the Ministry of Information the powers to appoint a board to run the Media and Commission’s affairs. The board would oversee issues affecting the media. The Minister of Information has the discretion to not only appoint the members of the board after consultation with the President but to also to dismiss or suspend the appointed board members.	Through the board, the Minister takes the overall control of media activities. The Board members by virtue of their appointment are at the mercy of the Minister and have to accede to his directions.
Section 79 requires that all journalists must be accredited before working in Zimbabwe. The Media Commission is tasked with the duty of accreditation. Non-citizens and non-resident journalists are not eligible to register.	No journalists are allowed to practice without accreditation and that the Commission can deny anyone they do not like to get accreditation. Foreign journalists are effectively prohibited from practicing in Zimbabwe.
Under section 68 of AIPPA Media institutions and news agencies must be registered. It constitutes a criminal offence to own an unregistered media agency. Non Zimbabwean citizens may not own	Such policies has curtailed the growth of alternative media to the state controlled media. Foreign investment in the media has been eliminated due to this law.

such media institutions.

It appears that AIPPA has made it extremely difficult for journalists to publish any news without being charged. Investigative journalism has been destroyed due to these laws. In contrast, Zimbabwean neighbor, South Africa has a freedom of Information Act which permits access to official records without bureaucratic procedures. The following examples show the impact of AIPPA on media practice in Zimbabwe. In May 2002 the Standard newspaper published a story in which it alleged that government had bought military and anti-riot equipment in a bid to crush anti government demonstrations. It also published another story to which it alleged prostitutes in Harare area were making arrangements with the police for their release in return for sex. The editor, entertainment editor and reporter were arrested in connection with these stories. They were charged with contravening Section 80 (1) (b) of AIPPA. They were held overnight in police custody and then taken to court where they were remanded out of custody.

On May 9th 2003 the Supreme court struck down as un-constitutional Section 80 (1) (b) and (2) of AIPPA. The Daily news had published a story about a woman said to have been beheaded in front of her children by supporters of ZANU PF. The story turned out to be false as the paper apologized immediately which is the standard practice in other parts of the world. But in Zimbabwe the Daily news reporters Geooff Nyarota (Editor in Chief) and Llody Madima were liable to severe punishment by the state under AIPPA that stipulated hefty fines or jail terms of up to two years or both. The two appealed to the Supreme Court to declare Section 80 (1) (b) and (2) unconstitutional because it violated Section 20 of the Constitution that guaranteed freedom of expression.

Analysis of BSA law and its Implications

The BSA law	The effects on the public
Section 3 of the act created a Broadcasting Authority which plays an advisory role to the Minister of Information. The Minister appoints the board members after consultations with the President.	The independence and objectivity of the Authority is compromised by the manner of appointments of its members. The appointees are bound to feel they owe allegiance to the minister and are therefore likely to make decisions that are biased in favor of government.
The Minister of Information is the sole licensing authority.	The Minister of Information is thus in charge of the airwaves as he/she can allocate them to whomever he/she pleases as long as the person meets the statutory requirements. She /he can deny a license to individuals she/he feels are opposed to government. Too much power is left in the hands of a single individual.
Section 8 of this Act stipulate that only Zimbabwean citizens ordinarily resident in Zimbabwe or a body corporate whose controlling interest are held in Zimbabwe are eligible for a license.	According to the BSA Act foreigners are totally excluded from owning any broadcast service. The rationale stems from the increasing poor relations between Zimbabwe and other countries. The government is suspicious of the information that foreign broadcasters might disseminate. The interesting observation is that foreign investment in Media and Communication is welcome.
Section 9 of the Act, restricts to only one in addition to ZBC, the Minister may issue only one other national license to an aspiring broadcaster to provide broadcasting services.	This section of the law is meant to keep airwaves closely monitored and to reduce, if not eliminate competition. The effect is that people are forced to listen and watch programs that are supportive of the ruling party. The Zimbabwe Broadcast Corporation is partisan and does not broadcast the views of the opposition parties as a result the views of dissenting opinions are not aired.
Section 24 of BSA gives the Minister the authority to be in charge of the responsibility of formulating codes of conduct for who operates a broadcasting industry.	The Minister not only determines who operates a broadcasting service, but also spells out the general conduct of the industry. In normal circumstances, the industry should be let alone to develop its own codes of conduct and not have them imposed by a partisan individual.

Civic organizations have argued that the BSA Act is an assault on citizen's right to free expression as the government seeks to limit rather than expand the communicative space. The civic alliance for Social and Economic Progress (CASEP) argued that control of the BSA act is a recipe for continued control of radio and television.

The other major problem with BSA is that it seriously inhibits investment in the broadcasting sector by creating licensing conditions, particularly for commercial broadcasting prohibition of foreign shareholding, restriction of licenses from possessing both a broadcasting license and a signal carrier license.

Findings

The findings of this research were analyzed according to the themes that were highlighted by the respondents who were interviewed in focus group discussions (FGD) and personal interviews.

Theme on the contents of AIPPA and BSA

The journalists who discussed the topic regarding the two acts in (FGD) all said they were familiar with the two acts since no journalist could work in Zimbabwe without knowing the legislation.

It is one of the most retrogressive legislation I have come across

in my entire career. The worst part of the legislation is that it is used to silence journalists from doing their job. (FGD in Bulawayo)

Theme on challenges faced by journalist and media organizations

It was clear from the responses that centralization of registration is unnecessarily cumbersome and expensive since every journalist has to travel to Harare to register

*The government officials behave as if they not heard of decentralization
We do not understand why officials from Ministry of information can
fail to register journalist in any part of the country. Its not as if when you go to
Harare it is the Minister who registers you.(FGD in Bulawayo Zimbabwe)*

Apart from criticizing the contents of AIPPA and BSA respondents felt that the aim of the whole exercise is to control the distribution of information. Another feeling expressed by journalists and media practitioners was that they are forced to consult Harare when writing on any issue that has to do with government, failing which they can be accused of distributing lies and propaganda. The major concern for media practitioners is that when they try to verify issues in Harare, they do not get responses immediately.

*The other major challenge relate to the issue of accreditation
that seems to have been designed to frustrate and stop foreign
Journalists from operating in Zimbabwe. (FGD in Bulawayo)*

Theme on the publication of cabinet and local government bodies

Media practitioners felt that AIPPA criminalizes disclosure of deliberations of the cabinet and local government bodies. They argued that it would appear that the Act was designed to protect government officials and keep the media away from cabinet ministers.

*The ministers are happier with cabinet ministers being
Interviewed by pro- government journalists who tend to
parrot the responses from the ministers. (FGD in Gweru)*

There is an attempt to use AIPPA to keep the critical media away so as to protect corruption and mismanagement.

Theme on the Powers of Minister of Information

Respondents were adamant that AIPPA gives too much power to the Minister of Information. As a result there is a likelihood of Ministers abusing their position by controlling and intimidating license holders. Those media practitioners who offend the Minister can have their license revoked. The major challenge is that the act gives the minister the powers to determine what is of public interest, morality health and safety. Respondents argued that the Ministers powers need to be reduced.

Theme on Registration of practitioners

Media practitioners felt that the whole process of registration was segregative and unfair. The general feeling was that the law curtailed the growth of alternative media to state controlled media. Foreign investment in the media is eliminated but government is lamenting everyday that the international community is imposing sanctions against Zimbabwe when the government is the one legislating laws that inhibit investment.

Theme on liberalization of air waves

It was clear from the comments from media practitioners and ordinary citizens that the air waves have not been liberalized since independence. ZBC is the sole broadcaster in the country. It should be noted however that the government has allowed satellite television operating. As a result in Bulawayo, a city in the southern part of Zimbabwe nearly every house hold has got a satellite dish.

*Watching DSTV or SABC is better than watching ZBC mainly because
ZBC has become a partisan broadcaster. Instead of discussing
national issues, there is a tendency to discuss party issues on
television. So it is better to contribute to DSTV so that you get
exposed to international news and events.(FGD in Gweru).*

Most of the respondents felt that the exclusion of foreign investors and foreign ownership of media services was a wrong policy by the Zimbabwean government. There is need to structure policies that convince foreign investors that we have nothing to hide and are prepared to work with any investor who is transparent and is willing to develop the infra structure of the country. The impact of the media policy of blocking foreign journalists has resulted in the bad publicity in the international media about Zimbabwe.

Impact of AIPPA and BSA on media practitioners

Most media practitioners were of the view that AIPPA has narrowed journalist's way of reporting and has brought self censorship among journalists. It has also intimidated the majority of journalist to such an extent that they are afraid of publishing some of the events taking place in Zimbabwe for fear of arrest due to AIPPA. AIPPA has seriously stifled and muzzled the freedom of information and freedom of journalists hence hindering the use of investigative journalism.

III. Conclusion and Recommendations

There is need for the two legislations to be revised so that the accreditation of journalists is done by an independent commission whose members are elected by journalists themselves. This process needs to be decentralized to other provinces so that practitioners do not incur the transport costs of going to Harare to register. Media houses or companies should not be licensed but registered like the other companies. Such a policy will promote diversity and plurality. There is an urgent need for government to reform the current media laws particularly those that hinder the media from checking on the activities of security and law enforcement agencies. Media should be one of the agencies that checks and balances the activities of government. A transparent media will expose corruption, human rights abuses and the abuse of authority by senior government officials. Such a policy will make government and private officials accountable to the general public whom they are supposed to serve. There is also need for government to free the air waves as the current situation of monopoly by ZBC is not healthy for the growth of the broadcasting industry.

References

- [1]. Chiweshe F. G. (2003) **Human Rights and the media** Harare, SAHRIT
- [2]. Feltoe G. (1993) **A Guide to Press law in Zimbabwe**. Harare, Legal Resources Foundations
- [3]. The Access to Information and Protection of Privacy ACT No 5/2002 Harare, Government Printers
- [4]. The International Convention on Civil and Political Rights Article 19 www.article19.org
- [5]. Law and Order Maintenance Act www.parlzim.gov.zw