

## **An analysis of the implications of the proposed amendments to the Access to Information and Protection of Privacy Act (AIPPA).**

### **From: Crisis in Zimbabwe Coalition**

The government intends to amend the Act in a bid to further cripple press freedom and gag the private media. A brief background will assist to show the history of the diabolic law.

The idea of having the repressive and draconian AIPPA started when Professor Jonathan Moyo was appointed to the Constitutional Commission of Zimbabwe (CCZ) in 1999 whose draft constitution was rejected in a national referendum. Moyo was the spokesperson of the CCZ.

It was during this period that Moyo realised the significance of the private media in shaping public opinion and in assisting the citizenry to make informed decisions about critical issues in the administration of their country.

Following the constitutional debacle, Moyo and other Zanu PF mandarins were not happy with the outcome of the constitutional referendum and that is when Moyo who used to be a darling of the private press because of his vitriolic attack of the Zanu PF government started talking about regulating the media.

After Moyo was appointed into Cabinet in July 2000, he started talking about having a media law because there was no specific act regulating the media.

The whole of 2001 AIPPA was being discussed with other interested parties but unfortunately Moyo did not take into account submissions made to him.

At the end of 2001, the AIPPA Bill was hotly debated in Parliament and the legal committee led by veteran nationalist and lawyer, Eddison Zvobgo ruled that most provisions of the Bill were unconstitutional but using Zanu PF's parliamentary majority, the Bill was passed and President Mugabe signed it into law in February 2002 on the eve of the disputed presidential election of March 2002.

At the heart of AIPPA is the desire by the state to stifle and ban privately owned newspapers that are critical of Zanu PF. Since its enactment three newspapers have been banned. *The Daily News* and *The Daily News On Sunday*, have already fallen victim to this monstrous legislation. The papers were banned through the Supreme Court in September 2003 while *The Tribune* was closed last month.

So far about 70 journalists have lost their jobs while more than 300 other workers in the media industry have faced the same fate. Several journalists in the private media have been arrested for violating the Act and 50 journalists from Associated Newspapers of Zimbabwe await possible trial for operating without licenses.

Fundamentally AIPPA is designed to encroach on the citizens' freedom of expression. The international community has realised this and Zimbabwe is now ranked third in the world for violating press freedom.

### **The Implications of the proposed Amendments AIPPA.**

The proposed amendments to the Access to Information and Protection to Sections 40 and 83 poses a greater danger to press freedom and democratic principles as they violate the Constitution of Zimbabwe, the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

According to an Extraordinary Government Gazette of Friday 18 June 2004, the government through the Department of Information and Publicity in the Office of the President and Cabinet wish to introduce the amendment Bill in Parliament for debate.

The Bill seeks to amend Section 40 of the Act, which requires that some of the members of the Media and Information Commission (MIC) be appointed from nominees of an association of journalists and an association of media houses.

The department said that since an association of media houses does not exist, the Bill proposes that nominations should be received from either or both of such types of association.

The proposal is absurd in that it seeks to deny the existence of the Advertising Media Association (ADMA), a body that represents media houses in the country. What Moyo seeks to achieve is to exclude publishers from taking part in matters that affect them.

For instance, if MIC is to make a decision to penalise an errant newspaper, it should have representatives from publishers and journalists for it to be binding.

Retired Administrative Court President Michael Majuru in October 2003 ruled that when MIC refused registration to The Daily News and The Daily News On Sunday it violated Section 40 because MIC was improperly constituted. There was no representative of media houses.

What is also interesting is that Moyo seeks to sanitise Section 40 before the Supreme Court ruling in the case involving the government and Associated Newspapers of Zimbabwe (ANZ) after MIC refused registration of the privately owned company's two papers.

It was argued that MIC did not follow the provisions of Section 40 when it denied ANZ registration and it did not have a representative of media houses when it refused to register The Daily News and The Daily News On Sunday. It seems to be an admission on the part of Moyo that the MIC did not comply with the provisions of Section 40 hence the proposed amendments.

Section 83 of the Act, which prohibits unaccredited or suspended journalists from practising, will be amended to provide a penalty which is presently absent. The Bill proposes that persons who contravene the section will be guilty of an offence and liable to a fine or imprisonment not exceeding two years or both.

The Constitution of Zimbabwe, which is the supreme law of the land, provides in Section 20 of the Bill of Rights for the freedom of expression and states that "Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence."

From these constitutional provisions, it is evident that freedom of expression is one of the elementary rights, which must be guarded jealously by all individuals in society. Other legal scholars have argued that freedom of expression is the cornerstone of any democratic society. Moyo is however of a different persuasion.

The Minister has successfully made a consistent attack on such freedoms and in the end criminalized the journalism profession. By banning three private newspapers in the space of one year, Moyo has gone further than what the colonial regime of Ian Smith did. He has destroyed our civil liberties with impunity.

He has also defied Article 19 of the Universal Declaration of Human Rights that states, "everyone has the right to freedom of expression; this right includes freedom to hold opinions without

interference and to seek to, receive and impart information and ideas through any media and regardless of frontiers."

Even though not binding legal experts have argued that the provisions have been considered to be an authoritative guide to human rights and constitute general principles of law and are widely held as having acquired legal force as customary international law.

The government of Zimbabwe risks being an international outlaw if it fails to abide by such world standards of modern democratic principles of governance.

It is also interesting to note that the Zimbabwe government further disregards the African Charter on Human and People's Rights, which it ratified in 1986. Article 19 (1) of the Charter states, "every individual shall have the right to receive information."

The African Commission on Human and People's Rights meeting in its 32<sup>nd</sup> Ordinary session in 2002 adopted the Declaration of Principles on Freedom of Expression (The Declaration), the preamble of which affirms "the fundamental importance of the freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for human rights and freedoms" in Africa.

The Declaration recognises the key role the media and other means of communication play in "ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy."

The envisaged amendments like other legal instruments such as POSA are at variance with the above African norms on press freedom, human rights and democracy.

Contrary to assertions by the government that it would not be averse to advice by fellow African governments, it is busy violating the continent's provision on a free society.

It is now abundantly clear that the government would not listen to wise counsel even from its African colleagues in its bid to hang on to power using unconstitutional and archaic laws.

Despite promises to South African President Thabo Mbeki that the government would repeal bad laws such as AIPPA and POSA during the build up to the Commonwealth Summit in Abuja last year, President Robert Mugabe is determined to make the country an unequivocal pariah state and his rule dictatorial in the extreme. History tells us that there is no dictatorship that celebrates free press, diversity of opinions, an independent judiciary and the rule of law. The government has an obligation to prove otherwise.

It should be made abundantly clear that the government particularly Moyo's department continues to make unconstitutional laws because of their confidence in the current Supreme Court bench whose judgements of late have continued to be questioned by senior lawyers in the country. It has been argued that instead of upholding the citizens' fundamental rights that are under siege by the executive, the country's highest court is collaborating with the government to erode such rights.

The argument seems plausible because the proposed AIPPA amendments followed a Supreme Court ruling in a matter in which the Independent Journalists Association of Zimbabwe (IJAZ) lost its case against the constitutionality of some sections of AIPPA.

In February, the Supreme Court ruled that it was criminal for any journalist to operate without a license from the government run MIC. As a result The Daily News and The Daily News On Sunday stopped operating because journalists from the two papers were not registered by MIC.

Attempts to get the licences failed after MIC chairman Tafataona Mahoso said he could not register reporters from an "illegitimate" employer.

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***Crisis Coalition is a grouping of non-governmental organisations fighting for democracy and good governance in Zimbabwe.***