



Information Rights Violations Report

December 2003 – February 2004

A. INTRODUCTION

The Public Information Rights Forum is a network of civic media editors and information officers in the Civic Alliance for Social and Economic Progress (CASEP). CASEP is a network of membership based organizations working to advance the social and economic interests of disadvantaged communities in the education, labour, health, local governance, media and health sectors. Its membership includes the Zimbabwe Congress of Trade Unions (ZCTU), the Community Working Group on Health (CWGH), Zimbabwe Teachers Association (ZIMTA), Public Services Association (PSA), the Media Monitoring Project Zimbabwe (MMPZ), Zimbabwe National Students Union (ZINASU), Zimbabwe United Residents Association (ZURA), Zimbabwe Human Rights Organization (ZimRights) and the Zimbabwe Projects Trust (ZPT).

PIRF acts as a community representative of consumers of media products. In the past two years, the organization has concentrated on carrying out civic education work on public information rights issues and developments. Civics in various provinces have developed methods of monitoring information rights developments in their respective communities and developed methods of bringing these to the attention of local and international human rights organisations. Meetings with civic leaders including Members of Parliament and councilors have also been held.

MMPZ acts as the Secretariat to PIRF and researches topical developments in the information and media sector, including monitoring the content of the country's mainstream media through analysis of news and current affairs. MMPZ produces weekly reports on the latter and occasionally detailed reports on topical issues.

This report was compiled by **Sizani Weza**, Researcher at MMPZ, and details information rights developments between 1st December 2003 and 28 February 2004. Its main focus is on those developments that are likely to impinge on the public's rights to information and freedom of expression. Most of the issues are drawn from the reports of human rights organisations and the media.

The author and the PIRF are grateful to the Norwegian Agency for International Development (NORAD) and the Netherlands Institute of Southern Africa (NiZA) who supported the research and publication of this report.

B. ETHICAL PRINCIPLES

In monitoring information rights developments, PIRF adheres to the following principles:

- ◆ Freedom of expression is a fundamental right enshrined in the country's Constitution. This right includes the right of the public to receive and impart information unhindered.
- ◆ While tolerance of the views of individuals in different social, economic and political groups is exercised, great exception is taken to views likely to incite violence and hatred against certain groups. Such views are described as hate speech or hate language
- ◆ The media and its workers should be allowed to exercise their legal right to collect and disseminate information without Government interference. Accreditation of journalists should be restricted to a non- discriminatory administrative process and should not be used to limit or control any individual's constitutional right to receive and disseminate information freely. Similarly, the registration of media should also be restricted to an administrative process that only limits the broadcast media in a way that allows for the fair and non-discriminatory administration of the national wave band space.
- ◆ Freedom of association means that one is free to be a member of any legally constituted body. It also means freedom to withdraw from the same organization or association.
- ◆ Information is power. Fair and accurate information empowers, whereas propaganda and false information leads to uninformed decisions. In addition, PIRF believes it is the Government's duty to protect and promote the right to basic education through the provision of adequate educational facilities for all.

The Zimbabwe Government is notorious for its poor record in upholding the public's right to information and expression. The following developments in the past four years confirm this:

- ◆ Government has closed down all private radio stations and prevented new ones from entering the broadcasting arena
- ◆ It has outlawed independent television
- ◆ It has been at the forefront of preventing the *Daily News*, the country's highest circulation daily newspaper from publishing.
- ◆ It has enacted extensively repressive media laws that make it impossible for privately owned media to collect and disseminate public information without government interference
- ◆ Scores of journalists have been arrested under these laws.
- ◆ Government officials have made statements that border on hate speech against anyone who criticizes Zanu PF policies, actions and its leader.
- ◆ It has ignored several court orders allowing *The Daily News* to resume publishing, among others. In fact, the President himself publicly stated that his Government would defy judgments that are "not objective" (*The Herald*, 27th July 2002).

C. GENERAL OBSERVATIONS

- ◆ Government clampdown on independent sources and channels of information has been conspicuous in the period under review. Its persecution of the Associated Newspapers of Zimbabwe, publishers of *The Daily News* and *The Daily News on Sunday*- and the campaign against ECONET wireless and the private weeklies, are good case examples. These attempts to curtail freedom of expression rights has led to the emergence of “protest channels of information”. These include the regular street newspaper, *Zwakwana*. Short wave radio broadcasts such as SW Radio Africa, Voice of the People and the Voice of America continue to provide alternative news services to limited audiences.
- ◆ The broadcasting sector remains a monopoly of the Zimbabwe Broadcasting Corporation despite promises by Information Minister Jonathan Moyo (on three occasions in 2003) that new players would have entered the broadcasting arena before the end of last year.
- ◆ Despite a number of positive judicial decisions promoting the protection of freedom of expression and access to information, the decisions of the Supreme Court have undermined these decisions and created an unacceptable climate for the authorities to abridge the public’s rights on these matters. In addition, the public’s constitutional rights to freedom of expression have been seriously eroded by unacceptable delays in delivering judgments on important constitutional issues.
- ◆ Freedom of expression through peaceful demonstration continues to be limited to protests against issues that do not address politically-relevant or sensitive matters. Demonstrations by civic groups on key political issues such as constitutional reforms and the campaign for peace were either violently thwarted or denied permission by the police.
- ◆ The right to basic education is severely threatened by prohibitive fees and Government’s failure to bring normalcy in the examination system.
- ◆ At the World Summit on the Information Society in December, President Mugabe made clear his Government’s view on new information communications technologies. He believed they are dominated “by a few countries in the selfish interests of those countries which are in quest for global dominance and hegemony...” (*The Daily Telegraph*, 11th December 2003). “Beneath the rhetoric of free press and transparency is the inequity of hegemony...” Mugabe said.

D. TRENDS

1. Distribution channels closed

Mainstream and alternative sources of information have been closed while others face closure. These measures are evidently part of a well-orchestrated campaign perpetrated mostly by Government and statutory bodies. The Government controlled media has been an ally in this campaign which has exposed the public to Zanu PF propaganda.

And while *The Zimbabwe Independent* (25 January 2004) reported that the Media and Information Commission confirmed receiving and considering two applications for daily newspaper licences, the

overall trend has seen an increase in Government control of media channels and severe erosion of independent media services.

Parliament also announced the introduction of Parliamentary Information Centres. At the same time, Government completed training graduates from the National Youth Service program to man its information kiosks nationwide.

Despite this announcement, the overall trend has seen independent sources of information facing an even bleaker future than the pre- AIPPA era.

Table 1: Information channels closed or threatened with closure

Channel	Position	Comment
ANZ (The Daily News and the Daily News on Sunday)	Closed on 6 th February 2004	The Government appointed Media and Information Commission and the Department of Information and Publicity in the President's Office have virtually opposed every court challenge that purports to give permission to the group to publish. They have used AIPPA as justification for these actions.
ECONET	Threatened	On Christmas Eve, the Herald published an article stating that Government was planning to withdraw Econet's operating licence because its profits were used to sponsor subversive activities. In February, Government gazetted regulations, which were ruled ineffectual by the High Court. POTRAZ went on to publish a notice to amend ECONET's licence. The move would make TelOne the sole international gateway operator in the country
SW Radio Africa & Voice of America	Threatened	The Mirror (9 th December 2003) reported that Government had tasked Transmedia Private Limited to use the same frequencies used by SW Radio Africa and Voice of America in order to prevent these broadcasts reaching the Zimbabwean public.
Media Africa Group (The Tribune and the Business Tribune)	Partial closure	Media Africa Group is no longer publishing two editions (i.e. The Business Tribune and the Weekend Tribune). Criminal elements vandalized equipment worth Z\$200million. The group now publishes a single issue that combines the Business and Weekend issues every week

The ANZ Case

The ANZ finally succumbed to concerted attempts by the Government to stop it publishing when the Supreme Court (5th February 2004) ruled that it is a criminal offence to practice journalism in Zimbabwe without accreditation from the government-appointed MIC.

The newspaper was on and off the street between 12th September 2003 and 6 February 2004. This is summarized in Table 2 below.

Table 2: The Daily News' brief appearances since September 12th 2003.

Date	Reason for publishing	Reason for stopping publication
25 th October 2003	Administrative Court judge Michael Majuru orders MIC to grant ANZ an operating licence before 30 th November failing which the newspaper group would be considered licensed. Judge rules that the MIC is improperly constituted	Police close the offices arguing that the MIC had filed an appeal against the decision of the Administrative Court.
4 th November 2003	A special edition of <i>the Daily News</i> is published in Nigeria during the Commonwealth summit in Abuja. The paper was tucked inside an influential Nigerian newspaper <i>ThisDay</i> .	-
18 th December 2003- 19 th December 2003	Judge Selo Nare granted ANZ leave to execute an earlier judgment pending MIC appeal to the Supreme Court. MIC ordered to pay the cost of the application	Police action. Government argued that the ruling by Judge Nare is " <i>academic and of no practical effect</i> ".
22 nd January 2004- 6 th February 2004	Police comply with High Court judge Tendai Uchena ruling ordering them out of the ANZ premises. This is the fifth court ruling in favour of ANZ.	Journalists at the paper resolved to first register with the MIC after Supreme Court ruled (on the 5 th February) that it was a criminal offence to practice journalism in Zimbabwe without accreditation from the MIC. They submitted fresh applications to the MIC and these were rejected.

The Econet Saga

On Christmas Eve *The Herald* published a story claiming that the operating licence of the mobile phone operator, Econet, was likely to be withdrawn because it was not repatriating its foreign currency earnings and that these ***"were being used to finance subversive activities to undermine the government of Zimbabwe"***.

Relying on "*sources close to the investigation*", the story made reference to an unexplained government directive that Econet was said to be violating. "*This comes amid allegations that Econet proprietor...Strive Masiyiwa...was using proceeds from the Zimbabwean company to finance subversive activities...*" the paper reported.

Noting that Masiyiwa had acquired *The Daily News*, *The Herald* listed a number of activities, including the publication of a special edition of *The Daily News* at the recent Commonwealth summit in Abuja, Nigeria that was ***"meant to tarnish the image of the Zimbabwean government..."***

On Friday 23rd January at around 6 pm Econet received communication, via fax, from the Postal and Telecommunications Regulatory Authority (POTRAZ) ordering that Econet must ***"cease to operate"*** at midnight, according to court documents. In just more than five hours, said the fax, new regulations would force Econet, Zimbabwe's only independent mobile telephone operator with assets of Z\$334 billion, to switch off its station that connects its 160,000 subscribers to the rest of the world through Intelsat, the United States-based satellite system. Rapid recourse to the courts stayed the unannounced blow.

On 27th January, Judge Younis Omerjee, after an urgent hearing in his chambers, ruled that Government had ignored the legislation governing the telecommunications industry. He declared the regulations "null and void and of no effect" in as far as they sought to amend Econet's licence. Despite the legal victory, POTRAZ proceeded to publish notice to amend Econet licence on 13th February. The notification intended to amend Econet's licence in terms of section 42 of the Postal and Telecommunications Act (Chapter 12:05) as read with section 11 of the Postal and Telecommunications (Licensing, Registration and Certification) Regulations of 2001. The notification would take effect on the 15th March 2004. The proposed amendments are shown in the table 3 below:

Table 3: Summary of amendments to Econet's licence

Section	Original clause	Amendment
5.1.1	Where the licensee deems it necessary, the licensee shall install and operate a limited facility international gateway, which shall be allowed to carry cellular traffic only originating and terminating in the licensee network	The licensee shall provide international traffic into and from its switch(es) through a licensed International Services Gateway Operator
5.1.2.	The interconnection agreement shall specifically be required to include this limitation	The Interconnection Agreement shall specify all terms and conditions of such operation including any limitation

POTRAZ argued that current international traffic statistics to and from Zimbabwe do not justify the existence of multiple international gateways. It also argued that it wanted to take advantage of volume discounts offered by Intelsat.

The regulations would make Tel One, the state-owned telephone operator, the sole legal provider of international telecommunications services.

Douglas Mboweni, chief executive officer of Econet told *the Mail and Guardian* that his company receives an average 1,5-million minutes of international telephone calls a month, 70% of them from South Africa. Its current licence runs to 2012. (*The Mail & Guardian* (SA), 5th February) TelOne had no capacity to take over Econet's international traffic, he said. "As we speak, Tel One subscribers cannot call overseas cell phone numbers," he said. "Chaos would result. Subscribers ... will simply wake up to no service."

2. Judicial decisions undermine the right to freedom of expression

The following table is a summary of the judicial rulings on freedom of expression and information between December 2003 and February 2004

Table 4: Summary of court judgments on media and freedom of expression

Dates	Decision	Government's response
19 December 2003	Judge Sello Nare, President of the Administrative Court, ruled that ANZ could resume publishing. Nare gave the ANZ leave to execute the judgment pending MIC's appeal to the Supreme Court. MIC ordered to pay the cost of the application.	Government argued that the ruling was academic and could not be enforced because of legal questions pending at the Supreme Court. As a result, the ANZ did not enjoy the benefits of the judgment
24 December 2003	In a case involving the Matabeleland Zambezi Water Trust and the Chronicle, The Supreme Court upholds a High Court ruling that a media organization is under no obligation to unnecessarily release information on stories it publishes.	
9 January 2004	High Court Judge, Justice Uchena, granted the ANZ an order stopping the police from interfering with its operations and to end their occupation at the newspaper group's premises in the city centre and the industrial site.	Bharat Patel, Acting Attorney General immediately instructed the Civil Division of his office to appeal against the ruling. Police ignore court order.
21 January 2004	High Court Judge Tendai Uchena orders police to vacate ANZ offices and printing press and stop interfering with the publishing group's business operations.	Police vacate ANZ premises about two hours after being served with the court order. MIC filed an urgent interdict to stop ANZ from publishing because it was using unaccredited journalists.
27 January 2004	Supreme Court decides that an appeal to stop the ANZ from publishing is an urgent matter and sits to hear MIC urgent appeal. However, it refuses to grant the MIC an interdict and says September 11 th 2003 ruling still stands. Appeals by MIC and ANZ to be consolidated and case postponed to 18 th February 2004.	
3 February 2004	High Court declares that provisions of the telecommunications regulations that seek to amend Econet's licence are of no effect	POTRAZ proceeds to publish notice to amend Econet licence
5 February 2004	Supreme Court rules that laws prohibiting the practice of journalism without accreditation are constitutional. Dissenting judgement disagrees. IJAZ filed the constitutional challenge in November 2002.	
5 February 2004	Supreme Court reserves judgment on MIC appeal to stop the ANZ publishing its two titles pending finalization of appeals on 18 th February. On that date, the case is postponed to 3 rd March. After hearing the consolidated appeals, the Supreme Court reserves judgment indefinitely.	
17 February 2004	High Court dismisses an urgent chamber application filed by ANZ seeking a declaratory order to have its journalists accredited by the MIC. Justice Alphas Chitakunye said the matter should go through the normal channels.	MIC chairperson Tafataona Mahoso had already indicated to the Herald that ANZ journalists would not be accredited unless they found a new employer.

The Supreme Court ruling on 11th September 2003 on the ANZ challenge on the constitutionality of sections of AIPPA left Zimbabweans with no alternative source of daily news. It was condemned in civic and legal circles.

Of contention during the period under review was the Supreme Court ruling on the Independent Journalists Association of Zimbabwe (IJAZ) challenge on the constitutionality of sections of AIPPA. The legitimacy of the Supreme Court ruling is brought into question on a number of levels as outlined below¹.

Process of Law

In a case of such national importance, there was no logical explanation given as to why the Supreme Court took 14 months to hand down its decision.

The case was heard before five judges, Chief Justice Godfrey Chiyausiku, Justice Luke Malaba, Justice Misheck Cheda, Justice Vernanda Ziyambi and Justice Sandura. The latter being the only dissenting voice among the five. Only the Chief Justice and Justice Sandura detailed the reasons for their decisions, while the remaining three justices gave no reasons for why they concurred with the Chief Justice. This is unusual in such a significant case.

The Supreme Court did not allow IJAZ to challenge the Access to Information and Protection of Privacy Act as a whole, but rather to choose specific sections to which its members objected. Because of this rigid and narrow focus it was not possible to bring one single action constitutionally challenging all the myriad restrictions and controls over newspapers and journalists contained in the Access to Information and Protection of Privacy Act. And yet the repressive nature of this Act in relation to the print media is best revealed when the controls and restrictions upon newspapers and journalists are considered as a whole. These controls go way beyond simply requiring journalists to be accredited and newspapers to be registered. Accreditation and registration are not merely administrative requirements. And even if they were, all newspapers and journalists were able to obtain registration and accreditation, once they do so they are locked into a system of very far-reaching controls.

Points of Law

- The applicants, IJAZ, cited a case decided in 1985 by the Inter-American Court for Human Rights which struck down a law introduced by the Costa Rican government requiring all journalists to be accredited. The Chief Justice found that this precedent was not valid as the Inter-American Human Rights Convention includes a section under Freedom of Expression that deals specifically with the media as a means of exercising the public's right to freedom of expression while the Zimbabwean Constitution does not. However, it stands to reason that the drafters of our Constitution intended, implicitly, that individuals would have the right to express themselves through all available media, including the print media. These media existed when the Constitution was drawn up and it expressly included the right to impart and receive information *without interference*. There can be no other logical understanding therefore, than that this right must include the right to transmit and receive information through the print and electronic media. Any proper interpretation of this provision, which lays due emphasis on the fundamental importance of the right to freedom of expression, would lead to this conclusion. This is not how the Chief Justice interpreted it.

¹ Based on an analysis of the Supreme Court ruling by MMPZ (undated). The detailed analysis of the judgement by MMPZ is available on request.

- Instead, according to the Chief Justice, a law providing for the licensing of the media falls within a derogation of the right to freedom of expression dealing with public order, thus limiting this right. He purported to find authority for this proposition in the case of *Athukorale & Ors v Attorney General of Sri Lanka*. However, this case dealt only with the licensing of electronic media where the allocation of frequencies makes regulation essential. But, the Chief Justice used this legal precedent to justify the regulation of all types of media in Zimbabwe. Based upon this premise he then erroneously drew the conclusion that as licensing of the media falls under the public order derogation so too should the accreditation of journalists.
- Thus the Chief Justice took a narrow and flawed interpretation of the Sri Lankan case to justify denying journalists their right to freedom of expression as guaranteed in section 20 of the Constitution. Although state regulation of electronic broadcasting is justifiable in the public interest to avoid chaos in the use of limited frequencies, and in this sense it may be said to fall within the public order derogation, it is difficult to understand how this can support a conclusion that the accreditation of journalists also falls within the public order exception contained in the right to freedom of expression. Given the existence of harsh criminal and civil laws that can be applied against the Press after publication, there is no justification to add prior restraint to the multitude of laws that can be brought to bear upon newspapers after publication.
- In their arguments the respondents did not seek to contend that the accreditation system fell within the public order derogation and the applicants' counsel was not asked to address this issue in argument. Thus it appears the Chief Justice moved significantly beyond the issues raised in court to justify his decision.
- Although the Information Minister stated that the accreditation system was required to ensure journalistic accountability and to allow easy access to events by journalists, he failed to illustrate why such a draconian law was necessary where other laws already exist by which journalists can be held accountable for the work they publish. Similarly, with reference to accessing events, there is no reason why a system of voluntary accreditation could not achieve this. The minority judgment of Justice Sandura found that the practice of journalism could not be separated from the right to freedom of expression and the Minister's objectives therefore, were not sufficiently important to justify limiting this fundamental right. Still, the Chief Justice ruled in the Minister's favour.
- Although IJAZ was not permitted to challenge the law as a whole, and was thus forced to challenge specific sections, the Chief Justice interpreted this as meaning that IJAZ had no issue with the constitutionality of the unchallenged sections and therefore had tacitly agreed that it is constitutionally permissible to regulate the Press.
- IJAZ had also cited a decision made by the High Court of Zambia where the Zambian government's attempt to introduce legislation requiring journalists to be accredited was denied by the court. Despite the heavy reliance on this case by the applicants the Chief Justice did not even refer to it in his judgement.

It is beyond dispute that the Press is not, and should not be, above the law. But in contemporary society much emphasis is rightly placed on the protection of fundamental human rights. A democratic society views freedom of expression as a core right and jealously guards against infringements of this right. A democratic society is a tolerant society in which people are allowed to express divergent

viewpoints. It is not a society where the government of the day silences views that are opposed to its own.

A judge properly attuned to democratic values will liberally interpret the right to freedom of expression and narrowly construe provisions that allow derogations from this right. In the IJAZ case the majority judgment completely reverses this; it narrowly interprets the freedom of expression guarantee and broadly interprets the provision allowing for regulation on the grounds of public order. The majority judgment displays a fundamental misunderstanding of the true nature of a democratic society and the vital role that a free and independent Press plays in such a society. The majority judgment was also irregular in that it introduces issues not raised during argument and which therefore the applicants had had no opportunity to direct arguments towards. Additionally the reasoning process in the majority judgment is badly flawed and, in places, illogical.

Press freedom has suffered a devastating blow as a result of the majority judgment in the IJAZ case. The majority has given its stamp of approval to one aspect of an overall system of control over journalists and the Press that has been and will continue to be applied in a way that will grossly interfere with freedom of expression and the Press in Zimbabwe. The decision allows serious governmental interference with the fundamental right of journalists to practice their profession and as such impacts dramatically on the public's right to access information.

3. Physical attacks and intimidation of media houses and journalists

- On 8th December a Zanu PF official, George Makombe reportedly phoned and threatened reporters at the Zimbabwe Independent after they had published a story that alleged that three Zanu PF officials (Retired Army Major George Makombe, Mr. Chipinda and Owen Mudha Ncube) were used as fronts by Speaker of Parliament Emmerson Mnangagwa, in illegal gold dealings. According to the Zimbabwe Independent (19 December 2003), Makombe told reporter Blessing Zulu: “ *I will come to that paper and shoot everyone. I will make sure that the paper is closed*”.
- In early January, the offices of Media Africa Group, publishers of the Weekend Tribune and Business Tribune, were vandalized. The incident resulted in the delay in the publication of its 9-15 January issues. Unknown individuals broke into the MAG offices in Harare and vandalized computers and made off with hard drives, the server, and other essential software worth Z\$200 million (*The Tribune*, 9-15 January 2004).
- *Zimbabwe Independent's* chief reporter Dumisani Muleya was assaulted by unknown assailants on 23rd January 2004. Muleya suffered a deep gash above his right eye as a result of the attack. He also lost a mobile phone and cash in the process. Muleya was released on bail after two days in detention on charges of criminal defamation arising from a story that alleged that President Mugabe had commandeered a plane to the Far East.
- On 8th January, *the Financial Gazette* reported that regulatory authorities were considering tightening the registration requirements of media houses. It alleged that the MIC and the Department of Information in the President's Office were formulating amendments to the law in order to require that a majority shareholder in a media house should also be resident in Zimbabwe. The current law only states that one should be a citizen of Zimbabwe. This was not confirmed by the MIC or the Department of Information although if implemented, could derail efforts by the ANZ to get registration from the MIC. The ANZ majority shareholder, Strive Masiwa is resident in South Africa.

- Tafataona Mahoso, Chairperson of the Media and Information Commission, wrote a letter to the Zimbabwe Independent accusing the paper of racism. Chief among his list of examples included a letter published in the Zimbabwe Independent saying Zimbabweans were as docile as “*a herd of wild beasts (sic)*”. He said the letter is “*typical of the worst expressions of racism from the former slave territories of the United States, from Apartheid South Africa and from the days of Rhodesia*”. The letter said Zimbabweans are a “*stupid lot*” and compared them to a herd of wildebeests who stand and watch while one of their number is caught and killed by a pride of lions. The letter was complaining about the failure by Zimbabweans to defend themselves against the excesses of Mugabe’s regime. In his closing remarks (which were not included in the letter to the Zimbabwe Independent)- Mahoso said: “*All publishers and editors in Zimbabwe should consider this statement as a warning to them as well, and not just to the Zimbabwe Independent*”.
- Jonathan Moyo, in his capacity as Acting Minister of Transport and Communications, threatened the Zimbabwe Independent with “*the full wrath of the law*” for writing a story that claimed that President Robert Mugabe had “*commandeered an Air Zimbabwe plane to ferry him around the Far East*”. Said Moyo: “*The time has come to bring the conspiracy (between Air Zimbabwe officials and reporters at the Zimbabwe Independent) to an end. Whoever has been doing this at Air Zimbabwe has run out of time and we will not tolerate the rot anymore...*” (The Herald, 10 January 2004). Moyo described the story as “*criminally false*” and “*blasphemous*”.
- On the same day the Herald story was published (10 January 2004), The Zimbabwe Independent editor, Iden Wetherell and two reporters, Dumisani Muleya and Vincent Kahiya, were arrested. The three were released on bail on 12th January 2004. On 14th January 2004, two more workers at the paper, Itai Dzamara and Raphael Khumalo, were arrested. Dzamara co-authored the story with Muleya. Khumalo is the paper’s general manager. Criminal charges against Khumalo were later dropped.
- The threat against the media and media workers extended to the judiciary when Administrative judge president, Michael Majuru reportedly fled the country after “severe harassment” by the Government officials for lifting the ban on the Daily News. Judge Majuru who was under investigation for alleged bias against the Government reportedly fled to South Africa. Majuru was forced to stand down in a case involving the ANZ and the Daily News after the Herald alleged he had boasted to a relative that he intended to rule against the Government. Majuru denied the allegation. The case was taken over by Judge Sello Nare. Before he was able to deliver judgment, a letter purportedly signed by war veterans aligned to Zanu PF threatened Nare and his family with “*serious suffering*” if he ruled in favour of the ANZ.

4. Restrictions of media workers

Media workers continue to face legal and extra-legal restrictions in their lawful activities of collecting and disseminating information. Perhaps the worst restriction to emerge during this period was the Supreme Court endorsement of sections of AIPPA that require journalists to obtain accreditation from a Government appointed MIC before practicing.

- At the time of writing this report, four ANZ directors are facing criminal charges for publishing an unregistered newspaper. The four are chief executive Samuel Sipepa Nkomo, Rachel Kupara, Michael Mattinson and Brian Mutsau. Charges against the four arose after ANZ proceeded to publish The Daily News on 25 October 2003 after the Administrative Court had ruled that the MIC should grant ANZ a certificate of registration on or before 30th

November 2003, failing which the paper would be deemed registered. On 6th February, the four were remanded out of custody to 8th March.

- On 8th December, Martin Chimenya, a journalist with the independent communications trust, Voice of the People (VOP), was arrested in Masvingo. He was charged under section 79(1) of AIPPA for practicing as a journalist without accreditation. The magistrates court released Chimenya on Z\$15,000.00 bail on 10th December. He was ordered to appear in court on 23rd December. According to MISA Zimbabwe, police also accused Chimenya of recording interviews in which President Mugabe was denigrated and was likely to be charged under section 16 of the Public Order and Security Act (POSA) which makes it a criminal offence to denigrate the office and person of the President.
- On 20th February a South African television crew was detained by police and ordered to leave Chimanimani (South East of Harare) where they had interviewed farm workers and settlers at Roy Bennet's farm. Bennet is an opposition MDC MP. The two, a cameraman and a reporter, were detained when they sought police comment over a series of violent attacks that had occurred within the past two weeks. The police failed to respond to their inquiries. The two were released and ordered to leave on grounds of "national security".
- Private media sports journalists report that they were denied an opportunity to accompany the national soccer team to Tunisia during the Africa Nations Cup.
- Early in February journalists at *The Daily News* resolved not to work until they obtained accreditation from the MIC. The decision was taken after the Supreme Court ruled that it was a criminal offence for journalists to practise without accreditation from the regulatory body. Ruling on a constitutional challenge by IJAZ against compulsory registration of journalists under the Access to Information and Protection of Privacy Act, the Supreme Court upheld that it was constitutional for the Government to make it compulsory for all journalists to obtain accreditation from the MIC.
- On 10th February, *The Herald* published an article that quoted the MIC's Mahoso stating that *the Daily News* journalists would not be accredited under the banner of ANZ. He said the notion that *The Daily News* (and *The Daily News on Sunday*) was entitled to publish was "misplaced" because as far as his organization was concerned the media group is not registered. In the report, Mahoso confirmed that application forms by *The Daily News* reporters were submitted to the commission the previous week. He said the journalists were not banished from practicing but their registration would only be accepted on condition that they find another employer or editors willing to buy their stories on a freelance basis.
- In mid February, Zimpapers Pvt. Limited dismissed two journalists, Robson Sharuko and Tendai Ndemera for allegedly freelancing for Voice of America. Collin Matiza, a journalist with *the Herald* was also suspended for posing as a player agent. On 25th February the MIC described the journalists as a threat to Zimbabwe's national security. "*The Voice of America is an arm of the US state department which is on record as seeking to overthrow the government of Zimbabwe through unconstitutional means and illegal(ly) under the United Nations charter,*" said the commission in a statement quoted in the state-owned *Herald* and *The Financial Gazette*. "***The... serious problem is that of national interest and national security,***" said the MIC. It added: "***The Voice of America... is among the media houses that have been peddling lies about this country, resulting in the deterioration of the Zimbabwean image...***" The Zimbabwe Union of Journalists issued a statement condemning their dismissals.

5. Infringement of public's right to freedom of expression

The Public Order and Security Act (POSA) continues to be used to silence any demonstration that does not favour Government. The 10th December march by human rights lawyers to protest the assault and harassment of lawyers and judges appeared to mark the end of police disruption of public meetings. The lawyers marched from the Supreme Court across the city's busiest streets during lunch hour. The demonstration was held to mark World Human Rights Day. Some of the placards read "Stop harassing judges and lawyers now", "freedom of expression now" and "No to torture".

- On 3rd December 2003, at least five women were injured and 10 arrested when police broke up a demonstration in Bulawayo. The demonstration was called by Women of Zimbabwe Arise (WOZA) to protest high prices of food and shortages.
- On 15 December 2003, Douglas Mwonzora, a lawyer and human rights activist based in Masvingo was arrested by police for allegedly insulting President Robert Mugabe. According to MISA (MISA/ IFEX alert, 9 January 2004) Mwonzora appeared in court on 16 December to answer charges alleging that he contravened Section 16(2)(a) of the Public Order and Security Act (POSA). The police claim Mwonzora insulted President Mugabe in an interview conducted by Martin Chimanya, a journalist with Voice of the People (VOP). Police say that in the interview, Mwonzora called Mugabe's withdrawal from the Commonwealth "*foolish bravery*." Mwonzora was granted bail in the amount of Z\$30,000 (approx. US\$36) and remanded until 14th January 2004.
- Zimbabwe police arrested more than 100 people on 4th February 2004 during a crackdown on a demonstration to press Government for a new people-driven constitution. Lovemore Madhuku was reportedly assaulted and severely injured while leading the demonstration. He told the media that 20 other protestors were severely assaulted.
- On 21st January, the Combined Harare Residents Association (CHRA) reported that police did not allow it to hold a public meeting to discuss the city council 2004 budget. Police were notified earlier and did not object to the meeting being held on that day. However, police objected on the day of the meeting citing "security reasons" and "perceived violence".
- On 20th February four ZCTU leaders were arrested for allegedly organising a strike to press for changes in the management of the national pension fund. ZCTU had earlier announced the strike to protest the alleged "rot" in the state-run National Social Security Authority (NSSA). The four, based in Bulawayo, were arrested by police early on 20th February at their homes for allegedly organising the strike, which was poorly supported.

6. Selective application of media legislation

Effective regulation of the media is impartial. Failure to observe this cardinal rule renders the whole process of media regulation a circus designed to oppress certain sections of the media and ultimately censor the opinion of perceived and real opponents. The actions of the MIC exposes it to such criticism. The following cases have been selected for their conspicuous appearance in the mainstream media.

- The MIC filed a complaint with the police over a story which appeared in *The Standard* (2 February 2004) alleging that Justice Sandra Mungwira had fled to Britain. (*The Herald*, 4th February 2004). The MIC alleged that the story was criminally defamatory and that the editors of *The Standard* had contravened section 80 of the Access to Information and Protection of Privacy Act. Mahoso alleged that the story had defamed the whole judiciary especially the Minister of Justice, Legal and Parliamentary Affairs (which the story portrayed as failing to protect judicial officers) and the Government (as the story portrayed it as corrupt, coercive and contemptuous of judges).
- No action was taken in a case where the Movement for Democratic Change (MDC) on 5th February filed a complaint with the MIC complaining that *The Herald* lied in its 4th February issue in a story headlined "*UCAZ Faces Possible Split*". The story alleged that the MDC leader Morgan Tsvangirai had traveled to Bulawayo together with suspended Harare mayor Elias Mudzuri to influence voting patterns in the Urban Councils Association. The MDC said its leader did not travel to Bulawayo and did not make any attempts to influence voting patterns at UCAZ. **"We are persuaded to believe that your organisation is only concerned with monitoring the privately-owned media. We await your swift response to the lies that are published on a weekly basis by the publicly owned media,"** MDC secretary for information and publicity, Paul Themba-Nyathi told *the Standard* (8th February)
- Racism and hate speech are a common feature of the opinion columns in the Government controlled Zimpapers group. The torrent of gratuitously racist and abusive language that regularly floods the columns of the government-controlled Press, particularly from their correspondents, Munyaradzi Huni, Caesar Zvayi and Nathaniel Manheru deserves condemnation because they promote hatred against identified groups. If the MIC purports to regulate the media, then it should sternly deal with such hate mongering in the media. It has however been silent on the subject. It however, condemned a debatable racist letter to editor published in the *Zimbabwe Independent* on January 2 as "*typical of the worst expressions of racism*". (See section on intimidation of media houses). While Mahoso's attack on *The Zimbabwe Independent* had no legal basis, PIRF is concerned by the undisguised bias shown by the MIC chairperson in his selective attack on *The Zimbabwe Independent* over a debatably racist opinion expressed by one of its readers while remaining silent about those published in the Government controlled papers. The authors of these opinion columns appear to be encouraged by the racist and offensive comments of their Minister and other government officials and specialize in propagating blatant racism and hatred against perceived opponents of ZANU PF on a weekly basis. Certainly, it is this downright hypocrisy, which clearly exposes MIC as nothing but a government weapon created to silence the private media which has remained one of the few robust media watchdogs of government excess following the banning of *The Daily News*.

7. ZBC's continued monopoly

Minister Jonathan Moyo's statement on 14th September 2000 that the airwaves were liberalized in 1980 by bringing the ownership of the local broadcasting stations to the majority of the people of Zimbabwe favoured ZBC's monopoly on the airwaves.

Government officials (Jonathan Moyo on three occasions in 2003, George Charamba once in the same year) have made promises that new players would be allowed to enter the broadcasting arena before the end of 2003. However, no invitation from the Broadcasting Authority (BAZ) has been extended to potential broadcasters.

Instead, the BAZ board was dismissed in early December 2003. According to *the Herald*, the dismissal was necessitated by the need to comply with provisions of the Broadcasting Services Amendment Act (*The Herald*, 5 December 2003). The paper quoted a statement from the Department of Information and Publicity that it “**received an overwhelming response from the churches and the chiefs**”. The amending Act requires the BAZ board to include persons nominated by church groups and traditional leaders. A new board was announced in December (*the Herald*, 15 December 2003) with the following personalities: Enock Kamushinda (chairperson), Terrence Hussein (vice chairperson), Mr. Oswell Matore, Mrs Cynthia Khumalo, Pikirayi Deketeke, Chief Michael Basi Ndodo, Reverend Elias Musakwa, Ms. Anne Gumbo, Erica Ndewere and Alexander Kanengoni.

Kamushinda was on the Zimpapers board and Hussein is the President’s personal lawyer in the 2002 presidential election petition brought by the Movement for Democratic Change (MDC). Deketeke is the editor of the Government controlled *Herald*, which is controlled by the Government. Two female members (Erica Ndewere and Anne Gumbo) were appointed later.

ZBC continued its restructuring exercise that saw MIC member Rino Zhuwarara being appointed Executive Chairperson of ZBC Holdings with effect from 1st December 2003.

The continued failure by the BAZ to invite prospective broadcasters in the commercial and community broadcasting sector nearly three years after the liberalization of the broadcasting sector represents a waste of public money. The existence of such institutions cannot be justified in a democracy.

8. Bias in media coverage

The Media Monitoring Project Zimbabwe (MMPZ) has continued documenting private and public media bias. In the three months reviewed, MMPZ weekly reports point to the following trends in media coverage:

- The Government-controlled print and electronic media continues to ignore issues and events of national significance such as politically-motivated violence visited upon ordinary citizens. Rather, these media found themselves largely restricted to quoting official sources. As a result, a spectrum of pertinent issues, with both political and economic connotations, goes unreported. Gross human rights violations found full expression and deserved condemnation in media such as SW Radio Africa, Voice of America’s Studio 7 and the private press. However, these media have a relatively low audience and circulation figures compared to the state media’s capacity to reach the Zimbabwean public.
- The same media continues to distort civic and opposition political party events. In one of their weekly reports, MMPZ noted that the government controlled media’s fixation with peddling reckless inventions and falsehoods to malign the MDC resulted in *The Herald* (30/1) retracting two stories it published in January 2002 accusing the MDC of evil machinations aimed at fostering economic and political chaos. The stories alleged - without a shred of evidence - that the MDC was involved in a \$2 billion South African heist and that the opposition party was responsible for a series of anthrax attacks in Harare in the run-up to the Presidential election. In the ongoing trial of MDC president Morgan Tsvangirai, *The Herald* was forced by the Court to retract an erroneous report on Tsvangirai’s defence outline. The paper (22 January 2004) reported that the MDC leader Morgan Tsvangirai had implicated the US Government in the alleged coup plot to assassinate President Mugabe.

- The dearth of investigative and interpretative skills, especially from journalists in the government-controlled media, seriously compromised the media's ability to fully explain and measure the depth of the corruption epidemic in the financial services sector, unearthed recently as a result of a stringent new Reserve Bank (RBZ) monetary policy.
- Vitriolic language against alternative voices was conspicuous in the media. For example *The Sunday Mail* (8th February 2004) censored Justice Sandura's dissenting judgment on the IJAZ constitutional challenge to sections of AIPPA. The paper went on to attack the integrity of the judge in its "Under the Surface" column where it employed vitriolic language with racial bigotry. It described Sandura as **"a snake in the house...with stinking colonial ideas...that would one day...strike while we concentrate on pressing issues and it would be too late to hit its poisonous head"**. The column likened Sandura to former Chief Justice Anthony Gubbay, whom government hounded out of the Supreme Court because of his principled stand on government's controversial land reforms and the rule of law. It noted that **"this Gubbay residue (Sandura)"** was more dangerous because **"it has the colour that we can identify with and speaks our mother language"**. There was no comment from the MIC on this malignant piece of writing.
- Information Minister Jonathan Moyo justified ZBC's failure to cover the opposition by attributing this to violence by the opposition against ZBC (*the Herald*, 18 December 2003). Moyo told Parliament that **"...journalists from the public media have been harassed on several occasions while covering the activities of the opposition while equipment has been destroyed...most of the things you say are not in the interest of the nation, hence we request you to be positive..."** This remark shows the level of political interference in ZBC's editorial coverage at the ZBC and does not pass as an excuse for ZBC's failure to cover opposition events and issues.

Ends

Comments and queries should be addressed to **The Researcher:** Communications & Advocacy, PIRF Secretariat, c/o Media Monitoring Project Zimbabwe, 15 Duthie Avenue, Alexandra Park, Harare, Tel/fax: +263 4 703702, E-mail: advocacy@mmpz.org.zw/ monitors@mweb.co.zw