

UPDATED BRIEFING

on

The Zimbabwean Access to Information and Privacy Bill (as amended)

by

**ARTICLE 19
Global Campaign for Free Expression
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Introduction

This Updated Briefing Note analyses the amendments to the Zimbabwean Access to Information and Privacy Bill, 2001 which were introduced into Parliament on 22 January 2002. Consideration of the bill was delayed for the second time when the parliamentary legal committee claimed it needed more time to assess the bill. This Updated Briefing Note should be read in conjunction with earlier ARTICLE 19 critiques of the Bill, in particular our Memorandum of 21 January.

As we noted earlier, the Bill does formally establish a right to access information held by public bodies, but this right is so limited by exclusions and exceptions that its practical impact is likely to be extremely limited. Most of the provisions in the Bill have nothing to do with access to information but instead impose a range of harsh restrictions on media freedom. Although the amendments do slightly mitigate these criticisms, all of ARTICLE 19's main concerns with the Bill remain and, in its current form, the Bill still represents a very serious breach of the right to freedom of expression.

Key problems with the current Bill are as follows:

- the exceptions and exclusions to the right to information are so comprehensive as to effectively negate the right;
- all media outlets and any business disseminating media products or even video or audio recordings must obtain a registration certificate from a government controlled body;

- all individual journalists must also obtain accreditation from the same body;
- foreign ownership of the media is very limited and no non-citizen may work as a journalist; and
- excessive restrictions are imposed on the content of what the media may publish or broadcast.

This Updated Briefing Note follows the format of the original memorandum, looking, in turn, at freedom of information, the lack of independence of the regulatory body, registration of the media, accreditation of journalists and content restrictions.

The Freedom of Information Regime

The amendments have reduced in small measure the regime of exclusions and exceptions to the right to information. However, overall the system of exclusions and exceptions is still massively overbroad. Key exclusions include any record relating to the exercise of the functions of the President and information the disclosure of which is deemed not to be in the public interest. 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 a public body.

As before, many exceptions are not subject to a harm test; examples include all information relating to advice given to public bodies and information which would affect relations with a foreign State or international organisation. These exceptions apply regardless of whether the disclosure would lead to any negative consequence.

No public interest override has been introduced into the law, so that information covered by an exception may not be disclosed even if this is in the public interest.

An appeal from a refusal to disclose information is still heard by the Information and Media Commission, a body controlled by the government, rather than by an independent body.

An improvement is that the prohibition on requests for information by permanent residents and on corporations which are not entirely controlled by citizens has been removed. However, non-registered mass media outlets still do not have any rights under the Act.

The Media and Information Commission

The Media and Information Commission remains firmly under the control of the Minister and continues to wield extensive powers over the media and journalists. The provisions giving the Minister extensive powers in terms of appointing, removing and setting the terms of office of members of its governing Board, and setting out the role of the Commission, have not changed.

Registration of the Mass Media

The provisions regarding registration of bodies which disseminate mass media products have not materially changed. The system is still overseen by the Commission, with substantial powers vested in the Minister both in relation to fees and seizure of equipment. The registration requirement remains massively overbroad, apply to the Internet, and to disseminators of mass media, although licensed broadcasting services are now excluded, presumably on the basis that the broadcast licensing process is sufficient. The sanctions regime remains substantially the same, and is therefore still excessively harsh. An improvement in this area is the addition of a number of process rights to mass media threatened with suspension or cancellation of their registration.

The restrictions on ownership of mass media have been relaxed a bit. Only individuals who are citizens may own mass media but now companies where citizens have a controlling interest, as opposed to being completely controlled by citizens, may also own media services. However, this relaxation has been accompanied by the addition of stringent conditions on who may own shares in a mass media company. These preclude share ownership other than by citizens, permanent residents or companies controlled by citizens or permanent residents. These changes mean that residents may now invest in mass media services, but not own them. Foreigners may invest in the mass media, but only indirectly, through companies controlled by Zimbabwean citizens or permanent residents. This is unlikely to attract much needed foreign investment and does not meet standards accepted in other countries.

An unfortunate change is that a provision in the original draft protecting freedom of expression and forbidding censorship has been removed.

Accreditation of Journalists

The system for accrediting journalists under the Bill remains substantially unchanged. All journalists, defined very broadly, are still required to obtain accreditation from the Commission, without which it is illegal for them to work or for media companies to hire them. Accreditation still lasts only 12 months and only journalists with the “prescribed qualifications” may be accredited. The Bill thus continues to impose what is in effect a licensing system for journalists, under the supervision of a body controlled by government.

One improvement is that permanent residents and non-resident citizens may now be accredited as journalists. Furthermore, non-citizen, non-residents may be accredited for the purpose of covering a specific event for a limited period of time.

Foreign mass media are still required to obtain permission from the Minister to set up representative offices. The explicit requirement that only locally accredited journalists (i.e. Zimbabwean resident citizens) may work as foreign correspondents has been dropped but this is presumably required in any case by the general prohibition on journalists without accreditation.

The Commission retains its broad and harsh powers to discipline journalists, but these are at least specifically linked to the Code of Conduct, whereas they were previously undefined. In addition, some process rights have been imposed on the exercise of this power.

Content Restrictions

The most important changes to the Bill are in the area of content restrictions. In particular, two prohibitions which had the effect of preventing criticism of the President, particularly contentious given the imminent presidential elections, have been dropped.

However, at least one very problematical restriction on content, namely a prohibition on spreading “rumours, falsehoods under the guise of authentic reports”, has been retained. The retention of this provision, widely acknowledged as being a breach of the right to freedom of expression, is of particular concern given that the Supreme Court of Zimbabwe recently struck down a similar provision as unconstitutional.

Furthermore, the Commission is still required, in consultation with journalists’ organisations, to develop a code of conduct for journalists. The Commission is also given the power to impose harsh sanctions on journalists for breach of this code.