



MISA Submissions on the Fourth version of the Draft Posts and Telecommunications Bill

About MISA-Zimbabwe

The Zimbabwe Chapter of MISA (MISA-Zimbabwe) is part of the larger, regional Media Institute of Southern Africa (MISA). The Media Institute of Southern Africa (MISA) is a non-governmental organization with national chapters in 11 of the Southern Africa Development Community (SADC) countries.

The regional body was officially launched in 1992 and focuses primarily on the need to promote free, independent and diverse pluralistic media, as envisaged in the 1991 Windhoek Declaration on Promoting Free and Independent Press. MISA-Zimbabwe has been in existence since 1995. Advancements in technology have expanded MISA-Zimbabwe's work to include the protection and promotion of online rights such as the right to freedom of expression, access to information, and the right to privacy.

MISA-Zimbabwe's submissions on the above-mentioned Bill are as follows:

1. Section 27 as read with section 3(d) restrict investments in Zimbabwe's telecommunications sector to Zimbabwean citizens who are ordinarily resident in Zimbabwe.

1.1. Section 3(d) of the Bill limits investment in the Zimbabwean telecommunications sector to Zimbabwean citizens. Section 27(1) expands on this by stating that licences can only be granted to body corporates controlled by Zimbabwean citizens who are ordinarily resident in Zimbabwe. It is acknowledged that foreign entities can own telecommunications services in Zimbabwe with the written consent of the Minister of ICT and Cyber Security.

1.2. This is an unnecessary restriction on ownership of telecommunications service providers. More so when one considers the fact that globalisation, and technological developments have given rise to multi-national telecommunications service providers. The requirement that Zimbabwean citizens have a controlling stake in all telecommunications ventures operating in Zimbabwe is a revival of the recently scrapped indigenous laws.

1.3. Section 29(3) states that radio stations can only employ Zimbabwean citizens. This is an unjustified restriction on radio stations. Such a restriction might make sense for state owned radio stations but not for privately owned radio stations.

1.4. **Recommendations:** Ownership of telecommunications services should be widened to include foreign nationals with the requisite experience and expertise in telecommunications, broadcasting and media.

1.5. The same goes for radio station employees. Private radio stations should have the discretion on who to employ.

2. Appointment process of POTRAZ Board members affects the Board's independence.

2.1. Section 5(5) states that the POTRAZ Board should be independent. This independence is weakened by section 7 which leaves appointment of all of POTRAZ's Board members to the President. Under the current arrangement there is no oversight mechanism which puts in check the President's powers of appointment.

2.2. There is no public involvement in the selection process, a worrying development because whatever decisions the Board make potentially affect members of the public who are the main consumers of postal and telecommunications services. This is against the spirit of public participation in public affairs as espoused in section 194 of the constitution.

2.3. **Recommendations:** There should be an oversight mechanism on the appointment of board members.

2.4. The President should not have the sole power to appointing people to the POTRAZ Board.

2.5. Section 15(3) states that the POTRAZ Board must accept any policy directions made by the Minister in terms of section 15(1) of the Bill. This provision ensures that the POTRAZ Board has no discretion on any policy directions received from the Minister's office. This again, compromises the board's independence.

2.6. **Recommendation:** The Minister can have powers to give policy directions, but the POTRAZ should have a discretion to accept such policy directions in whole or partially, or to refuse to accept policy directions which are not in the genuine public interest.

3. Excessive Data collection and retention provisions without adequate data protection laws

3.1. Section 42 requires telecommunication network owners to register users. Section 43 requires telecommunication network owners to keep subscriber records, copies of which POTRAZ will maintain. Subscriber information must be kept in these registers for up to 5 years after deactivation of a user's SIM card.

3.2. This is problematic because Zimbabwe currently has inadequate data protection laws. There is therefore, no guarantee on how confidentially such user data will be kept and whether it will be protected from abuse by the telecommunication network owners or any other third parties affiliated to them.

3.3. Zimbabwean users hardly ever deactivate SIM cards, this will make it hard to determine when to start calculating the 5 year period before disposing of a user's records. This means that users' records will potentially be kept indefinitely.

3.4. There is no restriction in the Bill on how the user records will be used either by telecommunication network owners or by POTRAZ. These provisions in their current state contradict users' right to privacy which is protected in section 57 of the Constitution.

3.5. **Recommendations:** Zimbabwe needs to put in place a Data Protection Act which matches globally accepted data protection principles.

3.6. There should be periodic transparency reports issued both by telecommunication network owners and POTRAZ. These reports would outline the number of requests to access user information received from State organs and other third parties within a specified period. This would help users know who has access to their data and what it is possibly used for.

3.7. The length of time for which user data is retained should be limited to about 24 to 30 months at most. This period should not be calculated from the time a user

deactivates the SIM card but from the time that the SIM card is no longer used (or the time when it is switched off).

3.8. Section 117(2) states that license inspectors cannot use any information they acquire during the course of their duties for their personal gain for a period of 5 years calculated from the time they leave employment as license inspectors.

3.9. **Recommendation:** License inspectors should not be allowed to use any information they acquire during the course of their employment in any way for their personal gain ever. Even after leaving employment for a period exceeding 5 years.

4. Provision of loans guarantees to POTRAZ employee spouses is contrary to good governance principles

4.1. Section 16 of the First Schedule gives powers to POTRAZ to guarantee loans made to POTRAZ employees or their spouses. This might be against principles of good governance as set out in section 194 of the Constitution as read with the draft Corporate Governance Bill which is expected to be gazetted as an Act soon.

4.2. Loaning public funds to employee's spouses is not the best way to spend public funds. Especially when sections 13 to 15 of the First Schedule of the Bill already provide for various options in which POTRAZ can finance or provide accommodation for its staff and families.

4.3. **Recommendation:** The current section 16 of the First Schedule of the Bill should be struck out.

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