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**AN EXAMINATION OF THE CONSTITUTIONAL CONGRUITY OF THE
CURRENT MEDIA LEGISLATION IN ZIMBABWE TO GLOBAL TRENDS**

**A DISSERTATION SUBMITTED IN FULFILMENT OF THE REQUIREMENTS FOR THE
ATTAINMENT OF A MASTER OF SOCIAL SCIENCE DEGREE IN COMMUNICATION AT
THE UNIVERSITY OF FORT HARE; REPUBLIC OF SOUTH AFRICA.**

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DECLARATION

I declare that the subsequent work is original work emanating from two years of hard work, pain, and solitude by Trevor Chabwinja (200910047) in the best of my knowledge, this work is not extracted from other people's works without acknowledgement and has not been previously submitted to any University faculty. Errors and omissions are the responsibility of the author and no other person is liable for the misadventures.

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DEDICATION

This dissertation is dedicated to my late father Timothy Chabwinja who passed on without witnessing the success of his son; and to my mother, Rosemary Chabwinja, who stood by me all the way.



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ABSTRACT

The focus of this dissertation was on the nature and operation of laws and regulations that were and are still being used to limit the freedom of the media in Zimbabwe. Through a legal and political analysis of the evolution and use of these laws and regulations by successive governments in Zimbabwe, the study provides an important perspective on the struggle for media freedom in Zimbabwe. The main focus of this study was to examine the impact of media laws in Zimbabwe on the freedom of expression of its citizens. Some of the key media laws under the spotlight include; Access to Information and Protection of Privacy Act (AIPPA), the Public Order and Security Act (POSA) and the Broadcasting Services Act (BSA). The underpinning theoretical framework was informed by the Authoritarian, Libertarian and the Social Responsibility schools of thought. Questionnaires and in-depth interviews with selected key informants were the chief methods for data collection. Secondary data such as court cases, newspapers and some documents from organisations such as the UN, African Charter and Southern Africa Development Community (SADC) Protocol on Culture, Information and Sport were also consulted. Qualitative data was analysed using thematic content analysis while tables, graphs and charts which were interpreted and linked with processed qualitative data to come up with emerging trends and resolutions. The research revealed that the government is aware of the shortcomings in the regulations and laws relating to the media, but is not willing to make genuine and comprehensive reforms. These laws impact negatively on freedom of expression on citizens especially journalists and their media houses. It is evident from the findings that media houses in Zimbabwe are vulnerable. These laws have forced some media houses such as Daily news, Tribune and Capital radio to close. Some of these institutions have since opened after the formation of the Government of National Unity (GNU). But little has changed even after the formation of the GNU. Some of the journalists left Zimbabwe for fear of prosecution. This goes on to confirm that the current media legislations in Zimbabwe are not congruent with global norms such as the SADC Protocol on Culture, Information and Sport, the Universal Declaration of Human Rights Article 19, the African Charter Article 9, and African Charter on Human and Peoples' Rights (ACHPR) which advocates for freedom of the media and expression. The study concluded that there is no freedom of expression in media legislation as has been witnessed from the findings of the study. The study then recommended crafting of new laws which promote freedom of expression of the citizens of Zimbabwe.

LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
AIPPA	Access to Information and Protection of Privacy Act
ANZ	Associated Newspapers of Zimbabwe
BSA	Broadcasting Services Act
BBC	British Broadcasting Corporation
BAZ	Broadcasting Authority of Zimbabwe
CHRI	Commonwealth Human Rights Initiative
FM	Frequency Modulation
GPA	Global Political Agreement
IBA	Independent Broadcasting Authority
LOMA	Law and Order Maintenance Act
MISA	Media Institute of Southern Africa
MIC	Media and Information Commission
OSA	Official Secrets Act
MDC	Movement for Democratic Change
POSA	Public Order and Security Act



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PPIPA	Powers, Privileges, and immunities of Parliament Act
PVOA	Private Voluntary Organizations Act
PAIA	Promotion of Access to information Act, 2000
RBA	Rhodesia Broadcasting Act
RBC	Rhodesia Broadcasting Corporation
RBSA	Rhodesia Broadcasting Services Act
S3	Section 3
S20	Section 20
S24	Section 24 University of Fort Hare <i>Together in Excellence</i>
SADC	Southern Africa Development Community
UDHR	Universal Declaration of Human Rights
UDI	Unilateral Declaration of Independence
ZANU PF	Zimbabwe African National Union – Patriotic Front
ZAPU	Zimbabwe African People's Union
ZBH	Zimbabwe Broadcasting Holdings
ZRBC	Zimbabwe Rhodesia Broadcasting Corporation
ZMC	Zimbabwe Media Commission
ZMMT	Zimbabwe Mass Media Trust



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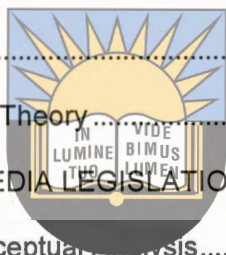
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CHAPTER ONE INTRODUCTION

1.0 BACKGROUND OF THE STUDY

Ever since the colonial period Zimbabwe has witnessed varying degrees of control by successive governments. However, in recent years the media has come under tight restrictions from the government. This has been particularly compounded by the growing economic and political crisis in the country.



The Zimbabwean Constitution does not specifically protect freedom of the media. However it is widely accepted that right to protection of the media is subsumed in the right to freedom of expression in section 20(1) of the Constitution¹. The section 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".

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It is submitted that this clause has not been wholly observed after the year 1999. This was violated by repressive legislation such as the Access to Information and Protection of Privacy Act (AIPPA) [chapter: 20/2002], the Public Order and Security Act (POSA) [chapter: 18/2002] and the Broadcasting Services Act (BSA) [chapter: 19/2001].

One of the aims of the struggle for independence in Zimbabwe was a guarantee for media freedom. This was supported by all the liberation movements which all clamoured for the repealing of several repressive media laws. The independent press

¹ Masiyiwa Holdings (Pvt) Ltd & Anor V Minister of Information 1996 (2) ZLR 756

had hitherto struggled to report in the country for many years as a result of many restrictive laws imposed by the minority regime of Ian Smith, the then Prime Minister of Rhodesia Zimbabwe. Such laws included the Official Secrets Act (OSA) 11/1970, which made it a crime to report on “classified information” and the Law and Order Maintenance Act (LOMA) 53/1960, under which a court could impose up to twenty years imprisonment for any violation thereof. Such Acts were used to impose a media blackout on reporting on African political activities and the casualties suffered by the Rhodesian Government Forces, for example the media could be ordered to focus on casualties on the other side and to report on the retreats to Zambia and Mozambique and not on anything reflecting the Rhodesian forces negatively. This study proposes to review pre- independence media policies as a preface to a comparison with prevailing policies.



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1.1 MEDIA POLICIES IN ZIMBABWE BEFORE THE SMITH UNILATERAL DECLARATION OF INDEPENDENCE (UDI)

Zimbabwe with the changes in its name at different times: Southern Rhodesia, Rhodesia, Zimbabwe-Rhodesia, and finally Zimbabwe in 1980 never really experienced genuinely free media (Melber, 2004). Before the inception of the Broadcasting Act, the first newspapers, *The Mashonaland*, *Zambezi Times* and *The Rhodesian Herald* were owned by the South African company – Argus Press of South Africa. In the same way Cecil John Rhodes was the force behind the British imperialism in Southern Africa, he was also the force behind the setting up and growth of newspapers in the then Southern Rhodesia. A friend of Rhodes Francis Dorma was the editor of the first paper and Argus Press was given the monopoly to establish newspapers in Southern Rhodesia (Chari *et al*, 2003). Newspapers during this period were designed to promote the cause of the

white settler colonialism and their business interests in South Africa (Windrich, 1981). In fact, the papers were designed to sustain colonial imperialist system and to serve their narrow interests which had nothing to do with the indigenous populations. Chari *et al* (2003:51) has argued that “, Rhodes used negotiation and persuasion to establish an alliance against Africans, whom he dominated using brute force.” One of the ways in which this was achieved is through a media propaganda which was aided by the newspapers that he controlled.

There was very little formulation of media policies under the United Federal Party of Sir Edgar Whitehead. The Native Affairs Department to the office of the Prime Minister operated as a nucleus for a Southern Rhodesia information service (Frederikse, 1990). During this era though there was no clearly written media policies, this department and the office of the Prime Minister were in charge of setting the conditions that guided the operations of the media.

The history of regulation of Broadcasting in Southern Rhodesia dates back to 1933 but the first media policy, *The Rhodesia Broadcasting Act (RBA, 1957)* was only passed twenty four years later in 1957. Before the *RBA, 1957* was adopted; the government relied on the Native Affairs department and office of the Prime Minister to come up with decisions concerning the parameters that guided the operations of Television and radio broadcasting. The colonial Broadcasting (*RBA, 1957*) did not bring relief to the broadcasting media but in fact reinforced existing colonial ideologies on media regulation. Electronic broadcasting, just like the print media also revolved around protecting the interests of minority whites and consolidating colonialism. It was designed from the onset to promote the cause of the settlers and their colonial interests, Mazula

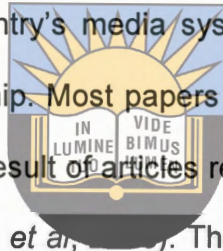
et al (2003). Broadcasting in this respect, became a cultural tool of re-assuring whites their sense of belonging. It was used to strengthen the position of settlers in the country. This was intensified in 1965 when the Smith regime gave itself independence from colonial master, the United Kingdom in his Unilateral Declaration of Independence (UDI) (Windrich, 1981).

1.2 THE UNILATERAL DECLARATION OF INDEPENDENCE (UDI) ERA TO INDEPENDENCE (1965 TO 1980)

The story of the media in Zimbabwe cannot be separated from the history of the troubled country, (Herbst, 1990). As a result this study followed this history which directly impacted on the media laws of the day. During this period the Southern Rhodesian whites started campaigning for independence. This was a movement whose sole aim was to retain total control of the colony in a white minority rule. Following this request for independence in 1962, the Rhodesian Front took over power from the United Federal Party in Southern Rhodesia and renamed the colony Rhodesia. However, under mounting pressure from African nationalists such as Joshua Nkomo and Robert Mugabe, the British government backed off from supporting this new government led by Ian Smith. When Britain withdrew its support, this placed the country under virtual international ostracism, leading to economic sanctions. Despite this mounting pressure on the Smith regime, on the 11th November 1965, Smith and his white minority Rhodesian Front party, unilaterally declared Rhodesia independent from Britain-UDI (Frederikse, 1990:23-25 and Chari *et al*, 2003: 50-53).

UDI was a calculated attempt to ensure perpetual white minority control at the expense of the black majority. The media played a crucial role in Ian Smith's quest to frustrate

African nationalism and establish a racist hegemony in Rhodesia. After illegally declaring itself independent from Britain, Ian Smith needed to seize total control of the media especially the radio and television. This was in order to make sure that he effectively communicated his propaganda. Ian Smith banned the use of other frequencies and even the sell of radios. He distributed free Frequency Modulation (FM) radios to the general public and forced all the merchandisers to sell FM radios only. The FM radios were controlled by his regime (Windrich, 1981). As a result of Ian Smith's desire to retain power, the country's media system suffered unparalleled restrictions which included outright censorship. Most papers were banned and the remaining ones had a lot of blank patches as a result of articles removed due to their failure to meet the censorship standards (Mudzengi *et al*, 2007). The Smith government intensified its grip on broadcasting media so as to ensure that it communicated the appropriate messages to the people according to the regime preferences. Between 1959 to 1979, besides the *RBA (1957)* and the *Rhodesian Broadcasting Services Act (RBSA, 1973)*, the government also used other repressive laws such as, *The LOMA (1960)*, *The OSA (1970)* and *The African Affairs Act and the Censorship Entertainment Act (AAACEA, 1965)* to control and manipulate the operations of both print and broadcasting media in the country (Chari *et al*, 2003 and Chirume, 2005).



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The appointment of employees of the Rhodesia Broadcasting Corporation (RBC) was based on the allegiance to the regime (Chari *et al*, 2003). This in a way directly helped the colonial government to tighten self-censorship and helped in enforcing other internal micro policies within the Rhodesian Television and radio stations. Ironically, despite all these measures used to enforce racism and hegemony this seemed to encourage the country's African nationalists to opt for guerrilla warfare as the only alternative to end

minority rule. This culminated in the struggle for independence which started in 1964.

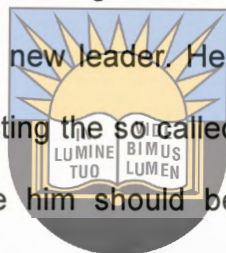
The Second *Chimurenga* which led to the 1980 majority elections stretched from the 1960s. In an effort to thwart black rebellion, Smith intensified his grip on the mass media (Windrich, 1981). To escape from Smith's attacks through the media, the nationalists and the masses developed alternative mediums of communication. This rendered the authoritarian policies that were being used by Smith irrelevant (Ibid). This, in other words, proved that although the regime controlled the mass media, it had failed to control the masses, for the masses had their own alternative media. The indigenous people developed other methods of communication which they used to communicate and share information about the war (Frederiske, 1990:28). The success of these 'other' mediums of communication reveals that indeed whites did not only share a common language with blacks in Rhodesia but the Blacks had any common context (Ibid: 29). The medium included the voices operating from Zambia and the word of mouth. The indigenous black people organized themselves in various strategic units which allowed free movement of information amongst them, which the enemy could not comprehend. For instance youthful young ladies who were known as the *Chimbwidos* acted as the caterers as well as informers for the black soldiers and the *mujibhas* – male youths also acted as informers and the messengers during the liberation struggle (Moyo, 2005).

Despite media controls the indigenous people had developed other media to circumvent government hegemony. In early 1979 the Smith government realized that they were heading towards an embarrassing defeat, so they called for an internal election where a few selected nationalists (sell-outs) were paid to contest (Frederikse, 1990). Bishop Abel Muzorewa, Sithole, Chirau and Murindagomo among a few others were allowed to

contest in the election. These elections were rejected by nationalists' who continued with the struggle. Despite its rejection there was a shift on the broadcasting arena.

It was announced on the national television and radio that Rhodesia Broadcasting Corporation (RBC) had changed its name to Zimbabwe Rhodesia Broadcasting Corporation (ZRBC) (Ibid). Jimmy Neil was appointed as the new ZRBC Chief Executive who obviously would maintain Smith's racist policies. On the 1st June 1979 the new President, Bishop Muzorewa gave his first national address to the nation on both radio and television as the new leader. He announced that, all other nationalists such as Mugabe who were rejecting the so-called 'will of the black people', by failing to stop the war and acknowledge him should be treated like terrorists. As such he threatened to deal with them decisively and called on the masses to treat them as terrorists as well (Frederikse, 1990). This Bowdler did not last despite the intensified media propaganda and bombardment of the nationalist movements on both radio and television. Cartoons and other print media techniques were also used to try and change the masses perception about the Smith engineered Muzorewa government. Thus the government hegemonic apparatus during this period failed to achieve desired consensus. This is in line with the assumption that hegemony is constantly in a state of struggle (Devereux, 2007).

The confusion that followed the April 1979 internal elections only settled when an agreement was reached at the Lancaster house conference in November 1979 (Windrich, 1981). The Smith regime and the nationalists agreed to stop the war and to hold another national free and fair election the following year (Frederikse, 1990). This election gave birth to the new black Zimbabwe on the 18th of April 1980.



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At independence in 1980, the new government adopted the *RBSA* of 1973 and renamed it the *Zimbabwe Broadcasting Act (ZBA), 12/1980*. It was easy and logical for the new government to take over the electronic media because under Rhodesian laws the broadcasting outlets were already under government control, although there was a political leadership shift since the country had gained its independence from colonial minority rule; the Act remained predominantly the same (Chirume, 2005). The Zimbabwe Broadcasting Corporation (ZBC) only transformed its hegemonic position from protecting colonial supremacy to endorse black political power after independence (MISA, 2001). Issues pertaining to black empowerment, education and health for all became key issues of concern for the new government as a result revising the colonial legislation was not an issue requiring any major concern at that time (Chari *et al*, 2003).



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The policies governing the media such as *LOMA* and *OSA* among others remained in the statute books of Zimbabwe. Thus, the newspapers were still controlled by the Argus Group of South Africa under mostly White leaders (Chari *et al*, 2003). It was inevitable that the new government which was struggling to remove the legacy of white hegemony upon stiff resistance from the white community who still held strategic economic positions in the country would find this unacceptable (Ibid). The new government had also signed the New World Information and Communication Order (NWICO) agreement under which it had an obligation to align its policies and activities towards fulfilling its four Ds. These included: Decolonisation (buying shares of the Argus Group of South Africa); democratisation (giving people access to the media); demonopolisation (removing private monopoly of the Argus Group) and decentralisation (taking the media to the people) (Chari *et al*, 2003).

Since Rhodesia became the independent Zimbabwe on April 18, 1980, there has been no direct censorship. But there has been government control of the print and broadcast media. Editors have also engaged in self-censorship. The Lancaster House Constitution of December 1979 became Zimbabwe's Constitution when the country became independent from Britain in 1980. It is a Westminster-type document designed to promote multi-party democracy. The Lancaster House Constitution of 1979 is still the Supreme Law of Zimbabwe today, thirty years after independence, itself being the parent Act to numerous colonial era Legislation (Chari *et al*, 2006) It is thus clear that Zimbabwe's laws are the pre-historic remnants of the colonial era.



After independence the government of Comrade Robert Mugabe did not implement the proposed media reforms from the colonial past. The pre independence media legislation was perceived as useful for disseminating information approved by the government. The only Act to be repealed was the Powers, Privileges, and immunities of Parliament Act (PPIPA, 1991). In January 1981, the government set up the Zimbabwe Mass Media Trust (ZMMT), as part of the government's new media policy. There have not been many changes and the basic provisions of LOMA have been re-enacted and adopted under POSA as well as the OSA, which remains on the statute books and has even been strengthened under provisions of AIPPA. The inescapable conclusion is that media freedom under the Smith regime is comparable in many respects to the current set up.

From 1991 to date, the Independent Press in the country has attempted to express its views but it has also been careful to reflect the government line when reporting through self-censorship. Private press is common and still exists. However since the 2002

AIPPA was passed (which replaced LOMA that had been in place for 40 years earlier) the government has closed a number of media outlets, including the Daily News, a newspaper which was perceived as supporting opposition politics in 2003. As a result, enterprising Zimbabweans have reacted by setting up radio and newspaper organisations in both neighbouring and Western countries. Reporters without borders claim that media regulation in Zimbabwe involves; surveillance, threats, imprisonment, censorship, blackmail, abuse of power, denial of justice to keep firm control over news. Under this arrangement dissenting views are often scantily covered or not mentioned in the state media, (media in which government has an interest, for example the Herald, Sunday mail and Zimbabwe broadcasting co-operation) which has also criticised demonstrations and strikes against the government.



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1.3 FREEDOM SUPPRESSED *Together in Excellence*

Freedom of expression is severely curtailed by the new legislation currently in place in Zimbabwe, such as, AIPPA, POSA and BSA. These have facilitated the closure of the Daily News in 2003 and its equipment embargoed and damaged. The immediate ban of this newspaper shows that freedom of the press is very limited.

Some of the restrictions on the media include:

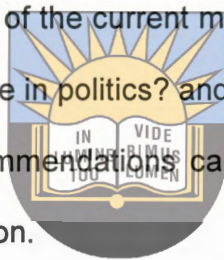
- (a) newspapers have to apply for an operating licence; and
- (b) journalists who need an operating licence which is renewed annually.

The media laws in Zimbabwe are not people driven. The above media restrictions hinder media from fulfilling its major roles in the society.

1.4 DAUNTING ISSUES

The following research questions guided the effort to attain the study's objectives:

- (a) to what extent is the current media legislation in Zimbabwe congruent with the Constitution and Global trends?
- (b) what cases on media regulation come to court, and what judgments are given which seem contrary to the constitution?
- (c) what has been the impact of the current media laws in Zimbabwe on how people get the truth and participate in politics? and
- (d) what feasible policy recommendations can make the media laws in Zimbabwe allow freedom of expression.



1.5 RESEARCH AIMS

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The main aims of this research study were:

- (a) the research aims at showing the impact of media laws on the operations of media houses; and
- (b) it also aims at showing that the media cannot successfully achieve its mandate because of the censorship and regulations.

1.6 OBJECTIVES

This research study's objectives were as follows:

- (a) to find out if the current media legislation in Zimbabwe allows freedom of expression;
- (b) to find out cases on media regulation which come to court, and judgments

- given which seem contrary to the Constitution;
- (c) to find out the impact of the current media laws in Zimbabwe on how people get the truth and participate in politics; and
 - (d) to make feasible policy recommendations that can make the media legislation in Zimbabwe to allow freedom of expression.

1.7 SIGNIFICANCE OF THE STUDY

This study is relevant given that Zimbabwe is in the process of crafting a new Constitution. This is as a result of the unity government and it is also known as the Global Political Agreement (GPA) brokered by the former South Africa President Thabo Mbeki, between Zimbabwe African National Union – Patriotic Front (ZANU PF) and the two Movements for Democratic Change (MDC) formations. In this regard the government, non-governmental organisations, and the people of Zimbabwe are set to benefit from policies founded on sound theoretical and empirical research from this study.

1.8 DELIMITATIONS AND LIMITATIONS OF THE STUDY

The study was limited to Harare due to financial constraints, limited time and mobility. The study focused on Harare because it is the capital city and where many people stay thus; the study is going to access a variety of views on current media laws. However, the study is a useful starting point for examining the constitutional congruity of the current media legislation in Zimbabwe to global trends. The study focused on Harare because it is where the main media houses are located.

The respondents may give rushed answers hence providing only surface information

however the study kept the questions as short and clear as possible so as to encourage the respondents to answer more questions (see Appendix, I). The study endeavoured by all means to conduct the detailed interviews, while avoiding exhausting the participants.

1.9 ENVISAGED STRUCTURE OF THE THESIS

The study was organised as follows:

1.9.1 Chapter one: introduction.

This covered background to the study and spelt out the statement of the problem, significance of the study, objectives of the study, delimitations and limitations of the study.



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1.9.2 Chapter two: review of related literature

This chapter reviewed literature on theories which underpinned this study. Empirical evidence from previous studies from Europe, Africa and Zimbabwe in particular supported this study. [See case studies in the body].

1.9.3 Chapter three: research methodology

This discussed the qualitative and quantitative methodology used in this study. It explained how interviews were conducted, documents and physical artefacts collected and what information was sought using questionnaires.

1.9.4 Chapter four: data presentation and analysis

This chapter presents data collected on media legislation and provided an in-depth

analysis and interpretation of the data.

1.9.5 Chapter Five: summary, conclusions and recommendations.

This chapter summarises the whole research project. From the findings cited in chapter IV, conclusions were made and recommendations given

1.10 CONCLUSION

This chapter dealt with the research problem of examining the constitutional congruity of the current media legislation in Zimbabwe to global trends. The importance of the study, background of the study, assumptions and limitations of the study were highlighted. The next chapter reviews related literature



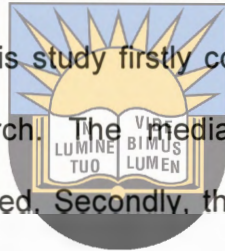
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CHAPTER TWO

LITERATURE REVIEW

2.0 INTRODUCTION

Due to repressive media laws on publishing, literature in this field is limited and the study therefore relied on what was available, and more general literature. The study examines the impact of recent media legislation on the to the freedom expression in Zimbabwe. Media legislation refers to laws that regulate the operation of mass dissemination of information. This study firstly considers the important concepts to be utilised throughout this research. The media legislation in Zimbabwe and the Constitution were closely analysed. Secondly, the theoretical framework was reflected on the current media laws. Three contrasting theories were closely examined in this research study in order to find out the extent to which Zimbabwean media legislation is repressive. The theoretical analysis was based on three normative theories namely, the Authoritarian, Social Responsibility and the Libertarian theories.



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2.1 THEORETICAL FRAMEWORK

A distillation of the literature leads one to come up with the following theoretical frameworks. One approach would be to use McQuail's Normative Theories which are mainly concerned with restrictions (and freedom of) media in various situations and how this impacts on the functioning of the media in the society. This was premised on the 1950's study of the different press systems in the world whose results have been updated in 1983 and 2005 (Siebert, Peterson and Schramm: 1956). Initially, they developed three theories that relate to the media (press), which were later adopted as a

yardstick for the measurement of the freedom of expression the world over. These are the Authoritarian, Libertarian and the Social Responsibility theories.

Apart from the three major theories of media applicable in most countries, the developments in the media industry have seen a number of theories emerging. These include the:

- Communist theory.

The communist media theory, based on the basic tenets of Marx and Engels envisages that media should be under the control of the working class with no private ownership of the media. The theory is also known as the Soviet media theory, though it is now rarely applicable.

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- Development theory. *Together in Excellence*

The theory suggests that the impact of the media should empower communities worldwide to and inspire them to endure change through creative story telling.

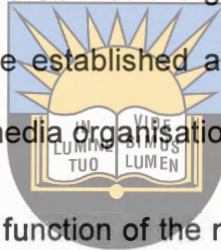
- Spiral of silence theory.

This theory postulates that individuals have a quasi-statistical sense organ by which they determine their opinion representing the minority point of view. In such a case, the individuals remain silent and hate to be isolated on their fellow beings and thus tend to follow the dominant opinion.

However this study on Zimbabwe media is mainly based on the three major normative theories, their application as well as their place in the global media fraternity. The three major theories upon which the study is based are discussed below:

2.1.1 Authoritarian Theory

According to McQuail (1987), the authoritarian state system requires direct governmental control of the mass media. The media in an authoritarian system is not allowed to print or broadcast anything, which is viewed as undermining the authority of the government. The fundamental assumption of the authoritarian system is that the government is infallible. Media professionals are therefore not allowed to exercise any operational independence within their media organisations. Foreign media houses and personnel are subordinate to the established authority and the repressive legislation restricts the operations of such media organisations.



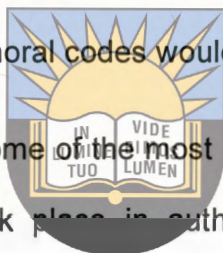
Under authoritarianism the main function of the media is to publicise and propagandise the government's ideology and actions. In other words the press is an instrument and mouth piece of the government. The Authoritarian Theory mainly applies in dictatorial societies. It also surfaces in less Authoritarian Societies when the freedom of the press may be found to be conflicting with the interest of the state or society, for example when there is a threat of terrorism or in times of war.

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Authoritarianism can also be exercised with regard to one media in contrast with other media. In some countries, for instance, the electronic media is subjected to greater control than the print media. This is so because the autocratic governments believe that the electronic media is easily accessible and reaches out to greater population than the print media. The Authoritarian Theory is not merely of historical or descriptive importance or simply an extra ordinary deviation from established democratic norms. It continues to justify government suppression of the media (Roelofse, 1996).

McQuail (1987) identifies the following basic assumption of Authoritarian Press:

- (a) the press should do nothing to undermine vested power and interest ;
- (b) the press should be subordinate to vested power and authority;
- (c) the press should avoid acting in contravention of prevailing moral and political values;
- (d) censorship is justified in the application of these principles; and that
- (e) editorial attacks on vested power and authority would be seen as a criminal offence and violation of moral codes would be considered criminal offences.



According to Roelofse (1996), some of the most significant communication and political events in the past century took place in authoritarian societies. The fascism (the philosophy and practice of the absolute power of the state in subservience of the individual) found in Europe in the 1900s in Adolf Hitler's Germany, Benito Mussolini's Italy, General Francisco Franco's Spain, in communist regime in Eastern Europe and elsewhere, South Africa's apartheid regime from 1948-1994 and in many post-independence African countries, was and in many cases rooted in authoritarianism and totalitarianism. Authoritarianism gave much freedom to the rulers, little or no freedom to the ruled, and defined freedom of expression as vested in the state.

In the Zimbabwean context, the government exercises absolute power over the media by applying laws such as AIPPA, POSA and BSA in order to suppress the media; which is generally seen as being authoritarian. For instance, a number of journalists were arrested for violating AIPPA, while over 70 journalists, all from private media houses were threatened since the promulgation of the law (The Daily News in exile, 2007.) The most significant attack on the private media took place in January 2001, when a bomb

explosion wrecked the printing press of the Daily News in Harare- only hours after the former Minister of information and Publicity Jonathan Moyo had publicly threatened the paper. The publication was subsequently forced to close down by the government rendering many journalists jobless. Furthermore the impact of the attack on The Daily news production was predictably severe. Although it took place more than a year before the presidential elections, the bombing continued to have a serious impact on the capacity of the country's largest daily paper to get the news to its readers. (The Daily News in Exile Thursday 3, May, 2007). Also (see Appendix, VI).

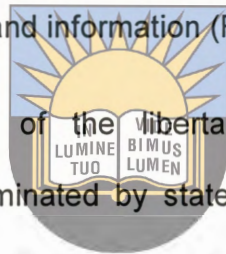


2.1.2 Libertarian Theory

Roelofse (1996), shows how the rise of democracy, religious freedom, expanded economic freedom and the general philosophical climate of the enlightenment undermining authoritarianism led to a new view of the role of the media in the West and increasingly so in Asia, Africa and Latin America. The emphasis on personal freedom and democracy that emerged in the late seventeenth century and flourished in the nineteenth century, gave rise to the libertarian theory in reaction to the authoritarian theory.

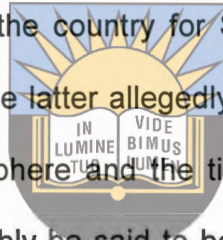
In contrast to the Authoritarian theory, the Libertarian theory is premised on the idea that the individual should be free to publish whatever he or she likes. In the Libertarian system, attacks on the government policies are fully accepted and even encouraged. Moreover, there should be no restrictions on import or export of media messages across the frontiers. Furthermore, journalists and media professionals ought to have full autonomy within the media.

According to the Libertarian Theory, people are rational beings capable of distinguishing between the truth and falsehood and between the good and the evil. The search for the truth is regarded as an inalienable natural right. In terms of these beliefs the media is seen as the source of information and a platform for the expression of divergent opinions, informing people about government affairs and other issues and enabling them to monitor their government and form their own ideas about policy. The media should be free from government control and government influence, and there must be a free market for ideas and information (Roelofse, 1996).



Based on the above outline of the libertarian theory, the post-independence Zimbabwean media, mainly dominated by state controlled media houses and a few independent papers (e.g. the Daily Gazette) experienced a fairly free working environment from the journalistic perspective. During the early 1980s through to the early 1990s, the Zimbabwean society generally regarded the media as a source of true information where people could express their views without fear of victimisation. Operationally, the accrediting commission was not as politicised as it became since the early 2000s to date. This favourable working environment in the media industry also gave space to foreign journalist working for such institutions as the British Broadcasting Corporation (BBC), Cable News Network (CNN) and the Guardian of United Kingdom. Against this background, it can be asserted to a lower extent that some aspects of the libertarian theory were observed prior to the year 2000 when the government of Zimbabwe had allowed considerable freedom of expression. This scenario dovetailed with global trends though as a developing country, Zimbabwe needed more time to develop the industry to enable fair comparison with countries like the USA, Canada and Britain which had this type of media for approximately 200 years; closely followed by

mainland European countries such as Netherlands and France. The enactment of suppressive media laws like AIPPA and POSA in the early 2000s regressed the achievements that had been made in the media industry since 1980. As a result, the government's crackdown on the media caused the closure of newspapers, deregistration or harassment of foreign and other local journalists perceived to be critical of the government and muzzling of the press. Notably, examples of journalists who were arrested or physically harassed include Basildon Peta and Mark Chavhunduka. The former fled the country for South Africa before joining the British independent newspaper while the latter allegedly died of torture wounds. It is because of the prevailing political atmosphere and the tight media laws in Zimbabwe that the media in the country can justifiably be said to be very far away from being completely libertarian.



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The media has been encouraged to act as the fourth estate along the legislative, executive and judiciary authorities in the government process (McQuail, 1987).

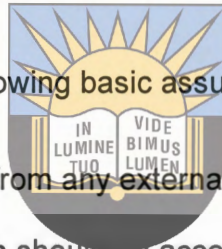
However the application of the idea of a free media is not simple as McQuail (1987) observes:

“The question of whether a free media is an end in its self, a means to an end, or absolute right has never been settled. Once freedom has been abused, it is no longer freedom and should be restricted. Absolute freedom is in fact anarchy. Libertarian societies therefore all more or less agree ... that freedom of the individual is defined and thus constrained by the freedom of other individuals”.

Most societies that recognise freedom of the media sought the solution to this dilemma of determining the boundaries of freedom without infringing the rights of the individual in:

- (a) the abolition of censorship on the one hand ; and
- (b) the introduction of media laws designed to protect individual rights on the other hand.

The protection of reputation, privacy, the moral development of individuals or groups and the security and even dignity of the state were recognised in common laws and enshrined in statutory laws. These laws often rode over the right to media freedom (McQuail: 1987).



McQuail (1987) identifies the following basic assumptions of the libertarian theory.

- (a) the media should be free from any external censorship;
- (b) publication and distribution should be accessible to any individual or group without a permit or a licence;
- (c) editorial attacks on government or political parties should not be punishable;
- (d) there should be no coercion to publish anything;
- (e) no restrictions should be placed on the acquisition of information through legal channel; and
- (f) there should be no restrictions on the export and import of information across national borders.

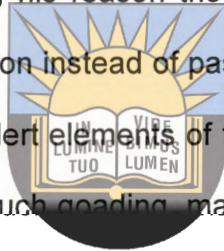
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2.1.3 The Social Responsibility Theory

The Social Responsibility Theory is an outgrowth of the Libertarian Theory. However, social responsibility goes beyond "objective" reporting to "interpretive" reporting. A truthful, complete account of the news is not necessarily enough today. "It is no longer enough to report the fact truthfully. It is now necessary to report *the truth about the*

fact." (Commission on the Freedom of the Press 1940). Today's complex world often necessitates analysis, explanation, and interpretation of news.

As the Commission stated in 1940: "The Social Responsibility theory does not deny the rationality of man, although it puts far less confidence in it than the libertarian theory, but it does seem to deny that man is innately motivated to search for truth and to accept it as his guide." Under the Social Responsibility Theory, man is viewed not so much as irrational but is capable of using his reason though he loathes to do so. If man is to remain free, he must live by reason instead of passively accepting what he sees, hears, and feels. Therefore, the more alert elements of the community must goad him into the exercise of his reason. Without such goading, man is not likely to be moved to seek the truth. The lethargy which keeps him from using his gift of reason extends to all public discussion. Man's aim is not to find truth but to satisfy his immediate needs and desires. It is the press, therefore, that must be the "more alert element" and keep the public informed, for an informed populace is the cornerstone of democracy.



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Today's large media conglomerates, however, may not function naturally as a public forum, where all ideas are shared and available. "The owners and managers of the press determine which persons, which facts, which versions of these facts, shall reach the public," writes Boyd-barret and Newbold (1995).

In the same light, (McQuail, 1987) warn that the power and near monopoly position of the media impose an obligation on the media to be socially responsible, to see that all sides are fairly represented and that the public has enough information to decide; and that if the media do not take on themselves such responsibility it may be necessary for

some other agency of the public to enforce it. The Canons of Journalism adopted by the American Society of Newspaper Editors addresses these same obligations when it calls on newspapers to practice responsibility to the general welfare, sincerity, truthfulness, impartiality, fair play, decency, and respect for the individual's privacy.

(McQuail, 1987) also note that "freedom of expression under the Social Responsibility Theory is not an absolute right, as under pure Libertarian Theory. One's right to free expression must be balanced against the private rights of others and against vital social interests." However, it would not be socially responsible, for example, to report how a terrorist, using some new method, evaded security measures and smuggled a bomb onto a commercial airline.



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Exponents of this theory attempt to reconcile the ideas of freedom and independence with responsibility towards society (Roelofse, 1996). According to McQuail (1987), the social responsibility theory is based on the following premises:

- (a) the media should support democratic political principles;
- (b) the media is under an obligation to create a forum for different viewpoints;
- (c) the independence of the media should be emphasised in relation to their responsibility towards society; and that
- (d) the media should meet globally acceptable standards.

McQuail (1987) identifies the following basic principles of the Social Responsibility Theory:

- (a) the media should accept certain responsibilities towards society;
- (b) the media should fulfil their responsibilities mainly by setting professional

- standards with regard to the supply of information and the truth, accuracy, objectivity and balance of their reporting;
- (c) the media should self- regulate within the framework of the law and established institutions;
 - (d) the media should avoid publishing information that can lead to crime, violence or social disruption, as well as information that can offend the ethnic or religious minorities;
 - (e) the media collectively should represent all social groups and reflect the diversity of society by giving people access to a variety of viewpoints and the right to react to these viewpoints; and
 - (f) society is entitled to expect high professional standards and government intervention is justifiable if the media fails to meet these standards.



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In view of the three theories to media legislation discussed above, this study adopted the Libertarian Theory as an analytical tool, in the sense that, it advocated for the freedom of the media from any external censorship.

2.2 A REVIEW OF CURRENT MEDIA LEGISLATION

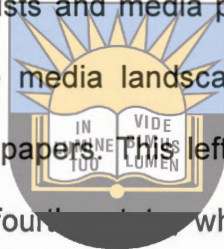
2.2.1 Media Legislation: A Conceptual Analysis

Zimbabwe has always had an array of media legislations in its statute books; which have stifled freedom of expression from the UDI era to independence. The Ian Smith regime resorted to such repressive laws as a way of stifling the tide of nationalism during the liberation struggle. Unfortunately the same repressive laws were employed

and reinforced in 2002 to achieve similar ends by the present regime. The government brought into effect laws such as POSA, AIPPA and BSA.

2.2.2 Access to Information and Protection of Privacy Act (AIPPA).

AIPPA governs the operations and general conduct of the media in a way that leaves media with little breathing space. AIPPA was passed by parliament of Zimbabwe on 31 January 2002 and signed into law by President Mugabe on 15 March 2002. Since its enactment, Zimbabwean journalists and media practitioners have continued to endure harassment and threats as the media landscape continued to shrink following the closure of privately owned newspapers. This left the media with little space to fulfil its public watchdog status as the fourth estate, which plays an adversarial role against government. Citizens have been deprived of their right to freedom of expression and the right to access information.

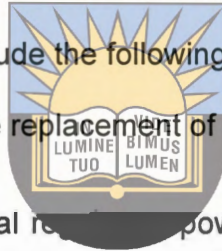


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The right to access information is provided in section 5 of AIPPA. Information is the life blood of any media organisation. Without free access to information, the media would not be able to play its role of holding those in public office accountable. In order to access public information, a request has to be made to the relevant government ministry and the ministry has up to thirty days to respond to the act, which may be impractical for journalists (Feltoe, 2003: 1). Since the act does not oblige the relevant ministry to supply such information upon request, it means that the public officials enjoy an unfettered discretion to choose who, when, how and what to supply to the media. Ironically, it is not the public that decides what is in their interest but the government officials.

The thirty day period provided in the Act maybe extended by another thirty days [section 8 and 11] with the permission of the Media and Information Commission (MIC) [abolished by a constitutional amendment or disbanded and immediately replaced by Zimbabwe Media Commission (ZMC) 2009], the Board is appointed by the President in consultation with Prime Minister of Zimbabwe. [Constitution Amendment (No. 19) Act, 2008].

Some of the problematical aspects of AIPPA from the perspective of freedom of expression and of the media include the following, although there are no major changes which have taken place since the replacement of MIC by ZMC:



- (a) it allocates very substantial regulatory powers over media outlets and individual journalists to the Zimbabwe Media Commission (ZMC), a body which is subject to extensive direct and indirect government control;
- (b) all media outlets and any business disseminating media products must obtain a registration certificate from the ZMC;
- (c) accreditation must be obtained from the ZMC before anyone may work as a journalist, effectively a form of licensing [s 83(1)];
- (d) local and foreign media outlets may only employ Zimbabwean citizens or permanent residents; and
- (e) foreigners and non-resident Zimbabweans are precluded from owning shares in Zimbabwean media business investments, although they may be minority shareholders in companies which own media shares. (Zimbabwe Government Gazette, 19 February 2010)

The British Broadcasting Corporation (BBC) was banned in Zimbabwe in 2001 and this

was as a result of restrictive media laws that were put in place by the Zimbabwean government. However the BBC was granted the permission to report in Zimbabwe 29 July 2009, and the breakthrough followed meetings between the broadcasters and senior government representatives, according to a report with the Zimbabwe Times 29 July 2009.

AIPPA's trail of destruction, both emotional and physical, can be traced to its enactment in 2002 and the plethora of arrest, intimidation, harassment and measures of control which immediately followed. Media space in Zimbabwe has continuously shrunk since the closure of Associated Newspapers of Zimbabwe (ANZ), publishers of the mass circulating, The Daily News and The Daily News on Sunday, on 12 September 2003. The government's determination to maintain AIPPA as its shield against criticism and exposure of corruption in high offices came in the wake of the closure of the African Tribune Newspapers in February 2005 and the bombing and closure of the Daily News. (The Daily News in Exile Thursday 3, May, 2007).



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The picture overleaf shows the Daily News printing press after it was bombed.



Source: The Daily News in Exile Thursday 3, May, 2007

2.2.3 Public Order and Security Act (POSA).

POSA was promulgated in 2002, and was meant to repeal LOMA but in effect; POSA may appear as a re-reworded version of LOMA. The Act contains provisions that curtail freedom of expression and criminalises speech. POSA re-introduces provisions of the 1964 Preservation of Constitutional Government Act, (repealed in 1999), which the Rhodesian government used to suppress nationalist movements such as Zimbabwe African People's Union (ZAPU) and ZANU PF. The new provision carries a penalty of twenty years imprisonment without the option of a fine for deliberately publishing

falsehoods. These stories may be negatively reflecting on the government or those in authority but may not materially be falsehoods.

Whilst the Constitution proclaims the right to freedom of expression, association and assembly, these rights may be limited in the interests of defence, public order or public safety; thus restraining freedom of journalists. Section 15 of POSA deals with publishing or communicating “false statements” considered prejudicial to the state. Section 15(1) of POSA makes it a criminal offence for a person inside or outside the country to communicate a statement that is wholly or materially false, and which is viewed as promoting public disorder or endangers public safety. Proof that the statement was intended to cause any of the above is enough to bring about a conviction, which carries a fine and or a five year prison sentence. The law applies not only to mass media, but also to reports produced by businesses and other civil society organizations. This false statements provision is a re-enactment of section 50 of LOMA; it however takes into account the Supreme Court’s judgment in *Chavhunduka & Anor –v- Minister of Home Affairs & Anor*, in which section 50 of LOMA was ruled to be in contravention of Section 20 of the Zimbabwean Constitution (Pottie, 2000).

POSA’s section 15 (2) prohibits the publication of a statement by a person who knows the statement to be false, or who does not have reasonable grounds for believing the statement to be true. This offence is punishable even when the accused reporter thought their statement was true. It is submitted that the effect of this provision is to subject media houses and journalists into a self-censorship exercise before publishing anything. This inevitably impedes on the right to freedom of expression. The public in such a situation are not guaranteed of balanced reporting. Sometimes it is important for



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opinions to find their way into the market place of ideas to enable the recipients to distinguish truth from falsehoods. Increasingly, the authorities have used Section 15 of the Act against the private media, as well as civil society leaders and those perceived to support the opposition. However, in most instances these charges have been dropped on the advice of the Attorney General's office (Pottie, 2000), implying that some prosecutions lack merit in any court of law; but the state's calculated move would be to threaten journalists and media houses.




Another repressive set of clauses in the statute falls under section 16 (2) of the Act. It criminalises the publishing of any negative statements about or concerning the President or Acting President. Such legislation virtually insulates the highest office against public scrutiny, there by infringing on the rights to the freedom of expression. Though the clause tries to protect the Office of the President, it is fundamentally susceptible to abuse by prosecuting authorities and an obvious deterrent to the operational effectiveness of the media industry. There is no logical or moral basis on which public officers should be shielded from scrutiny if one takes into account that they hold their offices at the pleasure of the electorate to whom they should be accountable (Ibid).

The media undoubtedly plays a crucial role in exposing officialdom misdemeanour. Comparatively in other open democracies like the United States the office of the President is subjected to intensive public scrutiny to ensure transparency. It is accordingly submitted that any ill-defined provisions shielding the office of the President from the public eye is not justifiable in a democratic society and therefore incongruent with the constitution and global trends

2.2.4 Broadcasting Services Act (BSA).

The BSA² was promulgated into the Zimbabwean statute in 2000. BSA establishes the Broadcasting Authority of Zimbabwe (BAZ), which grants broadcasting licenses. As with MIC (now ZMC), the Minister appoints the members of BAZ, which however, has yet to license a private or community broadcaster. Under BSA, it is an offence to broadcast without a license, and only citizens ordinarily resident in Zimbabwe, or a body whose controlling interest are held in Zimbabwe, can only apply for a license. The enactment of BSA was particularly targeted at denying operating licences to private broadcasters, as the act's enactment coincided with the banning of Capital Radio, a privately owned radio station that was already illegally broadcasting into Zimbabwe from outside the country in 2000 (Weza, 2001). Contravention of the law in any way attracts a fine and/or two years imprisonment.



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The BSA further requires a broadcaster to reserve, free of charge, one hour of programming a week for the Government to explain its policies (MISA, 2001). Whilst the need to have a registering authority for broadcasters is widely acknowledged, what is dangerous and inimical to a democratic society is to repose in the registering authority ill-defined powers on which it can refuse the registration of media houses. It is in this respect that the BSA is incongruent with the constitution as it has given enormous power to the authorities to refuse registration of private radio stations and maintaining the monopoly of ZBC long after it had been held to be unconstitutional (see *Capital Radio & Anor .v. Min Of Information*). To support this view, the late former legal affairs

² The Broadcasting Services Amendment Act, 2001 is an Act which provided for a state monopoly over all broadcasting (radio and television) in Zimbabwe.

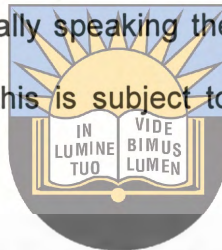
Minister Dr Edson Zvobgo attacked BSA as well as AIPPA and POSA when he remarked that:

“.....these media statutes were the most calculated attack on our civil liberties”, adding that “AIPPA is the most repressive piece of legislation ever passed in this country since the Land Apportionment Act of 1930”. (Daily News in Exile, 2007).

In Zimbabwe, the broadcasting industry thus has not been expanded in any form since independence in relation to the growth of other media- print and online publications (Mudzengi *et al*, 2003). The delay in enacting new broadcasting policies is not a unique scenario to Zimbabwe but also occurred in other African countries that share the same colonial history. For instance, in Ghana which attained its independence in 1957 broadcasting remained under the control of the state for nearly 40 years (Quarmyne *et al*, 2000). “In Zambia, the public service broadcasters formed part of the government ministry of information and served the needs of the government” (Ndlela, 2007: 1). However, South Africa is one of the first African countries that promptly changed colonial laws to suit the new political order. Out of the constitutional negotiation processes of 1993 emerged the Independent Broadcasting Authority Act No 153. The major tasks undertaken by the IBAA after the country gained political independence in 1994 was to develop a national broadcasting policy (Ndlela, 2007).

It is argued that the policy crises that are predominantly affecting most African countries including Zimbabwe are a legacy of repressive laws from the colonial and apartheid era. These have remained in the statute books of the majority of the countries in the region for too long despite the fact that such laws were strikingly incompatible with the new constitutional protection (ibid).

From a global perspective, POSA, AIPPA and BSA violate fundamental human rights enshrined in the Zimbabwe Bill of rights as well as African Charter on Human and Peoples' Rights (ACHPR), Southern Africa Development Community (SADC) Protocol on Culture, Information and Sport (See Appendix IV); and many other instruments to which Zimbabwe is a party to. POSA, AIPPA and BSA violate the freedoms enshrined in Article 9 of the Charter which states that, "Every individual shall have the right to receive information. Every individual has a right to express and disseminate his opinions within the law". Practically speaking the Acts impede on the general public's right to receive information as this is subject to regulation by the executive and the state's bureaucracy.



Media legislation in Zimbabwe violates the Universal Declaration of Human Rights Article 19, which states that "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and seek, receive and impart information and ideas through any media". To highlight this concern, a Member of Parliament, Gift Chimankire, during an interview with Nqobile Bhebhe in the Zimbabwean Independent of 07 May 2009, said, "There is need for media reforms in Zimbabwe. It's my view that there is a real need for reforms in the media. This is one of the tasks facing this committee. Zimbabwe has the right to have a free media space".

During an interview with Nqobile Bhebhe in the Zimbabwe Independent press 07 May 2009 former Deputy Minister of Media, Information and Publicity, Jameson Timbe said that, "he was not in favour of laws that limit freedom of expression. He said he took an oath to uphold the laws of this country (Zimbabwe) and granting of freedom of expression and the press to the citizens.

Notably though, recent cosmetic reforms instituted by the inclusive government have resulted in a new Zimbabwe Media Commission (ZMC) which granted licences to four new media houses. The newly licenced publishers were Cable News Agency, which operates a news agency, Berimark Enterprises, which publishes a monthly entertainment and celebrity magazine called Zimceleb, Feyjay Investments which publish a weekly sports magazine called Sport/24 and African Open Media Initiative that runs another news agency.

2.3 THE ROLE OF MEDIA INSTITUTE OF SOUTHERN AFRICA



Southern Africa Development Community (SADC) countries officially launched the Media Institute of Southern Africa (MISA) in September 1992. MISA is a non-governmental organisation with members in 11 Southern Africa Development Community (SADC) countries. It was created to help implement the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press. MISA's work is founded on the fundamental values of freedom of expression, access to information, media diversity, pluralism and independence as enshrined in the Universal Declaration of Human Rights, and in particular Article 19 (MISA, 2001).

While ensuring that gender-specific needs form an integral part of all activities, MISA seeks to play a leading role in creating an environment in which the free flow of information, ideas and opinions are encouraged through professionally run media as a principal means of nurturing democracy and human rights in Africa. MISA aims to create an environment in which civil society is empowered to claim information and access to it as unalienable rights and in which the resultant freer information flow strengthens democracy by enabling more informed citizen participation. Through one of

its activities, the Media Law Reform Programme, MISA is actively involved in the campaign to have all repressive media legislation on the statute books of countries in the SADC region repealed.

In its mandate to promote a free media society in SADC, MISA succeeded, to a limited extent in that regard. Notable contributions to the well-being of media in Zimbabwe include the lobbying to parliament to remove certain clauses of the repressive Acts and fighting unlawful arrests of media personnel. However, continuous efforts by MISA to discourage the government to suppress media freedom are being thwarted by the executive's perpetual and excessive control of the media regulating authorities.



2.4 THE ZIMBABWEAN CONSTITUTION

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The Zimbabwean Constitution does not specifically protect freedom of the media.

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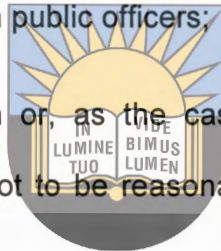
However it is widely accepted that right to protection of the media is subsumed in the right to freedom of expression in section 20(1) of the Constitution of Zimbabwe which states that: (1) "Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of 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".

(2) Nothing contained or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision –

- (a) In the interests of defence, public order, the economic interests of the state, public morality or public health;
- (b) for the purpose of:

- (i) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;
- (ii) preventing the disclosure of information received in confidence;
- (iii) maintaining the authority and independence of the courts or tribunal or Parliament;
- (iv) regulating the technical administration, technical operation or general efficiency of telephony, telegraphy, posts, wireless broadcasting or television or creating or regulating any monopoly in these fields;
- (v) in the case of correspondence, preventing the: unlawful dispatch therewith of the other matter; or

(c) that imposes restrictions upon public officers;



Except so far as that provision or, as the case maybe, the thing done under the authority thereof is not shown not to be reasonably justifiable in a democratic society (Feltoe, 2003: 49).

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Wilbert Mandinde has this to say on media sustainability index (MISA, 2006-2007): that freedom of speech, states that the above provision makes no specific mention of the right to media freedom, or the right to access to information which means these rights are inadequately protected. Panellists agreed that while Zimbabwe's Constitution guarantees freedom of expression it does not specifically guarantee freedom of the media. Constitutional provisions that protect freedom of expression only exist in theory and are, in practice, frequently flouted by the government. Media laws inhibit rather than promote freedom of the media. Media lawyer Takaona (MISA, 2006-2007: Media Sustainability index) argued that the country's repressive laws such as AIPPA, BSA and POSA take away the freedom guaranteed by the Constitution. Takaona said the existence of free expression guarantees in the Constitution itself is laudable although there are laws that take away the guarantees.

Comparatively the Constitution of the Republic of South Africa guarantees the right to access information in section 16(1). The general right in section 16(1) (b) is augmented by an explicit right of access to information in section 32 of the constitution. There is a further constitutional obligation that the state enacts enabling legislation to fully realize this right. Contemporaneous with section 32(2) of the Constitution, Parliament enacted the Promotion of Access to information Act, 2000 (PAIA) to give effect to the right of access to information. PAIA is therefore legislation with a particular constitutional status, it is legislation mandated by the Constitution to give effect to a constitutional right. Through PAIA, South Africa is enjoying freedom of expression and access to information than it has done for many decades. (Kanji, 2005)



In a workshop on media and corruption, Kajira Kanji of Media Institute of Southern Africa described PAIA as providing clear and detailed procedures for accessing a very broad range of both public and private information and also stated that;

“The exemption provisions are reasonable and subject to public interest and it provides a mechanism for monitoring which should ensure continued improvement and refinements as the act begins to have impact in South Africa”.

Section 16(1) states that: Everyone has the right to freedom of expression, which includes: (a) freedom of press and other media, (b) freedom to receive, impart information or ideas, (c) freedom of artistic creativity and (d) Academic freedom and freedom of scientific research (ibid).

South Africa is governed by a constitution, adopted in 1996, which is widely respected as one of the most progressive in the world. It guarantees and protects the right to freedom of expression, including media freedom, the right to access information and the

independence of broadcasting regulation. The right to freedom of expression is practised and citizens, including journalists, are asserting their rights without fear. There are no laws restricting freedom of expression such as excessive official secret or libel acts, or laws that unreasonably interfere with the responsible media. There are no laws in place as yet which seriously impact on the freedom of the media. The print publications are not required to obtain permission to publish from state authorities. Public information is easily accessible, guaranteed by law, to all citizens. (African Barometer, 2010). This shows that there is freedom of expression in South Africa. Media laws in South Africa advocates for freedom of expression unlike the Zimbabwe media laws, which hinder freedom of expression. Although the Constitution of Zimbabwe guarantees freedom of expression, media laws do not guarantee freedom of expression and it then makes it difficult for media houses to operate.



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2.5 ZIMBABWE MEDIA LEGISLATION AND GLOBAL TRENDS

There is an exciting global trend towards the recognition of the right to information by states, non-governmental organisations; civil society and the people in general all over the world and Zimbabwe is no exception. We have so far looked at restrictive pieces of legislation in Zimbabwe namely: AIPPA, BSA and POSA, among others, which curtail the freedom of media practitioners and consequently the people's right to information.

It is against this backdrop that media legislation in Zimbabwe is revisited against global trends with a view to providing recommendations as to how best policy-makers in Zimbabwe can dovetail the country's media laws to global standards. The right to information has been recognized as a fundamental human right encapsulated in the Universal Declaration of Human Rights (UDHR). It is linked to respect for the inherent

dignity of all human beings and this fact is what underpins any participatory democracy. The right to information has been described by Article 19 of the Commonwealth Human Rights Initiative (CHRI) as the "oxygen of democracy" which permits citizens to make informed electoral choices or participate in decision-making processes. It is also essential to accountability and good governance.

It is also common cause that lack of transparency and secretiveness is a breeding ground for corruption, abuse of power and mismanagement. In fact there is general consensus in global media trends that no government can seriously deny that the public has a right to information or that fundamental principles of democracy and accountability demand that public bodies operate in a transparent manner.

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However, in spite of this global recognition of the fundamental right to information, in Zimbabwe there is no national freedom of information law that gives practical effect to this right. As already established the colonial era Official Secrecy Act (OSA) still operates and continues to undermine information disclosure. As this study has shown, this law, including POSA and AIPPA are exacerbated by a pervasive culture of secrecy in the public sector.

The media's role in society has been largely described as that of acting as a watchdog of the government and enhancing the free flow of information to the public. In Zimbabwe the aforesaid laws unduly restrict both freedom of expression and right to information. This is done through licensing of the print media by the selective Zimbabwe Media

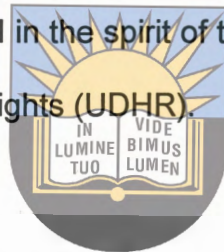
Commission (ZMC) which also licences the journalists. Criminal defamation laws used to silence critical voices as well as censorship laws do not help things either; if anything they compound the problem.

The repressive laws are against the UDHR and principally against the UN General Assembly Resolution 59 (1) which states:

Freedom of information is a fundamental human right and ... the touchstone of all freedom to which the UN is consecrated.

The above resolution was adopted in the spirit of the 1948 UN General Assembly of the Universal Declaration of Human Rights (UDHR).

Article 19 guarantees that:



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Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In 1993, the UN commission of Human Rights established the office of the UN special Rapporteur on freedom of opinion and expression and appointed Abid Hussain in pursuit of his mandate. The Rapporteur once noted:

The right to seek or have access to information is the one of the most essential elements of freedom of speech and expression.

In 1999 the Special Rapporteur, the OSCE Representative on freedom of the media and the Organisation of American States (OAS) special Rapporteur on freedom of expression adopted article 19 and jointly declared:

Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.

One observer noted with some regret that while other countries are busy trying to constitutionalise freedom of expression, not much has been done to do so in Zimbabwe. Admittedly, the New Constitution which is under way in Zimbabwe is expected to recognize this right, but it is still to be adopted and implemented to be true; otherwise it remains vulnerable to the political uncertainties of the time.

2.6 CONCLUSION



This chapter attempted to bring light on the state of media laws and also to examine the Constitution of Zimbabwe and South Africa. Some important concepts to be utilised in the study had been clarified. The theoretical framework underpinning this study had been given.

CHAPTER THREE

SELECTED CASES TAKEN TO ZIMBABWEAN COURTS

3.0 INTRODUCTION

Empirical evidence on media laws in Zimbabwe were examined in this chapter. A number of court cases were reviewed in order to find out if the current media laws in Zimbabwe are congruent with the Constitution and Global trends.

3.1 COURT CASES

3.1.1 Capital Radio versus the State.



In 2000, Capital Radio a private radio station successfully challenged the monopoly of Zimbabwe Broadcasting Corporation (ZBC) on the basis that it violated the right of freedom of expression under section 20(1) of the constitution. Following the legal battle between the Zimbabwe government and Jerry Jackson the owner of Capital Radio, on 22 September 2000 the Supreme Court struck sections of the BSA of 1980 which nullified the state broadcaster, ZBC monopoly of the airwaves (Auret and Jackson, 2007). Jackson successfully challenged some sections of the Zimbabwe Broadcasting Act (1980) taking advantage of its weaknesses (Mazula et al, 2003). The ruling of the Supreme Court on this case created a vacuum in the broadcasting law. As a result Capital radio started broadcasting openly on the 28th September 2000 in the absence of any broadcasting regulatory framework and taking advantage of the Supreme Court Judgment (Auret and Jackson, 2007). The Supreme Court later ruled that Capital Radio was allowed to broadcast. However, when the station went on air, armed soldiers and police confiscated its equipment.

3.1.2 Geoffrey Nyarota and Lloyd Mudiwa versus the State:

The two journalists were arrested on 23 April 2002 after publishing a story that an opposition party supporter had been beheaded by ruling party supporters. The story was later proven to be wrong and the paper retracted the story and apologised. However the two were arrested and charged under AIPPA for allegedly publishing falsehoods. Mudiwa and Nyarota then approached the Supreme Court challenging the constitutionality of the section 80(1) of AIPPA. The section 80(1) under scrutiny created what become known as the "false news offence". The applicants contended that the false news offence section constituted a breach of the freedom of expression and protection of the law as provided in Section 18 and 20 of the Constitution. The state did not oppose the challenge by Mudiwa and Nyarota nor file any arguments when called upon by the Registrar of the Supreme Court to do so. On the day the matter was set down to be heard, the state filed a notice that it was not opposed to what the defence lawyers were saying, that the section is unconstitutional. The state stated that it was not opposing the application by Mudiwa and Nyarota because section 80 is already been amended so that it would "avoid any apparent conflict with the constitutional freedom of expression. (Feltoe, 2003:56)

The full bench of the Supreme Court headed by the Chief Justice Godfrey Chidyausiku then made the following order:

- (a) Section 80(1) (b) as read with section 80(2) of the Access to Information and Protection of Privacy Act Chapter 10:27 is hereby declared to be *ultra vires* Section 20 of the Constitution and is struck down as being of no force and effect.
- (b) Respondent bears the costs of the application.

The state conceded that article 80(1) (b) was unconstitutional, and the Supreme Court nullified this section of the law and set in motion an apparent trend whereby court nullified only sections of laws that the state conceded to. (Ibid)

3.1.3 ANZ versus Minister of Information and others³: The Supreme Court Judgment

The Daily News applied to the Supreme Court for an order declaring unconstitutional certain sections of AIPPA. Chief among these sections was S66, which obliges all print mass media companies to register with the Media and Information Commission as a precondition to commence or continue operations. Other sections whose validity were challenged are Section 39,40,41,65,70,71,79,80 (repealed already), 83 and 89 as well as SI 169c of 2002 made under the principal Act. The Daily News contended that the Minister of Information and the Media and Commission responsible for applying the controls were partisan and patently biased against the private press and would apply AIPPA in a biased and prejudicial manner.⁴

The application was however, turned down by the Supreme Court, the main ground being that ANZ had neglected to comply with a valid Act of Parliament which it sought to have declared unconstitutional. The Supreme Court ruled that Daily News was supposed to comply with the Act first before challenging it. It was ruled that The Daily News had come to court with dirty hands and so could not be given audience until it had its “dirty hands” status purged.⁵

³ Sc-20-03

⁴ G. Feltoe, An analysis of the S.C. Judgment in the ANZ case pg1

⁵ G. Feltoe, whose hands were dirty, An Analysis of the Supreme Court judgment in the ANZ case.

3. 2 THE ROLE OF THE SUPREME COURT AS A CONSTITUTIONAL COURT

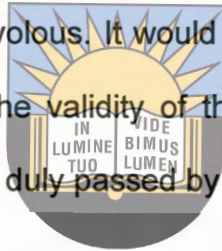
Sitting as a Constitutional Court the Supreme Court is the only court which can be approached on Constitutional matters at the first instance. The Supreme Court is mandated to uphold the Supreme law of the land. Constitutional provisions may not be violated except in circumstances where a law falls within an exception and is reasonably justifiable in a democratic society. When the legislature or the executive seeks to limit the rights entrenched in the Constitution to levels that are unacceptable, it is the duty of the Supreme Court to entertain challenges of such limits.

Section three of the constitution states the supremacy of the constitution and any law inconsistent with it, that other law shall, to the extent of the inconsistency, be void. S18 (1) of the Constitution gives every person the right to protection of the law and in terms of S113 of the same, that law includes any provision of the Constitution. S24(1) of the constitution gives efficacy to S28(1) by stating how one can exercise his right to protection of the law. It is clear that S24 (1) in giving efficacy to S18 (1), seeks to redress past, present or future contraventions of the declaration of rights. In making the application one needs to allege (not to prove) a contravention of one's rights. The effect of S24 is, *inter alia*, that the Supreme Court may make such orders which it considers appropriate for the purpose of entering or securing the enforcement of the declaration of rights⁶. It is submitted that, the Supreme Court failed to comply with these Constitutional provisions in the ANZ case, in effect, it did the reverse.

The Supreme Court should give precedence to the Constitution over Parliamentary legislation and rules of practice in order to guard against violation of Human Rights. The

⁶ *Retrofit v Minister of Information Posts and Telecommunications* 1995 (2) ZLR 422 (5)

court therefore erred in the ANZ case. In dismissing ANZ's application, the court gave prominence to a Parliamentary Act, AIPPA's registration provisions. It also went on to give more impetus to a rule of practice, the clean hands doctrine at the expense of fundamental Constitutional challenge that was at stake. The court clearly ignored its duty as the custodian of the constitution to give prominence to AIPPA, whose provisions' constitutionality Chief Justice Godfrey Chidyausiku conceded is "debatable" and "not blatantly unconstitutional."⁷ Such averments by the Supreme Court point to the fact that the court, from the onset, also had doubts on the validity of AIPPA's provisions and so ANZ's application was not frivolous. It would have been entirely appropriate for the court to go on and determine the validity of the challenged sections. The Supreme Court ruled that AIPPA had been duly passed by Parliament and so it was valid until the court had declared it invalid.



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Section 20 of the Constitution provides for freedom of expression, which also covers freedom of the press, and therefore the Supreme Court should have attempted to uphold S20 rather than AIPPA and the dirty hands doctrine. From S20 it is evident that freedom of expression is one of the elementary rights, which must be guarded jealously by all individuals, let alone the courts, for its violation detrimentally effects the enjoyment of other rights. *Clean hands* doctrine is indeed part of Zimbabwe's Jurisprudence. However it is the manner in which the court approached the issue at stake, which is legally impermissible. In the first place what was an issue were applicants' fundamental rights, and the Supreme Court in various pronouncements has said that the court should give a liberal and generous interpretation to constitutional rights and this reasoning is also consistent with the judgment in *Minister of Home Affairs*

⁷ SC-20-03 pg12

v Bickle in which interestingly the applicant had “dirty hands” in that he was a fugitive from justice, but nonetheless the Supreme Court gave him audience. It is more apt to refer to what the court said in that case. “It is a heavy handed for a court to refuse to hear a part to a cause and it is only to be justified by grave consideration of public policy. It is a step, which a court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing”.

It is regrettable that the Supreme Court elected without justification to overturn its earlier decision in this regard. In terms of the principle of “stare decisis” a court is bound by its previous decisions and it stands to reason that the court in this case should have followed this judgment or if it wanted to overturn it, it should have justified such an approach. De Bourbon went on to argue that even if ANZ had sought to be registered it might have been impossible for it to do so because certain administrative mechanisms envisaged by the Act were not in place at ANZ, worse still, were not practicable. AIPPA had been ‘cooked’ in such a manner as to make it clearly cumbersome or even impossible for papers like The Daily News to operate. ANZ’s argument was therefore clear- the court was to determine the constitutionality of AIPPA before it could seek to register under its provisions because it was going to face many huddles in the form of the challenged sections. De Bourbon argued that the ANZ had not evaded the law as was the case in *Deputy Sheriff, Harare versus Mahleza and Anor*.⁸ ANZ’s conduct was therefore not tainted with any moral turpitude such as fraud or dishonesty and was therefore entitled to approach the court for relief.

⁸ 1997 (2) ZLR 425 (HC)

3.2.1 The Supreme Court ignores the Concept of Separation of Powers

Some observers felt that the Supreme Court ruling in the ANZ case also went as far as violating the concept of separation of powers. The Court had been approached by ANZ as a check and balance to the laws of the legislature and the powers given to the Executive and other organs by AIPPA. The Court shirked its duty to check the validity of the law. The court did not test the validity of AIPPA but it sent ANZ to submit to a law which. If the Supreme Court had interpreted on its merit may have been found to be void to the extent of its inconsistency with the Constitution. By ordering compliance with AIPPA before challenging it, the court conspired with, rather than checked the legislature. AIPPA is akin to a ferocious and voracious wolf, which sought to devour ANZ. ANZ sought refuge by seeking protection of the law in terms of S28 of the constitution – ANZ wanted a determination whether the wolf had a right to devour it and whether ANZ had a duty to submit to the devouring. The court then held that before it could look into ANZ's contention. ANZ had to submit itself to the wolf for it to be devoured before the question of whether the wolf had a right to devour ANZ could be determined.

The Supreme Court's reliance on other cases in the ANZ case was, if evidence is weighed, unimpressive. The Court fell into a trap of slavishly relying on cases which are distinguishable from the ANZ case. As a result of this the court failed to notice that similar legal consequences that ANZ found itself in. The court became pre-occupied with admiring the decisions reached by other courts in cases where clean hands doctrine was applied and got carried away to the extent of forgetting its functions and its jurisdiction under S24 of the Constitution.

The court relied massively on *F. Hoffman-la Roche and Co. AG and others v Secretary of State for Trade and Industry* and in that process it failed to discern that Zimbabwe has Constitutional Supremacy as opposed to United Kingdom's Parliamentary supremacy where Parliament is paramount. If the court in ANZ realized that S3 of the Constitution renders void all laws inconsistent with the Constitution then the court should have simply asked itself whether the sections of AIPPA in question were or were not consistent with the Supreme law of the land.

The consequences of this judgment on freedom of expression or press freedom are done. In the first place it introduces dangerous jurisprudence in the interpretation of Constitutional rights in which the court gives emphasis to technical issues rather than deciding the merits of the matter. Secondly the decision arrogates to the executive unlimited powers to register and deregister media houses coupled with a requirement for journalists to be registered, this is likely to have a chilling effect on the individual journalists and media houses ability to report on issues freely and without fear.



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3.3 CONCLUSION

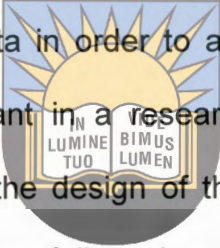
The chapter reviewed some court cases related to media legislation in Zimbabwe as empirical evidence on the state of media law in Zimbabwe. The next Chapter is on the research methodology.

CHAPTER FOUR

RESEARCH METHODOLOGY

4.0 INTRODUCTION

This chapter is on the research methodology employed in this study. Methodology refers to the body of methods used in a particular activity or research process. Research methodology constitutes variables such as the population, size, description of the sample and the research instruments used. It is the blueprint for the collection, measurement, and analysis of data in order to achieve the objectives of a research. Research methodology is important in a research due to the following reasons, it outlines the details of the study; the design of the research, the decisions regarding population and sampling procedures, methods employed to collect data and the procedures used to analyse the data.



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According to Hair *et al* (2008) the quality of collected data is only as good as the methodology employed to collect it. So any loopholes in the methodological procedures can cause the data collected to be questionable, that is, it will fail to measure what it was supposed to measure or would measure something else. The reliability and validity of the study will be compromised.

This chapter attempts to explain the study at hand in terms of the object, the study area, the study units, population and the sampling method used. It focuses on the presentation of the research method followed by the study. The primary focus of this study was to come up with empirically tested results and conclusion on the constitutional congruity of the current media legislation in Zimbabwe to global trends.

Such empirical data can be obtained through following a properly designed research methodology and data collection instruments. A properly planned and conducted research will produce reliable results which are important in making informed decisions about future courses of action.

4.1 QUALITATIVE AND QUANTITATIVE APPROACHES

The study used both the qualitative and quantitative approaches. However, the qualitative approach was the principal methodology of data collection mainly because the qualitative approach allowed the Media officers to talk for themselves and to pick abstract features of Media laws. The quantitative methodology was used to convert data into numerical form in order to subject it to statistical analysis.

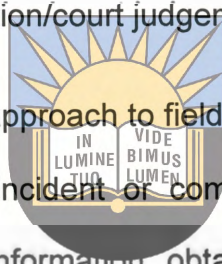


A research can be classified into qualitative and quantitative aspects. As observed, there is an important distinction between quantitative research and qualitative research. In quantitative research, the information obtained from the participants is expressed in numerical form. Quantitative research employs mathematical analysis for the measurement of variables and places a heavy emphasis on the use of structured questionnaires (Cant, Gerber, Nel & Kotze, 2005). According to Hair, *et al.* (2008) quantitative research enables the researcher to validate relationships and to test hypotheses. In this instance the hypothesis was that Zimbabwean media is heavily regulated against the grain of the constitution. Studies in which we record the number of items recalled, reaction times, or the numbers of aggressive acts are all examples of quantitative research. In qualitative research, on the other hand, the information obtained from participants is not expressed in numerical form.

4.2 RESEARCH DESIGN

According to Thomas and Nelson (2001) a research design is a plan of procedures for data collection and analysis that are undertaken to evaluate a particular theoretical perspective. The research design was the key to control the outcomes of the research study. In this study, the case study design was used. The process began by collecting, measuring and analysing data. Usually the technique of observation is used by most researchers carrying out case studies. But this study demanded the use of literature, especially newspapers and legislation/court judgements.

A case study is the most popular approach to field research. A case study is a thorough investigation of a single group, incident or community. Case studies can be done through intensive observation, information obtained from informants and informal interviews. Newspaper files, formal interviews, official records and surveys can be used to supplement these techniques (Leedy, 1997).



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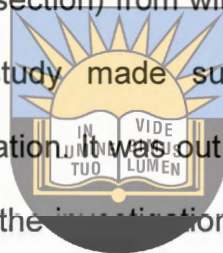
The term “case study” is mainly used in qualitative research and can be used as a synonym for qualitative research thus this study used the case study design so as to enable this study to compare the media legislation laws in Zimbabwe and those of the SADC region.

4.3 POPULATION OF THE STUDY

A research population refers to all those cases upon which the study intends to make a scientific conclusion with respect to a certain attribute or social phenomenon (Sumbulu, 2005). A research population is a phrase that sets boundaries on the study units and it refers to individuals who possess specific characteristics under study. Specifically for this

study, the research population included a selection of all editors, journalists, university students, media analysts and human rights lawyers who are based in Harare. These included men and women who were used as basic units of analysis and sources of information. The study used 600 participants as the total population from which only 10% was used as the sample due limited time and resources.

However, the study was unable to study the total purposive population with respect to this attribute as it was too large, or simply unavailable for study. The study accordingly used a sample (a relatively small section) from within the population due to limited time and resources. However the study made sure that the sample had the true characteristics of the whole population. It was out of this wide population that the study selected the direct participants in the investigation to form the research sample, based on the sampling methodology.



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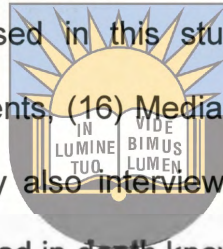
4.4 SAMPLE

In most cases researchers use a sample, which is a small part of the population with the same attributes as those in the entire population. According to Welman, Kruger and Mitchell (2006) a representative sample is a miniature image of the population. Selection of a sample was done carefully to allow generalisability of the results as it was a representative of the whole population and possess the exact properties of the population. The primary idea of sampling is that by selecting some elements of a population the researcher can draw conclusions about the entire and defined group of elements (target population). It is expected that the information gathered from the small group would enable accurate judgement about the larger group (Hair, *et al.* 2008). As quoted by Welman, *et al* (2006) Huysamen, (1991) points out that as a general rule,

researchers should not use any sample with less than 15 units of analysis, but preferably one with more than 25 units of analysed. The following subsections provide details on the sample size, sampling procedure and sample technique used in this study.

4.4.1 Sample size

The study purposively selected a small but qualitative sample size with the intention of focusing more on that small group and dig deeper into the exploration of all the required information. The sample size used in this study is 55, which comprised of (17) University Zimbabwe Media Students, (16) Media Analysts and (17) Polytechnic Media students in Zimbabwe. The study also interviewed (2) Editors, (1) journalist and (2) human rights lawyers since they had in-depth knowledge in media laws.



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4.4.2 Sampling Technique

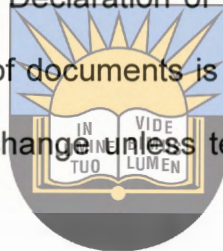
In this study, the investigation was driven by the desire to examine the constitutional congruity of the current media legislation in Zimbabwe to global trends, than the mere generalisation of the outcome. The study's sample was made up of purposefully chosen key informants (editors, journalists, university students, media analysts, polytechnic media students and human rights lawyers) because of their characteristics. Purposive sampling is most excellent when an investigator desires to discover specific types of cases for in-depth examination. The intention is to less generalise to a large population than it is to obtain an in-depth understanding of the phenomenon under investigation. Steinberg (2004) maintains that purposive samples are drawn from an available population without stratifying first. This is another reason why this study chose to use

purposive sampling. Like all other non-probability sampling methods, purposive sampling does not permit generalisation, hence the outcome of this study was interpreted in terms of the specific context under study.

4.4.3 Data collection Instruments

4.4.3.1 Documents

The technique, which was used, was documentary analysis. Documents such as the African Charter and the Universal Declaration of Human Rights were also used. Tellis (1997a) argues that the strength of documents is their stability, exactness and breadth of coverage. Documents do not change unless tempered with and can be referred to again and again.



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De Vos *et al*, (2005) described documents as those written customarily devoid of a view of research. They give instances of individual documents such as mail, diaries or life history (autobiographies). Additional non-personal documents such as proceedings of meetings, agendas and internal approved memos are printed without a rationale of a research. Moreover, they point out to a third group of documents that are designed at the mass media, such as newspapers, magazines or newsletters, which are written chiefly to broadcast information. Denscombe (2007) sees secondary analysis as the experiential exercise on data previously gathered and the investigator generally begins where the primary analysis of the data has been completed. Secondary analysis, thus, refers to the reworking of already analysed data over which the present researcher had no direct control or in which he had no direct involvement (Babbie, 2004 and Neuman, 2006). The study referred to secondary data through some court cases such as ANZ

vs. Minister of information in which Capital Radio challenged the monopoly of ZBC and won the case. The study also referred to the case of Geoff Nyarota and Lloyd Mudiwa vs. the State in which they were being accused of publishing a false story. Nyarota and Mudiwa challenged constitutionality of section 80(1) of AIPPA.

A greater part of this investigation began way back prior to getting on the field research and this was executed in the form of secondary analysis. In the course of the procedure of field research, the investigation wanted to refill the aspects already in the public domain and that which still has to be revealed. The foundations of secondary data analysis incorporate: text books; articles in scientific journals; theses and dissertations; institution reports; conference proceedings; magazines and newspapers, internet sources, court judgements and records (Goddard and Melville, 2001).

As maintained by Goddard and Melville (2001), the first five on the preceding listing are the main dependable sources of scientific data and are the most frequently referenced in scientific reporting. This investigation used various kinds of secondary information, in whichever manner it existed, in view of the fact that it created the most important source of information in this study.

Citation to text books is customarily the preliminary point of whichever scientific research in the social sciences. It is additionally the most consistent source of scientific information. On the other hand, it ought to be distinguished that text books are not devoid of their deficits. They ordinarily have outdated information, especially in speedy developing disciplines. This is because of the time consuming procedure of producing a book. It requires no less than a year from the opening statement to the stage the completed outcome is set for publication. Utilisation of recent versions of books reduces

this drawback. Accordingly, this study strives as much as possible to utilise current versions of books in order to acquire up to date information on Media laws in Zimbabwe.

Articles in scientific journals are the fundamentals of scientific reporting. Several journals are present, each bringing out latest work in a particular scientific discipline. The majority of journals are peer-reviewed. Journal articles expose more current work than text books. This investigation utilised text books as the foundation for information whilst considering scientific journal articles and reports as top-up of latest information.

Theses and dissertations are completed products or write-ups of master's and doctoral candidates. Theses and dissertations are commonly kept in libraries of the institutions they were presented and are accessible on inter-library loans. Some are also published on the internet. This study also used theses and dissertations as part of the secondary data analysis process; mostly those that dealt with Media laws in Zimbabwe.



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The internet is an international set of connections of computer networks which holds countless millions of records of data (including books, articles, reports and results). The internet is an exceptional source of searching information but in view of the fact that one cannot constantly be convinced of the accuracy of the information on a site, it should not by itself be a precise source of data. Considering the uncertainty of the accuracy of information obtained from the internet, this investigation opted to use this source of secondary data analysis to a minimal level.

Secondary sources, as summarised in the preceding section, formed a great and substantial source of information in this study. Throughout the literature review, it was

understood that there was extensive work which has been accomplished in this discipline of media laws in Zimbabwe. This secondary existing information aided to reinforce this study of examining the constitutional congruity of the current media legislation in Zimbabwe to global trends.

Data was collected through both the secondary and primary sources. Secondary data included documents, court cases, published books from the library, scientific journals, dissertations and theses and the internet.

4.4.3.2 Questionnaire



The data collection instrument which was used to collect information from the respondents is the self - administered questionnaire (see Appendix I). As defined by Hair, *et al.* (2008), a questionnaire is a document consisting of a set of questions and scales to gather primary data. Leung (2001) defines a questionnaire as a booklet of standardised procedure, pre-coded and containing open ended questions; or it can be regarded as a data collection instrument that sets out questions to be asked in a formal way in order to produce desired information. Self-administered questionnaire involves a direct and a face to face meeting between the researcher and the respondent. Cooper and Schindler, (2003). The researcher used self-administered questionnaire for the following reasons:

- (a) self-administered questionnaires ensure anonymity and privacy of the respondents, thereby encouraging honest responses;
- (b) the use of self-administered questionnaires allow collection of sensitive data related to the finance of respondents;

- (c) self-administered questionnaires are less expensive than other gathering techniques such as personal interviews where the respondents must be present with respondents at all times, and
- (d) It is economical in terms of time and money.

In designing the questionnaire, the research took consideration of the theoretical constructs that were identified during literature review. A semi – structured questionnaire was employed in gathering data. The semi - structured questionnaire combines open-ended and close-ended questions. Open ended questions require explanation from the respondent. They help to establish rapport, gather information, and increase understanding.



The questions in the questionnaire were carefully selected to ensure that only questions that made meaningful contributions to the focus of the study were included. Careful considerations was done to avoid “nice to have” questions without any relevance to achieving the objectives of this study. Each of the questions was checked for the following:

- (a) whether they were appropriate,
- (b) if the question is of proper scope and coverage,
- (c) if the respondents can adequately answer the questions,
- (d) if there is no ambiguous wording or wording that means different things to different respondents,
- (e) whether the respondents can be willing to answer the questions, and

(f) If there would be no double meanings of the questions, bias and that the respondent would not mistake the meaning of the questions.

Questionnaires were distributed to the respondents who constituted the sample of the study. The selected participants were requested to fill the questionnaires and assistance was rendered by the researcher if need arises and clarification is required from the researcher. The study used fifty questionnaires to obtain information from University students, Media Analysts, Polytechnic Media Students. The study chose the questionnaire method because it served as an appropriate and useful data collection device.



4.4.3.3 In-depth interviews

This study utilised interviews in the form of one-to-one structured interviews for primary data collection. This data collection technique was the means for examining the constitutional congruity of the current media legislation in Zimbabwe to global trends. Concisely, in-depth interviews with individuals within the same subjects were utilised (see Appendix II). Interviewing is the mode of data and information gathering in qualitative research. Sewell in De Vos *et al.*, (2005) defines qualitative interviews as "... attempts to understand the world from the participant's point of view, to unfold the meaning of people's experiences and to uncover their lived world prior to the scientific explanations".

The utilisation of interviews generally denotes that the study viewed this method as the best instrument of attaining primary data which presents more of an in-depth insight into the topic, deriving from information supplied by a small number of informants. The investigation is supposed to be able to justify the choice to go for depth rather than

breadth in material as being appropriate to the specific needs of the study according to Sumbulu (2005) and Denscombe (2007).

The study in this investigation chose to pursue in-depth rather than breadth information, because of two main reasons. First, the study's desire to get hold of information in its entire contextual relevance, that is inclusive of the emotions, experiences and feelings that go together with it; rather than access to plain straight forward, distant and inhuman factual factors. The second reason why this study chose to use interviews was to pursue what Denscombe refers to as "privileged information". This is the usefulness of getting in touch with major players in the field who can provide privileged information.

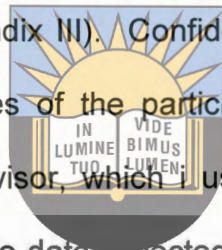


The interview questions were unstructured. They happen between only two people; the interviewer and the respondent. The purpose of in-depth interviews is to understand the underlying motivations, beliefs, attitudes and feelings on a particular subject. According to Greeff, (quoted in De Vos *et al.*, 2005) the unstructured one-to-one interview is used to determine individuals' perceptions, opinions, facts and forecasts, and their reactions to initial findings and potential solutions. This study utilised unstructured interviews with Editors, Journalists and lawyers because the investigation sought to understand the underlying beliefs, attitudes and feelings. More important, the research investment is more cost-effective since more of the budget is used to elicit information from each and every respondent, rather than for other incidental costs of hosting a focus group. Out of a total number of ten participants the researcher wanted to interview, only five were interviewed.

4.5 ETHICAL CONSIDERATION

Denscombe (2002) defines ethics as the system of moral principles by which individuals can judge their actions as right or wrong, good or bad. In any research design, the study should assess the potential for risk such as physical, psychological, social, economic or legal harm to participants (Sieber, 1998).

The study followed the University of Fort Hare ethical consideration and the participants were made to sign the informed consent agreement form to show that they participated on their own free will (see Appendix III). Confidentiality, privacy and anonymity were also applied in this study. Names of the participants remained confidential. I also obtained a letter from my Supervisor, which I used in order to collect data from the respondents (see Appendix V). The data collected as part of this study was kept under lock.



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4.6 CONCLUSION

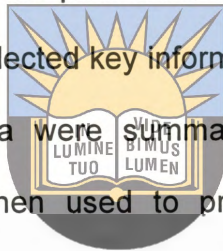
A research design that is carefully chosen helps alleviate confusion and helps the researcher to focus on the appropriate body of methods to be used in conducting the overall research. The chapter has examined research methodology touching on the research instrument; the sampling method to be used; and the sampling technique. The following chapter entails data analysis whereby the collected data will be collated and analysed. The chapter which follows will focus on presentation and analysis of data gathered.

CHAPTER FIVE

DATA ANALYSIS AND PRESENTATION

5.0. INTRODUCTION

Two main types of data were analysed before they were merged. These are quantitative and qualitative data types. Quantitative data from open-ended questions were analysed and presented in the form of tables and graphs. Qualitative data was analysed, using the common themes approach. The quantitative data was complemented by qualitative data from interviews held with selected key informants. Together, the findings from both quantitative and qualitative data were summarised thematically in order to show emerging trends which were then used to provide answers to the key research questions.



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5.1 RESPONSE RATE

Out of the 50 questionnaires which were distributed to the University of Zimbabwe, Harare Polytechnic media students and Media analysts, all the questionnaires were returned duly completed which is a response rate of 100%. Out of the ten interview guides prepared for journalists, editors and human rights lawyers, five were successful, which is a response rate of 50% of the total population. The overall response rate for all questionnaires and interview guides that were administered on the respondents is 91.67% which according to Wimmer and Dominick (2000) is well above the minimum cut off response rate of about 39% that is necessary to validate the findings of a research study. The above noted high response rate was achieved as result of the researcher who personally distributed and encouraged the respondents to cooperate in the study prior to them completing the questionnaires on their own time before the

appointed date for the collection of the questionnaires. In addition the respondents were further motivated into actively participating in the research study after they became aware of the fact that they were contributing towards a masters level thesis.

5.2 DEMOGRAPHIC CHARACTERISTICS OF THE RESPONDENTS

Data from the questionnaires are divided into three main categories focusing on the distribution of the population according to exposure to various forms of media by gender, age and marital status; distribution of the population according to knowledge of media laws in Zimbabwe; and according to their opinions about specific media laws such as POSA, AIPPA and BSA and their implications on media freedom.

The gender of the respondents is depicted in Fig 5.1 below.

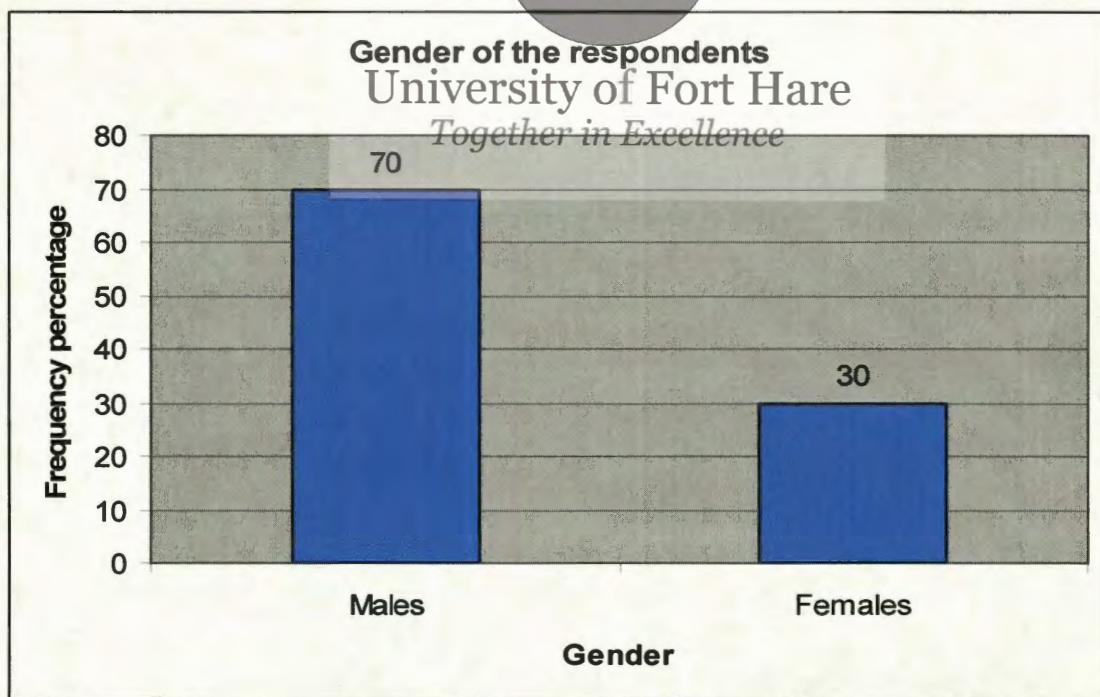


Fig 5.1: Gender of the respondents

Out of a total of 50 participants (70%) were male and (30%) were female. The study attempted, within the confines of the sampling design, to ensure gender equity in

collecting data from the respondents. However, very few female respondents were willing to participate in this research study. This may perhaps be indicative of the perilous nature of the media as perceived by most people or just lack of interest. The fact that the distribution is skewed in favour of males indicates that males are more concerned about media issues. This reflects the gender ratio of participation and interest in media politics.

In follow-up interviews, some of the respondents revealed that there was no freedom of expression. Some even refused to comment which showed that they were afraid of being prosecuted and those who were bold enough to pass their comments especially the male participants recommended that laws governing the media should be repealed.



The above findings confirm what was said by the former Deputy Minister of Media, Information and Publicity, Jameson Tumbwe during an interview with Nqobile Bhebhe in the Zimbabwe Independent press 07 May 2009, that:

"I am not in favour of laws that limit freedom of expression. I took an oath to uphold the laws of this country (Zimbabwe) and granting of freedom of expression and the press to the citizens".

The distribution of the respondents by age is illustrated in Fig 5.2.

N (50)

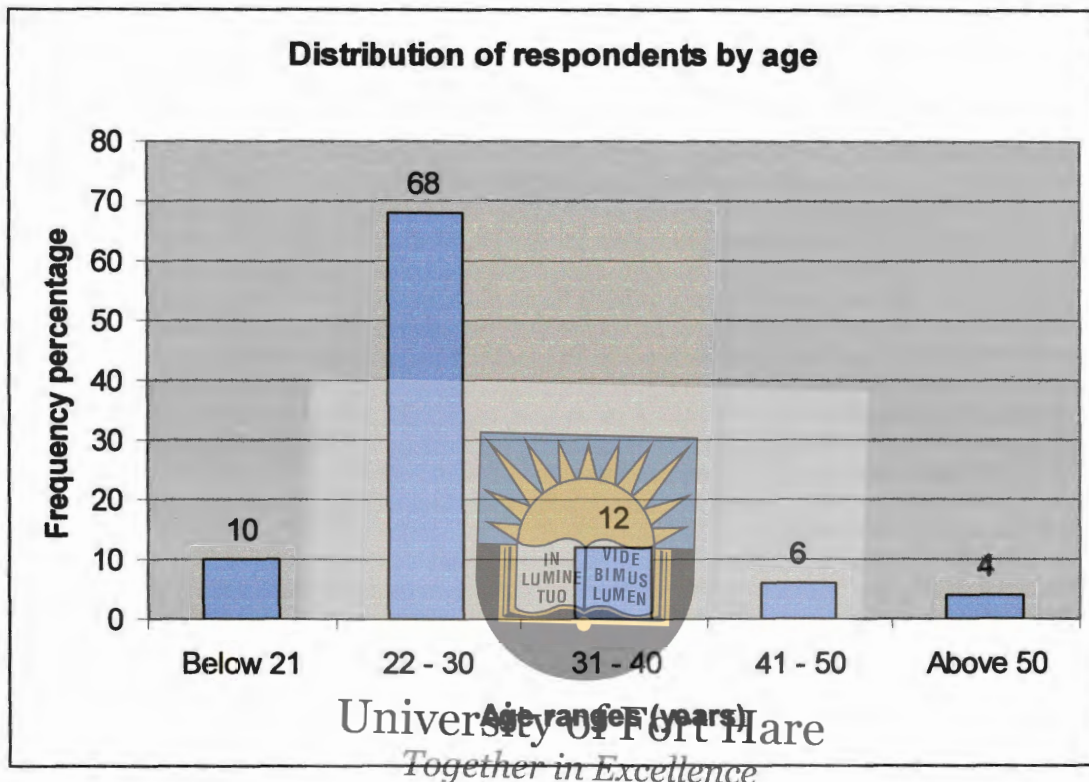


Fig 5.2: Age range of the respondents by age

Fig 5.2 describes five age-ranges. In this study, age was considered a critical factor because there are perceptions that those who fought in the war of liberation are more revolutionary than those who did not or were born after independence. Most of those who were in the struggle are in their 40s now.

Out of the total population of 50, one-tenth of the participants were below the age of 21. This is the age-group comprising mainly of school-going children; most of them were not actively interested in media issues. Their participation rate was 10%. This is a sharp contrast of the most active age group of between 22 and 30 years, which is the enlightenment age. This group comprises of new professionals, just entering the field. These were mainly college and university students as well as young professional

anxious to find their positions in the world of work and politics. This age group's participation rate is 68% which is the highest. The second highest age group in participation was 31 to 40 years which scored 12%, because most active age categories were now settled or settling down in their new careers and their attention was absorbed more in media issues. The age group 50 years and above were inactive in the issues concerning media laws.

In follow up interviews most of the respondents who were 50 years and above pointed out that they were not interested in media issues since most of them were worried about their security in the old age. Most of them pointed out that they did not have extra income to buy newspapers. However the active age groups recommended that the media laws should be congruent with global norms.



The above findings are in tandem with the recommendations from the respondents who pointed out that media laws should match global norms, for example the Universal Declaration of Human Rights Article 19, which states that, "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and seek, receive and impart information and ideas through any media"

The respondents suggested that the above recommendation could be achieved through the following:

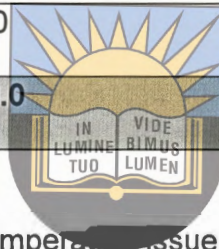
- (a) by repealing media laws like the BSA, AIPPA and POSA which negatively impact on freedom of expression; and
- (b) by consulting all stakeholders, for example, journalists, editors, human rights lawyers and the public.

The above suggestions from the respondents showed that the government was wasting time on repealing these media laws yet there were no major changes to improve on freedom of expression on Zimbabwean citizens.

The distribution of the respondents by marital status is depicted in Table 5.1.

Table 5.1: Marital Status of the respondents

Status	Frequency	Percentage (%)
Single	25	50.0
Married	25	50.0
Total	50	100.0



This research study took it as an imperative issue to determine the marital status of the respondents in the sample. The main purpose of establishing the marital status of the respondents was to determine whether being married or being single somehow determined a more active role by respondents in soliciting information about media and whether the political views between the two varied. Of the respondents that participated in the research study, 50% were married while the other 50% were single. Evidence from their responses showed that it was difficult to determine political interest on the basis of marriage status, so this variable was not as useful as initially thought.

Educational qualification is depicted in Fig 5.3

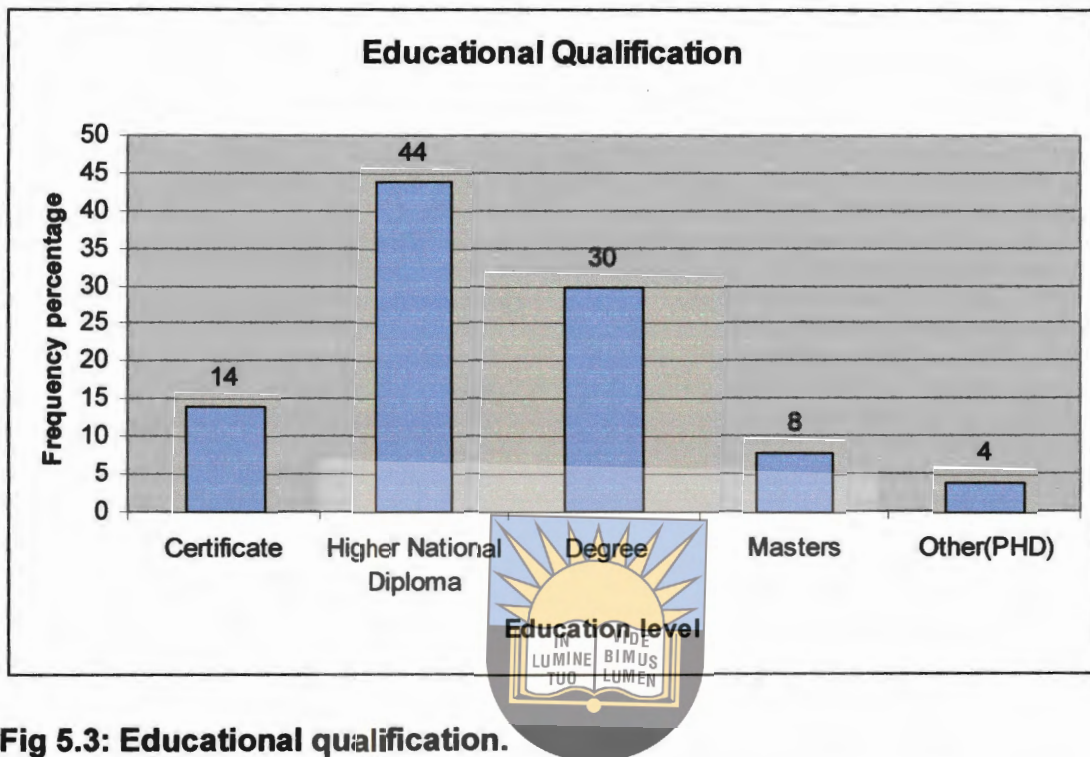
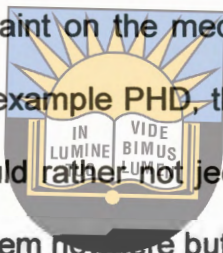


Fig 5.3: Educational qualification.

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Fourteen percent (14%) of the total respondents who have Journalism certificates proved to be less knowledgeable about laws affecting media freedom, since they were from the Harare polytechnic where they only deal with introduction to media studies. The other batch of the students comprise 44% of the total respondents had national diplomas and some of whom are practising journalism provided the researcher with vital information. They argued that the media is not free and they were afraid to report on some cases which involve government officials. 30% of the total respondents had degrees and were from the University of Zimbabwe. Amongst them were journalists, editors and junior lawyers. They had mixed views with some pointing out that the media laws in Zimbabwe are not congruent with the Constitution and global trends and they gave various reasons in support of their views, however some said that the media laws are congruent with the Constitution citing section 20 of the Constitution. Those with

masters comprise 8% of the total respondents. This batch consists of fulltime Editors, senior journalists and Human rights lawyers and this is where most interesting arguments came from with the human rights lawyers interpreting the Constitution to suit their profession and interests. They had the knowhow of the media laws and the Constitution and they went to point out the contradicting laws, that is, AIPPA and POSA. Some human rights lawyers pointed out that AIPPA and POSA are good and were not meant to restrict the media but to protect the state from the press so that the press will not divulge information threatening the security of the state. However some argued that AIPPA and POSA pose a constraint on the media. 4% of the total respondents were those with other qualification for example PHD, these respondents said they were tired of biased political views and would rather not jeopardise their careers by commenting on an academia which will take them nowhere but rather get them demoted.



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The frequency of the use of the electronic media is depicted in Fig 5.4

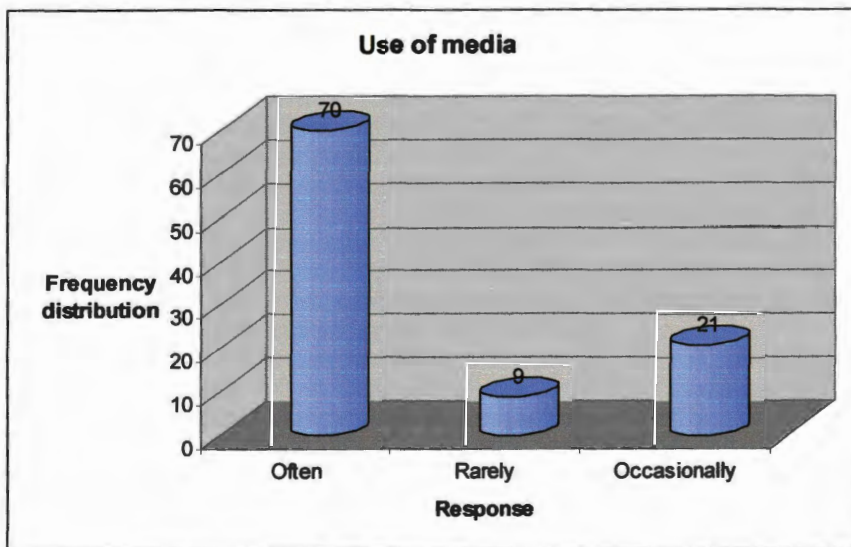
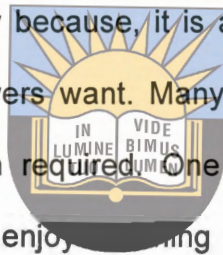


Fig 5.4: Use of Electronic Media

All participants viewed television but their preferences on channels differed invariably for different reasons. There is only one national television channel in Zimbabwe that is

ZBC TV 1 and TV 2 is a local channel available in Harare and these channels are controlled by the state.

In follow-up interviews, the respondents pointed out that they shunned these channels because they were boring, in the sense that they showed repeated programmes as well as state propaganda, therefore they preferred to watch foreign programmes, especially the South African programmes through Digital Satellite Television (DSTV) and Wizard Technology (Wiztech). In the SADC region, Zimbabwe is the only country that uses Wiztech. This is mainly because, it is affordable and free-to-air; principally this is the freedom that the viewers want. Many Zimbabweans prefer Wiztech since there is no monthly subscription required. One just needs to purchase a Wiztech decoder and a satellite dish and enjoy watching nearly all DSTV programmes free. It enables users to watch some European channels such as France 24, without paying.



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The research study established that 70% of the respondents watched television often. On the other hand 21% occasionally watched television; while 9% rarely watched television. In follow up interviews with the respondents it was established that many respondents who did not watch the television were sick and tired of the programmes which were sourced from China and Chimurenga files which showed video clips of the war.

The respondents suggested that they could be motivated to watch television through the following strategies:

- (a) bringing a variety of programmes especially on the Nigerian African movies which were on high demand;
- (b) by carrying surveys with the stakeholders so that they will inform them on their favourite programmes prior to hiring programmes of their choice; and

(c) by not mixing politics with media issues.

The most preferred channel in this study is depicted in Fig 5.5.

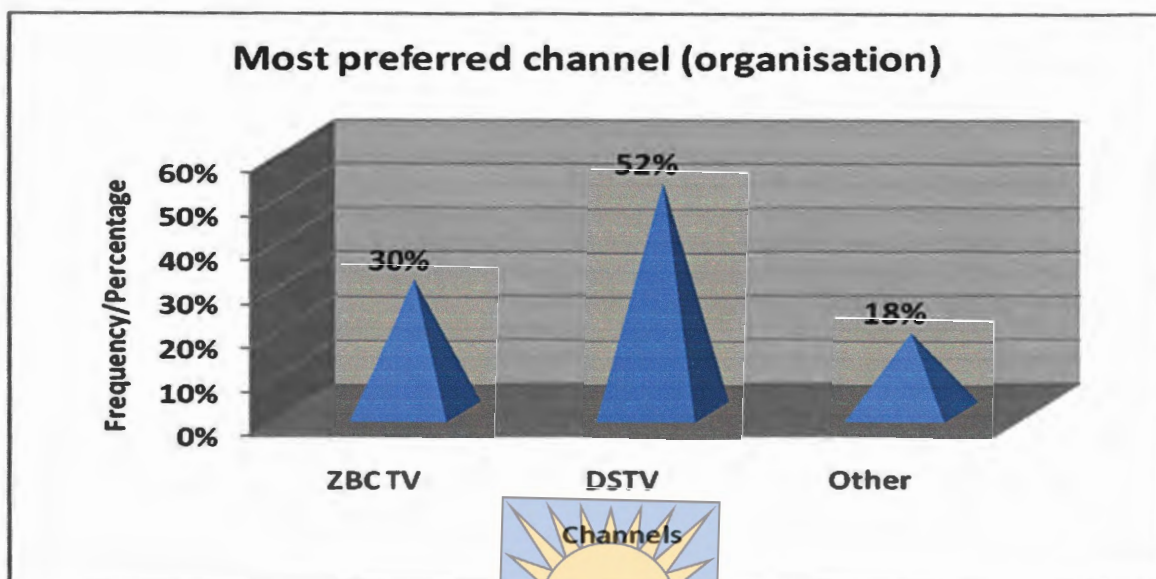


Fig 5.5: Most Preferred Channel

It was also found necessary to examine the participants' attitudes towards different types of television channels. The major assumption was that television is one of the major media forms through which information about media laws and about media freedom and individual freedom rights is communicated. The implication is that interest in a particular channel is an indicator of knowledge of that particular media. Three types of channels from different organisations were examined to find out the preferences of participants: ZBC TV, DSTV and Other channels (Wiztech). 30% of the respondents showed interest in the local channel. However evidence from interviews and observation confirm that those who resent the ZBC TV associate its programmes with the ruling ZANU PF party whose support has waned significantly over the years. As previously shown, the majority of participants who watched television were found within the active and productive age groups: the teenagers, college students and young

professionals with a keen interest in change politics and politics of hope. These were generally against the conservative politics of the old party whose policies they associate with the state.

This was the main reason why the majority of them watched DSTV and other foreign channels which broadcast a wide range of programmes, which the young deemed relevant to the modern world. 52% of the participants preferred these foreign television stations. 18% of the participants preferred other channels for example Wiztech which is also a foreign channel. The implication of this preference pattern on the relationship between participants on one hand and on media laws and freedom on the other hand is clear because the majority of them watched foreign channels. This means they were likely to have little or no knowledge and information on local media laws which is given through the local channel which they hated or avoided.



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However, the democratisation of digital satellite television programmes made the same participants experience various programmes on human rights issues hence they were more likely to be sensitive about any form of human rights abuse including any infringement on their media rights. This meant that whenever an inhibitive media law infringes upon any particular right, its experience would inversely lead to the affected gaining of an awareness of that inhibitive law or policy. The study established that the young (21-30 years) were generally very particular about anything that went against their right to self-determination on issues concerning their freedom and type and quality of entertainment. The young generation was interested in current issues about media laws and freedom of expression.

In follow-up interviews with the respondents, most of them recommended that the ZBC should establish more channels and carry out more surveys interviewing the viewers on

the type of programmes they prefer. Criticism was made of some Chinese films, which may have been out of date. The respondents further recommended that the ZMC should issue more licences to new organisations who want to be in the media field so that viewers will have a variety of channels to select from.

The above findings are in congruent with what was said by Gift Chimankire a Member of Parliament, during an interview with Nqobile Bhebhe in the Zimbabwe Independent press 07 May 2009, that, "There is need for media reforms in Zimbabwe, It's my view that there is a real need for reforms in the media. Zimbabwe has the right to have a free media space".



The in-depth Interviews confirmed that programmes such as *Chimurenga Files*, *Tiriparwendo* and *ZANU PF histories* particularly irked the viewers who were fed up with war memories or stories about the past war. The ZBC policy on 100% local content did not motivate the viewers to watch the local channels instead viewers turned to foreign channels. The study established that the small percentage of participants who still watched ZBC TV were the supporters of ZANU PF. Others were beneficiaries of the controversial land reform programme who selectively view ZBC TV programmes on farming such as *Murimiwanhasi*.

The respondents further recommended that the above files should be archived since they were out-dated. Some of the respondents even pointed out that they were evading ZBC TV and radio licences since they felt that it was a mere waste of financial resources. The respondents reasoned that money can be put to better use such as paying school fees for their children or buying food and other house-hold items.

The study established that ZBC TV was losing a lot of financial resources in paying licensing officers who followed up viewers who were not paying for their licences. However the respondents vowed that they would never waste their money in paying for licences for viewing boring programmes. Some of the respondents even revealed that they were not even afraid of being taken to the court of law to face charges on not paying for their licences.

The print media which was used in this study is depicted in Fig 5.6.

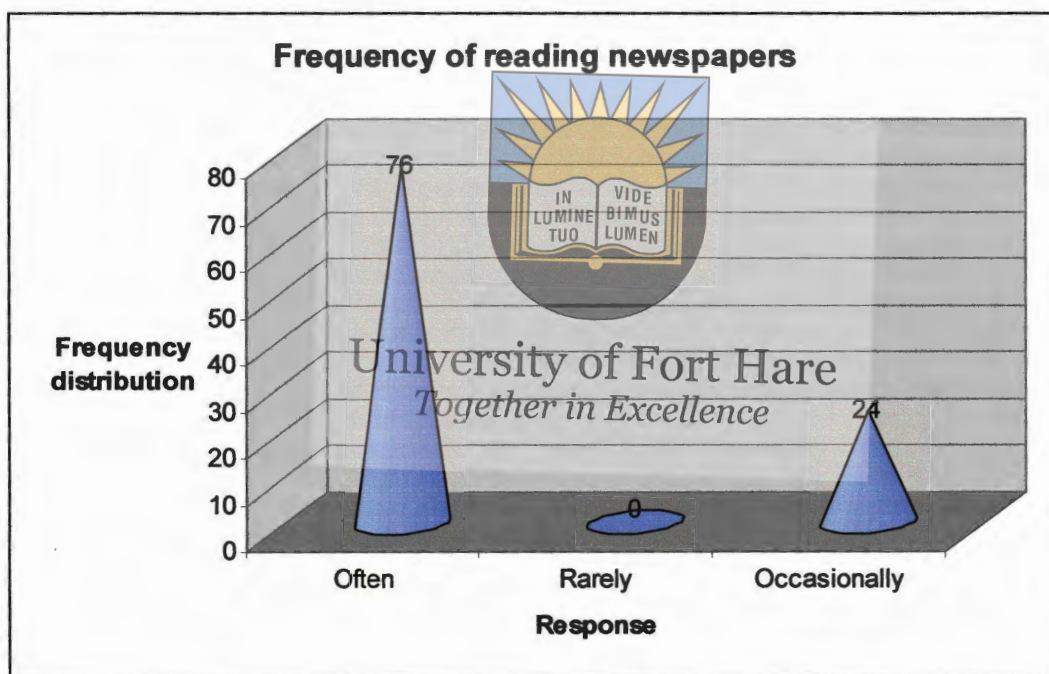


Fig 5.6: Frequency of reading newspapers

Print media in this instance refers specifically to newspapers as sources of information (news). The above Fig 5.6 shows that all the participants read newspapers although some read newspapers less often than others. 76% of the participants read newspapers often and 24% of the participants read newspapers occasionally. However, the researcher noted that the participants read different papers for different reasons. Also notable, was the fact that the papers they read could be categorised broadly as either

public or private according to the politics of media ownership and control; and that preferences were determined by the content. This study established that preferences were determined by ideologies which also determined the content readers look for in the papers. The study also established that all the respondents were more active in print media than electronic media. This can be attributed to the vast distribution of print form media since newspapers can be found throughout the country with distribution outlets vast and widespread.

In follow up interviews with the respondents it was established that the old generation read newspapers less frequently than the young generation since they had other commitments with their income such as paying school fees for their children, paying rentals and transport costs for them and their children. It was unlike the young generation who accessed newspapers from colleges and universities since they were of the school going age. They also pointed that hard economic conditions were some of the reasons which caused them to have less disposable income. They felt that buying a newspaper was a luxury not a necessity.

The respondents felt that they could afford to access newspapers through the following:

- (a) the ZMC should issue licences to media houses which were operating in foreign countries since this increased the price of the newspapers when imported into Zimbabwe because these organisations had to cover operating costs;

The respondents felt that the following were some of the factors which increased the price of the newspapers which were produced in other countries:

- (i) they had to pay import and excise duties for the papers; and

- (ii) they also had to pay money for transport costs and paying clearing agent.

(b) the government should also reduce tariffs for newspapers.

The respondents felt that the government was using customs duties as barriers in importation of foreign newspapers thus impacting on freedom of expression and choice of the type of newspapers to read.

Fig 5.7 below illustrates the distribution of participants by preferences.

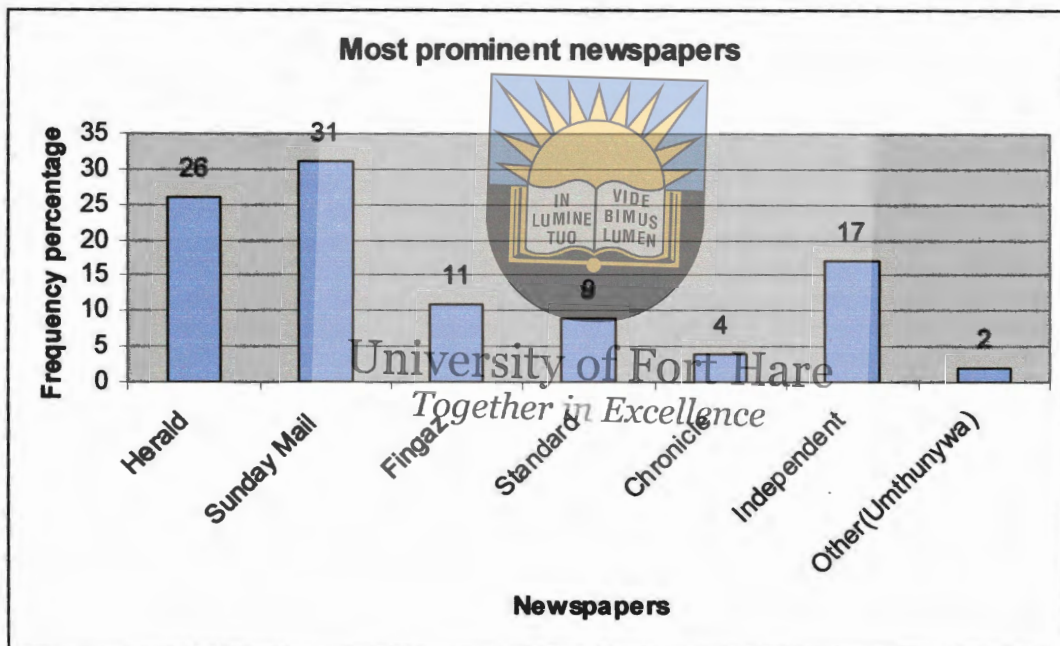


Fig 5.7: Most Prominent Newspapers

Of the newspapers available in Zimbabwe, the Sunday Mail had the most readers with over 31% of the readers. The Herald had 26% of the readers and the Financial Gazette having 11% of the readers. The Independent was read by 17%, the Standard by 9% and the Chronicle by 4% of the readers. All the readers were from Harare. 2% of the readers attested that they read other newspapers which were not listed among the main newspapers in the country. The Herald and The Sunday Mail were found to be popular

with readers because they were readily available in Harare and most people could afford to buy them. They also enjoyed monopoly because they were most popular among the readers and the government is the major shareholder. However there were some newspapers which were deliberately excluded from this study because they only managed to obtain their operating licences recently for example The News Day, The Daily and The Daily News although not yet operating.

Evidence has shown that more participants preferred private or non-government channels in the electronic media yet the print media preferences seemed to point to a different direction. In the follow-up interviews it was established that this contradiction was merely apparent with most of public paper zealots who indicated that they were more interested in the commercial content for example advertising rather than the political content of the public media. The Sunday Mail had more classifieds available to consumers on such issues as job hunting or marketing of products. The rest of the papers were private or independent papers which in reality enjoyed greater popularity but were failing to meet demand. Another perceived fact is that some of them were fairly new and therefore understandably little known. In the follow-up interviews some of the respondents recommended that the ZMC should issue licences to private media houses since it promoted freedom in the media. They also said the media must behave responsibly by not publishing false stories.



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These findings are in tandem with Feltoe's (2003) findings which states that:

"The freedom of speech and media are not absolute and unqualified rights. The print and electronic media are powerful agencies that have the capacity to disseminate information on a wide spread basis. Therefore in exercising this freedom, the media must behave responsibly and must not abuse its freedom to inform the public. They

must take all reasonable steps to try to avoid publishing false information such as defence and public safety or where the information will cause serious harm to the reputation to others”.

The knowledge of the media laws are illustrated in the Fig 5.8.

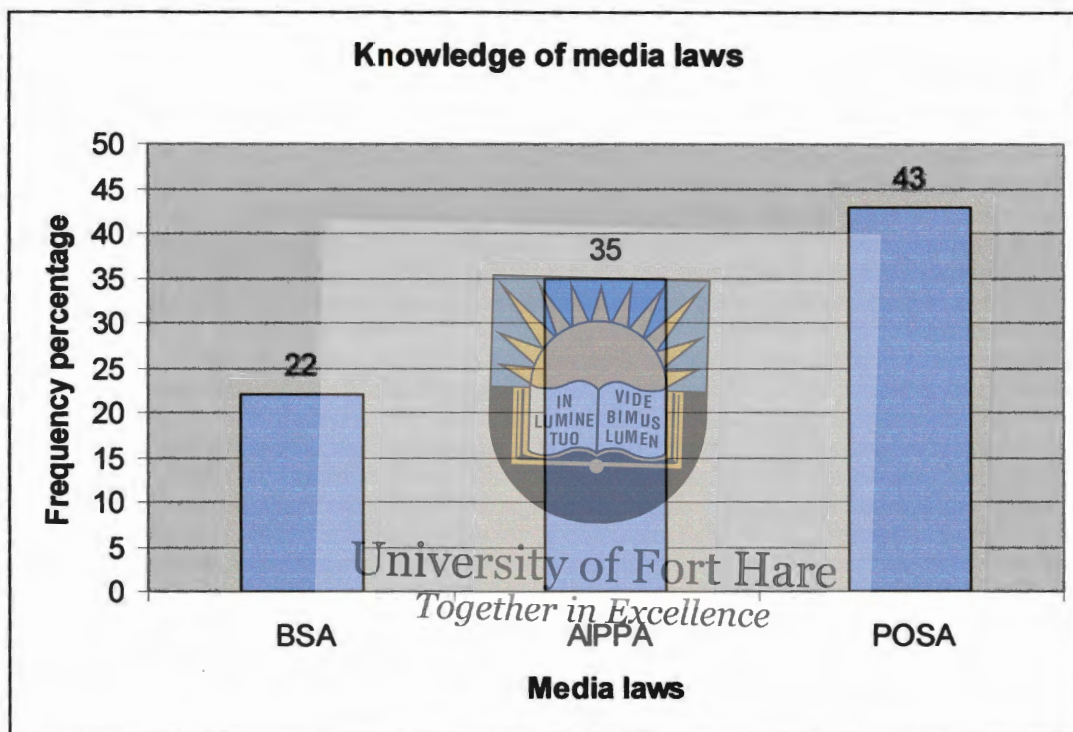
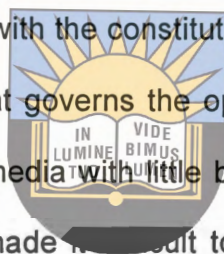


Fig 5.8: Knowledge about media laws in Zimbabwe

In conducting the research study, it was essential to determine if the respondents were aware of the current media laws in Zimbabwe that is, the BSA, POSA and AIPPA. 22% of the respondents were aware of the BSA because the law restricted them to watch one channel which is ZBC TV. 43% of the respondents were also aware of POSA in the sense that it is a law that empowers the police to disrupt gatherings or anyone organising a public gathering. At least a four-day notice should be given to the police before any gathering. The study established that there was a misinterpretation of this law by the police who deliberately or by mistake, interpreted this provision to mean that

the organiser must apply for, and obtain police permission to hold a gathering, whereas the law simply requires notification. This loophole is often exploited by politically biased officers to behave like political bullies.

The study found out that the police relying on this provision have broken up many gatherings. The impact on media freedom is self-evident. It inevitably follows that each time such gatherings were either disbanded or disallowed on vague grounds. The media's role to report on such activities is also interfered with. The study established that this provision is inconsistent with the constitution. 35% of the participants were also aware of the AIPPA as a law that governs the operations and general conduct of the media in a way that leaves the media with little breathing space. The study found out that enforcing on its ambiguity made it difficult to reconcile the freedom of access to information with the freedom to protection and privacy of private information. Freedom of association is thus violated.



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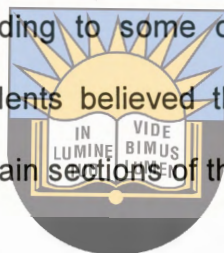
These findings refute what Khupe (2009) said about the media laws, during an interview with Nqobile Bhebhe in the Zimbabwe Independent press 07 May 2009, that although it was a general perception that the existing media laws were oppressive, there were sections that were good, he stated as follows:

“It’s my view that current media laws in Zimbabwe are restrictive, but there are some sections which are good for media operations and people turn a blind eye on them”.

For example POSA’s section 15 (2) prohibits the publication of a statement by a person who knows the statement to be false, or who does not have reasonable grounds for believing the statement to be true. By going beyond defence, public safety, public order

and the country's economic interests, the subsection exceeds the permissible limits set out under section 20(2) of the Constitution.

The three media laws: BSA, AIPPA, and POSA are not the only media-related laws in Zimbabwe but they are the ones that have been more quoted as clashing with freedom of expression than any other, hence the study mainly focused on these three laws. These laws were generally believed to be too general, vague and ambiguous to stand the test of legal litigation according to some of the respondents in the follow-up interviews. Some of the respondents believed that they were sectarian rather than national in that they protected certain sections of the community against others.

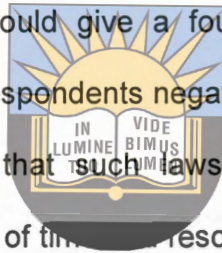


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Some journalists argue that because the interference of these laws, journalists were forced to report with bias towards certain sections privileged for fear of persecution under any of these 'draconian' laws. This notion is further supported the Authoritarian theory which applies in dictatorial societies such as Zimbabwe. It also surfaces in less Authoritarian Societies when the freedom of the press may be presented as conflicting with the interest of the state or society, for example when there is a danger of terrorism or in times of war. However in follow up interviews the respondents were advocating for media freedom, which is supported by Libertarian theory. The libertarian theory is premised on the idea that the individual should be free to publish whatever he or she likes. In the Libertarian system, attacks on the government policies are fully accepted and even encouraged. Moreover, there should be no restrictions on import or export of media messages across the frontiers.

Fig 5.8 indicates familiarity levels of participants with these laws. This can be used to measure the extent of their knowledge of their rights in the context of these media laws. Some of the respondents who were aware of such laws were more likely to understand how they impact on their freedoms.

Some of the respondents who were more informed about media laws expressed misgivings on the media laws such as the POSA which does not allow gatherings for any reason and that people should give a four-day notice to the police before gathering. This according to the respondents negatively impacted on their freedom, thus the respondents recommended that such laws should be repealed. They further recommended that it was a waste of time and resources to amend such laws since they had the same negative effect on people's freedom of expression in the media.



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This recommendation also corresponds with what was said by Gift Chimankire, a Member of Parliament, during an interview with Nqobile Bhebhe in the Zimbabwe Independent press 07 May 2009, that:

“There is need for media reforms in Zimbabwe. It’s my view that there is a real need for reforms in the media.Zimbabwe has the right to have a free media space”.

Fig 5.9 is on opinion on whether Media in Zimbabwe is free to air its views.

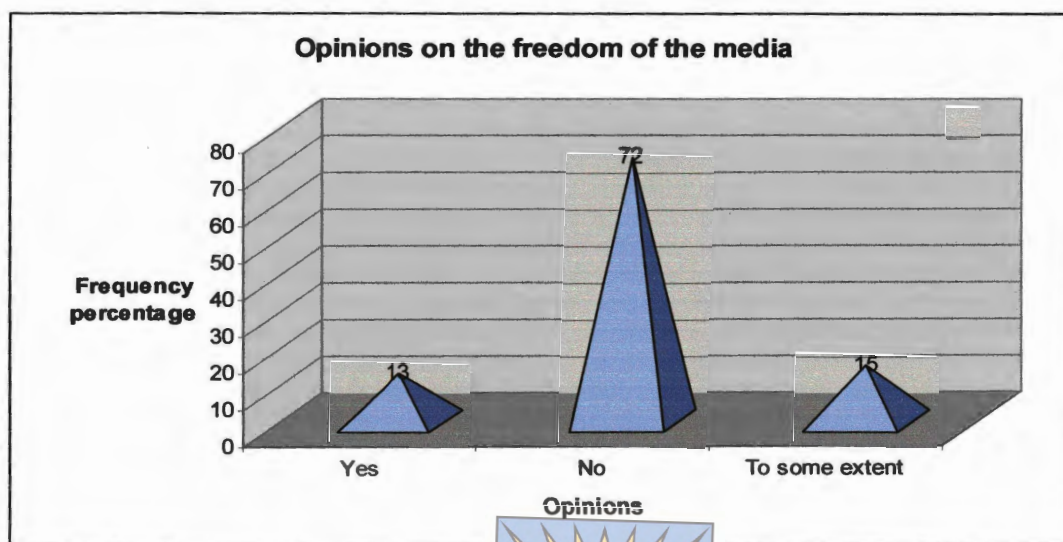


Fig 5.9: Opinion on whether Media in Zimbabwe is free to air its views

Fifteen percent (15%) of the total respondents pointed out that to some extent the media laws were free to those who had access to them, but were also biased on political basis. 72% of the total respondents said that the media was not free to air its views in Zimbabwe, because the laws that were currently in place deprived them of certain information they wanted to hear, especially on political issues. In follow –up interviews the respondents pointed out the fact that some journalists were arrested, some tortured and some killed so as to protect sensitive information from being heard. Those respondents were of the view that the Media in Zimbabwe was not free because those who formulated and implemented the laws were selected on political grounds to suppress opponents in the political sphere.

They further complained that some matters could not be commented on freely and also that the government had failed to repeal repressive legislation such as POSA and the AIPPA and the BSA which were “inimical to the holding of free and fair elections”.

However 13% of the total respondents said that the media is free to air its views because of the availability of different media spheres opposing the state run media. They further pointed that the media is free as was seen during the run off to the elections where all the political parties were given the platform to reach out to the voters through the use of media.

Fig 5.10 sought the views of the respondents on whether journalists reported freely in Zimbabwe.



Fig 5.10: Opinion on whether journalists report freely in Zimbabwe

Eleven percent (11%) of the participants agreed that journalists reported freely in Zimbabwe and 89% of the participants did not agree that, journalists reported freely in Zimbabwe about political issues, because of the repressive media laws that were in place, that is, BSA, AIPPA and POSA. Journalists were not allowed to report on information that is viewed as an attack on government policies. AIPPA's trail of destruction can be traced to its enactment in 2002 and the plethora of cases of arrests, intimidation, harassment and measures of control which immediately followed. These

have been directed at media workers of all sorts - journalists, photographers, vendors and even newsroom drivers - as well as media outlets, in particular independent print media. This left the media with little space to fulfil its public watchdog status as the fourth estate.

In the follow-up interviews, the respondents bitterly complained that the citizens have been deprived of their right to freedom of expression and the right to access information. Thus they recommended that instead of amending such laws, they should be repealed and be matched with global laws that govern the media.

These findings correspond with Khupe who, said "It's my view that current media laws in Zimbabwe are restrictivecalls for self-regulation and reforms were genuine".



Opinion on whether current media laws in Zimbabwe allow for media freedom is depicted in Fig 5.11.

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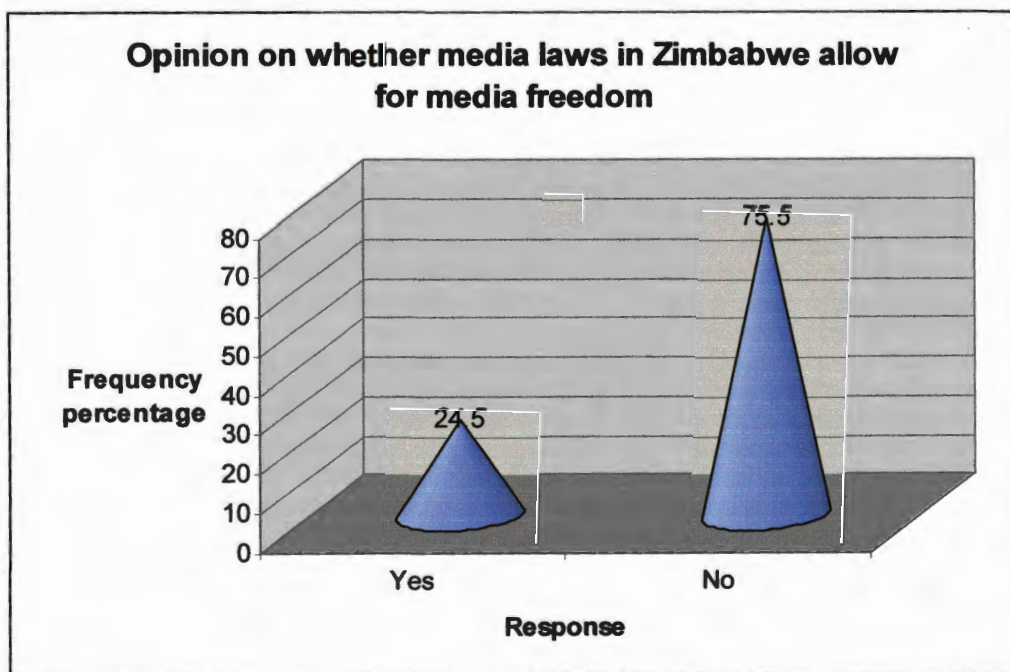


Fig 5.11: Opinion on whether current media laws in Zimbabwe allow for media freedom

Media laws in Zimbabwe have a certain degree of limitation on freedom of expression. These laws contradict section 20 of the Zimbabwean Constitution which 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.”



75.5% of the participants agreed that the media laws in Zimbabwe do not allow for media freedom, because they hinder freedom of expression. The findings indicate that those who said that, the media laws in Zimbabwe do not allow for media freedom were more concerned about media issues. This reflects their participation and interest in media politics. 24.5% of the participants said the media laws in Zimbabwe allow for media freedom and this is due to the fact that most of them were aligned to ZANU PF. The general feeling was that media laws in Zimbabwe did not allow media freedom at all as they were biased because they were crafted to serve political interests of a single party and very few individuals.

The above findings disputes with what the European Commissioner to Zimbabwe Mr Aldo Dell'Araccia said during an interview with Farirai Machivenyika in the Herald of 17 September 2010. Mr Aldo Dell'Araccia acknowledged the existence of a free Press in Zimbabwe. He also said that “I have been in this country for the past eight days and what I can tell you is that there is a Press that is free. “You can read newspapers in this country and have a feeling of independent information”.

5.5. THEMATIC CONTENT ANALYSIS OF INTERVIEWS

Although questionnaires were used to gather data from the participants, it was also imperative to conduct in-depth interviews so as to obtain detailed data. The quantitative data above are mainly a product of dry statistical evidence supplied in the questionnaire; they could not be further verified because of the very nature of questionnaires. To substantiate this information, follow-up in-depth interviews with selected key informants (journalists, editors and human rights lawyers) were conducted.

This part presents the findings which were analysed using thematic content analysis using the question-by-question approach.

Fig 5.12: below illustrates the number of participants who were interviewed.

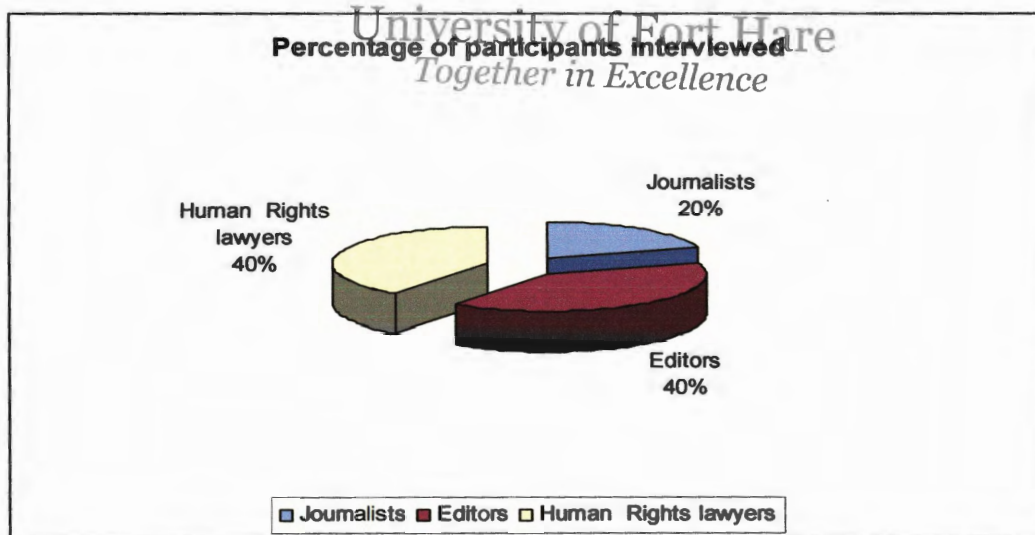


Fig 5.12: shows a total number of participants who were interviewed

Out of a total number of ten participants the researcher wanted to interview, he only managed to interview five; because five of them were tied up because of political reasons and also that they did not trust the researcher thinking that he worked for the

government. The researcher managed to interview 1 journalist from an independent paper which represents 20% of the total respondents, 2 human rights lawyers who work for the human rights association of Zimbabwe which represent 40% of the total respondents and 2 editors of which (1) was from The New Ziana and the other one from The Standard Newspaper which also represents 40% of the total respondents.

5.5.1. IN-DEPTH INTERVIEWS WITH JOURNALISTS, EDITORS AND HUMAN RIGHTS LAWYERS

The data collected from the journalists, editors and human rights lawyers' will be presented following the interview questions.



1. To what extent is current media legislation in Zimbabwe congruent with the constitution?

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This question was meant to find out if the media laws in Zimbabwe are congruent with the constitution. However it was met with mixed feelings. Some of the participants did not acknowledge that the current Constitution allows for freedom of expression because it is silent on the freedom of the press. One Editor argued that, "..... though freedom of expression is guaranteed in the Constitution of Zimbabwe, the legislation governing the media in Zimbabwe is fragmented, that is, some of the provisions of the media laws are found in security legislation." This shows that there is no freedom of expression as observed by the Editor.

One journalist from the private newspaper said "media laws in Zimbabwe cannot be incongruent with the Constitution because the Constitution is void. The Constitution was drafted by concerned parties, that is, the British government, ZANU and ZAPU during

the Lancaster House agreement. Even the current process of media reforms was initiated by talks from the three parties (The ruling ZANU PF, MDC-T and MDC-M) and the same talks centred on the issue of a new Constitution for Zimbabwe.” Therefore the reforms which are taking place are certainly not in congruent with the Constitution and even the current Constitution does not call for freedom of expression.

After questioning the researcher on his understanding of the term “freedom,” one of the human rights lawyers in answering this question said that it is important to state that “Zimbabwe is a constitutional democracy. What it means is that the Constitution is the supreme law of the land and all acts of Parliament are subject to Constitution scrutiny.” Section 3 of the Constitution aptly captures this concept. Legislation governing the media in Zimbabwe is fragmented. Some provisions are found in security legislation and some in properly so called media laws such as APMA Section 20 of the Constitution which provides for media freedom.



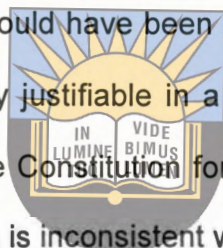
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The comments above from the human rights lawyer are in congruent with what was observed by the journalists who passed the same sentiments about the media legislation in Zimbabwe.

One of the Editors said that:

“Are you here to investigating me, because if you are here for that you are wasting your time”, however after the researcher produced his credentials (student card and the latter from the supervisor) the Editor agreed to talk. He went on to say “As would be expected, the freedom granted is limitless but subject to claw back clauses of the Constitution on the grounds of national security, health morality, etc. what it means

therefore is that the Constitution allows for any law to be enacted which allows for a limitation of Constitutional rights provided such laws are justifiable in a democracy. The question one has to ask therefore is whether POSA and AIPPA are justifiable in an open democracy. POSA has provisions which in my submission on are inconsistent with the Constitution. For example Section 16 which criminalizes criticism of the office of the President in both the private and public capacity. Criticism for any person holding public office should be seen as an occupational hazard and if it was necessary to protect the reputation of the President, that could have been achieved through the common law of defamation. This section is hardly justifiable in a democracy. Sections of AIPPA also appear to be inconsistent with the Constitution for example the provision that provides for registration of Journalists. This is inconsistent with an open democracy in more open democracies”.



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The other human rights lawyer agreed that the current media legislation in Zimbabwe is congruent with the Constitution he supported himself by citing section 20 of the Constitution which 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”.

He went on to say after all those who talks about freedom are not true Zimbabweans but puppets of the West arid the Americans who want to interfere with the laws of our country. Zimbabweans are content with what they have and are free to say their views openly. You cannot talk about those born frees who cannot even interpret the Constitution.

2. What cases come to court and what judgments are given which seem contrary to the constitution?

The researcher asked this question in order to establish the cases that came to court on media regulation and thereof. One of the editors expressed a concern, that "...there has been no single journalist who was arrested for contravening any of the media laws that are currently in place, but those who were arrested were prosecuted on grounds of politics."



"Not again" said one journalist, are you guys following me because I was in court last week, however after a long discussion he also concurred with other interviewees that, "In Zimbabwe there has been no single successful prosecution of a journalist who has been arrested under the current laws that infringe on the media." But there could be psychological harassment on the part of the journalists.

One of the human rights lawyer also acknowledged that, there have not been more cases brought to the Supreme Court which deals specifically with freedom of expression. This can either be attributed to low interest in such matters by legal practitioners, or lack of ingenuity or both. Of the few cases that have been decided one, quickly remembers Irene Mlambo in which the Supreme Court headed by Chief Justice Gubbay (the then chief justice) succinctly captured four basic purposes of freedom of expression namely to:

- (a) help an individual to obtain self-fulfilment;
- (b) assist in the discovery of the truth;
- (c) strengthen the capacity of an individual to participate in decision making; and

(d) provide a mechanism for establishing a reasonable balance between stability and social change.

One may be directed to the *Retrofit vs. State* case in which the Supreme Court struck down provisions of the Broadcasting Act which established ZBC's monopoly. These were commendable precedents which established the broad and purposive interpretation of the Constitution, as part of our Jurisprudence.

However in the case of *ANZ vs. Minister of information*, a new and questionable approach to Constitutional interpretation is adopted by the Chidyausiku bench. Briefly, in that case the ANZ, proprietors of the Daily News had approached the Supreme Court on the basis of section 24 of the Constitution arguing that sections of AIPPA were unconstitutional to the extent that it required media houses and journalists to register under MIC before they could practice or set up the shop. The Applicants had either not sought registration or had been refused. The Supreme Court in unprecedented fashion ruled that, to the extent that Applicants had failed to comply with an Act of Parliament they had approached the court with dirty hands and therefore could not be heard. The court just like the proverbial Pontius Pilate washed its hands and refused to entertain the merits of the application.

This judgement has received trenchant criticism, some merited and some wayward. It has been submitted that this judgement is inconsistent with the Constitution. This is probably one of the merited criticisms of the judgement. For no explicable reason the court gave precedence to technical issues at the expense of constitutional rights. Without an explanation, the time honoured broad and purposive interpretation adopted in either case such as *Irene Mlambo* and Chief Justice Gubbay was thrown out of the

window. One needs to bear in mind that the judgement is not patently wrong, but the approach is questionable, for example the dirty hands principle had already been part of our law.

However, the problem arises if one reads section 3 and 24 of the Constitution, the former provides for the supremacy of the Constitution while the latter provides a procedural right to a party to approach the court where they perceive an Act to be inconsistent with the Constitution. A reading of Section 3 would lead to the conclusion that AIPPA was inconsistent with the Constitution and therefore the ANZ did not need to comply with it. This was the Approach taken by the applicant. It is submitted that this approach was wrong because there is also the presumption of the constitutionality which provides that an Act passed by Parliament is valid until struck by the highest Court. This appears to have been the approach taken by the Court. Though this approach was correct it does not save the court from the criticism that it over-turned binding precedence without offering any explanation. One is forgiven in arguing that the court was guided by political considerations rather than legal wisdom and the dirty hands principle was merely invoked to clothe an inarticulate major political premise. In any event AIPPA was part of government's targeted legislation and the court was merely furthering that purpose.

The other human rights lawyer said that some of the cases that were brought to court were genuine for example a case involving two journalists from the Daily News, Geoffrey Nyarota and Lloyd Mudiwa versus the State case, were the two were alleged to have published a false story about an MDC supporter who was beheaded by ZANU

PF supporters. The story was later proven to be wrong and the paper retracted the story and apologized.

3. What has been the impact of the current media laws in Zimbabwe on how people get the truth and participate in politics?

The question was meant to dig deeper on how people get the truth and participate in politics. All the respondents admitted that the current media in Zimbabwe has led many people to access information, which is partial and inaccurate through the monopolisation of daily newspapers such as the Herald, television and radio stations by the state. The electronic media in the country is being controlled by the state and its main objective is to spread its propaganda therefore, any information that opposes the government cannot be regarded as newsworthy and as a result people will be influenced by one-sided information which might mislead them. People who also dance to the tune of the ruling party through censorship of information.



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A journalist from an independent paper said that, “the media at the present moment is polarised into the state controlled and the private media. The polarisation has affected how people get accurate, truthful and unbiased information. The information that has been reported by the private media has been termed Western ideology. In those circumstances it is difficult to get the truth and participate in politics from an informed position.....but do not try in any way to disclose my name because I will refuse having any dialogue with you.”

A Human rights lawyer also said that, the operation of the media over the years has been heavily impacted on the discovery of the truth and how people participate in politics. Political developments in the past decade have entrenched a media divide

which can conveniently be termed Public versus Private Government versus others, which concurs with what was said by the journalist as mentioned earlier on. The human rights lawyer further pointed out that, the media has heavily been polarised. The government dominated media, comprising of TV and radio where there is permanent monopoly and newspapers such as the Herald, Sunday mail and Chronicle slavishly toe the government line and are instruments of state propaganda reflecting the government's outlook.

The study observed that, no opposition or dissenting opinions were tolerated. In response to this, opposition political formations in cohorts with western powers and big corporate set up private media houses and pirate broadcasting stations both in Zimbabwe and neighbouring countries. These opposing sides have been combated to paint the 'Truth' from their own perspective. The study observed that people read the government owned newspapers more often because the government media was cheaper and easily accessible whilst the private media comes at a cost.

The human rights lawyer further went on to say that:

"there were some parts of the country in which there is a defector embargo on private newspapers. The obvious effect is that people in such areas have only a single market place of ideas. Coincidentally the ZANU PF party has recorded significant victories in such areas during elections. At some point in time reading newspapers from private media houses was synonymous with allegiance to oppositional politics for which one could lose life and or limb. All this has impacted on how people participate in politics. Participating in politics requires making certain defined and informed decisions, and where one is denied access to the truth, the process becomes difficult and at times costly"

4. What do you think needs to be done to ensure that there is freedom of expression?

This question was asked in order to establish what needs to be done in order to ensure that there is freedom of expression. The respondents concurred that the government should remove restrictive laws such as AIPPA, POSA and BSA to give more waves to the private media that can save the interests of the people not the government only. Removal of restrictive laws may also improve accuracy of information, as journalists will be able to report freely without any hindrance from the state.



“Are you not wired?” said one of the journalists from the independent news paper. “I don’t trust people who talk about AIPPA and POSA because you end up victimising us and I do not want to stand a chance of spending a night in your rotten prison cells. However, the truth of the matter, freedom of the press should be enshrined in the Constitution while bad laws such as POSA, AIPPA, Interception of Communication Act and other bad laws should be repealed.” The journalist also adds that, “... of course the government should set up statutory bodies to control the media but this must be done in such a way that the freedoms of individuals are not infringed. In fact government efforts should be corroborated by self-regulatory mechanisms within the media”.

A human rights lawyer also said that,“.... the most important thing would not only be to ensure there is freedom of expression but also freedom after expression.” As Edison Zvobgo a former Minister of Justice once said that, “I might have freedom to express myself but I am not sure if I will remain free after that expression”. The solution is both political and legal. Because any changes to the law which lack political will, will be nothing more than deception. There is an urgent need to depoliticise public institutions

such as ZBC and also develop a culture of human rights in which people are not only free but prepared to ask and fight for their rights and also to be accountable. Freedom should always be accompanied by responsibility.

The human rights lawyer also adds that “On the legal front there is need to remove government monopoly on the electronic and print media and ensure that mechanisms for registration of private players are simple, transparent and democratic. Further, such private players are also afforded the protection of the law”.



In the follow-up interviews the human rights lawyer recommended that self-regulation of journalists is encouraged just like other professionals like lawyers and accountants.

She further recommended that:

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“The government desires registration to keep the media in check as there is always the constant threats of either deregistration or refusal to entertain applications of perceived government opponents and this is inconsistent with open democracy. Further AIPPA ensures that access to information comes at a high premium; it is possible that a party might wait for up to ninety days before accessing information from the public bodies and in essence one would have been denied his right within a reasonable time and this provision is unconstitutional”.

5. To what extent has the media in Zimbabwe been constrained?

When asked the extent to which the media in Zimbabwe has been constrained, one of the journalists agreed that the media in Zimbabwe is to a great extent constrained considering that there were few newspapers, television, radio stations operating at the moment. The situation was leaving some of the important issues especially from the

private sector without being fully addressed. More so, journalists were still operating without freedom of expression due to restrictive laws in the country. Airwaves were also inadequate which limits the remote areas to access information due to poor transmission.

A number of interviewees cited the fact that, the media in Zimbabwe has been constrained by the laws that have hindered freedom of expression. They also said the media has also been hindered by lack of investment as no new investors and new players had been allowed in the country.



6. What impact does this have on people's development and general freedom?

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Some of the respondents concurred that people especially in the rural areas have little knowledge about what was happening in the country. Some people may access stale news, which might end up misleading them after new developments would have taken place.

One of the journalists said that: "I think it has a lot of impact on people's development and impacts negatively on general freedom as press freedom adds up to any other general freedoms that the citizens of any country can enjoy. Societies develop through sharing information and with stifled freedoms nations do not develop as there will be no exchanges of ideas."

A human rights lawyer said that:

As Pandey in Constitutional law of India (p118) aptly captures that some of the

purposes of freedom of expression is self-fulfilment and strengthens the capacity of an individual to participate in decision making. People generally need a favourable environment to express themselves. Through this people can influence the market place of ideas and more importantly hold accountable those mandated to run public office. This should then result in a free democratic dispensation. It must follow therefore that where there is no free press people's growth is stunted. The press will be limited in its role as the fourth estate as those holding public office may behave as they so wish with impunity as noted by Pandey.



The other human rights lawyer said that, “most the people who complained are urban dwellers who take politics for granted and do not understand the roots of politics. They think that if you join a certain party you are deemed to benefit economically, not knowing that people from the rural areas are benefitting from developmental projects. For example people in the rural areas were given cattle and agriculture inputs for free to better their lives”.

5.6. CONCLUSION

Data was presented and analysed in this chapter, numerical and graphical methods to highlight the findings were used. The data provided by respondents indicated that the media in Zimbabwe is not free to air out its views especially on political issues and also that the media laws that are currently in place are not congruent with the Constitution and Global trends. All the participants acknowledged that the media is controlled by the government and this resulted in journalists reporting on information which is not true or biased for fear of being victimised by the government.

They also argue that the media should be an agency of representation, by enabling various social groups to express alternative viewpoints. But the media encountered several problems in their attempt to fulfill the democratic goals. Many perceived that restrictive media legislation that affects media attempts to gather and disseminate information inhibits democratisation. The study demonstrated the use of press regulations as a governing instrument for successive governments in Zimbabwe and assesses the prospects for reform. The next chapter is on summary, conclusion and recommendations.



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CHAPTER SIX

SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.0. INTRODUCTION

This chapter concludes this study by way of summary, conclusion and recommendations. The issue of freedom of expression in Zimbabwe and the world over has been very controversial, especially so in the developing countries where governments are using the media to gain political mileage. The study focused on AIPPA, POSA and BSA since these media laws have been used to suppress the citizens' freedom of expression.



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These laws have also been used to harass media institutions, muzzle the people's freedom of expression and to close some private media houses such as The African Tribune Newspapers, Capital Radio and The Daily News (banned in 2003, only to get an operating licence in 2011). The BSA has been delaying in the issuance of licences to private media houses. Many journalists have also been arrested for violating AIPPA, BSA and POSA; these laws have instilled a lot of fear in many journalists who have ended up publishing biased news in favour of the government. This has made many readers and viewers to lose faith and trust in these journalists, hence many people have turned to foreign channels. Consequently the main recommendation from the respondents was to repeal these laws in order to accord people freedom of expression.

6.1 SUMMARY

There are several media laws which have negatively impacted on the freedom of expression on the citizens of Zimbabwe. One such law is AIPPA which protects access to information and privacy. Journalists are supposed to register before practising while media houses need to apply for a licence before operating. This AIPPA was being used deliberately by the government to delay the registration process for media personnel and houses whilst investigating the political affiliation of the media houses' board members. If a journalist is charged for publishing a story which reports negatively about the government, AIPPA was applied to harass, arrest or threaten journalists. AIPPA has also been used by government officials to withhold valuable information for a period of thirty days which is a major disadvantage to the public, who might need that information. This is also a violation of their right of freedom of expression and access to information.

Secondly, POSA is another law which is widely viewed as being repressive to the citizens' freedom of expression. The law stipulates that for any public gatherings to be legal, people have to apply to the Zimbabwe Republic Police (ZRP) to get clearance and permission to assemble. This means they have to give a four day notice, thus negatively impacting on people's freedom as citizens of Zimbabwe.

The BSA has also been used to deny operating licences to non-Zimbabweans and other private operators such as Capital Radio. This law is applied to any broadcaster suspected to be publishing any information against the government and its senior officials thereby depriving the citizens of Zimbabwe of their right to freedom of expression and to access any radio station of their choice. This forced many

organisations in the media to operate outside Zimbabwe for example Voice of the People, SW Radio Africa, Studio 7 and Community Radio Zimbabwe.

Thus these laws have been used as weapons or tools to suppress all citizens of their freedom of expression; hence most people are still afraid to utter anything they think is not favourable to the government.

6.2. CONCLUSION

This study sought to examine the constitutional congruity of the current media legislation in Zimbabwe to global trends. This discussion was underpinned by three theories; that is the Authoritarian, the Libertarian and the Social Responsibility Theory.

The majority of the respondents' comments were in line with the Authoritarian Theory which they say undermine freedom of the media in Zimbabwe. These respondents advocated for a libertarian system where the media is free to express public views without fear, as well as playing its role in disseminating the truth and checking the government and the social responsibility rationale for informed public debate.

The post-independence regime at each stage of the political evolution of Zimbabwe kept most of the media regulations, including Rhodesian colonial media legislations to serve their vested interests. The historical review presented here strongly supports that a free media is a prerequisite for the development of democratic institutions. However, it is arguable that a free media is difficult to achieve in an atmosphere of strong ideological differences as currently obtains among the inclusive government parties.



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This study has made an attempt to examine the intolerant political culture and partisan role of the media and to understand the media-government relationship in Zimbabwe. Specifically, an attempt has been made to assess the successes and failures of the government in terms of political pledges to reform, repeal or amend the regulations that limit the freedom of the media, including journalists' access to government information. The objective has been to promote reform in existing media regulations and emphasis has also been placed on the political commitment and consensus among political actors to get the reform process done.



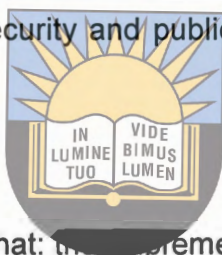
It is evident from the findings that the media institutions in Zimbabwe are fragile in the absence of democratic political culture. Respondents showed considerable skepticism about significant media reforms without the political will. The lack of any consensual model of democracy and the political intolerance reinforce this fragility. Freedom of the media is being affected by the presence of hostile politics, media regulations and laws. Since partisan conflict is intense, it is therefore difficult for the partisan media to be effective and objective in expressing public opinion.

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The study established that AIPPA has been undermining freedom of expression in Zimbabwe by promoting excessive government control over the independent media as well as intimidation of media personnel. Dozens of journalists suffered direct legal harassment, mostly in the form of short-term detentions, thereby impacting negatively on the profession as a whole. The closing down of the space for freedom of expression in Zimbabwe is part of a clear strategy by government to continue to muzzle the press

and harass its personnel. The whole framework of repressive legislation, that is the BSA, POSA and AIPPA has been carefully crafted to achieve precisely these ends.

The study revealed that, as a matter of law, AIPPA, along with related legislation such as POSA and the BSA, are quite clearly in serious breach of the right to freedom of expression as guaranteed under international law in a number of key ways. These laws significantly fail to strike a balance between the legitimate interests of the State, for example in preserving national security and public order, and the rights to freedom of expression and democracy.



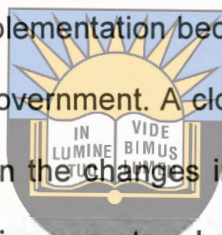
It was also revealed in this study that: the Supreme Court of Zimbabwe appears to have largely reneged on its obligation to uphold the Constitution, producing judgements that clearly flout established national and global principles of the right to freedom of expression. Consequently, such shortcomings in the country's justice delivery system have led to very serious breaches of this right in practice to go unchecked.

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The study also established that, the Zimbabwe Media Commission (ZMC) granted licences to four new media houses. The newly licenced publishers were Cable News Agency, which operates a news agency, Berimark Enterprises, which publishes a monthly entertainment and celebrity magazine called Zimceleb, Feyjay Investments which publish a weekly sports magazine called Sport/24 and African Open Media Initiative that runs another news agency. The registration comes two months after the ZMC issued licences to three daily newspapers, that is, The News Day, The Daily News and The Daily. Though the licencing of the new media houses was a step in the right

direction, there is not much to celebrate as long as the repressive media laws are in effect. More so, the ZMC which is supposed to fairly and independently regulate media operations comprises of political appointees who are there to serve the interest or ideologies of their parties at the expense of the global media ethics.

The study also recognized that there are current media reforms that are being mooted by the government. However, as good as it may seem, these reforms are not holistic and credible even before their implementation because of continuous political bickering amongst parties in the inclusive government. A closer look at the changes in the media sector shows a huge gap between the changes in print as compared to broadcasting. Potential private radio and television operators have been waiting for many years and there seems to be no light at the end of the tunnel concerning any concessions especially by ZANU PF with regard to freeing the electronic broadcasting sector.



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6.3 RECOMMENDATIONS TO THE GOVERNMENT OF ZIMBABWE

This study, recommends the following:

(a) The Government of Zimbabwe is advised to repeal AIPPA as well as POSA and the BSA. Repressive laws like these have no place in a democratic country since they seriously limit the freedom of expression, undermine participation, good governance and accountability, as well as the exposure of other human rights abuses.

(b) The government should urgently institute comprehensive and broad media reforms that will facilitate the establishment of a transparent and democratic media regulating

mechanism to foster and protect diverse media and the free flow of information and access to alternative sources of information.

(c) The Zimbabwe Media Commission should be encouraged to be independent in its execution of duties and be allowed to make apolitical appointments.

(d) The government is advised to give licences to new players in the broadcasting industry rather than to maintain the monopoly of ZBC as well as media houses in order for the society to have a wider choice unlike just listening to propaganda of the state.



(e) Self-regulating media authority within a democratic media framework compatible with international instruments on freedom of expression is the only obligatory route to achieving a genuinely free and diverse media environment. Zimbabwe must follow in the footsteps of South Africa, Botswana and also Mozambique where media is self-regulated and there is no government interference.

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(f) There is need to have an investor friendly environment to boost the growth of the industry.

(g) The Government of Zimbabwe is advised to initiate a broad, open consultative process to develop legislation giving effect to the right to information which is consistent with international standards and best practices. This should include the establishment of an independent media monitoring body. The Government of Zimbabwe is also advised to undertake a comprehensive program of public education on the right to information

once the legislation has been passed. This entails reviewing all laws and official practices which reflect freedom of expression and ensure that they are consistent with international constitutional standards.

6.3.1 RECOMMENDATIONS TO CIVIC SOCIETY

Civic actors are advised to:

- (a) Actively lobby legislators and other decision-makers to promote the adoption of right to information legislation.
- (b) Integrate the right to information as an element of corporate governance even in their varied organisations.



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6.4 AREAS FOR FURTHER STUDY *Together in Excellence*

The research can be extended to a wide geographical area in order to increase the representativeness of the sample to the population. A broader study is required in order to improve the validity of the results obtained. Though the research was concerned with examining the constitutional and global congruity of the current media legislation in Zimbabwe, there is an opportunity of carrying out research to establish the policies that govern the media laws so as to craft laws which promote freedom of expression in Zimbabwe.

REFERENCES

- Auret, M. & Jackson, G. 2007. *Policies and Legalities Surrounding Capital Radio*, Harare: Zimbabwe.
- Babbie, E. 2004. *The Practice of Social Research*, 10th edition. Belmont: Wadsworth Publishing Company.
- Boyd-barret O and Newbold c ed. (1995) *Approaches to media: A Reader* Arnold, London.
- Cant, M., Gerber, C., Nel, D. & Kotze, A. (2005). *Marketing Research*. 2nded. Claremount: New Africa books.
- Chari, T.J., Bvuma, T.S & Maputsani, C. 2003. *Media and Communication in Zimbabwe and Africa*. Harare, Zimbabwe Open University.
- Chari, T.J. Media Analysis: Balance and objectivity: Are they illusory goals? Sunday Mirror 22 July 2006:9.
- Chirume, C. 2005. *The Politics of Media Regulation: A study of the origins of AIPPA 2001*. An unpublished Masters Dissertation on the Partial Fulfilment of MSSC in Communication, University of Zimbabwe.
- Chiumbu, S. 2002. *Market- Driven media VS State in Southern Africa*. Zimbabwe as a case study. Harare, University of Zimbabwe.
- Cooper, D. R. & Schindler, P. S. (2003). *Business Research Methods*, 8th eds. Boston: Irwin. McGraw-Hill, New York.
- Devereux, E. 2007. *Understanding the Media*. London: SAGE Publications.
- De Vos, A.S., Strydom, H., Fouche, C.B. & Delport, C.S.L. 2005. *Research at grassroots: for the social sciences and human service professions*, 3rd edition. Pretoria: Van Schaik Publishers.
- Denscombe, M. 2007. *The good research guide: for small-scale social research project*, 3rd edition. Maidenhead: Open University Press.
- Feltoe, G. 2003. *A Guide to Media Law in Zimbabwe*. Harare: Legal Publications Unit of the Legal Resources Foundations.
- Frederiske, J. 1990. *None but Ourselves: Masses vs. Media in the making of Zimbabwe* Harare: Oral Traditions Association of Zimbabwe with Anvil Press.
- Goddard, W. & Melville, S. 2001. *Research Methodology: An Introduction*, 2nd edition. Lansdowne: Jutta and Company.



Hair, J., Wolfinbarger, M., Ortinau, D.J. & Bush, R.P. (2008). *Essentials of Marketing Research*. New York: McGraw-Hill Companies, Inc.

Herbst, D.A.S. 1990. *South Africa's Transition over Ten Years*. Randsburg: Southern African Forum.

Kaitira Kanji: Programme Manager- MISA in a paper presented at a workshop: *Media and Corruption: Raising the Bar*, May 29 –June 3, 2005 Park Plaza Hotel, Sandton, South Africa.

Leedy, J. 1997. *Practical Research Planning and Design*, 6th edition, Upper, Saddle River: Prentice Hall.

Leung, W.C. (2001). *How to conduct a survey. Student guide*; University of East Anglia, 2001. 143-145.

Mazula, R., Hussein, T., Mararike, C., Deketeke, P & Mandigora T. 2003. "National Survey on Broadcasting in Zimbabwe: A Report on a Survey carried out by the Broadcasting Authority of Zimbabwe". Harare: BAZ.

Melber, H (e.d). 2004 *Media, Public Discourse and Political contestation in Zimbabwe: The Nordic African Institute*.

McQuail, D 1987 (second edition) *Mass Communication Theory: An introduction*: Sage publications. London.

Moyo, D. 2005. *The "Independent Press and the Fight for Democracy in Zimbabwe: An Analysis of the Banned Daily News*: Harare, Collage press

Mudzengi, E., Gunduza, M.C & Nyakupinda, D.2003. *Radio and Television studies*. Harare, the Zimbabwe Open University.

Neuman, W.L. 2006. *Social Research Methods: Qualitative and Quantitative Approach*, 6th edition. Boston: Allyn and Bacon.

Ndlela, N.2007 *.Broadcasting Reforms in Southern Africa: Continuity and Change in the Era of Globalisation* .Available at: http://reference.kfupm.edu.sa/content/b/r/broadcasting_reforms_in_southern_africa__77599.pdf [Accessed: 28 October 2010].

Pottie, d. 2000.Zimbabwe: *Constitutional Referendum in Zimbabwe*. Harare, Zimbabwe.

Quarmyne, A.T., Ansah, K., Apenteng, B., Asante, K.B & Gordon, D. 2000.Ghana National Media Policy: Available at: <http://www.ict.gov.gh/pdf/NMC-MEDIA-POLICY.pdf> [Accessed: 28 October 2010].

Resolution 1993/45 5 March 1993 Report of the Special Rapporteur, Promotion and Protection of the right to freedom of opinion and expression, UN DOC E/CN.4/1995/31,DECEMBER1995 para 35.

Roelofse, K. 1996. *The history of the South African press*, an introduction to communication- course book5: Journalism, press and radio studies, edited by L.M. Oosthuizen Kenwyn: Juta: 66-118.

Sieber, J. E. 1998. *Planning ethically responsible research*. Handbook of applied social research. Thousand Oaks, CA: Sage Publications.

Steinberg, D.M. 2004. *The Social Work Student's Research Handbook*. New York: Haworth Social Work Practice Press.

Sumbulu, A. 2005. Writing your Research Project- Notes or SWK 425/512. University of Fort Hare, Unpublished: page 24.

Tellis, W. 1997a, 1997b. Application of a case study methodology: Available at: <http://www.nova.edu.ssss/qR/QR3/tellis2.html> [Accessed: 15 June 2009].

Thomas. & Nelson, J. 2001. *Research methods in physical activity*. Champaign: Human Kinetics.

The Zimbabwe Media Monitoring Project 2006-2007: Media Sustainability index (MSI) Africa: MISA, Zimbabwe. University of Fort Hare

Together in Excellence

Welman, E, Kruger, T. and Mitchell, R. (2006). *Research Methodology*. (3rded). Cape Town: Oxford University Press South Africa.

Weza, S. 2001. *Zimbabwean media in crisis: issues and challenges* Harare: Collage Press.

Wimmer & Dominick, 2000. *Mass Media Research*. An Introduction, 6th edition. Belmont: Wadsworth.

Windrich, E.1981. *The Mass Media in the struggle for Zimbabwe. Censorship and Propaganda under Rhodesia Front Rule*. Gweru: Mambo Press.

ONLINE PAPERS AND ARTICLES REFERRED TO.

African Charter on Human and Peoples' Rights, 1981: Available at: http://www.achpr.org/english/info/charter_en.html [Accessed: 21 May 2009].

African Media Barometer South Africa 2010 [Available at: <http://fesmedia.org/events/detail/datum/2010/08/06/amb-south-africa-2010-1/> [Accessed: 30 October 2010].

Daily News in Exile 2007: Available at: <http://www.zimbabwejournalists.com/uploaddocs/Daily News in Exile 2007 for websites.pdf> [Accessed: 23 August 2010].

Feltoe G. Professor, Crushing the Independent Press in Zimbabwe.

Hondora T, Whose hands are dirty: The Daily News?

Mandinde, W.2005. *Media Laws in Zimbabwe*: Available at: http://www.kubatana.net/docs/media/misaz_media_laws_051130.pdf [Accessed: 30 July 2009].

MISA-Zimbabwe, Highlights of the ANZ legal saga.

MISA, 2001. *Together in Excellence: Assessment, challenges and prospects* Windhoek, Namibia: Available at: <http://africa.ifj.org/assets/docs/218/116/4eaacda-5082674.pdf> [Accessed: 28 October 2010].

MISA- Zimbabwe 2009. *Repressive Media Law (AIPPA)*: Available at: <http://www.misa.org/cgi-bin/viewnews.cgi?category=2&id=1137054440> [Accessed: 30 October 2010].

Saki O, Independent Voices Gagged! Summary of ANZ Case and its impact on Human Rights in Zimbabwe.

The daily news in exile 2007: Available at: <http://www.zimbabwejournalists.com/uploaddocs/Daily News in Exile 2007 for websites.pdf> [Accessed: 08 September 2010].

The Zimbabwe independent online .2009: Available at: <http://www.thezimbabweindependent.com/index.php/local/22550-media-industry-needs-self-regulation> [Accessed: 06 June 2009].

The Universal Declaration of Human Rights. 1948. Available at: <http://www.cirp.org/library/ethics/UN-human/> [Accessed: 27 July 2010].

The Zimbabwe Times. 2009. BBC, CNN now free to cover Zimbabwe: Available at: <http://www.thezimbabwetimes.com/?p=20358> [Accessed: 28 October 2009].



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Appendix I



University of Fort Hare *Together in Excellence*

Questionnaire for the University of Zimbabwe Media Students, Media Analysts and the Polytechnic Media Students

I am a Masters student in Communication Studies at the University of Fort Hare in South Africa. I am carrying out a study aimed at examining the extent to which current media legislation in Zimbabwe is informed by the constitution. I request your assistance in answering some questions which I think will assist me in reaching the objectives of my study. If you take part in this survey, you are assured that this is a purely academic research that regards your anonymity as an issue of greatest priority. Results from this study will only be used for academic purposes and as a result, you are therefore requested to suppress any politically motivated sentiments when you supply information. If time allows, I will be free to share with you the results of this study.

SECTION A

Personal information (Please tick the most appropriate box with an x)

1. Gender:

Male	<input type="checkbox"/>	Female	<input type="checkbox"/>
------	--------------------------	--------	--------------------------

2. Age:

Below 21	<input type="checkbox"/>	22 – 30	<input type="checkbox"/>	31 – 40	<input type="checkbox"/>	41 – 50	<input type="checkbox"/>	Over 50	<input type="checkbox"/>
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3. Marital status:

Single		Married	
--------	--	---------	--

4. Educational Qualification:

Certificate	
Higher National Diploma	
1 st Degree	
Masters	
PhD	
Professor	



5. Profession

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SECTION B

USE OF MEDIA

Questions related to Electronic Media (Television)

6. Do you watch television?

Yes

No

7. How often do you watch television?

Often

Rarely

Occasionally

8. Which channel (organisation) do you watch?

ZBC TV

DSTV

OTHER (specify)

Give reasons for the choice above

.....

.....

SECTION C



Questions related to print Media (Newspapers)

9. Do you read newspapers?

Yes

No

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10. How often do you read newspapers?

Often

Rarely

Occasionally

11. Which newspapers are your favourites?

Herald

Sunday mail

Financial Gazette

Standard

Chronicle

Independent

Other (specify)

Give reason for your choice

.....

.....

.....

SECTION D

MEDIA LAWS IN ZIMBABWE

12. Are you aware of the following media law in Zimbabwe?

Broadcasting Services Act (BSA)

Public Order and Security Act (POSA)

Access to Information and Protection of Privacy Act (AIPPA)



11. What impact do the media laws have on the freedom of expression? Comment
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.....

.....

13. Taking into consideration your answers to number eleven above, do you think the media in Zimbabwe is free to air out its views? Comment

.....

.....

14. Do you consider the media in Zimbabwe to be?

Authoritarian

Libertarian

15. Do you think journalists report freely in Zimbabwe?

Agree

Disagree

Give a reason for your choice

.....
.....

16. In your opinion do you think the media laws in Zimbabwe allows for media freedom?

.....
.....
.....

17. What do you think should be done for the media in Zimbabwe to be free from current media laws?



.....
.....

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18. What policy recommendations can you give to improve media laws in Zimbabwe?

.....
.....
.....

19. What other issues need to be addressed?

.....
.....
.....

Thank you very much for your participation in this study!

Your time and opinions are greatly appreciated

Appendix II



University of Fort Hare *Together in Excellence*

In-depth interview guide for Editors, Journalists and Human rights lawyers

I am a Masters student in Communication Studies at the University of Fort Hare in South Africa. I am carrying out a study aimed at examining the extent to which current media legislation in Zimbabwe is informed by the constitution. I request your assistance in answering some questions, which I think will assist me in reaching the objectives of my study. If you take part in this interview, you are assured that this is a purely academic research that regards your anonymity as an issue of greatest priority. Results from this study will only be used for academic purposes and as a result, you are therefore requested to suppress any politically motivated sentiments when you supply information. If time allows, I will be free to share with you the results of this study.

1. To what extent is current media legislation in Zimbabwe congruent with the constitution?
2. What cases come to court, and what judgments are given which seem contrary to the constitution?
3. What has been the impact of the current media laws in Zimbabwe on how people get the truth and participate in politics?
4. What do you think needs to be done to ensure that there is freedom of expression?
5. To what extent has the media in Zimbabwe been constrained?
6. What impact does this have on people's development and general freedom?
7. What feasible policy recommendations?

Appendix III

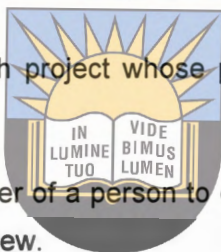
If possible, our organisation would like to come back to this area once we have completed our study to inform you and your community of what the results are and discuss our findings and proposals around the research and what this means for people in this area.

CONSENT

I hereby agree to participate in research regarding..... I understand that I am participating freely and without being forced in any way to do so. I also understand that I can stop this interview at any point should I not want to continue and that this decision will not in any way affect me negatively.

I understand that this is a research project whose purpose is not necessarily to benefit me personally.

I have received the telephone number of a person to contact should I need to speak about any issues which may arise in this interview.



I understand that this consent form will not be linked to the questionnaire, and that my answers will remain confidential.

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I understand that if at all possible, feedback will be given to my community on the results of the completed research.

.....

Signature of participant

Date.....

I hereby agree to the tape recording of my participation in the study

.....

Signature of participant

Date.....

Appendix IV

Analysis and Commentary on the SADC Protocol on Culture, Information and Sport, 2001.

ARTICLE 20: Freedom of the Media

This article states that “State Parties shall take necessary measures to ensure the development of media that are editorially independent and conscious of their obligations to the public and greater society. “ This shows the importance of freedom in the media which this study seeks to prove if there is freedom of expression in the Zimbabwean Media.

ARTICLE 22: SADC Accreditation



State Parties shall establish a regionally and internationally recognised SADC accreditation system or procedure for media practitioners with specific guidelines in order to facilitate the work of such personnel in the rest of the world.

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The participants in the United Nations/United Nations Educational, Scientific and Cultural Organisation Seminar on Promoting an Independent and Pluralistic African Press, held in Windhoek, Namibia, from 29 April to 3 May 1991, Recalling the Universal Declaration of Human Rights, Recalling General Assembly resolution 59(I) of 14 December 1946 stating that freedom of information is a fundamental human right, and General Assembly resolution 45/76 A of 11 December 1990 on information in service of humanity, Recalling resolution 25C/104 of the General Conference of UNESCO of 1989 in which the main focus is the promotion of Noting with appreciation the statements made by the United Nations Under-Secretary-General for Public Information and the Assistant Director-General for Communication, Information and Informatics of UNESCO.

Declare that:

1. *Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation and for economic development.*

2. *By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.*

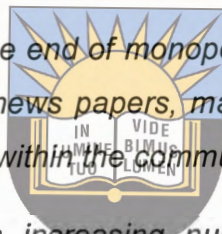
3. *By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of news papers, magazines and periodicals reflecting the widest possible range of opinion within the community.*

4. *The welcome changes that an increasing number of African States are now undergoing towards multi-party democracies provide the climate in which an independent and pluralistic press can emerge.*

5. *The world-wide trend towards democracy and freedom of information and expression is a fundamental contribution to the fulfilment of human aspirations.*

6. *In Africa today, despite the positive developments in some countries, in many countries journalists, editors and publishers are victims of repression—they are murdered, arrested, detained and censored, and are restricted by economic and political pressures such as restrictions on newsprint, licensing systems which restrict the opportunity to publish, visa restrictions which prevent the free movement of journalists, restrictions on the exchange of news and information, and limitations on the circulation of newspapers within countries and across national borders. In some countries, one-party States control the totality of information.*

7. *Today, at least 17 journalists, editors or publishers are in African prisons, and 48 African journalists were killed in the exercise of their profession between 1969 and 1990.*

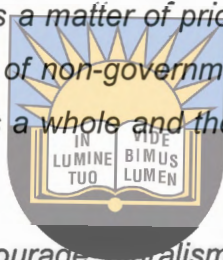


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8. *The General Assembly of the United Nations should include in the agenda of its next session an item on the declaration of censorship as a grave violation of human rights falling within the purview of the Commission on Human Rights.*

9. *African States should be encouraged to provide constitutional guarantees of freedom of the press and freedom of association.*

10. *To encourage and consolidate the positive changes taking place in Africa, and to counter the negative ones, the international community - specifically international organizations (governmental as well as non-governmental), development agencies and professional associations - should as a matter of priority direct funding support towards the development and establishment of non-governmental newspapers, magazines and periodicals that reflect the society as a whole and the different points of view within the communities they serve.*



11. *All funding should aim to encourage pluralism as well as independence. As a consequence, the public media should be owned by the authorities guarantee a constitutional and effective freedom of information and expression and the independence of the press.*

12. *To assist in the preservation of the freedoms enumerated above, the establishment of truly independent, representative associations, syndicates or trade unions of journalists, and associations of editors and publishers, is a matter of priority in all the countries of Africa where such bodies do not now exist.*

13. *The national media and labour relations laws of African countries should be drafted in such a way as to ensure that such representative associations can exist and fulfil their important tasks in defence of press freedom.*

14. *As a sign of good faith, African Governments that have jailed journalists for their professional activities should free them immediately. Journalists who have had to leave their countries should be free to return to resume their professional activities.*

15. *Co-operation between publishers within Africa, and between publishers of the North and South (for example through the principle of twinning), should be encouraged and*

supported.

16. As a matter of urgency, the United Nations and UNESCO, and particularly the International Programme for the Development of Communication (IPDC), should initiate detailed research, in co-operation with governmental (especially UNDP) and non-governmental donor agencies, relevant non-governmental organizations and professional associations, into the following specific areas:

(a) identification of economic barriers to the establishment of news media outlets, including restrictive import duties, tariffs and quotas for such things as newsprint, printing equipment, and typesetting and word processing machinery, and taxes on the sale of newspapers, as a prelude to their removal;

(b) training of journalists and managers and the availability of professional training institutions and courses;

(c) legal barriers to the recognition and effective operation of trade unions or associations of journalists, editors and publishers;

(d) a register of available funding from development and other agencies, the conditions attaching to the release of such funds, and the methods of applying for them; and

(e) the state of press freedom, country by country, in Africa.

17. In view of the importance of radio and television in the field of news and information, the United Nations and UNESCO are invited to recommend to the General Assembly and the General Conference the convening of a similar seminar of journalists and managers of radio and television services in Africa, to explore the possibility of applying similar concepts of independence and pluralism to those media.

18. The international community should contribute to the achievement and implementation of the initiatives and projects set out in the annex to this Declaration.

19. This Declaration should be presented by the Secretary-General of the United Nations to the United Nations General Assembly, and by the Director-General of UNESCO to the General Conference of UNESCO



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RE: TO WHOM IT MAY CONCERN

We write this letter in support of the research project which is being undertaken by Mr Trevor Chabwinja, student registration number: 200910047. He is a registered Masters student in the Department of Communication at the University of Fort Hare. He is currently conducting his field work.

We will be highly appreciative if you can assist him in his research in what ever way possible.

Yours Truly

A handwritten signature in black ink, appearing to read 'B.K. Sibanda'.

Professor B.K. Sibanda



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THE DAILY NEWS

IN EXILE

€0

TELLING IT LIKE IT IS FOR WORLD PRESS FREEDOM DAY

Established 1999

Thursday, 3rd May, 2007

Press Freedom, Safety of Journalists and Impunity in Zimbabwe

Geoffrey Nyarota
Editor and Editor-in-Chief of the banned Zimbabwean newspaper, *The Daily News*, Geoffrey Nyarota here writes about his experience as a Zimbabwean newsman and his fears for his colleagues he was forced to leave behind.

In the aftermath of the Mugabe government's takeover of Zimbabwe Newspapers in 1981, the performance of the company's publications declined. Circulations fell and papers spewed out propaganda in lavish praise of the government that was increasingly accused of corruption, abuse of power and maladministration. The closing of the *Daily News* in 1999 provided much-needed relief to a nation tired of newspapers that routinely churned out propaganda, while sweeping rampant official corruption, abuse of human rights and gross mismanagement of the economy under the carpet.

The paper adopted the motto, "Telling it like it is". The *Daily News* investigated and exposed corruption among the political elite and condemned government's excesses and misdeeds. The paper gave a new and much needed voice to the oppressed people. The public was ecstatic. Halfway through 2000, just a year after launch, the paper was the largest selling national newspaper, peaking at 9,000 by June. Meanwhile, sales of the government's own flagship, *The Herald*, plummeted from 100,000 to 50,000 over the same period.

While readers were jubilant, officials at the Ministry of Information were far from celebratory. They were angry. The President was furious. He branded us as traitors and puppets of the West. The ferocious veterans of Zimbabwe's war of liberation, used by government to spearhead the campaign to dispossess the white commercial farming community of land, condemned *The Daily News*. They staged demonstrations against the paper. Journalists working for *The Daily News* were subjected to harassment, abuse, violence and arrest.

The Central Intelligence Organisation (CIO) hired an agent to assassinate me.

I was arrested on a total of six occasions, mostly on spurious charges. On one occasion, they came for me under cover of darkness, well after midnight. They were incensed that

The Daily News had reported that the police used official vehicles to cart away goods looted from a farm invaded by the war veterans.

The Central Intelligence Organisation (CIO) hired an agent to assassinate me. Handled personally by a nephew of President Mugabe, the would-be assassin developed cold feet and exposed the plot. Officials in the much-feared CIO were mortally embarrassed when the agent's picture was splashed on the front page of *The Daily News*, together with a detailed account of his murderous assignment.

As the popularity of *The Daily News* escalated, so did government's animosity towards the paper. A group of war veterans and youth activists of Mr Mugabe's ruling party lobbed a hand grenade through a plate glass window on the ground floor of the building which housed *The Daily News*. The building was deserted over the weekend. Damage to a curio shop where the grenade



Bombed printing press of The Daily News



Geoffrey Nyarota, winner of the UNESCO Guillermo Cano World Press Freedom Prize in 2002. His book: *Against The Grain, Memoirs of a Zimbabwean Journalist* was published in South Africa last year.

landed on the ground floor was extensive. There was a large crack on one wall in my office immediately above the curio shop. There was no doubt as to the target of the attack.

The violent campaign to silence *The Daily News* having failed, the paper was, in due course, infiltrated.

The Minister of Information, Professor Jonathan Moyo, was the mastermind of the government's propaganda campaign. He frequently launched vitriolic attacks on the independent press. On Friday, January 26, 2001 Moyo appeared on television.

"The *Daily News* has become a threat to national security and must be silenced once and for all," he pronounced somberly.

Two nights after Moyo's dire warning, there was a massive explosion at the factory housing the *Daily News* printing press. Armed saboteurs had entered the factory under cover of darkness and attached powerful limpet mines to the printing press. The explosion reduced both the press and the building to a pile of scrap metal and twisted roofing material, never to print another issue of *The Daily News*.

Much to the surprise of the paper's anxious readers and to the chagrin of the perpetrators of the dastardly attack, the next issue of *The Daily News* was back on the streets in time, thanks to the intervention of hastily contracted commercial printers.

The registration number of the vehicle used by the assassins was recorded by our security guards and handed over to the police.

"On this case," a police officer told me after establish-

(continued on page 2)

DAILY NEWS TIMELINE

- 1999: Launched
- 2000-2001: Editors, journalists arrested several times
- Jan 2001: Printing press bombed
- 2002: New media law passed
- July 2003: Appeals against media law
- 6 Feb 2003: Closed
- 24 Feb 2003: Curio in the newspaper shop closed
- 25 Feb 2003: Curio in the newspaper shop closed
- 19 Dec 2003: Curio in the newspaper shop closed
- 20 Dec 2003: Curio in the newspaper shop closed
- 21 Dec 2003: Curio in the newspaper shop closed
- 22 Dec 2003: Curio in the newspaper shop closed
- 23 Dec 2003: Curio in the newspaper shop closed
- 24 Dec 2003: Curio in the newspaper shop closed
- 25 Dec 2003: Curio in the newspaper shop closed
- 26 Dec 2003: Curio in the newspaper shop closed
- 27 Dec 2003: Curio in the newspaper shop closed
- 28 Dec 2003: Curio in the newspaper shop closed
- 29 Dec 2003: Curio in the newspaper shop closed
- 30 Dec 2003: Curio in the newspaper shop closed
- 31 Dec 2003: Curio in the newspaper shop closed

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ing the identity of the owner, "we cannot help you." Today, five years later, the matter remains unresolved.

The violent campaign to silence The Daily News having failed, the paper was, in due course, infiltrated. A series of internal disturbances rocked the newspaper, as a newly-appointed Chief Executive ran on a collision course with employees and management, culminating in strike action which drove the paper off the streets for a week. When I tried to mediate between him and workers, he accused me of siding with staff and summarily dismissed me. As if acting on cue, the police mounted a renewed offensive against me. Without the protection of The Daily News and its lawyers, I had become vulnerable. While I was in hiding in the countryside, the police repeatedly visited my home at night.

I returned to Harare just in time to pick up my bag and an airline ticket and fled to South Africa. The New York-based Committee to Protect Journalists made arrangements for me and my family to proceed to the United States of America. In February 2003, I was offered a fellowship at the Nieman Foundation for Journalism at Harvard University. The Zimbabwe government banned The Daily News immediately thereafter.

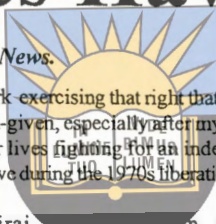
'Against the Grain, Memoirs of a Zimbabwean Newsmen', a book whose manuscript I started working on at Harvard, was published in South Africa in 2006. It is the story of the trials and tribulations of the independent press in Zimbabwe under the dictatorship of Mr Mugabe. It is also the story of a revolution that lost its head while a country that was formerly the bread basket of southern Africa degenerated into a basket case itself after only two decades of independence.

With the book project out of the way, I launched the *Zimbabwe Times.com*, a news website on Zimbabwe. Relying on a network of correspondents who previously worked for the now defunct Daily News, the website seeks to keep Zimbabwe's burgeoning diaspora community abreast of major developments back in their troubled land. A large number of visitors to the site are based back in the country where they have no other independent source of news on a daily basis. Sadly, access to the internet is low on the African continent.

My greatest regret as Managing Editor of The Zimbabwe Times is that, as violence escalates in Zimbabwe, I cannot guarantee my courageous and enterprising correspondents in Zimbabwe safety in a media climate where government abuses journalists with total impunity. This was also my most painful experience as Editor-in-Chief of The Daily News.

How Times Have Changed

By Sandra Nyaira,
ex-Political Correspondent with the Daily News.



It is that time of the year once again when the world takes some time to talk about issues around press freedom. World Press Freedom Day was to me nine or ten years ago just another day. It had no significant meaning for me as a young journalist. All I did on the day was attend an event organised by affiliates of the United Nations in Zimbabwe and write an article for the news organisation I worked for. And that was it... no reflections whatsoever.

My male colleagues probably remained behind to enjoy one or two free beers and use the opportunity to network.

I knew the day was meant to remind, not only the government but individuals, companies and many other organisations of the crucial role played by a thriving independent free press in the strengthening of democracies, and even in developmental issues. At that time, things were looking up in Zimbabwe: the independent and the state media were both thriving and massive gains were being recorded in the development of the private press. Our rights as journalists to work freely were largely unhindered, or so I thought.

To me, that role was my God-given right and there was nothing, I thought, that could ever infringe upon that. Having trained to become a journalist in a very different Zimbabwe than we have now, I could never have imagined that today I would be writing this article from a foreign country after the vibrant independent daily newspaper I worked for, The Daily News, was forced to close shop by the Zimbabwe government.

As I write this article today, colleagues I worked with on the newspaper are nursing painful wounds inflicted on them by the police in Zimbabwe. They were wounded while doing

their work exercising that right that I naively thought was God-given, especially after my uncles and aunts lost their lives fighting for an independent and free Zimbabwe during the 1970s liberation war.

Tsvangirai and an award-winning photojournalist, Luke Tamborinyoka and William Tagwirei Bango, all formerly with the popular Daily News, in a hospital article, were beaten and taken out on them by the police on March 15, 2005, as the Zimbabwe government moved to thwart efforts by the opposition to hold a prayer meeting for the country under the Save Zimbabwe Campaign banner.

Other journalists from Zimbabwe, notably Gift Phiri, a freelance journalist, are also nursing their wounds after being caught in the crossfire between the police and pro-democracy activists. The situation is bleak with media space shrinking all the time with the closure of independent newspapers or the taking over of papers by the government through the dreaded Central Intelligence Organisation (CIO).

I joined The Daily News in 1999 as a Political Correspondent after three or so meetings with the founding Editor-in-Chief, Geoff Nyarota. I worked for the Zimbabwe Inter-Africa News Agency (Ziana) before that. Things in the media had started changing by this time and it was clear for all to see that the

Zimbabwe government had made serious mistakes that were bleeding the country. There was massive corruption that went unreported in the absence of an independent daily newspaper. Inept government policies, the use of archaic legislation to oppress the people and related issues all saw the downward spiralling of people's standard of living. Everything was changing for the worse and the state media largely told one side of the story.

Enter the The Daily News with the crème of Zimbabwe journalism in the newsroom and experienced editors making sure Zimbabweans and the world got a daily dose of independent news about events in a vibrant independent media. Freedom of expression and that of our press remain severely limited by intimidation, unjust arrests, impunity for perpetrators and related issues.

With the launch of the newspaper coming in the same year as the formation of the vibrant MDC followed by the government's first ever massive election loss in the Constitutional Referendum of February 2000, journalists had to lose their right to report freely and the government of Zimbabwe did not leave any stone unturned.

The Zimbabwe government had to strike fear into the hearts of the journalists. We were a nuisance and threats



Stop Press: Daily News bombed

ZIMBABWE CRISIS

- 90,000 homes destroyed in 2005 (UN, 2005)
- 700,000 forcibly evicted in 2005 (UN, 2005)
- 83% live below US\$2 per day (UN, 2005)
- Inflation over 1,500% and food inflation close to 2,000% (IMF, 2005)
- Lowest life expectancy in the world (WHO, 2005)