

# The role of the media in fostering democracy in Zimbabwe

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by

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'African dreams of peace and prosperity have been shattered by the greedy, corrupt and unscrupulous rule of African strongmen. The dream has evaporated because of the treachery and betrayal of leaders with their pursuit of power and wealth. One would be content with just a modest cleaning up of the environment, development of opportunities, health services, education, eradication of poverty. But unfortunately even these modest goals are thwarted by a power crazed and rapacious leadership who can only obtain their egotistical goals by oppressing the rest of us.'

Nigerian Nobel laureate, Wole Soyinka (1934 - ).

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## CHAPTER I: INTRODUCTION

'Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.'  
Thomas Jefferson, third president of the United States (1743-1826) *Virginia Bill of Rights*.

### 1.1 BACKGROUND TO THE STUDY

Since 2000, Zimbabwe's ruling party, the Zimbabwe African National Union Patriotic Front (Zanu PF) has methodically stifled democracy in the country by compromising the independence of the judiciary, the professionalism of the police; and intimidating the media. Over the last decade, the party has rid both the state media and the judiciary of impartial journalists and judges, and filled these institutions with its followers.

The party purchases its supporters loyalty with presents of farms, expensive vehicles and scarce accoutrements of the consumer society. These material inducements have assisted Zanu-PF to drill an inequitable partisanship into the obsequious state media and instruct journalists to blackout opposition politicians to stymie resistance to its hegemony.<sup>1</sup>

State media practitioners and the judicial officers' bias have contributed heavily to Zimbabwe's current catastrophic human rights situation. In a practical sense, these openly partisan institutions disingenuously enforce Zanu PF's disastrous policies. While the media market government propaganda, and discredit its opponents, the judiciary is provided with instructions to jail opposition supporters, and issue judgments aimed at perpetuating Zanu PF supremacy.

These bodies are skilfully supported in their endeavours by police acting under specific orders not to investigate or arrest Zanu PF sympathisers

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<sup>1</sup> Dzamara, I 'Moyo cracks whip on state media.' *Zimbabwe Independent* 13 March 2004. Also Berger S, 'Robert Mugabe lavishes gifts of plasma TVs and Mercedes on Zimbabwe's judges' at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/zimbabwe/2485977> [accessed 14 November 2008].

involved in political violence. This is well illustrated by the police's failure to arrest known perpetrators of the extrajudicial killings of 163 opposition supporters following the March 29, 2008 general elections. Crucially, the police are instructed to detain, even without reasonable suspicion, government opponents for long periods without charge.<sup>2</sup>

Since 2002, the country has plummeted into a profound economic crisis, pulling down with it one of Africa's most robust private media. As the economic and political crisis deepens, the daily fare of a 'Zimbabwean journalist has consisted of permanent surveillance, police brutality and injustice'.<sup>3</sup> Accordingly, Reporters Without Borders (RSF) say, 'Zimbabwe's press today lies in ruins... there are very few journalists left to arrest, newspapers to close or foreign correspondents to expel. A handful of privately-owned publications do still appear, but under tight surveillance....'<sup>4</sup>

The few journalists still working in the country have to register with the government appointed Media and Information Commission (MIC) or risk going to prison for two years if caught working without accreditation. Editors of independent newspapers still in existence are pressurised to tone down criticism of Zanu PF.<sup>5</sup> Additionally, foreign journalists are banned from working in Zimbabwe: those caught working without accreditation are 'paraded like a trophy and expelled after high-speed sentencing'.<sup>6</sup>

However, suppression of the media and the concomitant clampdown on the democratic space has merely roused civil society to intensify calls for more open government. Figuratively, these efforts now fall under the purview of

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<sup>2</sup> Human Rights Watch, 'Our hands are tied' erosion of the rule of law in Zimbabwe' at [www.hrw.org](http://www.hrw.org) [accessed 14 November 2008].

<sup>3</sup> Reporters Without Borders, (2007) 'Zimbabwe - Annual Report 2008' at [http://www.rsf.org/article.php?id\\_article=1814](http://www.rsf.org/article.php?id_article=1814)[accessed 14 November 2008].

<sup>4</sup> RSF (n 3).

<sup>5</sup> Editors of state media face dismissal if they disobey orders; and are constantly spied on.

<sup>6</sup> RSF (n 3).

opposition political parties, organised around the Movement for Democratic Change (MDC).

Similarly, the private media, emboldened by Zanu PF's first electoral setback since independence from Britain in 1980,<sup>7</sup> have intensified their 'watchdog' activities: uncovering and publicising political corruption, abuses of power, and inept government policies. Ideally, this should stir public apprehension and trigger a citizens' reaction that would impel change in official behaviour. By diligently providing information, prompting alternative debate and criticism, the media efficaciously propagate 'more effective transparent and accountable governance'.<sup>8</sup>

Since the 1990s, civil society and rights-based non-governmental organisations (NGOs) have been concerned about the deleterious social effects of an International Monetary Fund (IMF) driven austerity programme. These concerns coupled with fearless private media added impetus to civil society's calls for the government to reverse the ever-mounting range of presidential powers and for writing of a new constitution.

As a matter of fact, as early as 1989, independent-minded journalists in the state media initiated the culture of superintending government when they exposed widespread corruption in the upper echelons of government. The private media followed this up with further exposes of government's ambivalence towards the embryonic HIV/Aids epidemic, massive looting of the War Victims Compensation Fund in 1997,<sup>9</sup> and a VIP Housing scandal in 1998 which implicated President Robert Mugabe's second wife, Grace.<sup>10</sup>

In 1997, the independent media helped weld together the inchoate and fractious civil society, workers bodies, churches and NGOs under an

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<sup>7</sup> A government draft constitution to replace the 1979 Lancaster House Constitution was rejected in a referendum in February 2000.

<sup>8</sup> Hamelink in Lee P (ed) *The democratisation of communication* (1995) 29.

<sup>9</sup> For a detailed discussion see Chapter V.

<sup>10</sup> See Chapter V.

umbrella organisation termed the National Constitutional Assembly (NCA). The NCA stepped up pressure for a new constitution to replace the 1979 Lancaster Constitution which to date has been amended 18 times. In consequence, President Mugabe launched a constitutional drafting process chaired by then High Court Judge Godfrey Chidyausiku. The Constitutional Commission produced the draft that was rejected in February 2000 because it weakened the legislature while shoring up the executive.<sup>11</sup>

These political schisms extended to the media, thus the state media in hyperbolic fashion clamoured for approval of the draft constitution while the independent press sided with the NCA. None the less, the backlash from the referendum precipitated violent land seizures which saw productive white farmers losing their properties to war veterans and their allies. The growing disconnect between the ruling party and the populace was a serious impediment to the reinstatement of the rule of law.

None the less, the violence that exploded countrywide before the June 2000 elections failed to cow voters, as the MDC won 57 out of the 120 Parliamentary seats contested for.<sup>12</sup> After a brief lull, the violence and human rights abuses erupted again before the disputed 2002 presidential election.

As before, the fissures in the media industry fanned by irreconcilable conflicts in ideals ran parallel to the medium's political leanings. Consequently, MDC presidential candidate Morgan Tsvangirai enjoyed extensive coverage in the private media led by the now closed *The Daily News* to the consternation of Zanu PF. The oligopolistic state media fronted by *The Herald* and the Zimbabwe Broadcasting Corporation (ZBC) viciously attacked opposition political politicians and what they termed a 'perfidious'

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<sup>11</sup> Saller, K 'Zimbabwe' in Van De Vijver L (ed) *A comparative study of common law jurisdictions* (2006) 241.

<sup>12</sup> Saller (n 11) 241.

private media. Thus, the state media helped Zanu PF encumber Zimbabweans pursuit of democracy.<sup>13</sup>

The government has exploited its monopoly in the airwaves to peddle propaganda to the exclusion of dissenting opinions. For example, at the peak of the farm invasions between 2000 and 2004, the ZBC bombarded its viewers and listeners *ad nauseam* with the *rambai makashinga* (be resolute) jingle extolling the virtues of the agrarian revolution and self-determination. While this was going on, most of the expropriated farms were lying idle and hunger was stalking the country. As said above, independent journalists who told the truth were excoriated as stooges of imperialists.

## **1.2 AIM OF THE STUDY**

The aim of this paper it is to look at the significance of the media in effectuating a major change in the democratisation process in Zimbabwe, as the country has over the past decade slid from a moderately free society into virtual dictatorship. Purposely, this paper sidesteps the discussion on the effects of the media on development processes as this has been adequately dealt with elsewhere.

The importance of the media in buttressing development, starting first; in liberal Western democracies is well documented. This is why it enjoys pride of place in human rights centred constitutions such as the American Declaration of Independence and the French Declaration of the Rights of Man and the Citizen.<sup>14</sup>

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<sup>13</sup> Dudge (2001) *International Press Institute*. Radio, is the dominant mass communication medium in Zimbabwe because of its extensive reach, and the only medium that can reach the nearly 70 percent of the country's estimated 13 million people who live in rural districts.

<sup>14</sup> The American Declaration of Independence adopted on July 4, 1776 served as a source of authority for the Bill of Rights of the US Constitution. Its influence is also manifest in the 1789 French Declaration of the Rights of Man and of the Citizen.

However, there is insufficient scholarly material on the impact of the free press in engendering democracy in Africa. This subject is particularly pertinent to Zimbabwe because of the clear collapse of the rule of law owing to the inflexibility of the ruling party and evolving repression. While the Zimbabwean constitution provides for freedom of expression,<sup>15</sup> subsequent legislation enacted after 2000 corrode its efficacy.

This has reduced chances of stimulating a robust and free contest for political power in the country. These laws are used to persecute MDC sympathisers as the government has 'substituted the practice of democracy for application of violence'.<sup>16</sup> Indeed, the enactment of the Access to Information and Protection of Privacy Act (AIPPA),<sup>17</sup> the Public Order and Security Act (POSA),<sup>18</sup> the Broadcasting Services Act (BSA),<sup>19</sup> the Private Voluntary Organisation (PVO), the Interception of Communication Bill and the Non Governmental Organisations Bill (NGO Bill), was an indicator of the mounting paranoia in the ruling party.

Whereas the government has maintained that these laws, particularly POSA and AIPPA are necessary to protect national security and grant accredited journalists access to information held by public bodies, human rights defenders dispute this. Instead, they argue that the laws actually suppress political dissent and freedom of expression.<sup>20</sup> From the government's pronouncements, one can deduce that these harsh pieces of legislation were a reaction to the intensified contest for power by the MDC and developing forcefulness of the formerly pliant civil society. Also, the preceding discussion shows that Zanu-PF political culture sharply contrasts human rights norms hence the international disapprobation. For instance, article

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<sup>15</sup> Section 20 of the Constitution of the Republic of Zimbabwe.

<sup>16</sup> Dudge (n 13).

<sup>17</sup> [Chapter 10:27] of 2002.

<sup>18</sup> [Chapter 11:17] of 2002.

<sup>19</sup> [Chapter 12:06] of 2001.

<sup>20</sup> Saller (n 11) 241.

19 of the 1948 Universal Declaration of Human Rights (UDHR),<sup>21</sup> appeals to states parties to respect the freedom of expression.

Secondly; and more importantly, the 1966 International Convention on Civil and Political Rights (ICCPR),<sup>22</sup> a binding treaty to which Zimbabwe is a party enjoins members to allow this right.<sup>23</sup> Finally, regional rights systems namely; the African Charter on Human and People's Rights (African Charter),<sup>24</sup> and the Southern African Development Community (SADC),<sup>25</sup> are also in consonant with current international human rights orthodoxy.<sup>26</sup>

Thus this paper examines the efficacy of the media in the promotion and protection of democratic processes in Zimbabwe, in view of the government's propensity to abuse the law to subjugate its opponents. To achieve this, the paper looks at the development of the media in Zimbabwe while critically analysing the impact of POSA and AIPPA on media law in Zimbabwe; and answering the question whether the media is an indispensable factor in the quest for democracy and by extrapolation; human rights in Zimbabwe. Lastly, the paper will look at how the media has performed in covering the Zimbabwean crisis.

### **1.3 RATIONALE OF THE STUDY**

The end of the Cold War marked the transcendence of neoliberal idealism over communism and tacitly confirmed capitalism as the economic philosophy that would drive global development. It is no coincide therefore that capitalism, which is spread by globalisation in the form of Transnational Corporations (TNCs), has spread even to former communist

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<sup>21</sup>G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>22</sup> G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

<sup>23</sup> Article 19 of the ICCPR.

<sup>24</sup> Article 9 of the African Charter. OAU Doc. OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997).

<sup>25</sup> SADC has been in existence since 1980.

<sup>26</sup> Article 7.4 of the SADC Principles and guidelines governing elections.

Russia.<sup>27</sup> Africa has not been spared. The media are ensconced at the heart of the globalisation phenomenon and accordingly purvey liberal notions of democracy. Although most African states formally embrace democracy and even constitutionally recognise democratic values such as freedom of speech, the majority nevertheless still arbitrarily silence divergent views.<sup>28</sup>

This situation is noticeable in Zimbabwe which tacitly abandoned socialism when it embarked on IMF and World Bank prescribed economic reforms in the 1990s. However, Zanu PF's Soviet style politburo,<sup>29</sup> still favours the system's discredited mode of succession; and the traditional African form of leadership. Put differently, Zanu-PF de-emphasises democracy.

Rather the party prefers to keep its liberation heroes in power for life. This research is therefore being undertaken in light of the fact that the privately owned media have proved to be a bastion against Zanu-PF's poor human rights record and undemocratic tendencies: the media have accurately assigned priority to delineating the atrocities perpetrated by the Zanu-PF government.

#### **1.4 SIGNIFICANCE OF MEDIA FREEDOM IN DEMOCRATISATION**

While the Zimbabwean constitution generally provides for freedom of expression, it none the less fails to expressly guarantee freedom of the press. Notwithstanding this lack of specificity, the Zimbabwean Supreme Court (ZSC) has widely interpreted this constitutional provision to include press freedom. For example the ZSC in *In re Munumheso & Ors*<sup>30</sup> declared that, 'freedom of expression is one of the most precious of all the freedoms and is

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<sup>27</sup> Howard-Hassmann RE (2005) 27(1) *Human Rights Quarterly* 1.

<sup>28</sup> Hamelink (n 8) 29.

<sup>29</sup> The Zanu PF supreme decision making organ.

<sup>30</sup> 1994 (1) ZLR 49 (S). See also *Retrofit (Pvt) Ltd v PTC Anor* 1995 (2) ZLR 422 (S) 211A-H; *Retrofit (Pvt) Ltd v PTC & Anor* 1995 (2) ZLR 199 (S); *United Parties v Minister of Justice, Legal and Parliamentary Affairs & Ors* 1997 (2) ZLR 254 (S) 269 (S); *In re: Chinamasa* 2000 (2) ZLR 322 (S). In South Africa see *Government of the Republic of South Africa v The Sunday Times* [1995] 1 LRC 168 at 175-6 (Transvaal Provincial Division).

a vitally important right that is an indispensable condition for a free and democratic society'. Thus Zimbabwean jurisprudence recognises the right of the press to receive and impart information subject to legal limitations occasioned by public policy issues.<sup>31</sup>

One thing that is apparent from the foregoing discussion is that Zimbabwean media law appears amenable to a tangential press, but as concluded earlier, the situation in practice projects a contrary executive mindset. For instance, since its creation in 2002, the MIC which is packed with Zanu-PF supporters has presided over the closure of four privately owned newspapers namely; the *Daily News*, the *Daily News on Sunday*, *The Tribune* and the *Weekly Times*.<sup>32</sup>

Currently, the MIC is locked in a legal battle with the Associated Newspapers of Zimbabwe (ANZ), publishers of the *Daily News* and *Daily News on Sunday* over registration.<sup>33</sup> In a similar manner, the Broadcasting Authority of Zimbabwe (BAZ), another statutory body tasked with overseeing broadcasting operations in the country has consistently refused to licence prospective private radio and television stations, citing lack of interest.

This is despite the fact that Zimbabwean owned radio stations such as *SW Radio Africa* and *VOP* currently broadcast into Zimbabwe from abroad. In addition, Geoff Feltoe submits that Zimbabwean defamation law is too restrictive and further hampers media efficiency in violation of the constitution: this is not justifiable in a democratic society.<sup>34</sup>

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<sup>31</sup> Decisions which uphold freedom of expression were handed down by the ZSC under then Chief Justice Anthony Gubbay who was forced to resign his office by war veterans and Justice Minister Patrick Chinamasa in 2001 for defending human rights.

<sup>32</sup> *The Weekly Times* was shut down on 25 February 2005 two months after its launch.

<sup>33</sup> *The Daily News* was shut down in 2003 after refusing to register with the MIC. Its attempts to register have been continuously frustrated by the MIC.

<sup>34</sup> Feltoe, G *A Guide to Media Law in Zimbabwe* (2004) 6.

Burchell Jonathan and Milton J,<sup>35</sup> in a similar vein, urge for the decriminalisation of defamation, which is essentially a delict, but is used to shield government from scurrilous attacks that could ostensibly lead to insurrection. The writers submit that, 'the crime (criminal defamation) possesses unattractively wide scope for the oppression of opponents of government, not to mention freedom of expression and the press. Its role in the prevention of disturbances of the public peace, in modern society is minimal.'<sup>36</sup>

The Zimbabwean media environment thus assumes importance as a research topic because it offers scholars with the perfect example of how an undemocratic regime can manipulate the law to take away people's right to speak. Also, the study shows the power of the media in the struggle for democracy. The research will attempt to show the media's ability to breach artificial frontiers; and penetrate the remotest village in undeveloped corners of the world to transmit live news via powerful satellite feeds across the globe. Tyrants can no longer seal their borders to conceal their human rights excesses from the international community.

## **1.5 RESEARCH METHODOLOGY**

This thesis will be a characteristically legal investigation based on written materials; hence existing publications will underpin the study. In view of the fact that finances and the time frame are limited, the author will not conduct any field research. In this connection, the study will in the main be desktop based.

This subject resonates well with the author who worked for *The Herald* for over a decade before he was relieved of his position as editor for being 'too

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<sup>35</sup> Criminal Defamation still exists under Zimbabwean criminal law. See Burchell J and Milton J, *Principles of criminal law* 450. Relevant Zimbabwean cases on criminal defamation are *S v Marangarire* 1977 RLR 73 (GD) and *S v Modus Publications (Pvt)* 1996 (2) ZLR 553 (S).

<sup>36</sup> This paper will not concern itself with defamation law.

independent and professional'.<sup>37</sup> Invariably, the author will draw on his journalist experiences and offer some insights into the workings and management of the Zimbabwean media. But in the main, the centrality of the media and new telecommunications technologies such as the internet in the democratisation process appeal most to the writer; for it is the free media that shape public opinion and rouse people to defend their rights; and to participate in government.

## **1.6 LITERATURE REVIEW**

The discussion will review diverse academic literature on the media and democracy. While the research focuses on Zimbabwe, it will be necessary to review literature on other African jurisdictions which have developed in tandem with the country. To narrow the study, the research will cover the post colonial period: starting at independence in 1980. Literature on South Africa whose legal pronouncements are of a persuasive value to Zimbabwean courts will be reviewed as well.

## **1.7 CHAPTER SYNOPSIS**

The entire study will contain seven chapters as well as this introductory chapter. The next chapter will trace the development of the media in Zimbabwe. Ordinarily this exercise will be rooted in Southern Rhodesia and will culminate in modern day Zimbabwe. This chapter will also examine the constitutional but often turbulent relationship between the government and the media – irrespective of ownership.

The third chapter discuss will discuss international law mechanisms that underwrite the right to freedom expression and by extrapolation, the media.

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<sup>37</sup> Muleya D, 'More purges at state media' Zim Independent of 16 March 2001 at <http://www.zimbabwesituation.com/mar17.html#link7>[accessed 14 November 2008].

This section will look at thematic recognition of freedom of expression and state obligations arising from this acknowledgment.

Chapter four discusses media responsibility and governance vis-à-vis regulation. This segment will examine the debate revolving around regulation, the pertinent question here being: who will police the media? The chapter will also look at international standards in relation to regulation.

Chapter five will examine the instrumental values of the media in upholding freedom of expression and the media. The chapter will discuss the role of the media in the democratisation process.

The sixth chapter will look at how the media has contributed to the construction of democratic institutions in Zimbabwe. It will be pertinent at this juncture to look at whether the media has made any significant headway in fostering political pluralism in the country. This will entail looking at the international media as well as the local media – both private and government owned.

The final chapter will conclude the paper, and give a summary of the major issues raised.

## CHAPTER II

### A HISTORY OF MEDIA OWNERSHIP IN ZIMBABWE

'Our Republic and its press will rise or fall together. An able, disinterested, public-spirited press, with trained intelligence to know the right and courage to do it, can preserve that public virtue without which popular government is a sham and a mockery. A cynical, mercenary, demagogic press will produce in time a people as base as itself. The power to mould the future of the Republic will be in the hands of the journalists of future generations.' Joseph Pulitzer, American journalist (1847-1911).

#### 2.1 INTRODUCTION

Although a new political and economic epoch began in Zimbabwe at independence, as shown above, Rhodesian instruments of repression remained intact.<sup>38</sup> As a matter of fact, the legal and political apparatus which had been skilfully deployed to suppress the political tribunes of African nationalism, democracy and human rights were carefully preserved by the new government ostensibly to safeguard the new majority administration in its infancy. This arsenal included well-oiled mass media which are principally still organised as in pre-independence Zimbabwe, notwithstanding the change in ownership.<sup>39</sup>

This way, the ZBC has maintained its dominance in the airwaves while Zimpapers is still the main actor in the newspaper industry. Hence the officious state media conceptualised and constructed by the Rhodesian state, remain pristine albeit focused on a new target.<sup>40</sup>

In this chapter we run a brief commentary on the history of the media in Zimbabwe in an attempt to contextualise the discussion. Also, censorship instruments that hamstrung the media in Rhodesia and those imported into independent Zimbabwe will be discussed. This section examines the whole scope of legislation that has been constructed by the Zanu PF government

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<sup>38</sup> Chiumbu, *HS Democracy, human rights and the media. A case of two human rights organisations and the media in Zimbabwe* (1996) 61.

<sup>39</sup> Chiumbu (n 38) 61 – 62.

<sup>40</sup> Chiumbu (n 38) 61 - 62.

particularly in the last decade when campaigning for democratic space intensified.

## 2.2 PRINT MEDIA IN RHODESIA

The arrival of John Cecil Rhodes' Pioneer Column at Fort Salisbury in 1890 was followed soon after by a printing press from the South African media mogul; the Argus Printing and Publishing Company (Argus Group). Soon after in 1891, *The Zambesia Times*, a weekly edited by Ernest Fairbridge was launched. This was a forerunner to *The Rhodesia Herald* which appeared in 1892 with *The Bulawayo Chronicle* launching in 1894. These titles exist today as *The Herald*, published in Harare and *The Chronicle* still domiciled in Bulawayo.

In 1949, *The Umtali Post* was launched in Mutare to become the third Rhodesia Printing and Publishing Company (RPP) title.<sup>41</sup> However, these newspapers articulated white readers' concerns and aspirations to the exclusion of black people's interests. *The Native Mirror*, which later became the *Bantu Mirror*, was launched in 1931 under the RPP stable and circulated in both Rhodesias. Although it was printed in African languages, the newspaper employed no African reporters.<sup>42</sup> Nevertheless, African journalism was growing up around this time although it gathered more impetus between 1940 and 1950 when a core of educated urban blacks emerged.

This resulted in the launch of *Chapupu* in 1958 followed by *The Zimbabwe Sun* although both had been banned by 1964. The prohibition was part of a wider campaign by the Rhodesians to thwart dissent ahead of the Unilateral Declaration of Independence (UDI),<sup>43</sup> which saw nationalists including Joshua Nkomo, a pioneering nationalist and leader of the Zimbabwe African

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<sup>41</sup> The RPP was formed in 1926 by the Argus Group to manage its Rhodesian newspapers.

<sup>42</sup> Mytton, G *Mass Communication in Africa* (1983) 49.

<sup>43</sup> 11 November 1965.

Peoples' Union (ZAPU), and Mugabe from the Zimbabwe African National Union (ZANU) being detained. The *Bantu Mirror* was later bought by the African Newspaper Group, publishers of *The African Daily News*.

*The African Daily News* distinguished itself as the first newspaper in southern Africa to encourage discussion, debate and reporting on African self-rule.<sup>44</sup> The Roman Catholic Church run newspaper, *Moto*, which was founded in 1958 and printed in English, Shona and Ndebele, was another notable publication of this period. *Moto* was acclaimed for its unflinching criticism of the minority white regime. This vibrancy placed the publication at odds with the government leading to its forced closure in 1974. *Moto* nevertheless re-appeared in 1980, first as a newspaper and later as a magazine.

*The National Observer*, *Umbowo*, *The Zimbabwe Times*,<sup>45</sup> and *The African Parade* (later *Parade*), which prided itself as the 'only magazine in southern Africa edited and printed by Africans for Africans', were also formed in the same period.<sup>46</sup> However, at independence most of these publications had floundered. Besides *Moto*, *The African Parade* was the other publication that continued appearing after 1980. *Parade* which had steadfastly delineated and promoted the ideals of African self-rule flailed in the 1990s because of shrinking advertising revenue and escalating production costs.

Notably, a historical narrative of the media in Zimbabwe runs parallel to the political evolution of the troubled nation itself. As demonstrated above, Smith's UDI drew a line in the sand in the sense that it marked the culmination of minority whites' pursuit of the total domination of the natives. UDI was calculated to signify white people's determination to

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<sup>44</sup> This newspaper was edited by Dr Nathan Shamuyarira, who became the first black minister of Information in 1980.

<sup>45</sup> Rusike, M *The Politics of the Mass media. A personal experience* (1990) 38. *Moto* sharply criticised the colonial government and supported African nationalists during the war.

<sup>46</sup> Saunders, R *Dancing out of Tune. A history of the media in Zimbabwe* (1999) 4.

permanently settle and control Rhodesia to the exclusion of the black majority.<sup>47</sup>

Thus the white dominated newspapers that were published under the aegis of the Argus Group - *The Rhodesia Herald*, *The Sunday Mail*, *The Bulawayo Chronicle*, *The Sunday News* and *The Umtali Post* - and the RBC ignored news that appealed to the African majority and their views. Urban events dominated newspaper columns to the exclusion of rural areas where the majority black population lived. During this period black nationalists who cast a powerful influence over the majority were not mentioned in the newspapers.<sup>48</sup>

Thus whenever black people were covered in the mainstream press it was invariably in the negative: for committing crime. As the war for liberation intensified in the 1970s, the Ministry of Information moved its censors into the newsrooms to ensure that there was compliance with its orders to blackout nationalists and to project the view that the war effort was tilting in the Smith regime's favour. At independence, the majority black government inherited a cowed media that was propagandistically organised and still perceived its main function as that of articulating the exigencies of the white community's political and economic life.<sup>49</sup>

### **2.3 BROADCAST MEDIA BEFORE INDEPENDENCE**

The Broadcasting industry in central and southern Africa is rooted in the 1930s. A decade later, the Northern Rhodesia Information Department began a small operation at Lusaka. This was followed soon after by the Southern Rhodesia Broadcasting Services (SRBS) in Salisbury. Both projects

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<sup>47</sup> Zimbabwe Press, Media, TV, Radio, Newspapers. Available at <http://www.pressreference.com/Uz-Z/Zimbabwe.html>[Accessed 8 January 2008].

<sup>48</sup> See (n 47).

<sup>49</sup> This was because all top newspaper executives were still white, as were all the editors, copy editors, almost all of the reporters, and most of the advertising and circulation executives, which had important implications for the media at independence.

were launched with minimal support from the British government. This was so despite the British government's widely publicised intention to extend the British Broadcasting Corporation's Overseas Service to the region for the benefit of white settlers and administrators.<sup>50</sup>

However, it was only after the formation of the Central African Federation (the Federation) which welded Nyasaland (Malawi), Northern Rhodesia (Zambia) and Southern Rhodesia (Zimbabwe) together in 1953 and the creation of the Federal Broadcasting Corporation (FBC) that broadcasting really took off on the sub-continent. Initially, the FBC operated a radio service only. A television station was established in 1960, giving Rhodesia the second TV station in Africa, after Nigeria.<sup>51</sup>

Predictably, African political leaders were denied access to these facilities hence nationalists including Joshua Nkomo, Ndabaningi Sithole and Robert Mugabe became dependent on radio stations in sympathetic independent African countries.<sup>52</sup> The collapse of the Federation in 1963 signalled the end of all pretence at professionalism at the renamed Rhodesian Broadcasting Corporation (RBC).<sup>53</sup> During UDI the RBC became an enthusiastic government megaphone churning out propaganda and shutting out all opposition voices including those of white liberals.<sup>54</sup>

As Harvey Ward, the News Director of the RBC noted in 1964, 'we are the official national radio and outside sources can quote us as the voice of the government and its policies.'<sup>55</sup> This was symmetrical with the government's

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<sup>50</sup> Kucera, G *Broadcasting in Africa: A study of British, French, and Belgian colonial policies* (1968).

<sup>51</sup> Saunders (n 46) 4.

<sup>52</sup> Zaffiro, J *Media and Democracy in Zimbabwe* (2002) 47.

<sup>53</sup> The new board of governors was full of partisan Rhodesia Front supporters.

<sup>54</sup> The RBC's monopoly was protected by the Broadcasting Act of 1957 which remained in force until 2001.

<sup>55</sup> Zaffiro (n 52) 47.

policy as it was in consonance with Smith's publicly stated plan to use radio in the 'war for men's minds'.<sup>56</sup>

Subsequently, Mugabe and Nkomo were labelled 'terrorist leaders' or 'leaders of terrorist organisations' while the thousands of guerrillas under their command were referred to as 'terrorists'.<sup>57</sup> To counter this propaganda onslaught the liberation forces broadcast 'sometimes inflammatory news and information' into Rhodesia from Tanzania, Zambia, Mozambique, Egypt and Ethiopia.<sup>58</sup> Kumbula submits that the 'struggle for Rhodesia was not just a military one. It also had important political and psychological components, including the struggle for the minds and allegiance of the African majority.'<sup>59</sup>

Apparently the propaganda skills honed in the 1970s and those copied from the Rhodesians were later used to denigrate former fighters of the Zimbabwe People's Liberation Army (ZIPRA) during the Matabeleland massacres as 'bandits' and 'dissidents'. As noted in the preceding chapter, these tactics have become the *modus operandi* of the ZBC and government newspapers. For example, the Media Monitoring Project in Zimbabwe (MMPZ) reported that during the 2002 presidential elections about 90 percent of all election stories broadcast on ZTV were pro-Mugabe, Zanu PF or the government.

The MDC was denied airtime to articulate its manifesto despite the absence of alternative broadcast media in the country.<sup>60</sup> As illustrated above, Zanu

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<sup>56</sup> Zaffiro (n 52) 47.

<sup>57</sup> After independence author Julie Frederikse found a confidential RBC memo, dated August 28, 1978, signed by T W Louw, RBC's director of news, which listed a number of organisations that could not be mentioned on air. These included ZAPU (Zimbabwe African People's Union), ZANU (Zimbabwe African National Union), the Patriotic Front (an alliance of ZAPU and ZANU), the Zimbabwe African National Liberation Army (ZANU's guerrilla wing), the Zimbabwe People's Liberation Army (ZAPU's military wing), and the Zimbabwe People's Army.

<sup>58</sup> Kumbula, T in Eribo, F and Jong-Ebot, W (eds) *Press Freedom and Communication in Africa* (1997) 162.

<sup>59</sup> Kumbula (n 58) 162.

<sup>60</sup> See Capital Radio case.

PF preserved Rhodesian draconian legislation and systematically used this to suppress dissent. Democracy was an early casualty of these laws. The most repressive of this family of laws are discussed in greater detail below.

## **2.4 CENSORSHIP IN RHODESIA**

Increased agitation for majority rule compelled the RF to promulgate draconian laws under the rubric of emergency powers to deal with the 'African problem'.<sup>61</sup> This was done by maintaining a firm grip on education, the media, formation of associations, and public gatherings. From 1933, the government introduced a bottomless pit of laws such as the Subversive Act of 1950,<sup>62</sup> the Preventive Detention Act of 1959, the Unlawful Organisations Act and the Vagrancy Act,<sup>63</sup> which gave the police carte blanche to detain any person found without valid reasons for being in an area.<sup>64</sup>

However, the Law and Order (Maintenance) Act (LOMA) of 1965,<sup>65</sup> was the harshest of all; and was expertly used to muzzle the press, and to restrict the operations of nationalist movements. In terms of section 50 (2) (a) of LOMA, the media, journalists and individuals could be charged for making statements which had the potential to cause 'alarm and despondency'. Additionally, disparaging statements or acts bringing the president, government into disrepute and the making of subversive statements were also prohibited.

LOMA among others provided for detentions and jail, fines, and even deportation of individual offenders and bans of publications. The RF became even more repressive after 1965 and the liberation of a sizeable number of African countries including former Federation partners, Zambia and Malawi.

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<sup>61</sup> These Powers restricted journalists from entering war time 'operational areas' – covering up to 90 percent of the country – or interviewing or quoting any member of the security forces without military permission.

<sup>62</sup> Was used to restrict press freedom.

<sup>63</sup> [Chapter 10: 25].

<sup>64</sup> Chiumbu (n 38) 61-62.

<sup>65</sup> [Chapter 11:07].

The regime promulgated the Emergency Powers (Censorship of Publications) Order which allowed censors to move into RPP newsrooms to vet news reports earmarked for publication.

Initially, RPP editors printed newspapers with blank spaces to protest the assault on media freedom; but this was soon made illegal as well. The Official Secrets Act of 1970 (OSA) prohibits the disclosure, for any purpose, government information which might jeopardise the safety or interests of the country.<sup>66</sup>

Additionally, the Privileges, Immunities and Powers of Parliament Act of 1971 protected parliament, its committees and members from criticism in the media.<sup>67</sup> Furthermore, civil and criminal defamation laws constrained the media's operations.<sup>68</sup> In 1976 the RF introduced Defence Notices which added more restrictions on media freedom.<sup>69</sup>

## **2.5 MEDIA OWNERSHIP AT INDEPENDENCE**

At independence, media ownership remained largely undisturbed. The RBC became the ZBC under the Ministry of Information, Posts and Telecommunications. It had one television channel and four radio stations broadcasting mainly in English, Shona and Ndebele. The legal status of the ZBC has remained unchanged notwithstanding the judgment in the *Capital Radio* case and the enactment of the BSA in 2001.<sup>70</sup>

In 1980, the print media was dominated by the RPP group which by then had been renamed Zimpapers, but was still owned by the Argus Group of South Africa. This situation was unacceptable to the new government which

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<sup>66</sup> In 1993, Basildon Peta and Brian Latham of the Daily Gazette were arrested under OSA.

<sup>67</sup> Parliament can charge and try a person it believes has breached this law.

<sup>68</sup> In 1995 criminal defamation charges succeeded against the *Financial Gazette* after it published reports about the alleged secret marriage of Mugabe and Grace Marufu.

<sup>69</sup> Further restricted what could and could not be reported without clearance by government on the security, defence and political situation.

<sup>70</sup> A fuller discussion on the BSA follows below.

was justifiably wary of leaving ownership of a key information conveyor in the hands of a company domiciled in apartheid South Africa. Thus the government acquired the 43 percent shareholding owned by Argus after a generous donation of US\$5 million (ZWD2, 7 million) by the Nigerian government in 1981.<sup>71</sup> According to Dr Nathan Shamuyarira, the Minister of Information at independence this was done to 're-assert the interests of the Zimbabwean society in its totality'.<sup>72</sup>

To achieve this the government established the Zimbabwe Mass Media Trust (ZMMT) to manage the Zimpapers titles; *The Herald*, *The Chronicle* (the two dailies), *The Sunday Mail* (the country's largest circulating newspaper), *The Manica Post*, *The Sunday News*, *Kwayedza* and *Umtunya* (published in Shona and Ndebele respectively). The national news agency, the Zimbabwe Inter-Africa News Agency (Ziana) and a journalist training programme which was later incorporated into the Harare Polytechnic in 1983 also fell under the ambit of the ZMMT. The ZMMT also manages the Community Newspaper Group (CNG).

Saunders submits that the creation of the ZMMT was a 'democratic experiment' aimed at shielding the press from state power and commerce, to guarantee its independence.<sup>73</sup> During the 1980's and early 1990's, government maintained a distance from the public media and relied on 'hatchet men' it had deployed to Zimpapers to do its bidding.<sup>74</sup> However, the appointment of Jonathan Moyo as Minister of Information in 2000 as a reward for his 'sterling performance' during the referendum and 2000

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<sup>71</sup> Saunders, R *Information in the Interregnum. The Press, State and Civil Societies in struggles for hegemony: Zimbabwe 1980 - 1990* (1991) 75. In 1986 ZMMT bought more shares in Zimpapers and gained control of company. The government started getting involved in the daily running of the media, giving rise to 'sunshine journalism'. Editors deemed too independent to control were quickly dismissed from their posts: Willie Musarurwa, Henry Muradzikwa, Bill Saidi, Tommy Sithole, Bornwell Chakaodza, Pascal Mukondiwa, Steve Mpofo, Funny Mushava, Stephen Ndlovhu, Edina Machirori, Geoff Nyarota and Ray Mungoshi were dismissed from Zimpapers between 1985 and 2004.

<sup>72</sup> *The Herald* 5 January 1981.

<sup>73</sup> Saunders (n 71) 74 -76.

<sup>74</sup> Rusike (n 45) 86.

general elections was a turning point in the history of the media in Zimbabwe.

Moyo dismantled the protective sheath around the state media giving himself unlimited access to editorial departments at Zimpapers. In time, the newspapers became conduits of government propaganda. Because of increased suppression of the state media, the public turned to informal sources and the small group of independent media for uncensored news. This gave impetus to privately owned publications such as the *Financial Gazette*, *Zimbabwe Independent*, the *Standard*, and the recently launched *The Daily News*, *The Daily Mirror*, *The Tribune* and *The Daily News on Sunday* to step in and grow their circulations. However, only the *Zimbabwe Independent*, *Standard* and *Financial Gazette* are still in existence.

However, the battle for media space which had been tame in the early years of independence acquired an unexpected urgency following the launch of the *Daily News* in 1998. The *Daily News* quickly garnered a huge readership and supplanted *The Herald* as the paper of record. At its peak, *The Daily News* sold more than 100,000 copies. Meanwhile, *The Herald*, saw its circulation drop from a peak of 136 000 in 1993 to about 35 000 after the 2000 general elections.<sup>75</sup>

The paper's revenue base was also eroded by dwindling advertising support while readers boycotted it *en masse* because of its perceived biased reporting.<sup>76</sup> Notwithstanding the closure of the *Daily News*, *The Herald* has failed to recover its market share. Its circulation currently stands at 45 000, while *The Chronicle* sells 20,000 copies daily. *The Sunday Mail* sells 60,000 copies, *The Sunday News* 18,000, the *Manica Post* 8,000, *Kwayedza* 5,000 and *Umthunywa* 2000 weekly. The privately owned *Financial Gazette* has a readership of between 50,000 and 100,000 and a circulation of 26 000

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<sup>75</sup> The writer has firsthand knowledge of this as he was news editor of *The Herald* in early 2000.

<sup>76</sup> Kumbula (n 58) 173.

weekly. Its rivals, *The Independent* and the *Standard*, both owned by T S Holdings sell 35,000 and 30,000 copies respectively.<sup>77</sup>

As a matter of fact, the closure of some privately owned news media by the MIC has brought into sharp focus the perennial struggles between the government and the media over what the public should know. Few battles have been fought as fiercely as the one that raged between the ANZ, the owners of the *Daily News* and the MIC led by former media studies lecturer Dr Tafataona Mahoso.<sup>78</sup>

This friction is an affirmation of the growing recognition that the media are no longer passive conduits for the government, political parties or citizens but are opinionated players in the democratic process. In this vein, the media are now perceived as autonomous power centres locked in perpetual rivalry with other power centres hence their appeal to powerful capitalists and the state.<sup>79</sup>

## 2.6 CONCLUSION

The development of the media in Zimbabwe is closely bound up with the history of the country. From the outset, the white settler administration fashioned the media to serve its purpose – primarily to entrench the minority regime. At the height of the war in 1970s, the rebel government ensconced in Salisbury had deployed the media particularly the broadcasting services to lead its propaganda campaign. The mainstream newspapers circulating in the country were initially antagonistic to the RF but were soon whipped into line by way of a surfeit of laws. The RF

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<sup>77</sup> Munyuki, G and MISA-Zimbabwe 'Media ownership in Zimbabwe.' Available at [http://www.kubatana.net/docs/media/misaz\\_media\\_ownership\\_zim\\_051130.pdf](http://www.kubatana.net/docs/media/misaz_media_ownership_zim_051130.pdf). [Accessed 16 November 2008].

<sup>78</sup> *Associated Newspapers of Zimbabwe (Pvt) Ltd v Minister of State for Information and Publicity and Ors* S-20-2003.

<sup>79</sup> Jacobs in Zegeye, A and Harris, RL (eds) *Media, identity and the public sphere in post-apartheid South Africa* (2003) 61.

meticulously crafted a wide range of legislation which was used to cow the media and suborn human rights defenders.

At independence, Zanu PF inherited the broadcasting services and acquired the newspaper from the Argus Group of South Africa ostensibly in trust for the people of Zimbabwe. As we will discuss below, the new majority government's intentions were more sinister than merely perpetuating the public good. Zanu PF has retained most of the anachronistic laws crafted in Rhodesia to subdue the country's citizenry. In addition, the government has stubbornly held on to the six newspapers in the Zimpapers group; the ZBC and New Ziana. These organisations have been the lifeblood of Zanu PF's longevity as they are regularly used to attack government opponents including the private media.

Notwithstanding, this negative outlook the private media has struggled heroically to check the government's profligacy and given space to those denied a voice in the government media. More importantly, the Zimbabwean crisis has remained topical for almost a decade because of the valiant efforts of the private media – both local and international. In the next chapter, we discuss the theories underpinning media development. We also illustrate the functions assigned to the media in a democracy and the setting for effective media operations.

## CHAPTER III

### THE ROLE OF THE MEDIA IN BUILDING A DEMOCRATIC ORDER

'Go out and speak for the inarticulate and the submerged.'

British newspaper owner and politician, Max Aitken Beaverbrook (1879 - 1964).

#### 3.1 INTRODUCTION

The media are often described as the 'Fourth Estate' because of the influence they wield and the oversight role they exercise over government.<sup>80</sup> As demonstrated in the previous chapters, Zimbabwean media ownership patterns have remained largely unchanged since independence: what has changed is the racial composition and political alignments of the new boards at the apex of these empires. Invariably, as we will show later, this has adversely crippled the media in its exercise of its democratically assigned mandate. Thus, the monopolisation of mainstream mass communication media by the ruling elite is at cross-purposes with Western liberal theory which places the mass media at the heart of democratic conjecture and practice.<sup>81</sup>

Alison Gillward has argued that the media's midwifery role during a society's gestation to full term democracy is reinforced by its perceived ability to provide public spheres where the citizenry discuss issues of common interest.<sup>82</sup> As we allude to above, this has proved nightmarish in Zimbabwe because government massages the messages that percolate down to the citizenry through its gargantuan media realm. In this chapter we look at the bolts and nuts that hold media theory together and which lay down the framework of the role allocated to the mass media in democracies. To arrive at this conclusion, it is therefore imperative to define the dominant concepts and examine how these fit into pluralist thinking.

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<sup>80</sup> The fourth 'power' checks and counterbalances the three state powers of executive, legislature and judiciary.

<sup>81</sup> Coronel, SS 'The role of the media in deepening democracy' <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN010194.pdf>.

<sup>82</sup> Gillwald, A (1993) 21 *Transformation* 65 -77.

### 3.2 DEFINING DEMOCRACY

The term democracy extracts an assortment of responses from different polities largely because power to govern is the ultimate prize due to victors in political contests. It not surprising therefore that a singular definition has proved elusive. What is not in dispute though is the notion that democracy has two pervasive principles that form the bedrock of the varying shades of the concept: firstly; the preservation of equality in contests for political power and secondly; providing guarantees that all members of a community enjoy universally sanctioned human rights. Hence, democracy has to be grounded in a solid constitutional order to forestall the usurpation of political power by one faction of society.<sup>83</sup>

This is manifest in the doctrine of separation of powers, which maps out how power is exercised in a democracy. Whereas the principle of majoritarianism bolstered by the consent of the governed is often viewed as a crucial cornerstone of democracy, the flip side is that too much power reposed in a single group breeds tyranny by the majority. Thus holding of regular, free and fair elections becomes an essential thermometer with which to measure the health of any democratic arrangement. Furthermore, the electoral process must be bolstered by democratic tenets such as freedom of expression, freedom of the press and political tolerance. Thus, democracy is often construed as an overloaded generic term that encompasses liberalism, political pluralism, the rule of law, human rights and a smattering of civil society movements.<sup>84</sup>

### 3.3 DEFINING MEDIA FUNCTIONS IN A DEMOCRACY

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<sup>83</sup> Liberty and Justice, *The Economist*. Available at [http://www.economist.com/markets/rankings/displaystory.cfm?story\\_id=8908438](http://www.economist.com/markets/rankings/displaystory.cfm?story_id=8908438)[accessed 7 February 209].

<sup>84</sup> *The Economist* (n 83).

In the main, liberal idealism identifies the watchdog function, the ability to convey information; to educate and encourage citizens to contribute to the way they are governed, promote tolerance among various social groups; provide entertainment and to act as a 'voice for the voiceless',<sup>85</sup> as the major roles of the post Cold War media.<sup>86</sup> This is because democracy thrives well as a political system where people are empowered to effectively contribute to governance issues. Hence, scholarly consensus holds that the free flow of information and citizens' ability to access the sources of information as well as taking part in political discourse foreground the media's key role in building democracy and strengthening existing institutions.<sup>87</sup>

Yet, despite the widely acknowledged notion that media shape public opinion and hold power accountable, they are nevertheless fallible and often succumb to the caprices of diverse interest groups in the community. Thus media can inhibit democracy by disseminating falsehoods, fear; propagating division and violence. This is more apparent in societies where the media are controlled by governments.<sup>88</sup>

Indeed, market forces can also contribute to poor reporting, as media practitioners sometimes dispense with journalistic principles in the quest for larger market shares; audiences and listeners. Also, some journalists allow themselves and their organisations to be used by vested interests thus making media ineffectual and a liability to democratisation.<sup>89</sup> These shortcomings raise ethical issues and questions about media responsibility and diminish its vaunted image as a good sentinel on the *qui vive*.

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<sup>85</sup> Being the voice of the voiceless relates to the media's ability to give agency to voices or views from sections of society that are normally marginalised in political and economic life. This may include poor citizens, ethnic or other minorities, as well as rural populations who have very limited access to the mainstream media.

<sup>86</sup> Alexander, K 'The Future of Democratic Politics in Zimbabwe' (2006) 92.

<sup>87</sup> Moyo D, (2005) *Westminster Papers in Communication and Culture* 109-128.

<sup>88</sup> Coronel (n 81) 8-9.

<sup>89</sup> Coronel (n 81) 8-9.

As Moyo correctly submits, responsibility is inseparably locked up with accountability. In most instances, bad journalism is rewarded with judicial sanctions although in more repressive societies the chilling effect is invariably state intervention; and the concurrent suppression of media freedom and the right to freedom of expression. But what should happen where the media abuse its immanent power? Should this attract legitimate criticism only; or activate political intervention in the form of statutory commissions; or should media practitioners be allowed to regulate themselves?<sup>90</sup>

Self-regulation has so far proved to be outstanding in vindicating freedom of expression and impelling high professional standards; and based on that evidence, should be the global standard. However, the situation is different in most emerging democracies where journalists are forced to march in lockstep with statutory bodies which are predictably packed with government supporters.

### **3.4 MASS MEDIA THEORIES**

The role of communications media is best appreciated when explained through a prism that includes the authoritarian, the libertarian, the social responsibility and the Soviet communist approaches.<sup>91</sup> Because of their importance to the comprehension of the intricacies of media operations, this section will give a brief outline of the theories as formulated by Siebert, Peterson and Schramm.<sup>92</sup>

#### **A. The Authoritarian Theory**

The authoritarian theory identifies the state as the seminal authority in society; hence the media must back the ruling government to brace up

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<sup>90</sup> Moyo (n 87) 109-128.

<sup>91</sup> Faringer GL, *Press Freedom in Africa* (1991) 86.

<sup>92</sup> Siebert et al *Four theories of the press* (1956).

national progress. This theory is premised on the idea that because societies are held together by the state, media should consequently be guided to drive positive change in society.<sup>93</sup> Siebert et al argue that man can only fully attain his potential only as member of society. Individually, people's sphere of activity would be extremely limited. Their chances of success are exponentially increased by membership to a group thus, the group assumed greater currency at the expense of the individual.<sup>94</sup>

In recent times, the authoritarian theory which bears a close resemblance to the Marxist-Soviet ideology was widely practiced in Eastern Europe, China and North Korean. In China, the political-economic situation obtaining there provides a fertile ground for the state to maintain a constitutive presence in the media. However, since 1992, there has been a deliberate effort to recast China as a society in transformation and eager to shed its authoritarian character.<sup>95</sup> In Africa, developmental one-party states such as Zambia under Kenneth Kaunda, Tanzania under Julius Nyerere and Mozambique until the 1994 multiparty elections were proponents of this theory.<sup>96</sup>

## **B. The libertarian theory**

The libertarian philosophy is mounted on the belief that people 'are rational beings with inherent natural rights'. Under this ideology the press is deemed to be free to compete in a laissez-faire environment that promotes pluralism and perpetuates the 'market place of ideas' philosophy.<sup>97</sup> Moreover, libertarians argue that governments should not control the press, as mature and free competition among news organisations will improve quality and give rise to self-cleansing regulatory mechanisms.<sup>98</sup>

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<sup>93</sup> Faringer (n 91) 86.

<sup>94</sup> Siebert et al (n 92) 27.

<sup>95</sup> Curran and Park M in *De-westernising media studies* 27.

<sup>96</sup> Ronning, H and Kupe, T (2003) in Curran, J and Park, M (eds) *De-Westernizing media studies* 157.

<sup>97</sup> Faringer (n 91) 86.

<sup>98</sup> Tomaselli, GK in Hyden et al (eds) *Media and democracy in Africa* (2002) 130.

This theory draws heavily on its liberal origins in Britain and Western Europe and is constructed on the hypothesis of a fiscally healthy media that exercises an oversight role over government.<sup>99</sup> The libertarian theory differs profoundly from authoritarianism in respect of freedom of the press. Whereas libertarianism is based on the free exchange of ideas, authoritarianism does not countenance the existence of an unregulated media. Also, the philosophical thinking which predominates libertarianism; namely that the media has a preponderate duty to check governmental power is anathema to the authoritarians.<sup>100</sup>

While this system is theoretically expected to stimulate democratisation, the situation that evolved in South America was rather confounding. Here, a liberal media was allowed to blossom in an anti-liberal environment: Media owners pandered to the caprices of the military in exchange for the right to exist and for financial reward. The result was diametrically dissimilar to the liberal model as the press went into a cordial relationship with the government instead of the envisaged adversarial system.<sup>101</sup>

### **C. Social responsibility theory**

The social responsibility theory postulates that media owe a fiduciary obligation to the citizenry because of their privileged position in society. This duty enjoins the media to respect society's right to credible information. In a practical sense, this basal responsibility compels the media to strive for accuracy, balance, objectivity and fairness.<sup>102</sup>

The social responsibility theory further posits that the press must not be allowed to derail societal goals and aspirations by diverting public attention and energies towards the inane. Supporters of the social responsibility

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<sup>99</sup> Wilcox, *The Press in Black Africa: Philosophies and Control* (1975) vii.

<sup>100</sup> Siebert (n 92) 28.

<sup>101</sup> Waisbord, S in Curran J and Park M (eds) *De-Westernizing media studies* 51.

<sup>102</sup> Wilcox (n 99) vii.

theory, which developed in the United States in the post World War II period, insist that democratic institutions and processes must be allowed to thrive with the aid of a discerning and intelligent press. The role of the press in this instance is seen as that of keeping the public focussed on identified community ideals and targets.<sup>103</sup>

#### **D. The Soviet-communist theory**

However, the emphasis on national unity was the principle idea behind the communist ideology which encapsulated the Soviet Union. Here, media were considered as propaganda and campaign instruments for the communist party, hence the stringent media controls.<sup>104</sup> This theory is rooted in early authoritarianism but was revised after the industrial revolution primarily to solve the problems that developed during this transient period. Since communism is premised on the overthrow of capitalism by the proletariat, the mass media as well can contribute to this process by aiding the poor achieve their ends.<sup>105</sup>

Crucially, under this theory the state controls all the means of propagating information to the masses. The argument used to justify state control of all forms of mass communications was that the state had been mandated by the public to do so. Furthermore, the state monopolised what information was placed in the public domain by imposing severe restrictions on the importation of foreign-originated materials.<sup>106</sup>

In summary, the authoritarians and the communists advocated close state control of the press, the libertarians wanted little state involvement; while those who favour the theory of social responsibility contend that, despite its soundness libertarianism falls short in contemporary society which requires

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<sup>103</sup> Siebert et al (n 92) 28.

<sup>104</sup> Faringer (n 91) 87.

<sup>105</sup> Siebert (n 92) 27.

<sup>106</sup> Siebert (n 92) 27.

some form of media control, preferably by 'the media themselves with a benevolent government in the background unobtrusively checking the ground rules.'<sup>107</sup>

From the foregoing, it is apparent that the libertarian and the social responsibility systems are more suited to democracy. While both were born out of pluralism and free enterprise, and are certain to ingrain social equality in new democracies, the social responsibility system however trumps libertarianism because it allows the press to ferret out wrongdoing while remaining mindful of its social responsibilities.

As demonstrated in the next chapter, the social responsibility theory echoes international standards which, while advocating free media enterprise, pluralism, media independence and self-regulation, also calls for media restraint. Additionally, international law unequivocally allows for suspension of press rights to the extent that they interfere with the civil liberties of others. This is clearly discernible in article 19 (3) of the ICCPR and the jurisprudence of the Human Rights Committee. Also, regional human rights conventions and declarations, national constitutions, regional and domestic courts, as discussed below, allow the limitation of media rights in deference to greater societal, and even individual interests.

In practice, most African countries flirted with the communist theory after gaining independence before switching to the authoritarian system. However, in recent times the majority, have embraced the social responsibility system owing to increased pressure by donor countries. Zimbabwe, however, hasn't had a consistent system since colonisation. Each new regime settled on a system that best served its goals. Today, the situation is still a mixed bag, as a small but robust independent press has been allowed to exist alongside the strictly controlled government media. At the same time, the government has maintained a tight leash on foreign

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<sup>107</sup> Siebert (n 92) 28.

media by passing onerous regulations that prohibit foreigners from practicing journalism in the country.

### 3.5 THE AFRICAN EXPERIENCE AND PERSPECTIVE

Historically, the media in Africa has been enmeshed in the same political turbulence that has affected much of the continent. Hence, the Zimbabwean media imbroglio can be explained in the broader context of the philosophies adopted and espoused by the heroes of pan-Africanism. The philosophies of Kwame Nkrumah of Ghana, Kenneth Kaunda of Zambia and Julius Nyerere of Tanzania in respect of development and the media, for instance, served as reference points for most newly independent states. As a result most African states tilted toward socialism, communism or an abridged version of both but imbued with African theory, such as Kaunda's humanism and Nyerere's Ujamaa. As discussed below, the media in these countries was thus regarded as mere tools of the state.<sup>108</sup>

However, philosophical contradictions soon emerged in these countries. The tensions and cleavages that characterised relations between the state and the press, developed into fault lines that had unpalatable consequences. Says Ekpu:

Journalism is a dangerous venture in the developing world ... No method of reprisal seems too severe to use against a press that dares to adopt an independent and critical stance. The arbitrary treatment meted out to *Newswatch* [a Nigerian publication] is a case in point. The magazine was 'convicted'—without benefit of anything even resembling due process - of an 'offence' (sic) which did not even exist at the time it was supposedly committed. The decree of proscription was promulgated after the ban was announced and then backdated - a flagrant example of *ex Post recto* legislation.<sup>109</sup>

Similarly, while addressing an annual meeting of the International Press Institute (IPI) in Nairobi in 1968, former Zambian President Kenneth Kaunda

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<sup>108</sup> Nkrumah, K in Mytton (n 42) 58.

<sup>109</sup> Ekpu, R (1990) *Journal of Democracy* 106.

extolled the virtues of a 'completely objective and free from influence of government' press. In the same speech, however, Kaunda railed against the free press and laid the foundations for the rather quixotic relationship he had with the media throughout his 27 year reign:

Knowing what it is capable of doing or undoing, I would not be far wrong if I said that the ... press qualifies as one of the many invisible governments. At other times and in certain situations it can form a formidable opposition party where there is organisationally none. The press is capable of making or destroying governments given appropriate conditions; it can cause war or create conditions for peace... It is largely true that a country is also what the press makes it. Once they stick a label on it, what was a lie can slowly be converted into truth in the eyes of other members of the international community.<sup>110</sup>

Also, Kwame Nkrumah, a former journalist himself, described the 'African journalist' one whose:

... newspaper is a collective organiser, a collective instrument of mobilisation and a collective educator – a weapon, first and foremost to overthrow colonialism and imperialism and to assist African independence and unity... his satisfaction is in his integrity, in work performed for the betterment of his fellows and the society of which he is a worthy member...the true African journalist very often works for the organ of the political party to which he belongs and in whose purpose he believes. He works to serve a society moving in the direction of his own aspirations.<sup>111</sup>

As a result the common perception in among the ruling elite in most African countries was that a free press had the capacity to cause chaos by focusing on peripheral issues that breed tribalism, disunity and thus stunt development. The new nations instead preferred that the media focus on promoting government programmes geared towards accelerating modernization.

As a consequence, turgid journalism which was 'truly patriotic and constructive [and] would have, as its major tasks; to guide inform and

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<sup>110</sup> Kenneth Kaunda's address to IPI Assembly, Kenya on 4 June 1968 in Mytton (n 42)58.

<sup>111</sup> Nkrumah (n 108) 58.

provoke development among the masses in general'<sup>112</sup> became the mainstay of African journalism. This resulted in a repudiation of the media's oversight function. The 'flag waving' or 'minister said' type of reporting thus became the stock-in-trade in most African newsrooms.

This is notwithstanding the 'second wave of democratisation'<sup>113</sup> which has not necessarily filtered down to the media. Still, most leaders in the developing world, while publicly and even constitutionally subscribing to the values of a free press, discourage investigative journalism in deference to slavish and sycophantic reporting.

### **3.6 MEDIA AND DEMOCRACY**

There is general consensus that the media is the cornerstone of democracy. By informing the public on government performance, public policy and projecting alternative viewpoints, the media empower their consumers to assert their civil, political, socioeconomic and cultural rights. In this way, the media undergird their oversight role and conduct essential surveillance of the state and government to produce a report card on their performance.<sup>114</sup>

Thus routine 'surveillance of development, both positive and negative which may affect citizens welfare; identifying key issues (agenda setting); and offering accessible platforms for intelligible illuminating advocacy by politicians and interest groups' are the primary functions of media today.<sup>115</sup> Additionally, the media assist in narrowing the divide between a wide range of opinions held by power-holders, aspirants and the citizenry.

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<sup>112</sup> Magaga, A, *People and communication in Kenya* (1982).

<sup>113</sup> The period after the end of the Cold War.

<sup>114</sup> Alexander (n 86) 92.

<sup>115</sup> Zaffiro (n 52) vii.

Also, the media educate and motivate 'citizens about politics and participation; and maintaining independence and integrity'.<sup>116</sup> In the main, the media are credited with contributing significantly to the proliferation of egalitarian values across the globe, more recently in Africa, by shaping and continuously refining democratic values.<sup>117</sup>

Hyden and Okigbo attribute the acceptance of political pluralism in Africa to globalisation and the sea change in media ethos on the continent.<sup>118</sup> Since the 'second wave of democratisation'<sup>119</sup> swept across Africa in the 1990s, tangible transformation has occurred in most newsrooms. This is illustrated by the growing number of private media bodies that put a premium on the media space and are prepared to fight for it.

### **3.7 THE MEDIA AS A WATCHDOG**

Modern-day liberal pluralist thinking contends that the watchdog function embodies the whole essence of the media in a participatory democracy.<sup>120</sup> Accordingly, the state of health of democracy in any society is measured by regularly holding of free and fair elections and the freedom enjoyed by its media, as this indicates the levels of tolerance of divergent points of view. As such, robust media that monitor government, publicise official malfeasance and prevent unpalatable consequences play a heroic role in growing democratic order dispensation.

This has elevated the watchdog role above other media functions as uncovering political corruption and inept policies sometimes causes widespread citizens' outrage which in turn impels change in official behaviour.<sup>121</sup> For this to happen, however, the media must fearlessly

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<sup>116</sup> Zaffiro (n 52) vii.

<sup>117</sup> Tettey, WJ (2001) 23 (1) *Media, Culture and Society* 5.

<sup>118</sup> Hyden and Okigbo in Hyden et al (eds) (2002) *Media and democracy in Africa* 41.

<sup>119</sup> Hyden and Okigbo (n 118) 41.

<sup>120</sup> Gillwald (n 82) 65 -77.

<sup>121</sup> Gillwald (n 82).

'generate discussion of issues of public concern in a way which does not favour partisan interests, whether these be the interests of particular parties, the interests of media bosses or media professionals'.<sup>122</sup> As Sandbrook argues, the media have an overriding responsibility in this regard. In an ideal situation, the media should be sufficiently detached from the governors although not necessarily antagonistic.<sup>123</sup> Says Coronel:

In both new and old democracies, the notion of the media as watchdog and not merely a passive recorder of events is widely accepted. Governments, it is argued, cannot be held accountable if citizens are ill informed about the actions of officials and institutions. The watchdog press is guardian of the public interest, warning citizens against those who are doing them harm. A fearless and effective watchdog is critical in fledgling democracies where institutions are weak and pummeled by political pressure. When legislatures, judiciaries and other oversight bodies are powerless against the mighty or are themselves corruptible, the media are often left as the only check against the abuse of power. This requires that they play a heroic role, exposing the excesses of presidents, prime ministers, legislators and magistrates despite the risks.<sup>124</sup>

In this respect, Latin American journalists have led the way in robustly exposing political wrongdoing including corruption and human rights abuses. This has encouraged a tradition of accountability in the region. Because of sustained investigative reporting of high level corruption, the governments of Fernando Collor de Mello of Brazil, Carlos Andres Perez of Venezuela, Abdala Bucaram of Ecuador and Alberto Fujimori of Fiji collapsed between 1992 and 2000. Such brave reporting has made the media a trustworthy and valuable component in the embryonic Latin American democracies.

Similarly, Amartya Sen assigns to the media the power to 'cleanse' society although he contends this can only be accomplished if the media is unshackled. These 'transparency guarantees [are] inescapably important requirements of good public policy... [and] have a clear instrumental role in

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<sup>122</sup> Boyd-Barrett, & Newbold (eds) (1995): *Approaches to Media: A Reader* 187.

<sup>123</sup> Sandbrook (1996) 17 (1) *Third World Quarterly* 81.

<sup>124</sup> Coronel (n 81) 4.

preventing corruption, financial irresponsibility and underhanded dealings.<sup>125</sup>

Indeed, investigative journalists help cultivate a culture of disclosure by constantly ferreting information from government and corporate sources. At the same time, these institutions start to appreciate the importance of openness to staunch rumours, lies and unsubstantiated statements. In the long term, this strengthens a tradition of discussion, tolerance and consensus building.

### **3.8 MEDIA AS INFORMATION AND EDUCATION TOOLS**

Often, the watchdog, adversarial and agenda setting roles collectively view social responsibility as the media's judicious lodestar.<sup>126</sup> This responsibility stems from the media's distinct ability to draw people to the figurative 'public square' and to facilitate 'a culture of community conversation by activating inquiry into serious public issues.'<sup>127</sup> This function is particularly crucial in emerging democracies where a culture of genuine discourse is still evolving. Coronel says:

All these are extrapolations on the media's role as a virtual town hall or public square: by providing information and acting as a forum for public debate, the media play a catalytic role, making reforms possible through the democratic process and in the end strengthening democratic institutions and making possible public participation, without which democracy is a mere sham.<sup>128</sup>

During elections, the media which are perched at the centre of this process, offer contestants platforms through which to communicate their ideas and opinions to voters.<sup>129</sup> The media's wider reach and the diminished influence of erstwhile sources of information encouraged political parties and

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<sup>125</sup> Sen, A in Coronel (n 82) 5.

<sup>126</sup> Altschull JH (1984) *Agents of power: The role of the news media in human affairs* 194.

<sup>127</sup> Moyers, B in Coronel (n 82) 5.

<sup>128</sup> Coronel (n 81) 6.

<sup>129</sup> Makumbe and Compagnon *Behind the smokescreen. The politics of Zimbabwe's 1995 general elections* (2000) 184.

candidates to turn to the media to disseminate their messages.<sup>130</sup> Against this background, it then becomes instructive to note that ruling elites, particularly in developing countries, rush to control the media to manipulate information that is placed on public view.<sup>131</sup>

Hence, media play a major role in educating the public on elections. This is, for example, accomplished through public affairs programmes on radio and television. These programmes give in-depth analysis on the candidates and political manifestos which news programmes and advertisements do not.<sup>132</sup> Accordingly, Henry Valentino suggests that where the media is state owned; media managers could ensure free and fair election coverage by:

First, differentiate straight news coverage, editorialising or news analysis or commentary, political news/information, and other information/educational coverage. Next, determine the amount of access that will be given each political parties or contesting groups. This should be public service access as contrasted with paid political messages or advertisements. The media must ensure all contesting groups or candidates are given equal treatment and access as to time and location of their messages.<sup>133</sup>

In South Africa, for instance, the state owned South African Broadcasting Corporation (SABC) TV and radio networks produce and convey public service programmes enjoining voters to participate in the electoral process. These messages encourage citizens to exercise their rights to vote. Additionally, current affairs debates pitting candidates against each other and moderated by experts are aired frequently before national polls. In addition, the privately owned e-TV, also hosts debates with a view to giving candidates with insufficient funds to pay for advertisements a chance to propagate their views to a large audience.

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<sup>130</sup> Coronel (n 81) 13.

<sup>131</sup> Mukori in Makumbe and Compagnon (n 129).

<sup>132</sup> Makumbe (n 129) 184.

<sup>133</sup> Valentino H, 'Establishing and maintaining balanced media support for free and fair elections', *Elections Today* (1994) 10.

In most African countries, radio has overshadowed newspapers as the medium of choice because of its wider reach and affordability. This has made it popular with poor people, especially those in distant rural districts: making it a target for manipulation by authoritarian governments. As argued above, the Zimbabwean government has stubbornly refused to liberalise the broadcasting sector for fear of allowing competing opinions to seep through to its powerbase in rural areas.

More recently, however, the internet has changed the way people communicate. Its popularity has grown exponentially over the last decade because of its interactivity, low rates and its freedom from centralised control. This projects the internet as the perfect bulletin board for the exchange of information, ideas and discussion.<sup>134</sup> In countries, where authoritarian governments deny their adversaries access to the media, the information superhighway has proved to be a powerful tool for mustering support. Here, one can freely participate in democratic processes without fear of government censorship or commercial partiality.<sup>135</sup>

In Central and Eastern Europe, NGOs conduct a lot of voter education on the internet. Social networks like Facebook, Myspace and Hi5 among others have made the internet even more powerful as a device for rallying people around causes. However, the majority of Africans are unlikely to immediately feel the impact of the internet because of their undeveloped locations. Most Africans do not have electric power in their houses. The cost of the hardware and lack of literacy in new media technology is an added hindrance to access the superhighway. But this disability is rapidly being cured by the proliferation of cell phones. In recent elections, text messaging was used widely as a campaign method in Zimbabwe, Zambia and Kenya to counter governments' control of the media.

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<sup>134</sup> Jacobs J, (1998) 'Democracy and the Internet' *The good citizen. Australian democracy & citizenship*. Available at <http://www.abc.net.au/ola/citizen/default.htm> [accessed 8 January 2009].

<sup>135</sup> Jacobs (n 134).

The use of the media in this way goes some way towards fulfilling the social responsibility theory, which demands media contribution to the maintenance of homeostasis in society. As will be illustrated below, this dovetails with international standards as well. However, lack of controls on the internet, which, while satisfying the requirements of the libertarian theory, makes it home to immorality. Paedophiles, bigots and other social miscreants whose voices are rightly drowned out of the mainstream mass media have migrated to there.

### **3.9 MEDIA AS DEFENDERS OF HUMAN RIGHTS**

As noted above, only an enlightened citizenry can assert its rights. Thus access to information that enunciates and interprets issues pertaining to personal rights and how these rights can be claimed becomes imperative. Besides accessing different shades of opinion, the citizenry should also as a matter of course use existing public spheres to criticise and offer alternative perspectives on matters of public interest.<sup>136</sup> Indeed, as Hamelink correctly argues, human rights can only be adequately secured in a society where free speech is the overlying right:

... in an egalitarian democratic arrangement of world communication the principle of the defence of human rights is more securely protected than in a non-democratic or in non-egalitarian democratic arrangements. At the core of the defence of human rights is a speech situation with specific requirements: the defence of human rights implies that all people can speak up and their perpetrators are not silenced, and that there is public debate about human rights. This demands the absence of all forms of censorship: one of the gravest obstacles for the defence of human rights.<sup>137</sup>

In this respect, the media in the free world has unfailingly documented the atrocities perpetrated by governments on their citizens and in foreign

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<sup>136</sup> Murdock, G in Skovmand, M & Schroder, KC *Media Cultures: reappraising Transnational Media* (1992).

<sup>137</sup> Hamelink (n 8) 29.

territories. The exposure of the United States government's poor human rights record at Guantanamo Bay and Abu Graib, stand out.

Furthermore, as Amartya Sen argues the media is pivotal in guarding against disaster and natural calamities. In this way, the media protect economic, social and cultural rights. His argument is premised on the fact that famines in modern times have been restricted to countries which do not respect the rule of law. He concludes thus:

There has never been a famine in a functioning multiparty democracy. A free press and the practice of democracy contribute greatly to bringing out information that can have an enormous impact on policies for famine prevention... a free press and an active political opposition constitute the best early-warning system a country threatened by famine could have.<sup>138</sup>

In this respect, the 1984 – 85 famine which claimed over a million lives in Ethiopia was emblematic of the docility of the local press which failed to issue early warnings of the impending calamity. This was due in part to the fact that the repressive ruling elite, the Derg under Mengistu Haile Mariam, maintained an unyielding stranglehold over the levers of power and the media.<sup>139</sup>

### **3.10 JOURNALISM AS AN AGENT OF PEACE**

Universally, there is now growing recognition of the media's ability to bridge gaps between disparate groups, especially those caught up in civil strife. In the alternative this means that a collective identity can be negotiated under a 'process in which actors articulate and defend competing conceptions of cultural and political identity and competing conceptions of political legitimacy'.<sup>140</sup> This is an outcome of the truism that democracy, and indeed development, can only flourish in peace time. Here, media as agents of social change promote dialogue between the belligerents and accordingly,

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<sup>138</sup> Sen in Coronel (n 81) 5.

<sup>139</sup> The Establishment of the Derg

<sup>140</sup> Gillwald (n 82) 71.

execute their allotted functions under international law and social development theories.

'Peace journalism' is an evolving variety of journalism which emphasises reconciliation, and articulates the views of all protagonists in conflict situations. In addition, the media avoids playing up violence but instead focuses on the impact of the conflict on affected communities.<sup>141</sup> This brand of journalism emphasises 'peace initiatives and potential solutions [which are made] more visible, whoever suggests them'.<sup>142</sup> In 2007, for instance, the Subaltern Forum, a Kathmandu based journalists' organisation, started fortnightly radio broadcasts calling for a cessation of hostilities after a protracted civil war. The programmes were designed to help ensure there was a smooth transition from a monarchical system to a parliamentary republic.<sup>143</sup>

### 3.11 CONCLUSION

The significance of the media in contemporary society is typified by the cacophony that comes in the wake of political repression of this sector. This is because the dominant political theory today presupposes the existence of an open society that guarantees full media autonomy from governmental controls. As MaChesney notes liberal pluralist thinking 'envisages a flowering commercial marketplace of ideas, unencumbered by government censorship or regulation, which should generate the most stimulating democratic political culture possible.'<sup>144</sup>

Since the regression of communism and socialism in the late 1980s, democracy, driven by globalisation, has spread rapidly across the world.

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<sup>141</sup> Wisudo, PB 'Broadening Access to Information as a Way of Ending War Journalism,' paper presented in a conference on 'Access to Information in Southeast Asia,' held in Hua Hin, Thailand, 4-6 March 2002.

<sup>142</sup> The World Association for Christian Communication available at [www.waccglobal.org/resources/no-nonsense-guides/peace\\_journalism3.pdf](http://www.waccglobal.org/resources/no-nonsense-guides/peace_journalism3.pdf).

<sup>143</sup> WACC (n 142).

<sup>144</sup> Machesney, R *Communication Politics in Dubious Times* (2000) 2.

Hence, the social responsibility theory has become the *de facto modus operandi* of media in democracies across the globe.

Notwithstanding its volatile history, the media in Africa as Folu Folarin Ogundimu rightly concludes is progressively becoming the centrepiece in the democratisation process. The paradigm shift followed the opening up of the communicative space which stimulates free choice, bargaining and compromise in power relations.<sup>145</sup> This boldness is partly rooted in greater recognition of and respect for freedom of expression at regional and international levels, as we discuss in the next chapter. In that chapter, also we explore the concerted efforts of the international community to entrench a culture of respect for the right to free expression and media. The theme currently permeating international custom is that the media must be permitted to make its own rules, although this must be done within the law.

This can only have negative implications for repressive governments such as the Zanu PF regime which has ingeniously intertwined the state media to sustain an authoritarian cult around its leader and disaffirmed the looming democratisation drive. Lately, African governments have been divesting from the media to pave the way for independent media. But this must not be misconstrued as a damascene awakening to the value of an unfettered media.

As a matter of fact, some African governments are increasingly calling for the enactment of legal measures with which to control recalcitrant media. As will be shown below, Botswana, Zambia, Kenya, Tanzania, Gambia and South Africa, are all contemplating setting up statutory media framework. This is a clearly retrogressive and a reversal of the gains made towards achieving media freedom on the continent.

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<sup>145</sup> Ogundimu in Hyden et al (eds) (2002) *Media and Democracy in Africa* 41.

## **CHAPTER IV**

### **DOES INTERNATIONAL LAW PROTECT FREE EXPRESSION**

'The freedom of the press is one of the greatest bulwarks of liberty, and can never be restrained but by despotic governments.' George Mason, United States statesman (1725 - 1792).

#### **4.1 INTRODUCTION**

This chapter highlights the various articles, rules and principles in international law that add weight to universal claims for the right to free speech. While human rights are generally respected as a matter of principle in old democracies, the picture is rather dim in developing countries. Here, human rights were until recently considered alien and thus unnecessary. As a result, fundamental rights including the right to life and freedom of expression were widely ignored.

As demonstrated in the first two chapters, this is still the position in Zimbabwe today. It is rather unfortunate, however, that some African nations including Botswana, Kenya, Tanzania and South Africa appear to be backpedaling in respect of press freedom. Botswana and Kenya have recently enacted media laws compelling journalists to register with statutory bodies.<sup>146</sup> The ANC government has mooted statutory regulation, rehashing the suspicion and intolerance towards media that insidiously existed in Africa in the 1970s. While this may still be the standard tariff in non democratic countries, it is certainly inconsistent with the universal democratic value system we have outlined in Chapter III.

In this chapter, we focus on international legal norms which legitimise the media: thus conferring upon it the right to seek and disseminate information. When viewed against the background of the theories discussed in Chapter III, and taken as a whole, these norms define the United Nations

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<sup>146</sup> Journalists are now required to register with a media council or face heavy penalties under the Media Practitioners Act.

grand scheme of altering the international community's attitude towards the human right to hold opinions, free expression, and free media.

## 4.2 STATE OBLIGATIONS IN INTERNATIONAL LAW

At its first session in 1946, the United Nations General Assembly (UNGA), declared that, 'freedom of expression is a fundamental human right and...the touchstone of all the freedoms to which the United Nations is consecrated.'<sup>147</sup> This notion was reinforced by the UDHR,<sup>148</sup> which in Article 19 affirmed the right to freedom of opinion and expression.<sup>149</sup> Similarly, Article 19 of the ICCPR, the hard-law version of the UDHR, literary restates its forerunner, thus:

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The most important feature of the ICCPR is that as a treaty, it has force of law in respect of its members. Additionally, Article 2 obligates States Parties to respect and promote rights protected under its purview. This provision enjoins states parties to adopt legislative measures that give effect to rights recognised in the ICCPR. None the less, it is trite that the effectiveness of the ICCPR is limited to its membership. Put differently, non-member states are not obliged to observe the provisions set forth in the ICCPR. This intrinsic deficiency is, however, cured by international customary law.<sup>150</sup>

In the meantime, compliance with the ICCPR is supervised by the Human Rights Committee (UNHRCComm). In General Comment 10, the HRCComm has affirmed that the 'right to hold opinions without interference' protected in paragraph 1 was non-derogable. Accordingly, paragraph 2 which offers

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<sup>147</sup> UN General Assembly Resolution 59(I).

<sup>148</sup> The UDHR was adopted on 10 December 1948.

<sup>149</sup> The UDHR is not directly binding on States.

<sup>150</sup> *Dimitrijevic, V (2006) WP-7 ISPI*. Zimbabwe ratified the treaty in 1991.

protection of the right to freedom of expression, obliges States Parties to refrain from effecting 'control of the media as would interfere with the right of everyone to freedom of expression'<sup>151</sup> outside the limitations provided for under article 19 (3). Hence, the UNHRCComm in *Ballantyne, Davidson and McIntyre v Canada* held that:

'article 19 para 2 must be interpreted as encompassing every form of subjective ideas and opinions capable of transmission to others which are compatible with article 20 of the covenant of news and information of commercial expression and advertising of works of art...it should not be confined to means of political, cultural or artistic expression. In the committee's opinion the commercial element in an expression taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedom. The committee does not agree either that any of the above forms of expression can be subjected to varying degrees of limitation, with the result that some forms of expression may suffer broader restrictions than others.'<sup>152</sup>

Similarly, the UNHRCComm has found violations of Article 19 in a number of non democratic nations, mostly in Africa. In *Aduayom et al v Togo*, the UNHRCComm held that:

...the freedoms of information and of expression are cornerstones in any free and democratic society. It is in the essence of such societies that its citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticise or openly and publicly evaluate their government without fear of interference or punishment within the limits set out by article 19, paragraph 3.<sup>153</sup>

In *Mukong v Cameroon* the UNHRCComm dismissed the argument that censorship was a legitimate method of preserving national unity. In this case, the UNHRCComm held that 'the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multiparty democracy, democratic tenets and human rights'.<sup>154</sup> The applicant was a journalist, writer and long time opponent of the repressive government in

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<sup>151</sup> U.N. Doc. HRI/GEN/1/Rev.1 at 11 (1994).

<sup>152</sup> Nos. 359 and 385/1989, §11.3.

<sup>153</sup> Nos. 422-424/1990, § 7.4.

<sup>154</sup> No 458/1991, §§ 9.6 and 9.7.

Cameroon. He had regularly agitated for an end to the one-party system and the establishment of an opposition political party. He was detained for several months and subjected to inhuman treatment.

In addition to the UNHRC's pronouncements, Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, has repeatedly emphasised the importance of the right to free expression. In his 1995 report to the United Nations Commission on Human Rights (UNCHR),<sup>155</sup> he stressed that:

Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.<sup>156</sup>

Also, the office of the United Nations High Commissioner for Human Rights (UNHCHR) has implored states to respect, protect and promote their citizens' liberty to free speech. The UNHCHR has criticised states for 'unjustified invocation of national security, including counter-terrorism, to restrict the right to freedom of expression and information'.<sup>157</sup> However, the need to protect this right is now widely recognized at regional level.

#### **4.3 THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

The ACHPR in Article 9, safeguards citizens the right to receive information and to share opinions. In other words, the ACHPR allows people to employ any means possible to spread information as long as they do so legally. In this regard, the African Commission on Human and Peoples' Rights (the African Commission), which oversees compliance with the ACHPR, in 2002 adopted the Declaration of Principles on Freedom of Expression in Africa in its 32<sup>nd</sup> Ordinary Session (the Banjul Principles). These read in part:

- 1 Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or print, in the form of art, or through any other form of

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<sup>155</sup> Human Rights Council since 2006.

<sup>156</sup> UN Doc E/CN.4/1995/32 para 35.

<sup>157</sup> E.CN.4.RES.2003.42.

communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

- 2 Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.<sup>158</sup>

Moreover, according to the African Commission, the African Charter obliges states parties to respect, protect, promote and fulfil the rights guaranteed therein.<sup>159</sup> As stated earlier, the obligation to respect enjoins states to refrain from interfering in the enjoyment of these rights. This duty obligates states to protect right-holders against other subjects by legislation and through effective remedies.

Protection means that states must create the right framework through an effective web of laws and regulations that enable citizens to freely enjoy their rights. This obligation is inseparably linked to the tertiary obligation of states to promote the enjoyment of all human rights. Lastly, states are expected to fulfil rights guaranteed under the African Charter, which Zimbabwe ratified in 1986.

Also, the African Commission in *Media Rights Agenda and Constitutional Rights Project v Nigeria* affirmed the provisions of Article 9. Here, the Commission noted the 'fact that freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the conduct of the public affairs of his country'.<sup>160</sup>

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<sup>158</sup> ACHPR /Res.62 (XXXII) 02.

<sup>159</sup> *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria* African Commission on Human and Peoples' Rights, Case 155/96.

<sup>160</sup> Nos.105/93, 128/94, 130/94 and 152/96, para 52.

#### 4.4 AMERICAN CONVENTION ON HUMAN RIGHTS

The American Declaration of the Rights and Duties of Man,<sup>161</sup> and the American Convention on Human Rights (the Convention),<sup>162</sup> also safeguard this right. Article 13 of the Convention positively protects the right to freedom of expression and delineates the permissible limitations. Paragraph 1 is a restatement of Article 19 of the ICCPR. Paragraph 2 discusses limitations which must only be invoked in deference to the rights of others; for security reasons, public order and morals.

Paragraph 3 proscribes interference with the media. Here, governments or the private sector are prohibited from exerting control over 'newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means to impede the circulation of ideas and opinions'. Paragraph 4 permits prior censorship to the extent that it shields children from immoral material.

Furthermore in Article 14, the convention provides for the right of reply to anyone whose reputation has been injured by 'inaccurate or offensive' reporting in the media. Also, the Inter-American Court of Human Rights (IACHR), in *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*,<sup>163</sup> recommitted the organisation to the values of the UN when it asserted that the right to speak freely 'is a cornerstone upon which the very existence of a democratic society rests.'<sup>164</sup>

#### 4.5 THE EUROPEAN CONVENTION

The European Convention for the Protection of Human Rights and Fundamental Freedoms protects the right to freedom of expression in Article

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<sup>161</sup> O.A.S. Res. XXX adopted in 1948.

<sup>162</sup> O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978.

<sup>163</sup> OC-5/85 of 13 November 1985, Series A, No.5, para 70.

<sup>164</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (n 164) para 70.

10 (1).<sup>165</sup> This allows people to hold opinions and to exchange information and ideas without interference by the state. However, states are not barred from licensing broadcasting media and cinemas. Paragraph 2, allows for limitations on this freedom as 'prescribed by law' and as 'necessary in a democratic society'. This means that even those views considered to be offensive should be heard.<sup>166</sup>

In effect, forbidding dissemination of information that spreads 'alarm and despondency'<sup>167</sup> would inhibit the media, as news reports are by nature disturbing and shocking. The European Court of Human Rights (ECHR), in *Handyside v United Kingdom*, settled this issue in these terms:

[F]reedom of expression ... is applicable not only to 'information' or 'ideas' that are favourably received...but also to those which offend shock or disturb the State or any other sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.<sup>168</sup>

Similarly, in *Lingens v Austria* the ECHR underlined the centrality of the press, in stimulating participatory democracy in this way:

Whilst the press must not overstep the bounds set inter alia, for the 'protection of the reputation of others', it is nevertheless incumbent on it to impart information and ideas on political issues just as those in other areas of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them.<sup>169</sup>

More importantly, some precepts discussed above, and which emanate from international and regional conventions are increasingly being repeated in domestic courts around the world. These documents have added to the growing corpus of both formally binding and non-enforceable standard-setting precedents which confirm the need to protect the right to free expression. Although international monitoring of implementation through

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<sup>165</sup> E.T.S. No 5 213 U.N.T.S. 222, entered into force Sept. 3, 1953.

<sup>166</sup> *Handyside v United Kingdom*, 7 December 1976, 1 EHRR 737, para 49.

<sup>167</sup> See Gubbay in *Chavhunduka and Choto v Minister of Home Affairs & Attorney General*.

<sup>168</sup> *Handyside* case (n 167) para 49. See also *The Observer and Guardian v the United Kingdom* Application No 13585/88 (ECHR).

<sup>169</sup> No 12/1984/84/131 Para 41.

the United Nations system is essential, domestic oversight is far greater and more enduring for the promotion of human rights. Nevertheless, it is trite that domestic remedies are quicker, less expensive and more efficient.<sup>170</sup>

#### 4.6 FREEDOM OF EXPRESSION IN NATIONAL COURTS

In most democratic societies, national courts recognise the centrality of freedom of expression and 'the need for unfettered interchanging of ideas for the bringing about of political and social changes desired by the people'.<sup>171</sup> Correspondingly, the Constitutional Court in *South African Nation Defence Union v Minister of Defence & Another*,<sup>172</sup> stressed the freedom's 'instrumental function as guarantor of democracy and its implicit recognition and protection of the moral agency of individuals ... to be able to hear, form and express opinions and views freely on a wide range of matters'. Similarly, in *Edmonton Journal v Alberta (AG)*,<sup>173</sup> a Canadian court declared thus:

It is difficult to imagine a guaranteed right more important to democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasised.

In a narrower sense, freedom of the press has been recognised as 'a necessary concomitant'<sup>174</sup> to the broader right to freedom of expression. For example, in the landmark United States case of *New York Times v Sullivan*, the Supreme Court refused to muzzle the media after it was found to have published a false report concerning a public official.<sup>175</sup> Additionally, in *Government of RSA v Sunday Times*,<sup>176</sup> the Transvaal Division declared:

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<sup>170</sup> Harland, C (2000) 22 *Human Rights Quarterly* 189.

<sup>171</sup> *Roth v United States* 354 U.S. 476 (1957).

<sup>172</sup> 1999 (4) SA 469 (CC) (6) BCLR 615 (CC) at para 7.

<sup>173</sup> *Edmonton Journal v Alberta (A.G.)* (1989) 2 SCR 1326.

<sup>174</sup> *Free Press of Namibia (Pty) v Cabinet* 1987 (1) SA 614 (SWA) 623-G.

<sup>175</sup> 376 U.S. 254 (1964). Justice Brennan stated that: 'Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be

... the role of the press is in the frontline of the battle to maintain democracy. It is the function of the press in a democratic society to ferret out corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal dishonest mal- and inept administration. It must also contribute to the exchange of ideas ... It must advance communication between the governed and those who govern. The press must act as the watchdog of the governed.

This small sample is a microcosm of the situation obtaining in countries that have embraced democracy. Although some countries in Africa tend to uphold democratic values in one sphere, while maintaining a measure of control of the media, the trend worldwide appears to be shifting towards granting the media all rights anticipated in a democratic society.

#### **4.7 LIMITING FREEDOM OF EXPRESSION**

The right to freedom of expression is not absolute, however. As a result, this freedom can be limited by other rights such as 'the right to equality, dignity, privacy, political campaigning, fair trial, economic activity, workplace democracy and property'.<sup>177</sup> However, national laws restricting its enjoyment must conform to the requirements of Article 19 (3) of the ICCPR. According to this paragraph, restrictions must be provided for by law and, (a) For respect of the rights and reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Alongside the obligation to promote human rights, states parties are additionally required to protect human rights horizontally, that is to say, paragraph 3 establishes obligations for states to ensure that there is no interference to enjoyment of rights between citizens. The UNHRCComm has

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true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which steer far wider of the unlawful zone. The rule thus dampens the vigour and limits the variety of public debate'.

<sup>176</sup> 1995 (2) SA 221 (T).

<sup>177</sup> Murenik (1994) 10 SAJHR 32.

recognised that rights protected in article 19, are capable of violating the rights of others, particularly privacy. Moreover, UNHRCComm has noted that in the exercise of this right, opinion leaders tend to monopolise the media. As a result, some voices are drowned out leading to conflicts with the freedom of opinion.<sup>178</sup>

Thus, media gatekeepers, journalists, editors and media owners, besides their common duty to disseminate information truthfully, accurately and impartially, are enjoined not to abuse their power at the expense of others. Additionally, states are required to take steps to ensure diversity of opinion and general access to published opinions. In this way, states can ensure a healthy 'interplay between the principle of freedom of expression and such limitations and restrictions which determine the actual scope of the individual's right'<sup>179</sup> is maintained.

Consequently, national laws that limit the enjoyment of this right can only be valid in international human rights law if they are justifiable in a democratic society. The Canadian case of *R v Oakes*<sup>180</sup> is widely recognised as the benchmark in this regard. According to the 'Oakes Test', the aim of suppressing a protected right ought to be 'of sufficient importance to warrant overriding a constitutionally protected right or freedom'. The method used to restrict the right must be rational and discernibly justified. The desired objective has to be proportional to the effects of the agencies on which the limitation is founded.

This test creates a higher threshold for parties seeking to curb this freedom, as the ECHR stated in *The Observer and Guardian v the United Kingdom*, 'Freedom of expression ... is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions

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<sup>178</sup> Nowak, M *United Nations ICCPR Commentary* 2ed (2005) 459.

<sup>179</sup> U.N. Doc. HRI/GEN/1/Rev.1 at 11 (1994).

<sup>180</sup> 26 D.L.R. (4<sup>th</sup>) 200.

must be convincingly established'.<sup>181</sup> Indeed while it is imperative that a compromise should be struck between the competing right of freedom of expression and societal interests, the freedom is so vital that it should only be suppressed when the community interest is threatened. Accordingly, the Supreme Court of India in *Rangarajan v Jagjivan Ram and Others; Union of India and Others v Jagvan Ram and Others* declared:

... the anticipated danger should not be remote, conjectural or farfetched. It should be proximate and (have) direct nexus with the expression. The expression should be intrinsically dangerous to the public interests. In other words the expression complained of should be closely linked to the action contemplated like the equivalent of a 'spark in a powder keg'.<sup>182</sup>

Clearly, courts are reluctant to encourage willful contravention of this right, mainly because it sits at the heart of democracy. It is trite that a voiceless society is powerless to assert its rights. A muzzled citizenry cannot freely debate issues and achieve consensus on matters of common interest. What is signally important here is that international human rights law has gained ground even in hitherto non democratic states. As will be discussed in Chapter 5, the ZSC has borrowed from democratic jurisdictions and international law to interpret human rights cases before it. In fact, the Oakes test was employed to settle the contentious *Chavhunduka* case.

As illustrated in Chapter 3, the development of international law and the manner in which Article 19 has been interpreted conforms to the social responsibility theory. The correlation between Article 19 and media theories surfaces in the assertive way the UNHRCComm, regional human rights tribunal and domestic courts protect the freedoms of opinion, expression and media.

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<sup>181</sup> 13585/88 (ECHR). Furthermore, the ECHR declared that:

These principles are of particular importance as far as the press is concerned. Whilst it must not overstep the bounds set, inter alia, in the 'interests of national security' or for 'maintaining the authority of the judiciary', it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'.

<sup>182</sup> (1990) LRC (Const) 412, at 427.

#### 4.8 A CASE FOR REGULATION

Regulation is one of the most contentious issues threatening media freedom in the modern world today. Although journalism is commonly touted as 'the noble profession' which serves the public good, journalists themselves will be the first to admit that they have failed to debunk the obtuse side of their craft and re-orient themselves to that good.<sup>183</sup> The belief that media and journalists are perfect and entirely devoted to delivering societal goals is erroneous and totally misplaced.<sup>184</sup> In reality, the media are imperfect entities, and can be used with great effect to spread fear, despondency and suffocate democracy.

In Rwanda, for instance, the media was used by a clique from the Hutu majority to incite people to take part in the 1994 genocide. The propaganda campaign was skilfully conducted through newspapers and magazines to spread ant-Tutsi messages in towns. A parallel campaign on Radio-tÉlÉvision libre des mille collines (RTLM), broadcast 'hatred and distrust among the much larger rural population, as well as the unemployed youth of Kigali.'<sup>185</sup>

Such blemishes in media character often lead to threats of statutory regulation. Here, democratising nations find themselves faced with difficult ethical questions on mass media accountability: To whom is the media answerable? Owens-Ibie writes that ideally, media are accountable:

To their audiences, who they owe correct news reportage, analysis and editorialising. To government, which they owe constructive criticism, a relay of popular opinion and adequate feedback from the populace. To their proprietor, who they owe the survival of the media organisation as a business venture as well as a veritable source of education, enlightenment and entertainment. To themselves, whom they owe fulfilment in their calling, satisfaction and an entire success story.

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<sup>183</sup> Ekpu, R (1990) *Journal of Democracy* 106.

<sup>184</sup> Aboaba, D 'The Nigerian Press under Military Rule' (1979) 104 -5.

<sup>185</sup> Chalk, F *Radio propaganda and genocide* 1997.

When any of these 'judges' of journalistic responsibility is shunted, accountability is dented and automatically, responsibility is affected adversely.<sup>186</sup>

In effect, journalism like other trades is not immune from regulation. But contrary to international standards that accentuate media freedom, laws in some emerging democracies are ambiguous and slanted to satisfy the whim of the governing elites. Consequently, this results in self-censorship as journalists become overly cautious in order to avoid altercations with the authorities.<sup>187</sup> But the media is easier to manipulate where it is arranged along the communist, authoritarian and libertarian systems. Under both the communist (which has fallen into disuse since the 1990s) and the authoritarian systems, the media can be manipulated to meet its minder's ends. This was clearly the situation in Rwanda and in Germany under the Nazis.

Whereas the libertarian system promotes free enterprise, its greatest drawback is that it encourages monopolistic tendencies which in turn lead to the dominance of one voice over others. Here, again owners can deploy the media anyhow. This is currently the situation in Somalia where institutionalized chaos has replaced official censorship. Unregulated radio stations owned by clan lords have sprouted all over the place and are effectively used against the owners' opponents.<sup>188</sup> Thus these systems fail to meet the objects and purposes of article 19 (2) which enjoin states to ensure that this freedom is enjoyed by all citizens.

Conversely, statutory bodies undermine journalists' right to exercise editorial control and judgment. As affirmed by the UNHRCComm, it is the editor's right to decide how a mass circulation news medium handles news items and not bureaucrats', although the news managers must take heed of

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<sup>186</sup> Owens-Ibie, N (1994) 8 (1) *Africa Media Review* 74.

<sup>187</sup> Owens-Ibie (n 187) 74.

<sup>188</sup> Karikari, K 'Press freedom in Africa. Challenges and opportunities' 2004 *New Economy* 185.

their heavy social responsibility. However, by insinuating their proxies into editorial boardrooms, governments surreptitiously hijack editorial policies of the concerned media.<sup>189</sup>

Yet, the media is still heavily regulated in most countries. Even South Africa with its acclaimed progressive constitution has a clutch of laws besides the common laws of defamation and privacy, which determine what editors may publish. The Films and Publications Act,<sup>190</sup> the Criminal Procedure Act,<sup>191</sup> and the Protection of Information Act,<sup>192</sup> among others, criminalise publication of certain types of information.

#### **4.9 SELF-REGULATION**

Supporters of self-regulation insist that it trumps statutory control in the sense that autonomous press councils do not rely on state funding, a feature that allows these bodies to draw up their own codes of conduct. These codes help media organisations foster their independence, and beat off the omnipresent likelihood of political meddling, legal and commercial constraints. This in turn ‘promotes higher professional standards and greater responsibility’.<sup>193</sup>

Additionally, statutory controls force media organisations that are critical of their government to approach functionaries of the same government for accreditation.<sup>194</sup> These statutory bodies also have a predilection towards depriving practitioners of their independence and prescribing harsh

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<sup>189</sup> Milo D ‘The media watchdog may need more teeth’ *Sunday Times* 4 May 2008. In the United States case, *Miami Herald publishing v Tornillo* 418 US 241 (1974) the Supreme Court stated thus: ‘Regardless of how beneficent-sounding the purposes of controlling the press might be, we remain intensely sceptical about those measures that would allow government to insinuate itself into the editorial rooms of this nation’s press.’

<sup>190</sup> No 65 of 1996.

<sup>191</sup> No 51 of 1977.

<sup>192</sup> No 84 of 1982.

<sup>193</sup> Rantao J (2008), ‘A case for media self-regulation in South Africa.’

<sup>194</sup> Lush, D and Kupe, T *CRISIS? WHAT CRISIS? Free expression and access to information in Zimbabwe* A paper presented at the International Conference on Media Support Strategies for Zimbabwe Johannesburg, November 28-30, 2005.

sanctions for mundane transgressions. The fact of the matter is that these bodies are constructed chiefly to do the bidding of their sponsors.

Conversely, independent regulatory bodies focus on protecting people's right to information and the right of mass media to operate; to secure the independence of journalists and to allow the public to easily access the media. These bodies insist on professionalism and strive to maintain pluralism in media ownership. Within this framework, the regulatory authorities ensure that minorities and political parties get equitable air time and editorial space during electoral processes.<sup>195</sup>

In practice, regulatory bodies do well where members of the public fully participate in the process and, crucially, this mechanism provides cheap, flexible and immediate redress when the media errors. Whilst they promptly resolve public concerns, these bodies additionally insulate the media from government interference. Self-regulation thus matches the dictates of international standards as is further argued below.

#### **4.10 REGULATION IN INTERNATIONAL HUMAN RIGHTS LAW**

Over the last decade, international jurisprudence, as exemplified by communications from the UNHRCComm and the Special Rapporteur on Freedom of Opinion and Expression, show a spreading aversion to media censorship. The UNHRCComm in 1997 criticised Sudan for laws that imposed disproportionate limitations on the media and jeopardised freedom of expression. The criticism was prompted by the actions of a partisan National Press and Publication Council which had decreed that media practitioners register their personal particulars with the body.<sup>196</sup> Similarly, when commenting on the Lebanese Media Law of November 1994, the

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<sup>195</sup> CAMRB Libreville, 2 - 5 June 1998 available at [http://www.gret.org/parma/uk2/ressource/etude/rap\\_pdf/actecircaf.pdf](http://www.gret.org/parma/uk2/ressource/etude/rap_pdf/actecircaf.pdf) [accessed 19 January 2009].

<sup>196</sup> UN Doc. CCPR/C/79/Add.85, para 18.

UNHRCComm called for the establishment of an independent broadcast regulating authority to examine applications and 'grant licences in accordance with reasonable and objective criteria'.<sup>197</sup>

Also, the Special Rapporteur emphasised that laws governing the licensing of 'media and the allocation of broadcasting frequencies must be clear and balanced; any regulatory mechanism, whether for electronic or print media, should be independent of all political parties and function at an arms-length relationship to Government...'<sup>198</sup> Similarly, regional bodies have added impetus to steps towards making regulatory bodies independent of official or commercial interference.

In 2000, the Committee of Ministers of the Council of Europe adopted *Recommendations on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector* which enjoined states to ensure that independent regulatory frameworks in the broadcasting sector were unimpeded in their functions.<sup>199</sup> Additionally, the powers of making them accountable, and procedures for appointment of their members and funding should be clearly defined in law. There should be no interference of any type by political forces or economic interests.

Also, the Banjul Principles emphasise independence in respect of regulating authorities in the broadcasting and telecommunications sector. Civil society participation is vital in the appointment of members of these boards. Also, the boards must be made accountable to a multi-party body.<sup>200</sup>

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<sup>197</sup> UN Doc. CCPR/C/79/Add.117.

<sup>198</sup> UN Doc. E/CN.4/1999/64.

<sup>199</sup> REC (2000) 23 (*Adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies*).

<sup>200</sup> ACHPR /Res.62 (XXXII) 02. 'Regulatory Bodies for Broadcast and Telecommunications', October 2002.

#### 4.11 INTERNATIONAL CASE LAW

Jurisprudence emerging from regional and national courts is increasingly slanted in favour of upholding rights such as freedom of expression. Hence in a landmark decision, the Inter-American Court of Human Rights in *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*,<sup>201</sup> decided that freedom of expression could not be restricted on the whim of a party that merely invoked 'public order' or 'general welfare'. The importance of the press was such that entry to the profession should be not restricted by way of paper qualifications:

... [J]ournalism is the primary and principal manifestation of freedom of expression and thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual. Journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional 'collegio'.<sup>202</sup>

This view is at variance with journalists' demands for the restriction of their craft to qualified persons only. Journalists associations across the world are clamouring to create a closed society entry to which will be predicated on qualifications.<sup>203</sup>

In *Media Rights Agenda and Others v Nigeria*,<sup>204</sup> the African Commission was asked to decide on the proscription of certain newspapers and a retroactive requirement for the media to pay large registration fees to the government. While acknowledging that payment of a registration fee is not *per se* an encroachment on the right to free expression, the African Commission, however, found that the registration fee should not be prohibitive. The amount must only be enough to meet the administrative expenses of the

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<sup>201</sup> Advisory Opinion OC-5/85 of 13 November 1985, Series A, No 5.

<sup>202</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (n 165) para 71.

<sup>203</sup> Cleveland, L *The Structure and Functions of the Press in New Zealand* (1970) PhD Thesis in Political Science, Wellington, Victoria University of Wellington.

<sup>204</sup> 31 October 1998, Nos.105/93, 128/94 and 152/96.

registration because 'excessively high fees are a restriction on the publication of news media.'<sup>205</sup>

Similarly, the Privy Council of Antigua and Barbuda in *Observer Publications Ltd v Matthew*,<sup>206</sup> held that denial of a broadcasting licence to the appellant was 'a hindrance of freedom of expression and freedom to disseminate information and ideas without interference'<sup>207</sup>. The applicant had applied for a licence to operate a commercial FM radio station but more than five years had lapsed without the application being considered.

In the Sri Lankan case of *Athukorale and Others v Attorney-General*,<sup>208</sup> involving a challenge to a broadcasting Bill; the plaintiff argued that the Broadcasting Authority was not independent. The Supreme Court decided that:

While a regulatory authority is ... necessary, it is imperative that such an authority should be independent.... The airways/frequencies, as we have seen, are universally regarded as public property. In this area, a government is a trustee for the public: its right and duty is to provide an independent statutory authority to safeguard the interests of the People in the exercise of their fundamental rights: No more and no less. Otherwise the freedoms of thought and speech, including the right to information, will be placed in jeopardy.<sup>209</sup>

The cases discussed here all point to a judicial inclination towards opening up the media environment to private players. In light of this jurisprudence, keeping governments at bay therefore becomes crucial in maintaining media independence. The media is thus liberated to aggressively prosecute its mandate although it should always do this within the law and responsibly.

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<sup>205</sup> *Media Rights Agenda and Others v Nigeria* (n 204) para 56.

<sup>206</sup> 19 March 2001, No 3 of 2000 (Judicial committee of the Privy Council).

<sup>207</sup> *Observer Publications Ltd v Matthew* para 25.

<sup>208</sup> 2 BHRC 609.

<sup>209</sup> *Athukorale and Others v Attorney-General* (n 208) 22. In *New Patriotic Party v Ghana Broadcasting Corp.*, 30 November 1993, Writ No. 1/93, the Supreme Court noted that independent broadcast regulator must 'breathe the air of independence into the state media to ensure that they are insulated from Governmental control'.

## 4.12 CONCLUSION

As contended above, universally guaranteed human rights including the right to freedom of expression, information and the press have become common currency worldwide. While there is an international inclination toward limiting this right in appropriate circumstances, such limitations, however, should be tempered sufficiently to cause only minimal disruption to their enjoyment.

It is against this background that international law, regional bodies and national courts are inching towards upholding people's right to communicate freely and the correlated right of an unfettered media. This philosophy is an outgrowth of the libertarian and social responsibility theories of the press, which vaunt the media as the keystone in the promotion and construction of a democratic order. This position has prevailed despite lingering public uneasiness about the ability of the media to cause irreparable harm because of its 'propensity for sleaze, sensationalism and superficiality'.<sup>210</sup>

The next chapter takes a close look at the situation in Zimbabwe. Here, the discussion will centre on the legal instruments used to shrink the democratic space and how the remnants of a once vibrant industry have struggled against the odds to campaign against tyranny.

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<sup>210</sup> Coronel (n 81) 4.

## CHAPTER V

### TEMPTING FATE? THE MEDIA BATS FOR DEMOCRACY

'Freedom is never voluntarily given up by the oppressor.'  
Martin Luther King, Jr. US civil rights leader (1929 - 1968).

#### 5.1 INTRODUCTION

Zimbabwe was launched on the path to economic ruin and authoritarianism when the government lost a referendum on a new constitution in 2000. As we outlined in Chapter One what followed was an era of depravity, persecution of political opponents; and hounding of journalists and civil society. In 2001 alone, for instance, 20 journalists were arrested and three foreign correspondents were expelled on trumped up charges.<sup>211</sup> Since then, the country has been plunged into a deep economic and political crisis, which has decimated one of the continent's most vibrant media.

Zimbabwe's press is in terminal decline today forcing the majority of experienced journalists into exile. Robust and erstwhile critical private sector daily newspapers have been shut down. No privately-owned radio or television station is allowed to operate inside the country. Only a handful of privately-owned weekly newspapers still appear albeit under close scrutiny by the MIC and the Central Intelligence Organization (CIO). However, the journalists who are still working in the country for foreign media, and online newspapers managed by exiled Zimbabweans, have kept the Zimbabwean story on the international agenda.

Thus, this dwindling group of journalists continues to expose human rights abuses, sleaze, governmental incompetency and impropriety. In this Chapter we examine the legal framework pertaining to the media and how government has used the laws to control the press. After that, we look at

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<sup>211</sup> RSF, Zimbabwe - Annual report 2002.

efforts of the media, both local and foreign, in discharging their obligations as promoted by international standards delineated above.

## **5.2 CONSTITUTIONAL PROTECTIONS AFTER INDEPENDENCE**

Zanu PF has tried to mask its excesses by enacting patently repressive laws which it uses to justify its actions. The party's 'adherence' to its jaundiced version of the rule of law was exemplified by its retention of a Declaration of Rights in the Lancaster House Constitution that purportedly protects the rights of citizens. Among others the Constitution in s 20 (1) protects freedom of expression thus:

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.

While this constitutional provision guarantees freedom of expression, it does not explicitly protect press freedom. Comparatively, both the South African Constitution of 1996 in section 16 (1) (a) and the Namibian Constitution in Article 21 (1) (a) clearly guarantee the media the freedom to operate unhindered as long as they do so within the confines of the law.

It is instructive to note, however, that the constitutional omission did not disable the judiciary, before the political upheavals of 2000, from upholding the rights of the media. The Supreme Court widely interpreted s 20 as extending to the media as well. The judiciary robustly protected this freedom and recognized citizens' right to receive and impart information (even false news). In this vein, *In re Munhumeso & Ors*,<sup>212</sup> Gubbay CJ, as he then was, declared:

Freedom of expression, one of the most precious of all the guaranteed freedoms, has four special purposes to service; (1) it helps an individual to obtain self fulfillment; (2) it assists in the discovery of the truth; (3) it strengthens the capacity of an individual to

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<sup>212</sup> 1994 (1) ZLR 49 (S).

participate in decision making; and (4) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.<sup>213</sup>

And in *United Parties v Minister of Justice, Legal and Parliamentary Affairs & Ors*, the court stated thus:

Freedom of expression is one of the most precious of all the freedoms and is a vitally important right that is an indispensable condition for a free and democratic society. Without the freedom to express, interchange and communicate new ideas and advance critical opinions about public affairs or the functioning of public institutions, a democracy cannot survive. Freedom of expression is universally recognised as a core value of society. One of the functions of freedom of expression is to protect the free flow of information and ideas in a society. This is essential to the proper functioning of a democratic system. In the political sphere, political parties competing for power are entitled to communicate freely with the electorate in order to try to persuade the electorate to support them and vote for them. Only by the spread of information, opinions and arguments, can voters make a responsible choice in determining whether they should support a particular candidate at an election or the party that person represents.<sup>214</sup>

Consequently, the ZSC Court in *Chavhunduka and Choto v Minister of Home Affairs & Attorney General*,<sup>215</sup> stressed the fact that the Constitution also protected what was generally termed 'false news', in accordance with international practice. In that case, *The Standard* had published a story alleging that some army officers had attempted a coup. Mark Chavhunduka, the editor, and senior reporter Ray Choto, who wrote the story, were arrested and charged with publishing 'false news'.

They were severely tortured: beaten, subjected to electric shock treatment, and submerged in water while in the custody of the military. The journalists were later charged with the offence of publishing false news. But the ZSC held that, 'plainly embraced and underscoring the essential nature of freedom of expression, are statements, opinions and beliefs regarded by the

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<sup>213</sup> *Indian Express Newspapers (Bombay) v Union of India* (1985) 2 SCR 287.

<sup>214</sup> 1997 (2) ZLR 254 (2) 269 (S).

<sup>215</sup> Judgement No. S.C. 36/2000 unreported.

majority as false'.<sup>216</sup> Here, the court was reinforcing the decision in *Handyside v United Kingdom* where the ECHR declared that false statements can legitimately enrich democratic discourse.<sup>217</sup> The ZSC held that the offence of publishing false news was deliberately interpreted widely. Hence, the offence covered not only those statements which actually caused 'fear, alarm or despondency'. The Court observed:

The expression 'fear, alarm or despondency' is over-broad. Almost anything newsworthy is likely to cause, to some degree at least, in a section of the public or in a single person, one or other of these subjective emotions. A report of a bus accident which mistakenly informs that fifty instead of forty-nine passengers were killed, might be considered to fall foul of s 50(2)(a) [of LOMA].<sup>218</sup>

In ss20 (2) (a) the Constitution, nonetheless, permits limitation of the freedom of expression in the interests of public safety and public order. Such restrictions should nevertheless be reasonably justifiable in a democratic society. In *Chavhunduka & Another v Minister of Home Affairs & another*,<sup>219</sup> the ZSC applied the 'Oakes Test' and declared that rights can only be restricted under these circumstances:

- (a) the legislative objective which the limitation is designed to promote must be sufficiently important to warrant overriding a fundamental right;
- (b) the measures designed to meet the objective must be rationally connected to it and not arbitrary, unfair or based on irrational considerations;
- (c) the means used to impair the right or freedom must be no more than necessary to accomplish the objective.

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<sup>216</sup> *Chavhunduka and Choto v Minister of Home Affairs & Attorney General* (n 215).

<sup>217</sup> See *R v Zundel* (1992) 10 C.C.R. (2rd) 193 209, where the Canadian Supreme Court stated thus: 'Before we deny a person the protection which the most fundamental law of this land on its face accords to the person, we should, in my belief, be entirely certain that there can be no justification for offering protection. The criterion of falsity falls short of this certainty given that false statements can sometimes have value and given the difficulty of conclusively determining total falsity... I cannot accede to the argument that those who deliberately publish falsehoods are for that reason alone precluded from claiming the benefit of the constitutional guarantees of free speech.'

<sup>218</sup> *Chavhunduka and Choto v Minister of Home Affairs & Attorney General* (n 215).

<sup>219</sup> [S.C. 36/2000: Civil Application No. 156/99].

Thus, as concluded in *The Observer and Guardian v the United Kingdom*, as well, courts must narrowly interpret derogations from fundamental rights.

### 5.3 RESTRICTIVE MEDIA LAWS IN ZIMBABWE

Since the government forcibly replaced Chief Justice Gubbay, the regime has dealt ruthlessly with critical media. This confrontational attitude and traits of despotism started surfacing in 1998 when former permanent secretary in the Ministry of Information, Posts and Telecommunications Willard Chiwewe, thundered: 'If media freedom will kill my mother, to hell with it! And if media freedom will bring war to my country, to hell with it again!'<sup>220</sup>

It was against this background that the government enacted the legislative triumvirate AIPPA, POSA and the BSA. The BSA was aimed at restoring state control over the broadcasting sector after the Supreme Court had declared the ZBC monopoly unconstitutional.<sup>221</sup> It is discernibly clear that these laws were geared at compressing the media environment by keeping a tight grip on the press while maintaining the state monopoly in the broadcast sector. This is a clear breach of UNHRCComm General Comment 10 and the Banjul Principles, as outlined earlier.

However, the passage of AIPPA into law was fiercely opposed because of its unpopularity even among within the governing party. Dr Edson Zvobgo, the chairman of the Parliamentary Legal Committee (PLC) said, 'I can say without equivocation that this Bill ... was the most calculated and determined assault on our liberties guaranteed by the Constitution....'<sup>222</sup> similarly, the African Commission said:

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<sup>220</sup> Chiwewe in Karanja, D 'Africa's fight for ethics' (2000) *Global Journalist*.

<sup>221</sup> *Capital Radio (Private) Limited v Minister of Information, Posts and Telecommunications*, Judgment No. S.C. 99/2000 unreported.

<sup>222</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, Abid Hussain, appealed to the Zimbabwean authorities to reconsider the provisions of the Bill. Moyo

The POSA and Access to Information Act should be amended to meet international standards for freedom of expression. Any legislation that requires registration of journalists, or any mechanism that regulates access to broadcast media by an authority that is not independent and accountable to the public, creates a system of control and political patronage.<sup>223</sup>

#### **5.4 ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT**

The MIC was created by section 38 of AIPPA which also permitted the body to deal with a wide range of issues affecting the media. The MIC also had power to accredit journalists, enforce professional and ethical standards; and licence mass media organisations. Part of section 39 which delineates the functions and powers of the MIC reads:

- (1) (a) to ensure that Zimbabweans have access to information and effective control of mass media services; and
  - (i) to receive, evaluate for accreditation and consider applications for accreditation as a journalist; and
  - (j) to enforce professional and ethical standards in the mass media; and
  - (m) to authorise a public body, at the request of its head, to disregard requests that would unreasonably interfere with the operations of the public body; and
  - (n) to accredit journalists; and
  - (o) to monitor the mass media and raise user awareness of the mass media; and
  - (p) to register mass media in Zimbabwe; and
  - (q) to investigate and resolve complaints against any mass media service in terms of the provisions of this Act.

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publicly stated that AIPPA was needed to enable the government to defend Zimbabwe's sovereignty, and that AIPPA had brought 'sanity' to the media industry.

<sup>223</sup> Report of the African commission Fact-finding Mission to Zimbabwe 24th to 28th June 2002. Available at [www.kubatana.net](http://www.kubatana.net)[Accessed 19 January 2009].

Critics of AIPPA submit that the law was promulgated primarily to shield the government from scrutiny and not to improve access to information or to protect citizens' right to privacy; as argued by the government.<sup>224</sup> The government's critics further argue that s 65 further erodes media freedom as it restricts media ownership to Zimbabwean citizens and permanent residents only. Section 79 provides for compulsory licensing of journalists who must be either Zimbabweans or holders of permanent residency. However, this section permits foreign journalists to work in Zimbabwe for 30 days per trip.

Section 69 prescribes when registration of mass media bodies can be withheld; while s 80 which was struck out by the ZSC, had criminalised reporting false statements and made this punishable by up to two years' imprisonment.<sup>225</sup> Journalists, who practice without registration, face up to two years in jail. Additionally, journalists' licenses are valid for one year while media houses have to renew their registration every two years. According to section 71, these licenses can be revoked for prescribed offences.<sup>226</sup>

In terms of section 90, foreign media organisations intending to establish offices in Zimbabwe must get permission from the MIC before doing so. Sections 86 – 89 enjoin mass media bodies to promptly correct untruthful information. These provisions also grant aggrieved parties the right of reply thus usurping editors' right to decide what they publish. However, AIPPA has been amended on two occasions after being successfully challenged in the ZSC. In *Independent Journalists Association of Zimbabwe v The Minister*

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<sup>224</sup> Amnesty International 2003 Report, 'Zimbabwe Rights under siege.' Available at <http://www.amnesty.org/en/library/asset/AFR46/012/2003/en/dom-FR460122003en.html>[Accessed 10 December 2008].

<sup>225</sup> In June 2002, Andrew Meldrum, a US national and journalist with the United Kingdom-based newspaper *The Guardian*, was the first journalist to be charged and tried under Section 80 of AIPPA with 'abusing journalistic privilege by publishing a falsehood' in connection with a report regarding the alleged beheading of a woman by ZANU-PF supporters. Although he was acquitted, within hours of the ruling he was served with a deportation order.

<sup>226</sup> The MIC used this proviso to cancel the license of *The Tribune*.

of *State of Information and Publicity*,<sup>227</sup> the legality of sections 79, 80, 83 and 85 of were challenged. Similarly, the ANZ launched a series of cases in the ZSC to test the validity of several provisions of the AIPPA and assert its right to re-launch *The Daily News* and *The Daily News on Sunday*. The matter is still unresolved as the MIC continuously appeals every decision handed down in favour of the newspaper company by the courts. *The Daily News* narrative epitomises the government's determination to silence hypercritical media.<sup>228</sup> In the words of the MMPZ the judgement:

... clearly demonstrates the undemocratic authority of the MIC to circumvent the due process of law and the deeply flawed nature of the Access to Information and Protection of Privacy Act (AIPPA) that provides the MIC with this authority. Since 2003 the MIC has forced four newspapers to close down – all for reasons that do not outweigh Zimbabweans' constitutionally guaranteed rights to freedom of expression.<sup>229</sup>

In the main, the composition of the MIC board elicited adverse reactions from rights defenders and journalists who are excluded from this body. This violates journalists' right to choose their own leaders and to control their own affairs. Moreover, selectivity and duplicity in the application of the law has caused concern among human rights groups. Since its inception the MIC only targeted the private media: journalists working for state media have escaped scrutiny despite their questionable professional conduct.

Whilst registration of journalists is not uncommon, however, in most democracies this is done by independent journalists' bodies. These organisations also monitor conduct and discipline journalists who abuse the privileges extended to them by virtual of their membership to the profession.

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<sup>227</sup> No SC 252/2002 unreported.

<sup>228</sup> See *Associated Newspapers of Zimbabwe (Pvt) Ltd v The Minister of State for Information and Publicity, the Media and Information Commission and the Attorney General*. Supreme Court 20/03 unreported, *Associated Newspapers of Zimbabwe (Pvt) Ltd v Chief Superintendent Madzingo and the Commissioner of Police*, Harare High Court 157-03 unreported, *Associated Newspapers of Zimbabwe (Pvt) Ltd v the Media and Information Commission AIPP 1/03* unreported, *Associated Newspapers of Zimbabwe (Pvt) Ltd v the Media and Information Commission AIPP 03/03* unreported.

<sup>229</sup> Media Monitoring Project of Zimbabwe, 'Statement on Denial of an Operating License to Associated Newspapers of Zimbabwe.' Harare, 19/07/05.

Before the enactment of AIPPA, journalists in Zimbabwe had to register with the Ministry of Information to facilitate their operations and give them access to public institutions and information. But since 2002, accreditation is being used as a means to censor the media.<sup>230</sup>

## 5.5 2008 AIPPA AMENDMENTS

On 11 January 2008, the government forced through parliament amendments to AIPPA. These changes sought to reconstitute the MIC as the Zimbabwe Media Commission (ZMC).<sup>231</sup> The new body would assume all the powers of its forerunner. The ZMC will comprise nine members appointed by the President from a list of 12 persons nominated by the Parliamentary Committee on Standing Rules and Orders.<sup>232</sup>

Membership to the ZMC will be restricted to people with experience and knowledge of the media.<sup>233</sup> However, the ZMC will retain the MIC's powers to refuse to register newspapers that have a previous conviction for false reporting. Publications that fail to notify the ZMC of changes to their registration particulars; or fail to print a correction of harmful or untruthful information they may have published can also be banned.<sup>234</sup>

The amendments also create a Media Council (the Council),<sup>235</sup> which will be chaired by a member of the ZMC.<sup>236</sup> This Council will develop and enforce a code of conduct and ethics for journalists and mass media. This is a blatant negation of the Banjul Declaration,<sup>237</sup> which underscore self-regulation. Additionally, only two journalists nominated by journalists associations will sit on the council. Thus media practitioners will be in the

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<sup>230</sup> AI Report (n 3).

<sup>231</sup> The amended section 38.

<sup>232</sup> Section 38 (2) as amended.

<sup>233</sup> Section (38) (3) as amended.

<sup>234</sup> Sections 65 – 71 as amended.

<sup>235</sup> Section 42A (1) as amended.

<sup>236</sup> Section 42A (2).

<sup>237</sup> ACHPR /Res.62 (XXXII) 02.

minority on the Council that will oversee their fate.<sup>238</sup>

Whilst the amendments purportedly abolish the offence of 'journalism without accreditation',<sup>239</sup> unregistered journalists will still be prohibited from covering official events including elections and parliament. Also, unaccredited persons will only be allowed to work in a freelance capacity.<sup>240</sup> However, to register with the ZMC, journalists will still be required to produce prescribed qualifications.<sup>241</sup>

Under the amendments, the ZMC is permitted to accredit foreign journalists for periods of up to 60 days. This period can nevertheless be extended for a further specified period for 'good cause shown' or to enable a journalist to work for the duration of any event he or she has been accredited to cover.<sup>242</sup> But more than a year after the amendments were promulgated, the MIC remains firmly in place as the ZMC has not yet been established. On the face of it, the changes appear superfluous. Between them, the ZMC and the Council will retain the power to discipline media houses and journalists through a plethora of methods including fines and deregistration.<sup>243</sup>

The adjustments, in their current form, will not substantively ameliorate the harsh effects of the law. The powers lined up for transfer to the media Council, will make it an even more powerful tool for oppression. Put simply, the continued regulation of the media environment by legislation will perpetuate repression and is clearly at variance with international law and the values that underpin democracy.

## **5.6 BROADCASTING SERVICES ACT OF 2001**

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<sup>238</sup> Section 42A (2) (b).

<sup>239</sup> AIPPA (n 65) clause 18.

<sup>240</sup> In addition, sections 15 and 16 of POSA, which criminalize certain media offenses, have not been dealt with by the amendments.

<sup>241</sup> Sections 78 and 79 as amended.

<sup>242</sup> Section 79 (4).

<sup>243</sup> AIPPA section 39 and 42D. Despite the amendments, the government on 4 January 2009 announced exorbitant accreditation fees for journalists and media organisations ranging from US\$1 000 to US\$20 000.

Section 4 of the BSA establishes the Broadcasting Authority of Zimbabwe (BAZ). This is touted as an autonomous body with powers to regulate and advise the responsible minister on the allocation of broadcasting frequencies. Section 3 empowers BAZ to receive and consider applications for broadcasting licences; to monitor tariffs charged by licence holders and to 'encourage' licence holders to pursue ethical journalism. However, the BAZ doesn't have the authority to allocate licences as this power is vested in the Minister.<sup>244</sup>

Section 8 prohibits foreign ownership of broadcasting services. According to s 18,<sup>245</sup> the ZBC cannot lease a television channel to another operator. This is why the privately owned *Joy Television (Joy TV)* which had leased a channel from the ZBC before May 2002 was shut down. Section 24 empowers the Minister to de-register any broadcaster deemed to be a threat to national security. The minister can also dictate content to any broadcaster, which must be 75 percent local. In the same vein, violation of the BSA attracts heavy fines, imprisonment and forfeiture of equipment to the government.

However, in September 2000 *Capital Radio* challenged the constitutionality of s 27 of the Broadcasting Act in the ZSC,<sup>246</sup> which ruled in the station's favour. The government promptly responded to this setback by enacting the

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<sup>244</sup> Section 7 requires the licensing of broadcasting services, while Sections 6, 11 and 15 provide the Minister with the authority to determine who gets a broadcasting licence. However, according to the Windhoek Charter on African Broadcasting, '[l]icensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria which include promoting media diversity in ownership and content.'

<sup>245</sup> Section 18 reads: 'No licensee shall assign, cede, pledge, transfer or sell his license to any other person or surrender his programming duties to another entity outside his establishment. Any such assignment, cession, pledge, transfer, sale or surrender shall be void.'

<sup>246</sup> Section 27 prohibited the establishment of private radio services.

Presidential Powers (Temporary Measures) (Broadcasting) Regulations to restore the status quo *ante*,<sup>247</sup> before the BSA was enacted.

## **5.7 2008 AMENDMENTS TO THE BSA**

The changes effected to the BSA are in the main cosmetic because the government retains full control of the industry. This contradicts the freshly installed section 2A of the amended Act. Section 2A asserts that the BSA sought, 'to promote the provision of a wide range of broadcasting services in Zimbabwe which, taken as a whole, are of high quality and calculated to appeal to a wide variety of tastes and interests, providing education, information and entertainment.'

The amended Act in the Sixth Schedule enjoins licence holders to broadcast at least 75 percent local material every day.<sup>248</sup> This is inconsistent with the 'wide range' and 'wide variety of tastes' stipulated in s 2A in the sense that the taste of the content is largely limited to local interests. Even the public funded ZBC, has failed to produce enough high quality material to meet the required local content quota because of severe cash flow problems.<sup>249</sup> According to section 16 (1) (b) a single infraction of the content requirements can lead to revocation of a licence.<sup>250</sup>

The local content requirement will certainly dissuade potential investors from considering the Zimbabwean broadcasting industry. Unlike publicly funded stations, private entities solely depend on advertising revenue. It is a truism that advertisers often associate themselves with organisations and products that confirm their world view and have a diverse and broad based

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<sup>247</sup> Regulations made under the Presidential Powers (Temporary Measures) are valid for six months after which they lapse unless they are passed into law by Parliament.

<sup>248</sup> The Schedules and most of the Regulations passed under the Act as S.I 185/2004 specify what a broadcaster may or may not transmit.

<sup>249</sup> The ZBC content is technically poor, boring and presented by unskilled personnel. As a result, many Zimbabweans now illegally use satellite decoders to tune in to Botswana Television and South African broadcasters.

<sup>250</sup> Section 13 of S.I. 185/2004 enjoins licence holders to uphold national sovereignty, national unity, national interest, national security, and economic interests.

audience. Still, only Zimbabweans or entities wholly owned by Zimbabweans may hold a broadcasting licence. Also, the minister under the new s 8(7) may, at his discretion, grant exemptions from these provisions. The amended BSA does not conclusively deal with the prohibition of foreign funding and partnership in this sector. This is despite the admission by the BAZ that this grey area scares off potential applicants.<sup>251</sup>

Zimbabweans based outside the country are now allowed to run broadcasting services in the country. Section 8 (5) has been repealed to permit single investors to hold more than 10 percent shareholding in a broadcasting entity. Other token amendments lengthen the period of a licence covered under section 12 (3) from two to three years. Also, the pre-production period stipulated in section 11 (7) has been extended from six to 18 months. As in AIPPA, the amended s 4(2) provides that BAZ will constitute 12 members appointed by the President after consultation with the Minister and the Parliamentary Committee on Standing Rules and Orders.<sup>252</sup>

Rights organisations, however, insist that the life span of the licences was too short and discouraged investment in the media. Additionally, the prohibition on foreign ownership will starve the industry of technological, management expertise and skills.<sup>253</sup> Also, the amended BSA fails to satisfy the Banjul Declaration which in part declares that 'states shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.'<sup>254</sup>

Internationally, licensing private broadcasters is not perceived as a hurdle to media press. However, as said above, the licensing authority must be free of

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<sup>251</sup> Johnson, N 'Tens Reasons to amend the Broadcasting services act' *Jesuits Communications*. Available at <http://www.jescom.co.zw/mukai36/Broadcasting36.htm> [Accessed January 20 2008]

<sup>252</sup> Section 4 (2).

<sup>253</sup> Johnson (n 249).

<sup>254</sup> The Banjul principles (n 158).

state controls. In Zimbabwe, this will help break the ZBC monopoly: such a nomenclature will encourage pluralism and diversity. But as MISA-ZIM rightly concludes, the amendments are 'of propaganda value only and reflect no real advance in opening up the airways and Zimbabwe's democratic space'.<sup>255</sup>

## **5.8 THE IMPACT OF POSA ON MEDIA OPERATIONS**

POSA was enacted to repeal LOMA. The security law had an immediate impact on freedom of expression and the press, albeit a harmful one. POSA outlawed unsanctioned public gatherings, although the police rarely allow opponents of the government to gather in public. POSA re-incarnated some anachronistic laws such as sections of the Preservation of Constitutional Government Act of 1964<sup>256</sup> which the Rhodesian government had employed ruthlessly to suppress Black Nationalism.

In terms of section 15, publishing or communicating 'wholly or materially false statements' to disturb public order, undermine confidence in a law enforcement agency, the defence and economic interests of the country was punishable by imprisonment and or a fine. The 'false statements' provision was a re-introduction of section 50 of LOMA, which had been declared *ultra vires* in the *Chavhunduka* case. Section 16 revived the nebulous s 46 of LOMA, which criminalised 'undermining authority' or 'insulting' the president 'publicly'. Such insults could be issued in the form of gestures that brought ridicule to, or instigated feelings of hatred against the President.

## **5.9 POSA AMENDMENTS**

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<sup>255</sup> MISA-Zimbabwe (2008) 'AIPPA, POSA, BSA amendments signed into law'. Available at [www.kubatana.net](http://www.kubatana.net)[accessed 20 January 2008].

<sup>256</sup> This legislation was repealed in 1999.

The amendments which in principle acquired legal force in January 2008 are largely perfunctory as they do not go to the heart of POSA.<sup>257</sup> Organisers of public meetings, processions, political rallies, and demonstrations can now appeal to a magistrate if the police ban their rally. But rights bodies insist the changes are ‘inconsequential’ and ‘will not advance basic freedoms such as the right to freedom of expression, media freedom and freedom of assembly and association’.<sup>258</sup> The amended POSA compels the police to open dialogue with organisers of public gatherings where they have evidence that public disorder may occur if the gathering proceeds. Nonetheless, the repealed section 15 of POSA is restated in s 31 of the Criminal law [Codification and Reform] Act of 2004.<sup>259</sup>

## **5.10 THE ZIMBABWEAN MEDIA AS A WATCHDOG**

The privately-owned press in Zimbabwe in the 1990s was outstanding in vindicating freedom of expression: it projected itself as efficacious corrective equipment that routinely challenged the government. In reality, the private press notoriously focused on returning the democratic genie back into the bottle by unearthing political corruption, malfeasance, human rights abuses and arbitrary government. In the main, the press which changed its template in the late 1980s affixed a spectrum of new voices to a range of media users thus progressively quickening the pace toward communal decision making.<sup>260</sup>

The ‘Willowgate scandal’ of 1988 marked the growing disconnect between the governors and the governed as the episode calibrated the severity of materialism within the upper echelons of Zimbabwean society. The scandal which exposed cabinet ministers, senior politicians and businessmen for reselling subsidised vehicles at huge profit, momentarily muted the sonorous

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<sup>257</sup> An extraordinary gazette published on 11 January 2008 announced that the President had assented to these amendments although they had not been implemented by Mar 2009.

<sup>258</sup> MISA-ZIM (n 119).

<sup>259</sup> [CHAPTER 9: 23].

<sup>260</sup> See Carver R, (2000) 4 *UNHCR Centre for Documentation and Research* 7 for an overview.

socialist language of the Zanu PF leadership. For the first time since independence, the press had pierced the cloak around the ruling elites, giving the nation a rare glimpse into festering corruption and maturing despotism there. Thus, the media was galvanized into proactively setting the agenda for law enforcement agencies and investigative bodies by exposing official wrongdoing.<sup>261</sup>

The government-owned *The Chronicle*, which blew the whistle on Willowgate, followed this up with more crusading exposés on the peccadilloes of senior the ruling elite.<sup>262</sup> Additionally, the Willowgate scandal served as the defining factor in government-media relations. The incident signaled the growing political influence of the press and awakened it to its democratic right to legitimately criticise power. This emboldened budding private publications such as *Parade* and later *Horizon*, the *Financial Gazette* whose owners Modus Publications later launched *The Daily Gazette* to discuss previously taboo subjects.

Also, the *Zimbabwe Independent* and *The Daily News* bolstered the nascent opposition political parties that sought to break the Zanu PF hegemony. The private newspapers achieved this by providing public spheres for opposition parties, original thought and independent journalism. In many respects, the press 'played an incalculable role in opening the government to public scrutiny'.<sup>263</sup>

Similarly, reports started emerging in the private press of egregious abuses of the War Victims Compensation Fund, forcing President Robert Mugabe to set up a commission of inquiry into how the Fund had been administered. Again, top government officials, army generals and prominent politicians were found to have looted the Fund, which had been intended for people

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<sup>261</sup> Tettey, WJ (2001) 23 (1) *Media, Culture and Society* 10.

<sup>262</sup> 'Police seek former minister over fraud' *The ZimbabweTimes.com* 16 October 2008.

<sup>263</sup> Carver (n 260) 7.

who were injured during the liberation war.<sup>264</sup> In the same period, corruption became endemic among the ruling elite and even eclipsed Willowgate.

Inexplicably, the commander of the army acquired immense riches. President Mugabe's nephew Leo Mugabe 'won' a public tender to operate a cellphone company and another to build the Harare International Airport terminal.<sup>265</sup> Alongside her propensity for expensive shopping trips abroad, Mrs Grace Mugabe, appropriated funds contributed by homeless middle-and lower-ranking civil servants to a housing cooperative and built a mansion in one of Harare's exclusive suburbs. She later sold the house for US\$35 million without living in it.<sup>266</sup>

Instructively, the sea change in the press' fortitude, which had previously allowed government to propagate its views unchallenged, followed a steady decline in the economy. Whereas the government had loomed benignly over a pliant media in the 1980s, the growth of an uncompromising private sector press which vigorously campaigned for clean government and political pluralism revolutionised the media milieu. Therefore, unlike in the 1980's when Zimbabweans were only privy to an adumbrated version of the massacre of an estimated 20 000 people in Matabeleland during the *Gukurahundi*, the non government media were now quick to publicise any

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<sup>264</sup> A Consolidated Report on the Food Riots 19 - 23 January, 1998. Available at [http://www.hrforumzim.com:80/members\\_reports/foodriots98/food9801.htm](http://www.hrforumzim.com:80/members_reports/foodriots98/food9801.htm)[Accessed 10 December 2008]. President Mugabe's brother-in-law Reward Marufu was awarded ZWD822 668 (US\$70 000) for a scar on his left knee. Nothing happened to the looters. Other prominent personalities who looted the Fund included Police Commissioner General Chihuri said to have suffered 20 percent disability got Z\$138 664, Personalities mentioned on the list included former ZBC staffer Robin Shava (100 percent disability and Z\$483 535); Air Marshal Perence Shiri was said to have got a 50 percent disability and was awarded Z\$90 249; Vice President Joyce Mujuru was 55 percent disabled and got Z\$389 472); and long serving cabinet minister Oppah Rusesha 65 percent disability and Z\$478 166.

<sup>265</sup> Carver (n 260) 4.

<sup>266</sup> Charles Goredema *Zimbabwe: Penetrating State and Business Organised Crime in Southern Africa* Gastrow P(ed) (2003). Other beneficiaries were judges, lawyers, high-ranking civil servants, Commissioner General of Police Chihuri. Most of the intended beneficiaries were seriously prejudiced, as the fund collapsed and their contributions were lost.

sign of official kleptomania.<sup>267</sup> In this way, the press assisted the populace in its assessment of the performance of politicians and their undemocratic tendencies: in established democracies, this would be politically fatal to the concerned individuals.

In 1998, the government's growing paranoia was fertilised by the birth of the MDC and the launch of *The Daily News* a year later. Additionally, the re-emergence of white Zimbabweans on the political scene in the MDC entrenched the siege mentality in the ruling party. For example, former Information minister Moyo, in 2001, accused the BBC and the British newspapers *The Guardian* and *The Telegraph* of 'working for the British intelligence services...in the interests of respect for the law, the competent authorities will track down these individuals and put an end to the media jungle they are trying to create'.<sup>268</sup>

As a result, the litany of draconian media laws, discussed above, were enacted, transforming the Zimbabwean government into 'one of the world's worst predators of press freedom'.<sup>269</sup> In response, the United Nations High Commissioner for Human Rights, Mary Robinson appealed to President Mugabe to protect freedom of expression. 'You, who have struggled for freedom in your country, should understand the importance of free media, including an independent local press'.<sup>270</sup> The appeal went unheeded. Instead, Zanu PF leaders continuously bombarded the private press with libel suits in an attempt to financially break the publications. Clearly, the idea was to silence the vocal press.

Undeterred, the private press continued reporting on corruption, maladministration and human rights abuses which were typified by the murders of activists, farmers and farm workers. The world learnt of

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<sup>267</sup> Carver (n 260) 8.

<sup>268</sup> RSF, Zimbabwe Annual report - 2002.

<sup>269</sup> RSF (n 268).

<sup>270</sup> As cited in RSF Zimbabwe Annual report (264).

concerted electoral fraud and violence over the last decade through the spirited efforts of the media. Since 2000, reports of the growing unlawful tendencies of the ruling elites and a collapsing state have dominated news from Zimbabwe, leading to the barring of the regime from entering certain countries. Although it has taken nearly a decade for the chink in the Zanu PF shield to widen, the role of the media in making this possible cannot be downplayed.

### **5.11 MEDIA AS AN EDUCATION TOOL**

As illustrated in Chapter III, the mass media help the public understand and evaluate political structures, policies, actors and events.<sup>271</sup> Alongside other civil societies, the media educates citizens on democracy and constitutionalism. Since 1998, the private media has shrugged off the limitations in terms of volumes of output to provide alternative views. In this respect, the London based *SWRadio Africa*, *The ZimbabweTimes.com*, *NewZimbabwe.com*, *The Zimbabwean*, *Zimonline*, and *Studio7 on VOA*; promote human rights and host voices banned on ZBC and from the pages of government-owned newspapers. Also, *SWRadio Africa* hosts debates on contentious issues on *Democracy* and *Reporters Forum* while *The Zimbabwean* has dedicated a column to the promotion of human rights and democracy.<sup>272</sup> These publications carry incisive news reports on human rights abuses by state actors while documenting the activities of civil society and human rights defenders in Zimbabwe.

As concluded above, the government media only gives prominence to Zanu PF and government information. The ZBC goes into overdrive towards general elections – saturating the airwaves with jingles extolling the virtues of the liberation war, and the chaotic land reform programme. Unreservedly, the state broadcaster chants heroic mantras such as that, '*Zimbabwe will*

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<sup>271</sup> Wasburn (1995) 17 (4) *Media, Culture & Society* 647 – 76. See Chapter V.

<sup>272</sup> See <http://www.swradioafrica.com>.

*never be a colony again*;<sup>273</sup> the overt insinuation being that voting for an opposition political party was akin to regressing to colonialism.

The MMPZ has reported that towards the 2008 elections, the 8 O'clock news on ZTV was transformed into a propaganda programme for the ruling party. The MDC was only mentioned in the negative while other voices were totally drowned out or shuffled to obscure parts of the news cast.<sup>274</sup> In this way, the broadcaster stymied democratic discourse and reform. As Kupe correctly submits, 'a lack of media diversity and editorially independent mass media in Zimbabwe has led directly to lack of political diversity'.<sup>275</sup> This lament exposes the level of inconsistency between the Zimbabwean media environment, and international democratic theories and standards.

Before, the 2008 general elections, the MDC complained that the state media had denied it its articulated rights to communicate with the electorate, as innately enumerated in the Constitution and electoral laws. Both ZBC and Zimpapers, acting on an unwritten code, refused to take advertisements from the opposition party. In consequence, the MDC derived valuable assistance from South African television stations that broadcast into the country by satellite, and private newspapers to reach voters.<sup>276</sup> In many respects, the MDC and other opposition groups' contest for political power was terminally prejudiced.<sup>277</sup> Hence, in a tradition of deception that overthrows the institutional basis of democracy, that is the truth, the state media suppressed alternative voices.

## **5.12 THE BIRTH OF ONLINE PUBLICATIONS**

Exiled Zimbabwean journalists 'have become masters of alternative communication and media strategies as surrogates for mainstream

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<sup>273</sup> 'The politics of fear' BBC News 17 June 2000.

<sup>274</sup> MMPZ, Weekly Media Update February 18th – 28th February 2008.

<sup>275</sup> Kupe T, 'How to free the media in Zimbabwe' *Mail & Guardian* 3 May 2007.

<sup>276</sup> Nhuka I, 'Zimbabwe's MDC adverts blacked out of public media ahead of poll'. Available at [http://www.zimbabwejournalists.com/story.php?art\\_id=4302&cat=1](http://www.zimbabwejournalists.com/story.php?art_id=4302&cat=1) accessed 12 February 2008.

<sup>277</sup> See 2000 Zimbabwe All Media and Products Survey (ZAMPS) results.

media'.<sup>278</sup> Kupe observes that the proliferation of online newspapers which provide news and information that state-controlled media suppress, offer banished Zimbabweans a chance to debate and discuss the crisis at home, proffer possible solutions and mobilise for democracy.<sup>279</sup> Crucially, these online media are accessible to people in Zimbabwe as well. It is interesting to note that most of these online newspapers specialise in investigative journalism and news analysis. Hence, the websites facilitate enlightened debate which often 'demonstrates a remarkable degree of sustained engagement and presentation of differing views'.<sup>280</sup>

Typically, the state media downplayed the abduction of opposition and human rights activists among them former ZBC news reader Jestina Mukoko, while online publications consistently updated the public on her circumstances. The publicity forced the government to produce her unharmed, nearly a month after her abduction.<sup>281</sup> Moreover, the online publications have formed effective synergies with human rights NGOs which have become handy in protecting rights. For example, on 15 February 2008, *SWRadio Africa* ran a Sokwanele alert on its website which announced that, '[MDC Treasurer-general] Roy Bennett is being held at Mutare Police Station. Please protest - call the police and remain polite and calm. Tell them the world is watching: +263 (0) 20 64212.'<sup>282</sup>

Consequently, a crowd gathered at the police station and prevented Bennett's removal to an undisclosed location. Kupe adds:

To some extent they prove some of the theories about the power of the Internet to act as an arena of the public sphere... their news reports have a great diversity of views and opinions. This is a remarkable

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<sup>278</sup> Kupe, 'How to free the media in Zimbabwe' *Mail & Guardian* 3 May 2007.

<sup>279</sup> The major online newspapers include *The ZimbabweTimes.com*, *NewZimbabwe.com*, *Zimonline.com*; *The Zimbabwean* the London based newspaper weekly.

<sup>280</sup> Kupe T (2005) 'Diasporic Journalism' 25 *Rhodes Journalism Review*.

<sup>281</sup> Jestina Mukoko: 'Mugabe's henchmen came for me before dawn' <http://www.independent.co.uk/news/world/africa/jestina-mukoko-mugabes-henchmen-came-for-me-before-dawn-1418260.html>.

<sup>282</sup> Sokwanele alert, available at *www.SWRadio.com* accessed 15 February 2009.

achievement made possible by the use of cellphones and email which are not controlled by the state.<sup>283</sup>

In addition, the online newspapers are now increasingly viewed as credible sources of news on Zimbabwe by international media.<sup>284</sup> Also, the writer contends that the internet's greatest contribution to global communication trends has been the sprouting of what is widely referred to as community newspapers and blogging. Whilst the news industry was previously dominated by a few mainstream newspapers and broadcasters, nowadays communities share news and information on their polity in cyberspace. This has greatly enhanced communal comprehension and awareness of issues. In a practical sense, this phenomenon is threatening to break up media monopolies and change media trends as we have always perceived them.

In the same vein, bloggers are now contesting with traditional opinion leaders for the minds of the various publics. It is not uncharacteristic for bloggers to decide the talking point by exposing malpractice in their neighbourhood, or workplace whose ripple effects might lead to national discourse and ultimately cause change. As indicated above, the increased use of cellphones in rural districts has metaphorically reduced the distance between communities.<sup>285</sup>

The net result of the technological advancement has been greater exposure of human rights abuses, economic development and general news. During the 2008 elections, for instance, Zanu PF was frustrated by technologically savvy voters, even in rural areas, who relayed results glued outside polling stations to the MDC headquarters by text messages. The MDC announced the results and posted them on the internet. As a result, the possibility of

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<sup>283</sup> Kupe (n 280).

<sup>284</sup> Kupe (n 280).

<sup>285</sup> Zoellick, RB 'An Inclusive & Sustainable Globalization' Available at [http://digitalmedia.worldbank.org/slideshow/?slideshow\\_id=20](http://digitalmedia.worldbank.org/slideshow/?slideshow_id=20) [Accessed on 10 September 2008].

widespread rigging was significantly reduced as the public took ownership of the electoral process.

The websites have thrived despite the anticipated government restrictions on discourse on the internet discourse following the enactment of the Interception of Communications Bill (ICA) in August 2007.<sup>286</sup> The ICA permits the government and the police to intercept, read or listen into emails and cell phone communications, without obtaining a court order. These publications', it is clear, have chalked up significant successes in keeping the international community interested in the crisis in Zimbabwe. However, their role as advocates of democracy is severely hampered by the fact that, although internet access is generally available, it is not widely accessible due to a lack of telecommunications infrastructure outside the major urban centres.<sup>287</sup>

### **5.13 THE CRISIS SEEN THROUGH FOREIGN MEDIA**

The international media, typified by the British and United States press; the BBC and CNN, have since 2000 unfailingly covered events in Zimbabwe. Sympathisers of the Mugabe regime worldwide, however, have criticised the networks for being obsessed with Zimbabwe at the expense of more deserving international flash points such as Somalia.<sup>288</sup> In the main, the Zimbabwe crisis has provoked international outrage because the country is located at the heart of the southern Africa sub region.

Additionally, the country was initially perceived as a paragon of racial tolerance and relative economic prosperity. Carver argues that the international community is also nervous at the prospect of an unstable Zimbabwe dragging down the whole region with it. This reason, and the fact that the region is just emerging from a long history of racism and war,

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<sup>286</sup> [Chapter 11: 20].

<sup>287</sup> Bureau of democracy, human rights and labour, 11 March 2008.

<sup>288</sup> 'An Overemphasis on Zimbabwe?' *BBC News The Editors* 25 Apr 08.

underlines its newsworthiness.<sup>289</sup> Significantly, the large-scale migration from Zimbabwe might trigger a regional humanitarian crisis on a bigger scale than the deleterious cholera outbreak which has spread to South Africa, Botswana and Malawi.<sup>290</sup>

Such a tapestry inevitably provides fertile soils for the media to operate on, notwithstanding the shocking and appalling live television footage on rights abuses that have galled viewers across the globe. Nevertheless, at the onset of the crisis, the foreign media, particularly the BBC and CNN were perceptibly fixated on the racial component of the conflict. The networks focused on the plight of white commercial farmers to the exclusion of other races. For example, in 2000 President Mugabe legitimately criticised media reportage on farm related violence arguing that, 'those whites who died were shown like small gods on BBC and CNN and other foreign news agencies but no black was shown. Were there no blacks who died?'<sup>291</sup>

Fundamentally, the networks swayed international opinion against the Mugabe regime. This resulted in targeted sanctions being imposed on President Mugabe and Zanu PF leaders by the European Union, the United States, Canada and Australia. The overlying view was that the sanctions would stimulate democratic reform in the country.<sup>292</sup> Similarly, the media took the lead in exposing the forced mass evictions of 700 000 people in 2005 from their homes under Operation Murambatsvina (remove the chaff).<sup>293</sup> Even more media coverage of electoral fraud, violence perpetrated by Zanu PF apparatchiks on opposition supporters and the evolving

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<sup>289</sup> Carver (n 260) 4.

<sup>290</sup> Three million people have left the country mainly for South Africa, Botswana, UK, Canada and the US.

<sup>291</sup> President launches election tour, *The Herald* June 9, 2000.

<sup>292</sup> EU broadens sanctions on allies of Zimbabwe's Robert Mugabe, *Telegraph* 19 February 2009.

<sup>293</sup> Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe Mrs Anna Kajumulo Tibaijuka. The report was released on 22 July 2005.

humanitarian crisis, prompted the Security Council to debate the Zimbabwe situation in 2008.<sup>294</sup>

#### 5.14 POLARISATION OF THE MEDIA

Ndlela argues that objectivity in covering the Zimbabwean crisis and attendant issues such as democracy, free and fair elections, human rights and property rights has been blighted by a polarised media. The cracks in the industry widened at the onset of the farm invasions.<sup>295</sup> The state media which publicly sided with the ruling elite justified the farm occupations as an attempt to redress a historical injustice. The state media argued that conditions in rural districts had become so intolerable that villagers had spontaneously moved onto white owned commercial farms. The argument which echoed the department of information's thinking, hypothesised that the invasions were '*Hondo yeMinda*'<sup>296</sup> (struggle for the land) or '*the Third Chimurenga*' (third liberation) struggle.<sup>297</sup>

On the other hand, the private press was sceptical with *The Daily News* particularly underlining the negative effects of the land seizures on the economy. The paper sourced variegated opinions which, while generally backing the principle of orderly land reform, expressed concern over a disorganised programme. *The Daily News* opined thus:

The present concept of land invasion and settling multitudes of people on productive farmland, many, if not all, of whom will not have the necessary resources to make the land productive has to be a recipe for disaster. The farms which are being invaded are the farms that feed the nation and earn foreign currency.<sup>298</sup>

We are no longer a nation that can survive without commercial farming. Commercial farming is a necessity today in order to feed the

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<sup>294</sup> On 11 March 2007 about 50 activists among them opposition leaders Tsvangirai and Mutambara were arrested for exercising their right to peaceful association and assembly.

<sup>295</sup> Ndlela N (2005) *University College of Hedmark, Norway*.

<sup>296</sup> The song by war veterans Chinx Chingaira and Marko Sibanda and was co-produced by Information & Publicity minister Jonathan Moyo. The launch was given 18 minutes on ZBCTV news bulletins on the 7<sup>th</sup> and 8<sup>th</sup> August 2001.

<sup>297</sup> Willems, W (2004) *Science Direct - World Development* 1768.

<sup>298</sup> *The Daily News*, March 16, 2000 in Willems (n 290) 1773.

people. Commercial farming provides a major source of the nation's foreign exchange.<sup>299</sup>

*The Herald* dismissed this view arguing that the assertion that black people were 'unproductive peasants' was a stereotype constructed in colonial Rhodesia to malign black people. *The Herald* stressed that:

Persistent claims that Zimbabwe will not be able to feed itself if communal farmers are settled on commercial farms have no foundation at all. Our small[holder] farmers have convincingly answered their critics by consistently producing on their small and poor pieces of land the bulk of the country's maize and cotton.<sup>300</sup> The resettled farmers, who were given land during the first phase of the land reform programme, have contributed immensely to the country's agricultural production, in spite a host of problems, such as absence of infrastructure, escalating costs of inputs and high interest rates.<sup>301</sup>

A decade after the conflict flared up, it is rather unfortunate that media organisations have remained embedded in their ideological cossets and are as far apart as they were in 2000. The state media has continued to propagate the anti MDC line while the opposite view, which rightly accuses the government of mounting a ruinous campaign against its citizens, has also held firm. For example, Peter Mavunga writing in *The Herald* on 28 April 2008 noted:

Jesus detested liars, hypocrites, people who purported to be what they were not. I refer here to Morgan Tsvangirai and his MDC-T. They have become so used to lying that it is now part of their vocabulary. They have fomented trouble in the streets to take appropriate pictures to show to their masters abroad. If only the MDC-T took heed that telling the truth 'will make you free'.<sup>302</sup>

Conversely, veteran Zimbabwean journalist Bill Saidi in the *Sowetan* of South Africa noted:

Mugabe has convinced colleagues they are still fighting the cold war and that imperialism is still the No 1 enemy. Nothing matters more than sacrificing even the lives of children and expectant mothers in

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<sup>299</sup> *The Daily News*, April 18, 2000 in Willems (n 290) 1773.

<sup>300</sup> *The Herald*, April 24, 2000 in Willems (n 290) 1773.

<sup>301</sup> *The Herald*, March 31, 2000 in Willems (n 290) 1773.

<sup>302</sup> *The Herald* 18 April 2008.

this fight. If the present impasse on the election results is not ended equitably, Zimbabwe is in for prolonged strife. Eventually, politics could destroy the country, if it hasn't done so already.<sup>303</sup>

It is a truism that a divergence of opinion is one of the indispensable bedrocks of democracy. Ideally, the myriad views tabulated above would represent healthy debate. But the reality on the ground is one of intolerance and an aversion to contrasting opinion on the part of the ruling elites. This mindset was the driving force behind the ZBC's termination of the *National Development Assembly's* (NDA) 'Talk to the Nation',<sup>304</sup> a live TV phone-in programme which debated issues of public interest.

The accompanying rights deprivations are inconsistent with the objects and purposes of the ICCPR and the ACHPR. This environment was at the core of the African Commission's criticism of Zimbabwe in 2002. At its 32rd session in 2005 at Banjul, the Africa Commission declared that the country's laws violated fundamental freedoms and urged the government to, 'Respect fundamental rights and freedoms of expression, association and assembly by repealing or amending repressive legislation, such as the Access to Information and Protection of Privacy Act, the Broadcasting Services Act and Public Order and Security Act'.<sup>305</sup>

## **5.15 MEDIA RESPONSIBILITY**

As indicated earlier, some journalists have failed to correctly handle their newly found power. Indeed, as Kasoma argues the private press in some African countries has demonstrated a high level of 'recklessness [that] is reaching alarming proportions'. He further posits that this trend has, in some countries, resulted in multiparty rulers 'taking measures to limit press freedom once again'.<sup>306</sup> In this connection, Dare submits that, '...freedom of the press is regarded as a social good that belongs to the public and society

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<sup>303</sup> *The Sowetan* 18 April 2008.

<sup>304</sup> 'Mawere wants his money back', *The Daily News* 7 June 2001.

<sup>305</sup> ACHPR report on the December 2005 Fact Finding mission to Zimbabwe.

<sup>306</sup> Kasoma, FP (1997) 59(4-5) *Gazette* 295-310.

itself but as a special privilege belonging to journalists and the media...when governments descend heavily on the press, the public hardly feels any sense of injury. Only the news media and human rights organisations put up strong protests.<sup>307</sup>

This is a succinct summary of the recent history of the press in Zimbabwe. Whereas the state media has continuously spewed undisguised propaganda to sully government opponents, sections of the private press often ignore their self-avowed pledge to remain 'disinterested surveyors of the political scene'.<sup>308</sup> Instead of adhering to 'a free floating watchdog' role, the journalists have 'stretched the bounds of adversarial politics to the point where animosity appears to define the[ir] relationship [with] the state'.<sup>309</sup> For example, some reporters with *The Daily News* in 2002 concocted a story that an MDC supporter had been beheaded by Zanu PF supporters.

Also, two senior journalists on *The Standard* printed an unsubstantiated report on an alleged coup.<sup>310</sup> The *Financial Gazette* in 1996 wrongly reported that President Mugabe had secretly wed his second wife, Grace.<sup>311</sup> Nonetheless, these incidents pale into irrelevance when juxtaposed against *The Herald's* numerous fabrications: the paper has accused the MDC of planning to bomb high-rise buildings in Harare, cause an anthrax outbreak and lead an insurrection from Botswana.

Ideally, a proliferation of media organisations steeped in diverse ideologies would cure these intrinsic weaknesses. This would allow media audiences a wide range of media to choose from; and invariably readers would settle for publications that confirm their worldview. However, the foregoing commentary on the private press must not be misconstrued as an indictment of their contribution to the political changes that are taking place in the country today. The writer categorically argues that were it not for the

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<sup>307</sup> Dare, O (1998) 74(2) *International Affairs* 289-303.

<sup>308</sup> Tettey (n 117) 22.

<sup>309</sup> Tettey (n 117) 22.

<sup>310</sup> See *Chavunduka & Anor v Commissioner of Police & Anor* 2000 (1) ZLR 418 (S).

<sup>311</sup> *Business Day* 19 May 1995.

valiant efforts of the few brave journalists who are willing to 'dive and duck' from the government, the Zimbabwean story would have 'gone cold' while the country became another Somalia.

## **5.16 CONCLUSION**

From the foregoing discussion one recognises the media's struggle since the late 1980s to exercise oversight on government in the face of intractable odds. However, it also apparent that were it not for the efforts of the private media, the corrupt tendencies of Zanu PF, senior government and army officers would have gone undocumented. On the political front, the media alerted the international community to maturing tyranny in the country.

This contrasts the situation 20 years ago when the government was able to keep the public ignorant of the Matabeleland massacres by suppressing information on the atrocities. The proliferation of private media and development of telecommunications technologies have scuttled government's plans to keep a lid on its excesses and improprieties. The fact that hundreds of journalists have fled into exile and the international media is banned from operating inside the country, has not erased the Zimbabwean crisis off the media diary.

A positive outcome of the crisis has been the emergence of a tenacious crop of journalists who operate from internet bars and feed the world with information on the unrestrained behaviour of the Mugabe government. These reporters have alerted the international community to the rights abuses being perpetrated on Zimbabweans by their governors, eliciting the international condemnation.

## CHAPTER VI

### CONCLUSION

'To poison a nation, poison its stories. A demoralised nation tells demoralised stories to itself.'

Ben okri, Nigerian novelist, poet (1959- ).

On 15 September 2008, the three major political parties in Zimbabwe – Zanu PF and the two factions of the MDC – signed the Global Political Agreement (GPA) to clear the way for the creation of a Government of National Unity (GNU). Article 19 of the GPA recognizes the right of free expression although it falls short of calling for outright reverence of media freedom.<sup>312</sup> In addition, the formation of the GNU on 11 February 2009,<sup>313</sup> therefore completed the roadmap toward full implementation of amendments to AIPPA, the BSA and POSA that were enacted in January 2008 and were intimately bound up with the GNU.

Crucially, the new government has pledged to unban newspapers, radio stations and allow foreign journalists back into the country. If executed, this will go some way toward helping the government comply with Article 19 of the ICCPR, Article 9 of the ACHPR and decisions of various international bodies, but chiefly the UNHRCComm. As this thesis has demonstrated, journalists in the private media have suffered varying degrees of intimidation at the hands of state agents because of their tendency to expose corruption.

Under the Zanu PF government, independent-minded journalists felt the full weight of the coercive apparatus of the state. Identified reporters, editors and publishers were arbitrarily detained, indicted and tortured for spurious reasons. In January 2001, 'armed saboteurs' bombed the printing press of *The Daily News*. Similarly, on 31 March 2007, former ZBC staffer and

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<sup>312</sup> Agreement between the Zimbabwe African National Union-Patriotic Front (Zanu PF) and the Two Movements for Democratic Change (MDC) Formations, On Resolving the Challenges Facing Zimbabwe. Available at [Http://Www.Nehandaradio.Com/Index.Html](http://www.Nehandaradio.Com/Index.Html)[Accessed 23 February 2009].

<sup>313</sup> Tsvangirai sworn in as Zimbabwe PM', CNN 12 February 2009.

freelance cameraman Edward Chikomba, was found murdered two days after he was abducted by suspected members of the CIO. Chikomba had been accused of selling footage of a battered Tsvangirai to the foreign media, following the 11 March 2007 police assault on opposition leaders.<sup>314</sup>

The perpetrators of media oppression continued on this anarchical path despite the fact that Zimbabwe has strict defamation legislation for dealing with cases of unethical reporting. This thesis has argued that while s 20 of the Constitution and resultant case law protect freedom of expression and of the press, the efficacy of this body of laws has been neutralised by claw back clauses and draconian subsidiary legislation. Although the AIPPA and BSA purport to uphold freedom of expression, in reality, they entrench repression and promote a culture of fear.

Also, this thesis has discussed how a free media which consistently exercises oversight over government is strategically poised to thwart the latter from appropriating undue power. The Zanu PF government has expertly used these misappropriated powers to abuse the electorate and manipulate the political process to its advantage. In the process, the government expropriated the public media and suborned its editors.

This was in contravention of classical liberalism, which vaunts prudent media as committed monitors of the activities of public bodies. The absence of a vigilant and probing press, often times results in the wholesale trumping of fundamental rights, and invariably, democracy. As this thesis has argued, democracy prospers where citizens are informed well enough to fully participate in the political process. The citizenry must then be bold enough to stake their claim as the final decision makers. Predictably, when Zimbabwe regressed into tyranny, the private media was one of the first pillars of democracy to be dismantled.

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<sup>314</sup> RSF, Zimbabwe - Annual Report 2008.

The suppression of the private media left the majority of Zimbabweans without access to comprehensive and accurate information on the polity, thus blurring their worldview. As said above, the amplification of the state media's voice in national discourse shrunk the local 'market place of ideas'. As a corollary, the Zanu PF imprint was ubiquitous on all contentious issues of public interest. This was exacerbated by the reduction of the private media to a few straggling publications, hence little information adjudged to be in the readers interest was put out. News items that seeped through the sieve were heavily sanitised as journalists cautiously navigated the legal minefield ostensibly laid down to advance media freedom.

Furthermore, the thesis has illustrated how the majority of Zimbabweans who live in rural areas have been muzzled. The government has bombarded radio listeners with Zanu PF propaganda, particularly its captive audience in undeveloped outlying areas. In a practical sense, the government has subtly guided what issues dominate the agenda around the fire place there.

This paper recommends that for a new culture that recognises and respects press freedom to take root in Zimbabwe, it is contingent upon the political leadership to redouble their efforts and entrench this custom. This must be demonstrated by allowing private players to enter the broadcasting sector and unbanning privately owned newspapers. More importantly, the government media empire must be unbundled and transformed into cogent public media that work toward community refinement. The net effect of such a holistic transition step would be the creation of a more democratic media, free of government interference. Here, journalists, particularly editors, who practice self-censorship to keep their jobs, would require a rigorous re-orientation programme. Ideally, this would inspire them to reach certain summits in the discharge of their duties. Admittedly, less government involvement in media supervision and output is ideal for Zimbabwe.

However, it is submitted, that the burden of safeguarding and freeing the media from ethical shortcomings must be borne all Zimbabweans. After all,

society and a free press are 'symbiotically related and mutually reinforcing'.<sup>315</sup> Through a series of domestic, international law material and cases, this thesis has posited that this is only achievable if stronger legal controls that undergird unfettered media are developed. A step in this direction would, foremost; require inserting a provision in the Constitution that explicitly recognises and protects press freedom. Secondly; the government must repeal legislation that hampers the media from conducting its democratically-assigned mandate. Thirdly; independent regulatory authorities for both the print and broadcasting media must be established to oversee journalism in the country.

Fundamental alterations to the media firmament, such as the proposals outlined above, would thus require the government and civil society to encourage the establishment of community radio stations and to subsidise them. These stations could be used to deepen democracy by encouraging more people to participate in policy formulation through, for example, phone-in programmes. Radio is a proven change agent and has the potential to mobilise people for social programmes, involvement in local government and participation in electoral processes.

The impact of radio on Zimbabwean politics has been demonstrated by foreign based stations such as *VOA*, *VOP*, and *SWRadio Africa* which broadcast into Zimbabwe on shortwave and in local languages. Invariably, the stations are locked in a pitched battle for the minds audiences with ZBC as they too penetrate the remotest parts of the country. Unlike ZBC, these private stations have become sources of credible information and news for people in rural districts – who represent three out of every four Zimbabweans.

In the same vein, public newspapers that print quality news and educational reports must also be set up. As a short-term antidote, these bodies must be

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<sup>315</sup> Tetey (n 117) 28.

subsidised with advertising levies and taxes paid by mass circulation newspapers. The public media must be freed from both government and commercial control. Ideally, these publications could be placed under the direction of independent bodies whose members would be representative of a broad section of society. However, implementers of such changes must beware of the hazards of diversity that can derail the liberalisation process if it is not supported by comprehensive civic guidelines.

## **BIBLIOGRAPHY**

### **ZIMBABWEAN CASES**

*Associated Newspapers of Zimbabwe (Pvt) Ltd v The Minister of State for Information and Publicity, the Media and Information Commission and the Attorney General* Supreme Court 20/03.

*Associated Newspapers of Zimbabwe (Pvt) Ltd v Chief Superintendent Madzingo and the Commissioner of Police*, Harare High Court 157-03.

*Associated Newspapers of Zimbabwe (Pvt) Ltd v the Media and Information Commission* AIPP 1/03.

*Associated Newspapers of Zimbabwe (Pvt) Ltd v the Media and Information Commission* AIPP 03/03.

*Capital Radio (Private) Limited v Minister of Information, Posts and Telecommunications*, Judgment No. S.C. 99/2000 unreported.

*Chavhunduka and Choto v Minister of Home Affairs & Attorney General* Judgment No. S.C. 36/2000 unreported.

*Chavunduka & Anor v Commissioner of Police & Anor* 2000 (1) ZLR 418 (S).

*Independent Journalists Association of Zimbabwe v The Minister of State of Information and Publicity* No SC 252/2002 unreported.

*In re: Chinamasa* 2000 (2) ZLR 322 (S).

*In re Munhumeso* 1994 (1) ZLR 49 (S).

*Retrofit (Pvt) Ltd v PTC & Anor* 1995 (2) ZLR 422 (S) 211A-H.

*S v Marangarire* 1977 RLR 73 (GD).

*S v Modus Publications (Pvt)* 1996 (2) ZLR 553 (S).

*United Parties v Minister of Justice, Legal and Parliamentary Affairs & Ors* 1997 (2) ZLR 254 (S) 269 (S)

### **SOUTH AFRICAN CASES**

*Government of the Republic of South Africa v The Sunday Times* [1995] 1 LRC 168 at 175-6 (Transvaal Provincial Division).

*South African Nation Defence Union v Minister of Defence & Another* 1999 (4) SA 469 (CC) (6) BCLR 615 (CC).

## **CANADIAN CASES**

*Edmonton Journal v Alberta (A.G.)* (1989) 2 SCR 1326.

*R v Zundel* (1992) 10 C.C.R. (2rd) 193.

## **INDIAN CASES**

*Indian Express Newspapers (Bombay) v Union of India* (1985) 2 SCR 287.

*Rangarajan v Jagjivan Ram and Others; Union of India and Others v Jagvan Ram and Others* (1990) LRC (Const) 412, at 427.

## **UNITED STATES OF AMERICA**

*Miami Herald publishing v Tornillo* 418 US 241 (1974).

*Roth v United States* 354 U.S. 476 (1957).

*New York Times v Sullivan* 376 U.S. 254 (1964).

## **INTERNATIONAL CASES**

*Aduayom et al v Togo* Nos. 422-424/1990, § 7.4.

*Athukorale and Others v Attorney-General* 5 May 1998, 2 BHRC 609.

*Ballantyne, Davidson and McIntyre v Canada* Nos. 359 and 385/1989, §11.3.

*Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No 5.

*Free Press of Namibia (Pty) v Cabinet* 1987 (1) SA 614 (SWA) 623-G.

*Handyside v United Kingdom* 1 EHRR 737.

*Lingens v Austria* No 12/1984/84/131.

*Media Rights Agenda and Constitutional Rights Project v Nigeria* Nos.105/93, 128/94, 130/94 and 152/96.

*Mukong v Cameroon* No 458/1991, §§ 9.6 and 9.7.

*Observer Publications Ltd v Matthew*, 19 March 2001, No 3 of 2000 (Judicial committee of the Privy Council).

*The Case concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)*, ICJ Reports, 1970.

*The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* African Commission on Human and Peoples' Rights, Case 155/96.

*The Observer and Guardian v the United Kingdom* 13585/88 (ECHR).

*United States v Iran* ICJ Reports 1980.

## **ZIMBABWEAN STATUTES**

Constitution of the Republic of Zimbabwe.

Access to Information and Protection of Privacy Act (AIPPA) [*Chapter 10:27*] of 2002.

Broadcasting Act of 1957

Broadcasting Services Act (BSA) [*Chapter 12:06*] of 2001.

Criminal law [Codification and Reform] Act of 2004 [*CHAPTER 9: 23*].

Emergency Powers (Censorship of Publications) Order

Law and Order (Maintenance) Act (LOMA) [*Chapter 11:07*] of 1965.

Interception of Communication Act [*Chapter 11: 20*] of 2008.

Official Secrets Act of [*Chapter 11:09*] of 1970.

Voluntary Organisations Act [*Chapter 17: 05*].

Public Order and Security Act (POSA) [*Chapter 11:17*] of 2002.

Presidential Powers (Temporary measures) Act [*Chapter 10:20*].

Preventive Detention (Temporary provisions) Act of 1959.

Private Voluntary Organisations Act [*Chapter 3: 03*].

Privileges, Immunities and Powers of Parliament Act [*Chapter 2:08*] of 1971.

Subversive Act of 1950.

Vagrancy Act [*Chapter 10: 25*].

## **SOUTH AFRICAN STATUTES**

Constitution of the Republic of South Africa of 1996.

The Films and Publications Act No 65 of 1996.

The Criminal Procedure Act No 51 of 1977.

The Protection of Information Act No 84 of 1982.

## **INTERNATIONAL CONVENTIONS AND TREATIES**

African Charter on Human and People's Rights OAU Doc. OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997).

American Declaration of the Rights and Duties of Man O.A.S. Res. XXX adopted in 1948.

American Convention on Human Rights O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978.

Council of Europe Committee of Ministers recommendation REC (2000) 23 (*Adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies*).

Declaration of Principles on Freedom of Expression in Africa in its 32<sup>nd</sup> Ordinary Session (the Banjul Principles) ACHPR /Res.62 (XXXII) 02.

European Convention for the Protection of Human Rights and Fundamental Freedoms E.T.S. No 5 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953.

Human Rights Committee General Comment 10 U.N. Doc. HRI/GEN/1/Rev.1 at 11 (1994).

Universal Declaration on Human Rights G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa ACHPR /Res.62 (XXXII)02.

Recommendations on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector.

SADC principles and guidelines governing democratic elections (Adopted by the SADC Summit, Mauritius, August 2004).

Southern African Development Community (SADC)

## **REPORTS AND OBSERVATIONS**

ACHPR Report on the December 2005 Fact Finding mission to Zimbabwe  
A Consolidated Report on the Food Riots 19 - 23 January, 1998  
[http://www.hrforumzim.com:80/members\\_reports/foodriots98/food9801.htm](http://www.hrforumzim.com:80/members_reports/foodriots98/food9801.htm).

A Consolidated Report on the Food Riots 19 - 23 January, 1998. Available at  
[http://www.hrforumzim.com:80/members\\_reports/foodriots98/food9801.htm](http://www.hrforumzim.com:80/members_reports/foodriots98/food9801.htm)  
[Accessed 10 December 2008].

Agreement between the Zimbabwe African National Union-Patriotic Front (Zanu PF) and the Two Movements for Democratic Change (MDC) Formations, On Resolving the Challenges Facing Zimbabwe. Available at  
<Http://Www.Nehandaradio.Com/Index.Html>[Accessed 23 February 2009].

Amnesty International 2003 Report, 'Zimbabwe Rights under siege.' Available at  
<http://www.amnesty.org/en/library/asset/AFR46/012/2003/en/dom-FR460122003en.html>[Accessed 10 December 2008].

Concluding observations of the Human Rights Committee : Sudan. 19/11/97. CCPR/C/79/Add.85. (Concluding Observations/Comments) UN Doc. CCPR/C/79/Add.85.

Concluding observations of the Human Rights Committee (Hong Kong) : China. 12/11/99. CCPR/C/79/Add.117. (Concluding observations/Comments). UN Doc. CCPR/C/79/Add.117.

Commission on Human Rights, 54th session; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain; 29 January 1999; UN Doc E/CN.4/1999/64.

Commission on Human Rights Resolution 2003/42: Right to freedom of opinion and of expression) E.CN.4.RES.2003.42.

Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe Mrs Anna Kajumulo Tibaijuka (released on 22 July 2005).

Media Monitoring Project 'Election 2000: The Media War'.

Media Monitoring Project of Zimbabwe, 'Statement on Denial of an Operating License to Associated Newspapers of Zimbabwe.' Harare, 19/07/05.

MMPZ, Weekly Media Update February 18th – 28<sup>th</sup> February 2008.

Report of the African commission Fact-finding Mission to Zimbabwe 24th to 28th June 2002, hosted at [www.kubatana.net](http://www.kubatana.net)[accessed 19 January 2009].

Reporters Without Borders, Zimbabwe - Annual report 2002.

Reporters Without Borders, Zimbabwe - Annual Report 2008.

U.N. Commission on Human Rights, Report of the Special Rapporteur on promotion and protection of the right to freedom of opinion and expression, U.N. Doc. E/CN.4/1995/32 (1994) (Special Rapporteur Abid Hussain).

2000 Zimbabwe All Media and Products Survey (ZAMPS) results.

#### **BOOKS AND CHAPTERS IN BOOKS**

Altschull, JH *Agents of power: the role of the news media in human affairs* (1984) New York, Longman.

Boyd-Barrett, O & Newbold, C (eds) *Approaches to Media: A Reader* (1995) London, Arnold.

Burchell J and Milton J, 2 ed (1997) *Principles of criminal law*.

Crick, B *Democracy: A very short introduction* (2002) Oxford University Press.

Elliott, D 'Foundations for News Media Responsibility' in Elliott D (ed) *Responsible Journalism* (1988) Beverly Hills, California, Sage Publications.

Faringer, GL *Press Freedom in Africa* (1991) New York, Praeger.

Hamelink, CJ 'The democratic ideal and its enemies' in Philip Lee (ed) *The democratisation of communication* (1995) Cardiff, University of Wales Press.

Hyden, G, Leslie M and Ogundimu F (eds) *Media and Democracy in Africa* (2002) New Brunswick, NJ: Transaction Publishers.

Jacobs, S 'How good is the South African media democracy?' in Abebe Z and Richard I H (eds) *Media, identity and the public sphere in post-apartheid South Africa* (2003) Leiden, Boston.

Kumbula T 'Press Freedom in Zimbabwe' in Festus E and William J (eds) *Press Freedom and Communication in Africa* (1997) Africa World Press, Inc.

Lippmann, W *Public opinion* in Owens-Ibie, N 'Press Responsibility and Public Opinion in Political Transition' (1994) 8 (1) *Africa Media Review*.

Machesney, R *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (2000) New Press, New York.

Magaga, A *People and communication in Kenya* in Mytton, G *Mass communication in Africa* (1983) E. Arnold, London.

Makumbe, J and Compagnon, D *Behind the smokescreen. The politics of Zimbabwe's 1995 general elections* (2000) UZ publications, Harare.

Merrill, JC *Global Journalism: Survey of International Communication* (1995) White Plains, NY, Longman.

Meyer, P *Ethical Journalism* (1987) New York, Longman Inc.

Mytton, G *Mass communication in Africa* (1983) E. Arnold, London.

Moyers, B 'Overcoming Civic Literacy' in *Media Reader: Perspectives on Mass Media Industries, Effects, and Issues* 2ed (1993) Belmont, Wadsworth Publishing Company.

Murdock, G 'Citizens, Consumers and Public Culture' in Skovmand, M & Schroder, KM *Media Cultures: reappraising Transnational Media* (1992) Routledge, London.

Nowak, M *United Nations ICCPR Commentary* 2ed (2005) N.E Engel Publisher.

Ogundimu in Hyden et al (eds) (2002) *Media and Democracy in Africa*.

Rivers, WL and Cleveland, M *Ethics for the Media* in Owens-Ibie, N 'Press Responsibility and Public Opinion in Political Transition' (1994) 8 (1) *Africa Media Review*.

Rusike, M *The Politics of the Mass media. A personal experience* (1990) Harare, Roblaw.

Ronning, H and Kupe, T 'The dual legacy of democracy and authoritarianism' in Curran, J and Park, M (eds) *De-Westernizing media studies* (2003) Routledge, London and New York.

Saller, K 'Zimbabwe' in Van De Vijver L (ed) *A comparative study of common law jurisdictions* (2006) The Judicial Institution in Southern Africa, Democratic Governance and Rights Unit, UCT.

Saunders, R *Dancing out of tune' a history of the media in Zimbabwe* (1999) Harare, Zimbabwe.

Tomaselli, GK 'Media ownership and democratisation' in Hyden G; et al (eds) (2002) *Media and democracy in Africa* New Brunswick, New Jersey

Sen, A 'Development and Freedom' in Coronel, SS *The role of the media in deepening democracy*

Waisbord S in Curran J and Park M (eds) *De-Westernizing media studies* (2003) Routledge, London and New York.

Zaffiro, JJ *Media & Democracy in Zimbabwe 1931 - 2001* (2002) Colorado Springs, International Academic Publisher.

## **JOURNAL ARTICLES**

Akehurst, M 'Custom as Source of International Law' (1977) 47 *British Year Book of International Law* 1.

Alexander, K 'The Future of Democratic Politics in Zimbabwe' (2006) *Institute for Justice and Reconciliation*.

Carver, R 'Zimbabwe: a strategy of tension' 2000 *UNHCR Centre for Documentation and Research* 4.

Charney, J 'Universal International Law' (1993) 87 *American Journal of International Law* 543.

Dare, O 'A few considerations on democracy in Africa', (1998) 74(2) *International Affairs* 289.

Dadge, D 'The power that corrupts' overview of Africa' 2001 *International Press Institute*.

Dimitrijevic, V 'Customary Law as an Instrument for Protection of Human Rights' (2006) WP-7 *ISPI*.

Egbon, M (1987) 'Mass Media Development in A Developing Country: The Nigerian Experience' 2 *CAEJAG Journal*

Ekpu, R 'Nigeria's Embattled Fourth Estate' (1990) 1(2) *Journal of Democracy* 106.

Graber, D *Mass Media and American Politics* in Owens-Ibie N, (1994) 'Press Responsibility and Public Opinion in Political Transition' 8 (1) *Africa Media Review*.

Gillwald, A 'The public sphere, the media and democracy' (1993) 21 *Transformation* 65.

Harland, C 'The status of ICCPR in domestic law of state parties: an initial global survey through UN Human Rights Commission Documents' (2000)22 *Human Rights Quarterly* 188.

Howard-Hassmann RE 'The Second Great Transformation: Human Rights Leapfrogging in the Era of Globalization' (2005) 27(1) *Human Rights Quarterly* 1.

Jacobs, J 'Democracy and the Internet' 1998 *The good citizen. Australian democracy & citizenship* .

Karanja, D 'Africa's fight for ethics' 2000 *Global Journalist*.

Karikari, K 'Press freedom in Africa. Challenges and opportunities' 2004 *New Economy* 185.

Kasoma, FP 'The independent press and politics in Africa' (1997) 59 (4-5) *Gazette* 295.

Kupe T 'Diasporic Journalism' (2005) 25 *Rhodes Journalism Review*.

Lent, J 'A Third World News Deal? Part One: The Guiding Light,' (1977) 5 *Index on censorship* 22.

'Media and Democracy' in *Media Studies Journal*, Freedom Forum, Summer 1995 in Ocitti J, 'Media and democracy in Africa. Mutual political bedfellows or implacable arch-foes', *Weatherhead Center for International Affairs* Harvard University.

Moyo, D 'The 'independent' press and the fight for democracy in Zimbabwe: A critical analysis of the banned Daily News' (2005) *Westminster Papers in Communication and Culture* 109.

Murenik, E 'A Bridge to Where: Introducing the Interim Bill of Rights' (1994) 10 *SAJHR* 31.

Ndlela, N 'The African Paradigm: The Coverage of the Zimbabwean Crisis in the Norwegian Media' (2005) *University College of Hedmark, Norway*.

Owens-Ibie, N 'Press Responsibility and Public Opinion in Political Transition' (1994) 8 (1) *Africa Media Review*.

Sandbrook R 'Transitions without consolidation: Democratisation in six African cases' (1996) 17 (1) *Third World Quarterly*.

Tettey, WJ 'The Media and democratisation in Africa: contributions, constraints and concerns of the private press' (2001) 23 (1) *Media, Culture and Society*.

Valentino H, 'Establishing and maintaining balanced media support for free and fair elections', *Elections today*, (1994) *International Foundation for electoral Systems* 5.

Waldahl, R *Perspectives on Media, Culture and Democracy in Zimbabwe* (2000) Unpublished Masters degree thesis, Department of Media and Communication, University of Oslo

Wasburn, PC 'Democracy and media ownership: a comparison of commercial, public and government broadcast news' (2000) 17 (4) *Media, Culture & Society* 647.

Willems, W 'Peasant Demonstrators, Violent Invaders: Representations of Land in the Zimbabwean' (2004) 32 (10) *Press Science Direct – World Development*.

## **THESES AND UNPUBLISHED PAPERS**

Aboaba, D *The Nigerian Press under Military Rule* (1979) Unpublished PhD dissertation, State University of New York.

Andersen, WE and Ragnhild, KO *Press Freedom and Democracy in Zimbabwe* (1996) Master's Thesis University of Oslo, Department of Media and Communication.

Chalk, F *Radio propaganda and genocide* MIGS Occasional Paper Presented to the Conference on 'Synergy in Early Warning,' Centre for Refugee Studies York University, Toronto, Ontario 16 March 1997.

Cleveland, L *The Structure and Functions of the Press in New Zealand* (1970) PhD Thesis in Political Science, Wellington, Victoria University of Wellington.

Chiumbu, HS *Democracy, Human Rights and the Media. A case of Two Human Rights organisations and the Media in Zimbabwe* (1996) Masters' Thesis, University of Oslo, Department of Media and Communication.

Lush, D and Kupe, T *CRISIS? WHAT CRISIS? Free expression and access to information in Zimbabwe* A paper presented at the International Conference

on Media Support Strategies for Zimbabwe Johannesburg, November 28-30, 2005.

Elsaka, N *Beyond Consensus? New Zealand Journalists and the Appeal of 'Professionalism' as a Model for Occupational Reform* (2004) Unpublished PhD thesis, University of Canterbury.

EZE, OP *The Mass Media in the Dependency syndrome: An explanatory case study of the Nigerian daily Newspaper* (1977) Unpublished paper, Simon Fraser University, Burnaby, BC Canada.

Kucera, G *Broadcasting in Africa: A study of British, French, and Belgian colonial policies* (1968) Unpublished PhD thesis, Michigan State University.

Moyo, D *The 'independent' press and the fight for democracy in Zimbabwe: A critical analysis of the banned Daily News Westminster Papers in Communication and Culture*: University of Westminster, London 109-128, 2005.

Rantao, J *A case for media self-regulation in South Africa* A paper presented at the South African National Editors Forum at Stellenbosch University on 19 October 2008.

Saunders, R *Information in the Interregnum. The Press, State and Civil Societies in struggles for hegemony: Zimbabwe 1980 – 1990* (1991) Unpublished PhD Thesis, Carlton University, Ottawa.

Saunders, R *The Press, Civil Society and Democratic Struggles in Zimbabwe*, paper presented at NAI Conference on National Identity and Democracy, Cape Town, March 1987.

Wilcox, LD *The Press in Black Africa: Philosophies and Control* (1975) PhD dissertation, University of Missouri.

## **INTERNET SOURCES**

Berger S, 'Robert Mugabe lavishes gifts of plasma TVs and Mercedes on Zimbabwe's judges.' Available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/zimbabwe/2485977>[accessed 2 January 2009].

Coronel, SS 'The role of the media in deepening democracy' <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN010194.pdf>.

Proceedings of the first Conference of African Media regulatory Bodies – CAMRB Libreville, 2 – 5 June 1998. Available at [http://www.gret.org/parma/uk2/ressource/etude/rap\\_pdf/actecircaf.pdf](http://www.gret.org/parma/uk2/ressource/etude/rap_pdf/actecircaf.pdf)[accessed 19 January 2009].

Feltoe G, 'A Guide to Media Law in Zimbabwe.' Available at [http://www.kubatana.net/docs/resour/021101mediaguide\\_gf.pdf](http://www.kubatana.net/docs/resour/021101mediaguide_gf.pdf)[Accessed 10 October 2008].

Human Rights Watch, 'Our Hands Are Tied' Erosion of the Rule of Law in Zimbabwe' at [www.hrw.org](http://www.hrw.org).

Johnson N, 'Tens Reasons to amend the Broadcasting services act' *Jesuits Communications*. Available at <http://www.jescom.co.zw/mukai36/Broadcasting36.htm> [Accessed January 20 2009].

MISA-Zimbabwe 'AIPPA, POSA, BSA amendments signed into law'. Available at [www.kubatana.net](http://www.kubatana.net)[Accessed 20 January 2008].

Muleya D, 'More purges at state media' *Zim Independent* of 16 March 2001 at <http://www.zimbabwesituation.com/mar17.html#link7>[accessed 14 November 2008].

Munyuki, G and MISA-Zimbabwe 'Media ownership in Zimbabwe.' Available at [http://www.kubatana.net/docs/media/misaz\\_media\\_ownership\\_zim\\_051130.pdf](http://www.kubatana.net/docs/media/misaz_media_ownership_zim_051130.pdf). [Accessed 16 November 2008].

Reporters Without Borders, [www.rsf.org](http://www.rsf.org).

Zimbabwe Press, Media, TV, Radio, Newspapers. Available at <http://www.pressreference.com/Uz-Z/Zimbabwe.html>[Accessed 8 January 2008].

Liberty and Justice, *The Economist*. Available at [http://www.economist.com/markets/rankings/displaystory.cfm?story\\_id=8908438](http://www.economist.com/markets/rankings/displaystory.cfm?story_id=8908438)[accessed 7 February 2009].

Zoellick, RB 'An Inclusive & Sustainable Globalization' Available at [http://digitalmedia.worldbank.org/slideshow/?slideshow\\_id=20](http://digitalmedia.worldbank.org/slideshow/?slideshow_id=20) [Accessed on 10 September 2008].

## **NEWSPAPER AND MAGAZINE ARTICLES**

An Overemphasis on Zimbabwe? *BBC News The Editors* 25 Apr 08. [tory\\_id=8908438](http://www.bbc.com/news/8908438)[accessed 7 February 2009].

'Mawere wants his money back', *The Daily News* 7 June 2001.

Milo D 'The media watchdog may need more teeth' *Sunday Times* 4 May 2008.

'Moyo cracks whip on state media' Zimbabwe Independent 13 March 2004.

Muleya D, 'More purges at state media' Zim Independent 16 March 2001.

Nhuka I, 'Zimbabwe's MDC adverts blacked out of public media ahead of poll' *zimbabwejournalists.com*.

Obama rules the TV ad airwaves', BBC News 29 October 2008.

'President launches election tour', *The Herald* June 9, 2000.

'Probe into VIP housing scam opens' *Financial Gazette* 29 June 2000.

'Police seek former minister over fraud' *The ZimbabweTimes.com* 16 October 2008.

*The Herald* 18 April 2008.

*The Sowetan* 18 April 2008.

*NewZimbabwe.com* 18 April 2008.

'The politics of fear' BBC News 17 June 2000.

'Tsvangirai sworn in as Zimbabwe PM', CNN 12 February 2009.

'To the armed cowards who burn newspaper' *The Zimbabwean* 29 June 2008  
[http://www.thezimbabwean.co.uk/index.php?option=com\\_content&task=view&id=14369&Itemid=88](http://www.thezimbabwean.co.uk/index.php?option=com_content&task=view&id=14369&Itemid=88).

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