
**PROTECTED BUT EXPOSED:
A CRITIQUE OF THE RIGHT TO PRIVACY AND REPORTING OF DOMESTIC
VIOLENCE CASES IN THE (ZIMBABWE) MEDIA**

By

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Abstract

In Zimbabwe, when women, who are the majority of victims of domestic violence, apply for protection orders against their abusers from the civil Magistrates Courts in terms of the Domestic Violence Act, their cases are reported in the media. As the Act does not contain provisions to protect the privacy of complainants, the media resorts to ethically questionable reporting practices when it aggravates their trauma by naming and shaming victims in tasteless headline grabbing stories, the worst of which sensationalise intimate details about their painful ordeals. This study seeks to analyse the impact of the media's reporting of domestic violence court cases that discloses the names of litigants and their personal stories and it discusses interventions to protect litigants and encourage sensitive reporting that recognises their right to privacy and protects their right to access justice. The study analyses the serious issues at stake when the media's exercise of its right to publish reports of domestic violence court cases (in terms of 61 of the Constitution of Zimbabwe) breaches the rights of litigants to their privacy in terms of section 57. These rights are also protected by regional and international human rights instruments to which Zimbabwe is a party. This qualitative research employed the women's law and human rights approaches. The women's law approach was used to capture the voices and lived realities of women and the attitudes of society in which women live and fall victim to domestic violence and when they seek justice, an unsympathetic media prey on them for gain. The human rights approach interrogated the legal framework which protects and upholds the rights of both litigants and the media. Methods of data collection included interviews, focus group discussions and desk research. The research findings revealed that uncontrolled reporting by an unaccountable media wreaks devastating personal, economic and social harm on complainants. Such reporting, on the one hand, provokes public scorn against domestic violence victims whom it stereotypes, degrades and mocks by trivialising their trauma while, on the other hand, it evokes public sympathy for their abusers whose alleged crimes the media whitewashes or ignores. In other words, in the public mind the media cunningly turns the victim into the abuser and the abuser into the victim. Since such reporting has the direct impact of preventing potential complainants from reporting their cases for fear of facing similar consequences, it has the direct effect of defeating the very purpose of the Domestic Violence Act. There is therefore an urgent need to formulate corrective legislative, social and other measures to ensure that victims of domestic violence enjoy both their right to privacy and their right access justice under the Act without unlawful interference. This can be done by amending the Domestic Violence Act by providing for the hearing of cases *in camera* and the non-disclosure of litigants' names in any publication. The training of media professionals in gender sensitive reporting is also crucial and long overdue in developing a responsible media which should play an important role in raising awareness about domestic violence and contributing to its deterrence.

Table of contents

Abstract.....	2
Table of contents.....	3
Declaration.....	6
Acknowledgements.....	7
List of abbreviations and acronyms	8
List of human rights instruments	9
List of legislation	9
List of policies.....	9
List of cases.....	10
List of figures.....	11
List of tables.....	11
Executive summary.....	12
CHAPTER ONE.....	14
1.0 INTRODUCTION AND BACKGROUND TO THE STUDY.....	14
1.1 Introduction	14
1.2 Background of the study.....	14
1.3 Statement of the problem.....	19
1.4 Objectives of the study	21
1.5 Research assumptions.....	22
1.6 Research questions	22
1.7 Location of study	23
1.8 Limitations encountered in the study.....	23
1.9 Summary of chapters	23
1.10 Conclusion.....	25
CHAPTER TWO	26
2.0 METHODOLOGY AND RESEARCH METHODS.....	26
2.1 Introduction	26
2.2 METHODOLOGICAL APPROACHES.....	26
2.2.1 <i>Women’s law approach</i>	26
2.2.2 <i>Actors and structures approach</i>	28
2.2.3 <i>Human rights approach</i>	31
2.3 RESEARCH METHODS	31

2.3.1	<i>Desk research</i>	31
2.3.2	<i>Interviews</i>	32
2.3.2.1	<i>In-depth interviews</i>	32
2.3.2.2	<i>Key informant interviews</i>	32
2.3.2.3	<i>One-on-one interview</i>	32
2.3.3	<i>Focus group discussions ('FGD's) with female litigants</i>	33
2.3.4	<i>Perusal of domestic violence court records</i>	33
2.4	Overview of the research methodologies and methods	35
CHAPTER THREE		36
3.0	THE RIGHT TO PRIVACY AND DOMESTIC VIOLENCE CIVIL COURT REPORTS IN THE MEDIA.....	36
3.1	Introduction	36
3.2	Stereotyping women in domestic violence cases.....	36
3.2.1	<i>Women 'inviting' or 'asking for' domestic violence</i>	37
3.2.2	<i>Women as perpetrators of domestic violence</i>	37
3.2.3	<i>Women abuse the legal framework for the protection of domestic violence victims</i>	38
3.2.4	<i>Women gone astray</i>	39
3.3	Conclusion.....	42
CHAPTER FOUR.....		43
4.0	THE MEDIA'S OVERSTEPPING OF THE LIMITS OF THE FREEDOM OF EXPRESSION AND THE FREEDOM OF THE MEDIA IN RELATION TO THE PROTECTION OF PRIVACY OF LITIGANTS IN REPORTING DOMESTIC VIOLENCE CASES	43
4.0	Introduction	43
4.1	The right to privacy versus media freedom	43
4.2	The media's overstepping of the limits of its freedom	47
4.2.1	<i>Sensationalising domestic violence cases</i>	47
4.2.2	<i>Wrongfully taking and publishing photographs</i>	47
4.2.3	<i>Disclosing the HIV status of litigants</i>	49
4.2.4	<i>Inaccuracy of media reports</i>	52
4.3	The effects of being thrust into the public spotlight	53
4.4	Interventions	56
4.5	Conclusion.....	56

CHAPTER FIVE	58
5.0 THE ROLES OF THE JUDICIARY, LEGISLATURE AND MEDIA IN PROTECTING THE RIGHT TO PRIVACY	58
5.1 Introduction	58
5.2 Role of judiciary and legislature in protecting right to privacy of litigants.....	58
5.2.1 <i>Interventions</i>	63
5.3 Can positive reporting play a part in raising awareness about and reducing domestic violence?.....	64
5.3.1 <i>The media as the fourth estate</i>	64
5.3.2 <i>Sensitive reporting of domestic violence cases</i>	66
5.4 Conclusion.....	71
CHAPTER SIX.....	72
6.0 CONCLUSIONS AND RECOMMENDATIONS	72
6.1 Conclusions	72
6.2 Recommendations	73
Bibliography	78

Declaration

I, Elizabeth Danga, certify that this dissertation is my original work; it is an honest and true effort of my personal research. I certify that the work has not been presented anywhere else before for any other thesis.

Signed

Date

This dissertation was submitted for examination with my approval as the University Supervisor, Dr R.K. Katsande

Signed

Date

Professor J E Stewart

Director of the Southern and Eastern African Regional Centre for Women’s Law, University of Zimbabwe

Date Signed

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List of abbreviations and acronyms

ACHPR	African Charter on Human and People's Rights
HIV	Human Immune Deficiency Virus
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-governmental organisation
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
ZWLA	Zimbabwe Women Lawyers Association

List of human rights instruments

African Charter on Human and People's Rights (1986) (Banjul Charter)

Beijing Declaration and Platform for Action (1995)

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979)

International Convention on Civil and Political Rights (1966)

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Declaration)

SADC Protocol on Gender and Development

Universal Declaration of Human Rights (1948)

List of legislation

Australia

Domestic Violence and Protection Orders Act, 2008

South Africa

Constitution of South Africa

Domestic Violence Act, No.116 of 1998

Zimbabwe

Access to Information and Protection of Privacy Act [Chapter 10:27]

Children's Act [Chapter 10:27]

Constitution of Zimbabwe Amendment (No. 20) Act, 2013

Courts and Adjudicating Authorities (Publicity Restrictions) Act [Chapter 9:07]

Criminal Procedure and Evidence Act [Chapter 5:06]

Domestic Violence Act [Chapter 5:16]

Health Professions Act [Chapter 27:19]

List of policies

Zimbabwe

National Gender Policy (2013-2017) of the Republic of Zimbabwe. Ministry of Women Affairs, Gender and Community Development.

List of cases

South Africa

Johncom Media Investments v M

NM v Smith 2007 (5) SA 250 (CC)

O' Keffe v Argus Printing and Publishing Company Limited 1954 (2) SA 244

United States of America

New York Times Co v United States 403 US 713 (1971) (the 'Pentagon papers' case)

List of figures

Figure 1:	Diagram showing the relationship between the media, the fourth estate, to the other estates in society	65
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List of tables

Table 1:	Showing the state of domestic violence in Zimbabwe (2010-2011)	18
Table 2:	Showing details of the respondents	34

Executive summary

The move on the part of countries to enact anti-domestic violence legislation was sparked by the Beijing Platform for Action in 1995 as well as the World Decade for Women which strengthened the principle of women's rights as human rights. The right to privacy of complainants of domestic violence in Zimbabwe has been overlooked since the inception of its Domestic Violence Act in 2007.

Domestic violence operates at the intersection of civil and criminal law. Many acts of domestic violence (for instance assault, sexual abuse and verbal abuse) which are litigated in civil courts may also be prosecuted as crimes by the state under criminal law. When a person approaches the criminal courts with a case of sexual abuse their right to privacy is protected in terms of the Criminal Procedure and Evidence Act¹ which prohibits and penalises the publication of the name, address, place of occupation of the complainant or any other information likely to reveal the identity of the complainant or of any witness in cases of indecent assault unless otherwise determined by the judge or magistrate presiding at the trial, after consulting the person concerned or, if they are a minor, their guardian, has given their consent in writing to such publication conveyed in a document signed by the judge or the registrar of the High Court or by the magistrate or the clerk of the magistrates court, as the case may be. The Domestic Violence Act, on the other hand, does not provide such protection meaning that complainants in civil cases of domestic violence risk having their identities revealed. It is important therefore that complainants in civil cases receive the same protection they would receive under the criminal law.

The methodologies used in this research were the women's law and the human rights approaches. The women's law approach entails analysing the lived realities of women and how they are affected by publications that disclose their names. The human rights approach analyses the legal framework that can be used to protect the right to privacy of victims of domestic violence and to identify existing gaps and how to fill them. This approach revealed that the Domestic Violence Act does not provide for the protection of litigants and therefore it needs to be amended to include that protection.

¹ Section 196.

The research findings revealed that media stereotypes women as having ‘invited’ the domestic violence they suffer, as being perpetrators of domestic violence themselves, as abusers of the legal framework which protects victims of domestic violence and as having gone astray by behaving in a manner that is morally unacceptable. Such stereotypes trivialise the serious nature of domestic violence. Further, disclosing the names of victims of domestic violence in media reports has far reaching social, professional and economic consequences. It humiliates, degrades, traumatises and damages their reputation. It also deters other victims from seeking legal redress for fear of being exposed in the media. Since domestic violence involves very intimate and personal issues their victims are justified in their reasonable expectation that such details should not be made available for public consumption.

The media oversteps the limits of its freedom by infringing the right to privacy of litigants through disclosing their identity and HIV status and publishing photographs of them for public consumption without their consent. The judiciary has failed to use the provisions of the Courts and Adjudicating Authorities (Publicity Restrictions) Act to protect complainants of domestic violence from identification in media reports.

When it enacted the Domestic Violence Act, the Legislature left a gap by not regulating the conduct of court hearings and media reporting of domestic violence cases. If regulated properly, however, a responsible media can play an important role in raising awareness about domestic violence and contribute to its deterrence. The media should be trained in gender sensitive and human rights reporting. The Domestic Violence Act needs to be amended to ensure that names of litigants and any information that can lead to their identity should not be published in any way.

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

Zimbabwe had no specific anti-domestic violence legislation until 25 October 2007 when the Domestic Violence Act became operational. This chapter looks at the background of the Domestic Violence Act, the problem which the research tries to address, the objectives of the research, its assumptions and research questions as well as the location of the study and the limitations which were encountered in pursuing it.

1.2 Background of the study

Domestic violence is an international public health and human rights issue. It is a gross violation of human rights which occurs across all socio-economic and cultural backgrounds. Statistics show that domestic violence is a global menace. The 1993 World Report states that around the world, at least one in every three women has been beaten, coerced into sex or otherwise abused in their lifetime; more than twenty percent (20%) of women are reported to have been abused by men with whom they live; and, among women aged 15-44, gender based violence accounts for more death and disability among women than the combined effects of cancer, malaria, traffic injuries and war (Anti-Domestic Violence Council, 2012).²

Zimbabwe is signatory to various international and regional treaties, conventions, declarations and protocols that seek to promote gender equality and eradicate gender based violence. The state is therefore duty bound to put in place mechanisms to achieve that purpose. The international instruments signed by Zimbabwe include the following:

- The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). Ratified in 1991. This instrument seeks to redress the gender discrimination that has been so rampant in our society. State parties are obliged to prevent, investigate and punish all forms of gender based violence including domestic violence.

² Zimbabwe, Ministry of Women Affairs, Gender and Community Development. Anti-Domestic Violence Council (2012) in its Strategic Plan 2012-2015 quoting the 1993 World Report.

- The International Convention on Civil and Political Rights.
- The Beijing Platform for Action (1995) which states the twelve critical areas of concern one of which is violence against women.
- In 1997 Zimbabwe signed the SADC Protocol on Gender and Development and also its addendum on the Prevention and Eradication of Violence Against Women and Children. In 2009 Zimbabwe ratified the protocol to show its commitment to address issues of gender based violence including domestic violence.
- In 2007 Zimbabwe ratified the African Union's Protocol on the Rights of Women.

In line with the spirit of these instruments Zimbabwe has enacted various laws including the Domestic Violence Act,³ which occurred after ten years of protracted debate following its proposal. The Act was enacted following the realisation that there was no law that protected victims of domestic abuse the majority of whom are women. Many women were suffering domestic violence without any relief.

‘In his second reading speech, Justice, Legal and Parliamentary Affairs Minister Cde Patrick Chinamasa said domestic violence had resulted in the death or maiming of women. There was no law adequately addressing the issue of violence within the family as this was being equated to common law offences such as assault. “This had tended to limit the scope of domestic violence which has resulted in many deaths.” The Minister said the psychological effects of domestic violence were far reaching especially on children who witnessed such violence’ (Kubatana.net).⁴

The domestic violence debate was intense nationwide and dominated the national media. The national debate expressed the mixed feelings of people from all walks of life. Even in Parliament the debate on the Act generated a great deal of controversy. Mr Timothy Mubhawu, the then MDC Member of the House of Assembly for Tafara-Mabvuku was expelled from his party following sentiments he expressed during a Parliamentary debate

³ Chapter 5:16 of 2007.

⁴ Quoting The Herald (Zimbabwe) of 5 October, 2006.

which was illustrative of the perceptions of many Zimbabweans. An excerpt from the press article quoting him states:

“I stand here representing God Almighty. Women are not equal to men,” [Mubhawu] said amid jeers from women parliamentarians. “It is a dangerous Bill and let it be known in Zimbabwe that the right, privilege and status of men is gone. I stand here alone and say this Bill should not be passed in this House. It is a diabolic Bill. Our powers are being usurped in daylight in this House.” The proposed law, Mr. Mubhawu said, was crafted in a manner that promoted western cultural values. Mr. Mubhawu said the issue of proper dressing by women should also be addressed in the Bill as “some of the dressing by women is too inviting.” Women in positions of authority, he said, should be role models in their marriages. “Women leaders in Government, judiciary and Parliament should be exemplary by at least marrying,” he said’ (Zimbabwe Human Rights NGO Forum, 2006).⁵

Many other legislators were hesitant to pass the Bill into law. They said that it was in conflict with culture and religious beliefs. Men feared that their power of control over women was being eroded.

‘Chief Mudzimurema of Mashonaland East said information from the rural communities indicated that the Bill could result in marriage breakdowns. He said some men were of the view that it was difficult to stay with a wife who would have reported the husband to the police resulting in prosecution and a jail sentence. The chief said the Bill should be modified in such a manner that it take into account customary and traditional values. Kadoma West legislator Cde Zacharia Ziyambi (Zanu-PF) said there should be more consultations and the Bill should not be fast-tracked. “Men we are trapping ourselves if we agree to this thing. We should take the proposed law to the people because we seem to be fighting against our cultural values,” he said’ (Zimbabwe Human Rights NGO Forum, 2006).

However the majority of Parliamentarians were in agreement with the then MDC chief whip and Mutare Central legislator, Mr Innocent Gonese, who stated that this is a most important Bill which must be supported by all honourable members. He further emphasised that it was important for everyone to ‘realise that physical violence has no room in a modern civilised society.’

These Parliamentary debates are a true manifestation that our society still accepts and justifies violence against women, in particular, intimate partner violence. This is the society

⁵ Report from Zimbabwe Human Rights NGO Forum published on 8 December 2006.

in which both the perpetrator and the victim of domestic violence are socialised and raised. Usually society blames complainants in domestic violence cases to the point that the complainant even blames herself for the domestic abuse she suffers. This in itself makes her reluctant to report a case of domestic violence against herself and seek a protection order from a court. Usually complainants only seek recourse to the courts when the violence is perpetual especially when severe injuries result.⁶ When they are pushed to this extreme they wish that the court process would be as discreet as possible for fear of suffering public judgment and condemnation that they ‘invited’ the abuse. The condemnation is shameful for the victim who is accused of failing to have conducted herself ‘properly’ and in a manner which provoked the perpetrator. In other words, she is a failure in the eyes of the public, and often, even her own family. If married, she is henceforth regarded as not being ‘proper wife material’. She is accused of destroying her home with her own hands. Such sentiments are in keeping with the attitude that wives are expected by society to become good wives and mothers.⁷

The findings of this research will reveal that when the media makes headlines of a victim’s domestic violence experience it traumatises them. Domestic violence is a very private affair which they do not want to become known, often even by their own children or parents. Therefore, women victims often resort to employing other ways of dealing with domestic violence rather than taking court action. These other measures often end up perpetuating further abuse against them. The media’s practice of publishing the names of litigants in domestic violence cases actually perpetuates the culture of silence among victims who fear being exposed to the world.

The Zimbabwe Demographic and Health Survey (ZDHS) for 2010-11 (Table 1) provides an overview of the situation regarding domestic violence in Zimbabwe. The report confirms that there is a culture of silence regarding the reporting of cases of domestic violence as the relationships stated are covered by the Domestic Violence Act.

⁶ Comment by the Provincial Development Officer for Harare in the Ministry of Women’s Affairs, Gender and Community Development. In an interview held on 14 January 2016 at his offices.

⁷ In a focus group discussion at ZWLA the participants shared the view that society expects a good wife to be submissive and to deny herself for the sake of her husband.

Statistics from the Chief Magistrate’s office indicate that in 2009 the judiciary handled 2040 domestic violence cases, 4906 in 2010, and 2665 in the first quarter of 2011 (Anti- Domestic Violence Council, 2012).

Table 1: Showing the state of domestic violence in Zimbabwe (2010-2011)

ABUSE	PERCENTAGE
Percentage of Women who have experienced physical violence since they were 15	30%
Percentage of Women who have experienced violence since the age of 15 who reported their current husband or partner as the perpetrator.	57%
Percentage of Women who have experienced violence since the age of 15 who reported their former husband or partner as the perpetrator	20%
Percentage of Women who have experienced violence since the age of 15 who reported their mother or step mother as the perpetrator.	5%
Percentage of Women who reported that they have experienced sexual violence at some point in their lives	27%
Percentage of Women who reported that they experienced violence when they were pregnant	5%
Percentage of ever married Women who reported having experienced some form of physical abuse	29%
Percentage of ever married Women who reported sexual abuse	26%
Percentage of ever married women who reported emotional abuse	27%
Percentage of Women who have ever experienced any physical or sexual violence and have sought some sort of help	37%
Percentage of Women who have ever experienced any physical or sexual violence and told someone about their situation	14%
Percentage of Women who have ever experienced any physical or sexual violence and never told anyone that they were victims of violence.	49%

1.3 Statement of the problem

Domestic violence cases are heard in open court and there is no law restricting their publication in the media. Media reports disclose the names of litigants and other personal details which litigants may not want the public to know. This makes the court an unsafe place for victims of domestic violence.

One respondent who is a nurse at a private hospital went to Zimbabwe Women Lawyers Association (ZWLA) to seek legal advice in connection with a case of domestic violence. Her husband is a pastor at a popular church. He assaults, sexually abuses, stalks and harasses her at her workplace. At ZWLA she was advised to apply for a protection order against him. A provision of the protection order directed her husband not to enter or approach her workplace. She took the provisional order to her immediate supervisor and told her to advise the hospital security not to allow her husband admittance to the building. The supervisor told her that she was going to advise the hospital manager about the protection order. Immediately, she was called to a meeting by management who told her to withdraw the protection order saying that it would affect the clientele of the hospital if they learnt that a member of its staff was a victim of domestic violence. When she insisted that she had tried other avenues like prayer and counselling they were not interested and the manager said:

‘If you go to court the media will be there. Court days are working days, most likely you will take a morning off so you will be wearing a uniform. The media will identify you with the uniform and they will jump on your story to report the abuse of a nurse of this affluent hospital. Besides, your husband is a pastor, the media will be interested to report a story of a pastor who beats and abuse his wife. Besides the uniform, if it comes out in any way that you work at this hospital the media will surely report the case. We cannot allow that. If you want you can proceed, but that will be unacceptable to the directors.’

She went on to say that she then advised her lawyer that she was withdrawing the case as it would cost her her job:

‘I knew from the way they said it that I would definitely lose my job if I proceed with the court application. My lawyer advised me that we will apply to have the case heard *in camera* but management said that is not a guarantee that the case will not be reported in the media. I also became afraid. With the economic hardships prevailing in this country I cannot afford to lose my job. I withdrew the case.’

This is one example of the effects of media reports which disclose the names of litigants in domestic violence cases or other personal details about them that leads to their identification. There are no specialised courts for domestic violence in Zimbabwe. At Harare's civil Magistrates Courts, domestic violence cases are heard in Court 5 which also functions at the same time as the Children's Court and the Small Claims Court.

An open court means that the public has a right to be admitted into the court, including the media. The common law rationale for the open court system was for the transparent administration of justice. It essentially stands for the proposition that the courts should be open to the public for scrutiny and criticism (Stoddart, 2011). Therefore, unless legislation specifically states that certain categories of matters shall not be heard in open court or it prohibits publication or where parties apply to the court for their case to be heard *in camera*, the proceedings can be published by media. This is the case with domestic violence cases.

The usual rationale for the Constitutional protection of press freedom is the important contribution the press makes to one of the goals of freedom of expression in general, that is, its role in establishing and maintaining an open and democratic society. This means that the press is both protected by the right to freedom of expression and has duties to promote it on behalf of the rest of society (Curie and De Waal, 2013: 343). Section 61 of the Constitution of Zimbabwe provides for the freedom of expression and freedom of the media. The right is limited, if, among other things, it results in an unwarranted breach of a person's right to privacy.

Section 57 of the Constitution provides for the right to privacy. The identification of litigants by name in reporting domestic violence cases infringes on the right to privacy. The reporting is sensationalised to the point that it sometimes distorts the facts. The disclosure of a litigant's personal details such as their name, HIV status, place of residence, workplace and occupation is an unwarranted invasion of privacy. Such details are not in the public interest. What is in the public interest is the core issue of domestic violence, the story of what happened and not to whom it happened.

Disclosing the names of complainants in domestic violence cases has negative social consequences. Complainants feel humiliated and stigmatised. They are also persecuted by

society as a result of such reports and are themselves blamed for the domestic violence they suffer. Their children and families are also emotionally traumatised by the reports.

There is a gap in the Domestic Violence Act in that it does not protect the identity of litigants of domestic violence. The research findings reveal that complainants in domestic violence cases prefer to remain anonymous in media reports of domestic violence cases. The Criminal Procedure and Evidence Act⁸ protects complainants in indecent assault and other cases by stating that their identity shall not be disclosed in any publication unless their written consent is given through the presiding judicial officer. Domestic violence operates at the intersection of civil and criminal law in that cases which are brought before the civil courts can also be prosecuted by the state under the criminal law. Complainants whose claims are handled under the criminal law automatically have their identity protected in terms of criminal procedure. It is therefore important that this same protection be extended to litigants in civil cases.

1.4 Objectives of the study

The overall objective of the study is to understand the impact of the media reporting of domestic violence cases that discloses the names of litigants and what can be done to protect litigants and to bring about reporting that is sensitive and recognises the right to privacy of women litigants.

The three main objectives are:

1. To interrogate why the media reports civil court domestic violence cases in a way that stereotypes women as helpless victims of domestic violence and discloses their names.
2. To investigate the role of the judiciary and legislature in protecting the privacy of female litigants in the reporting of civil court cases of domestic violence by the media and other legal and non-legal strategies that can be used to protect the privacy of litigants in the reporting of domestic violence cases in the media.

⁸ Section 196.

3. To outline the role of media in raising awareness of domestic violence and bringing about its deterrence.

1.5 Research assumptions

1. In the media's reporting of domestic violence cases, it stereotypes women as helpless victims of domestic violence thereby trivialising issues of domestic violence.
2. In the media's reporting of domestic violence cases, it oversteps the limits of freedom of expression and media freedom in relation to the right to privacy of the litigants.
3. The judiciary and legislature have failed to protect the right to privacy of victims of domestic violence as provided for in the Constitution and under international law as the media is not accountable in its reporting.
4. The media's positive reporting of domestic violence cases can play a part in raising awareness about and reducing the problem of domestic violence

1.6 Research questions

1. Is it the case that in the media's reporting of domestic violence cases, it stereotypes women as helpless victims of domestic violence thereby trivialising issues of domestic violence?
2. Is it the case that in the media's reporting of domestic violence cases, it oversteps the limits of freedom of expression and media freedom in relation to the right to privacy of the litigants?
3. Is it the case that the judiciary and legislature have failed to protect the right to privacy of victims of domestic violence as provided for in the Constitution and under international law as the media is not accountable in its reporting?
4. Is it the case that the media's positive reporting of domestic violence cases can play a part in raising awareness about and reducing the problem of domestic violence?

1.7 Location of study

The research was carried out in Harare. Since I was investigating the reporting of domestic violence cases which take place in Harare I looked at the reporting of cases decided by the Harare Magistrates Civil Courts, including its Domestic Violence Court which has jurisdiction over all litigants who reside in the various suburbs of the city of Harare. I also compared the reporting of these court cases with those of the Magistrates Courts in the other Zimbabwe centres of Bindura, Goromonzi and Norton. Respondents interviewed as members of the public were randomly selected in the city of Harare.

1.8 Limitations encountered in the study

My efforts to interview as many litigants as possible whose cases had been reported on in the media, especially those whose cases had been reported on in the month of July 2015 were futile. I managed to get one client from ZWLA and two clients from Msasa Project. I communicated with the rest of them over the phone them using details I had accessed from court records. I could not travel to their homes because of financial constraints and security concerns.

1.9 Summary of chapters

This research is divided into five chapters. Chapter 1 discusses the problem that the right to privacy of complainants of domestic violence is breached by media reports that identify litigants by name. Domestic violence operates at the intersection of civil and criminal law. Section 196 of the Criminal Procedure and Evidence Act protects litigants of the crime of indecent assault from being publicly identified in the media. The media's disclosing of the names of victims of domestic violence has far reaching social, professional and economic consequences. It humiliates, degrades and traumatises them and damages their reputation. It also deters other victims from seeking legal redress for fear of also being exposed by the media. Domestic violence involves very intimate and personal issues that victims do not desire to become public knowledge.

Chapter 2 discusses the methodologies used in this research. They were the women's law and the human rights approaches. The women's law approach takes women as the starting point for analysing the law and how it affects them. The human rights approach analyses the legal

framework that can be used to protect the right to privacy of victims of domestic violence and to identify the existing legal gaps and how to fill them.

Chapter 3 explores how the media's reporting of domestic violence stereotypes women as being helpless victims of domestic violence and oversteps the boundaries and limitations of freedom of expression. The research findings revealed that the media stereotypes women and portrays them as having 'invited' the domestic violence they suffer, as perpetrators of domestic violence, as abusers of the legal framework which protects victims of domestic violence and as being wild, out of control and behaving in a manner that is morally unacceptable. It also revealed that the media's coverage of domestic violence cases trivialises the seriousness of the problem by sensationalising and inaccurately reporting them. The media oversteps the limitations of its freedom by disclosing the HIV status of litigants and photographing and publishing pictures of litigants without their consent.

Chapter 4 interrogates the role of the judiciary and the legislature in protecting the right to privacy of litigants. It analyses the legal framework in place that can be used by the judiciary and the opportunities that can be seized by the legislature. The role of the media in deterrence and awareness of domestic violence is also discussed, and how that role can be implemented in a way that upholds the right to privacy of litigants in domestic violence cases.

Chapter 5 concludes and recommends as follows:

1. That the media does indeed stereotype women and trivialises domestic violence issues. It is therefore recommended that media professionals should be advised on the effects of such reports and be trained in gender sensitive and human rights reporting.
2. That the media oversteps the boundaries of its freedom of expression by disclosing the identity of litigants. It is recommended that the media be engaged to desist from that practice by the Ministry of Women's Affairs in partnership with other stakeholders responsible for the implementation of the Domestic Violence Act. Alternatively, test case litigation could be used to put a stop to this unethical practice.

3. That the judiciary and legislature have failed to protect the right to privacy of litigants in domestic violence cases. It is recommended that the Domestic Violence Act be amended to prohibit the disclosure of the identity of litigants.
4. That the media can play a positive and responsible role in deterrence and awareness in its reporting of the issue of domestic violence. It is recommended that the media be trained in gender sensitive and human rights reporting.

1.10 Conclusion

The Domestic Violence Act became operational on 25 October 2007 after ten years of lobbying by various women's rights groups who had realised that it was the only reasonable response to the increasing number of domestic violence cases whose disproportionate impact on women's lives whose victims found no adequate remedy within their normal family/social dispute resolution mechanisms or even the wider legal system. When victims of domestic violence seek legal recourse their cases are reported in the media. This research seeks to analyse the impact of media reports that identify litigants of domestic violence and how their rights and distress can be addressed. Chapter 2 will discuss the methodology that was used in this research.

CHAPTER TWO

2.0 METHODOLOGY AND RESEARCH METHODS

2.1 Introduction

This chapter explores the methods that were used in collecting data in this research and the methodological framework informing these methods. The research was based on qualitative research methods. The methodological approaches were chosen for their ability to unearth the reality of women's lives in relation to the law. The methods also gave women the opportunity to speak out and tell their story on their own. They also interrogated the attitudes of the community in which women live in relation to women's rights, and also the roles of normative structures which impact on the realisation of women's rights. The methodologies used were the women's law, actors and structures and the human rights approaches.

2.2 METHODOLOGICAL APPROACHES

2.2.1 *Women's law approach*

The overall method used for this research was the women's law approach. As Stang Dahl puts it, this is a women-centred legal discipline which takes women's actual lived experiences and life situations based on sexuality, birth, care and domestic work as starting point for the analysis of the position of women in law and society (Bentzon *et al.*, 1998: 91). I therefore approached gender experts⁹ who advocate for women's rights and the eradication of domestic violence. They stated that there was a *lacuna* in the Domestic Violence Act in that it did not regulate the adjudication procedures of domestic violence cases. This meant that domestic violence cases were treated any other case in open court. They referred me to women's organisations.

The women's law approach is associated with grass-roots oriented research methodology (Bentzon *et al.*, 1998: 92). I therefore approached women's organisations that work with complainants in domestic violence cases.¹⁰ These organisations stated that media reports that disclose the names of complainants in domestic violence cases were actually defeating the purpose of the Domestic Violence Act because such reports result in the humiliation and

⁹ Oxfam and UN Women.

¹⁰ These organisations are: the Musasa Project, Zimbabwe Women Lawyers Association (ZWLA), Women and Law in Southern Africa (WLSA), Legal Resources Foundation (LRF) and Katswe Sistahood. They work in communities and provide services to litigants.

persecution of complainants by society. They also deter other victims of domestic violence from seeking legal recourse for fear of being exposed to ridicule by society.¹¹ These organisations were also contact points for accessing litigants whose cases were reported in the media. I accessed one respondent from ZWLA and two respondents from Musasa Project.

The women's law approach involves collecting empirical data about women's lived experiences (Bentzon *et al.*, 1998: 92). The respondents narrated the ordeal of having their matters reported in the media and their names disclosed. They stated that it was emotionally traumatising to their dirty linen washed in public.¹² The respondents said it was humiliating, stigmatising and degrading to be identified in a report which exposes their personal and intimate problems to the public without their consent. They stated that such reports had serious social consequences which include being ostracised by society and family. Some had their reputation at work affected and some even lost businesses.¹³ Other women who were not reported in the media explained how reports that reveal the names of litigants deter them from seeking legal recourse for fear of exposure. One respondent at a focus group discussion at ZWLA said:¹⁴

'In cases of spouses abusing each other names of litigants should not be disclosed. What I want is protection, not to shame my husband. When the media say they report cases using names to shame the perpetrator what they are doing is wrong. In shaming my husband I will be shamed as well and also my children. Imagine my children reading a newspaper article saying my husband is sexually abusing me, or threatening me with death. It affects the children emotionally and psychologically. When your case is published in the newspaper you feel humiliated. Sometimes you stay in your house behind closed doors because you are ashamed of what people are commenting about you. It is an embarrassment.'

These sentiments were shared by other respondents. The respondents suggested interventions which included law reform to ensure that their identities are not disclosed or that the case itself is not reported without their consent. This manifestly reveals relational feminism at play. Women can be defined in terms of their relationships to other people. Women emphasise relationships, contexts and needs. This is called the ethic of care (Banthuys and

¹¹ Msasa Project.

¹² The respondent from ZWLA whose case was reported in the media under the headline, '*Woman seeks refreshment from marriage*'.

¹³ A woman who cooks meals at a shopping centre in Epworth and whose HIV positive status was disclosed in a media report of domestic violence.

¹⁴ The focus group discussion was conducted on 23 November 2015 at ZWLA, Harare.

Albertyn, 2007: 36). Before seeking legal redress of a problem women consider how the contemplated action will impact on their relations with family and society at large.

I also approached Padare Men's Forum on Gender¹⁵ and other individual male respondents I randomly selected in Harare to find out the views of men on the disclosure of the identities of litigants in reports of cases of domestic violence. The inclusion of men as subjects of research is a natural extension of women's law research which is concerned with gender differences, gender relations and gender transformation (Bentzon *et al.*, 1998: 94). They said at Padare that the issue of confidentiality in cases of domestic violence is a priority for all their clients because they do not want their personal issues made known to the public. Ironically the Padare respondent said he did not see anything wrong with disclosing the identity of litigants in media reports because the law is clear that the court is a public place. Other men who were interviewed were of the view that women do not care about having their identity disclosed because it is they who approach the courts knowing full well how the media reports domestic violence cases. Some men even thought that women engage the media to report their cases specifically in order to humiliate their husbands. Although the respondents blamed women for the media reports, they said that identifying the litigants by name results in their humiliation, suffering low self-esteem and damage to their reputations at work and in society.¹⁶

2.2.2 Actors and structures approach

'By focusing on the woman and her relationships with men and with other women and the society in which she is embedded, we may uncover the norms, expectations and social and economic forces which influence problem solving and dispute resolution experiences.' (Bentzon *et al.*, 1998: 100)

Using the actors and structures methodology I interviewed media houses, media organisations and government institutions responsible for the media and implementation of the Domestic Violence Act. News editors¹⁷ said they report domestic violence cases in the public interest to advise the nation on what is transpiring in the courts, to deter offenders from perpetrating

¹⁵ Padare Men's Forum is a men's organisation that works to promote gender equality and fights against women's abuse by promoting gender equality and involving men in the fight against gender based violence. The organisation was inspired following the realisation of the importance of partnering with men in the fight against gender based violence and the recognition that men can also be victims of gender based violence.

¹⁶ I interviewed 11 men in Harare, 10 in the Harare's Central Business District and 1 in Highfields.

¹⁷ Newspaper, H-Metro.

violence and to shame the perpetrators. As to how they choose the stories they report, he said they report on any story which they think would be informative to the public. He said they did not take the issue of gender into consideration when reporting and that litigants in domestic violence cases had no right to privacy in relation to court cases.

Reporters from the newspapers, Newsday and Daily News were of a different view and said that when a case involves intimate and personal issues, the right to privacy of the complainant is at stake and has to be protected by not disclosing their names.¹⁸ This shows that there is some appreciation by the media of the importance of privacy for victims in reporting domestic violence cases. There is therefore room to engage the media to desist from disclosing the identity of litigants. However H-Metro was adamant that they have the right to disclose the identity of litigants because if the legislature did not intend them to disclose their identities then it would have prohibited them from doing so in the same way as it protects the identities of parties in rape cases. ZWLA said they tried to engage H-Metro on the same issue but to no avail.

I interviewed media organisations¹⁹ to get an insight into the role of the media in fighting domestic violence and the responsibilities of reporters and editors in the eradication of domestic violence and in upholding the human rights of litigants, including their right to privacy.

‘The actor perspective is particularly useful in obtaining a dynamic and processual understanding of gender and legal change in the context of societies where state-law interplays with other normative orders. It assumes that social and legal change takes place through interaction between human beings as individuals or groups and not through some seemingly abstract medium such as “The Law”’ (Bentzon *et al.*, 1998: 100).

Such interviews gave insights into how the media can be engaged to respect and uphold the right to privacy of litigants. Representatives from MISA, MMPZ and FAMWZ stated that in terms of ethical journalism, media practitioners have a responsibility to ensure that their reports do not result in unintended consequences such as the re-victimisation of the

¹⁸ ‘*Husband shoves cooking stick into wife’s privates*’ reported in the Newsday on 3 July 2015, and ‘*Wife sues hubby over abuse, HIV medication*’ reported in Newsday on July 2015.

¹⁹ I interviewed representatives of the Media Institute of Southern Africa (MISA), Media Monitoring Project of Zimbabwe (MMPZ), Voluntary Media Council of Zimbabwe (VMCZ), Zimbabwe Union of Journalists (ZUJ) and Federation of Africa Media Women (FAMWZ).

complainants of domestic violence. An editor is ethically bound to respect the right to privacy of victims even when they are complainants in civil cases in which the law does not protect their right to privacy. The VMCZ was of the opinion that as long as the report was a true account of what happened in court, a journalist would be acting ethically and that if the law does not prohibit the identification of litigants, the journalist should report victims by name for reasons of authenticity.²⁰ All the organisations stated that reporters had a responsibility to fight against domestic violence by reporting incidences of domestic violence in the media.

Interviews with representatives of government departments and institutions with the mandate and responsibility of implementing media laws and the Domestic Violence Act²¹ were insightful. The Media Commission stated that media houses are bound by their codes of conduct and have no responsibility to protect the right to privacy of victims if it is not protected by the law. It was further stated that the Commission is a creature of statute, as it came to force by provisions in the AIPPA.²² The NPA respondent stated that off-hand, they were not aware of any case in which a breach of the right to privacy had been prosecuted.

Examining life situations within the context of actors, norms and structures in relationships enables the researcher to start out with women's experiences in the process of life management and then encourages them to look at the normative structures that impinge on their lives. Structuration theory is based on the assumption that structure is both enabling and constraining, but does not totally determine an actor's behaviour. The theory assumes that individuals or groups are responding and acting with knowledge of the conditions with which they have to cope (Bentzon *et al.*, 1998: 103). The methodology unearthed that women and men are apprehensive about accessing the courts for fear of being exposed by the media and they therefore prefer to resort to alternative dispute resolution mechanisms such as counselling, prayer, consulting friends, church and family elders. Respondents said these measures, however, only yielded short-term solutions and they were forced to seek legal recourse as a desperate last measure having finally been confronted with the dilemma of suffering the humiliation of being exposed by the media or running the risk of losing life or limb.

²⁰ This view was also shared by the Deputy Editor of H-Metro.

²¹ The Media Commission of Zimbabwe (MCZ), the Zimbabwe Human Rights Commission (ZHRC), the Ministry of Women's Affairs, Gender and Community Development (MWGCD), the Ministry of Justice Legal and Parliamentary Affairs (MJLPA), the Judicial Services Commission (JSC) and the National Prosecuting Authority (NPA).

²² Access to Information and Protection of Privacy Act [Chapter 10:27].

2.2.3 Human rights approach

In interrogating the right to privacy and freedom of the media in relation to disclosing the names of litigants in the reporting of domestic violence cases in the media, the human right approach was used. This methodology analyses the legal instruments that are in place to protect the rights at stake. It was used to study the international, regional and national laws which provide for the right to privacy and freedom of the media. The Zimbabwe Constitution and other relevant pieces of national legislation such as the Domestic Violence Act were interrogated to assess their compliance with international and regional standards. This approach revealed that there is indeed a gap in the Domestic Violence Act being its failure to protect litigants from being identified by media reports and this should be closed by appropriately amending the Act. It also revealed that section 57 of the Constitution on the right to privacy presents an opportunity to protect litigants through strategic litigation.

This approach gave valuable insights from gender based and women's organisations on the continuum of human rights and how the breach of one right can easily lead to the subsequent breach of other rights. It also manifestly revealed the interdependency of rights. The realisation of one right often depends upon the realization of others.

2.3 RESEARCH METHODS

The data collection methods I adopted were determined by the kind of information that I required to answer my research questions and how I would draw out the information. Various data collection methods were used.

2.3.1 Desk research

I first used desk research. I read various newspapers for the month of July 2015 to find out how domestic violence cases were being reported. I noticed that in every report the names and other details which lead to the identity of the litigants were disclosed. From these reports I also took down the names of litigants in domestic violence cases. I then went to the civil courts of the Harare Magistrates Courts and perused the index book using the names of the litigants to access the case numbers of their court cases which in turn identified their court records. From their court records, I discovered the personal information of the litigants including their phone numbers and addresses. I then phoned the litigants.

2.3.2 Interviews

The interview technique was characterised by extensive probing using open-ended questions. The emphasis was on obtaining answers to carefully phrased questions to address the research assumptions. Details of the respondents are shown in Table 2.

2.3.2.1 In-depth interviews

In-depth interviews were carried out with litigants of domestic violence cases which had been reported by the media. These were interviews with actual people who had experienced what it felt like firsthand to have one's case reported by the media. They were individuals who had experienced the lived reality of having their private lives exposed to the world. Twelve (12) litigants whose cases were reported in the media were interviewed, nine (9) of them were women and three (3) were men.

2.3.2.2 Key informant interviews

Key informant interviews were carried out with knowledgeable community experts who deal or interact with litigants in domestic violence cases on a daily basis. They provide valuable insights to the community's general behaviour, attitudes and beliefs. Key informants provide important statistics and also key recommendations for the study.

The key informants interviewed were magistrates, prosecutors, clerks of court, officers from the Human Rights Commission, the Media Commission, Provincial Development Officers, District Development Officers, media organisations' staff, gender activists' organisations, newspaper editors and lawyers in private practice. At times I held group interviews of the key informants so that I did not consume too much of their time as they were busy people who had to attend to their clients. This was the case with Ward Co-ordinators in the Ministry of Women's Affairs whom I could access during the monthly meetings at their District Headquarters.

2.3.2.3 One-on-one interview

One-on-one interviewees were identified using the random sampling method. I used this method to select respondents whom I strategically located in places like Africa Unity Square and Harare Gardens which are popular places in Harare city where ordinary members of the public sometimes spend their time. Sixteen (16) members of the public were interviewed of which eleven (11) were women and five (5) men. I interviewed them in order to obtain a

general picture of the opinions and views of the public regarding the current reporting of domestic violence cases in the media.

2.3.3 Focus group discussions ('FGD's) with female litigants

Focus group discussions (FGDs) were used to collect data through group interaction. The research concepts were defined broadly to these groups. Focus group discussions capitalised on group dynamics and increased levels of focus and depth on the key issues of the research topic. In focus group discussions people often talk spontaneously and freely on themes considered important to the research. I conducted six focus group discussions with ZWLA clients at the ZWLA offices. They were conducted on different days and with different participants in November 2015.

This method was used to get the views of many different respondents at the same time. Also participants who are peers tend to speak comfortably in the presence of each other. It has also been noted that people tend to be less inhibited in a group setting, this characteristic being termed the group 'anonymity factor'. Also the interaction and sparking of views can be a rich source of data, particularly of differing generational views.²³ The groups interviewed were female litigants who were seeking legal advice from the organisation. Six (6) focus group discussions were conducted with a total of sixty-eight (68) female litigants.

2.3.4 Perusal of domestic violence court records

I perused court records to get information about the age, occupation and place of residence of the litigants. The most important reason for perusing court records was to get the full details of the application that had been made to the court, details of the court proceedings in each case and the judgment of the court. Thirty-two (32) domestic violence court records were perused.

²³ Dengu-Zvobgo *et al.*,1991.

Table 2: Showing details of the respondents

ORGANISATION	POSITION	NUMBER OF RESPONDENTS	SEX	
			F	M
H- Metro	Deputy Editor	1		M
Media Practitioners	Communication Officer	2	F	
Media Commission of Zimbabwe	Training and Communication Manager	1	F	
Zimbabwe Human Rights Commission	Officers	4	3F	1M
HER ZIMBABWE	Operations Assistant	1	F	
Media Monitoring Project Zimbabwe	Director	1	F	
Media Institute of Southern Africa	Legal Adviser	1	F	
Voluntary Media Council of Zimbabwe	Director	1		M
Voluntary Media Council of Zimbabwe	Programmes Manager	1	F	
Federation of African Media Women	Programmes Officer	1	F	
Zimbabwe Union of Journalist	Communications Officer	1	F	
Humanitarian Information Centre	Director	1	F	
Zimbabwe Women Writers	Member	1	F	
Zimbabwe Women Film Makers	Member	1	F	
Zimbabwe Women Lawyers Association	Director	1	F	
UN Women	Programmes Assistant	1	F	
Zimbabwe Women Lawyers Association	Law officers	4	F	
Women and Law in Southern Africa	Legal Programmes Officer	1	F	
Legal Resources Foundation	National Programmes manager	1	F	
Musasa Project	Programmes officer for Counselling, Shelter and Legal Services.	1	F	
Padare Men's Forum	Field Officer	1		M
Katswe Sistahood	National Co-ordinator	1	F	
Judicial Services Commission	Magistrates	12	9F	3M
National Prosecuting Authority	National Co-ordinator for Victim Friendly Courts	1	F	
Attorney General's Office	Chief Law Officer	1		M
Ministry of Women's Affairs, Gender and Community Development	Provincial Development Officer	1		M
	District Development Officers	3	2F,	1M
	Ward Co-ordinators	18	12F	6M
Lawyers	Private Practice	6	3F	3M
Litigants		12	9F	3M
Members of the Public		16	5F	11M
Focus Group Discussions	ZWLA clients	68	F	
TOTAL		171	137F	34M

2.4 Overview of the research methodologies and methods

The research methodologies and methods employed in this research were effective. They revealed how the law affects women differently from men and the gaps that exist within the legal system. They also captured the views and voices of the women and recommendations as to how they want the situation to be remedied. The methodologies and methods of data collection also managed to interrogate the roles of actors and structures that have a bearing on women's realisation of their rights. Chapter 3 will discuss the findings that emerged from the field.

CHAPTER THREE

3.0 THE RIGHT TO PRIVACY AND DOMESTIC VIOLENCE CIVIL COURT REPORTS IN THE MEDIA

3.1 Introduction

This chapter explores how the media stereotypes women in domestic violence reports thereby trivialising domestic violence issues.

3.2 Stereotyping women in domestic violence cases

Cusack defines a gender stereotype as a generalised view or preconception about the attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, women and men. A gender stereotype operates to create assumptions about the attributes or characteristics possessed by individuals and the roles that they perform, based on their membership of a particular sex or gender group; all of the dimensions of personality that make individuals unique are filtered through the lens of a stereotypical belief about their sex or gender (Cusack, 2013).

According to Muchemi, gender stereotypes are widely held beliefs about the characteristics and behaviour of women and men. Gender stereotypes are not only descriptive, but also prescriptive about how men and women should be and behave. In covering domestic violence stories, most reports are full of objectification, domestication and eroticization of women (Muchemi, 2015). This affects the perception and attitude of the readers towards the woman and this is further generalised to cover other women in society.

Media reports on domestic violence civil court cases stereotype women in the following manner:

1. As people who 'invite' the domestic violence they suffer.
2. As perpetrators of domestic violence.
3. As abusers of the legal framework for the protection of domestic violence victims.
4. As having gone astray.

3.2.1 *Women ‘inviting’ or ‘asking for’ domestic violence*

Media reports portray women as people who ‘invite’ the domestic violence that is perpetrated against them. The headline, **‘Cheating wife bashed’**²⁴ in itself seems to justify the violence that was perpetrated against the wife as if to say, really, any man would ordinarily have assaulted a cheating wife. The headline is punctuated with stereotypical undertones that cheating wives are blamed for being battered, hence the assault is not treated as violence and abuse but as a well-executed and deserved punishment.

In the article headlined, **‘Nude pics end marriage....hubby sleeps with knife under pillow’**²⁵ it was reported that a husband started sleeping with a knife under his pillow after discovering nude pictures that his wife was exchanging with other men on the phone, thus insinuating that the alleged conduct of his wife alone drove him to act the way he did. Blaming the victim trivialises the violence perpetrated against them.

3.2.2 *Women as perpetrators of domestic violence*

Women are misleadingly portrayed as perpetrators of violence in news headlines and without reading the whole story, a reader would be misled by the headline. The headline, **‘Abused by drunk wife’** gives the impression that the report is about a husband living in hell. However a reading of the whole story shows that the media focused on the husband’s defence and used it as the basis of its headline. The report related that it was the wife who had approached the courts seeking for a protection order against her husband who assaulted her and the children and sometimes even locked them out of the house forcing them to sleep in the open overnight. The protection order was granted. In the report, **‘Cheater granted protection order’**²⁶ the impression is given that ‘a cheater’ (who was the wife in the report) obtained a protection order against the person she was cheating on. In fact, the report revealed the order was granted against the complainant’s brother; he had alleged that his sister (the complainant) was cheating on her husband but the court found in her favour and that it was he who was abusive towards her.²⁷ In **‘Woman threatens to get ex-lover fired’**²⁸ the woman was going to

²⁴ Reported in the H-Metro on 7 July 2015.

²⁵ Reported in the H-Metro on 3 July 2015.

²⁶ Reported in H-Metro on 23 July 2015.

²⁷ In his defence, the complainant’s brother alleged that his sister (the complainant) was evicting him because she was cheating on her husband, yet the complainant’s husband testified in court that it was in fact the defendant who was disturbing their peace to the point that the complainant and their three minor children had moved out of the house for fear of the defendant who was verbally and physically abusive and had made death threats.

²⁸ Reported in the Newsday on 11 July 2015.

the complainant's workplace to get money for the child's upkeep and to ask him to obtain the child's birth certificate and he was refusing to co-operate. To try and stop her he applied for a protection order. In other words, he was abusing the protection order procedure to prevent her from pursuing her legal right to protect their child's rights.

3.2.3 Women abuse the legal framework for the protection of domestic violence victims

In the story headlined, '*Cheating wife bashed*', a wife was granted a protection order against physical, sexual and verbal abuse. This gives the impression that the courts are actually protecting women who cheat. It also gives the impression that women who approach the domestic violence court are actually the main perpetrators of violence and that the courts condone the act of cheating. The respondents were of the view that:

'All these women who seek protection orders are the perpetrators of violence. They abuse the husband verbally and emotionally and rush to the courts for a protection order. And surely they will be granted. These days the courts are full of female magistrates. Women are doing what they want in this country. Us men will soon need to have men's organisations because women are abusing us.'²⁹

However, information obtained from the court record was to the effect that the parties were not in fact married and that the incident which prompted the allegations of cheating occurred six months after the parties had separated. They had cohabited together for four years and they had a three year old daughter. From the time they had started living together the respondent began physically and psychologically abusing the complainant on and off. She then moved out of the respondent's house and went to stay with her uncle's family and her sister. The respondent would come and cause havoc at the residence and one night at midnight he arrived and forcibly removed the child and threatened the complainant with death because of the separation and said that if he could not have her, she should not live. One day he came to her uncle's house and when he saw her getting out of another man's car he assaulted her accusing her of prostitution. This report shows that the media even sometimes report domestic violence cases inaccurately, literally painting women with a 'black' brush by portraying them in a scandalous light. It perpetuates the stereotype that women who seek protection orders against their intimate partners are loose women who pretend to want

²⁹ The sentiments of a male respondent in Africa Unity Square. Five other male respondents gave comments in line with these at different times and venues which shows that this is a widely held perception by men towards women who are victims of domestic violence.

protection orders as a cover so that they cheat and get away with doing other immoral acts. The media is also making scandalous inaccurate reports about genuine complaints against abusers thereby trivialising the violence suffered by women victims.

Trivialisation can also be seen from the way in which newspaper articles frame domestic violence using themes that might misinform the public about the topic, for instance, by blaming the victim and writing up reports in a misleading and inaccurate manner,³⁰ as in this case.

The impression given by the report headlined, *'Cheater granted protection order'*³¹ is that the woman was granted a protection order for cheating, and that the protection order was against her husband. When you read the story, however, you realise that the cheating allegations were being levelled against her by her brother. This article incorrectly portrays women as abusing the legal system for protection of domestic violence cases.

3.2.4 *Women gone astray*

The reporting also portrays women as having lost their manners, self-respect and dignity. They are portrayed as behaving in a way that is unacceptable and shameful. The headline, *'Wife takes condoms home'*,³² speaks of a married black Zimbabwean woman violating the taboo of bringing condoms home and asking her husband to wear them when they are being intimate. Such behaviour is ordinarily regarded as being culturally and religiously unacceptable by many people in the country. One interviewee actually commented:

'This is unheard of. Really the world is coming to an end. Is she a real wife for who *lobola* was paid or she is just a prostitute he was cohabiting with and he just calls her his wife. I cannot imagine my wife doing that. She would have declared herself the head of the family. Anyway I cannot live with such a person.'³³

³⁰ In the report headlined, *'WOMAN SEEKS REFRESHMENT FROM MARRIAGE'* she had said she was sick and tired of the abuse and had already instituted divorce action.

³¹ Reported in the H-Metro on 23 July 2015.

³² Reported in The Herald on 16 July 2015.

³³ A male respondent in the Harare Gardens. 5 women respondents who were interviewed at different times commented that this woman had gone too far. They said condom use was an unmentionable topic in the home no matter how promiscuous a husband.

He said despite the infidelity of her husband, the wife she should have found other means to deal with the situation, and added, ‘any way all these men that you see have extramarital affairs’.

In this case, it was in fact the wife one who had applied for a protection order. The newspaper also cited the physical and verbal abuse she was facing. In trivialising the matter they did not report the fact that they had been married for 23 years and that her husband beat her in front of their four children, that he had threatened her with death and that she had reported the matter to the police, that he had been fined but had still not stopped abusing her. These are important facts which should have been disclosed to give readers a full picture of the abuse and victimisation he was inflicting on his wife. Instead the media reported at length how his wife had denied her husband his conjugal rights and how she had removed her wedding ring which she had sent for polishing. The issues that the media focused on are not acts of domestic violence.

The Herald report headlined, ‘*Wife deserts bed*’,³⁴ gives the impression that the wife is just being a problem in refusing to share the matrimonial bed with her husband. However on reading the story it is revealed that the husband was sleeping with a knife under his pillow and he had sent to her mobile phone a picture of an axe with a message saying ‘some people deserve this’. The same story was carried by Newsday and its headline read, ‘*Man threatens wife, send her an axe picture*’³⁵ which is much more in keeping with facts of the story.

A report with the headline, ‘*Sex starved wife drags hubby to court*’,³⁶ suggests a woman who went to court for sex thus portraying her as being out of control and behaving in a manner unacceptable to society thus trivialising the domestic violence issues she needed to have addressed. The extent to which the report trivialised the domestic violence became very apparent when I perused the court record. Although the report mentioned that it was a case of domestic violence, there was no hint of that in the headline itself. Being deprived of sex is not recognised as abuse under the Domestic Violence Act, so why did this newspaper make it the headline? The reporter only disclosed that the husband physically and verbally abused his wife but he did not go into any detail. A reading of the court record, however, revealed that

³⁴ Reported by Prosper Dembedza in The Herald on 24 July 2015.

³⁵ Reported by Tinashe Sibanda in the Newsday on 21 July 2015.

³⁶ Reported in The Herald on 27 January 2016.

the complainant's husband stalked her, searched her mobile phone and called her clients thus harming her business, and also used his vehicle to go out with his girlfriends. Instead of reporting this ordeal, the report went on at length about:

‘... [how the] woman yesterday cried at the Harare Civil Court pleading with the magistrate to order her husband to have sex with her. could not hold back her tears while telling magistrate that her husband, Joseph, denies her sex. She said she was being sex-starved and could not live without enjoying it every day.’

The report even went further to disclose that the couple was HIV positive. The media's focus on and exaggeration of issues that have little or nothing to do with domestic violence cases while at the same time choosing to ignore the basis of a complainant's application is a glaring example of just how the media trivialises the serious issue of domestic violence and the harm it causes women complainants. One-sided, biased and unbalanced reporting such as this which is calculated to excite perverse sexual pleasure in readers at the expense of women victims also trivializes the serious harm they suffer. Also, attributing the wife's pain and suffering in this case simply to a denial of physical pleasure also demeans her and her situation and trivialises the harm inflicted on her by her abuser.

The media often trivializes domestic violence by sexualising it and so leading to society's desensitization of the issue. In some cases these reports are received and discussed as though they were titillating sexual entertainment, for instance, the case of the report headlined, ***'I can't take 10 hours of sex daily anymore'***.³⁷ It is notable that many other stories on domestic violence are confined to court reports on the insignificant outer fringes of newspapers and in such a way that they do not add any value to the key functions of journalism (Muchemi, 2015).

Trivialisation also takes the form of the media's insincere and half-hearted attempts to seek out the voices of the victims of domestic violence but then ignoring them altogether. In the same vein, they do not seek the opinions of legal or gender experts, counsellors or the

³⁷ ***'I CAN'T TAKE 10 HOURS OF SEX DAILY ANYMORE'*** a headline on NewsdzeZimbabwe read on 16 November 2016. The wife sought a protection order against her husband who demanded ten hours of sex daily and any failure to oblige was met with physical abuse. The online comments showed that some people joked about the case, some seemed to envy her husband (by posting comments such as, 'These are the really married ones who can have sex until the woman is frustrated'), some asked for his number because they were sexually starved, and others asked him to share his secret.

judiciary who could provide important information about local resources, the background of the issue and the impact of domestic violence. Rather domestic violence is reported as a personal tragedy and the reports are more reactive than proactive (Lindsay-Brisbin *et al.*, 2014).

The Beijing Declaration and Platform for action (1995)³⁸ states that the continued projection of negative and degrading images of women in media communications must be changed as it negatively affects women and their participation in society.

3.3 Conclusion

The findings in this chapter revealed that media reports of domestic violence cases stereotype women as deserving to be abused, as perpetrators of domestic violence, as abusers of protection order applications and as having gone astray thereby trivialising domestic violence issues. They ignore the abusiveness of perpetrators of domestic violence but blame their victims. Chapter 4 will discuss the way the media oversteps the limits of its freedom in relation to the right to privacy of litigants and the consequences of doing so.

³⁸ Paragraph 236.

CHAPTER FOUR

4.0 THE MEDIA'S OVERSTEPPING OF THE LIMITS OF THE FREEDOM OF EXPRESSION AND THE FREEDOM OF THE MEDIA IN RELATION TO THE PROTECTION OF PRIVACY OF LITIGANTS IN REPORTING DOMESTIC VIOLENCE CASES

4.0 Introduction

Examples of the media's overstepping the limits of its freedom of expression in relation to the right to privacy of victims of domestic violence take the form of sensational and inaccurate reporting, the taking and publishing of photographs and disclosing the HIV status of litigants without their consent. Putting the litigants in the public spotlight has dire social consequences for victims of domestic violence.

4.1 The right to privacy versus media freedom

Noting the excesses of the media in as far back as 1890, American lawyers Samuel D. Warren and Louis D. Brandeis wrote a watershed article describing the pathology of what they saw as follows:

'The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle' (Cameroon, 2003).³⁹

Warren and Brandeis argued that the 'intensity and complexity of life' rendered 'some retreat from the world' necessary at the same time as 'modern enterprise and invention' created new ways and means of invading privacy. The result, they concluded, was that individuals could be subjected to mental pain and distress 'far greater than could be inflicted by mere bodily injury' (Cameroon, 2003).

³⁹ Cameroon, J. quoting (1890) 4 Harv. L. Rev. 193, at 196.

The Constitution of Zimbabwe provides for both the right to privacy and freedom of expression and freedom of the media. Section 61⁴⁰ provides for the freedom of expression and freedom of the media. The Constitution⁴¹ limits that freedom of expression and freedom of the media by excluding, *inter alia*, malicious or unwarranted breaches of a person's right to privacy. This section mirrors provisions of international instruments such as ICCPR⁴² and ACHPR⁴³ which protects the freedom of expression and freedom of the media.

Section 57 of the Constitution provides that every person has the right to privacy. This section manifests Zimbabwe's efforts to abide by the international instruments to which it is a party. This section is in tandem with international instruments such as UDHR⁴⁴ and ICCPR.⁴⁵

Article 17 of the ICCPR protects everyone from arbitrary or unlawful interference with his privacy or family or unlawful attack on his honour and reputation. Sub-article 2 further provides for a right to the protection of the law against such interference or attacks. The legislature did not protect this right in relation to litigants in domestic violence cases. The media oversteps the limits of their freedom by infringing this right to protection.

A right is an entitlement you own. It is a claim by you against another to the extent that by exercising your right, you do not prevent someone else from exercising theirs. It has been said that your right to swing your arm ends where another person's nose begins. It has also been said that one person's right is another person's duty. A right is determined by human needs that make life fulfilling and are essential for keeping us alive (English and Stapleton, 1997). In exercising its freedom of expression the media should therefore not infringe on a litigant's right to privacy.

⁴⁰ Section 61(1)(a) provides that every person has the right to freedom of expression, which includes freedom to seek, receive and communicate ideas and other information.

Section 61(2) provides that every person is entitled to freedom of the media, which freedom includes protection of the confidentiality of journalists' sources of information.

⁴¹ Section 61(5)(d).

⁴² Article 19 provides that everyone shall have the right to freedom of expression. The exercise of this right carries with it special duties and responsibilities. It may be restricted when necessary for respect of the rights or reputations of others.

⁴³ Article 9(2) provides that every individual shall have the right to express and disseminate his opinions within the law.

⁴⁴ Article 12 provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks upon his honour and reputation. Everyone has the right to protection of the law against such interference.

⁴⁵ Article 17.

The media's argument for disclosing the identity of litigants in domestic violence cases is that the matters are subject to public court hearings and that mentioning names proves the authenticity of a story.⁴⁶ Public hearings are those to which access is not limited, meaning that ordinary members of the public enjoy free entry to them so that they may verify for themselves that justice is not only done, but is seen to be done (English and Stapleton, 1997). A public hearing is the basis for an open court system. In common law systems open court is a venerated ideal and principle of justice which is regarded as indispensable. The principle generally requires that court proceedings be open to the public and that publicity of those proceedings be uninhibited (Cameroon, 2003). The media in Zimbabwe has the right of admission to sit in the country's courts, to follow and publish their proceedings.

In order to fully understand the right of the media to report court cases, it is important to look at the reasons for having an open court system with public hearings in common law jurisdictions.

The open courts principle seeks to prevent arbitrariness, corruption and injustice. Its origins date back to the early 17th Century English experience, when the legitimacy of the Crown's rule-making was being questioned by Parliament. It pursued the objectives of accountability, legitimacy of the process and public confidence in the justice system (Stodart, 2011).

The media reporting of domestic violence court cases should therefore be analysed from the perspective of the purpose of the legislature in guaranteeing the freedom of expression and freedom of the media. Did the legislature intend to have the identity of complainants in domestic violence cases disclosed in media reports that reveal personal and intimate details which would tend to humiliate, embarrass and make them feel ashamed? That could never have been the intention of the legislature. The usual rationale for the constitutional protection of press freedom is the important contribution made by the press to one of the goals of freedom of expression in general, and that is the establishment and maintenance of an open and democratic society (Currie and de Waal, 2013: 343). In the United States of American case of *New York Times Co v United States*⁴⁷ Justice Black stated that the constitutional guarantee of a free press gave the press the protection it must have to fulfil its essential role in

⁴⁶ H-Metro Deputy Editor in an interview conducted on 28 October 2015 and VMCZ Director in an interview conducted on 13 November 2015.

⁴⁷ 403 US 713 (1971) (the 'Pentagon papers' case).

our democracy, so that it could bare the secrets of Government and inform the people (Currie and de Waal, 2013: 343).

It should be noted that the open court system is first and foremost about the courts, and not about those who are seeking justice in it or are earning their livelihood reporting on court activities. (Stodart, 2011). When publishing personal information, it is always necessary to consider the impact of such disclosure on the administration of justice and on the rights of the litigants concerned since it can be extremely harmful to individuals.

The disclosure of personal information of litigants in domestic violence cases has a significant human impact. Respondents⁴⁸ told me they were distressed to discover often with no prior notice, that personal information about them was in the press or available on the internet for neighbours, relatives, friends and colleagues to see. The broader impact of that freedom of the media is that the potential disclosure of their personal information causes victims of domestic violence to be apprehensive about seeking recourse or justice because of the potential for humiliation, embarrassment and exposure.

Many victims of domestic violence are afraid to go court due to various reasons. Appearing in open court in itself is intimidating and embarrassing, but these pre-existing difficulties are exponentially worsened by the reporting and publication of their cases in the media. Though the reporting may have the noble intention of informing the public about domestic violence, the inclusion of personal details which leads to the identification of victims has the ironic and counter-productive consequence of turning them away from the justice system, which actually frustrates the very objectives of the Domestic Violence Act. If people are deterred from going to court to enforce their rights or seek justice then we need to be extremely concerned about access to justice (Stoddart, 2011). Muchemi states that a ‘professional journalist’ should go to court ‘not to expose a man who was beaten by his wife or a wife who was beaten by her husband, but to expose a gross vice which needs to be eliminated in [the] public interest’ (Muchemi, 2015: 89).

⁴⁸ The respondents whose cases were reported as ‘*Woman Seeks refreshment from marriage*’, ‘*HIV Positive Woman abused by husband*’, ‘*Man takes spoiled panties, used condoms to wife’s workplace*’.

4.2 The media's overstepping of the limits of its freedom

4.2.1 Sensationalising domestic violence cases

The media presents domestic violence cases in an exaggerated way to make them sound more interesting. The media houses maintained that the reporting of domestic violence cases in the media was consistent with media professionalism and media ethics. However some editors admitted that in certain situations the media oversteps its limits when for instance it continues to use a respondent's defence as its headline when reporting a case even after the court has rejected his defence and found in favour of the complainant and granted her a protection order. For example, in the story headlined, *'Abused by drunk wife'* the respondent had made this allegation in his defence, yet it was the wife who had successfully approached the court and had obtained a protection order. The heading gives the impression that it was the wife who was abusing her husband and a reader who reads only the headline and does not go on to read the story as well will incorrectly gain the impression that women are abusing men. In other words, when the media misleads the public like this it is giving them an incorrect picture of domestic violence cases in society.

Headlines of this kind have the effect of 'framing' victims of domestic violence. It is unethical to turn women victims of domestic violence who are suffering deep physical and psychological wounds into a source of entertainment.⁴⁹ The media should not give room to degrading and ridiculing domestic violence victims in this manner as this will only discourage others from honestly trying to obtain legitimate help by telling their stories. At its worst, the media's one-sided, cruel and degrading, titillating, highly sexualised and sometimes even downright pornographic reporting of women victims and their cases⁵⁰ clearly tends to incite the public to clamour for the acquittal of the guilty (whose vicious crimes the media tends to ignore, downplay and excuse) and the conviction of the innocent (whose traumatising ordeal the media tends to mock and trivialise).

4.2.2 Wrongfully taking and publishing photographs

The media's wrongfully taking and publishing photographs relating to domestic violence cases is another example of its exceeding the limits of freedom of expression and press freedom. They often take such photographs stealthily and without consent. One of the

⁴⁹ MMPZ.

⁵⁰ For example through headlines such as, *'26 years no sex'*, *'My hubby is a sex maniac'*, *'Sex starved wife drags hubby to court'* and *'Man demands sex'*.

research respondents⁵¹ said during an interview that when they asked media how they obtained pictures of litigants they said that after the magistrate hearing a case excuses a witness, the reporter who is in the courtroom taking notes of the case uses their mobile phone to communicate with a fellow photographer waiting outside the court with details of the person whom they want to be photographed. The details contain a description of the person and what they are wearing so that the photographer will be able to recognise them. The photographer will usually be hidden from the intended target for example under a tree across the road from the court exit. The fact that the media preys on litigants like this and resorts to such underhand tactics proves that the media is aware that their conduct is highly problematic.

A media practitioner⁵² from a media organisation said the taking of pictures of victims of domestic violence without their consent is not a right of the media even when they do so at a court which is a public place. It is not a right because it may not help the victim. She further stated that details of a person's intimate story should not be published without their consent.

A litigant whose case was reported in the media with accompanying pictures under the headline, *'Woman seeks refreshment from marriage'*, said:

'I was shocked and emotionally disturbed to see my case and pictures in the newspaper. It was a week after publication. The newspaper came with my fourteen year old son who had been given by my husband. I applied for the protection order five months after our separation and I had moved into my parents' house. He had started stalking me, forcing entry into my residence, assaulting me in the presence of the children and threatening me with death. The story was about his defence alleging that I was cheating on him and neglecting my wifely duties of cooking for him and doing his laundry. He said when I moved out I had said I wanted to rest from those duties. They did not focus on my application yet I am the one who had approached the courts. You know how people are, they were asking what actually I wanted refreshment on. It is so degrading. You will be moving without dignity when people are misinformed about your cases. The media just write for people to enjoy the story but they do not understand how such exaggerations affect your self-esteem.'

Another respondent said that media ethics is about a lot more than simply whether what is reported is true or false. The editor should look at the implications of a story for the survivor

⁵¹ A magistrate interviewed on 26 January 2016.

⁵² An officer from HER Zimbabwe interviewed in Harare on 19 November 2015.

of domestic violence, including their standing at school, work and in society. Some of the reports are so graphic even when there are no pictures. Sometimes you cannot even read them aloud to another person.⁵³ She also stated that although such graphic reporting may not be in breach of a particular law, it is still unprofessional. The media should understand that newspapers are family publications and read by people of all ages. The news is for public consumption so editors should therefore consider how the public will feel about the contents of certain stories.

In the story headlined, *'Married cheat bashed'*, it was reported in the first paragraph that the complainant approached the court seeking a protection order stating that the respondent forced her to have sex with him even during her monthly period. The parties' names were disclosed. When I telephoned her seeking an appointment to interview her, she told me that she could not talk to me in case I was a journalist wanting to get her comments so that I could publish again what she was saying. She then immediately hung up on me. As she was talking to me, her voice was trembling so much such that I could feel her fear, which I think indicated just how traumatised she felt by the media's reporting.

In South Africa, the courts have held that the right to privacy is also invaded by publishing someone's photograph without their consent (*O' Keeffe v Argus Printing and Publishing Company Limited*⁵⁴). Neethling *et al.* explain the principle as follows:

'No person need tolerate that even his image (photograph)... is disclosed to an unlimited number of persons against his determination and will' (Currie and de Waal, 2013: 296).

4.2.3 Disclosing the HIV status of litigants

It should be noted that the court reports of domestic violence cases have gone further and have even reported on the HIV status of the litigants even in cases where the status was not in issue.

The Constitution⁵⁵ protects the right to privacy of every person, which includes the right not to have their health condition disclosed. This right is not qualified as to who should not

⁵³ Media Monitoring Project.

⁵⁴ 1954 (2) SA 244.

⁵⁵ Section 57(e).

disclose that health condition. Before the enactment of the 2013 Constitution this right would only arise in relation to the medicinal professionals.⁵⁶ Since the Constitutional provision is general in nature, this means that no person should disclose the health condition of anyone. This includes the media in their reporting of court cases because the moment the media discloses that condition, its impact usually goes way beyond the individual concerned and exacerbates the consequences of the breach. When they approach the courts for protection, a domestic violence victim is claiming that their rights have been breached. The media has a duty to ensure that their conduct does not further breach the rights of litigants, for instance, by writing in a report, ‘meanwhile a woman is suing her ex- husband accusing him of disclosing her HIV+ status to the public.’⁵⁷

Publishing the allegation that a person is suffering domestic violence stigmatises the victim. And disclosing a person’s HIV + status is also stigmatising. So if both are published about a person, they suffer a double impact. It is actually very traumatising for victims of violence.

Disclosing that someone is HIV positive is an invasion on their privacy (Currie and de Waal, 2013: 296). In the case of *NM v Smith*⁵⁸ the Constitutional Court of South Africa held on appeal that the disclosure of the fact that persons were HIV positive where defendants were certainly aware that the plaintiffs had not given their consent or at least foresaw the possibility that the consent had not been given to the disclosure was a breach to the right to privacy.

Invasion of privacy in reporting domestic violence cases sometimes actually breaches a victim’s right to personal security.⁵⁹ In the case of a litigant whose domestic violence case was reported in the media as well as her HIV status it had far reaching human rights abuse implications. As a result of the media publicity she was discriminated against by the community in Epworth (a high density suburb on the outskirts of Harare) where she stayed. Even her children of nine and twelve suffered discrimination and stigmatisation at school. Her nine year old child was born HIV positive and the other children at school started asking her about her HIV status because of her perennial illness. Some children even refused to

⁵⁶ Health Professions Act.

⁵⁷ On page 4 of The Herald 22 July 2015. The headline was ‘*Man assaults granny (100) over witchcraft*’.

⁵⁸ 2007 (5) SA 250 (CC).

⁵⁹ Section 52 ‘Every person has the right to bodily and psychological integrity which includes the right (a) to freedom from all forms of violence from public or private sources.’

share a desk with her and many children no longer wanted to play with her. Some even told her point blank that there were afraid of being infected by her even though they were not certain of her status.

The complainant earned her living cooking meals in the open with other women at the shopping centre. On several occasions, a number of her male clients confronted her when they were drunk and accused her of trying to kill them by cooking for them when she knew she was HIV positive. At one point a man insulted and assaulted her, poured water on her cooking fire, threw away her pots and gave her an ultimatum not to cook again for the public because she was putting people's lives at risk. He called her a murderer and said she was the person who should have been taken to court because she was abusing other people's rights. She was saved from further abuse by the intervention of the police. Her business suffered as a result of the report. Her in-laws also blamed her for infecting her husband saying that if she was not the person who was the AIDS carrier, then she would not have told the media to publish it. That is a further dimension of the affects of media reports. When victims win their cases, they are suspected of having given details in reports to the media. The victim in this case narrated her ordeal as follows:

'After the case was reported in the media people started shunning me. Those who know me would not buy from me. Some women who do the same business actually insisted that I should stop the business as I was making loss and also their association with me was causing them to lose business. News spread like veld fire in Epworth that a woman who cook at the shops was reported in the newspaper that she has AIDS. Many people would ridicule me and say with my heath condition I should stop serving the public. Many times drunk men would say where did you get your AIDS? You want to get it from food? In an extreme case a man who was my client for years approached me. He was visibly drunk. He demanded that I put off the fire and pack my utensils not to come back again because I was risking infecting people. He threw away my pots and poured water on the fire. I reported him to the police. That is when the abuses stopped. But whenever I saw people talking and pointing at me I thought they were discussing my HIV status.'

Respondents told me they were distressed to discover that their cases had been reported in the media without their receiving prior notice. It was also published on the internet for the whole world to see.⁶⁰ They stated that having your HIV status disclosed to the public without your consent was emotionally traumatising. They said that it is so painful that it makes you feel

⁶⁰ *'Hubby abuses HIV Positive wife'*, H-Metro March 2011.

miserable, as there is so much to deal with. Some people even ask how you acquired the virus. Even though there is a lot of awareness and increasing understanding about HIV, it is still agonising to have your health condition reported to the world because you do not want everyone to know. When your spouse's HIV status is disclosed people are interested to know about yours as well. A respondent reported that at work people asked her if she had been tested to ensure that she was not infected. She said:

‘When I went to court for hearing I did not tell anyone at work. I just took a day off. The following day after lunch my superiors called me to their office and asked me what was going on. They told me they had read the case in the newspaper. That is when I first knew that the case had been published. They said I should have told them that I was going to court when I took the day off. The reason why I did not tell them is because they would ask why I was going to court and I did not want anyone to know. Imagine walking around the hospital with everyone talking about you. You noticed that the newspaper reported that my husband is HIV positive. My colleagues were asking when I discovered that he was positive and when I had been tested and whether I am not on window period or I could be infected but my anti-bodies were still active since our tests in Zimbabwe do not reveal that you have the virus but it is inferred when your anti-bodies had decreased. People were concerned to the extent that the concern was agonising. The stigma caused by such reporting is for a lifetime. I really felt that my privacy had been invaded. My father even phoned me later in the day asking if I was aware that my case was in the media. He had not seen the newspaper but only came to know about it when his work colleagues were asking whether it was me in The Herald report. At least my father knew about the case since I had told him. It is so humiliating to the whole family. People who know would want you to explain what really is the matter. And this is not an interesting story that you want to be narrating the whole day.’⁶¹

4.2.4 Inaccuracy of media reports

In terms of the laws of Zimbabwe court reports must be accurate, fair and balanced. The media is entitled in the public interest to report on all court proceedings and therefore they should communicate accurate information about them. Court reporters must exercise meticulous care in gathering and checking their information. They must ensure that no vital facts are left out and that they do not distort the facts. In summarising a court case, court reporters must ensure that their reports do not become distorted, garbled, inaccurate or misleading (Feltoe, 2003). Journalists should not disseminate falsehoods or rumours or half-truths that reduce the value of information as this can amount to a human rights violation

⁶¹ The complainant in the case reported under the headline, ‘*Man takes used condoms, panties to wife’s workplace*’, The Herald 26 January 2016. Reported by Evan Zhakata.

since false information can harm individuals and society. In essence, from a human rights and media perspective, journalists have a responsibility to disseminate all information so long as it does not compromise other people's rights including unduly invading the right to privacy (Loewenstern and Moyo, 2003: 73):

'The public has a right to unbiased, accurate and comprehensive information. Journalists must therefore make inquiries and cross-check their facts. Inaccuracies may harm the news subjects' reputation and other people. Inaccuracies can also do harm to the public interest.'

Reporting these cases inaccurately⁶² shows that the media trivialises these cases, does not take them seriously and does not respect the litigants involved. Journalists should understand how responsibly they should behave and perform their reporting duties because of the great trust the ordinary person puts in the media. Publishing inaccurate reports is feeding their consumers the wrong information which then affects people's attitudes and opinions about the very serious problem of domestic violence.

4.3 The effects of being thrust into the public spotlight

Publishing domestic violence cases in the media puts the litigants in the public spotlight. The research findings revealed that the litigants do not desire the publicity because of the various painful unintended consequences which accompany publicity. These include distress, humiliation, stigma, the straining of relations with others, the escalation of domestic violence, loss of earnings (employment or business), and psychological abuse suffered by children.

A respondent who is a professor of law said:

'Domestic violence includes private matters which are humiliating and embarrassing. It is degrading to be reported about your sex life. These are private matters. People should not endure public humiliation. It is a form of double exposure. It is as if I have made myself the object of public interest. I should be able to approach the court if it is safe. Humiliation that results from such reporting does not come out of your mind easily. It might border on defamation in some instances.'

⁶² For example, in a story headlined, '*Cheating wife bashed*' the parties were not in fact married. They had cohabited sometime in the past but by the time of the case they had been separated for more than 6 months. See also the story with the headline, '*Woman seeks refreshment from marriage*'.

One of the research respondents said:

‘Reporting of domestic violence cases should be looked at from two angles, that is, what does the reporting help the complainant with and what does it help the public when a person is reported by name. Really we cannot say the media’s right to freedom of expression should override an individual’s right to dignity. A lot comes with it. There are issues of stigma, your reputation at work or among peers. People will be saying that is the woman who is assaulted by her husband. You are labelled. Your self esteem is lowered. It can actually affect you performance at work. Everyone has their own space. My relatives, neighbours, church mates, workmates, colleagues, schoolmates. Perception of society still has not changed. It becomes an issue that a person is stigmatised in society for instance, her mother was in the newspaper for domestic violence. People may blame you saying why didn’t you go to your family elders.’⁶³

A litigant said it was a disgrace to have her sex life published in the newspapers considering that she had daughters in law and sons in law. She said it lowered her self esteem.⁶⁴ Her case was reported in The Herald as *‘Man (72) threatens wife with death... 26 years no sex’*, and in the H-Metro as, *‘Meet the couple. 26 years no sex’*⁶⁵. Both reports carried photographs of the parties to the case.

The reporting of cases identifying the litigants sometimes provokes an escalation in the very domestic violence from which the complainant is trying to protect herself. It also strains relations with in laws who often blame the complainant for taking their relatives to court. In our society when a wife takes her husband to court people usually think that she wants him incarcerated. Many litigants, especially women, are blamed for the case being published in the media simply because they are the applicants in the case. One respondent said:

‘After I was granted the protection order my mother in law came all the way from Zvishavane to evict me from her house where I was staying with my husband for fourteen years. She accused me for prostitution and for infecting my husband with HIV. She said had I not been the one who brought the HIV in the family I would not have told the media about the case. My husband’s sister whom we were staying with do not talk to me. They said I despised them by taking the matter to court instead of waiting for them to solve the problem. But they had been talking to my husband to stop the violence for the years now. He does not listen to them sometimes when he is beating me he also beat them. The whole family thinks I am the one who gave the media the details of

⁶³ A woman interviewed in Harare on 6 December 2015.

⁶⁴ Reported by Prosper Dembedza in The Herald 20 July 2015.

⁶⁵ H-Metro 25 July 2015.

the story. But I did not. I and my children are now isolated by the whole family. I am now renting and life is tough.’

Another respondent said:

‘I always thought that cases which are reported in the newspapers are those in which one of the parties voluntarily engaged the media.’⁶⁶

One of the respondents whose case was reported as, *‘Man sees wife’s boyfriends in dreams’*⁶⁷ was suing his wife for defamation damages on the basis that she reported him to the media who published falsehoods about him which he claimed were degrading. He said:

‘She applied for custody of our two minor children I had taken from her because she cannot properly take care of the children. In court she was making false allegations that I am not a responsible father and that I threw her out of the house and she was now living on the streets. This was false. Yet the local media took it as news and published it. As a known banker and risk control professional my reputation was damaged. The public knows me in social, business and employment circles across the country and also in countries like United Kingdom, South Africa and Australia. She also lied that I have girlfriends and I was exposing my children to those affairs. She advised the court that I believe in children of darkness. She sensationally claimed that these children visited me in my sleep and provided visions of her boyfriends. Yet it was untrue. She was simply harassing me. The defamation was gross and with far reaching reputational consequences. Even my employer asked me to explain what was happening. Local media reported on it. For this I demand defamation damages of US\$280,000 from her.’

The media’s reporting of domestic violence cases that reveal the names of the complainants also have an economic impact. A police officer whose case was reported as, *‘Cop handcuffs, bashes wife’* stated that when the domestic violence case was reported in the media his superiors called him to explain the report and they almost charged him had it not been for the fact that he was by then living peacefully with his wife.⁶⁸ He said:

‘Sister, I almost lost my job. After the case was reported in the media my superiors called me to explain. I told them that she was lying and they only believed me when they talked to her. I am not sure about the conversation they had with her.’

⁶⁶ A respondent in the Harare Gardens.

⁶⁷ Reported in the H-Metro on 17 September 2013.

⁶⁸ Reported by Prosper Dembedza in The Herald on 20 July 2015.

He however insisted that she was lying to court about being handcuffed. He said the two were having problems in their marriage but he never assaulted her. She made the false report of verbal abuse because she was influenced by neighbours. When I interviewed the wife she just said what she said in court is what was happening. Both parties however stated that they were now living peacefully in their marriage.⁶⁹

4.4 Interventions

In the short term the media should be advised about the adverse effects of reports that are sensational, inaccurate, disclose the names of litigants or their HIV status and those that put the litigants in the spot light. They should then be trained in human rights and gender sensitive reporting. Further, public interest litigation could be used to clarify the legal position of the constitutional right to privacy and media freedom. This would protect litigants pending the amendment of the Act to provide for cases to be conducted *in camera* and without identifying the parties which is the position in South Africa.⁷⁰ Public interest litigation includes strategic litigation and the provision of legal aid to indigent individuals in the interest of improving the justice system. Strategic litigation uses the court system to attempt to create broad social change through the law or public policy reform.

Strategic litigation aids in the establishment of effective and enforceable laws or usable precedents in common law jurisdictions. It also includes the interpretation of existing laws, constitutions and treaties to substantiate or redefine rights. It enforces or applies favourable rules or law that are underutilised or ignored and helps to challenge existing laws detrimental to social justice or individual rights.

Using strategic litigation stabilises and clarifies laws and helps in legal education, targeting the judiciary and legal profession and at the same time documenting the injustices thereof. Government will be also held accountable thereby changing public attitudes and empowering vulnerable groups such as victims of domestic violence.

4.5 Conclusion

The findings in this chapter revealed that the media oversteps the boundaries of its freedom by for example sensationalising domestic violence cases, taking pictures of litigants and

⁶⁹ The interview was conducted on 3 December 2015, almost 5 months after the court report.

⁷⁰ Section 11 of the Domestic Violence Act, No 116 of 1998.

disclosing their HIV status without their consent. Chapter 5 will discuss the role of the legislature and judiciary in protecting the identity of litigants of domestic violence and the role of the media in raising awareness and helping to reduce the incidence of domestic violence.

CHAPTER FIVE

5.0 THE ROLES OF THE JUDICIARY, LEGISLATURE AND MEDIA IN PROTECTING THE RIGHT TO PRIVACY

5.1 Introduction

This chapter interrogates the role of the judiciary and the legislature in protecting the right to privacy of litigants. It analyses the legal framework that is in place and how it can be used by the judiciary and the opportunities that can be seized by the legislature. The role of the media in deterrence and awareness of domestic violence is also discussed, and how that role can be implemented in a way that upholds the right to privacy of litigants in domestic violence cases.

5.2 Role of judiciary and legislature in protecting right to privacy of litigants

The function of the courts is to adjudicate on the rights of litigants. The legislature has the role of making law that will uphold and protect the rights of citizens.

The judiciary can protect litigants by invoking the Courts and Adjudicating Authorities (Publicity Restrictions) Act⁷¹ which empowers courts to impose restrictions on what information may be revealed about court proceedings if it considers it necessary or expedient to do so where publicity would prejudice the interests of justice, particularly where it is satisfied that a witness or his family members will suffer harm if his identity is revealed; or to protect the private lives of persons concerned in the proceedings; or to protect the safety or the private lives of persons related to or connected with any person concerned in the proceedings.

The judiciary has failed to protect litigants because they have not been invoking this section despite admitting that the way in which the media reports on domestic violence cases calls for the protection of its litigants. One magistrate⁷² had this to say:

‘I am not happy about the way media is reporting on domestic violence issues. Those are seriously personal issues. It is like a person going to the doctor and saying I have this sexually transmitted infection please assist, treat me. They would not want anyone to know why they visited the doctor. What they want

⁷¹ Section 3(i), (v) and (vi).

⁷² Interviewed in Harare on 19 October 2015.

is the professional assistance they can get because they are desperate. These are not joking matters. I even at my own instance approached the resident magistrate and told him that I was not comfortable with over presiding certain matters in open court. So I took it upon myself to proceed with such matters that I think are sensitive in the chambers. Imagine someone seeking a protection order against a husband who defecates and urinates in blankets. These are people who want to go back home and continue staying together. I think magistrates should have the powers to decide *mero motu* that a case is sensitive and should be heard in chambers and further protect the identity of the parties should the matter be published. The record will be endorsed that the names of the parties shall not be disclosed.’

Although the magistrate did not invoke the provisions of the Courts and Adjudicating Authorities (Publicity Restrictions) Act, she was acting in a way that protected the litigants. However the measures which the magistrate took to protect the litigants were not completely effective because the media could still access the court record. Therefore there was also a need to ensure that the court records were endorsed so that sensitive details of the case could not be published in the media.

Some resident magistrates indicated that they had tried to protect litigants by conducting domestic violence cases in chambers but this was not sustainable or practicable because they were understaffed. In such cases the media still has access to the court records. Apart from escaping the insensitive media, conducting cases in chambers would actually assist litigants in clearly articulating their cases without having to do so in open court and with the uneasiness associated with it where people may laugh or make sounds of disapproval whilst witnesses give evidence. This may affect the person giving evidence, the litigants and other witnesses who in their state of stress, may use words or behave in such a way that jeopardises their interests. Another magistrate commented that the court in itself is not a friendly environment, even for lawyers. How much worse it must then be for a nervous litigant. It is often the case that litigants are afraid of the court environment and find it difficult to express themselves. The evidence shows that there is real need for a victim friendly environment when dealing with complainants in domestic violence cases.

Another magistrate had this to say:

‘As the bench we can just but go so far in protecting the identity of litigants. You cannot invoke the Courts and Adjudicating Authorities Act in every other case, or decide to conduct all cases in chambers. You can lose your job. The

bosses will think that you have some sinister interests in the matters. Also the lawyers and litigants will complain saying there is no longer transparency. Already when you ask parties to come in chambers they will start thinking that you want to be corrupt. The best way to tackle the problem is law reform providing for the cases to be conducted *in camera* and non-disclosure of the names of litigants.⁷³

The research findings revealed that some magistrates displayed a poor attitude towards women litigants. One magistrate said:

‘I do not see anything wrong with the newspaper headlines. The problem is with the woman who comes to tell the court that her husband is sexually abusing her. Those are issues which cannot be said in public. We know the type of women who say that. They are not mannered. The newspaper is trying to advertise them. But it will not help because if they divorce no man is going to be interested in her because of that. These women just want to taint the reputations of their husbands. Also I blame the courts which allow those women to go all the way to describe such abuse. People should know that domestic violence is about physical abuse not all these other things.’⁷⁴

And in a similar vein, another female magistrate said:

‘What is wrong with the reporting? It is not a crime to report what happened in court. The media also have a right to report. If you go to court then you should be prepared to be reported in the media. The court is a public place open to everyone. I do not see anything wrong. Women just complain about a lot of things. There must be a limitation to the right to privacy. I never did women’s law. I am not a feminist. You should balance the two interests of media freedom and right to privacy. That is why I would not report if I were abused.’

Freedom of expression is one of the cornerstones of democracy for without the freedom to criticise government and freely to express and exchange ideas, there can be no democracy. That said, however, the right to free speech needs to be balanced within the context of special duties and responsibilities. For example, my right to say what I like does not include the right to spread untrue stories about someone and ruin their reputation (Currie and De Waal, 2013).

Section 57 of the Constitution of Zimbabwe provides for the right to privacy. However as has been demonstrated, the right to privacy of litigants in domestic violence cases is infringed on a daily basis. This is because when crafting the Domestic Violence Act the Legislature failed

⁷³ Interviewed on 26 January 2016 in Harare.

⁷⁴ Interviewed on 12 December 2015 in Bindura.

to provide for this right resulting in the common law position of open court prevailing, a situation which fails to comply with international instruments. Article 14(1) of the ICCPR is the most significant of these instruments and provides as follows:

‘... The Press and the public may be excluded from all or part of a trial for reasons of morals ... or when the interest of the private lives of the parties so requires, or to the extent that is strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a ... suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes ...’

The SADC Protocol on Gender and Development⁷⁵ provides that states parties shall ensure that cases of gender based violence are conducted in a gender sensitive environment.

The legislature failed to protect the litigants in domestic violence in civil cases by failing to incorporate a suppression clause which provides that the court proceedings shall be held *in camera* and that the identity of the parties shall not be revealed in any report including the law reports. Section 11 of the Domestic Violence Act of South Africa⁷⁶ provides that domestic violence cases shall be held *in camera* and categorically states that the cases shall not be reported in any manner and that should they be reported in law reports the identity of the parties or witnesses shall not be revealed or any information that may lead to their identity. This section is watertight in its protection of litigants of domestic violence cases. However in Zimbabwe the research shows that both litigants and women’s rights activists clearly stated that they would like domestic violence cases to be reported in the media for purposes of raising awareness about the problem. Revealing the identities of the litigants, however, is something they do not desire since it re-victimises the victim.

Basically the media is not accountable to anyone in Zimbabwe. The media has a very long rope, a great deal of freedom and they do what they like.⁷⁷ There are no mechanisms of making an individual reporter accountable. Ideally the media should be accountable in its reporting. There are different organisations which should be attending to this. The Zimbabwe Media Commission is supposed to enforce measures to make the media accountable in terms of a code of conduct. Under the Media Commission there is the Media Council of Zimbabwe

⁷⁵ Article 20(6).

⁷⁶ Act No. 116 of 1998.

⁷⁷ Media practitioner interviewed on 30 October 2015.

which is a complaints board but is still not in place.⁷⁸ An interview with the Media Commission revealed that the Media Council is not yet fully operational because of funding constraints though it has decided a few matters none of which had anything to do with gender based violence. Further, the Media Commission is a statutory board which was created by the Access to Information and Privacy Act.⁷⁹ It follows therefore that for the media to be said to have acted unlawfully it should have contravened the AIPPA yet there is no provision in the Act that could be used to protect litigants in domestic violence cases.

At the moment the regulations on media available is the Code on Media Ethics by the Voluntary Media Council of Zimbabwe. But this is a voluntary association and its decisions are only persuasive. They are not enforceable.

‘The VMCZ receive all complaints relating to the media. But to what extent is it effective? Can it enforce its decisions? It is a voluntary organisation. It can only go so far but if a media house does not want to comply then the VMCZ cannot really do anything. Therefore their effectiveness depends on the willingness to co-operate of the parties involved.’⁸⁰

An interview with the VMCZ revealed that:

‘The guiding principles for reporting are accurate, fair, truthful and balanced..... Acceptability of publishing certain issues is another thing altogether. Most of our reporting is interpretive. The journalist is just parroting what was said in court. If the HIV status of a litigant or other humiliating issues which are published were said in court then there is nothing wrong with the media report.’⁸¹

The legislature has a role to protect citizens from unwarranted intrusions on their privacy. The Divorce Act of South Africa⁸² prohibits the publication of ‘any particulars of a divorce action or any information that comes to light in the course of such an action.’ In the light of the South African Constitutional Court’s order in *Johncom Media Investments v M*, it is contempt of court to publish the identity of, and any information that may reveal the identity of, any party or child in any divorce proceedings before any court. In Australia⁸³ a person

⁷⁸ Respondent from MISA.

⁷⁹ AIPPA Chapter 10:27.

⁸⁰ Respondent from MISA.

⁸¹ VMCZ Director.

⁸² Act 70 of 1979.

⁸³ Section 111 of the Domestic Violence and Protection Orders Act, 2008.

commits an offence if they publish an account or report of a proceeding on an application for a protection order.⁸⁴

Section 196 of the Criminal Procedure and Evidence Act⁸⁵ provides for the concealment of the identity of complainants and witnesses in certain cases including cases of sexual assault. The aim of the legislature was, among other reasons, to protect the privacy, dignity and integrity of the witnesses and complainants in sexual abuse cases. Magistrates who preside over civil cases of domestic violence can therefore invoke section 3 of the Court and Adjudicating Authorities Act where the cases involve sexual abuse⁸⁶ because our legislature has clearly shown its intention to protect the parties.

5.2.1 *Interventions*

- (a) It is important to bring the Domestic Violence Act into line with the Constitutional provision on the right to privacy and to amend it so that it conforms to regional and international legal directives on court reporting⁸⁷ and it should also be provided that cases shall be held *in camera* and that publication should be forbidden and where publication is allowed, the identity of the parties should not be revealed.
- (b) A Family Court should be established to which access is restricted to those with an interest in the matter.
- (c) Stiff penalties should be enforced against journalists for breaking the law, such as being struck off the register of journalists which happens in the medical and legal professions. Currently the media is not accountable to anyone in Zimbabwe. The media has a great deal of freedom and does what it wants.⁸⁸ There are no mechanisms for making an individual reporter accountable.
- (d) There is a need to garner political will. This can be done through lobbying Parliamentarians and help them to realise that the gaps within the Domestic Violence

⁸⁴ Maximum penalty is 50 penalty units, imprisonment for six months or both.

⁸⁵ Chapter 9:07.

⁸⁶ For instance, in court cases whose newspaper reports carried these headlines, '*Married cheat bashed*', '*Man sexually abuses wife*', '*Meet the couple...26 years no sex*', '*Possessed woman demands sex in minor's presence*', '*My hubby is a sex maniac*', '*Wife takes condoms home*'.

⁸⁷ ICCPR.

⁸⁸ Media practitioner interviewed on 30 October 2015.

Act are impeding the proper implementation of the Act. The following Parliamentary structures should be targeted for this purpose: the women's Parliamentary caucus, the Parliamentary committee on human rights, the Parliamentary committee on legal affairs, the Parliamentary committee on women's affairs and the Parliamentary committee on media.

- (e) The media should follow up on cases they report to their final judgement. In the story headlined, '*Sex starved wife drags hubby to court*'⁸⁹ the reporter mentioned that the ruling in the matter was being handed down on the day of publication, and yet the ruling in the matter was never reported. This left the public ignorant of the verdict of the court and such silence by the media is misleading. Media coverage can be a powerful tool in framing issues and either facilitating or inhibiting the public's understanding of domestic violence (Lindsay-Brisbin *et al.*, 2014).

5.3 Can positive reporting play a part in raising awareness about and reducing domestic violence?

The media is a very powerful force for shaping the way people think and many people consider the media to be truthful.⁹⁰ It not only performs the roles of entertaining, educating and informing the public, it also acts as the so-called fourth estate in society which holds the government accountable. Therefore it also performs the task of promoting the constitutional rights of citizens including their right to privacy and reporting on domestic violence.⁹¹ The effects of mass media cannot be underestimated. The media has the capability of influencing what its readership audience knows, thinks and does. According to Muchemi, the mass media plays an important role in the transmission of attitudes, perceptions and beliefs. Under certain conditions the media becomes an important socialisation agency in determining the attitudes of young people. (Muchemi, 2015: 86). Therefore the media can be used as a strategic partner in fighting domestic violence.

5.3.1 *The media as the fourth estate*

From a human rights perspective, journalists are seen as agents of change. (Loewenstern and Moyo, 2003: 24). Some of the ways in which the media can promote human rights are,

⁸⁹ The Herald 27 January 2016.

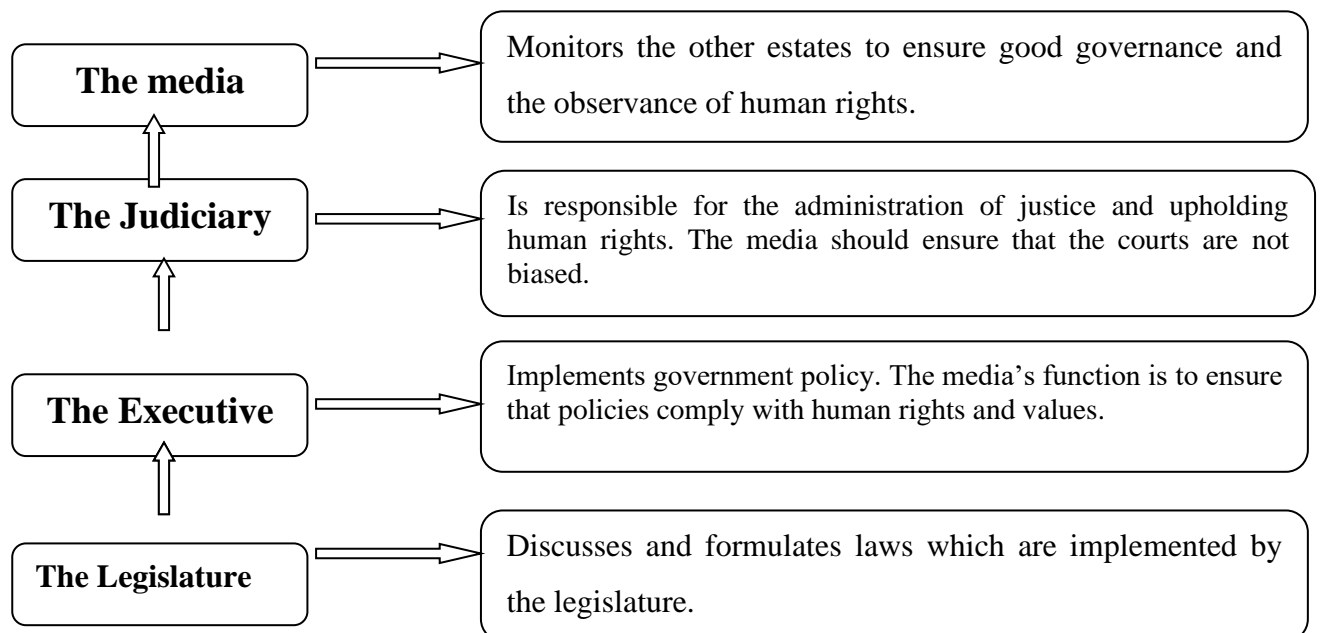
⁹⁰ Respondent from the Media Commission of Zimbabwe.

⁹¹ MISA officer.

raising awareness of human rights among all people and holding the government accountable to its commitments made by ratifying international agreements since they are binding and set ideal standards in the field of human rights promotion and protection. Therefore, the media should report both the successes and failures of government and society and as it does so, the media must make sure that all rights are protected and promoted.

The media is generally seen as the watchdog of people’s human rights. Therefore, it must protect and promote human rights. The watchdog concept says that the media is the fourth estate after the legislature, the executive and the judiciary. The media as the fourth estate monitors the other estates to make sure they do not abuse their power and infringe people’s rights. The diagram in Figure 1 explains the relationship of the media to the other estates, and the responsibilities of each of the estates. The media’s role as the fourth estate is complementary to the roles of the judiciary, the executive and the legislature. Each of the estates has a very special role that it plays to ensure that there is respect for human rights. As the fourth estate, the media assumes the role of overseer ensuring that the rule of law prevails.

Figure 1: Diagram showing the relationship between the media, the fourth estate, to the other estates in society



5.3.2 *Sensitive reporting of domestic violence cases*

Sensitive reporting about gender based violence can help survivors and others by providing them with the information they need to protect themselves or others or to seek help and justice (Inter Press Service, 2009). There is also an important role for commentaries, editorials, features analysis pieces and blogs that can provide greater analysis and understanding of the psychology of gender based violence in a way that will improve readers' understanding of both the actions and reactions of the survivor and the perpetrator.

'The media has a critical role to play in reducing gender based violence by covering stories that raise awareness of the extent of problem as well as those that promote prevention , thus ensuring that people who experience violence receive care and support. The media potentially has a huge role to play in changing attitudes, perceptions, and mindsets where gender violence is concerned' (Ndlovu, 2011: 18).

The IPS provides the following best practices in reporting on domestic violence:

- The report should consider the different types of domestic violence.
- It should assess the issues from a legal, religious and cultural perspective specific to that society.
- It should give voice to affected women and avoid stereotypes.
- It should speak of some of the issues that prevent women from seeking justice.
- It should refer to the political will, or lack thereof, needed to address the issue.

According to Okwemba, the media should dig deeper into lived realities and sincerely investigate the causes or patterns of violence, linking them to poverty levels, lack of knowledge about human rights protections and the challenges faced when trying to enforce protection orders (Okwemba, 2011: 245).

Sensitive reporting includes reporting on the massive cost of domestic violence in terms of treatment of injuries and sexually transmitted diseases, missed work hours and the invisible but extensive cost to our society when this cycle of violence is passed down from abusive parents to their children. Unfortunately, 'in the mindset of many media, gender based violence is not an issue worthy of paper and ink' (Okwemba, 2011: 245).

Sensitive reporting is also about pro-active reporting rather than depending on court cases. This calls for techniques such as gathering information that does not easily present itself, and much more field reporting and moving among communities to observe, investigating and checking and cross-checking information, new sources of information, knowledge, patience and sensitivity (Made, 2002). Pro-active articles are written with the intention of educating the public about domestic violence more generally, for instance, its prevalence and consequences and the community organisations that try to address it. They also showcase domestic violence events, for instance the opening of domestic violence related non profit organisations. They inform readers where they can find assistance if they are facing domestic violence. Pro-active articles are much more informative and helpful than current court reports which simply report an event without giving any further information.

Lindsay-Brisbin *et al.* (2014) states that the media can contribute to the fight against domestic violence in the following manner:

- Provide comprehensive educational information or resources about domestic violence and report about domestic violence in a community context.
- Smaller, local newspapers⁹² can play a particularly important role by responsibly informing residents about domestic violence in their communities, and reporting on incidents of domestic violence within the context of larger social and other issues.
- Educate readers about the physical consequences of domestic violence and the mental health problems that can result and give information about the impact of domestic violence on children.
- Produce content aimed at connecting the public with resources to help victims of domestic violence.
- Publish the voices of the victims of domestic violence as well as those of legal experts, gender experts and counsellors who can provide important information on local resources and the wider background of domestic violence.
- Educate the media and the public about domestic violence.

⁹² For instance, Manica Post in Mutare, Nehanda in Bindura, Masvingo Mirror in Masvingo, H-Metro in Harare, B-Metro in Bulawayo.

The media said they report domestic violence cases in the public interest. They said:

‘As the media we report to the public what happens in court because the whole country cannot fit into the courts. The media therefore broadens the court room thus enabling everyone else to benefit from lessons in the court. People learn from other people’s mistakes. Our reports on court cases is also an opportunity for people to learn from the provisions of the Constitution. Majority of Zimbabwean are unaware of many forms of domestic violence especially marital rape. As the media we have a part to play to ensure that it stops. We identify litigants by name for authenticity reasons.’⁹³

Yes, it is true that the media’s reports enlighten the public on what is obtaining in society. Yes, such reporting can deter other perpetrators and would be perpetrators of domestic violence when they realise that the justice delivery system frowns on domestic violence. Yes, reports can encourage victims of domestic violence to report their cases when they realise that other victims are being protected by the courts. But an overreliance of media stories simply on court proceedings and events concerning domestic violence deprives readers of crucial in-depth and critical analytical coverage of the many issues involved in domestic violence. Event based coverage is more reactive than it is issue-based. Domestic violence can only be reduced if the media maintains a sustained responsible and sensitive coverage of issues.

The power of domestic violence testimony is not in the name but it is in the deed, the story of what happened and how it was overcome.⁹⁴ There is more potential for change in making people aware of the issues not of the individuals. Therefore, the media should focus on addressing the issues surrounding and the root causes of domestic violence and critique the dangers to society if we accept domestic violence.

A gendered lens allows journalists to gain deeper insights into the various events and issues that they regularly cover (Joseph, 2011). This is an angle much missed in the reporting of the media. To ensure effective sensitive reporting more female journalists need to participate in the process of gathering and editing news. The Glass Ceiling study⁹⁵ revealed that women are more likely to access women news sources than men. In the region women constitute 31% of stories written by women journalists compared to 15% written by men. The findings suggest

⁹³ H-Metro Assistant Editor.

⁹⁴ Information Officer at the Sexual Rights Centre.

⁹⁵ Gender and Media Progress Study 2011.

that while increasing the proportion of women managers makes little difference to gender responsiveness of news content, increasing the presence of women journalists does make a difference. This also goes a long way in challenging gender stereotypes in media content (Ndlovu, 2011: 18). There is also a need for strategising on how to get credible and reliable women sources especially where expert comments or analysis is involved. Lessons can be learned from the Mauritius Directory of Women Sources (Seedoyal, 2011: 222) which comprises at least five women sources in almost forty categories, which the media can access to improve the number of women's voices and views reflected in coverage.

Training the media on human rights reporting is crucial. Human rights reporting involves the collecting, publication, propagation and dissemination of human rights issues by the media. For a person to be able to write effectively on human rights they must be trained to do so. It is not that a journalist must be a human rights lawyer but, just as financial reporters are not experts in matters of finance, a human rights reporter needs only basic training in the subject (Mutumbwa, 2002).

Lessons can be learnt from Brazil and Spanish legislation as indicated below:

'Media representations significantly influence societal perceptions of acceptable behaviour and attitudes. Training journalists and other media personnel on women's human rights and the root causes of violence against women may influence the way in which the issue is reported and thereby influence societal attitudes. The Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004) provides in article 14 that "[t]he communications media shall work for the protection and safeguarding of sexual equality, avoiding any discrimination between men and women" and that "[r]eports concerning violence against women, within the requirements of journalistic objectivity, shall do the utmost to defend human rights and the freedom and dignity of the female victims of gender violence and their children". Article 8 of the Brazilian Maria da Penha Law (2006) calls for the communications media to avoid stereotyped roles that legitimize or encourage domestic violence' (UN Handbook).

In other jurisdictions there are newspapers that have introduced specific human rights content. Stories carried in specialist publications or pages are purposefully written from a human rights perspective with a human rights angle and as such human rights stories are of a better quality than those which just happen to have a human rights content, for instance, court

reports (Mutumbwa, 2002). The use of commentaries, features, editorials and blogs can be more informative and interactive with the audience.

Positive reporting also includes asking the vital question, ‘what issues are at stake?’, that is, what is domestic violence all about? There have been several headlines of cases which were purportedly domestic violence court reports. However the allegations which formed the subject of such headlines do not constitute acts of domestic violence, for instance, when parties deprive each other conjugal rights.⁹⁶

Positive reporting of domestic violence includes respecting the dignity and privacy of litigants where their identities have been disclosed with their consent. Otherwise the media perpetuates even more violence against litigants by disclosing details of their private life to the whole nation, indeed possibly the world, since these cases are also often posted on the internet, meaning that anyone can have access to them.

‘I would want my case to be reported in the media so that it helps other people. But I want my identity to be anonymous. Is it not we read other stories where the reporters write giving parties names saying these are not their real names? Also on television there are reports where people’s faces are shielded so that you cannot recognise who the person is. Why cannot the media do the same in reporting domestic violence cases?’⁹⁷

Many litigants⁹⁸ did not mind having their cases reported in the media but they did not want their identities to be revealed. Many argued that being identified by the media in connection with domestic violence even if you are the victim it is humiliating, shameful and stigmatising. One respondent said:

‘At work, when you see people looking at you think that they are talking about you. You will not be able to work. The media should use pseudonyms when reporting and desist from inserting pictures of litigants in the reports.’⁹⁹

⁹⁶ *‘Meet the couple: 26 years no sex’, ‘Sex starved wife drags hubby to court’, ‘Man demands sex’.*

⁹⁷ Respondent, an accounts assistant, aged 53.

⁹⁸ Participants at focus group discussions held at ZWLA on 16, 19 and 23 November 2015 said they wanted their cases reported in the media but they did not want their identities to be disclosed.

⁹⁹ A 26 year old ZWLA client who was being assisted in making an application for a protection order against her husband.

Another respondent stated:

‘To ensure positive reporting of domestic violence cases we should tailor make our programmes to engage the media more. We need women in decision-making positions in the media houses. Also about civil society its training should be ongoing. Gender issues are complex, for instance, a person has been socialized for thirty years, a one day or two workshops will not be enough for them to unlearn. Do a series of workshops with the same people, rigorous and systematic trainings. We are engaging the media on sending out information but not training them. Staff turnover at the media houses and civic organizations is another problematic factor. It is also tied to funding issues. Media is an important stakeholder in involving them in our programming. Thank you for these insights. As UN Women we have not been engaging the media. We have not been structuring programmes specifically meant to engage media moreso in reporting domestic violence.’¹⁰⁰

The need for a continuous and systematic engagement and training of the media cannot be overemphasised. Strengthening the role of the media in responsible reporting that is consistent with protecting human dignity of women and girls is crucial (National Gender Policy, 2013).¹⁰¹

5.4 Conclusion

This chapter revealed that there is a *lacuna* in the Domestic Violence Act which results in the names of litigants being disclosed in media reports on domestic violence. The legislature should fill this gap by amending the Act so that names of litigants are not disclosed in media reports. Also, the judiciary has failed to utilise the provisions of the Courts and Adjudicating Authorities (Publicity Restrictions) Act. It is noted however that the provisions of this Act are not watertight as they have to be invoked on a case by case basis, an exercise which may cast doubt on the transparency of court proceedings. The chapter further discussed that media is an important stakeholder in raising awareness about and reducing domestic violence as it has the power to influence and shape the public’s attitudes and perceptions. In performing this task, the media should report in a gender sensitive manner and use commentaries, editorials and features to critically analyse and educate the public about the problem of domestic violence. Chapter 6 will conclude and make recommendations based on the findings of the research.

¹⁰⁰ Respondent from UN Women.

¹⁰¹ Art 5.8 (v).

CHAPTER SIX

6.0 CONCLUSIONS AND RECOMMENDATIONS

This chapter provides the conclusions and recommendations for each assumption based on the findings of the research.

6.1 Conclusions

From the findings of the research, it is concluded that:

6.1.1 In the media's reporting of domestic violence cases, it stereotypes women as helpless victims of domestic violence thereby trivialising issues of domestic violence

The media reports of domestic violence cases stereotype women as deserving to be abused, as perpetrators of domestic violence, as abusers of protection order applications and as having gone astray. Such stereotypes trivialise domestic violence issues. Instead of the reports showing the wrongfulness of the crimes of the perpetrators they blame and shame the victims. The reports also trivialise domestic violence by writing inaccurate stories and disclosing the names of complainants.

6.1.2 In the media's reporting of domestic violence cases, it oversteps the limits of freedom of expression and media freedom in relation to the right to privacy of the litigants

The media oversteps the limits of freedom of expression and media freedom by sensationalising domestic violence cases, taking pictures of litigants and disclosing their HIV status without their consent. Freedom of the media is meant to be used to safeguard democracy in the nation and not abused by invading the privacy of individual citizens in a way that causes them harm by exposing them to ridicule and humiliation.

6.1.3 The judiciary and legislature have failed to protect the right to privacy of victims of domestic violence as provided for in the Constitution and under international law as the media is not accountable in its reporting

There is a *lacuna* in the Domestic Violence Act which has resulted in the names of litigants being disclosed in media reports. The legislature should fill this gap by amending the Act so that names of litigants are not disclosed in media reports. The judiciary has also failed to

protect parties connected with domestic violence cases by enforcing the provisions of the Courts and Adjudicating Authorities (Publicity Restrictions) Act. It is however noted that the provisions of this Act are not watertight as they have to be invoked on a case by case basis, an exercise which, among other things, may cast doubt on the transparency of the court procedures.

6.1.4 The media's positive reporting of domestic violence cases can play a part in raising awareness about and reducing the problem of domestic violence

The media is an important stakeholder in raising awareness about and reducing the problem of domestic violence as it has the power to influence and shape the public's attitudes and perceptions. Media reports miss opportunities to provide educational information or resources about domestic violence and fail to contextualise the problem of domestic violence within communities and society as a whole. Smaller, local newspapers could play a particularly important role in informing residents about domestic violence in their community. Domestic violence is reported as an isolated event yet it is a pervasive social menace which needs to be addressed through responsible reporting. Media reports tend to be reactive rather than proactive.

6.2 Recommendations

Based on the above conclusions of the research, it is concluded that:

6.2.1 In the media's reporting of domestic violence cases, it stereotypes women as helpless victims of domestic violence thereby trivialising issues of domestic violence

There is need to train the media in gender sensitive and human rights reporting. The training should be well co-ordinated, systematic, long-term and on-going. The Ministry of Women's Affairs should partner with the Human Rights Commission, other relevant government departments and non-governmental organisations in conducting this training so that they are holistic and there is no duplication of teaching.

6.2.2 In the media's reporting of domestic violence cases, it oversteps the limits of freedom of expression and media freedom in relation to the right to privacy of the litigants

In the short term media houses can be engaged and educated in the harmful effects on litigants and the public of reporting that is gender insensitive, biased, inaccurate, sensational and discloses the names of litigants, their HIV status and publishes photographs without their consent. They should then be thoroughly well trained in human rights and gender sensitive reporting.

Test case litigation can be launched involving lawyers who can approach the Constitutional Court for an order to stop the media from identifying the litigants in domestic violence civil cases arguing that such disclosure is an unjustified and harmful invasion of the litigants' private lives.

Legal action can be taken against the media for unlawfully disclosing the HIV status of litigants since it is a blatant breach of section 57(e)¹⁰² of the Constitution.

Before reporting a case of domestic violence, the media should be encouraged to seek the consent of the parties to use their actual names or to use pseudonyms. The media should not publish any information that can lead to the identity of the litigants.

Photographs of litigants should not be published.

The use of other dispute resolution mechanisms, for instance, counselling and mediation which ensures privacy can be adopted. The Domestic Violence and Protection Orders Act of Australia provides for comprehensive counselling and the services are accessed at the court.

Litigants and the public should be empowered and trained up in legal knowledge so that they can request that the court hear their cases *in camera* for the purpose of protecting their families. With empowerment, the issue of legal aid also becomes very crucial. Domestic violence litigants should be entitled to legal representation provided by the state.

¹⁰² It states that 'Every person has the right to privacy, which includes the right not to have their health condition disclosed.'

In the long term, the Domestic Violence Act should be amended to prohibit and penalise any publication of the identity of parties or proceedings of domestic violence and a provision that the cases will be conducted *in camera*. Law reform is the best remedy.

6.2.3 The judiciary and legislature have failed to protect the right to privacy of victims of domestic violence as provided for in the Constitution and under international law as the media is not accountable in its reporting

Magistrates hearing domestic violence cases should protect litigants ‘*ex mero motu*’ by invoking section 3 of the Courts and Adjudicating Authorities (Publication Restrictions) Act¹⁰³ in order to protect the privacy of litigants and their families.

In relation to the right to privacy, it is important for the Domestic Violence Act to be amended so that it conforms to Zimbabwe’s Constitutional, regional and international (e.g., the ICCPR) commitments on court reporting.

The Domestic Violence Act needs to be amended to include a provision similar to that of section 11 of the Domestic Violence Act of South Africa which provides that cases shall be held *in camera* and forbids the publication of cases in the media and where publication is allowed, the identity of the parties, witnesses and children should not be revealed. It provides the following:

‘11. Attendance of proceedings and prohibition of publication of certain information

(1) No person may be present during any proceedings in terms of this Act except-

- (a) officers of the court;
- (b) the parties to the proceedings;
- (c) any person bringing an application on behalf of the complainant in terms of section 4(3);
- (d) any legal representative representing any party to the proceedings;
- (e) witnesses;
- (f) not more than three persons for the purpose of providing support to the complainant;

¹⁰³ Chapter 7:04.

- (g) not more than three persons for the purpose of providing support to the respondent; and
- (h) any other person whom the court permits to be present:

Provided that the court may, if it is satisfied that it is in the interests of justice, exclude any person from attending any part of the proceedings.

- (b) Nothing in this subsection limits any other power of the court to hear proceedings *in camera* or to exclude any person from attending such proceedings.
- (2)(a) No person shall publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings.
- (b) The court, if it is satisfied that it is in the interests of justice, may direct that any further information relating to proceedings held in terms of this Act shall not be published: Provided that no direction in terms of this subsection applies in respect of the publication of a bona fide law report which does not mention the names or reveal the identities of the parties to the proceedings or of any witness at such proceedings.’

A specialised Family Court should be established with fully trained specialists in gender and gender based violence which is dedicated to hearing sensitive cases such domestic violence cases.

Stiff penalties (including being banned from practice) should be enforced against journalists who break the law.

There is need to garner political will. This can be done through lobbying Parliamentarians to bring about the above-mentioned changes.

6.2.4 The media’s positive reporting of domestic violence cases can play a part in raising awareness about and reducing the problem of domestic violence

The media should be trained in human rights and gender sensitive writing. The training should include important background information that can help journalists come to grips with terms like gender and patriarchy to get a sense of the history of women’s subordination (Joseph, 2011: 38).

When reporting on domestic violence, the media should seek the voices of its victims, experts on domestic violence, lawyers, members of the judiciary, social workers, psychologists, health experts and the police.

The media should introduce into its reporting of domestic violence cases the use of specific human rights/gender content in its commentaries, features, editorials and blogs all of which should aim to be more informative about the problem of domestic violence and interactive with its readers, many of whom seek help from a responsible media.

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