‘YOU CAN CAGE THE SINGER BUT NOT THE SONG’

PRESS FREEDOM AND THE ROLE OF THE STATE IN ZAMBIA

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Abstract

Zambia has been a democratic country since the first multiparty elections in November 1991 and as a nation it has been a sort of role model for young democracies in Southern Africa, including countries such as South Africa. However, the media in Zambia has not fully enjoyed the fruits of democracy because the government has continued to control and use the media in the manner it was used during the colonial period and one party state. There is government interference in state owned media and the private media is highly regulated by media laws that are undemocratic in nature and an infringement on press freedom and freedom of expression.

This research project is an examination of the weaknesses in the Zambian media laws that infringe on the principles of press freedom and freedom of expression, within the realm of the Social Responsibility and Libertarian theories of a free press. The research also identifies the role played by the Zambian state in media regulation. The findings of the research indicate that most media laws were enacted either during the colonial period or during the time Zambia was under a one party state, hence to a large extent these media laws do not adequately reflect the tenets of democracy and the government has been very reluctant to review these media laws. The media in Zambia has been very active and on several occasions have engaged the government to enact better media laws and review the old media laws now that Zambia is a democratic nation. However, despite numerous promises from the government to review these media laws, they have not fulfilled their promises. As a result, the media in Zambia continues to operate under a difficult media legislative environment and consequently the growth of the media has been hampered due to these bad media laws. The state is directly involved in media regulation and exhibit a tendency to use weaknesses in these media laws to intimidate the private media and stifle criticism. The private media finds it difficult to provide an open civic forum for the exchange of ideas because they are under government surveillance. The state owned media is a government mouth-piece, they offer no criticism of the government because they are controlled by the state. This research provides an insight into the weaknesses in the Zambia media laws and provides evidence of how the state abuses these weaknesses to achieve their own ends, representing a clear infringement on press freedom and freedom of expression principles.
Statement of Authentication

I hereby certify that the work presented in this master thesis is to the best of my knowledge and belief. I further certify that this thesis is my original work, except where I have cited other research works.

I hereby declare that I have not submitted this material, either in whole or in part thereof, for a degree at this or any other University. Whatever flaws that might be found in this thesis are exclusively mine.

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Hlazo Mkandawire Date
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List of Acronyms

ANC – African National Congress
CABS – Central African Broadcasting Services
CAF – Central African Federation
CCZ – Council of Churches in Zambia
CRC – Constitution Review Commission
CSO – Civil Society Organization
DPP – Director of Public Prosecutions
DSTV – Digital Satellite Television
EU – European Union
FNDP – Fifth National Development Plan
FOIA – Freedom Of Information Act
FOI – Freedom Of Information
HDI – Human Development Index
HIPC – Highly Indebted Poor Countries
IBA – Independent Broadcasting Authority
JK – Justitiekanslern
LORNHO – London and Rhodesian Mining Company
MECOZ – Media Council of Zambia
MISA – Media Institute of Southern Africa
MLC – Media Liaison Committee
MMD – Movement for Multi-party Democracy
MRC – Mwanakatwe Constitutional Review Commission
MP – Member of Parliament
NCC – National Constitutional Conference
NP – Norwegian Press Association
PAYE – Pay As You Earn
PF – Patriotic Front
PFU – Press Complaints Committee
SABC – South African Broadcasting Services
SPSS – Statistical Package for Social Sciences
UDHR – Universal Declaration of Human Rights
UK – United Kingdom
UNIP – United National Independence Party
USA – United States of America
UTH – United Teaching Hospital
ZAMEC – Zambia Media Council
ZANIS – Zambia News and Information Services
ZBC – Zambian Broadcasting Corporation
ZBS – Zambia Broadcasting Services
ZCTU – Zambia Congress of Trade Unions
ZEC – Zambia Episcopal Conference
ZESCO – Zambia Electricity Supply Corporation
ZICTA – Zambia Information and Communications Authority
ZIMA – Zambia Independent Media Association
ZNBC – Zambia National Broadcasting Corporation
UNZA – University of Zambia
ZPA – Zambia Privatization Agency
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Chapter 1 Introduction

1.1 Introduction

From a journalistic perspective, this dissertation examines the Zambian media laws in relation to press freedom and freedom of expression, and the role of the state in media regulation. The title of the project is “You can cage the singer, but not the song”. Press freedom and the role of the state in Zambia. The research is premised on two of the four main theories of the press as proposed by Fred Seaton Siebert, Theodore Peterson, and Wilbur Schramm, namely the Libertarian and Social Responsibility Theories which aim at providing philosophical and international perspectives of a free press. The introductory chapter is organized as follows; section 1.2 presents the background to the study; section 1.3 is the statement of the problem; section 1.4 gives the significance of the study; section 1.5 states the aims and objectives; section 1.6 is the thesis outline; and lastly section 1.7 is the chapter summary.

1.2 Background to the Study

The term press freedom is essentially the latitude and conditionality that accords a media practitioner the liberty to access and gather information, and to select and publish material in order to serve the public good without any interference or censorship from anyone, provided of course that the liberty is within the limits set by the individual rights of citizens.¹

The Universal Declaration of Human Rights (UDHR) states that, "[…] everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and impart information and ideas through any media regardless of frontiers".²

The press has often been described as the fourth estate because it has immense political and social power, based on the fact that the press can be used to shape societies through information and public debate, and thus contribute to educating and securing equality among citizens.

The origin of the term ‘fourth estate’ is attributed to the eighteenth century English political philosopher and commentator on the revolution, Edmund Burke, referring to the three sections of the French Estates-General, an assembly consisting of

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representatives from the clergy, the nobility, and the commoners (in practice, the bourgeoisie), whose gathering in 1789 is said to have paved the way for the French Revolution. The term ‘fourth estate’ has been used to refer to the press since at least the early 1800s. It has become shorthand to denote the role of the public media as a pillar, on which the smooth functioning of a democratic society rests, together with the other three estates, the legislative, the executive, and the judiciary. A free press is also a counterbalance to these powers, a watchdog guarding the public interest, and providing a forum for public debate – a public sphere – that underpins the processes of democracy.³

The fourth estate is recognized as such an important institution that many nations have enacted media laws which protect the rights of the press, ensuring that citizens have access to reporting on matters of interest. Therefore, for the media to fulfill their mandate of providing information to the public, countries ought to create an environment in which the media can operate without undue restriction or hindrance. A free and vibrant press serves as one of the pre-requisites of functional democracy. A long tradition of liberal theorists argues that the existence of an unfettered and independent press within each nation is essential in the process of democratization. As the fourth estate, independent media also has the potential to facilitate greater transparency and accountability in governance, by serving as a watchdog as well as providing a civic forum for multiple voices in public debate, and highlighting social problems to inform the policy agenda. A free press is not just valuable for democracy but the final claim is that the media is also important for human development because it enhances the voice of the poor and generates more informed choices about economic needs.

The history of the media in Zambia (which is dealt with in detail in chapter two of this research) dates back to the early 1900’s when white settlers established newspapers in towns, along the line of rail to cater mainly for their own interests. The newspapers were racially biased and excluded African interests from their news columns. After the country became independent from colonial rule on 24th October 1964, the new African government took over and continued to use the media as a tool for the mobilization of the people to achieve their goals. Therefore, the media in Zambia to a large extent has functioned as a tool of the

government in power to help mobilise people, purportedly for the social and economic development of the country, but in reality, to help leaders remain in power. This has been made possible mainly due to the continued state ownership and control of the media in Zambia.

Even though Zambia is now a democratic nation, the media system that currently exists and consequently the media laws are mostly a replica of the media system and media laws that were passed during the colonial period and during the time Zambia was under a one party state (1972-1990). Despite Zambia becoming a democratic nation in 1991, many of these media laws are still the same, some have been amended to conform to democratic principles but these efforts get choked by those media laws from the colonial period and one party state that are an infringement on press freedom and freedom of expression.

1.3 Statement of the problem
Journalists ideally aim at educating and informing the public on matters of public interest, and it is the role of the media to hold governments accountable to the people, and serve as watchdogs for democracy. In order to achieve this, the right of journalists to freely seek, receive and impart information must be upheld at all costs and they must operate in a favourable media legal environment. Zambia's transition to multi-party politics in 1991 has not led to significant changes in relations between the state and the media. There was a brief period (just before and soon after 1991) when it appeared that the media would become an independent influence in a democratic environment. But any movement in that direction has been thwarted by the continued state control of the country's major news establishments (state media) while the private media is operated under strict government surveillance in an unfriendly media legal environment. Over the years, Zambia has acquired a baleful media reputation in the region because of the large number of media Court cases, both civil and criminal, against the media (mostly private media).

The country still has media laws in place that impinge on press freedom and make it difficult for journalists to operate in what is now a democratic nation. Journalists in the state owned media are highly controlled by the government and generally practice self-censorship. The journalists and editors in the state owned media operate under constant pressure from the government regarding the kind of articles or stories they write or publish, thus gradually pushing them in to a ‘safe zone’ of self-censorship. There is a lot of government interference in the state owned media. At the same time, the private media is also highly regulated and
closely monitored by the government. The government has mainly relied on an inimical media legal environment to have an influence in the operations of the private media through broadcast licensing, determining radius of operations for Radio and TV, and influencing media content presentation to the public. The press freedom violations against the media in Zambia include physical harassment, threats of legal suits and dismissals, ejections from premises of political events, threats to close down media institutions and orders to stop live broadcasts or publishing of certain types of stories either by order from the Ministry of Information and Broadcasting Services or through the Courts of law. The government of Zambia acknowledged in the Fifth National Development Plan (FNDP) of 2006 that;

The prevailing media legislative environment does not adequately provide for freedom of the press, freedom of information and good governance. The government consequently sees the need for a review of the current Media Law regime and the enactment or enforcement of new laws that promote press freedom, freedom of expression and democratic governance.4

This acknowledgement by the government justifies the need to seriously look into the existing media laws that infringe on the principles of press freedom and freedom of expression in Zambia. It is also important to critically review the media system that has resulted in these kinds of media laws in order to find a lasting solution to this problem. For the past 3 – 4 years Zambia has been drafting a new Constitution that shall uphold human rights, including the right to media freedom. In 2010, the draft Constitution was tabled in parliament but it was never passed as it did not achieve the necessary majority. With change of government on 23rd September 2011, where the opposition won the Presidential and Parliamentary elections held on 20th September to replace the ruling Movement for Multi-party Democracy (MMD), the Constitution Review Commission (CRC) has been re-started by the new government of the Patriotic Front (PF) as promised during their campaign messages prior to the election. As a result, the dissertation aims at examining the weaknesses in the Zambian media laws that infringe on press freedom and freedom of expression from a journalistic perspective and the role played by the state in media regulation.

1.4 Significance of the Study
This research will add value to other research done on the subject of press freedom and freedom of expression in Zambia, and also bring out the clauses in the Zambian media laws

that limit, hinder or infringe on the principles of a free press and freedom of expression. The research will also examine the role of the state in media regulation in Zambia. With good timing, this research could feed into the next Constitution of Zambia as it will be submitted to the Constitution Review Commission (CRC) for consideration as they make final submissions in the new supreme law of the land, the Constitution. In return, this hopefully will lead to a viable free press in Zambia that shall contribute positively to the development of the nation, the journalism profession and create jobs.

1.5 Aims and Objectives

1.5.1 Aim of the Study
The purpose of the research is to examine the features in the Zambian media laws that infringe on the principles of press freedom and freedom of expression from a journalistic perspective and the role of the state in media regulation in Zambia.

1.5.2 Main Research Objectives
The research will review the Zambian media laws in relation to press freedom and freedom of expression from a journalistic perspective and the role of the state in media regulation in Zambia.

Objectives of the Study

1. To identify the Zambian media laws that infringe on the principles of press freedom and freedom of expression from a journalistic perspective.
2. To determine the role of the state in media regulation in Zambia.

1.5.3 Research Questions

Main Research Question

1. What are the weaknesses in the Zambian media laws that affect press freedom and freedom of expression from a journalistic perspective and what is the role of the state in media regulation in Zambia?

Hypothesis and Sub-Research Question

1. The Zambian Constitution and media laws do not provide sufficient evidence to protect the Zambian media from state control and regulation. (Hypothesis).
2. What are the weaknesses in the Zambian media laws that affect press freedom and freedom of expression from a journalistic perspective?

1.6 Thesis Outline
The introductory chapter has covered the background to the study; the aims; objectives; and significance of the study. The remaining chapters shall be organized as follows; chapter two discusses the history of the media in Zambia; chapter three is an overview of the media laws in Zambia; chapter four represents the literature review; chapter five is a presentation of the methodology as adopted in this research; chapter six is the theoretical and conceptual framework upon which this research is based; and finally chapter seven provides the discussion of findings and conclusion.

1.7 Chapter Summary
This chapter has discussed the necessity of a free and vibrant press in a democratic country like Zambia, free from government influence and interference. The researcher has emphasized the importance of a media legal environment in which the media can operate without state restriction or interference. The chapter has introduced some of the press freedom and freedom of expression violations in Zambia, perpetuated by a media system that is largely a carry-forward from the colonial period that centered on state control and manipulation of the media. The government of Zambia has itself acknowledged that the current media laws in Zambia are not favourable for media practitioners to fully exercise their press freedom and freedom of expression. My intention is to review the media laws in Zambia in close relation to press freedom and freedom of expression, and the role of the state in order to ensure media transparency and accountability that can foster the growth of both the private and state media and wean it from government interference. As a result, this study examines the weaknesses in the Zambian media laws and the role of the state in media regulation in Zambia.
Chapter 2 History of the Media in Zambia

2.1 Introduction

The previous chapter has presented the introduction to this research; chapter two will give the history of the media in Zambia tracing it from the British colonial rule to present day Zambia. The chapter is organized as follows; section 2.2 deals with the history of the print media system; section 2.3 is about the history of the broadcast media; and section 2.4 presents the chapter summary. This chapter is very important because the history of the media in Zambia puts this dissertation in to perspective by providing background historical information and preparing the reader to understand the existing media laws in Zambia and their origins.

2.2 History of the Print Media in Zambia

2.2.1 The Colonial Era (1906 – 1964)

The history of the print media in Zambia can be traced back to the early 1900’s during the colonial period when the inaugural newspaper was published mainly to cater for the white settler’s interests. “The first local newspaper was published in Livingstone town in 1906 and it was called the Livingstone Pioneer, later renamed Livingstone Mail”.5 The newspaper was owned and published by a Mr. W. Tranter, but due to financial constraints he was forced to sell his newspaper enterprise to a chemist Mr. Leopold Frank Moore who continued to finance the newspaper using profits from his work as a chemist. There is little information known about this newspaper except that it appears to have been a six-paged weekly publication, and page one was totally reserved for advertisements. The Livingstone Mail had a racist policy and “[…] ran no stories about Africans unless they were of direct concern to the white settlers and a lot of space was allotted to news especially from Britain and South Africa, where there was a large white community”.6

The Livingstone Mail was operated in an authoritarian style, with little or no regard to the principles of press freedom and freedom of expression. This was the print media system introduced from inception of the print media in Zambia by the colonial masters and at that time the Livingstone Mail was the only publication in Zambia, then known as Northern Rhodesia. It was not until 18th March 1932 when two miners, E.C. Wykerd and E.B. Hovelmeier partnered and set up a publication in Chingola town known as the Copperbelt

Times. This became the first publication on the Copperbelt which was and still is Zambia’s biggest copper region. "The Copperbelt Times appears to have been a channel of communicating local gossip and social news around the mine camps". 7 Three years after the establishment of the Copperbelt Times, a smaller publication emerged called the Northern Rhodesian Advertiser owned by Mr. F. Mackenzie. This publication was first published on 9th February 1935 and was the first publication that tried to present a more balanced reporting of news for both white minority settlers and the black majority. By 1935 all newspapers were owned by private individuals. However, in 1936 the colonial government set up the first state owned newspaper called the Mutende. The Mutende was established with a view of serving African interests and it was later replaced by a new publication called the African Eagle. Both the Mutende and African Eagle were highly controlled and manipulated by the colonial government and were biased in news presentation. As a result, these publications were both rejected by the black African majority and the colonial government was forced to discontinue them in 1962.

In 1943, a new publication called the Northern News was established after the owners of the gossip focused Copperbelt Times moved their offices from Chingola to Ndola to be more central in the Copperbelt after making an agreement with Roy Welensky. Roy Welensky utilized the Northern News as a media tool to help him gain popularity and later bought the entire shareholding of the newspaper. The first newspaper to be published in the capital city Lusaka was the Central African Post established by Dr. Alexander Scott in 1948. The Central African Post was an independent media and became the first newspaper that was privately owned to objectively criticize the colonial government. Dr. Alexander Scott was a campaigner for press freedom but he also used his paper for political ends, by successfully campaigning for election to the Federal Parliament in Salisbury. After achieving his goal, “[…] Dr. Scott changed the stance of the Central African Post and started supporting Roy Welensky and the formation of a Federation” 8 Therefore, the Central African Post contributed to the formation of the Federation of Rhodesia and Nyasaland on 01st August 1953 comprised of three nations namely, Southern Rhodesia (now Zimbabwe), Northern Rhodesia (now Zambia) and Nyasaland (now Malawi) who were joined to form one country.

The first Prime Minister of the Federation of Rhodesia and Nyasaland was Sir Godfrey Huggins from 1953 to 1956. Using the influence of the *Central African Post* and other newspapers at that time, Sir Roy Welensky successfully campaigned to become the Federation of Rhodesia and Nyasaland’s Prime Minister and achieved his goal in 1957. Sir Welensky remained the Prime Minister of the Federation up until its dissolution in 1963.9

Dr. Alexandra Scott and Roy Welensky both used their newspaper ownership to campaign for election in to the colonial government, and once they achieved this both the *Northern News* and *Central African Post* started supporting the government, and operated more or less like state owned newspapers and offered no criticism of the colonial government. This kind of print media system was a wake up call for the Africans and they decided to start their own African owned print media that would serve African interests and offer criticism to the colonial government. The first truly African newspaper was published on 01st November 1959 by Sikota Wina and was called the *African Life*. "The *African Life* was a Pro-African newspaper in both editorial opinion and news presentation, this provided the much needed balance between pro-African and pro-white newspapers".10 In October of the same year (1959), an African political party called the United National Independence Party (UNIP) was formed, initially led by Mainza Chona but later leadership of the party was assumed by Dr. Kenneth Kaunda in January 1960 after he was released from prison. When Sikota Wina was appointed as Publicity Chief for UNIP, the *African Life* was heavily used as a mouth piece of UNIP and their propaganda in promoting the interests of the black majority and calling for the independence of Northern Rhodesia from colonial oppression. However, due to hard economic times the *African Life* newspaper closed down early in 1961.

From 1906 to 1964, most Zambian newspapers either struggled for survival or died due to financial problems or the publication continued under a different name and ownership changed hands. The media was nothing near stable during this period, it was a volatile business.

### 2.2.2 First Republic (1964 – 1973)

On 24th October 1964, Zambia gained its independence from British colonial rule and UNIP assumed power with Dr. Kenneth Kaunda becoming the first President of Zambia. At the time

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Zambia was gaining political independence in 1964, the newspapers that were in print were the following:

*Central African Mail* jointly owned by Dr. Alexander Scott and Mr. David Astor; the *Northern News* owned by Argus Group of Companies; *Zambia Times* and *Sunday Zambia News* owned by Heinrich Syndicate Limited and later Lornho.\(^{11}\)

In 1951, the Argus Group purchased the *Northern News* but sold this paper shortly after independence to the London and Rhodesian Mining Company (Lornho).

Lornho had also just bought out Heinrich Brewery which had briefly operated a daily, *Zambia Times* and a weekly the *Zambia News* under Heinrich Syndicate Limited. Lornho eventually found itself in control of the only two dailies in Zambia and the only weekly.\(^{12}\)

In July 1965, the *Central African Mail* was bought by the Zambian government and it was renamed the *Zambia Daily Mail*. The *Zambia Daily Mail* became the first state owned newspaper after independence and in the same year Lornho renamed *Northern News* and *Sunday Zambia News* to *Times of Zambia* and *Sunday Times* respectively, and Richard Hall was immediately appointed as editor in Chief. The *Times of Zambia* became the first daily newspaper in Zambia with a nationwide circulation. Since independence, the voice of the African black majority was becoming more powerful and the first task given to Richard Hall by Lornho was to Zambianize the *Times of Zambia*. As Francis Kasoma argues, Richard Hall’s first task was to;

[… ] improve the paper’s public image by ‘Zambianizing’ it both in staff and content. He hired some black Zambian reporters, weeded out ‘colonial-minded’ white staff members and recruited only sub-editors with political progressive views.\(^{13}\)

This was a clever strategic move by Lornho and Richard Hall because in order to survive in light of the new government of African black majority rule, the newspaper had to quickly acclimatize and be recognised and accepted by the African black majority otherwise it would not have seen the light of day. Most government officials were still not happy that *Times of Zambia* was owned and run by foreigners, a cat and mouse game ensured between the ruling

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government officials and Richard Hall which eventually led to the latter’s resignation as editor in chief of *Times of Zambia* just two years after his appointment. The top UNIP officials were happy to see Richard Hall walk from his position at *Times of Zambia*, and with pressure from the government, Lornho appointed a black person as the new editor in chief, Dunstan Kamana. However, Dunstan Kamana was opposed to Dr. Kenneth Kaunda’s style of leadership and ended up using his position as editor in chief at *Times of Zambia* to criticize the rule of Dr. Kenneth Kaunda. Dunstan Kamana, among other things, criticized the government for abolishing special fee-paying wings in hospitals. “He argued that a policy of completely free medical care would lower the standards of health facilities in the country”.  

President Kaunda was not pleased with this style of media criticism and was not willing to tolerate it either, so after consultations with Lornho, Dunstan Kamana was fired and replaced by Vernon Mwaanga who was handpicked by Dr. Kenneth Kaunda himself. This kind of government interference in the print media after independence represented the beginning of a downward spiral of the print media in Zambia.

In January 1972, while Vernon Mwaanga was away the Zambian government invoked the Deportation Act and deported his assistant editor in chief Vernon Wright after he authorized an editorial on the military coup that had taken place in Ghana. This was the first time a person was being deported for writing an editorial that the government was not pleased with. The sudden deportation of Vernon Wright by the government affected the white journalists who at the time retreated in their shells and minimized their criticism of the government, this ignited the first signs of self-censorship in Zambian journalism. As a result, the level of press freedom and freedom of expression in Zambia would come under enormous threats from the government. President Kaunda summed it up in August 1972 by issuing a statement in which he said, “[...] freedom of the press was based on the right of the people to know, and to have access to information. It was not for reporters to decide what the people were to be informed about”.

2.2.3 Second Republic (1973 – 1991)
Zambia became a one party state in August 1973 and the country witnessed a firmer control of the print media during this period and although freedom of expression existed as a constitutional right, it was not recognised in practice. The government realized how powerful

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the media was in furthering their selfish aspirations and became greedy with ownership and control of the media. The government monopolized the print media by taking full control of the private media, thereby creating a print media system that would rely on state owned print media as a source of information. Only one Christian newspaper was allowed to operate independently during this period and media laws were stretched to the limits in order to maximize control of the media.

In June 1975, the Zambian government announced that they had taken over full operations of the *Times of Zambia* and *Sunday Times of Zambia*. The *Zambia Daily Mail* was also officially taken over by the government. The UNIP government controlled the media with a firm hand during the second republic and influenced media content by hiring editors and reporters who published favourable stories for the party and firing those who criticised them. Any journalist who wrote an article critical of the government was either suspended or dismissed by the government. The President was directly in charge of appointing heads of all media and prevented private newspapers from publishing. The only non-state newspaper that was allowed to be published was the *National Mirror* owned by Multimedia Zambia a communication organisation for Christian Churches. “The *National Mirror* was less critical of government and in-between 1972 to 1983 it only published a total of 23 editorials critical of the state”.

Dr. Kenneth Kaunda harnessed the power of the media in promoting his philosophy of humanism and the media largely remained toothless and as a government mouthpiece until 1990 when Zambia reverted back to multiparty politics.

### 2.2.4 Third Republic (1991 – present)

Zambia’s transition to multi-party politics in 1991 has not led to significant changes in relations between the state and the media. After Dr. Kenneth Kaunda was voted out of power in 1991, he was replaced by Dr. Frederick Chiluba of the Movement for Multi-party Democracy (MMD). The MMD in its campaign messages prior to the 1991 elections promised to free the press from government control and interference. During the era of UNIP rule, most companies in Zambia were run down and operated on huge government subsidies including the media. As a result, when MMD took over power in 1991 they decided to establish the Privatization Act of 1992 which established the Zambia Privatization Agency (ZPA) whose purpose is to plan, manage, implement and control the privatization of state

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owned enterprises by selling them to those with the expertise and capital to run them on a commercial basis.

In October of 1992, a three-day seminar was organized with the theme ‘Democracy and the Media in Zambia’ and the then Minister of Information and Broadcasting Services, Dipak Patel announced that the process of selling state owned media had begun and a study funded by the Zambia Privatization Agency (ZPA) to assess how best the exercise could be conducted, would be commissioned soon”.

Almost all government owned companies were sold, including the copper mines in the Copperbelt which formed the backbone of the Zambian economy because copper was and still is Zambia’s major export. Surprisingly, no single media was sold or privatized, government’s desire to retain power and control over the media was obvious. Despite the above, there was still hope that the MMD would keep its promise when a Constitutional Review Commission was appointed in 1993 to change the Constitution and make it more democratic in line with the direction the country was taking at that particular time. This was received as good news by the media fraternity. Sadly, the new government did not implement the media law reforms which the MMD had promised prior to elections in 1991.

Although the government set up the Mwanakatwe Constitutional Review Commission in 1993, it did very little to implement the Commission’s many media reform related recommendations, including for example, that the Zambia National Broadcasting Corporation (ZNBC) ought to be removed from government control.

The government also continued to own and control both the *Times of Zambia* and *Zambia Daily Mail*. Although the government still maintained control of the state owned media, Dr. Frederick Chiluba embraced the idea of liberalization and opened up the media market in Zambia which led to the mushrooming and blossoming of the private media. *The Post* with the motto “the paper that digs deeper” was established in 1991 prior to the elections as a weekly paper called *The Weekly Post* by Fred M’membe and associates. It was based in Lusaka. By 1996, *The Post* had started publishing on a daily basis and was politically outspoken and critical of the government, living up to its motto.

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Other significant newspapers that appeared after 1991 include; the *Weekly Express*, *Zambia Crimes News* fore-runner of *The Confidential*, *The Sun*, *The National Harald*, *The Weekly Standard*, *The Eagle Express*, *The Chronicle*, among others. Each of these papers had its own editorial policy, motto, and target readership and these factors influenced the kind of articles published. Most of the papers that were started after liberalization had a short lifespan, they quickly folded up or were discontinued. On one hand the liberalization of the print media brought competition and had its own casualties, a number of independent newspapers ceased publication due to “[...] dwindling circulation, inadequate advertising revenue and soaring printing costs, among them, *The National Harald*, *The Weekly Standard*, *National Mirror* and *The Eagle Express*”.¹⁹ On the other hand, the state owned print media (*Times of Zambia* & *Zambia Daily Mail* together with their Sunday editions namely; *Sunday Times* and *Sunday Mail* respectively) continued to exist and enjoyed government subsidies in order to survive in a difficult economic period for the media in Zambia.

After Zambia became a democratic nation it meant that the print media system that existed during the colonial government and one party state under Dr. Kenneth Kaunda could no longer be continued in the same manner and the private media was allowed to publish. However, the new democratically elected government also wanted to maintain their control and power over the media. In January 1997, Dr. Frederick Chiluba announced in Parliament that government intended to legislate for a Media Council of Zambia to regulate the conduct of journalists, hence, testifying to the government’s desire to control both state and private media in Zambia and re-affirmed the MMD’s breaches of media best practices following a series of arrests and harassments of journalists especially those in the private media, *The Post* being the ultimate target. This was a clear infringement on press freedom and self-regulation of the media.

The events that followed this announcement by the President include the imprisonment on 4th March 1996 of *The Post* editor in chief, Fred M’membe, managing editor Bright Mwape and a columnist Lucy Sichone after they had been found with a case to answer for publishing contemptuous articles which appeared in *The Post* of 29th January 1996.²⁰

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²⁰ Chirwa, *Press Freedom in Zambia*. P34
The three were later released on 27th March 1996 after the local Church mother bodies, independent media, civic organizations and Media Institute of Southern Africa (MISA) condemned this kind of harassment of journalists. After a successful appeal, the High Court ruled that they had been wrongly sentenced and ordered their release. Today, all newspapers in Zambia are published in English which is the official language and *The Post* is Zambia’s largest circulation daily which sells over 50,000 copies a day and this represents a small percentage of the potential leadership in a country with a population of 13 million people. Accurate circulation figures for the state owned newspapers, *Times of Zambia* and *Zambia Daily Mail* are not available.

Newspapers are too expensive and the majority of Zambians can not afford at K3, 000 (US$ 60 cents) in a country where a loaf of bread costs K4, 000 (US$ 80 cents) and officially 64% of the population living under the poverty datum-line, meaning they survive on less than US$ 1 per day. In a country of 752, 614 square kilometers’, however, distribution, particularly of print media is problematic and costly for publishers in terms of reaching remote parts of the country.\(^\text{21}\)

In some areas such as Nakonde in the far north-east or Shang’ombo in the far south-west, readers receive newspapers a day late.

### 2.3 History of the Broadcast Media in Zambia

#### 2.3.1 Colonial Era (1940 – 1964)

Broadcasting in Zambia started with radio experiments in the 1940’s by the department of Information in the British Colonial administration after the Second World War. These experiments resulted in a 300 watt transmitter radio station being set up in Lusaka the capital city and it broadcast for one hour, four days a week. In 1949, the radio station started broadcasting two and a half hours on a daily basis and at this time most Zambians were illiterate and could not read, write or understand English making it difficult to get messages across to the intended audience because they had to rely on interpretations by a few who could understand English. This scenario forced the colonial leaders to include four Zambian local languages in radio broadcasting namely; Tonga, Lozi, Nyanja and Bemba. In 1950 the Central African Broadcasting Services (CABS) was established, covering Northern Rhodesia.

and Nyasaland. “The service was extended to include Southern Rhodesia and renamed the Federal Broadcasting Corporation of Rhodesia and Nyasaland in 1957 with headquarters in Salisbury, Southern Rhodesia now Harare, Zimbabwe”. 22

The broadcasting industry in Zambia started as an initiative of the colonial government and this created a broadcasting media system firmly rooted in the hands of the state or ruling government. In this broadcast media system, ownership of the broadcast media was mainly by the state and there were no privately owned radio stations during this time as the broadcast media was characterised by state monopoly. In 1961 Lornho became the first company to establish a private television station in Zambia but it didn’t last very long in a broadcast media system that favoured full state control of the ownership and operations of the broadcast media. Consequently, the company was bought and nationalized by the Zambian government in 1964 shortly after independence.

2.3.2 First and Second Republic (1964 – 1991)

“From 1964 – 1966 the radio station existing was called Zambia Broadcasting Corporation (ZBC), then after 1966 it became known as the Zambia Broadcasting Services (ZBS) and finally the Zambia National Broadcasting Corporation (ZNBC) in 1987”. 23 With Zambia being run as a one-party state from 1973 by Dr. Kenneth Kaunda and his UNIP government, no private or community radio station or private television station was allowed to broadcast. In 1982, the government inaugurated the Mass Media Complex which housed all radio and television stations and introduced three domestic radio services namely; Radio 1 broadcasting in the seven major local languages of Bemba, Nyanja, Lozi, Tonga, Kaonde, Lunda and Luvale. These local languages were used in rotation to ensure a prime time audience for each group and another station, Radio 2 was introduced as a general English broadcaster. Finally Radio Mulungushi (later renamed Radio 4) was added in February of 1989 and this was an entertainment channel which broadcast in English. All of the above mentioned broadcasting stations were owned and operated by the government, there was no private broadcast media during this period and the government used the broadcast media to mainly communicate their propaganda and some useful information to the general public.

Radio programs during this time mainly consisted of news, public affairs, light entertainment, sport, religion and education. School broadcasts were carried during

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23 Chirwa, Minnie and Bussiek, *Public Broadcasting in Africa: Zambia*. P11
school semesters. Agricultural programs for farmers were prominent and covered all the country areas.24

The government issued no broadcasting licences to private media from 1964 until the UNIP rule came to an end in 1991. During this period only the state owned broadcast media existed in Zambia. This phase of the Zambian broadcasting media system accounts for a crucial time period of serious infringement on press freedom, and internationally accepted best practices of media management by the state. The broadcast media (both radio and television) was a mouthpiece of the ruling government, and the state introduced media laws aimed at maintaining their strong grip on the broadcast media in Zambia. However, this kind of broadcast media system that ensured full state control of ownership and operations of the broadcast media changed after Zambia became a democratic country in 1991. Private broadcast media was allowed to broadcast, and the government started issuing broadcast licences to both radio and television stations but at the same time they also maintained full control of the ownership and operations of the state owned broadcasting media (radio and television) which they inherited from the regime of Dr. Kenneth Kaunda and his one party state.

2.3.3 Third Republic (1991 – present)

When Zambia reverted back to multi-party politics in 1991, the MMD assumed power and as promised during their election campaigns they quickly liberalized and de-regulated the air waves. “As a result of this liberalization and de-regulation of the air waves, three privately owned radio stations went on air and another thirty private, community and religious stations started operating over the next decade”.25

In 1996, Radio Phoenix became the first independent privately owned radio station in Zambia. Its programme schedule was a diet of popular music shows and several genres of talk shows including its flag career “Let the People Talk” – a call in programme which still exists today. A number of other private broadcasting stations later emerged namely; QFM Radio, Radio Lyambai, Radio Liseli, Radio Choice, and Mazabuka Radio. However, the mushrooming of private radio stations in Zambia was just the first step in liberalizing the air waves and tolerating private broadcast media. The government has been very reluctant to turn

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the state owned broadcast media in to public media, even though the public are asked to pay monthly contributions in the form of a TV levy, the television station is still owned and controlled by the state. And the private radio and television stations both operate under a tight media legal environment.

The new democratic government in Zambia realized the potential of the media and even though they opened up the air waves to the private media through liberalization, they deliberately maintained the state owned broadcast media and most of the broadcast media laws that supported this kind of broadcast media system. The growth of the broadcast media in Zambia continues to be hampered by state monopoly and the slippery manner in which they use archaic broadcast media laws to interfere in the operations of the privately owned broadcast media through licensing, determining radius of operations, closure, among others. However, even under these archaic broadcast media laws, there are more and more radio stations in Zambia that are being established and these are mainly community radio stations and they continue to operate under an insecure broadcast media legal environment. The community radio stations include Radio Mosi-o-Tunya, Zambezi FM, Hone FM, and Unza Radio. Others are Radio Lundazi (Chikaya), Breeze FM, Radio Petauke Explores and Pasme, Mpangwe FM, Radio Mkushi, Itezhi Tezhi Community Radio and Radio Mano, among others.

By nature and design, community radio stations offer a type of radio service that caters to the interests of a certain area, they broadcast mostly in local languages and broadcasting material that is popular to a local audience but is overlooked by more powerful broadcast groups. The radio is usually established by the efforts of a specific community, operated by the community and for the community welfare. They have a heavy responsibility of serving the needs of the communities within which they broadcast and exist. “This is because of the enormous potential that they have to lift the standards of the people through the provision of relevant information”.26

The Churches also joined the airwaves with religious based programming options through the establishment of Yatsani Radio, Radio Icengelo, Chikuni Radio, Radio Maria and Radio Christian Voice. This followed the declaration of Zambia as a Christian nation on 30th

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December 1991 by then President Frederick Chiluba. This declaration was eventually included in the Zambian Constitution and made it easier to establish religious based radio stations which broadcast mainly religious information. Today, 22 years down the line, Zambia boasts of over 40 private, community and Church owned radio stations that have become popular among listeners. The community and Church radio stations continue to increase in number because the broadcast licences are easier to obtain if the radio or television station will operate within a certain radius and if it is branded as a community/Church radio or television. Radio is the medium of choice for most Zambians especially in rural areas, according to a 2009 survey 87% of households in Zambia own a radio set (94% in urban and 84% in rural areas). The state owned broadcaster known as Zambia National Broadcasting Corporation (ZNBC) is dominant in both radio and television. “Only 45% of Zambians own a television set and the past 4 – 6 years Zambia has witnessed a mushrooming of privately owned television stations such as Muvi TV, Mobi TV, among others and these have provided competition to ZNBC TV”.27 The government has limited the operations of Muvi TV and Mobi TV to Lusaka town.

“ZNBC on the other hand which is the government owned and controlled television station is accessible in 63 out of the 72 districts through analogue aerials, although technically, DSTV subscribers can access the station throughout the country”.28 ZNBC’s radio signal covers all the districts and reaches throughout the nation and broadcasts in several local languages, while private radio stations have limited reach, unable to move to a wider, national audience outside the province from which they broadcast. The government knows how powerful radio can be and have decided to limit radio operations by allowing them to broadcast only in a certain specified radius, any station that attempts to broadcast beyond faces the wrath of government machinery and risks closure.

Despite liberalization of the air waves the Zambian government has been reluctant to enact broadcast media law reforms that would make the private broadcast media fully independent.

2.4 Chapter Summary

Chapter two has highlighted the history of the print and broadcast media in Zambia, from the colonial era to present day. The media in Zambia has changed compared to the way it was

operated during colonial rule and from 1964 when Zambia got its independence all the way to 1991 which represent the first and second republic of Dr. Kenneth Kaunda’s rule. The introduction of multi-party politics and democracy in 1991 has extended the scope of press freedom and freedom of expression for the media as a result of liberalization of the economy and media industry. This is evident by the number of private media that have mushroomed after 1991. However, the government has maintained most of the print and broadcast media laws that were created during the colonial rule and one party state that aimed at maintaining a media system that would retain media ownership and control in the hands of the state who could then use this opportunity to extend their popularity and maintain their authority. There are some changes that have been made to some of these media laws, but they are loosely defined and the government can still legally control the media both state and privately owned because the current media system allows this to happen within the confines of the Zambian media law.
Chapter 3 Overview of Media Laws in Zambia

3.1 Introduction
Chapter two has given an account of the history of the media in Zambia, both print and broadcasting. Chapter three gives an overview of the different laws that relate to the media in Zambia. The chapter is organized as follows; section 3.2 is about the media and the Constitution of Zambia; section 3.3 highlights media and legislation; while section 3.4 gives a chapter summary.

3.2 The Media and the Constitution
A Constitution is a set of rules that are fundamental to the country, institution or organisation to which they relate, for example, the Constitution of Zambia sets out the fundamental rules upon which the entire country operates. A Constitution can be defined as;

The fundamental law, written or unwritten, that establishes the character of a government by defining the basic principles to which a society must conform; by describing the organization of the government and regulation, distribution, and limitations on the functions of different government departments; and by prescribing the extent and manner of the exercise of its sovereign powers.  

The Constitution of any country takes precedence over any other law. This means that, “[…] if the government passed a law that violated the Constitution that was not in accordance with or conflicted with a Constitutional provision, such a law could be challenged in a court of law and could be overturned on the ground that it is unconstitutional”. This is what is referred to as ‘Constitutional Supremacy’. The Zambian Constitution makes provision for Constitutional Supremacy in Article 1 (3) which specifically states that, “[…] this Constitution is the supreme law of Zambia and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void”. The Zambian Constitution has a provision which protects freedom of expression but it does not directly protect the media (publishers, broadcasters, journalists, editors and producers). Article 20 (1) of part III of the Constitution which is headed ‘Protection of Freedom of Expression’ states that;

31 Limpitlaw, Media Law Handbook for Southern Africa. P333
Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to impart and communicate ideas and information without interference, freedom to communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.32

The Constitution of Zambia has been amended numerous times and in 2005 a draft Constitutional Review Report recommended changes to this Constitution in order to include a clause on media freedom in the Bill of Rights. However, the government heavily meddled in to the affairs of the National Constitutional Conference (NCC) and the suggestion by the report to include media freedom in the Constitution was removed in 2010 when the NCC submitted its final report and draft Constitution to the national assembly. The NCC had been established by an Act of Parliament in 2007 and tasked to debate, recommend and adopt recommendations from the 2005 draft Constitution by the Mung’omba Constitutional Review Commission. The government seems very reluctant and skeptical to include a clause in the Zambian Constitution that directly deals with media freedom, and the media continue to rely on Article 20 (1) which has general provisions for freedom of expression. This clause is not adequate for press freedom and makes the work of journalists difficult because they do not get specific protection in the Constitution.

It is also imperative to note that the Zambian Constitution has no clause on the right of access to information. In June 2005, the interim report of the Mung’omba Constitutional Review Commission recommended among other things that the right of access to public information held by the state (subject to security considerations) and press freedom should be enshrined in the Bill of Rights. The government is, however, opposed to including a clause guaranteeing access to information, arguing that it would compromise state security. Another issue of concern is that Article 25 of the Zambian Constitution makes provision for the suspension of fundamental human rights, including the right to freedom of expression during wartime or when a state of emergency is declared under Article 30 of the Constitution which provides that, “[…] the President may, in consultation with cabinet, at any time, by proclamation published in the Gazette declare that a state of public emergency exists”. 33

provisions of the Zambian Constitution are not in accordance with international best practices and lack objectivity.

3.3 The Media and Legislation

Legislation is a body of law consisting of Acts passed by Parliament, and in Zambia the Parliament is the legislative authority and is made up of 158 members. “Out of the 158 members, 150 are directly elected by the people in their Constituencies using the simple majority system while the remaining 8 members are directly appointed by the President”. Parliament passes Acts in relation to the provisions of the Zambian Constitution. The executive branch of government in Zambia is made up of the President and he/she appoints the Vice President. The legislative authority in Zambia is highly compromised and in most cases controlled by the ruling political party with the majority member seats in Parliament. In 1996, in reference to the relation between the legislature and executive branches of government in Zambia, Fred M’membe the owner of the biggest private newspaper in Zambia, *The Post*, said that;

> It is clear that our current Parliament is totally useless in the governance of this country. It is just an extension of State House and a very expensive one for that matter. But for all the laws they enact, real power does not lie with them, it is outside Parliament.\(^{35}\)

In order for any media laws to exist in Zambia, just like any other laws for that matter, they have to be enacted by Parliament as provided for by the Constitution of Zambia.

3.3.1 General Media Laws and Regulations

3.3.2 Printed Publications Act of 1947

The Zambian Printed Publications Act of 1947 as the name suggest relates particularly to the print media and requires the registration of newspapers before publication. No person is allowed to print or publish or cause to be printed or published any newspaper until it has been registered at the National Archives. The registration involves providing full details of the proprietor, editor, printer or publisher and the physical address of the premises where the newspaper is to be published. “A fee is paid for registration and the Act further stipulates that


a copy of every newspaper or printed book should be deposited with the Director of the National Archives”. The Printed Publications Act is out of tune with press freedom because it sets up barriers to the public’s right to know by demanding registration of a newspaper before it is published. The Act also has a very broad definition of ‘newspaper’ which includes, “[…] any periodical publication published of intervals or not more than one month and consisting wholly, or for the greater part, of political or other news…or to other current topics”. Article 5 of the Act makes it illegal to publish a newspaper without first registering it with the Director of National Archives. The Director of the National Archives is a civil servant and government employee appointed by the Minister of Information and Broadcasting Services, who in turn is appointed by the President and is a member of the ruling party. Hence, government interference is conceivable in the Printed Publications Act.

3.3.3 Independent Broadcasting Authority Act of 2002

“The Independent Broadcasting Authority Act was passed in 2002, previously there was no such legislation and the Minister had the power at any time to cancel or refuse to issue a licence or to renew a licence…in the public interest”. This legislation governs the broadcast media in Zambia and the Act also establishes the Independent Broadcasting Authority (IBA) and provides for the functions of the IBA in Article 5. Article 8 of the IBA Act establishes the independence of the IBA by stating that it shall not be subject to the direction of any other person or authority except as otherwise provided for in the Act. However, “[…] the IBA’s independence is eroded by the fact that the Minister of Information and Broadcasting Services appoints the members of the appointments committee for members of the IBA board”. The appointments committee is responsible for recommending members of the IBA board to the Minister, who in turn has the power to accept or reject the names as provided by the appointments committee before they are presented to Parliament for ratification.

In 2010 the government tabled a Bill in Parliament to amend the IBA Act of 2002. Although the media fraternity objected to most of the amendments, the Bill still went ahead and was passed by Parliament because the ruling party had majority seats in Parliament. This amendment to the IBA Act was retrogressive because it removed the requirement of an appointments committee to make board nominations, and the Minister was again granted the

37 Chirwa, Minnie and Bussiek. Public Broadcasting in Africa. P61
power to name people to the IBA board without seeking ratification from Parliament. Since this amendment was made, the Minister has stopped issuing new broadcast licences and licences that would allow private broadcasters to expand their radius of operations to other provinces. The situation remains largely the same even under the new Patriotic Front (PF) government elected in September 2011, only Q FM Radio has been given a licence to broadcast beyond Lusaka to the Copperbelt based on the fact that this Radio station ‘campaigned’ for the PF in 2011. No other media house has been awarded a licence to broadcast beyond their radius prior to 2011 elections. Other provisions of the Independent Broadcasting Act of 2002 were amended and they all seem to point in one direction and that is government control, monopoly and manipulation of the broadcasting industry in Zambia for their interests as opposed to public interest.

3.3.4 Zambia National Broadcasting Corporation (ZNBC) Act of 2002

The Zambia National Broadcasting Corporation (ZNBC) Act of 2002 is an amendment to the ZNBC Act of 1987 which governs the operations of the state broadcast media in Zambia, mainly three radio stations (Radio 1, 2 and 4) and two television stations (ZNBC TV and ZNBC TV2 which was launched in 2010). The ZNBC Act was amended in 2002 with the purpose of transforming the state owned broadcast media in to a public broadcaster. Section 3 of the ZNBC Act of 1987 establishes ZNBC as a broadcaster in Zambia and Section 4 constitutes the ZNBC Board which carries out the functions of ZNBC.

Under the ZNBC Act of 1987, the Minister of Information and Broadcasting Services was the only person with the authority to give and revoke broadcast licenses and no sufficient editorial independence was guaranteed for the state owned broadcast media because the Minister of Information and Broadcasting Services had absolute power to appoint and disappoint the Board of Directors of ZNBC.39

However, the amendments of 2002 to the ZNBC Act were ignored and never implemented by the government. Infact, in 2010 the ZNBC Act was again amended by the government giving back the powers to the Minister of Information and Broadcasting Services. There were only two positive aspects that the government implemented from the ZNBC Act of 2002. Firstly, broadcast media regulation (issuing of licenses and regulating air waves) was moved from the ZNBC Act to the IBA Act of 2002 and secondly, the government introduced TV licence levy

for ZNBC meaning that all viewers are now required by law to pay K3, 000 (US$ 0.70) monthly. This payment is mandatory for everyone who has electricity at home because the amount is added automatically to your electricity bill.

### 3.3.5 Freedom of Information Act

The purpose of the Freedom of Information (FOI) Act is to encourage a more open and transparent government where members of the public, including the media, can have access to some information about government operations upon request. With this legislation, “[...] members of the public would have access to reports of commissions of inquiry, audits of various government offices, and reports held in government offices and the government officials would be obliged by law to release this information”.  

Zambia currently does not have a Freedom of Information (FOI) Act although a draft document of the Freedom of Information (FOI) Bill exists. On 18th December 2002, the government deferred the Freedom of Information Bill in Parliament saying that it needs further consultation before it can be enacted. In over 10 years, it seems the government has not consulted enough to pass this Bill. This is a violation of people’s rights to access information.

### 3.3.6 Defamation Act of 1930

“Law must reconcile the right to free speech with the right to reputation, in news rooms libel is the greatest inhibition upon freedom of speech”. There is nothing objectionable in the principle that a person’s reputation should be protected from falsehoods, problems arise when the practices and procedures of the libel law can also work to prevent the exposure of wrong.

According to Robertson and Nicol, defamation can be defined as lowering the claimant in the estimation of right thinking people generally; injuring the claimant’s reputation by exposing him to hatred, contempt or ridicule and trending to make the claimant be shunned and avoided.

In Zambia, the law has criminalized defamation of the President which means that it is a criminal offence to defame the head of state and carries a prison sentence.

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42 Robertson and Nicol, Media Law. P105
Section 69 of the Penal Code provides for the protection of the president’s reputation and the dignity of his office by ensuring that any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence punishable by up to three years imprisonment.\textsuperscript{43}

Defamation law is there to protect individuals from potentially harmful media reporting but criminalizing only the defamation of the President makes the work of journalists more difficult because they cannot freely and openly criticize the President who holds public office, for fear of the consequences and this is not in line with international best practices of press freedom and freedom of expression.

3.3.7 Obscene Publications Act of 1930

Obscenity is a serious crime in many countries and its total impact is judged in light of its potential to deprave and corrupt morals. In Zambia, Section 177 of the Penal Code deals with obscene matters and states that, “[…] it is an offence to make, produce or possess obscene writings, drawings, printed matter, photographs, cinematograph film or any other object tending to corrupt morals”.\textsuperscript{44} This offence is punishable by a fine or imprisonment of up to five years. This Section does not provide for any defences and the definition of what is regarded as ‘tending to corrupt morals’ is left to the courts to decide on behalf of the public.

For example, in 2009 Chansa Kabwela the news editor of The Post was arrested and charged with pornography by the government for circulating a picture of a woman giving birth outside the maternity ward at University Teaching Hospital (UTH). This happened during the time nurses went on strike to force government to improve the working conditions of medical stuff in Zambia following poor salaries.\textsuperscript{45}

3.3.8 Theatres and Cinematograph Exhibition Act of 1929

The Theatres and Cinematograph Exhibition Act of 1929 controls the use of theatres and cinemas in Zambia. “Section 7 empowers the Minister of Information and Broadcasting


Services to appoint one or more Film Censorship Boards consisting of a number of persons as the Minister may determine."  

Section 8 (1) spells out the functions of the Film Censorship Board and these mention that a descriptive title of every film intended to be screened in Zambia and copies of all posters advertising it must be sent to the Board for approval, failure to do so may result in a fine or imprisonment of up to three months.

3.3.9 The State Security Act of 1969

The intended purpose of this Act is to deal with issues relating to state security such as; espionage, and sabotage. However, the Zambian government has used this Act to enforce censorship of information that may not be favourable for them. This Act contains provisions which not only prohibit publication of certain information but also hinders the media’s ability to perform its news gathering functions. “Section 3 of the State Security Act of 1969 gives a very broad and extensive definition of the offence and this makes civil servants reluctant to provide any information about government operations to journalists for fear of being prosecuted”.

In Section 4 (1) and (2) the State Security Act deals with wrongful communication of information by stating that;

Having in one’s possession a secret official code, password or document or information that relates to a prohibited place, or which has been obtained in contravention of the State Security Act, and communicating the code, password, document or information to any unauthorised person or retaining it when having no right to do so...or having in ones possession information that relates to munitions of war, information relating to the defence or security of Zambia and communicating the same to any person for any purpose prejudicial to the safety or interest of Zambia.

Section 5 of the State Security Act relates to the protection of classified information. “This Section makes it an offence to communicate any classified matter to any person other than someone to whom he is authorized by an authorized officer to communicate it or to whom it is, in the interests of Zambia, his duty to communicate it”.

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international best practices of freedom of information because it prevents people from expressing themselves for fear of a hefty jail sentence once found guilty.

### 3.3.10 Contempt of Court Offence of 1930

The Penal Code of Zambia, under Section 116 provides for offences that constitute Contempt of Court and these offences are punishable by a fine or imprisonment. This provision is used by the government to stifle the practice of journalism and to target journalists who are critical of the state. In June 2010, *The Post* editor in chief Fred M’membe was arrested and sentenced to four months imprisonment with hard labour because *The Post* published a commentary piece questioning the lawfulness of an on-going Court case in which the accused was subsequently found with no case to answer. According to Section 116 (1) (d) of the Penal Code which says;

> [...] while a judicial proceeding is pending, makes use of any speech or writing, misrepresenting such proceedings, or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being heard or taken…is guilty of a misdemeanor and is liable to imprisonment for six months.\(^{50}\)

However, Fred M’membe appealed the sentence and the judgment was reversed. Other offences under this Act include taking and publishing any photographs, portraits or sketches of people involved in Court proceedings.

Section 117 of the Penal Code is headed ‘Prohibition on Taking Photographs’ and makes it an offence to publish any photograph, portrait or sketch of any person involved in Court proceedings, whether they are civil or criminal, including; judges, jurors, witnesses or parties and this offence is punishable by a fine.\(^{51}\)

### 3.3.11 Treason and other offences

Treason and other offences can be found in Section 53 of the Penal Code and makes provisions to stop the publication of ‘prohibited information’.

In terms of Section 53 (1), if the President is of the opinion that a publication is contrary to the public interest (which is defined in Section 62 of the Penal Code as

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\(^{51}\) Chirwa, Minnie and Bussiek, *Public Broadcasting in Africa*. P32
including the interest of defence, public safety and public order), he may, in his absolute discretion, declare it to be a prohibited publication”.52

The above provision is alarming for the media because only the President is entrusted with the sole authority to determine if a publication should be prohibited or not. Another offence that relates to the media is found under the Criminal Procedure Code Act 1933, where confidentiality of sources can be overruled by the Courts because the Act provides for disclosure by force of confidential sources of information. The Court has the authority to compel a witness or journalist to give evidence or any documents in their possession that are relevant to the case. For example, in 2002, journalists at The People newspaper were arrested and pressurized to disclose the source of their information when they published a story saying that the then President, Levy Patrick Mwanawasa was suffering from Parkinson’s disease. The journalists were detained, and released only after disclosing the source of the information in the said article.

3.4 Chapter Summary
The Zambian Constitution acknowledges freedom of expression but despite being amended twice and another Constitution Amendment on-going, the government has not committed themselves to including a clause specifically to deal with media freedom and domesticating international treaties such as the United Nations Declaration on Human Rights to which Zambia is a signatory. There is government interference in media regulation, as they have opposed self-regulation through an independent media council and have also blocked the enactment of the Freedom of Information (FOI) Act for the last 10 years. Most of the media laws that currently exist where made during the colonial era or during the one party state rule, hence they tend to be negative towards the private media and also encourage state control and monopoly of the media industry. Hence, this research will highlight the weaknesses in the Zambian media laws that infringe on press freedom and freedom of expression in detail. A Constitution Review Commission has been appointed to review the laws of the country and this research might feed into the bigger picture regarding media laws in Zambia and human rights. The research also seeks to ascertain whether the Constitution and media laws in Zambia are sufficient enough to protect the Zambian media from state control and regulation.

Chapter 4 Literature Review

4.1 Introduction
Chapter four (4) is a presentation of the literature review and is organized as follows; Section 4.2 is an examination of different media systems and the role of the state; Section 4.3 presents the literature review on Media Laws; Section 4.4 is an analysis of the literature on Press Freedom and Freedom of Expression; and Section 4.5 is the chapter summary. The sources of the literature review in this chapter include but are not limited to the following; study materials for the program am enrolled in at the University of Oslo, Department of Media and Communication (Master in Nordic Media), published books from the University of Oslo Library and other libraries, journals, online materials, Media Institute of Southern Africa (MISA) Zambia Chapter, Media Laws in Zambia, among others.

4.2 Literature Review on Media Systems

4.2.1 Media Systems and the role of the state
The media does not exist in a vacuum, each country has a media system with its own special characteristics. The media system that exists in Zambia is unique but also has some similarities with other media systems in other countries. Daniel C. Hallin and Paolo Mancini in their quest to understand different media systems in the world developed what they coined as the three ideal type media systems namely; the polarized pluralist model, democratic corporatist model and the liberal model. All the three media systems attempt to describe the role of the state in a given media system. Zambian media currently exists in a particular media system that cannot be easily and entirely categorized in just one of the Hallin and Mancini media models, this is because the Zambian media system has characteristics that seem to indicate a combination of the three media systems developed by Hallin and Mancini. The Zambian media system currently has traceable trends that indicate a democratic and liberal media system but at the same time, there are some remnants carried over in to the democratic and liberal media system from the authoritarian and colonial period.

4.2.1.1 Polarized Pluralist Media System
“The key characteristics of the polarized pluralist model say Hallin and Mancini are to be found in the closeness of political actors to the media, in the dominant focus of the media on
political life and in the relatively elitist nature of journalism”.\(^{53}\) This media system also indicates that there is less development of the commercial media system as compared to the other two media systems and newspaper circulation is regarded to be relatively low. With regards to the role of the state under the polarized pluralist media system;

[…] instrumentalization of the media by the state, parties, and private owners with political ties is relatively common. The state has tended to play an interventionist role in many ways, though clientelism and political polarization have often undercut its effectiveness as a regulator.\(^{54}\)

The management of public broadcasting is highly party politicized under this type of media system. The state also displays authoritarian intervention techniques, such as censorship, seizing publications and generally leans towards dictatorship in the management of the media. Historically, the Zambian media system was infiltrated and controlled mainly by individuals who had political party ties and this showed in the content of the newspapers and the editorial opinion. This scenario continued even after colonialism had ended. As a result, the current print media system in Zambia is still largely divided between supporting either the ruling political party or the opposition political party, and the stories that usually make front page headlines are almost always political in nature or politically related. The state owned print media is always supporting the government and the ruling political party whereas the private print media tends to support the opposition political parties.

As regards broadcasting in Zambia, ZNBC Radio and Television stations are state owned and seem to be aligned with the political party in power, for example, the past 20 years (1991 – 2011) when the Movement for Multi-party Democracy (MMD) was the ruling political party in Zambia, ZNBC tended to support the MMD and condemned the opposition political parties including the Patriotic Front (PF). After the PF won the 2011 elections and became the ruling political party, ZNBC’s coverage of news and events has changed and they now condemn MMD and support PF and their President, someone whom they highly condemned just in the run-up towards the 2011 elections. Therefore, these political ties are also evident in the


broadcasting media, because the private broadcast media tend to be critical of government and sort of provide an alternate political voice by giving coverage to specific opposition political parties.

Overall, the government has interfered especially in the state owned media, which is highly controlled and manipulated. And there are instances when publications from private media have been seized in what the government terms as ‘national interest’, as will be shown later in this research.

4.2.1.2 Democratic Corporatist Media System

This media system demonstrates a set of characteristics that have been called the three coexistences;

These ‘coexistences’ include the simultaneous development of strong mass circulation commercial media and of media tied to political and civil groups; the coexistence of political parallelism and journalistic professionalism; and the coexistence of liberal traditions of press freedom and a tradition of strong state intervention in the media, which are seen as a social institution and not a purely private enterprise.55

The democratic corporatist media system describes the role of the state as one where, “[…] there is a strong tradition of limits on state power – one of the most important manifestations of which is the early development of press freedom”.56 Under this media system the state is seen to be active in governance of public broadcasting by committing to insulating public broadcasting from control by the political majority and journalists in both print and broadcasting are awarded high levels of autonomy from political players. This role of the state in the democratic corporatist media systems has brought with it some degree of professionalism in the practice of journalism as opposed to the polarized pluralist media system.

The Zambian government has made noticeable efforts to try and make public broadcasting free from political party ties by enacting the ZNBC Act in 2002. However, even though they claim that ZNBC is free from political party ties and political pressure they have still maintained an invisible hand in the management of public broadcasting because the President is still responsible for appointing the Managing Director and Director of Programmes of


56 Hallin and Mancini, Comparing Media Systems: Three models of media and politics. P145
ZNBC. The ZNBC Board’s accountability lies with the Minister of Information and Broadcasting Services, annual reports and audits are submitted to the Minister before they are presented to the National Assembly. And the Minister is appointed by the President and is a member of the ruling political party. The journalists and media institutions are largely professional in the execution of their duties and try to maintain a high level of internationally accepted standards. It is important to mention that Zambia is a democratic state and the state does not have unlimited powers in the management of the media. There are laws that guide the extent to which the state can go in influencing the operations of the media.

4.2.1.3 Liberal Media System

This media system is based on limited government powers and a strong rational-legal authority. The liberal media system encourages the development of a strong private or commercial media with strong professional conduct of journalists. One of the key characteristics of the liberal media system is that it emphasizes media freedom from political parties. Under the liberal media system the role of the state is described as one where, “[…] the liberal countries are, by definition, those in which the social role of the state is relatively limited and the role of the market and private sector relatively large”. The liberal media system also prescribes management of public broadcasting that is detached from political party ties, instead public broadcasting should be managed by neutral professionals devoid of political party ties.

The Zambian media system displays some elements of a liberal media system and these can be traced from the time of the liberalization of the Zambian economy in the early 1990’s. The media industry was also liberalized and private media was accorded an opportunity to compete with state owned media in what can be termed as a free media market. This move gave birth to private radio stations, private television stations and private print publications, which operate on a commercial basis. However, the state owned media still exhibit some political party ties and align themselves with the ruling political party, this is because they are highly controlled and influenced by the state.

4.3 Literature Review on Media Law

4.3.1 Protection of media freedom under the Constitution

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The Zambian Constitution of 1996 has a provision that protects freedom of expression under the general ambit in part III Article 20 of the Constitution. This provision does not specifically apply to the media but to all citizens of the country. However, South Africa which is the role model of media freedom in Southern Africa has a Constitution that guarantees both freedom of expression and media freedom. The South African Constitution is newer than the Zambian, and also more modern in many aspects. Section 16 of the freedom of expression clause in the South African Constitution reads:

(1) Everyone has the right to freedom of expression which includes –

(a) Freedom of the press and other media;
(b) Freedom to receive or impart information or ideas;
(c) Academic freedom and freedom of scientific research.\(^{58}\)

The South African Constitution sets the tone for media freedom and since every Constitution is the supreme law of that particular nation, no law can be made that infringes on the provisions in the Constitution. This specific guarantee of media freedom in the Constitution is desirable for a media law environment that is favourable because it gives the media the opportunity to challenge legal decisions or laws they feel restrict media freedom based on the supreme law of the land.

### 4.3.2 Protection of media freedom under Media Laws

Where the boundaries of freedom of expression should be drawn is one of the eternal issues in constitutional and human rights law. Where are the limits to what can be said, or otherwise made public…who shall determine the limits of free speech; politicians, the press or the judiciary? These questions will haunt us forever, because the answers are different depending on who you ask and where and when you ask them.\(^{59}\)

There is no single universally accepted definition of media law but there are legislative principles that affect the media and these characterize a good media law environment. Other than the legislative principles, each country also has institutions and cultures that equally affect the media law environment.

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It is not enough to concentrate on the laws alone but it is also vital to focus on institutions and the institutional infrastructure that makes the rule of law possible. Formal rules, the mere existence of laws, even formal prohibitions on state intervention, make little difference without the machinery of enforcement that gives integrity to law.\textsuperscript{60}

Regardless of the particular legal approach to media law, good journalism is expected to flourish in a society that respects and enforces the rule of law, such as democratic societies. As a result, media laws vary from country to country and Eric Johnson attempted to provide some general principles to consider when judging a country’s media law environment. The first principle was one that relates to a level playing field for all media companies, with no discrimination or segregation in any given country. Eric Johnson proposed that;

All media (private, governmental, domestic and foreign) should operate under the same rules, with no tax breaks, no preferential treatment in the license-giving process, and ideally, a limit on how much advertising income government-subsidized media can siphon-off from the private sector.\textsuperscript{61}

With regards to registration of the media, Johnson noted that the best media registration is none at all. He argues that if there should be any registration of media then it should purely be for monitoring purposes, and no conditions should be set up for registration. In terms of licensing for broadcasting, Johnson argued that no single person should be in-charge of issuing or revoking licenses of media companies to avoid bias and manipulation by those in authority for their own benefit or to serve and protect the interests of the political parties they belong to. This is made on the assumption that frequencies are owned by the public and not by those in power, therefore, the media (in particular broadcast media) should be licensed to use the air waves by an autonomous commission and not necessarily by those in power, this is because the broadcast media has had numerous difficulties regarding licensing. “The criteria for deciding who gets a license should be clearly laid out and based on maximizing diversity. The commission’s decision making process should be public and subject to appeal”.\textsuperscript{62}

Another form of licensing is the one that demands compulsory licensing of journalists in order


\textsuperscript{62} Johnson, “Defining a Good Media Law”. P2-3
to ensure that only those with the right qualifications practice the profession. This law is still being practiced in certain countries and is used by the government to determine who should be a journalist and in a way prescribes the parameters of what can be termed as ‘acceptable’ reporting and commentary. Compulsory government licensing encourages self-censorship for fear of the unknown, and also chokes debate concerning topics of importance in any given nation. As Leonard Sussman of the New York based Freedom House once wrote; “Governmental licensing of the press is the old blunder-buss of censoring weapons”.

Eric Johnson further argues that other considerations for a good media law environment relate to control of media content. He argues that if anything is to be forbidden it must be tightly and narrowly defined, and provided for by law, meaning that it must be backed up by legislation and not by an individual in power. Johnson finally argues that those in power should have no say concerning media content be it private or government owned, only the media itself should be responsible for what it publishes or broadcasts without interference from authorities. Jane Kirtley in her Media Law Handbook says that, “[…] the most insidious aspect of censorship is that at first glance it can seem justifiable or reasonable”. Authorities will often attempt to control media content by using broad provisions such as, protecting national security, prohibition of publication of books intending to corrupt public morality, protecting the identity of a child who has been sexually abused or raped, protecting the rights of other individuals from racist or hate speech. However, the danger is that most times governments use the above broad definitions to restrict press freedom and the distribution of unpopular opinions and ideas. Jane Kirtley further says that, “[…] this is not to suggest that freedom of the press will, or should, inevitably trump other fundamental values. The challenge is to strike a balance between legitimate competing interests and this is not an easy task”.

Another importance principle that characterises a good media law environment is the access to information law. This law allows citizens to find out what the government is up to in the present and what it did in the past. Access to information law helps by holding governments accountable to its citizens, checking improper conduct, human rights abuses, serves as a valuable anti-corruption tool, ensures transparency and builds public trust. “The free flow of information and ideas lies at the heart of the very notion of democracy and is crucial to the

effective respect of human rights”. According to Dr. Patrick Matibini, *The Struggle for Media Law Reforms in Zambia*, he argues that central to the guarantee in practice of the free flow of information and ideas, is the principle that public bodies hold information not for themselves but on behalf of the public. Therefore, this information must be readily accessible to the public in the absence of compelling or overriding public interest to justify secrecy of the information, because public bodies are only custodians of this public information.

Access to information law also serves as a pre-requisite for the effective functioning of democracy in any country because it allows the public to fully and effectively participate in policies that affect them and in combating corruption and wrong doing in government. As Supreme Court Justice Louis Brandes famously noted, “[…] a little sunlight is the best disinfectant”. Jane Kirtley explains the history of access to information laws, she starts by mentioning that freedom of information laws share common principles and characteristics. Jane Kirtley says that most freedom of information laws have been influenced by the U.S. federal Freedom of Information Act (FOIA) which was signed by President Lyndon B. Johnson on July 4, 1966.

Despite its name, the statute does not actually create a right of access to information, rather it establishes a presumptive right of access to existing records, in paper or digital form, held by executive branch agencies, departments, regulatory commissions, and government controlled corporations.

The access to information law must not only be for journalists but for all citizens, and the access must not be restricted only to certain government branches but must extend to all branches and agencies that hold public information. Any restrictions on classified information that can not be accessed by citizens must be provided for by law and narrowly defined, however, if the public interest in disclosure outweighs any harm then this information must also be allowed to be released upon request from the public. Any citizen denied access to classified information must have the right to appeal (internal and external review); the appeal should be sort from an independent tribunal or through the national courts.

67 Matibini, *The Struggle for Media Laws Reforms in Zambia*. P95
4.4 Literature Review on Freedom of Expression and Press Freedom

Freedom of expression plays a vital role in democracy and the latter can not exist without it. According to Dr. Alfred W. Chanda (1999), freedom of expression serves four main broad purposes; it helps an individual attain self-fulfilment, it assists in the discovery of truth, it enhances the capacity of an individual to participate in a democratic society, and provides the mechanism by which to establish a reasonable balance between stability and social change. Dr. Chanda argues that freedom of the press is a constituent part of freedom of expression. He defines freedom of the press as, “[…] the right to receive and impart ideas and information without interference. The expression ‘interference’ refers to legislative constraint and executive control”. Freedom of expression, human rights and press freedom can be traced to the First Amendment to the US Constitution and also Article 19 of the United Nations’ Universal Declaration of Human Rights, which recognizes free speech as a right that must be protected. The Nordic countries namely, Norway, Sweden and Denmark were also among the first to enact laws to recognize freedom of expression and protect the media from censorship. In Norway and Denmark, censorship was first abolished in 1770, it was later re-introduced but finally re-abolished again.

Sweden was in 1766 the first country to introduce a constitutional law where censorship was abolished and the freedom of the press guaranteed. The Law on the Freedom of Printing of 1766 was written by a committee of the parliament, during the Swedish "Era of Freedom" (frihetstiden). This law was also the first in the world to make most documents of the state authorities open and available for the citizens. This principle from 1766 is still an important part of the Swedish Constitution, and all Freedom of Information Acts in the world has grown out an application, usually in a very diluted way, of this Swedish "principle of public availability. However, there is a need to explore the main arguments that have been put forward for protecting freedom of expression, and determine whether the traditional old arguments are still valid and ‘waterproof’ in today’s circumstances, which are different from those in which they were first advanced. The First Amendment to the US Constitution states that;

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press, or of the people peaceably to assemble, and to petition the Government for a redress of grievances.\textsuperscript{71}

The First Amendment and the Bill of Rights were submitted for ratification on 25\textsuperscript{th} September 1789 in the United States of America (USA) but it was not until 15\textsuperscript{th} December 1791 when they were adopted. The First Amendment recognizes free speech and the exercise of this right, including freedom of the press. It also protects the people’s right to petition the government against grievances, placing power in the people to express themselves freely and without hindrance or censorship.

The United Nations Declaration on Human Rights echoed the provisions of the First Amendment in 1948. Article 19 of the declaration states that, "[…] everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and impart information and ideas through any media regardless of frontiers".\textsuperscript{72}

Many continental and regional Conventions and Declarations have arisen over the years such as the European Convention on Human Rights and African Charter on Human and People’s Rights. Article 10 of the European Convention on Human Rights states that;

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. \textsuperscript{73}

The African Charter on Human and People’s Rights Article 9 provides protection for freedom of expression by stating that, "[…] every individual shall have the right to receive information, and every individual shall have the right to express and disseminate his opinions within the law".\textsuperscript{74} These Conventions are only treaties signed by governments, meaning they have no direct impact on domestic law in any given country. The treaties can not become

‘law’ until their provisions are adopted by Parliament. In Zambia none of the treaties have been domesticated or adopted by Parliament. The government has been reluctant to include the Bill of Rights in the Zambian Constitution and yet the Zambian law is modeled from the British law because Zambia is a former British colony. On the other hand, Britain has domesticated the European Convention on Human Rights through the Human Rights Act.

In the UK this was done by the Human Rights Act 1998, which came into force on 02\textsuperscript{nd} October 2000 and from this date onwards, the European Convention on Human Rights was operated as part of UK’s domestic law, introduced by a statute (the Human Rights Act 1998) which by Section 12 gives Article 10 of the Convention special prominence. As a result, Article 10 is now a constitutional right in the UK.\textsuperscript{75}

The UK adopted the Human Rights rationale for freedom of expression and incorporated this into the British law because freedom of expression is important for a nation and serves a number of broad objectives. Firstly, it promotes the self-fulfillment of individuals in society. Secondly, in the famous words of J. Holmes (echoing John Stuart Mill), “the best test of truth is the power of the thought to get itself accepted in the competition of the market”. Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country. Other declarations and conventions have also made similar provisions to protect freedom of expression, one aspect they all agree upon is the fact that free speech is not absolute and must be weighed against other fundamental human rights.

Different countries have different laws that pertain to free speech and the media, including democratic countries in order to maintain peace, unity and harmony. Some countries are more liberal when it comes to free speech while others have laws that fall on the other extreme end. It is important to mention that in as much as free speech is important and must be protected, there are certain instances when free speech has to be suppressed for the good of the society and in this case government must show strong grounds for interference.

[…]. For example, particularly in times of war, it may be necessary to suppress certain kinds of information on the grounds of national security, and few would want to

defend the production and distribution of images that record actual rapes and instances of child abuse”.76

However, some scholars have argued that free speech is entitled to a greater degree of immunity from regulation than other forms of conduct which have the potential to cause similar offence because of its special quality or value attributed to communication and expression. When people are free to speak and write publicly about issues that affect them, then they are able to put pressure on government and push towards the direction of democracy.

The right to freedom of expression is based on the principle that statements and depictions that are controversial must come out in the open. Freedom of speech is not a right that exists in order to create peace and consensus in society. This means that we also must tolerate utterances that many will find deeply offensive and wounding.77

In John Betjeman’s England, “free speech” washes like fluoride through the suburban water supply, but as a cultural assumption rather than a constitutional right.78 When freedom is unprotected by legal rights, it gets limited in ways pleasant to those in power.

When the United Kingdom (UK) reintroduced licensing system in the media industry around the 1960’s, it provoked the poet John Milton and he made his cry through this great cri de Coeur, “Promiscuous reading is necessary to the constituting of human nature. The attempt to keep out evil doctrine by licensing is like the exploit of that gallant man who thought to keep out the cows by shutting his park gate……Lords and Commons of England, consider what nation it is whereof ye are: a nation not slow and dull, but of a quick, ingenious, and piercing spirit. It must not be shackled or restricted. Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties. In this cri de Coeur John Milton fashioned a rationale for media freedom that was taken up centuries later.79

Today freedom of expression remains a struggle to tell inconvenient truths, against the wishes not only of governments but also of powerful multi-national corporations and public figures.

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79 Robertson and Nicol, Media Law. P3
Below are the four pillars of press freedom and freedom of expression in the United Kingdom (UK) as propounded by Geoffrey Robertson and Andrew Nicol in their book *Media Law*;

### 4.4.1 Trial by Jury

Professor A.V. Dicey in 1885 formulated the argument that the jury is a true guarantor of free speech. “The jury’s constitutional right to acquit, irrespective of the law or of the evidence is a better practical protection for free speech than any number of constitutional guarantees”.  

The age of jurors and who qualifies to be a juror plays an important role in free speech. “A younger and more broadminded generation of jurors in the UK in the 1970’s emerged and this saw a lot of acquittals involving obscenity and as a result this made Rupert Murdoch feel safe to introduce ‘page 3’ nudes to The Sun”.  

Trial by jury makes government officials reluctant to put journalists and publishers in the dock of a criminal court for fear that the ‘gang of twelve’ will live up to their historic expectation and acquit.  

The rational is that a jury can do justice and acquit using public interest, whereas the judge, who takes pride in just interpreting the law, lacks in common street knowledge and is highly unlikely to acquit using public interest. The principle that public interest is better served by a reasoned verdict is a logical development if society looks to the courtroom as a mechanism for extracting and declaring truth. However, juries are human beings and may be swayed by tear-jerking family members and may end up acting out of sympathy, also celebrities or well-known figures may get away with some cases that should be punishable.

### 4.4.2 Open Justice System

“No public inquest or inquiry can be truly public unless the evidence, at least when given by officials and public figures, is made available for radio and television”.  

Justice must not only be done but must be seen to be done. The media should be allowed to cover court cases because publicity keeps the judge himself, while trying under trial.

The prospect of open justice has advantages, once evidence and arguments are publicly known then society will be able to judge for itself the quality of justice administered and also it guards against perjury, witnesses are more likely to tell the

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81 Robertson and Nicol, Media Law. P8  
82 Robertson and Nicol, Media Law. P23
truth if they know that any lie they tell might be reported and provoke others to come forward and dis-credit them.\textsuperscript{83}

Therefore, media reporting of court cases enhances public knowledge and appreciation of the workings of the law, and it assists the deterrent effect of heavy jail sentences in criminal cases. Open justice system must permit journalists to televise public inquiries on television and radio, a broadcaster must have the right to televise this because the information is good in helping to form public opinion. Journalists should also be allowed to take photographs inside the court room. However, other scholars share different philosophies, they believe that cameras in court undermine the right to a fair trial by disrupting proceedings, intimidating witnesses and encourage lawyers to act inappropriately. For example;

The coverage of the notorious O.J. Simpson murder trial in 1995 in California continues to influence judges and policy makers around the World, even though Simpson was acquitted many judges and policy makers believe that the presence of cameras during the O.J. Simpson murder trial which was televised live on national and international TV stations might have had an influence on witnesses and the normal course of court proceedings.\textsuperscript{84}

As a result, countries have statutory exceptions to open justice system, for example, rape victims are entitled to anonymity in order to mitigate their humiliation and encourage other victims to come forward and also in juvenile cases the offenders are not identified.

\subsection*{4.4.3 The Rule Against Prior Restraint}

The media must be free to publish and be damned, “[…] meaning they should be free to publish whatever they want so long as damnation comes after, and not before the word gets out”.\textsuperscript{85} Any country that takes freedom of speech seriously should make this a right. The granting of interim injunctions by judges is an infringement on the rule against prior restraint and freedom of expression consequently. Debate and discussion is stifled when speech is stopped before it is uttered or published, any sanctions should come only after publication has taken place and the media should take responsibility for their actions. Governments have so many justifications for invoking the prior restraint close and the most commonly used is ‘national security’. Governments use national security to justify censorship and prior restraint,

\textsuperscript{85} Kirtley, Media Law Handbook. P23
by claiming that information about to be published or uttered hinges on national security. This situation happened in the United States;

The Supreme Court of the United States considered this issue in the *New York Times Co. v. United States* (1971), often referred to as the Pentagon Papers case. After the *New York Times* begun publishing excerpts of classified documents about the American involvement in the Vietnam, the administration of President Richard M. Nixon sought a judicial restraining order to stop further publication. The Supreme Court ruled against the government. ‘Any system of prior restraints comes to this Court bearing heavy presumption against its constitutional validity,’ the Court noted and concluded that in this case the government had failed to meet the heavy burden of showing justification for the imposition of such a restraint…the case of the Pentagon Papers has created a virtually insurmountable barrier to govern imposed censorship on national security grounds in the United States.” Never since has the Supreme Court upheld a prior restraint on the media’s ability to publish national security information, not even in the post 9/11 environment.86

The Nordic countries have some of the best freedom of expression practices in the world today. The media is free from interference and laws have been enacted and implemented to promote rather than suppress freedom of expression. Article 100 of the Norwegian Constitution states that;

There shall be freedom of expression.

No person may be held liable in law or any other grounds than breach of a contractual or other obligation under private law for having imparted or received information, ideas or messages unless such liability can be justified in relation to the grounds for freedom of expression, which are the seeking of truth, the promotion of democracy and the individual’s freedom to form opinions. Such legal liability will be prescribed by law.

Everyone shall be free to speak his mind frankly on the administration of the state and on any other subject whatsoever. Clearly defined limitations to this right may only be imposed when particularly weighty considerations so justify in relation to the grounds for freedom of expression.

Prior censorship and other preventive measures may not be applied unless so required in order to protect children and young persons from the harmful influence of moving pictures. Censorship of letters may only be imposed in institutions.

Everyone has a right of access to documents of the state and municipal administration and the right to follow the proceedings of the courts and democratically elected bodies. Limitations to this right may be prescribed by law to protect the privacy of the individual or for other weighty reasons.

The state authorities shall create conditions that facilitate open and enlightened public discourse.\(^\text{87}\)

This Article is one of the finest models when it comes to setting a media tone in any given country because it states that prior censorship cannot take place starting from the Constitution, which happens to be the supreme law in every nation. Article 100 also gives provisions under which prior censorship may be imposed, and these provisions are clearly and narrowly defined.

**4.4.4 Freedom from Government interference**

According to Geoffrey and Nicol (2007), they argue that government has no direct control over the press. A different form of political influence on television programmes is provided by the government’s power of appointment to controlling bodies of the television stations such as the IBA board. The make-up of these boards can be crucial particularly when government exerts pressure over the broadcasting of certain programmes.

Many of the criminal laws that affect the media, official secrets and prevention of terrorism, and most of the laws relating to contempt, reporting restrictions and obscenity in the UK can not be invoked in the criminal courts by anyone except the Attorney General or Director of Public Prosecution (DPP) who works under the Attorney General’s superintendence.

The Attorney General has the discretion to prosecute or not to prosecute depending on the view of the public interest. And in exercising his discretion he is entitled to take into account any consideration of public policy that bears on the issue, and the public

policy on free speech is important in deciding whether to launch official secrets or contempt or obscenity prosecutions.\(^{88}\)

However, there is a danger in placing over-much reliance on the Attorney General’s discretion. He is after all, a member of the government, as well as the leader of the legal profession. Hence, in deciding public policy, he will obviously be influenced by the outlook of the political party of which he is a member and by the value of the profession he leads. These influences will not always incline him to the view that revelation of particular legal or political material is necessarily in the public interest.\(^{89}\) This scenario is similar to what is happening in Zambia with regards to government interference in the operations of the media, having been a British colony most laws that exist in Zambia are a model of the British system.

### 4.5 Freedom of the Press Act in Sweden


In 1766, Sweden enacted the first Freedom of the Press Act aimed at protecting freedom of expression and information. The Act prohibited prior restraint, regulated the criminal responsibility of expression, and made public documents widely available to the public. The current Freedom of the Press Act was amended in 1949. The first basic rule is that everything printed is protected by the Freedom of the Press Act. The second important feature of the Act is the rule of “single-person responsibility” [...] for any crime under the Act only a single person may be held legally responsible. The third feature is that any legal procedure against someone based on material protected by the Freedom of the Press Act can only be initiated by a single prosecutor in the whole country, the Chancellor of Justice (Justitiekanslern, JK). [...] the JK is expected to take the greatest possible care not to unduly infringe upon freedom of expression. The fourth important feature is that trial of cases that fall under this Act includes a jury. If the jury finds the accused not guilty, that verdict stands and the judges play no role. However, if the jury finds the accused guilty, then the judges must also make that judgment in order to convict the accused. And Lastly, the protection of informants is a very pivotal feature of the Freedom of the Press Act and the Swedish constitutional law has taken this concept a step further, not only is there a right to remain anonymous.

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\(^{89}\) Robertson and Nicol, *Media Law*. P38
as a source, there is an explicit prohibition in the Act against asking questions on the topic of sources in any legal proceedings.  

4.6 Chapter Summary

Chapter four has analyzed different literature regarding media systems, media laws, freedom of expression and press freedom in order to gain a deeper understanding of these topics and understand how they interact. The chapter draws practical examples from countries such as Norway, Sweden, Britain, South Africa and USA that are regarded to have some of the internationally accepted best practices of media systems, media laws, freedom of expression and press freedom. In any country, media laws that exist are a reflection of the media system that is practiced and to a certain extent this has a historical orientation. The Zambian media seems to have remnants of principles of different media systems, as a result, the Zambian media system can not be easily classified in just one of the media systems identified in this research. Regarding media law, there are legislative principles, institutions and cultures that govern a good media law environment and these are highlighted and discussed in this chapter. The chapter has also discussed the key principles of press freedom and freedom of expression.

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Chapter 5 Methodology

5.1 Introduction
Chapter four has presented the literature review on which this research is based and Chapter five is an account of the research methodology as used in this research. The chapter is organized as follows; section 5.2 talks about qualitative legal research; section 5.3 presents qualitative interviews; section 5.4 is document analysis which deals with analysis of various court cases; section 5.5 is about how the qualitative data has been organized; 5.6 gives an insight into qualitative data presentation and display; and finally section 5.7 ends with a chapter summary of the methodology.

5.2 Qualitative Legal Research
Qualitative legal research is defined by McConville & Wing Hong as, “[…] non-numerical and contrasted as such to quantitative (numerical) research”.91 The authors identify that there is a difference between academic legal research and legal research for professionals (legal practice). This research is categorized in the academic legal research which is for students and academicians. According to McConville and Wing Hong there are two kinds of qualitative legal research namely; doctrinal and non-doctrinal research. “The aim of doctrinal research is to collect and analyze a body of case law, together with any relevant legal legislation and may include secondary sources as well such as journal articles”.92 McConville and Wing Hong argue that this kind of research is branded as non-empirical as it is purely theoretical because it only provides an analysis of the law to demonstrate how it has developed in terms of judicial reasoning and legislative enactment.

On the other hand, non-doctrinal research is considered more empirical than doctrinal research because it involves both legal and socio-legal research. “Non-doctrinal research involves assessment of the problem, evaluation of policy and the need for law reform and these require an empirical approach (which can be qualitative, quantitative or a combination of both)”.93 Assessment of the problem, evaluation of policy and the need for law reform include a consideration of the social factors involved and/or the social impact of current law and practice. As a result, there is no difference between the non-doctrinal legal research

92 McConville and Chui, Research Methods for Law. P19
93 McConville and Chui, Research Methods for Law. P20
approach and empirical research approach because they both follow standard systematic rules and patterns of scientific research. However, assessment of the problem, evaluation of policy and law reform are not mutually exclusive meaning they do not necessarily have to exist at the same time in the same research, although large scale research has tended to involve all three. The argument is that for students this may not be possible because of limited resources and time.

The focus of this research is to examine the Zambian media laws in relation to press freedom and freedom of expression, and the role of the state in media regulation. Therefore, this research undertakes qualitative legal research that is empirical in nature because this will make it more relevant in society than just conducting non-empirical and non-systematic reviews of law articles or journals.

5.3 Qualitative Interviews

As described by Arthur Asa Berger, “[…] an interview is a conversation between a researcher (someone who wishes to gain information about a subject) and an informant (someone who presumably has information of interest on the subject)”\(^{94}\). There are a number of ways of getting information from people, however, unless people are observed for a long period of time we can not know much about their past activities. But we can discover this information by asking them about it through interviews. In this research, qualitative interviews have been used to find out people’s ideas, thoughts, opinions, and attitudes on the existing media laws in Zambia in relation to press freedom and freedom of expression, asking relevant questions directed at relevant people who have witnessed and experienced how the role played by the state in Zambia affects media regulation. There are four different kinds of interviews namely; informal interviews, unstructured interviews, semi-structured interviews and structured interviews. This research has adopted ‘semi-structured interviews’ because this type of interviews will help the researcher to gain the necessary information needed to answer the research questions and achieve the objective of the research. The researcher purposefully selected participants in the semi-structured interviews who helped the researcher to understand the problem and research question. After purposefully selecting the participants in the interviews, the researcher then travelled to Zambia and conducted face-to-face interviews. The semi-structured interviews were selected because they allowed the researcher to conduct the interviews using open ended questions. “Open ended questions are few in number and are

intended to elicit views and opinions from the participants”. The interviews conducted in this research also guaranteed anonymity to the respondents.

In order to ensure that information is accurate an interview protocol has been used by asking questions and recording answers from the respondents. The interviewer in this research used audio taping of the interviews and at the same time also took down hand written notes for reference and as a back-up plan. The audio tapings have been transcribed from the oral format in to the written format for analysis. The date of the interview, the place where the interview occurred and the full names of the person interviewed have also be written down for reference.

5.3.1 Purpose of the study

The purpose of the study is to examine the Zambian media laws in relation to press freedom and freedom of expression, and the role of the state in media regulation. This purpose has made the researcher determine the type of interviews to be adopted to solve the problem. Hence, the researcher has adopted semi-structured interviews, mainly key informant type of semi-structured interviews because in a key informant interview;

   The interviewer collects data from individuals who have special knowledge or perceptions that would not otherwise be available to the researcher. Key informants often have more knowledge, better communication skills, or different perspectives than other members of the defined population.

Key informants identified in this research have special knowledge on media laws in Zambia and are better trained in the area of media legislation, press freedom, freedom of expression and law. They also possess a lot of experience and are capable of breaking new grounds and this kind of information will be very useful for the researcher as it will shade more light on the media laws in Zambia.

5.3.2 Selecting Sample

The sampling in this research is highly flexible and has been modified as the research is conducted in order to gather as much information as possible regarding the subject under study, this is common in qualitative research. The researcher adopted purposeful sampling by

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carefully selecting the individuals to be interviewed that helped to solve or share more information on the subject under study. “In purposeful sampling, the goal is to select cases or individuals that are likely to be ‘information rich’ with respect to the purpose of the study”. 97 There are different types of purposeful sampling and in this research, maximum variation sampling has been adopted and “[…] this involves selecting cases or individuals that illustrate the range of variation in the phenomena to be studied”. 98 This kind of sampling does not intend to provide a representative sample of the population of Zambia, but to obtain an in-depth understanding of the experiences and opinions of the selected individuals on the particular subject under study.

Individuals from the following institutions have been purposefully sampled and interviewed; University of Zambia – Department of Mass Communication Senior Lecturer, Evelyn Hone College – Department of Journalism Senior Lecturer, Media Institute of Southern Africa (MISA) Zambia Chapter – Chairperson, The Post – Chairperson of the Press Freedom Committee, Daily Nation Newspaper – News Editor, Radio Phoenix – Managing Editor, QFM Radio – Managing Editor, and Muvi Television – News Editor. Attempts were made to also interview individuals from the state owned media and the Ministry of Information and Broadcasting Services but all of them declined to be interviewed.

5.3.3 Designing Interview Format
An interview guide used in this research was designed with general questions on topics concerning the subject of study. Even though these general questions were prepared in advance, the interviewer was very flexible as respondents were given freedom and allowed to explain their responses in order to obtain additional information. The research adopted a lot of open ended questions in order to solicit for more information and the wording of follow up questions was decided by the interviewer depending on how the interview was progressing. The interviewer did not divert from the topic of study during the course of the interviews and also politely encouraged interviewees to do the same, only when necessary.

An interview guide lists the questions or issues that are to be explored in the course of an interview. An interview guide is prepared to ensure that the same basic lines of inquiry are pursued with each person interviewed. The interview guide provides topics

98 Gall, Gall and Borg, Education Research: An Introduction. P182
or subject areas within which the interviewer is free to explore, probe and ask questions that will elucidate and illuminate that particular subject.\textsuperscript{99}

During interviews the variables of interest in this research were not pre-specified by the researcher. Instead, it was decided that, “[…] at the stage of analyzing data, the researcher might choose to identify quantifiable variables or broad themes and patterns”.\textsuperscript{100}

\subsection*{5.3.4 Transcribing Interviews}
This research generated 294 minutes of un-transcribed interviews, and in order to make sense of these interviews they had to be transcribed. Transcription of interviews is a very time consuming exercise and generally a tedious process. There are different ways of transcribing interviews and in most cases where the volume of interviews is overwhelming it is advised to use a transcribing machine or computer software. However, even with this technology designed to help make transcribing interviews easy, “[…] it is still risky because there may be some important words that the word recognition program misses…even though some programs claim up to 95% accuracy”.\textsuperscript{101} Therefore, since this research has only 294 minutes of un-transcribed interviews the researcher decided to transcribe the interviews manually by listening to each interview and manually writing the information provided by the interviewees. This approach to transcribe interviews manually was adopted because even if computer software is used to transcribe the interviews, the researcher still has to go through the material and fix errors which would eventually be time consuming. And given the volume of interview material under study in this research, the researcher decided that this was the best method of transcribing these interviews to ensure 100% accuracy. The method used in transcribing interviews is a matter of style and preference and in this research manually transcribing the interviews is calculated to provide the best results within the timeframe desired by the researcher, and within the limits of scientific research.

\subsection*{5.4 Document Analysis}
“Document Analysis involves using already existing materials such as texts or images, which can be analyzed in a qualitative or quantitative way depending on the research question”.\textsuperscript{102} In this research, Court cases that relate to each particular media law in Zambia have been


\textsuperscript{102} Flick, Uwe (2011) \textit{Introducing Research Methodology}. London: SAGE publications Ltd. P122.
carefully selected and analyzed in a qualitative manner. This process of document analysis helped the researcher to save a lot of time at the data collection stage because it involves selecting information from data that already exists. This research analyzed only written materials (Court cases) in order to shed more light on issues of media laws in Zambia as these Court cases occurred in a natural setting, thereby providing strong data validity and reliability for the research. These documents are readily available and have been accessed on various databases, books, journals and the Ministry of Justice in Zambia. Hence, the Court cases are classified as secondary data because they are not produced for the purpose of this particular research but have been collected and used in this research to further understand the subject under study.

### 5.4.1 Sampling

One or two Court cases will be sampled in relation to a particular media law in order to gain more understanding of the subject under study. Only one or two Court cases have been selected under each media law in Zambia because much of the evidence is provided using other research methods such as interviews, the purpose of the Court cases is to validate the information collected using the other research methods. The Court cases have been used to authenticate evidence that a particular media law that infringes on press freedom or freedom of expression has indeed been exercised by the Courts of Law in Zambia.

### 5.5 Qualitative Data Organization

After transcribing the interviews and conducting document analysis, data has been organized systematically in order to ensure easy access and reference when coding. In order to obtain themes to properly organize the data collected in this research, the researcher has adopted the cutting and sorting manipulative technique because this technique can be applied to any qualitative data, does not require any special computer skills and has low labour intensity. It is also easier because it can be undertaken even by an individual with low expertise in language, substantive and methodological aspects of data analysis.

After the initial pawing and marking of text, cutting and sorting involves identifying quotes or expressions that seem somehow important – these are called exemplars – and then arranging the quotes/expressions in to piles of things that go together.\(^{103}\)

The researcher found it reasonable to arrange the quotes and expressions from interviewees based on the existing media law statutes in Zambia. The names of the media statutes referred to by interviewees when answering questions are already known. Hence, the researcher was just required to sort out similar quotes and expressions from interviewees regarding certain media statutes in Zambia in to piles and giving these piles a name according to the names by law that exists in Zambia. These piles of names of media law statutes that exist in Zambia become what are termed as ‘themes’ for this research.

According to Bernard H. Russell and Gery W. Ryan, there are so many principles for analyzing themes and this question has a long history, but they argue that themes more naturally connote the fundamental concepts we are trying to describe.\(^\text{104}\)

These themes once identified also provided the researcher with a basis for classifying information obtained from document analysis. Therefore, each Court case reviewed in this research has been placed under the identified theme or media statute to which the Court case relates to in order to determine that there is sufficient evidence of the existence and subsequent exercise of a particular media statute. Once themes have been identified, the researcher had two options namely; either to use the technique of splitting or lumping. “Splitters maximize the differences between items and generate more fine-grained themes while lumpers minimize the differences and identify more overarching themes”.\(^\text{105}\) In this research both techniques have been utilized by first splitting the available information at the early stages of data analysis, then lumping it in order to come up with principal themes.

5.5.1 Qualitative data coding process

There are three kinds of codes namely; structural codes, theme codes and memos and in this research the last two types of codes (themes and memos) have been utilized. “Theme codes show where the themes we have identified actually occur in a text. Memos are field notes about codes and contain our running commentary as we read through texts”.\(^\text{106}\) When the transcribed interviews and information from documents were organized properly in this research, the next step was to find ways of making sense out of the information available. According to Arthur Asa Berger, “[…] there are no absolute rules about how coding is done;
a great deal depends on the nature of the material being coded”. In this research, the interviews conducted and documents analyzed have been read thoroughly and an overview of the information has been obtained by the researcher. Hence, a list of the topics covered by the interviewees was developed based on the interview schedule and a list of different media statutes in Zambia. These topics were turned into categories, and these categories covered all the transcripts. A full-featured text management program has been adopted to make coding easier in this research, as this is also effective in complex research projects. According to Bernard H. Russell and Gery W. Ryan, a full-featured text management program works as follows;

Basically, the codes are linked to chunks of text or to points in the text, and the codes and memos are all linked. You build a code book as you go, highlighting a chunk of text and assigning it a code by opening up a codebook window. If the code exists already (If you have used it before for some other chunk of text), you just click on the code and the highlighted chunk of text is then associated with that code. If you need a new code, you name it and add it to the codebook.

In this research, the researcher has adopted the categories made from the topics mentioned above as code names and has added them to the codebook based on the existing Zambian media statutes. The codebook was not rigid, it was flexible and new codes were added as new information relating to new statutes in the Zambian media laws developed from the text from interviewees or document analysis, which the researcher may not have known about beforehand or may have ignored initially. With the inclusion of each code, the researcher reserved the right to add memos which presents the researcher’s observations on a particular code based on the information gathered and these memos form part of the discussion. All memos were hyperlinked to the original text and as data analysis progressed the researcher again reserved the right to add, delete or edit memos. Intercoder reliability was achieved in this research because the researcher constantly kept the information and coding process under strict scrutiny by the research supervisor and also used friends (master students) at the University of Oslo to go through the material and try to find new codes that may have been missed initially. “Intercoder reliability is vital if you are going to do statistical analysis on

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your data” ¹⁰⁹ and this was not the case in qualitative interviews and document analysis in this research.

5.6 Qualitative data presentation and display
This is the part of the research where the findings or results are presented and the quality of the writing plays an important role in the way readers respond to the research. The researcher relied on his understanding of empirical research to compile the data and present it in an organized and legible manner to provide the reader with easy understanding of the key findings in this research. The findings have been logically structured, with comments, criticism and suggestions all taken in to consideration. The researcher has been very objective in the presentation of data in this research, as Arthur Asa Berger says, “[…] researchers must be honest and report the results of their research; this is part of the ethics of research…even if the results are distasteful to the researcher”. ¹¹⁰

The data from both interviews and document analysis have been presented together. The qualitative data has been presented in the form of media statutes that already exist in Zambia, explaining what each law regulates and its weaknesses, or strengths in relation to press freedom and freedom of expression. This is then related to international best practices and also the views and opinions of different interview respondents to questions regarding this particular statute, and then the opinion of the researcher on that particular media statute. Lastly, on each statute the researcher endeavors to provide examples of Court cases where this law has been exercised or abused by the state to intimidate, control or interfere in media legislation in Zambia. The researcher gives a critical opinion and recommendation on each statute based on the information as presented above in that chronological order.

5.7 Chapter Summary
The chapter has presented the methodology as used in this research. The research adopted qualitative research method combining qualitative interviews, with document analysis. The research method has been embraced because it will provide the research with the much needed information that will help to understand and answer the research questions and achieve the purpose of this research. Qualitative interviews and document analysis have been used to understand the Zambian media laws in relation to press freedom and freedom of expression, and the role of the state in media regulation. This chapter has justified the use of

the above research methods, and how these shall assist in achieving the purpose of this research. The chapter also gives an overview of how the data analysis and compilation has been achieved in this research.
Chapter 6 Theoretical and Conceptual Framework

6.1 Introduction
Chapter 6 is an outline of how this study has been organized at the theoretical and conceptual level. This chapter serves as the reference point for data analysis and discussion of findings and it is organized as follows; Section 6.2 is the presentation of the rationale for the theoretical framework; Section 6.3 covers the Libertarian Theory of the Press; Section 6.3 looks at the Social Responsibility Theory of the Press; and lastly Section 6.4 presents the chapter summary.

6.2 Rationale for the Theoretical Framework
From a journalistic point of view, there are basically two major general schools of thought regarding media law theory and regulation. There are those who advocate for as little or no government interference in the media as possible in order to promote press freedom and freedom of expression. However, there is also the opposing school of thought and these argue that, “[… ] government intervention through law, subsidies and regulation are necessary to promote the free flow of information and to protect other fundamental rights”.111 The opposing school of thought argue that without government intervention, the media cannot be trusted to guarantee that they will protect civil liberties such as the right to privacy, among others. In this research, the first school of thought which advocates for little or no government interference in the media has been adopted and the researcher has selected theory that shall support and promote the principles of this school of thought regarding media law and the role of the state in the media in Zambia.

Consequently, the research has adopted a two-fold approach in the theoretical and conceptual framework by using two of the four main theories of the press namely; the Libertarian and Social Responsibility theories as proposed by Fred Seaton Siebert, Theodore Peterson, and Wilbur Schramm.112 The four theories of the press are largely considered to be outdated, nevertheless they are still influential and are being used as a background for further discussion of the media in today’s world. The Libertarian and Social Responsibility theories of a free press are both designed to prescribe certain principles of a free press and media ethics. The

two theories have been adopted in this research because it can be argued that even though the principles of a free press and media ethics belong to a separate category from issues to do with law, it can also be proved that the three categories certainly overlap in theory and practice.

In theory, principles of a free press and media ethics justify laws and legal practice. From a journalistic perspective, the way the media industry operates raises both legal and ethical questions on a daily basis and in deciding whether or not to publish material, the newsroom first has to seriously examine the legal aspects or consequences of the material to be published, thereafter, the newsroom enters into a debate to consider ethical issues surrounding that material. Furthermore, principles of a free press and ethical standards such as fairness and accuracy are used by the Courts to evaluate stories for defamation, libel and other legal media related cases. Therefore, principles of a free press, media ethics and law are intertwined categories in discussions of press freedom and freedom of expression. Hence, this research has adopted a combination of the main principles of the Libertarian and Social Responsibility theories of the press which shall form the backbone of arguments in this research, with special reference to Hallin and Mancini’s idea of a sophisticated model of modern media theory based on comparative analysis of media systems.

In as much as these theories seem old and have certain weaknesses, one cannot simply ignore the strengths they pose regarding the role of the media in society and the role of the state in the operations of the media. It is imperative to have an understanding of the strengths of these theories because Fred Seaton Siebert, Theodore Peterson, and Wilbur Schramm “[…] gave a welcome push to reasoning about the role of the media in society by suggesting different systems of the press as linked to different systems of governance”.\footnote{Nordenstreng, Kaarle (2006) 	extit{Researching Media, Democracy and Participation}: The intellectual work of the 2006 European Media and Communication Doctoral Summer School. Chapter: Four Theories of the Press – Reconsidered. Tartu University Press. P35}

In this research, the researcher examines the Zambian media laws in relation to press freedom and freedom of expression, using a combination of the principles of the Libertarian and Social Responsibility theories of the press. The research also examines the role of the state in media regulation, basing this on the fact that Zambia is a democratic country and has been democratic for over 20 years.

Some scholars have criticized the four theories of the press, Hallin and Mancini when discussing in their book about the 	extit{four theories of the press} argued that, “[…] it is time to
give it a decent burial and move on to the development of more sophisticated models based on real comparative analysis. However, Hallin and Mancini also appreciate the difference that exists between emerging democracies and mature democracies and readily admit their bias in analysis towards mature democracy when they developed the three model paradigm of media and politics; the polarized pluralist model, democratic corporatist model and the liberal model. Therefore, there is need for broader applications of different theories when studying media systems in different countries, what may work in one country or group of countries may not necessarily work in another country or group of countries. In the same light, Fred Seaton Siebert, Theodore Peterson, and Wilbur Schramm assumed a universal applicability of each of their theories but this is difficult to conceive in modern society, different countries may need theoretical approaches that are relevant and address the main aspects that are resulting in media glitches in those particular countries.

Hence, this research adopts a combination of just two of the four main theories of the press because they provide a framework for media operations that seems suitable in the Zambian media context. The researcher’s proposition is that there is a gap between the role the media plays in developed countries and the role it plays in less developed countries. In the Zambian context, what is required is a foundation of strong principles on which the role of the media in the Zambian society can be defined and developed. It is this foundation of strong media principles that shall create a new media system that will lead to stronger media laws by improving the media policy framework and making it more democratic and liberal, devoid of political manipulation or government interference. And the combination of the Libertarian and Social Responsibility theories of a free press provide such strong media principles that are capable of building a stronger and independent media policy framework that will also be in harmony with democratic principles of a free press. An attempt to jump straight in to the more sophisticated models or theories might obscure the whole idea of how to envisage the development of a free and vibrant press in Zambia that shall be built on a strong and independent legal media framework. The current stage of media evolution in Zambia is best aided by a combination of the Libertarian and Social Responsibility theories of the press, and once a strong foundation has been developed then the media in the country can begin to aspire for more sophisticated models or theories. The media legal framework situation in Zambia right now calls for a basic theory that shall start the ball rolling for better and sophisticated

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models or theories in the near future. Despite numerous attempts over the years to enact better media laws in Zambia, the situation largely remains the same because the government is full of anxiety concerning media policy, and there has been a lack of political will.

Katrin Voltmer in her chapter in the book *Comparing Media Systems Beyond The Western World*, argues that media systems have to be amended when studying countries other than the ones where the media analysis was done (western countries) because this potentially leads to conceptual overstretching and disguises the broad variation of patterns that can be found empirically outside the western world;\(^{115}\)

In spite of the forces of globalization, the transitions from authoritarian rule have not resulted in a homogenization of democratic practice. Rather, the trajectories of the past and the cultural frames within which the political institutions are interpreted by those who are putting them into practice have given way to a puzzling diversity of what is broadly labeled ‘democracy’ and ‘democratic media’. Thus, neither the political systems nor the media systems that emerged during the recent wave of democratization fit easily in to the concepts and models that have been developed for western contexts.\(^{116}\)

Zambia has been a democratic nation since 1991, but the media system and media laws that exist are largely a carry-forward of the system and laws that were used during colonial rule and the one-party state with just minor changes. The media system makes it difficult to enact media laws that reflect the tenets of democracy because it favours those in authority and they would rather keep the status quo in order to continue benefitting from it than enact fresh laws that are media friendly. And for this reason, a combination of the Libertarian and Social Responsibility theories of the press is valuable in the Zambian media context as it shall set the motion of the idea of a better media model and pave the way for further discussion and lobbying for more sophisticated models or theories in the near future. At the same time, this will lift the lid of anxiety on the part of government so that they may be able to change the current media system and enact better media laws that will reflect the tenets of democracy and ensure press freedom. The Libertarian and Social Responsibility theories of the press when used simultaneously they form an ideal media system that reflects the principles of


\(^{116}\) Voltmer, “How far can the media systems travel”. P244
democracy, press freedom and freedom of expression that can help to solve the many challenges faced by the media in Zambia today.

The Libertarian Theory assumes that the media’s main goal is to convey the truth and that the media will not cave in to outside pressure such as the state or corporate owners.

In the Libertarian Theory the press is not an instrument of government but rather a device for presenting evidence and arguments on the basis of which the people can check on government and make up their minds on policy. Therefore, it is imperative that the press is free from government control and influence.\textsuperscript{117}

The Libertarian Theory proposes that ownership of media should be chiefly private and takes the philosophical view that man is rational and able to discern between truth and falsehood, therefore can choose between a better and worse alternative. The Social Responsibility Theory accepts the concept of the Libertarian Theory but freedom of expression under this theory is not an absolute right as in the Libertarian Theory, the belief is that a person’s freedom of expression must be balanced against the private rights of others and vital social interests in order to ensure that the media is responsible.

If the media fails to meet their responsibility to society then government should encourage the media to comply. The Theory states that the government should intervene cautiously and only when the need is great and the stakes are high. It should not aim at competing with or eliminating privately owned media. In short, the government should not act with a heavy hand. Any agency capable of promoting freedom is also capable of destroying it.\textsuperscript{118}

Hence, a simultaneous approach that supports the combination of the Libertarian and Social Responsibility theories of the press is adopted in this research in order to have a free press in Zambia and define the role of the media without government interference in the media system and regulation. The media ought to be free from government interference and operate freely, so that it can play its role as a medium for communicating the truth which must be weighed against the rights of other members of the public. And for this to happen, the media legal

\textsuperscript{117} Siebert, S. Fred, Petersen, Theodore and Schramm, Wilbur (1969) \textit{Four Theories of the Press}. Chicago: University of Illinois Press. P3

\textsuperscript{118} Siebert, Petersen and Schramm, \textit{Four Theories of the Press}. P95
framework must reflect principles of a free press as proposed by a combination of the Libertarian and Social Responsibility theories.

6.3 Libertarian Theory
The Libertarian theory of the press can be traced as far back as the 17th century. The concept of a Libertarian press evolved from the idea that people who are given all the information on an issue will be able to discern what is true and what is false and will make good choices. This is an idea embraced by the writers of the U.S. Constitution and by other democratic governments that rank high when it comes to freedom of expression. This theory assumes that the media’s main goal is to convey the truth and that the media will not yield to outside pressures, such as from advertisers or corporate owners. This theory also assumes that people with opposing viewpoints will be heard and that the media will present all points of view.

In the libertarian public sphere, interested parties are supposed to advance interested arguments for their positions, and rational individuals are supposed to choose from among the competing arguments those that best suit their interests; the outcome will be the adoption, as if directed by an invisible hand, of a position that will promote the common good.119

Siebert et. al. (1969) argue that the underlying purpose of the media under this theory was to discover truth, to assist in the process of solving political and social problems by presenting all manner of evidence and opinion as the basis for decision making. And the dominant aspect of this idea was total freedom from government controls or dominion. Fred Siebert, Theodore Petersen and Wilbur Schramm also outline what the functions of the mass media ought to be under the Libertarian theory of the press;

Under the Libertarian concept the functions of the mass media of communication are to inform and entertain. And a third function was later developed to provide a basis of economic support and thus to assure financial independence. This was the advertising function.120

The essential characteristic of the Libertarian theory is emphasis on freedom from government interference in the operations of the media. The argument is that the government is an interested party in the outcome of a dispute and if the media is going to perform its watchdog role to provide the checks on government then there was need to free the media from the hands of government manipulation and control. In the libertarian theory the government has no right to restrict the operations of the media because if that was the case, then government “[…] would inevitably suppress that which was critical of the state or which was contrary to the opinions of government officials”. Hence, it is important to separate the operations of the media from that of the government because they can not be thoroughly trusted to identify its ends with the ends of its citizens. Liberal theorists argue that a free and vibrant press also serves as one of the pre-requisites of functional democracy. The existence of unfettered and independent media has the potential to facilitate greater transparency and accountability in governance, by serving as a watchdog as well as providing a civic forum for multiple voices in public debate, and highlighting social problems. A free press is not just valuable for democracy but is also important for human development because it enhances the voice of the poor and generates more informed choices about economic needs when voicing their concerns and pointing out injustices.

The Libertarian theory also promotes private ownership of all forms of media and does not subscribe to the notion of state owned media. According to the theory, anyone with the necessary capital should be free to set up and own a medium of communication, and operate it and compete in an open market devoid of government interference, like any other business enterprise. The forces of the open market are promoted by the theory as the benchmarks to determine success or failure depending on the ability to compete favourably with other media and make a profit in the media market. The Libertarian theory is opposed to the concept of economic support of the media by government because this tilts the market and makes it favourable for some media to out-perform the others and sustain their existence in the market based on an inflow of government financial support. “In the end, the success of any media enterprise would be determined by the public which it sought to serve based on its ability to satisfy those customers”.  

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122 Sierbert, Petersen and Schramm, *Four Theories of the Press*. P52
However, the Libertarian theory of the media can only suffice in a democratic society. The functions of the Libertarian theory of the media get choked in an authoritarian state. Zambia is a democratic state and has been democratic for over 20 years, hence this is the right time to propose the functions of a Libertarian model of a free press in Zambia. The Zambian government has for a long time operated state owned media (TV, radio and newspapers) with heavy interference which has consequently led to these media houses becoming biased, and providing one-sided information. There is government interference and all the state owned media never criticize government even when the government has done something wrong.

The Libertarian theory recognizes the fact that there are so many limitations on the freedom of the press and freedom of expression imposed by government, and the argument is that these must be kept to a minimum and only when prescribed by law in order to protect society morals, reputation of individuals, and not in-direct control or manipulation of the operations of the media.123

The Libertarian theory’s major defect is its inability to provide a globally accepted standard for the day to day running of the mass media, it has not distinguished between liberty and abuse of this liberty and the choices on what to publish and what not to publish are left in the hands of man. “Thomas Jefferson, the third President of America said that if man exercised reason, the majority, as a group, would make sound decisions, even if individual citizens might not”.124 Hence, in this research the Libertarian theory is being ‘married’ with the Social Responsibility theory of the press to find that formula that can successfully guide the day to day operations of the mass media by supplementing those grey areas of the Libertarian theory with principles of the Social Responsibility theory. Where one theory seems insufficient or inadequate, the other theory with the best model will suffice.

6.4 Social Responsibility Theory
The Social Responsibility theory accepts the concept of a Libertarian model but suggests what the media should do, it prescribes the day to day running of the media and promotes self-regulation. The theory accepts the idea of freedom of expression, but that this freedom must be exercised with responsibility in the interests of other members of society and in consideration of other individual human rights. Someone who believes in the Social

123 Sierbert, Petersen and Schramm, *Four Theories of the Press*. P54
Responsibility theory believes that members of the press will do their jobs well only if periodically reminded about their duties. This theory grew out of the 1947 Hutchins Commission Report on the Free and Responsible Press. The commission’s report *A Free and Responsible Press* (1947) built a philosophical and moral foundation for the idea that the press owed a responsibility to society. “It is argued that democracy depended on a flow of trustworthy information and a diversity of relevant opinions”. The commission report named the key journalistic standards that the press should seek to maintain.

According to the report, a responsible press should provide a full, truthful, comprehensive and intelligent account of the day’s events in a context which gives them meaning. It should serve as a forum for the exchange of comment and criticism and be a common carrier of the public expression...the report further says that the press should give a representative picture of constituent groups in society and also present and clarify the goals and values of society.

The above key journalistic standards are the pillars of the Social Responsibility theory that this research wishes to define in Zambia and these are used simultaneously with the principles of the Libertarian theory. On one hand, state owned media has been biased in its reporting and they never criticize the government of the day while on the other hand the private media has been accused of being sensational in its reporting of news and that they lack professionalism.

The Social Responsibility theory also provides guidelines when it comes to the theoretical approaches to power relations regarding media ownership. Although some modern scholars have argued that today's large media conglomerates may not function naturally as a public forum, where all ideas are shared and available. The owners and managers of the press determine which persons, which facts, which versions of these facts, shall reach the public. However, the Social Responsibility theory demands that even if power to run media companies is in the hands of a small number of people, this power carries with it a responsibility to exercise it with great caution and respect for others. The theory discourages sensationalism and the mixing of news with editorial opinion. In this same light, Siebert, Peterson and Schramm argue that (1969), the power and near monopoly position of the media impose on them an obligation to be socially responsible, to see that all sides are fairly

presented and that the public has enough information to decide; and that if the media do not take on themselves such responsibility it may be necessary for some other agency of the public to enforce it.

“Social Responsibility theory holds that the government must not merely allow freedom, it must actively promote it…and when necessary the government should act to protect the freedom of its citizens”\textsuperscript{127}. However, the theory emphasises that social responsibility must be reached through self-control as opposed to government intervention, but where necessary and for the sake of protecting the freedom of other citizens then government should intervene and their intervention should only be in form of legislation to prevent abuses. Freedom of expression under the Social Responsibility theory is not an absolute right, as under pure Libertarian theory. The argument by the Libertarian theory to make freedom of expression an absolute right is outdated and in this research we propose the idea of the Social Responsibility theory regarding freedom of expression. The Social Responsibility theory argues that like any other right, one's right to freedom of expression goes beyond self-interest and must be balanced against the private rights of others and against vital societal interests. The Social Responsibility theory also proposes institutional and professional autonomy of journalism through self-regulation of the media provided they uphold high standards, and mechanisms for accountability to society and the public should be enacted. “The institutional and professional autonomy of journalism is also the best guarantee of an adequate watch being kept on those in power”\textsuperscript{128}.

The Social Responsibility theory is an outgrowth of the Libertarian theory. However, social responsibility goes beyond "objective" reporting to "interpretive" reporting. A truthful, complete account of the news is not necessarily enough today, notes the Commission on the Freedom of the Press: "It is no longer enough to report the fact truthfully. It is now necessary to report the truth about the fact"\textsuperscript{129}. The theory of Social Responsibility also argues that media ownership should be a form of public trust or stewardship as opposed to being an unlimited private franchise and this is a fundamental basis for the demand of responsibility.

\textsuperscript{127}Siebert, S. Fred, Petersen, Theodore and Schramm, Wilbur (1969) \textit{Four Theories of the Press}. Chicago: University of Illinois Press. P95


\textsuperscript{129}Siebert, S. Fred, Petersen, Theodore and Schramm, Wilbur (1969) \textit{Four Theories of the Press}. Chicago: University of Illinois Press. P88
“Inseparable from the right of the press to be free has been the right of the people to have a free press. But the public interest has advanced beyond that point; it is now the right of the people to have an adequate press. And of the two rights, it is the right of the public that takes precedence under this theory”.130

6.5 Chapter Summary

This chapter has presented both the Libertarian theory and the Social Responsibility theory as propounded by Fred Seaton Siebert, Theodore Peterson, and Wilbur Schramm in their book entitled The Four Theories of the Press. The research proposes a combination of both of these theories in order to have a free and vibrant press in Zambia. Therefore, arguments presented in this research will reflect the principles of the above mentioned theories of the press. The media in Zambia is affected by government interference and in most cases it is difficult to draw the line where their boundaries begin and end, hence, the need to use both these theories to clearly define the role of the media in Zambia. The two theories form an ideal backbone of modern day theories of the press especially in democratic countries like Zambia.

The research recognizes two inadequacies of the Libertarian theory and proposes that these be met using the Social Responsibility theory. The two inadequacies relate to the ideas of making freedom of expression an absolute right and private ownership of all media houses. On these two aspects, the Social Responsibility proposes that freedom of expression should not be an absolute right, because it must be weighed against other individual rights and societal interests. The pure Libertarian theory proposes that media ownership should be solely private, and that like any other business the market should determine the success or failure of the private media. However, in this research this notion of private media is accepted but like in the Social Responsibility theory media ownership should not be solely private and other public media should be allowed to operate in the interests of society. It must be emphasized that public media ownership is allowed but this should not be used by government for their own agenda.

Chapter 7 Discussion of Findings and Conclusion

7.1 Introduction
Chapter 7 is a discussion of the findings regarding weaknesses in the media laws in Zambia in relation to press freedom and freedom of expression, and the role of the state in media regulation. Under each finding, the chapter has included a discussion based on information from interview respondents, the researcher’s opinion and information from document analysis. This chapter is organized as follows; Section 7.2 presents and discusses the weaknesses in the Zambian media laws; Section 7.3 gives a conclusion of the findings in this research; and lastly Section 7.4 is the chapter summary.

7.2 Weaknesses of Media Laws in Zambia

7.2.1 Zambian Constitution
The key finding in this research is that since independence (1964) Zambia has witnessed four Constitutions and sadly, none of these Constitutions have been satisfactory when it comes to providing media freedom. The current Constitution of Zambia has nothing explicitly stated about media freedom. The current Constitution only protects freedom of expression in Article 20 (1) of part III of the Constitution which is headed ‘Protection of Freedom of Expression’ which states:

> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to impart and communicate ideas and information without interference, freedom to communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.\(^{131}\)

And in Article 20 (2) the Constitution states that, “[…] subject to the provisions of this Constitution, a law shall not make any provision that derogates from freedom of the press”.\(^{132}\)

However, this provision is not satisfactory and in instances where media freedom is violated the journalist or the media can not seek protection from the Constitution using Article 20 (2). The new Patriotic Front (PF) government promised to deliver what they coined as a ‘people-


driven Constitution’ during their Presidential, Parliamentary and Local Government campaigns in the 2011 tripartite elections. The PF won the Presidential elections and immediately they were elected in to office in September 2011, they instituted a Constitution Review Commission (CRC) to deliver to the people of Zambia the Constitution they had promised during their campaigns. The President appointed a Constitution Review Commission Draft Technical Team and they have since developed a new draft Constitution that provides for a clause on media freedom explicitly and how the media can exercise this clause to operate and expand itself. The appeal by the media in Zambia is that the final draft Constitution that will be presented to Parliament for adoption will retain this clause, because it is still in the draft form and people are making submissions for and against. Once retained, this clause will bring about subsidiary media laws in Zambia that would support the free existence and free operations of the media.

One of the questions in the interview sessions helped to discover whether the current Constitution sets the right tone when it comes to media freedom in Zambia and almost all the respondents echoed similar sentiments. All the respondents seem to agree that the current Constitution has no protection specifically for media freedom but only a general provision for freedom of expression and that the media in the past and currently has relied on this provision, which has not been sufficient.

**Interviewer:** Do you think the Constitution in Zambia is media friendly; does it set the right tone for a fair and free media?

**Respondent:** The current Constitution only has general provisions that grant certain rights to individuals, for example, the right to freedom of expression, and these rights are not granted to the media specifically. It would be nice if the new final draft Constitution of Zambia can grant specific freedom to the media to have a right to information and right to express themselves.

Another respondent shared similar sentiments when asked if there is anything lacking in the current Constitution of Zambia for the media?

**Respondent:** We need the freedom of the media clause in the Constitution that will allow the media to operate freely. Once this is enshrined in the Constitution then Parliament can not enact media laws that will abrogate this, they can’t enact media
laws contrary to the Constitution and consequently the statutes that will follow will also be in tune with the Constitution.

In the past, the Zambian government has been accused of lacking political will to be able to grant media freedom in the Supreme law of the land, which is the Constitution. The media has for a long time been denied a clause that provides for media freedom explicitly despite having more than one Constitution Review Commission (CRC) under the Movement for Multi-party Democracy (MMD) led government. And now that we have a new government in place, based on their promises to deliver a ‘people-driven Constitution’ it is understood that the political will is now there and the media is generally happy with the way affairs to do with media freedom are being handled so far by the current government. Once media freedom is enshrined in the Zambian Constitution, it will give the media special legal protection against government interference.

7.2.2 Zambia National Broadcasting Corporation (ZNBC) Act of 2002

Zambia National Broadcasting Corporation Amendment Act of 2002 was meant to transform the Zambia National Broadcasting Corporation (ZNBC) Television and Radio stations from being state owned broadcasters to public broadcasters. This was an amendment to the ZNBC Act of 1994. The ZNBC Act of 2002 aimed at removing ZNBC TV and Radio stations from total government control through a provision that states that ZNBC is going to be run by a board appointed by an independent adhoc appointments committee and not by the government in order to ensure transparency and avoid government interference. Chapter 154 part II, Section (3) (1) states that, “[…] there is hereby constituted the Zambia National Broadcasting Corporation Board which shall, subject to the provisions of this Act, perform the functions of the Corporation under this Act… the Board shall consist of nine part time directors appointed by the Minister of Information and Broadcasting Services on the recommendation of the appointments committee, subject to ratification by the National Assembly”.133

Section (3) (3) of the ZNBC Act provides a criteria for selecting the board of directors by stating that, “[…] a person shall not be qualified to be appointed to the Board unless the person is committed to fairness, freedom of expression, openness, and accountability and when viewed collectively the person appointed shall be representative of a broad section of people.”

the population of the Republic”. The ZNBC Act states that the adhoc appointments committee is responsible for recommending to the Minister of Information and Broadcasting Services the appointment of directors to the ZNBC Board. The adhoc appointments committee can only recommend the names to the Minister of Information and Broadcasting Services who then is required by the ZNBC Act to submit these names to Parliament for ratification by the National Assembly. Section 4 (1) of the ZNBC Act stipulates the composition of the adhoc appointments committee by stating that the Minister shall constitute an adhoc appointments committee consisting of the following;

(a) One member nominated by the Law Association of Zambia;
(b) One member nominated by a non-governmental organization active in human rights;
(c) One member nominated by religious organizations; and
(d) One member nominated by the Ministry responsible for information and broadcasting.

Once the ZNBC Board is put in place by the Minister through recommendations from the independent adhoc appointments committee and ratified by the National Assembly, it would then be responsible for appointing the Director General of ZNBC. This ZNBC Act was passed into law in 2002 by Parliament but the government never implemented or operationalized the Act for eight (8) years. During this period, only one small part of the ZNBC Act was implemented by the government, which was collection of the TV licence and the name was later changed to TV levy. Apart from this provision of the public paying TV levy, nothing else has changed and ZNBC still operates as a state owned broadcaster. The government violated Section 4 of the ZNBC Act in 2007 and when the media fraternity attempted to pursue the case through a judicial review, the Supreme Court ruled in favour of the government and threw out the case.

MISA, PAZA, ZUJ, ZAMWA, SSZJ and The Post Newspaper against the decision of the Minister of Information and Broadcasting Services
In 2007, the Supreme Court heard the matter of an application for judicial review by Media Institute of Southern Africa (MISA), Press Association of Zambia (PAZA), Zambia Union of Journalists (ZUJ), Zambia Media Women's Association(ZAMWA),

135 The Zambia National Broadcasting Corporation Amendment Act No. 20, Chapter 154 of the Laws of Zambia.
Society of Senior Zambian Journalists (SSZJ) and The Post newspapers limited against the decision of the Minister of Information and Broadcasting Services. [...] the then Minister of Information and Broadcasting Services, pursuant to the provisions of Section 7(2) of the Independent Broadcasting Authority Act No. 17 of 2002 and Section 4(2) of the Zambia National Broadcasting Corporation (Amendment) Act No. 20 of 2002(1) appointed an Adhoc Appointments Committee pursuant to the provisions of the two Acts for purposes of appointing members of the Boards of the Independent Broadcasting Authority and the Zambia National Broadcasting Corporation…The Adhoc Appointments Committee duly selected persons to be appointed to the two Boards. Subsequently, the Committee made recommendations to the Minister. The Minister in turn questioned some of the persons recommended. She insisted that she had power to do so. Consequently, she rejected some of the persons recommended on account, inter alia, that there was no representation from various sectors of the society as provided for under the two Acts. On those grounds, the Minister did not forward the names to Parliament for ratification in terms of the two Acts. Hence, the applicants commenced these proceedings leading to the appeal before this court.

[...] The applicant's contention was that the decision of the Minister, not to submit the names recommended by the Adhoc Appointments Committee appointed under the provisions of the two Acts, was so unreasonable in that no reasonable authority, directing itself to the relevant law and facts, could ever have come to such a decision; that the Minister's decision was ultra vires Section 7 of Act No. 17 and Section 4 of Act No. 20; that the Minister has no power to veto the names recommended by the Adhoc Appointments Committee; that the decision to veto was based on personal whims; and that the Minister's refusal to forward some names amounted to discrimination, usurping of the role of the National Assembly to ratify or refuse to ratify the names recommended. [...] The Minister's contention was that she acted intra vires Sections 7 and 4 of Acts Nos. 17 and 20 of 2002, respectively, and did so in good faith and without any discrimination; that she had a duty to ensure equity in the appointment process; and that the recommendations, once made by the Adhoc Appointments Committees, are not binding on the Minister…The learned trial Judge then pointed out that his duty was not to inquire or decide the merits or otherwise of the reasons for the Minister's decision, but rather to decide whether or not she acted
without jurisdiction; or exceeded her jurisdiction; or whether or not she acted rationally.

[...] In presenting judgment, the Supreme Court agreed with the submissions of the learned Attorney-General in toto that the Minister cannot be a rubber stamp or a conveyor belt in the process of appointments of members to the two Boards. Indeed, a distinction ought to be made between constituting the Boards and the operations of the Boards and in constituting the Boards, the Minister is not bound to accept the names recommended by the Adhoc Appointments Committee. But once the Board has been established, then it becomes independent and in its operations is beyond the control of the Minister or any other authority or person as provided in Section 6 of the Independent Broadcasting Authority Act, No. 17 of 2002. For the foregoing reasons, we are satisfied that there was no illegality in the Minister vetting certain names recommended to her, Her decision could not be said to have been outrageous or irrational.\textsuperscript{136}

Immediately after this Court case and upon realizing that the media was seeing the potential of holding government accountable using the ZNBC Act, the government quickly reacted by starting the process to shrewdly amend the ZNBC Act again. In 2010 the government succeeded and the ZNBC Act was amended and this amendment took the broadcast media in Zambia backwards to the old system of managing ZNBC by removing the part in the ZNBC Act which provided for an independent adhoc appointments committee to run the broadcaster and the ZNBC Board to appoint the Director General. The ZNBC Board of directors has limited authority, it does not even have the powers to appoint or terminate the services of the Director General without consulting the Minister of Information and Broadcasting Services. Therefore, as the ZNBC Act stands right now the Minister of Information and Broadcasting Services has been given back the power to appoint both the Director General of ZNBC and the ZNBC Board. Infact, what is surprising is that the new PF led government through its President Micheal Chilufya Sata, has appointed both the Director General and the Director of Programmes at ZNBC respectively. The President has already fired two Director Generals of

ZNBC in less than one year from the time the PF government took over office and has appointed two in the same period.

The 2010 amendment to the ZNBC Act also gave back executive powers of running ZNBC TV and Radio Stations to the state/government which meant that ZNBC would continue reporting to the Minister of Information and Broadcasting Services. Part III Section 24 (1) of the ZNBC Act states that, “[…] as soon as practicable but not later than six months after such financial year, the Corporation shall submit to the Minister a report concerning its activities during such financial year, annual report”. This means that the audit report and annual reports produced by the ZNBC Board shall be submitted to the Minister of Information and Broadcasting Services instead of the National Assembly. The National Assembly is composed of Members of Parliament (MPs) elected by the public, and in submitting the ZNBC financial and annual reports to the Minister means that the ZNBC is accountable to the executive powers rather than the public’s elected MPs in the National Assembly, bringing in to question its existence as a public broadcaster.

The ZNBC Act also states in Section 24 (3) that, “[…] the Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred in Sub-Section (1), lay it before the National Assembly”. However, if ZNBC is truly to be a public broadcaster then the ZNBC Board should submit the financial and annual reports directly to the National Assembly so that they are seen to be accountable to the public rather than the executive powers. This is a matter of transparency and accountability of ZNBC as a public broadcaster. The interviewees shared the above understanding of the ZNBC Act and the general feeling was that government is not willing to release ZNBC from being a state owned to a public broadcaster. Some provisions of the ZNBC Act which suit government have been implemented, for example the TV levy which makes it mandatory for every person in Zambia who owns a Television set to pay K3, 000 every month to contribute towards the running of ZNBC which is still being run as a state owned broadcaster.

**Interviewer:** What do you think is the issue of concern with the ZNBC Act?

**Respondent:** The ZNBC Act right now makes it mandatory for people who own Television sets to pay K3, 000 each month to that institution (ZNBC) but their...

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138 The Zambia National Broadcasting Corporation Amendment Act No. 20, Chapter 154 of the Laws of Zambia.
coverage of news is always one sided. ZNBC never criticizes the government, they only shower praises on what the government is doing and is still being operated like a state owned broadcaster even when there is a law that makes it a public broadcaster. They don’t give coverage to opposing views and the current Zambian President should be more aware of the operations of ZNBC more than anyone else because when he was in the opposition, ZNBC attacked him and never gave him coverage unless it was something negative.

Under the ideal ZNBC Act, the ZNBC board is supposed to be composed of neutral people and the Minister of Information and Broadcasting Services has no authority to hand pick and appoint the board members of ZNBC because that takes away the independence of the board members. In the ZNBC Act the ZNBC board is supposed to be appointed by the Minister of Information and Broadcasting Services but subject to ratification by Parliament so that the ZNBC board gets the blessing of the law makers but since 2002 up to now nothing has been done and government is still resisting the ratification of the names of the ZNBC board members by Parliament. If ZNBC is going to be a truly public broadcaster, this is what is supposed to happen.

**7.2.3 Independent Broadcasting Authority (IBA) Act of 2002**

The Independent Broadcasting Authority (IBA) Act was enacted in 2002 but all this time it has not been operational because the board which is supposed to manage it was not set up by the authorities, in this case the Independent Broadcasting Authority (IBA) Board which was supposed to issue out broadcasting licences to Radio and Television stations, among other things. Part II Section 5 (1) states the functions of the IBA Act, “[…] subject to provisions of this Act and the Radiocommunications Act, the functions of the Authority shall be to regulate the broadcasting industry in Zambia”. 139

Section 7 (1) (2) of Part II of the IBA Act provides that, “There is hereby constituted the Independent Broadcasting Authority Board which shall, subject to the provisions of this Act, perform the functions of the Authority under the Act…The Board shall

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consist of nine part-time members appointed by the Minister, on the recommendation of the appointments committee, subject to ratification by the National Assembly. The Independent Broadcasting Authority Act No. 17 (2002) Chapter 169 of the Laws of Zambia, Part II. Lusaka, Zambia: Government Printers. P341

Section 8 (1) of Part II of the Act gives the Minister authority to appoint the adhoc appointments committee, “[…] The Minister shall, for the purposes of Section seven, constitute an adhoc appointments committee…” The aim of the Independent Broadcasting Authority Act was to get broadcasting from government hands in to a statutory board but this was never implemented. The media in Zambia were not pleased that the provision in the IBA Act to have an IBA Board was never implemented and consequently the media sued the government and took this matter to the High Court of Zambia but the media lost the case. They tried to appeal to the Supreme Court of Zambia but the matter was thrown out of Court. It was very difficult to challenge government in the Courts of law even though they were clearly violating the provisions of the IBA Act by not setting up the IBA Board but at that particular time the Attorney General was also the Minister of Justice and the Vice President of Zambia, the late George Kunda, therefore this made it more difficult to pursue this case because he also belonged to the ruling party, MMD. The IBA Act process has been highly politicized and the issuing of broadcasting licences in the past has been reserved mostly to those who are sympathetic to the government of the day. Those that seem to be critical of the government or are considered enemies of the state have had their broadcasting licences revoked or cancelled by the government through the Ministry of Information and Broadcasting Services. One particular case was the one involving OMEGA TV which was a privately owned television station, details of the case are below;

**OMEGA Television v. Ministry of Information and Broadcasting Services**

On 01st November 2003, a team of plain clothed and armed uniformed police officers raided the offices of OMEGA Television, a privately-owned free-to-air television station based in Lusaka and ordered staff to cease test broadcasts immediately, citing ‘orders from above’. [...] The closure of the station followed a letter written on 27th October 2003 by Solicitor General, Sunday Nkonde to the Minister of Information and Broadcasting Services, Mutale Nalumango, stating that the station was operating illegally and police should shut it down. Nkonde argued that there was no legal basis for the ‘stay of execution’ because the temporary permit that OMEGA TV was trying to have was not in force and the station was therefore operating contrary to the terms of the permit.

The Independent Broadcasting Authority Act No. 17, Chapter 169 of the Laws of Zambia. P342
to protect had actually expired and government had no intentions of renewing it. […] OMEGA TV had earlier applied to the High Court for a Judicial Review of the cancellation of the licence by former Minister of Information and Broadcasting Services, Newstead Zimba of its 18 months temporary permit which was valid until July 2003. The Minister had cited ‘public interest’ as the reason for cancelling the license. However, the station lost the case before the High Court but was granted a ‘stay of execution’ pending an appeal to the Supreme Court, thereby allowing it to continue operating.

On 11th November the fate of OMEGA TV was sealed and was ordered to close again following the reversal of a High Court order allowing it to continue its test broadcasts. The closure of the TV station followed a successful appeal by the Solicitor General, Sunday Nkonde, against a ‘stay of execution’ granted to OMEGA TV on 19th September 2003 which had allowed it to continue its test broadcasts. […] On 07th November 2003, just prior to the Supreme Court ruling, seven (7) armed police officers were sent to the station to ensure that it was not broadcasting. It was demeaning that the government sent heavily armed policemen, brandishing AK 47s, to shut down a television station. There was no cause for the large number of officers to come with arms when they knew they were dealing with journalists and transmission staff who were not armed.142

Therefore, the law is there but without setting up the IBA Board the Minister of Information and Broadcasting Services retains the authority of issuing and revoking broadcasting licences in Zambia. The Minister of Information and Broadcasting Services and his Permanent Secretary are directly appointed by the President and are members of the ruling political party. With the current PF government there has been some movement in the direction of setting up the IBA Board. This law was enacted in 2002 but there has been no political will to ensure that the IBA Board is put in place. In Part IV titled ‘Broadcasting and Licences’, Section 19 (1) of the IBA Act states that;

[...] Subject to the provisions of this Act, no person shall operate or provide a broadcasting service in Zambia otherwise than in accordance with the terms and

conditions of a licence issued by the Authority and on payment of such fees as the Minister may, on the recommendation of the Authority, prescribe.143

The growing fear among the media and journalists is that the IBA Board may never get to see the light of day in Zambia, because the new PF government has now been in power for over one year and the IBA Board is still not in place and they are dragging this process. One of the respondents during the interview sessions had this to say regarding the IBA Act and IBA Board with regards to government interference:

**Interviewer:** Do you think the ruling governments want to keep the status quo because they can take advantage of certain provisions to limit private media houses that are critical of government?

**Respondent:** Yes that has been the trend that governments sometimes use the power they have in terms of broadcasting licensing or defining coverage arrears that Radio and Television stations may have. They have used this to limit or try to control media houses that come on the industry because they fear that if those media houses are given wide coverage and are critical of government they might lose their power and popularity. When you have the power to grant you also have the power to revoke a licence, and in Zambia they can do this as and when they please.

A recent case involving a community student radio station is an example of how the government can use this power as seen below;

**Threat to Close UNZA Radio**

In September 2012 the Ministry of Information and Broadcasting Services Permanent Secretary Amos Malupenga issued a threat to suspend University of Zambia (UNZA) Radio licence on allegations that the station was providing a platform for advancing partisan interests. These threats were followed up by the reduction of the radius transmission of UNZA Radio from 1000 watts to 260 watts by the Zambia Information and Communications Technology Authority (ZICTA). ZICTA under special instructions from the Ministry of Information and Broadcasting Services went against the law as stipulated under the license of the radio station. According to the license provisions, the radio station is supposed to operate within a radius of up to

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1000 watts and it is expected to expire in January 2013. The reduction in the radius has put the radio station at a risk of breaching its contractual obligations with its advertisers.\(^{144}\)

The adjustment is uncalled for as it is an infringement on press freedom and freedom of expression and this was condemned by various sectors of the media including MISA Zambia. This kind of behavior from government officials, whose only concern is to please those that have appointed them in to office, is worrying for the media and this is why the media in Zambia has been calling for the implementation of the Independent Broadcasting Authority (IBA) Act so that broadcast media regulation can be independent of political interests. The Zambian people were appalled by this behavior from the new PF government which has on several occasions pledged to uphold press freedom and freedom of expression to allow Zambians freely express themselves on various issues affecting their welfare. It seems the new PF government is now back peddling on their campaign promises for media freedom in Zambia. And what is very surprising is that the Permanent Secretary in the Ministry of Information and Broadcasting Services who issued the threat of closure of UNZA Radio through revoking their licence is Amos Malupenga who not so long ago was Managing Editor of *The Post* newspaper, the biggest private print media in Zambia. And it seems now that he is in government his principles have rapidly shifted. The above example shows how important it is that the IBA Board is put in place, because even the new PF government is showing signs of abusing the IBA Act and their authority. One of the respondents was asked to explain the process of the IBA Act and why this has taken long to be enacted with all its provisions and why government has been amending the same Act over and over and the answer was a very encouraging and comprehensive analysis of the current status of the IBA Act and this becomes worrying for the media houses who are pushing for the current IBA Act to be implemented and adopted in Parliament.

**Interviewer:** Why has the IBA Act been amended more than once and do you think now with these amendments we have what the media can say is a refined IBA Act that would benefit the media?

**Respondent:** The IBA Act has been amended twice by the way, the Act was ensured to help in regulating and monitoring how the broadcasting media works, but they didn’t operationalize that. What they did was to sit back and say they would not accept the board members that had been selected to sit on the IBA Board. And in the meantime, the Minister of Information and Broadcasting Services still remained in charge of the broadcast sector, and they discovered that they were violating the law. Thereafter, what they decided was to amend the IBA Act to empower the Minister of Information and Broadcasting Services to appoint members who would sit on the IBA Board. The media started asking for that amendment to be re-amended, but just before the end of 2010 they again re-amended that law to make it even more impossible for any other actors outside government to do anything about the mode and how the broadcasting sector was going to work and this was passed through parliament very quickly. Therefore, right now when government now says lets operationalize the IBA Act which IBA Act are they operationalizing? They are operationalizing a dis-functional IBA Act, which they themselves want and this IBA Act is wrong and faulty. There is need to nullify the current IBA Act and enact a new one.

The IBA Act is another law that is contentious and has many flaws, but after all is said there should be an IBA Board in Zambia and this authority should be given the powers to grant broadcasting licences. One individual (Minister of Information and Broadcasting Services) can not be entrusted with the sole responsibility of granting and revoking broadcasting licences. The current IBA Act is dysfunctional, the provision of setting up the IBA Board was never implemented and this means the Minister of Information and Broadcasting Services, who is directly appointed by the President of the ruling government and is a member of the ruling party has the authority not only to grant broadcasting licences, but also to revoke such licences as and when he deems fit. Section 30 (1) of the IBA Act states that, “[…] Subject to the other provisions of this section, the Authority may suspend or cancel a licence issued under this Act”. 145

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And it is because of this provision that the growth of private broadcasting stations (Radio and Television) in Zambia has been hindered, because they are operating under very difficult circumstances where their continued existence on the airwaves in Zambia is determined by one individual, who is a member of the ruling party and in his approach to issuing or revoking broadcasting licences will obviously first have the interests of the political party to which he belongs. The broadcasting licensing system has been highly politicized because authority has been entrusted in one individual and the government of the day has taken advantage of this provision to silence opposing views in the broadcasting industry in Zambia through threats of closure, revoking their broadcasting licences, or limiting their radius of operations. Many people in Zambia, especially those in the rural areas have been denied access to valuable information about the leaders they have put in power by preventing private Radio stations from broadcasting in the rural parts of the Country. The government has found a way through the IBA Act to censor information that reaches the people living in the remote and rural parts of the Country in Zambia.

7.2.4 Defamation Act of 1930

“The law of defamation in Zambia is embodied in both statutes and Court decisions”.

This practice is normal in all countries and is not an infringement on freedom of expression and media freedom, but in Zambia the law has gone a step further by criminalizing defamation of the President. Defamation of the President is a criminal offence under section 69 of the Penal Code of Zambia. This section seeks to protect the President’s reputation and the dignity of his office by providing that “[...] any person who, with intent to bring the President in to hatred, ridicule or contempt publishes any defamatory or insulting matter. Whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for up to three years”. During the interview sessions, the researcher was privileged to interview a senior media lecturer and media consultant in Zambia who also happens to have a bachelor’s degree in Law. This interviewee was able to provide an almost flawless introduction to the law on defamation by making inferences to the law in Zambia.

Interviewer: What does criminalization of defamation mean for the media in Zambia?

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Respondent: The law basically has two broad spheres; you have the criminal law and the civil law. Criminal law arises from codifying certain vices which society considers being negative and attach certain sanctions, and when you have codified those vices they become criminalized and if anyone does anything that breaches any of those vices then that individual is sanctioned either by a fine or imprisonment. Then another type of law is civil law where even if one is found to be culpable they are required to just pay damages or make a public apology. Generally, when looking at the law in Zambia, defamation falls under the sphere of law called the law of TOTS. And a TOT by definition is considered as a civil wrong, for example, trespassing, insulting, among others. Any civil wrong requires that you pay damages; civil wrongs do not necessarily lead to jail. As a result, from a legal point of view, this is the sphere where defamation falls, ideally. And if someone sues anyone for defamation and it can be proved that you have actually defamed that person then the offended must sue under the civil laws.

In Zambia the law on defamation is a civil offence for any member of society, inclusive of the Members of Parliament (MP’s) and government officials. When any member of society has been defamed they have a right to sue and they can only sue in the Civil Courts. However, the weakness of this law on defamation in Zambia is that it has criminalized only defamation of the President. Criminalizing defamation of the President has made the work of the media in Zambia very difficult because they are not free to criticize the President for fear of a lawsuit on defamation. The private media attempted to challenge the Constitutionality of the criminalization of the law on defamation of the President in the case below;

The People v Bright Mwape and Fred M’membe

In 1994 Bright Mwape and Fred M’membe who were journalists for The Post weekly newspaper, were charged with criminal defamation against the President arising from an article referring to him in a derogatory term. The appellants did not plead to the charge of criminal defamation against the President in the Magistrate Court but instead raised a preliminary issue as to the Constitutionality of Section 69 of the Penal Code and whether this Section was contravening Article 20 and 23 of the Constitution of Zambia…This case was referred to the High court by the Resident Magistrate Lusaka pursuant to Article 28 (2) (a) of the Constitution for the High Court to rule on the Constitutionality of Section 69 of the Penal Code 146 of the Laws of Zambia which
creates the offence of defamation of the President. Apart from the allegation contained in the particulars of the offence no facts or affidavit evidence was put before the Court for the Court to be in a clear picture as to how the publication of the offending article arose.

[...] The Applicants’ case was argued by Mr. John Sangwa and Mr. Robert Simeza. The case for the Applicants had two limbs. The first limb deals with the conflict of Section 69 of the Penal Code with Article 20 of the Constitution while the second limb of the argument deals with the contravention of Article 23 of the Constitution by Section 69 of the Penal Code. The applicant’s lawyers submitted that Section 69 of the Penal code is unconstitutional. It was Mr. Sangwa’s submission that since truth is not a defence under Section 69 of the Penal Code one can go to prison for speaking the truth as long as the truth has brought the President into contempt and ridicule. For that reason Section 69 of Penal Code cannot stand vis-à-vis Article 20 of the Constitution. [...] Mr. Sangwa submitted that while the freedom of expression and indeed any other freedom is not absolute, Section 69 of the Penal Code does not meet the standards set in and justifiably under the derogations under Article 20 (3) of the Constitution and the burden of proof is on the state. Mr. Sangwa submitted that freedom of expression is the life blood of any democratic society and any law like Section 69 of the Penal Code which attempts to derogate it cannot be said to be reasonably justifiable in a democratic society.

[...] In delivering judgment, High Court Judge Chitengi P.J. said that the answer to the first question whether Section 69 of the Penal Code is or is not in conflict with Article 20 of the Constitution of Zambia, is that Section 69 of the Penal Code Cap. 146 of the Laws of Zambia is not in conflict with Article 20 of the Constitution of Zambia. As regards the second question whether Section 69 of the Penal Code is or is not in conflict with Article 23 of the Constitution of Zambia is that Section 69 of the Penal Code Cap 146 of the Laws of Zambia is not in conflict with Article 23 of the Constitution of Zambia. The judge said that having answered both questions in the negative I remit the case to the Magistrate at Lusaka to deal with the Applicants as
accused persons according to law. The applicants were found with a case to answer.  

This legislation, Section 69 of the Penal Code has been abused by sitting Presidents who in the past have relied on this law on several occasions to sue the media (private media) which appears critical of government for defamation of the President. The media has been fighting to remove the clause that makes defamation of the President a criminal offence and the argument has been that the Presidency is an institution and not an individual in the Zambian set up and this institution needs to be checked one way or the other. In checking this institution there are certain things that need to be taken in to account, therefore if that institution is over protected the individual that goes in there tends to have the leverages and all the liberties to do all the wrong things knowing very well that no one can call him/her names. The end claim is that this law that criminalizes defamation of the President actually exposes the President to a lot of evil. For example, if the President is involved in some kind of criminal activities like corruption or theft, the media can not call the President a thief. The media in Zambia can not inform the public that their President is stealing because that law prohibits anyone from doing that. It makes it very difficult for the media to provide the checks on the Presidency because of the same law. Upon conviction under the criminal defamation of the President, one may be sentenced to prison for a term not exceeding three years without the provision for a fine.

Therefore, the country of course must have a law that will protect the Presidency from unnecessary rebuke or attacks but legitimate checks on the Presidency must also be provided for by law. After all, the same standards used to measure defamation of the President are exactly the same standards used with defamation of any individual so why should one be a civil offence and the other is criminalized. Defamation of the President should also be a civil wrong, because it is not like the President is physically assaulted causing grievous body harm where the president will incur sores. All it will do is to just lower his reputation in the eyes of right thinking members of society; hence even if it’s the President it is wrong to put it as a criminal offence when the standards of measure that you use are the same as the ones you use

in a civil matter. The criminalization of defamation of the President has indeed contributed to the situation where the President or the institution itself gets corrupted with power. As a result, criminalization of defamation of the President requires serious surgery, serious review, serious reform, such that it has to strike a balance between protection for the good of the public and allowing the media to expose the wrong doing of the President for the good of the public. Generally, the respondents all seem to agree that criminalization of defamation of the President is wrong and an infringement on freedom of expression and media freedom because on one hand the President is free to call anyone any names he/she so wishes but on the other hand, members of the public and including the media can not call him/her any names even if they have proof of wrong doing because he/she enjoys immunity.

**Interviewer:** What is wrong with criminalizing defamation of the President and what does this mean for the media?

**Respondent:** The President is a human being like anyone else, if a President defames a member of society he/she is not libel because the President in Zambia enjoys immunity and can not be sued by law. But if that same member of society says anything that defames the President then that person is criminally libel. This is not fair and the laws of justice don’t operate like that, the environment must be created in such a way that everybody has their own space. If somebody is elected in to the office of Presidency he/she becomes a servant of the people, so why should the people who put that person in to office be criminally libel if they defame the President even in circumstances where they can prove wrong doing, this should not be like this. Of course, in excesses were someone insults or destroys property that you can understand.

In order to have a vibrant media that shall provide the checks on the institution of Presidency in Zambia then every case of defamation must be looked at with its own merit and placed in the appropriate category, but to just blanket defamation of the President and criminalize it prevents exposure of wrong doing because the same President also enjoys immunity and can not be sued. This makes the operations of the media very difficult and it is an infringement on press freedom. However, these laws are everywhere in the world and most countries have criminal defamation laws.

### 7.2.5 Public Order Provisions

There are two provisions that deal with public order in Zambia mainly the Public Order Act and Section 67 of the Penal Code. The Public Order Act Cap 113 of the laws of Zambia is
meant to regulate assemblies, public meetings and processions. Section 4 of the Act provides that; “Any person who intends to assemble or convene a public meeting, procession or demonstration shall give police at least seven days’ notice of that person’s intention to assemble or convene such a meeting, procession or demonstration”. This Act further provides in Section 5 (a) (b) that the authority may impose conditions on this right and this relates to the following; the date upon which and the place and time at which the assembly, meeting or procession is authorized to take place and also the maximum duration of the assembly, public meeting or procession. Section 7 of the Public Order Act has a provision that deals with unauthorized assembly and states that;

Any assembly, meeting or procession (a) for which a permit is required under subsection (4) of section 5 and which takes place without the issue or such permit; or 
(b) in which three or more persons taking part neglect or refuse to obey any direction or order given under subsection (3) or (7) of section 5; shall be deemed to be an unauthorized assembly, and all persons taking part in such assembly, meeting or procession and, in the case of an assembly, meeting or procession for which no permit has been issued, all persons taking part in convening, calling or directing such assembly, meeting or procession, may be arrested without a warrant and shall on conviction be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding six months, or both.

The Public Order Act is an infringement on people and journalists freedom of assembly and freedom to express themselves. The responsibility of granting or denying a permit to assemble, hold a public meeting, procession or demonstration is left in the hands of the police to determine. The Police Service in Zambia is highly controlled by the ruling party, because all the top positions are appointed by the President himself. Hence, in deciding whether to issue a permit or to deny it, the police are highly likely to take in to consideration the wishes of the appointing authority and the government in power as opposed to the people’s wishes. The Public Order Act mainly affects the opposition political parties and government uses this Act to deny them permits to hold campaign rallies or meetings. However, the Public Order Act also has chilling effects on the media as can be witnessed by the case below;


Forced closure of Radio Lyambai

On January 14, Radio Lyambai was forced off air when the Zambia police raided their offices and confiscated the station’s broadcasting equipment on allegations that the station had been running seditious material regarding a meeting called by advocates calling for the restoration of the Barotseland Agreement of 1964. The Zambia police service seized the equipment saying that the station had incited violence or disturbed the peace through its broadcasts and they used the Public Order Act to justify their actions. Police interrogated the Radio Station News Editor, Nyambe Muyumbana on January 18 for nine hours on the intent of the debate program that was aired on Radio Lyambai. The Station Manager, Mukeya Liwena was also called in for questioning over the same matter but neither of them was formally charged by the police. [...] The Zambia Police Service later gave back the equipment they had confiscated unconditionally. After a couple of months and a huge out cry from the media fraternity and the general public, the government allowed Radio Lyambai to get back on air.\footnote{Committee to Protect Journalists (2011) Committee to Protect Journalists (CPJ) [Online] Available from: URL: http://www.cpj.org/2011/01/authorities-illegally-shutter-radio-station-in-zam.php [Last accessed on 27\textsuperscript{th} December 2012]}

The above case shows that the Public Order Act is a very difficult law to escape especially for Radio stations that want to engage in interactive media programming where the public are able to phone in and issue their opinions on public matters. If the government feels that the opinion of the callers or listeners is too critical of government, they send orders to the police to threaten the media house with the Public Order Act. This is an infringement on media freedom and has prevented the growth of Radio stations because they can not have sensitive Radio programmes to discuss national matters of public interest for fear that what callers might say on their programmes might put them in trouble with the law. During the interview sessions, most respondents seemed to agree that the Public Order Act is an infringement of people’s right to assemble and freedom to express themselves in different ways. The respondents worry about how the Public Order Act provisions have been abused in the past in Zambia and how the same scenario has continued even in the new PF government. The general consensus is that this Act needs to be amended so that the police should not have all the powers to decide whether to issue a permit or deny it for a public assembly, meeting,
procession or demonstration because they are usually biased and are influenced by the people who appoint them in to office, in this case the President and his/her government.

**Interviewer:** What are your views on the Public Order Act?

**Respondent:** The Public Order Act needs to be looked at seriously, this is the one police officers use when they beat up journalists and smash their cameras all in the name of bringing peace and public order. Some Radio stations in Zambia have been closed down or threatened and the government has used the Public Order Act where they call in the police purportedly to come and make peace. And they say you have incited the public through your programming.

The Public Order Act has been used more frequently in the past to threaten or close down Radio Stations; Radio Lyambai was closed down using the same law, it was also used to threaten Sky FM during the sky forum where people were chatting and exchanging opinions on national issues, and also Radio Phoenix’s programme “Let the people talk”.

The second provision that deals with public order is Section 67 (1) of the Penal Code titled ‘Publication of false news’ which states that;

> […] any person who publishes, whether orally or in writing or otherwise, any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false, is guilty of an offence and is liable to imprisonment for up to three years.\(^{152}\)

This provision provides no defence for the publisher of such information to claim that they didn’t know or didn’t have reason to believe that the information was false, unless it can be proved that prior to publication the publisher took measures to verify the accuracy of such a statement, rumour or report. As it relates to the media, this provision is an infringement on press freedom because it means that journalists in the media publish information at their own risk. This provision can be used by the government to suppress opinions of private media or opposing politicians. In a recent Court case, the leader of the opposition political party United

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Party for National Development (UPND) attempted to challenge the Constitutionality of this provision when he was charged with contravening the provision.

**Hakainde Hichilema v. The State**

On 28th December 2012 opposition United Party for National Development (UPND) President Hakainde Hichilema appeared for mention in the Lusaka Magistrates Court in a matter in which he is facing one count of publication of false news with intent to cause fear and alarm to the public contrary to Section 67 (1) (2) of the Penal Code Chapter 87 of the Laws of Zambia. [...] Charges in Court are that Mr. Hichilema on 11th June 2012 in Lusaka did orally publish statements in which he said, among other things, that “PF had signed an agreement for the militia in Sudan to train PF youths to prepare for trouble”. This statement was published by *The Post* newspaper. Initially Mr. Hichilema, through his defence lawyers made an application to quash the indictment and refer the charge of publishing false news to the High Court to establish some Constitutional matters. However, this application was dismissed and the matter referred to the Magistrates Court for commencement of trial. [...] When the matter came up for mention, Mr. Hichilema did not appear in person but through his lawyers and his case was adjourned to 15th January, 2013 for trial. Magistrate Joshua Banda granted Mr. Hichilema a K30 million cash bail, with two working sureties based in Lusaka and further ordered that his passport be surrendered to the Senior Clerk of the Court.

[...] In this particular case, defence Lawyer Sakwiba Sikota submitted that the Penal Code in question is archaic and was used by the colonial regime to oppress the people of Northern Rhodesia. Mr. Sikota said that Section 67 of the Penal Code was enacted in 1938 and last amended in 1958, before the Constitution of Zambia. Another defense lawyer Jack Mwiimbu has told Lusaka Chief Resident Magistrate Joshua Banda that Director of Public Prosecutions (DPP), Mutembo Nchito abused his discretion by writing to the Inspector General of Police, Stella Libongani that Mr. Hichilema retracts his claims against the government. Mr. Mwiimbu submitted that by his conduct, the DPP had consequently waived his right to prosecute Mr Hichilema’s case.

The prosecution through a Mrs. C.L. Phiri from the National Prosecution Authority, who refused to give her first name to journalists, said that the Constitution does not
grant a person the right to issue inflammatory statements in total disregard of national
defence, public safety, public morality and public health. “From the foregoing, we
submit that the raising of the question of Constitutional issue is not only frivolous and
vexatious but also an attempt intended to delay the case before this Court,” Mrs. Phiri
said. She said alarming the public is not one of the rights protected under the
Constitution of Zambia. Mrs. Phiri said that Section 67 of the Penal Code is not
discriminatory and it is a law which is reasonably justified in a democratic state and it
has general application without any discrimination. She said contrary to the arguments
by the defence, the law does not become bad because it was enacted before the
Constitution of Zambia. She also said that Director of Public Prosecution (DPP) did
not waive his right to prosecute when he wrote a privileged letter to Inspector General
of Police Stella Libongani because he was trying to invite Hichilema to give an
different sources: URL: http://www.zambianwatchdog.com/?p=48168 ; http://www.lusakatimes.com/2012/10/01/ hh-
December 2012]}

At the time of writing this thesis the case was still pending in the Courts of Law but this is a
true testimony of how this Penal Code provision can be interpreted to persecute those who
seem to be opposing the government, like opposition leader Mr. Hakainde Hichilema. The
above case involves an opposition politician but it is a serious indication of how even
journalists especially those from the private media who oppose or criticize the government
can be targeted using this draconian provision in the Penal Code. Hence, there is need to have
this provision repealed or revised and free journalists for them to be able to perform their
duties of providing information to the public without any fear or favour. The state through the
DPP did not make any attempt to prosecute the publishers of the statement issued by Mr.
Hichilema, The Post newspapers because government is in good working relations with The
Post newspaper. The Post newspaper campaigned heavily for Michael Chilufya Sata and his
PF government and played an important role in the PF making government, hence, the
interpretation of the Penal Code in this case is partial, only targeted at the opposing side.
The DPP and *The Post* newspaper owner are very good friends and were also the major shareholders and co-owned the defunct Zambian Airways, which went into bankruptcy on 10th January 2010. At the time of its closure, Zambian Airways owed Development Bank of Zambia (DBZ) a loan of K41 Billion, this matter was being heard by the High Court but after PF won the elections and formed government in September 2011 the Solicitor General, Musa Mwenye pressured DBZ to write off the loan. When Judges at the High Court made their intentions clear that they would go ahead and prosecute the accused because this was a matter of public interest and DBZ manages Zambian tax payers money, the President reacted by suspending three Judges including the Judge handling this case citing corruption in the Judiciary. The Judges suspended included Justice Nigel Mutuna, Justice Charles Kajimanga and Justice Philip Musonda. The Judges have since appealed their suspension.

7.2.6 Prohibited Publications

Prohibited publications is found in Section 53 of the Penal Code and this provision grants the President absolute powers to ban publications or a series of publications that he considers to be contrary to the public interest. Section 53 (1) of the Penal Code states that;

> […] If the President is of the opinion that there is any publication or series of publications published within or outside Zambia by any person or association of persons, matter which is contrary to the public interest, he may in his absolute discretion, by order published in the Gazette and in such local newspapers as he may consider necessary, declare that that particular publication or series of publications, or all publications or any class of publication specified in the order published by that person or association of persons, shall be a prohibited publication or prohibited publications, as the case may be.\(^{154}\)

This provision represents a form of censorship by stopping a publication before it is published or distributed and is a gross infringement on principles of press freedom which require that a publication should first be published and condemnation, if any, should come after, in the words of a famous media phrase, ‘publish and be damned’. Another downside of this provision is that it leaves the decision of public interest entirely in the hands of one man, the President, to decide on behalf of the whole nation. As a result, this provision has been abused

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on two major occasions in Zambia, once during the one party state and the second time came after Zambia had already become a democratic nation. The details of the two cases are as follows;

**Shamwana v. Attorney General**

In this case two political detainees namely Jack Edward Shamwana and Valentine Musakanya who at the time were serving prison terms having been convicted for their part in an attempted coup against the President of Zambia in 1980 sent a petition to the National Assembly of Zambia, requesting the National Assembly to review the state of emergency declared by the then President Kenneth Kaunda, which had been in existence since Zambia got its independent from British colonial rule on 24th October 1964 [...] In March 1981, President Kenneth Kaunda reacted by banning the said petition. As a result, Shamwana sought an order from the High Court declaring that the President’s decision to ban the petition was wrongful, unlawful and unconstitutional. He contended that a petition to the National Assembly could not be prejudicial to the public interest and that by proscribing the document the President was negating his oath of office to uphold the Constitution.

 [...] Justice Florence Mumba held that the President had acted within powers conferred on him by Section 53 of the Penal Code and that the President’s opinion was not open to question and that his decision following upon such an opinion could not be impugned. This is an example of how this Section of the Penal Code can be exercised by the President because it grants him or her unchallengeable discretionary power. And in this case, the Courts failed to check abuse of this discretionary power even though it was exercised unreasonably and in bad faith by the then President. Section 53 of the Penal Code is clearly incompatible with the tenets of democracy as the existence of a free press is entirely dependent on the goodwill of the President. However, despite Zambia becoming a democratic nation in 1991, this Section of the Penal Code remains unchanged up to date.\(^{155}\)

In another similar case, which directly affected the media in Zambia, print media in particular, the President exercised the powers granted to him by Section 53 of the Penal Code in 1996, at the time Zambia was already a democratic nation.

**Banning Publication 401 of The Post**

In February 1996 the President of Zambia, Dr. Frederick Chiluba banned edition 401 of *The Post* before its distribution in terms of Section 53 of the Penal Code because it prematurely disclosed a plan by the government to organize a referendum over the Constitution. Consequently, the President also banned the day’s internet edition of *The Post* and ordered it removed from the paper’s World Wide Web (www) site making it the first act of censorship on the internet in Africa. [...] In issue number 401 the newspaper carried a story in which they revealed a devious plot by the government to hold a secret referendum on the proposed constitutional amendments without giving warning to the public. The story caused much uproar especially among government ranks and the President banned the paper that very day. Later in the day three employees of the newspaper namely; Fred M’membe, Masautso Phiri and Bright Mwape were arrested and denied bail, the bail was later granted after a successful appeal. The pair was consequently charged under the State Security Act for publishing a classified document.\(^{156}\)

**7.2.7 Contempt of Court of 1994**

There are principles that govern the operations of the Courts in Zambia and anyone found wanting is charged with Contempt of Court. The power to punish for Contempt of Court is the means by which the legal system protects itself from publications that might unduly influence the result of litigation. Contempt of Court is not a law it’s a punishment. It’s the punishment the Court will invoke if one offends the Court and it is punishable by a fine not exceeding one thousand five hundred penalty units in respect of each offence. However, the weakness of Contempt of Court as it relates to the media in Zambia is that it has been extended to include journalists who gather information in the Courts of Law by what has been provided for in Section 117 of the Penal Code which makes it an offence for any person to;

Take or attempt to take any Court photograph, or, with a view to publication, make or attempt to make in any Court any portrait or sketch, of any person, being a Judge of the Court or a juror or a witness in or a party to any proceedings before the Court, whether civil or criminal;...or publish any photograph, portrait or sketch taken or made in contravention of the provisions of this subsection or any reproduction thereof.\(^{157}\)

There is a difference in the way judicial systems operate in developed and less developed countries. If a country is a mature democracy then there is no need to hide Court proceedings especially when it has some public interest in it. Of course, there are some exceptions and these should only be in cases that involves a minor, rape victim or if it is a sensitive issue. The media should be allowed to carry live feeds of such Court proceedings, and laws need to be put in place to allow journalists to go in and report on the proceedings especially on matters bordering on public interests, to take photographs in Court, portraits or sketches and publish without fear of punishment. Currently the media in Zambia is barred from making coverage of live proceedings in Court, and they are not allowed to take photographs in Court, portraits or even sketches of any person involved in Court proceedings. This is an infringement on freedom of expression and media freedom because it prevents the media from disseminating information about Court proceedings, even in cases that have a public interest and the public rightfully deserve to know how proceedings are going but this opportunity is denied by the Contempt of Court rule.

As argued by Robertson and Nicol, the smooth working of the legal system is a very important, but not always overriding, consideration in holding the delicate balance of public interest between the rights of defendants and litigants to a fair trial and the need for society to know about the issues involved in their cases and about the effectiveness of the system that resolves those issues.\(^{158}\)

**Masautso Phiri v. The State**

In 1997, Masautso Phiri, editor of the privately owned newspaper, *The Post*, was sentenced to three months imprisonment with hard labour by the Supreme Court for contempt of court for publishing a story in which *The Post* accused Supreme Court


judges of receiving bribes in order to dismiss a petition against President Frederick Chiluba. This case was smeared with serious anomalies among them, failure by the Supreme Court, through Judge Bonaventure Bweupe who chaired the proceedings of the trial to ask Phiri to plead to the charge of contempt of court for which he was eventually jailed for [...] The Supreme Court judges jailed Mr. Phiri despite him issuing an apology on 10\textsuperscript{th} February 1997 in which he unreservedly apologized, the judges rejected his apology and were dissatisfied with his explanation that he did not intend to ‘scandalize’ the case under review in the Courts of Law. Mr. Phiri appealed his conviction asking the Supreme Court to review its decision to jail him for three months for contempt of court, however, he was moved from Lusaka Central prison to Mwembeshi maximum security prison which is 42km’s away from Lusaka. Despite his appeal, there was no official notification from the Supreme Court to Mwembeshi maximum prison that indicated his review case was coming up for mention on 17\textsuperscript{th} March 1997. As a result, prison authorities could not allow him time to research and prepare his case unless they had formal proof of his case being heard by the Court. Mr. Phiri was released from prison on 11\textsuperscript{th} April 1997 after serving two months of the three months in jail. He had one month’s remission of sentence.\textsuperscript{159}

7.2.8 Access to Information Law

The Access to Information Law was previously known as the Freedom of Information (FOI) Bill and the first draft of the FOI Bill was completed in 2002. The FOI Bill was meant to allow individuals to seek and access public information that relates to how government performs. Government works for the people so the people should be free to access information that relates to them. However, this draft FOI Bill was withdrawn at the committee stage and kept on government shelves until 2007. Government cited many factors for withdrawing the FOI Bill, for example, privacy of individuals, national security, fears and insecurities government had, among others. Government’s main reason for withdrawing the FOI Bill was that it needed more time to make the necessary consultations about the Bill and for over 10 years it seems the government is still consulting on this Bill and as it turns out it seems the government has just been kicking the can down the street because it doesn’t want to enact this Bill. In 2007 another draft FOI Bill was prepared solely by government and was taken to Parliament to be made in to an Act. However, they were some serious observations

made by the Members of Parliament (MP’s) on the lapses of the government prepared 2007 FOI Bill and the draft was again withdrawn for the second time and brought back to the government for further consultations.

With the coming in to power of the new PF government in 2011 the name of the FOI Bill has been changed to Access to Information Law and there has been some level of developments with the new law. The PF government campaigned for the enactment of the FOI Bill and during their campaigns they promised the people of Zambia that within three (3) months of being elected in to office they would enact the FOI Bill. A technical committee comprising of government, civil society, the church, the media and other stakeholders has been appointed by government and a draft of the new Access to Information Law of 2012 has already been developed. The Access to Information Law is a 90 paged document and the launch was scheduled to take place in July 2012 but it was postponed by the government. The Ministry of Information and Broadcasting Services Permanent Secretary explained that the launch of the Access to Information Law could not take place because it had not yet been approved by their counterparts from the Ministry of Justice so they want to seek the endorsement of their colleagues before the draft can be released to the public for further scrutiny. The Permanent Secretary further explained that the Attorney General and the Minister of Justice needed more time to look at the draft Access to Information Law before it was launched. The launch is meant to release the draft Access to Information Law to the general public for scrutiny so that people can study the draft and make submissions or recommendations or points of corrections. Then government would look at what people submit and the final draft would be taken to Parliament to be enacted in to law. This piece of legislation is not exclusively for the media, it is mainly for the good of the public at large. But of course, this law will mean a lot for media houses and journalists because it provides the opportunity to re-enforce the media’s responsibility of playing a watchdog role in society. Hence, the duty lies upon journalists and media practitioners to read and understand the document and get back to the basics and see if this document is appropriate for the ideals of the media in Zambia. One of the respondents stressed the importance of the Access to Information Law and the difference it would make in the operations of the media in Zambia once enacted.

**Interviewer:** If the Access to Information is made in to Law, what difference will it make in the operations of the media in Zambia?
Respondent: Maybe in trying to answer that question, one would look at what is the rationale behind having such a law because sometimes when you put a law you are not putting a law just for the sake of it. There is always a mischief that you are trying to cure, meaning that you have seen a problem and the best way to cure this problem is to put in place such kind of a law. And the question is what kind of mischief would this access to information law cure? And basically you just have to see how the media has been operating, in the past there have been complaints where the media has not been able to access information because there is a lot of bureaucracy and some government institutions tell them certain information is classified even when that information is not classified.

As a result, this has been a draw back on the part of the media because the media thrives on information and the role of the media is to bring out issues that affect the public. And such a law once put in place will ensure that certain information that can be accessed will be made certain, this law will prescribe what kind of information is accessible and which one is not accessible. The media will know which information they are entitled to access, this law brings certainty and ensures that there is a certain procedure that the media will be entitled to follow in order to access that kind of information and the media will also know what kind of information is classified and can not be accessed. The media can argue by law in order to access certain kinds of information and demand for it because they can argue that by law this kind of information is not classified. However, this law is not just meant for the media houses but the law will also help citizens to access this information and make informed decisions.

The Access to Information Law is also very important for the media in Zambia because it will enhance professionalism, objectivity and accuracy in media reporting and contribute to a better society through information dissemination. It is also important to mention that the Access to Information Law will strengthen the operations of society and not necessarily just the media and this is the basis upon which information should be made open to the public, and will bring certainty to the governments as well. The interviewer further drew the respondents in to a teasing discussion of whether this certainty that the Access to Information Law brings to the media in Zambia is in itself uncertainty on the part of the government and that this is probably why the previous government delayed the enactment of this Law for over 10 years.
**Interviewer:** The Access to Information Law creates certainty on the part of the media, but does it create uncertainty on the part of government because they want to hide certain information or prevent the public from knowing about it?

**Respondent:** Of course African governments are the same everywhere and there is always this mistrust between the media and the government. Governments assume that the media is there to get information that will tarnish their image. Individuals have a right to know how their money is being used and what it is being used for and how they are benefiting from it because they pay huge taxes to government and the government feels jittery when it comes to putting in place such kind of a law because this information will be made public by the media.

Therefore, the Access to Information Law once enacted will create certainty on both sides because the law will stipulate which information is classified and which one is not and governments will also know this, so they will also be certain what kind of information the public will access and which kind they can not accessed based on the provisions of the Access to Information Law. Access to information is the primary responsibility of journalists because their duty is to access and disseminate information and currently the media trend is that news gathering in Zambia is highly characterised by event based journalism as opposed to investigative journalism because it is bureaucratic and very difficult to access certain public information in public offices because people who are the custodians of this information fear that if they release sensitive information they might lose their jobs or might be prosecuted and imprisoned. This is the more reason why the media in Zambia needs the Access to Information Law, even though it is not just meant to benefit the media alone but also the general public because they too will have the right to seek and access public information about the affairs of the nation and make informed decisions. Those in power should not fear or have insecurities about enacting the Access to Information Law because this piece of legislation is more based on empowerment, the access to information is not scandal driven and is based on exposing factual information. Zambia being the 10th most corrupt country in the World, the Access to Information Law will contribute towards the fight against corruption by exposing corrupt leaders, and the media will be able to offer the checks and balances in the governance system of the country because they will have access to the right information to be able to achieve this.

**7.2.9 Obscene Publications Act of 1930**
The Penal Code Cap. 87 of the Laws of Zambia is specifically meant to deal with obscene matters. Section 177 (1) (a) states that it is an offence for “[…] any person to make, produce or possess obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph film or any other object tending to corrupt morals. Section 1 (b) states that any person who, “[…] imports, conveys or exports, or causes to be imported, conveyed or exported, any such matter or things or in any manner whatsoever puts any of them in circulation”. Any person found wanting is guilty of a misdemeanor and is liable to imprisonment for five years or to a fine of not less than fifteen thousand penalty units nor more than seventy five thousand penalty units. Section 177 (1) (e) goes a step further by indicating that, “[…] any person who publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals is guilty of this offence”. The media is very clear on obscenity, it is the media’s ethical demand that they do not subscribe to the idea of publishing or circulating obscene materials but it is in the context in which that obscene material is being published.

The government of Zambia has attempted on several occasions to mis-interpret the Obscene Publications Act to achieve their own ends. The preserve of what is obscene or not lies with the Courts which should always look at the facts and decide whether to prosecute or not. If the ingredients for obscenity are there then there can be a case, but where the Courts can not prove this then the case is dismissed. But a judiciary that is not independent can be bribed and mis-interpret the law differently to punish offenders who are critical of government. In cases involving obscene matter and public interest in Zambia, it becomes problematic for the media where the law leaves the interpretation of what ‘tends to corrupt morals’ in the judgment of the Courts, through either a Magistrate or Judge. Furthermore, Section 177 (5) states that, “[…] no prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions (DPP)”.

The DPP is appointed directly by the President, including the Chief Justice subject to ratification by the National Assembly. It has been tradition in Zambia that the person who serves as DPP or Chief Justice in Zambia is always one who is in good boots or a supporter of the President and the ruling
political party, hence in deciding whether to prosecute for obscenity or not s/he may be influenced by the appointing authority. The President reserves the right to fire the DPP or Chief Justice. In 2009 the government attempted to prosecute *The Post* newspaper editor using the Obscene Publications Act for a story that was not published but circulated to top government officials.

**Chansa Kabwela v. The State**

*The Post* News Editor Chansa Kabwela was arrested on July 13, 2009, on charges of circulating obscene materials contrary to Section 177 1 (b) Cap. 87 of the Penal Code. After her trial which lasted for four months she was acquitted on 16 November 2009. Chansa Kabwela circulated pictures of a woman giving birth at Zambia’s largest Hospital (UTH) in the parking lot without the assistance of the medical personnel because they were on strike at the time. [...] She pleaded not guilty before Magistrate Charles Kafunda and was released on bail of K5, 000,000 (US$1000) and later found with no case to answer and the case was dismissed by the Courts of Law. Kabwela was trying to bring out how far the strike had gone and the challenges people were facing as a result, but the Minister decided to go to court after seeing the image.\(^\text{163}\)

In a recent development, *The Post* newspaper had consecutively published two weekend pictures for two weeks of ‘indecently’ dressed women dancing in night clubs around Lusaka the capital of Zambia. On 04\(^{\text{th}}\) January 2013 the government reacted to these pictures and the Minister of Information and Broadcasting Services, Kennedy Sakeni released a press statement in which he condemned the pictures published by *The Post* newspaper, the press statement read in part:

> The government is concerned with the continued publishing of nude pictures by some media house in the country. I note with regret that pictures depicting scantily dressed persons socializing in night clubs and other entertainment spots have become a common feature in some media outlets much to the discomfort of the general

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public….this is not only morally harmful, but also un-Zambian and un-acceptable, more so, that this is a Christian nation.164

The above is a clear demonstration of government interference in issues of morality and the media. The government in Zambia tends to feel they have the power to determine on behalf of Zambians what material tends to corrupt morals. And this has the potential of government manipulating the Obscene Publications Act for their own interests camouflaged as ‘interests of the people’. It was clear during the interviews that the law on obscenity in Zambia needs to be amended so that it defines in clear terms what constitutes obscenity and matter that can corrupt morals rather than leaving it in the hands of a few people to define this on behalf of society.

**Interviewer:** Obscene Publications Act – what are your views on the Chansa Kabwela case and how the government uses the Obscene Publications Act?

**Respondent:** The Chansa Kabwela case was just an act of desperation on the part of the political regime then (MMD), they felt that now they had something to get at *The Post* because of the seemingly obscene material which *The Post* released. They could have done their homework to determine whether that material was obscene and how the material was released to the public, was it through publication or other means? But they were in a hurry to pin down *The Post* without taking in to account all the relevant issues that were at play. What they didn’t realize was that *The Post* was concerned at the situation at the time, and those pictures were not published in the newspaper our news editor looked at the pictures and thought ethically it was not right to publish them so she forwarded the pictures to the responsible people through email to confirm to them that we had a crisis at that time, she relayed the message to the relevant authorities to check and address the issue. *The Post* had no opinion on that picture. In any case those pictures were not obscene in nature, they were just depicting a very serious situation of a crisis at the time. Obscene materials are ones that excite you sexually, but those pictures had no such qualities they would actually just throw you in to grief and sorrow.

The Obscene Publications Act has been used on several occasions to convict people and the Court are left to decide on behalf of the people what constitutes public interest and also define what material tends to ‘corrupt morals’. The most recent case involved a college student convicted under the Obscene Publications Act. The case drew a lot of media attention in Zambia and sympathizer’s on social networking sites like facebook and twitter that opened accounts to condemn the actions taken by the state against the student.

**Iris Kaingu v. The State**

In 2011, Iris Kaingu a 20 year old ZCAS College student was found guilty and convicted using the Obscene Publications Act by the Lusaka Magistrate Courts for making a 16 minutes sexual video that was circulated across Zambia and on the internet using digital media. Iris made the sexual video with her boyfriend Teddy Malekani, a 21 year old student at the same college. The video became famous and was an instant hit on many pornographic sites, because almost every Zambian was looking for it online. Iris and her boyfriend claimed that they never made the video for public consumption but it slipped out after one of their friends asked to use their laptop and found the video and copied it and showed it to a few friends and eventually ended up online. The video is the first ever Zambian public porno and it intrigued the nation. [...] In passing judgment, Resident Magistrate Prince Mwiinga found Iris Kaingu guilty and fined her K10.8 Million in default of which she would serve a prison sentence. Kaingu paid the K10.8 million and was released after spending two nights in prison. The boyfriend Teddy Malekani was never arrested or charged.165

**7.2.10 The State Security Act of 1969**

The State Security Act was enacted on 23rd October 1969, replaced the Official Secrets Act of 1967. The Act is based on the Official Secrets Act of 1911, 1920 and 1939 of the United Kingdom (UK). The objective of the State Security Act are; to make better provision to state security; to deal with espionage, sabotage and other activities prejudicial to the interests of the state; and to provide for purposes incidental to or connected therewith.166 The State Security Act has three (3) sections that affect the operations of the media in Zambia namely; section 3, 4 and 5. Section 3 gives a very extensive and broad definition of the offence of espionage and

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makes it almost impossible for civil servants to provide information about government operations for fear of being imprisoned because the offence also carries a hefty sentence of not less than 20 years but not more than 30 years. Section 4 (1) of the Act deals with wrongful communication of information by making it an offence to have in one’s possession, to receive and/or to communicate official secret codes, passwords or documents that border on the security and interests of the nation.

Any person who has in his possession or under his control any code, password, sketch, plan, model, note or other document, article or information, which relates to or is used in a protected place or anything in such a place, or which has been made or obtained in contravention of this Act.167

Section 5 is meant to protect classified information and makes it an offence to communicate any information considered ‘classified’ by the state and this offence carries a sentence of not less than 15 years. The State Security Act has been used before by the government to threaten media houses that seem to be critical of government and this is a serious case of abuse by those in authority, and this confirms that the laws we have are prone to abuse by those in authority. When it suits them they do not invoke them, but when they are under siege or scrutiny they tend to feel uncomfortable and they threaten the media or people scrutinizing or criticizing them by way of invoking these laws. What Zambia needs is a legal guarantee of media freedom in the Constitution so that in the event where government tries to use other means to clamp on the media they can seek protection from the Constitution. If criticism will jeopardize their popularity, politicians tend to fight back using their positions of influence to threaten the media and the State Security Act in Zambia has been used to make such threats. An example is the case below;

**The People v Fred M’membe, Masautso Phiri and Bright Mwape**

This case involved publication of issue number 401 of *The Post* newspaper, the accused carried a story in which they revealed a devious plot by the government. The President banned the paper that very day and the three accused were arrested and charged under the State Security Act for publishing a classified document. [...] Particulars of the offence are that on the 5th February, 1996 *The Post*, a newspaper for which the three accused work, produced its No. 401 Edition. The front page

carried an arresting headline entitled “REFERENDUM SET FOR MARCH”. The Police under special instructions from the state swung into action and ringed the offices of *The Post* and put them on surveillance from morning of that day. Armed with a search warrant, the police searched *The Post* Offices in Kanjombe House and Chandwe Musonda Road. The search yielded nothing in the office of Fred M’membe (Accused one) and Masautso Phiri (Accused two). In Bright Mwape’s (Accused three) office the document programme of work on Constitutional Reform Activities (Ex P1) was found under a table calendar. The document Ex P1 was not marked secret. The document Ex P1 contained nothing more than what its title suggests and the projected costs for the activities to be undertaken in the Provinces. In court, the defence made submissions of no case to answer. [...] In passing Judgment, High Court Judge P.J. Chitengi ruled that the accused have no case to answer. The essential ingredient of knowledge or reasonable ground for belief that the information is covered by the State Security Act was not proved. The accused escaped a sentence by a simple technicality because the document recovered by the Police was not marked ‘secret’ by the state. The state failed to prove that the contents of the document Ex P1 or indeed also those of Ex P3 are matters of State Security. Accordingly, the Judge dismissed the charges against the accused.168

This case did not lead to any imprisonment under the State Security Act because government failed to prove that Ex P1 was a classified document because it was not marked ‘secret’. What is worrying is that this is a clear sign of how the state can manipulate and abuse the State Security Act in order to punish journalists or the media. It is enough proof to know that if the government has attempted to use this law against the media in the past, then they might attempt to do the same in future and there are no guarantees that next time the accused will be lucky enough to escape punishment because of a simple technicality of a document not marked ‘secret’. The law needs to be looked in to seriously and a postmortem is required so that what is considered classified or not is laid clear by the state for everyone to know. The results from the interviews conducted in this research seem to point to the same school of thought when it comes to the State Security Act. All respondents agree that Zambia needs the

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State Security Act to keep secret information, just as the word goes ‘secret’ in order to maintain public order and national security. However, the voices of the respondents seem to come to an understanding that the current State Security Act is not perfect especially for the media and that it has weaknesses which have been abused by the government in the past to suppress opposing views especially those from private media and to threaten media operations in Zambia.

**Interviewer:** Every country needs to protect the security and interest of its citizens, what do you think is the weakness of the State Security Act in Zambia and how does this relate to the media?

**Respondent:** The State Security Act has a provision that is quite chilling for the media in that this particular provision gives authority to the President in his/her discretion to decide if the media has breached the State Security Act. The Act leaves it entirely to the President to decide public interest and national security issues on behalf of the nation. Hence, the State Security Act is prone to abuse by the President who might use it to silence opposing views especially in private media houses.

Another worrying provision in the State Security Act is that it criminalizes certain actions, for example, if an individual gives out certain information which is prohibited and one receives that information knowing that the information is classified then both individuals have bleached the State Security Act. One can be found wanting and caught up in this provision as long as the government (President) says that information is classified. This law includes journalists, who give out or receive such kind of information which is prohibited or classified and publish it. The State Security Act is supposed to protect the security of the nation but this particular law has been abused for political purposes to silence opposing views that seem to be a threat to the political existence of the ruling party. The provision that allows the President to ban a particular publication is so dangerous because this provision is so open and there is nothing that stops the President from banning altogether a particular publication from ever publishing again. This provision just gives rights to the President to ban a publication. There is a difference between banning a particular edition and banning a particular publication, so the law is not very clear on this aspect it’s a rubber band that can be stretched by the President in the name of state security as it suits him/her and his/her political party.

The State Security Act is also an infringement on freedom of expression and media freedom when it prohibits journalists or any individual in particular to be in possession, receive or
communicate information that is classified as bordering on state security and protection of public interest. The question is who determines what information is classified and when we talk about public interest, who determines what is public interest. This is not clear in the State Security Act as most of the authority to exercise this law lays within the President’s powers. Therefore, the President may use this law to persecute political opponents and this of course has happened in the past in Zambia and also to silence the voices of private media who seek to provide opposing views to government rule and authority. Another weakness of the State Security Act is that it has provided for a jail sentence of not less than 20 years for anyone who commits an offence that bleaches state security, this is a drawback for the media and imparts unnecessary fears when gathering news and information that is sensitive. The government has used this provision in the past to threaten journalists and the private media. This jail sentence slapped on such kind of an offence is tantamount to threats, intimidation and government control because it affects the media’s news gathering and consequently an infringement on media freedom. Nobody wants to be in jail for more than 20 years just because they were found in possession or received a two (2) paged document which the state considers ‘classified information’.

7.2.11 Printed Publications Act of 1947

The print media in Zambia has enjoyed a lot of latitude as regards registration compared to the broadcast media. The Printed Publications Act regulates the print media and has a provision that requires anyone who wants to start a print publication to register with the national archives and they must also send a copy of every publication to the national archives.

Section 5 (1) stipulates that no person shall print or publish, or cause to be printed or published, any newspaper until there has been registered at the office of the Director of National Archives at Lusaka the full and correct title thereof and the full and correct names and places of abode of every person who is or is intended to be the proprietor, editor, printer or publisher of such newspaper, and the description of the premises where the same is to be published. Every alteration in such particulars shall forthwith be registered in like manner.\textsuperscript{169}

Therefore, the Act makes it an offence to print or publish a newspaper without having registered the newspaper prior to printing and publication. And in Section 5 (2) the Act

provides for a fine for anyone found contravening Section 5 (1). There are no incidents in history where a newspaper or magazine has been denied registration by national archive, until recently when a journalist was arrested and charged under this Act.

On the 09th of January 2013, freelance Journalist Chanda Chiimba III was arrested and charged under the Printed Publications Act, the first time in the history of the media in Zambia that this particular Act has been used against the media. Particulars of the offence are that between June 9 and July 28, 2011 and August 25 and September 26, 2011 respectively, Chanda Chiimba III unlawfully did cause to be printed or published newspapers called “Stand Up for Zambia” and “News of Our Times” which were both not registered at the office of the Director of National Archives of Zambia. The case is being handled by Lusaka Chief Resident Magistrate Joshua Banda, and at the time of writing this dissertation the case was still before the Courts of Law.170

The Printed Publications Act also requires that all journalists in Zambia register with Zambia News and Information Services (ZANIS) and this registration of journalists is simply for accreditation purposes. The Printed Publications Act has no provision that requires journalists in Zambia to register for practicing licences per say, but only for accreditation purposes. During the interview sessions respondents asked about the Printed Publications Act said that this Act does not in any way hinder the operations of the print media in Zambia, neither has it been used by the government to block newspapers from registering with the national archives. And there have been no incidents where this Act has been used against journalists by denying them accreditation. One of the respondents was asked if this particular Act has any weaknesses that need attention and below is what they had to say;

**Interviewer:** What do you think are the weakness of the Printed Publications Act, if any?

**Respondent:** The only challenge of the Printed Publications Act is that what we have on the ground sometimes is not what is prevailing in actual sense at the national archives. For example, the national archives data base right now shows so many newspapers that have registered but if you look at the number of newspapers that are

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actually circulating it does not reflect the actual picture and this is mainly because the Printed Publications Act right now merely requires newspapers to register but does not require them to inform the registrar at the national archives when they have stopped circulating.

What is lacking is a provision in the Printed Publications Act that would make it mandatory for all newspapers and magazines that have registered, to also notify the national archives when they de-register or stop circulating so that the national archives can have correct records of what newspapers and magazines were registered, how many are still in circulation and how many are no longer in circulation. National archives right now just has a data base of all newspapers and magazines that have registered and can’t give information as to whether these newspapers or magazines are still in circulation or not.

**The Case of South African journalists**

In 1997, two South African journalists were expelled from Zambia because the government considered them a ‘threat to Zambia’s national security’. Reggie Marobe and Abraham du Preez of Phenyo Film and Television Production were ordered to leave Zambia within 24 hours by the Ministry of Information and Broadcasting Services. [...] The journalists had, prior to their arrival in Lusaka, been granted permission to film a documentary for the South African Broadcasting Corporation (SABC) entitled “Our Heroes”. The programme was due for broadcast on December 16. It was to be based on the ruling African National Congress (ANC) liberation activities in Zambia before the end of apartheid. The ANC’s headquarters were in Lusaka during the liberation struggle. [...] However, when the journalists went to collect their Press passes from the Zambia News and Information Services (ZANIS), they were told that their accreditation had been revoked. They were then led to a meeting with the information Permanent Secretary where they were reportedly told that their presence in Zambia was ‘undesirable’ due to the prevailing state of emergency in the country after the October 18 failed coup attempt.171

This case represents how the Printed Publications Act and specifically its provision that requires all journalists in Zambia to register with ZANIS for accreditation purposes can be

used by the government to silence the voice of those who seem to be critical of the
government. ZANIS is controlled by government through the Ministry of Information and
Broadcasting Services, they appoint the board and senior positions at ZANIS. After the PF
government came in to office in September 2011, within a year of their authority they
advertised all ZANIS jobs nationwide, this just goes to show the control each government
wants to maintain of ZANIS.

For any country to organize itself there have to be systems in place, and registering a
newspaper or magazine in itself is a system that is there to organize the print media in
Zambia. Registration is not wrong in itself but the conditions or obligations attached to
registration are the ones we have to look in to seriously in order to determine if this particular
law is good or bad. In terms of the media, if it is mere registration that is required, then that
should not be a problem. And this provision should apply to every media equally, whether
government or privately owned. This law should not be used to suppress the voice of certain
media. However, the chilling effect that the Printed Publications Act sends down our spines is
the fact that the national archives is under the direct jurisdiction of the Ministry of
Information and Broadcasting Services, and the head of this Ministry and his Permanent
Secretary are directly appointed by the President of the ruling party in Zambia. Hence, the
fear is that in future selfish leaders may use this particular Act to prevent print media from
registering if they seem to be critical of government and if the government in its calculations
categorizes a particular print media about to register as being a treat to their rule or extended
stay in power.

7.2.12 Compelling Attendance of Witnesses
This particular provision in the Criminal Procedure Code of Zambia has a very broad
definition and might be used by the Courts of Law to compel a journalist to reveal
confidential sources. Section 143 of the Criminal Procedure Code states that;

If it is made to appear that material evidence can be given by, or is in the possession
of, any person, it shall be lawful for a Court having cognizance of any criminal cause
or matter to issue a summons to such person requiring his attendance before such
Court, or requiring him to bring and produce to such Court, for the purpose of
evidence, all documents and writings in his possession or power, which may be specified or otherwise sufficiently described in the summons.\textsuperscript{172}

This provision gives the Courts the authority to compel a journalist to reveal sources and if the journalist does not provide the names of his/her sources, the Court further has powers to issue a warrant to bring him/her before the Court at a time and place deemed fit by the Courts. The Court under section 145 is further given powers to issue a warrant for the arrest and production of such person before the Court, and have him/her detained in custody until such a hearing has passed. The protection of journalistic sources is one of the basic conditions for press freedom, protection of sources is a right accorded to journalists under the laws of some developed countries and is recognised by international human rights treaties, conventions or charters. This particular right provides that the authorities, including the Courts, cannot compel a journalist to reveal the identity of an anonymous source for a story because this is an infringement on media freedom and the reporter’s privilege. This right is based on recognition that without a strong guarantee of anonymity, many people would be deterred from coming forward and sharing information of public interest with journalists, especially civil servants for fear of losing their jobs. As a result, problems such as corruption or crime might go undetected and unchallenged, to the ultimate detriment of society as a whole. Although there are no cases when this particular provision has been used to compel journalists to reveal their sources in Zambia, there are high chances that it might affect the work of journalists especially lately when there has been accusations of corruption within the judicial system in Zambia.

\textbf{7.3 Conclusion}

In conclusion, this research has utilized qualitative research methods (interviews and document analysis) in answering two separate but related research questions. The findings have achieved the objectives of the research by examining the Zambian media laws in relation to press freedom and freedom of expression, and determining the role of the state in media regulation. The Zambian media laws that infringe on press freedom and freedom of expression have been identified and presented in this research drawing on the principles of a combined theory of the Libertarian and Social Responsibility theories of a free press. The research findings indicate that there are a lot of weaknesses in the media laws in Zambia that indeed stand in the way of press freedom. Most of these weak media laws are mainly a carried

forward of the media laws from the colonial rule and the one party state. Some of the media laws have been amended several times but the government has largely influenced this process of media law review in Zambia and continue to frustrate the media in their quest to enact better media laws. According to the Social Responsibility theory of a free press, a responsible press should provide a full, truthful, comprehensive and intelligent account of the day’s events in a context which gives them meaning and it should serve as a forum for the exchange of comment and criticism and be a common carrier of the public expression. However, media laws that exist in Zambia make it particularly difficult for the media to provide a forum for the exchange of comments and criticism, especially the private media. Private Radio and Television stations that have attempted to provide this opportunity to its audiences have either been closed down or served with threats of closure should they continue. The government uses weaknesses in the Zambian media laws as pockets of opportunity to prevent private media criticism of the government, while at the same time the state owned media is crippled they are not able to criticize the state. Consequently, the weaknesses in the Zambian media laws have prevented the growth of the media in Zambia (both private and state owned) and most of these media laws are not in-tune with the principles of press freedom or freedom of expression.

The other objective was to determine the role of the state in media regulation in Zambia and it was discovered that there is government control and interference in the regulation of the media in Zambia. All state owned media belongs to the government and there is government interference in the way they are operated, while at the same time the state has been reluctant to review certain media laws because they give them an advantage to be able to interfere in the regulation of private media as well. Evidence has been provided through Court cases of how the government interferes in media regulation in Zambia. The Libertarian and Social Responsibility theories of a free press both indicate that the media should be free from government interference and that the state should only intervene when the stakes are high and this kind of intervention must not be abused and must be prescribed by law in order to protect society morals, reputation of individuals, and not in direct control or manipulation of the operations of the media. However, in the Zambian media context it can be seen from the evidence provided that the state is actively involved and has a firm grip on media regulation and do not play an interventionist role, instead the state tends to set parameters on behalf of the media and in most cases directly interfere in what the media publishes. The state owned media experiences a lot of prior censorship because the state appoints individuals in the entire
top decision making positions and also appoint the boards entrusted to run the state media, this situation is backed up by media laws. The Libertarian and Social Responsibility theories of the press indicate that the private media should be allowed to compete in a free market with state or public media. However, even though private media in Zambia is allowed to exist there are doubts as to whether they are allowed to operate in a free media market, because the state owned media gets subsidies from government and are never subjected to Court cases or threats of closure while this is the order of the day for the private media. It is clear that the state owned media have an added advantage over the private media and the odds of the media market are tilted towards the state owned media, the private media have to start on the back-foot.

The growth of the media in Zambia has been at a very slow pace because it is hampered by the weaknesses in the media laws which seem to choke any movement towards a free press, and the state seems to be happy to keep the status quo because from the evidence gathered it is clear that they are benefitting from these weak media laws and use them to control the media. The media locally and also with the help of international organizations, have been trying to push for better media laws and enactment of the access to information law. The government despite promising on numerous occasions has yet to give the media this kind of freedom. The media laws that currently exist are mostly archaic and were established before Zambia became a democracy in 1991 and yet the country has still maintained most of these unpleasant media laws, some of which can be described as undemocratic in a democratic nation. If the media in Zambia has to develop and move with modern trends in journalism and press freedom, then the current media laws have to be revisited, reviewed, corrected, some repealed and new ones enacted in order to achieve a media that will be truly independent and free from state control and interference and that will serve the interests of the Zambian public without fear or favour.

7.4. Chapter Summary
This chapter has presented findings in this research, thereby answering two separate but related research questions. The chapter has carefully selected and presented the weaknesses in the current Zambian media laws in relation to press freedom and freedom of expression based on the combined principles of the Libertarian and Social Responsibility theories of a free press. When presenting the weaknesses in the Zambian media laws, the research incorporated a discussion under each media law analyzed, giving the researchers opinion and providing
evidence using Court cases and further information to indicate the role of the state in media regulation in Zambia. The chapter has a conclusion that provides an overview of the evidence and findings of this research. The research has successfully answered the research questions and has achieved the purpose it set out to achieve when the thesis proposal was developed.
References


Appendices

Appendix A: List of Media and Court Cases

Banning Publication 401 of *The Post*

Chanda Chimba III vs The State

Chansa Kabwela v. The State

Forced closure of Radio Lyambai

Hakainde Hichilema v. The State

Iris Kaingu v. The State

Masautso Phiri v. The State

MISA, PAZA, ZUJ, ZAMWA, SSZJ and The Post Newspaper against the decision of the Minister of Information and Broadcasting Services

OMEGA Television v. Ministry of Information and Broadcasting Services

Shamwana v. Attorney General

Threat to Close UNZA Radio

The People v. Bright Mwape and Fred M’membe

The People v. Fred M’membe, Masautso Phiri and Bright Mwape
Appendix B: Interview Schedule

1. What are your full names and what position do you hold at this media institution?
2. How long have you been in the media industry?
3. How would you describe the media industry in Zambia, with regard to media law?
4. Is the media law in Zambia fair to the media, both public and private?
5. What are some of the media laws in Zambia that affect the media negatively?
6. Is there anything the government can do about these laws to improve the operations of the media?
7. Do you think the Zambian Constitution is media friendly?
8. What are your views on the Printed Publications Act of 1947?
9. Should media houses be allowed to publish without registration at National Archives?
10. What are your views on the Freedom of Information Bill (FOI)?
11. Should the FOI be made law?
12. How will the FOI improve media operations?
13. What are your views on criminalizing defamation?
14. What are your views on defamation of the President?
15. How does criminalizing defamation affect the media in Zambia?
16. What are your views on the Obscenity Publications Act of 1930?
17. Who determines what is obscene and what is not? Govt/public interest
18. What are your views on the State Security Act of 1969?
19. How does this deal with issues of access to information? Are journalists being hindered from accessing certain information deemed ‘classified’ by the state?
20. What are your views on the Contempt of Court Act?
21. Should the media be allowed to take pictures or record court proceedings?
Appendix C: Field Work Introductory Letter

To Whom It May Concern:  

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Date: Monday, 4 June 2012  
Your ref.:  

Letter of Recommendation  

Mr. Hlazo Mkandawire is a Master student in the Department of Media and Communication at the University of Oslo. I serve as his supervisor, and I find that he has chosen a very interesting and relevant topic for his dissertation namely: “‘You can cage the singer, but not the song”. Press freedom and the role of the state in Zambia.”

Obviously in order to undertake such a study it is essential that Mr. Mkandawire has access to information that will provide him with as much background knowledge as possible.

I hereby ask you to be so kind as to help Mr. Mkandawire in acquiring the assistance that he may need during his field-work in Zambia June till October 2012.

Yours Sincerely

Helge Rønning  
Professor  

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