

**PROTECTED BUT EXPOSED:**

**A CRITIQUE OF THE RIGHT TO PRIVACY AND REPORTING OF  
DOMESTIC VIOLENCE CASES IN THE MEDIA.**

**By**

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A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE  
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## **Abstract**

In Zimbabwe, when complainants of domestic violence apply for a protection order from the civil court the cases are reported in the media. Media reports identifies the victims by name. This study seeks to analyse the impact of media reporting of domestic violence that disclose names of litigants and discuss interventions to protect litigants and have sensitive reporting that recognise the right to privacy of litigants.

Section 57 of the Constitution of Zimbabwe provides for the right to privacy whereas section 61 provides for freedom of expression and freedom of the media. This is in line with the letter and spirit of international instruments to which Zimbabwe is a party which includes the International Covenant on Civil and Political Rights, the African Charter on Human and People's rights and the Maputo Declaration.

This research was conducted using the qualitative research method in the form of women's law and human rights approaches. Women's law approach was used to capture voices and the lived realities of women and the attitudes of society in which women live. Human rights approach interrogated the legal framework that can be used to protect and uphold the rights of both litigants and the media. Methods of data collection included interviews, focus group discussions and desk research.

The research findings revealed that being identified in media reports has several negative consequences on the complainants as it humiliates them and degrades their dignity. Further, it deters other complainants from reporting for fear of being exposed to the public, thus defeating the purpose of the Domestic Violence Act. There is therefore need to formulate corrective legislative, social and other measures to ensure that victims of domestic violence enjoy the right to access justice. This can be done by amending the Domestic Violence Act providing for hearing in camera and non disclosure of litigants' names in any publication. Training of media professionals on gender sensitive reporting is also crucial.

**Declaration**

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

**Signed** .....

**Date** .....

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

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**Date** ..... **Signed** .....

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## **Executive Summary**

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

Domestic violence is at the intersection of civil and criminal law. Many acts of domestic violence which are litigated in the civil court can also be litigated under criminal law for instance assault, sexual abuse and verbal abuse. When a person approaches the criminal court with a case of sexual abuse their right to privacy is protected in terms of the Criminal Procedure and Evidence Act<sup>1</sup> which prohibit and penalise publication of the name, address, place of occupation or any other information likely to reveal the identity of any complainant or of any witness in cases of indecent assault unless the judge or magistrate presiding at the trial, after consulting the person concerned or, if he is a minor, his guardian, has given his consent in writing to such publication conveyed in a document signed by the judge or the registrar of the High Court or by the magistrate or the clerk of the magistrates court, as the case may be. The Domestic Violence Act on the other hand does not provide such protection meaning that complainants in civil cases of domestic violence have their identity revealed which would otherwise receive protection had they chose to litigate in the criminal court. It is important therefore that complainants in civil cases receive the same protection.

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

The research findings revealed that media stereotypes women as having invited the domestic violence they suffer, as perpetrators of domestic violence, as abusing the legal framework

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<sup>1</sup> Section 196

which protects victims of domestic violence and as having gone awry by behaving in a manner that is morally unacceptable. Such stereotypes trivialise domestic violence issues. Further, disclosing the names of victims of domestic violence in the media reports has far reaching social, professional and economic consequences. It humiliates, degrades, traumatise and damage their reputation. It also deters other victims from seeking legal redress for fear of being exposed in the media. Domestic violence involves very intimate and personal issues that a person would not want just anyone to know that they are going through that.

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

The legislature in enacting the Domestic Violence Act left a gap by not regulating on the conducting of the court hearing and media reporting of domestic violence cases. Nevertheless the media can play a role in deterrence and awareness. The media should be trained on gender sensitive and human rights reporting. The Domestic Violence Act needs to be amended to ensure that names of litigants and any information that can lead to their identity should not be published in any way.

## **Acronyms and Abbreviations**

HIV                      Human Immune Deficiency Virus

ICCPR                    International Covenant on Civil and Political Rights

NGO                      Non – Governmental Organisation

UN WOMEN            United Nations Entity for Gender Equality and the Empowerment of  
Women

ACHPR                   African Charter on Human and People’s Rights

## **Human Rights Instruments and Local Legislation cited**

### **Human Rights Instruments**

Universal Declaration on Human Rights (1948)

International Convention on Civil and Political Rights (1966)

CEDAW

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

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

Beijing Declaration and Platform for action 1995

SADC Protocol on Gender and Development

### **Local Legislation**

Constitution of Zimbabwe Amendment (No. 20) Act 2013

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

Children's Act [Chapter 10:27]

Criminal Procedure and Evidence Act [Chapter 5:06]

Domestic Violence Act [Chapter 5:16]

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

The Health Professions Act [Chapter 27:19]

## **National Policies**

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

## **Other Legislation**

### South Africa

Constitution of South Africa

Domestic Violence Act No.116 of 1998

### Australia

Domestic Violence and Protection Orders Act 2008

## **CHAPTER 1**

### **Introduction**

Zimbabwe had no specific anti-domestic violence legislation until the 25<sup>th</sup> of October 2007 when the Domestic Violence Act became operational. This chapter looks at the background of the Domestic Violence Act, the problem which the research tries to address, the objectives of the research, the assumptions, the research questions, the location of the study and the limitations encountered in the study.

### **1.1 Background of the Study**

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

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

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

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

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

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

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

The domestic violence debate was so intense nationwide that it dominated on national media. The debate expressed mixed feelings by different sectors of society. Even in parliament the debate on the Act generated so much controversy. Mr Timothy Mubhawu , the then MDC Member of the House of Assembly for Tafara-Mabvuku was expelled from his party following his sentiments during parliamentary debate which was illustrative of the perceptions of many Zimbabweans on the domestic violence act. An excerpt from the press article quoting him states:

"I stand here representing God Almighty. Women are not equal to men," [Mubhawu] said amid jeers from women parliamentarians. "It is a dangerous Bill and let it be known in Zimbabwe that the right, privilege and status of men is gone. I stand here alone and say this Bill should not be

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<sup>3</sup> Chapter 5:16 of 2007.

<sup>4</sup> quoting The Herald (Zimbabwe) of October 05, 2006.

passed in this House. It is a diabolic Bill. Our powers are being usurped in daylight in this House." The proposed law, Mr. Mubhawu said, was crafted in a manner that promoted western cultural values. .... Mr. Mubhawu said the issue of proper dressing by women should also be addressed in the Bill as "some of the dressing by women is too inviting." Women in positions of authority, he said, should be role models in their marriages. "Women leaders in Government, judiciary and Parliament should be exemplary by at least marrying," he said (Zimbabwe Human Rights NGO Forum, 2006).<sup>5</sup>

Many other legislators showed hesitation to pass the bill into law. They cited that the bill was in conflict with culture and religious beliefs. Men feared that their powers to control women were being eroded.

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

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

These parliamentary debates are a true manifestation that our society still accepts and justifies violence against women, moreso intimate partner violence. This is the society in which both the perpetrator and the victim of domestic violence are socialised and raised. Usually society blames complainants in domestic violence cases such that the complainant also blames herself for the domestic abuse they suffer. This in itself makes her reluctant to report the case and seek for a protection order from the court. Usually complainants only seek recourse to the

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<sup>5</sup> Report from Zimbabwe Human Rights NGO Forum published on 8 December 2006

courts when the violence is perpetual especially when severe injuries results.<sup>6</sup> But they prefer the court process to be as discreet as possible for fear of public judgment and condemnation that they invited the abuse. The condemnation is shameful on the part of the victim because she should have conducted herself in a manner which does not provoke the perpetrator. It means she is a failure in the eyes of the public, even sometimes her own family. She is not ‘proper wifely material’ if she is married. She is actually destroying her home with her own hands. This is keeping in mind that wives are expected by society to become good wives and mothers.<sup>7</sup>

The findings will reveal that when the media then makes headline a person’s domestic violence issue it traumatises the complainants. Domestic violence is a very private issue which they would not want to be known, sometimes, even by their own children or parents. Women therefore resort to employing other measures of dealing with domestic violence than taking court action. These other measures often perpetuate further abuse against the women. Mentioning names of litigants in domestic violence media reports actually perpetuates the culture of silence against domestic abuse for fear of being exposed to the world.

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

Statistics from the Chief Magistrate’s office indicate that in 2009 domestic violence cases handled by the judiciary were two thousand and forty (2040), in 2010 they were four thousand nine hundred and six (4906), and in the first quarter of 2011 they were two thousand six hundred and sixty five (2665) (Anti- Domestic Violence Council, 2012).

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

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

Table 1: Domestic Violence Situation in Zimbabwe

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

## **1.2 Statement of the Problem**

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

One Respondent who is a nurse at a private hospital went to ZWLA to seek legal advice in connection with a case of domestic violence. Her husband is a pastor with one of the popular churches. He assaults her, sexually abuses, stalk and harass her at her workplace. At ZWLA she was advised to apply for a protection order. A provision of the protection order directed the husband not to enter or approach her workplace. She went with the provisional order to her immediate supervisor and gave her to advise the hospital security to ensure that her husband was not admitted into the building. The supervisor told her that she was going to advise the hospital manager about the protection order. Immediately, she was called for a meeting by management who told her to withdraw the protection order saying that it will affect the clientele of the hospital to learn that a member of the hospital staff was a victim of domestic violence. When she insisted that she had tried other avenues like prayer and counselling to no avail the manager said:

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

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

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

economic hardships prevailing in this country I cannot afford to lose my job. I withdrew the case.

This is one example of the effects of media reports which disclose the names of the litigants and other personal details that leads to their identification. There are no specialised courts for domestic violence in Zimbabwe. At the Harare civil court domestic violence cases are heard in court 5 which is at the same time the Children's Court and the Small claims court.

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

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

The constitution in section 57 provides for the right to privacy. The identification of litigants by name in reporting domestic violence cases infringes on the right to privacy. The reporting is sensationalised to the extent of sometimes distorting the fact. The disclosure of the litigants' personal details such as names, HIV status, place of residence, workplace and occupation is an unwarranted invasion of privacy. Such details are not in the public interest. What is in the public interest is the core issue of domestic violence, the story of what happened and not to whom it happened.

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

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

There is a gap in the Domestic Violence Act in that it does not protect the identity of litigants of domestic violence. The research findings reveal that complainants in domestic violence cases prefer to be anonymous in media reports of domestic violence cases. The Criminal Procedure and Evidence Act <sup>8</sup> protects complainants in indecent assault and other cases by stating that their identity shall not be disclosed in any publication unless with their written consent which is given through the presiding judicial officer. Domestic violence is at the intersection of civil and criminal law in that cases brought before the civil court can also be litigated under criminal law. Those litigating under criminal law automatically have their identity protected in terms of criminal procedure. It is therefore important that this protection be extended to litigants in civil cases.

### **1.3 Objectives of the Study**

The overall objective of the study is to understand the impact of media reporting of domestic violence that disclose names of litigants and what can be done to protect litigants and have sensitive reporting that recognise the right to privacy of women litigants.

The three main objectives are:

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

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<sup>8</sup> Section 196

## **1.4 Research assumptions**

1. The media in reporting domestic violence cases stereotypes women as helpless victims of domestic violence thereby trivialising issues of domestic violence.
2. There is an overstep of freedom of expression and freedom of the media in relation to protection of the privacy of a person in reporting of domestic violence cases.
3. The judiciary and legislature have failed to protect the right to privacy of victims of domestic violence as provided for in the constitution as the media is not accountable in its reporting.
4. Positive reporting of domestic violence cases in the media can play a part in deterrence and awareness.

## **1.5 Research questions**

1. Does the media in reporting domestic violence cases stereotype women as helpless victims of domestic violence thereby trivialising issues of domestic violence?
2. Is there an overstep of freedom of expression and freedom of the media in relation to protection of the privacy of a person in reporting of domestic violence cases?
3. Has the judiciary and legislature failed to protect the right to privacy of victims of domestic violence as provided for in the constitution as the media is not accountable in its reporting?
4. Can positive reporting of domestic violence cases in the media play a part in deterrence and awareness?

## **1.6 Location of study**

The research was carried out in Harare. Because of the nature of the research, that I was looking at the reporting of domestic violence civil court cases I could not restrict myself to a certain suburb of the city. I was looking at the court reports of cases decided at the Harare civil court in the domestic violence court. The Harare civil court services all litigants who reside in the city of Harare. A comparison analysis was also made with the Magistrates Court in Bindura, Goromonzi and Norton.

Respondents interviewed as members of the public were randomly picked in the city of Harare.

## **1.7 Limitations encountered in the study**

My efforts to interview as many litigants whose cases have been reported in the media, especially whose cases were reported in the month of July were futile. I managed to get one client from Zimbabwe Women Lawyers Association and two clients from Msasa Project. The rest I had to communicate with them over the phone them using their details that I had accessed from court records. I could not travel to their homes because of financial constraints and security concerns.

## **1.8 Summary of Chapters**

This research is divided into five chapters. Chapter 1 discusses the problem that the right to privacy of complainants of domestic violence is infringed by media reports that identifies litigants by name. Domestic violence is at the intersection of civil and criminal law. Section 196 of the Criminal Procedure and Evidence Act protects litigants of indecent assault from being identified in publications. Disclosing the names of victims of domestic violence cases in the media has far reaching social, professional and economic consequences. It humiliates, degrade, traumatise and damage their reputation. It also deters other victims from seeking legal redress for fear of being exposed in the media. Domestic violence involves very

intimate and personal issues that a person would not want just anyone to know that they are going through that.

In Chapter 2 discusses the methodologies used in this research. They were the women's law approach and the human rights approach. The women's law approach takes women as the starting point in analysing the law and how it affects them. The human rights approach analyse the legal framework that can be used to protect the right to privacy of victims of domestic violence and to identify the existing legal gaps and how to bridge the gap.

Chapter 3 explores how the media reporting of domestic violence stereotypes women as helpless victims of domestic violence and overstep on freedom of expression. The research findings revealed that media stereotypes women as having invited the domestic violence they suffer, as perpetrators of domestic violence, as abusing the legal framework which protects victims of domestic violence and as being wild and behaving in a manner that is morally unacceptable. It also revealed that media reports on domestic violence trivialise the issues of domestic violence by sensationalisation and inaccurate reporting. Media overstep on its freedom by, disclosing the HIV status of litigants and taking pictures of litigants without their consent.

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

Chapter 5 concludes and recommends as follows:

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

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

## **1.8 Conclusion**

The Domestic Violence Act became operational on the 25<sup>th</sup> of October 2007 after ten years of lobbying by various women's rights groups that realised the increase in number of domestic violence cases and the disproportionate impact on women yet there was no law adequately addressing the issue of violence within the family. When victims of domestic violence seek legal recourse their cases are reported in the media. This research seeks to analyse the impact of media reports that identifies litigants of domestic violence and how the situation can be addressed. Chapter 2 will discuss the methodology that was used in this research.

## **Chapter 2**

### **Methodological Approaches**

#### **2.0 Introduction**

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

#### **2.1 Women's law approach**

The overall method used for this research was the women's law approach. As Stang Dahl puts it, this is a woman centred legal discipline which took women's actual lived experiences and life situations based on sexuality, birth, care and domestic work as starting point for the analysis of the position of women in law and society (Bentzon et al, 1998:91). I therefore approached gender experts<sup>9</sup> who advocates for women's rights and the eradication of domestic violence. They stated that there was a lacuna in the Domestic Violence Act in that it did not regulate the hearing procedures of domestic violence cases. This meant that domestic violence cases were treated any other case in open court. They referred me to women's organisations.

The women's law approach is associated with the grass-roots oriented research methodology (Bentzon et al, 1998:92). I therefore approached women's organisations that work with

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<sup>9</sup> Oxfam and UN Women.

complainants in domestic violence cases.<sup>10</sup> These organisations stated that the media reports that disclose the names of complainants in domestic violence cases were actually defeating the purpose of the Domestic Violence Act because such reports results in humiliation and persecution of the complainant by society. They also deter other victims of domestic violence from seeking legal recourse for fear of being exposed to ridicule by society.<sup>11</sup> These organisations were also contact points for accessing litigants whose cases were reported in the media. I accessed one respondent from ZWLA and two respondents from Musasa Project.

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

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

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

<sup>11</sup> MSASA Project

<sup>12</sup> Respondent from ZWLA whose case was reported as 'Woman Seeks refreshment from marriage'.

<sup>13</sup> A woman who cook meals at a shopping centre in Epworth whose HIV positive status was disclosed in a media report of domestic violence.

<sup>14</sup> The focus group discussion was conducted on 23 November 2015 at ZWLA , Harare offices.

closed doors because you are ashamed of what people are commenting about you. It is an embarrassment.

These sentiments were shared by other respondents. The respondents suggested interventions which included law reform to ensure that their identities are not disclosed or even the case itself should not be report without their consent. This manifestly reveal relational feminism at play. Women can be defined in terms of their relationships to other people. Women emphasise relationships , contexts and needs. This is called the ethic of care ( Banthuys and Albertyn, 2007: 36). Before seeking legal redress of a problem women consider how the contemplated action will impact on their relations with family and society at large.

I also approached Padare Men's Forum on Gender<sup>15</sup> and other individual male respondents I randomly picked in Harare to get the views of men on disclosure of the identity of litigants in reports of domestic violence cases. The inclusion of men as subjects of research is a natural extension of women's law research which is concerned with gender differences, gender relations and gender transformation (Bentzon et al, 1998:94) . At Padare they said the issue of confidentiality in cases of domestic violence is a priority for all their clients because they do not want their personal issues known to the public. Ironically the respondent said he does not see anything wrong with disclosure of identity of litigants in media reports because the law is clear that the court is a public place. Other men who were interviewed were of the view that women do not care to have their identity disclosed because they are the ones who approach the courts yet they know how the media reports. Some men even thought that women engage the media to report the case in a bid to humiliate their husbands. Although the respondents blamed women for the media reports they stated that identifying the litigants results in humiliation, low self esteem and injury to reputation at work and in society.<sup>16</sup>

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<sup>15</sup> Padare Men's forum, a man's organisation that works to promote gender equality and fights against women's abuse by promoting gender equality and involving man in the fight against gender based violence. The organisation was formulated on the realisation of the importance of partnering with men in the fight against gender based violence also realising that men are also victims of gender based violence

<sup>16</sup> 11 men interviewed in Harare. 10 in the Central business District, 1 in Highfields

## 2.2 Actors and Structures Approach

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

Using the actors and structures methodology I interviewed media houses, media organisations and government institutions responsible for the media and implementation of the Domestic Violence Act .News editors <sup>17</sup> said they report domestic violence cases in the public interest to advise the nation on what is transpiring in the courts, to deter offenders from perpetrating violence and to shame the perpetrators. About how they choose the stories to report he said any story which they think will be informative to the public they will report. He said there were no consideration of gender issues in reporting and that litigants in domestic violence cases had no right to privacy in relation to court cases.

Reporters from Newsday and daily news were of a different view saying when the case involves intimate and personal issues the right to privacy of the complainant was at stake and had to be protected by not disclosing their names.<sup>18</sup>This shows that there some kind of appreciation by the media of the importance of privacy for victims in reporting domestic violence. There is therefore room to engage the media to desist from disclosing the identity of litigants. However H-Metro was adamant that they have a right to disclose the identity of litigants because if the legislature did not intent that then it should have made provisions for their protection as in rape cases. ZWLA said they tried to engage H-Metro on the same issue to no avail.

I interviewed media organisations<sup>19</sup> to get an insight on the role of media in fighting domestic violence and the responsibilities of reporters and editors in the eradication of domestic violence and in upholding the human rights of litigants including the right to privacy.

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<sup>17</sup> H-Metro.

<sup>18</sup> ‘Husband shoves cooking stick into wife’s privates’ reported in the Newsday on 3 July 2015., and ‘Wife sues hubby over Abuse, HIV medication’ reported in NEWSDAY 21 July 2015.

<sup>19</sup> They are the Media Institute of Southern Africa (MISA), Media Monitoring Project of Zimbabwe (MMPZ), Voluntary Media Council of Zimbabwe (VMCZ), Zimbabwe Union of Journalist (ZUJ) and Federation of Africa Media Women (FAMWZ).

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

Such interviews gave insights on how the media can be engaged to respect and uphold the right to privacy of litigants. MISA, MMPZ and FAMWZ stated that in terms of journalism ethics media practitioners have a responsibilities to ensure that their reports does not result in unintended consequences such as revictimisation of the complainants of domestic violence. An editor is ethically bound to respect the right to privacy of victims even when they are complainants in civil cases where the law does not protect the right to privacy , the journalist or editor should protect the complainant. VMCZ stated that as long as the report was a true account of what happened in court the journalist would have acted ethically and that if the law does not prohibit identification of litigants the journalist should report victims by name for authenticity reasons.<sup>20</sup> All the organisations stated that reporters had a responsibility to fight against domestic violence by reporting incidences of domestic violence in the media.

Interviews with government departments and institutions with the mandate and responsibilities of implementing the media laws and the domestic violence Act<sup>21</sup> were insightful. The Media Commission stated that media houses are bound by their codes of conduct and have no responsibility of protecting the right to privacy of victims if it is not protected by the law. It was further stated that the Commission is a creature of statute, as it came to force by provisions in the AIPPA<sup>22</sup>. The NPA respondent stated that off hand they were not aware of any cases on the right to privacy that had been prosecuted.

The actors, norms and structures in relationships enable the researcher to start out with women’s experiences in the process of life management and look at the normative structures that impinge on her life. Structuration theory is based on the assumption that structure is both

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<sup>20</sup> This view was also shared by the Deputy Editor of H-Metro.

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

<sup>22</sup> Access to Information and Protection of Privacy Act [Chapter 10:27]

enabling and constraining, but does not totally determine the actor's behaviour. The theory assumes that individuals or groups are responding and acting with knowledge of the conditions they have to cope with (Bentzon et al, 1998:103). The methodology unearthed that women and men are apprehensive about accessing the courts for fear of being exposed by the media therefore they resort to alternative dispute resolution mechanisms such as counselling, prayer, friends, church and family elders. Respondents said these measures yielded short term results and they were forced to seek legal recourse as a desperate measure weighing between the humiliation of media reports and the risk of losing life or limb.

### **2.3 Human Rights Approach**

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

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

### **2.4 Research methods**

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

### **2.4.1 Desk research**

I first used desk research. I read the newspapers for the month of July 2015 to follow on the manner in which domestic violence cases were being reported. I noticed that in every report the names and other details which leads to the identity of the litigants were disclosed. From these reports I also took down the names of litigants on domestic violence cases. I then went to the civil court at Harare and perused the index book using the names of the litigants wherein I was able to access their case numbers which in turn I used to access the court records of the cases. In the court records is where I got the personal information of the litigants including their phone numbers and addresses. I then phoned the litigants.

### **2.4.2 Interviews**

The interview technique was characterised by extensive probing and open-ended questions. The emphasis was on obtaining answers to carefully phrased questions to address the assumptions.

#### **2.4.2.1. In-depth interviews**

They were carried out with litigants in domestic violence whose cases had been reported by the media. These were interviews with actual people who experienced how it feels and the effects of having one's case reported in the media. Individuals with a lived reality of having their private lives exposed to the world. Twelve (12) litigants whose cases were reported in the media were interviewed. They were nine (9) women and three (3) men.

#### **2.4.2.2. Key informant interviews**

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

The key informants interviewed were magistrates, prosecutors, clerks of court, officers from the human rights commission, the media commission, provincial development officers, district development officers, media organisations' staff, gender activists' organisations', newspaper editors and lawyers in private practice. At times I had group interviews of the key

informants so that I do not consume too much of their time as they were busy people who had to attend to their clients. This was the case with Ward Coordinators in the Ministry of women's affairs whom I could access during the monthly meetings at the district headquarters.

#### **2.4.2.3 One –to-one interview**

The interviewees were identified using the random sampling method. They were also administered on respondents whom I strategically located in the Africa Unity Square and Harare gardens popular places in Harare where people while up time waiting for their appointments. Sixteen (16) members of the public were interviewed of which eleven (11) were women and five (5) men. These were meant to get the general picture on the perspectives of the public regarding the current reporting of domestic violence cases in the media.

#### **2.4.3 Focus Group discussions with female litigants**

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

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

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<sup>23</sup> Dengu-Zvobgo et al 1991.

#### **2.4.4 Domestic Violence Court Records**

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

Table 2: Table Of Respondents

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

## **2.5 Overview of the research methodologies.**

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

## **CHAPTER 3**

### **RIGHT TO PRIVACY AND DOMESTIC VIOLENCE CIVIL COURT REPORTS IN MEDIA**

#### **3.0 Introduction**

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

#### **3.1. Stereotyping women in domestic violence cases**

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

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

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

1. As people who invite the domestic violence they suffer.
2. As perpetrators of domestic violence.
3. As abusing the legal framework for protection of domestic violence victims.

4. As having gone awry.

### 3.1.1 Women asking for domestic violence.

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

**‘Nude pics end marriage.... hubby sleeps with knife under pillow’**<sup>25</sup>. The article reported that the husband started sleeping with a knife under pillow after discovering nude pictures that his wife was exchanging with other men on the phone. In a way the wife caused the husband to sleep with a knife under his pillow. She is the one who was driving him to behave in such a manner. Blaming the victim trivialises the violence perpetrated against them.

### 3.1.2 Women as perpetrators of domestic violence.

Women are portrayed as perpetrators of violence in the news headlines such that if a person does not read the story the headline would mislead them. **Abused by drunk wife**. The headline gives the impression that the husband is living in hell. However a reading of the whole story will show that the media picked the husband’s defence and used it as the headline. The wife is the one who had approached the courts seeking for a protection order against the husband who assaults her and the children and sometimes lock them out of the house to sleep in the open overnight. The protection order was granted. In the report **‘Cheater granted protection order’**<sup>26</sup> the impression is that she given a protection order against the person she cheated yet it was against her brother<sup>27</sup>. In **‘Woman threatens to get**

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<sup>24</sup>Reported in the H-Metro on 7 July 2015

<sup>25</sup> Reported in the H-Metro on 3 July 2015

<sup>26</sup> Reported in H-Metro on 23 July 2015

<sup>27</sup> The brother in his defence alleged that her sister was evicting him because she was cheating her husband yet the complainant’s husband was testified in court that the defendant was disturbing their peace such that complainant and their three minor children had moved out of the house for fear of defendant who was physically and verbally abusive and issued death threats.

**ex lover fired**<sup>28</sup> the woman was going to the complainant's workplace to get money for the child's upkeep and to ask him to obtain the child's birth certificate and he was refusing to cooperate. To stop her he applied for a protection order. The woman was going to his workplace for the sake of the child's needs.

### **3.1.3 Women abusing the legal framework for protection of domestic violence victims.**

**'Cheating wife bashed'**, she was granted protection order against physical, sexual and verbal abuse. To the reader it then gives the impression that the courts are actually protecting women who cheat. It also gives the impression that women who approach the domestic violence court are actually the main perpetrators of violence and the courts condone the act of cheating. The respondents during the research were of the view that,

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

However , information on the court record is that the parties were not married and the incident which prompted the cheating allegations occurred six months after separation. They had cohabited together for four years and they had a three year old daughter. Since they started staying together the Respondent would always physically and psychologically abuse her wily nilly. She then moved out from respondent's house to stay with her uncle's family and her sister. He would come and cause havoc at her residence, took the child by force at mid-night , threatening her with death because of the separation and said that if he cannot have her she would rather be dead. One day he came to her uncle's house and when he saw her being dropped from a car by a man. He assaulted her accusing her of prostitution. This report shows that the media even sometimes report domestic violence inaccurately. The inaccuracy actually paints women with a 'black' brush. It portrays women as scandalous. It perpetuates the stereotype that women who seek protection orders against their intimate

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<sup>28</sup> Reported in the Newsday on 11 July 2015.

<sup>29</sup> Sentiments by a male respondent in the Africa Unity square. Five other male respondents gave comments in line with these at different times and venues which shows that this is a widely held perception by men towards domestic violence cases.

partners are loose and they want protection so that they cheat and do other immoral acts. The media is also scandalising abuse thereby trivialising the violence perpetrated against these women.

Trivialisation is also seen from the way newspaper articles framed domestic violence using themes that might misinform the public about domestic violence for instance victim blame and misleading facts where the reports are inaccurate<sup>30</sup> as in this case.

**‘Cheater granted protection order’<sup>31</sup>**. The impression given by the headline is that the woman was granted protection order for cheating, and that the protection order was against her husband. Alas, when you read the story you realise that the cheating allegations were being levelled against her by her brother. This article portrays women as abusing the legal system for protection of domestic violence cases.

#### **3.1.4 Women gone awry**

The reporting also portrays women as having lost manners and their respect and dignity. They are portrayed as behaviour in a manner that is unacceptable and that brings shame on society. **‘Wife takes condoms home’<sup>32</sup>**, really this is taboo for a married black Zimbabwean to bring condoms into the house and ask her husband to wear them when they are being intimate. This behaviour is ordinarily unacceptable both culturally and religiously to many people in the country. One interviewee actually commented saying

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

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

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<sup>30</sup> Headline stating **‘WOMAN SEEKS REFRESHMENT FROM MARRIAGE’** yet she had said she was sick and tired of the abuse and had already instituted divorce action.

<sup>31</sup> Reported in the H-Metro on 23 July 2015

<sup>32</sup> Reported in the Herald on 16 July 2015

<sup>33</sup> A male respondent in the Harare gardens. 5 women respondents who were interviewed at different times commented that this woman had gone too far. They said condom use was an unspeakable topic in the home no matter how promiscuous the husband is.

In fact the wife is the one who applied for a protection order. The newspaper also cited the physical and verbal abuse she was facing. In trivialising the matter they did not report the fact that they had been married for 23 years, he beats her in front of their four children, he threatens her with death and that she had reported to the police and he was fined but he is still not deterred. These are important issues to disclose so that people can have a full picture of the abuse and victimisation. Instead the media reported at length how the wife was denying the husband conjugal right and about her removing the wedding ring which she had sent for polishing. The issues that the media focused on are not acts of domestic violence.

**‘Wife deserts bed’**<sup>34</sup>, the headline gives the impression that she is just a ‘problematic wife’ who does not want to share the matrimonial bed with her husband. However on reading the story it is revealed that the husband was sleeping with a knife under the pillow and he had sent her an axe picture on the phone with a message saying ‘some people deserve this’. In the Newsday the headline of the story was **‘Man threatens wife, send her an axe picture’**<sup>35</sup>. In this context the Newsday headline is more in sync with the case.

**‘Sex starved wife drags hubby to court’**<sup>36</sup>, that a woman goes to court for sex portrays women as having gone wild and behaving in a manner unacceptable to society thus trivialising the domestic violence issues she wanted addressed. Trivialisation really came our glaringly when I perused court records. The report states that it is a court report of domestic violence but the headline itself has nothing to do with domestic violence. Being sex starved is not abuse in terms of the Domestic Violence Act. The media only discloses that he physically and verbally abuses her. A reading of the court record revealed that the respondent stalk her, searches her mobile phone and calls her clients thus affecting her business, and also that he takes his vehicle and uses it with his girlfriends. On the other hand the newspaper report did not disclose this ordeal, but reported at length how the ‘woman yesterday cried at the Harare Civil Court pleading with the magistrate to order her husband to have sex with her. .... could not hold back her tears while telling magistrate ..... that her husband, Joseph, denies her sex. She said she was being sex-starved and could not live without enjoying it every day.’ The report even went further to disclose that the couple was HIV positive. The focus of the media on issues that have nothing to do with domestic violence at the same time choosing to ignore

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<sup>34</sup> Reported by Prosper Dembedza in the Herald on 24 July 2015

<sup>35</sup> Reported by Tinashe Sibanda in the Newsday on 21 July 2015

<sup>36</sup> Reported in the Herald on 27 January 2016

the basis of the complainant's application is a manifestation of the way media trivialise domestic violence issues. Such reports trivialize the matter in that it sexualises it by giving it pleasurable undertones. It trivializes the wife's bitterness as merely brought about by lack of bodily pleasure.

Media often trivializes domestic violence by sexualisation it leading to society's desensitization of the issue. In some cases these reports are received as and discussed as entertainment, for instance the headline '**I can't take 10 hours of sex daily anymore**'<sup>37</sup>. It is notable that many other stories on domestic violence are confined to the court reports on the small edge of the paper and in a way that do not add any value to the key functions of journalism (Muchemi,2015).

Trivialisation is also seen by failure seek the voice of the victim but ignores them altogether. In the same vein they do not seek the opinions of legal experts, gender experts, counsellors or the judiciary who could provide important information on local resources, the background of the issue and the impact of domestic violence. Rather domestic violence is reported as a personal tragedy and the reports are reactive rather than proactive (Lindsay- Brisbin et al , 2014).

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

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<sup>37</sup> **I CAN'T TAKE 10 HOURS OF SEX DAILY ANYMORE** a headline on NewsdzeZimbabwe on 16 November 2016. The wife sought a protection order against a husband who demanded ten hours of sex daily and any failure to oblige was meet with physical abuse. The online comments shows people joking about the case some seemingly envying the husband saying 'these are the really married ones who can have sex until the woman is frustrated', other asking for his number because they were sexually starved, and others asking where they can get his concortion.

<sup>38</sup> Paragraph 236

## **3.2 Conclusion**

The findings in this chapter revealed that media reports of domestic violence cases stereotype women as deserving to be abused, as perpetrators of domestic violence, as abusing protection order applications and as having gone awry thereby trivialising domestic violence issues. They ignore the abusiveness of the perpetrator but blame the victim. Chapter 4 will discuss the way media overstep in its freedom in relation to the right to privacy of litigants and the consequences of such.

## Chapter 4

**There is an overstep of freedom of expression and freedom of the media in relation to protection of privacy of litigants in reporting domestic violence cases.**

### 4.0 Introduction

The overstep of media freedom in relation to right to privacy is manifested by sensational reports, inaccurate reporting, inserting pictures and disclosing the HIV status of litigants without their consent. Putting the litigants in the spotlight has dire social consequences to victims of domestic violence.

### 4.1 Right to privacy versus media freedom

American lawyers Samuel D. Warren and Louis D. Brandeis noting the excesses of the media wrote a watershed article in 1890 describing the pathology of what they saw as follows:<sup>39</sup>

The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle (Cameroon, 2003)<sup>40</sup>

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

The constitution of Zimbabwe provides for both the right to privacy and freedom of expression and freedom of the media. Section 61<sup>41</sup> provides for the freedom of expression

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<sup>40</sup> Cameroon, J. quoting (1890) 4 Harv. L. Rev. 193, at 196

<sup>41</sup> Section 61 (1) (a) Every person has the right to freedom of expression, which includes freedom to seek, receive and communicate ideas and other information.

and freedom of the media. The constitution<sup>42</sup> limits that freedom of expression and freedom of the media to exclude, inter alia, malicious or unwarranted breach of a person's right to privacy. This section mirrors the international instruments such as ICCPR<sup>43</sup>, ACHPR<sup>44</sup>, which protects the freedom of expression and freedom of the media.

Section 57 of the Constitution provides that every person has the right to privacy. This section manifests Zimbabwe's efforts to abide by the international instruments to which it is a party. This section is in tandem with international instruments such as UDHR<sup>45</sup> and ICCPR<sup>46</sup>.

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

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

In exercising its freedom of expression the media should therefore not infringe on the litigant's right to privacy.

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

<sup>42</sup> Section 61 (5) (d)

<sup>43</sup> Article 19 provides that everyone shall have the right to freedom of expression. The exercise of this right carries with it special duties and responsibilities. It may be restricted when necessary for respect of the rights or reputations of others.

<sup>44</sup> Article 9 (2) 'Every individual shall have the right to express and disseminate his opinions within the law.'

<sup>45</sup> Article 12 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks upon his honour and reputation. Everyone has the right to protection of the law against such interference'.

<sup>46</sup> Article 17

Media's argument for disclosing identity of litigants in domestic violence cases is that the matters are subject to public hearing and that mentioning names show authenticity of the story.<sup>47</sup> Public hearing is one where access is not limited: ordinary members of the public and members of the should be allowed free entry so as to verify that justice is done and seen to be done (English and Stapleton, 1997). A public hearing is the basis for an open court system. In common law systems open court is a venerated ideal and principle of justice which is regarded as indispensable. The principle generally requires that court proceedings be open to the public and that publicity to those proceedings be uninhibited (Cameroon, 2003). The media in Zimbabwe has the right of admission to sit in court and follow proceedings and to publish those proceeding.

To understand the right of the media to report court cases it is important to look at the reasons for having an open court system with public hearing in common law jurisdictions.

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

The media reporting of domestic violence court cases should therefore be analysed from the perspective of the purpose of the legislature in guaranteeing the freedom of expression and freedom of the media. Did the legislature intent to have the identity of complainants in domestic violence cases disclosed in media reports that reveal personal and intimate details which would humiliate, embarrass and make them feel ashamed? That could never have been the intention of the legislature. The usual rationale for constitutional protection of press freedom is the important contribution made by the press to one of the goals of freedom of expression in general, that is, establishing and maintaining an open and democratic society (Currie and de Waal, 2013:343). In the United States of America case of *New York Times Co v United States*<sup>48</sup> Justice Black stated that the constitutional guarantee of a free press gave the press the protection it must have to fulfil its essential role in our democracy, so that it could bare the secrets of Government and inform the people (Currie and de Waal, 2013:343).

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<sup>47</sup> H-Metro Deputy Editor in an interview conducted on 28 October 2015 and VMCZ Director in an interview conducted on 13 November 2015.

<sup>48</sup> 403 US 713 (1971) (the 'Pentagon papers case')

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

Disclosure of personal information of litigants in domestic violence cases has a significant human impact. Respondents <sup>49</sup> told me they were distressed to discover often with no prior notice that personal information about them was in the press or available on the internet for neighbours, relatives, friends and colleagues to see. The broader impact of that freedom of the media is that the potential disclosure of their personal information causes victims of domestic violence to be apprehensive about seeking recourse or justice because of the potential for humiliation, embarrassment and exposure.

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

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<sup>49</sup> Respondents whose cases were reported as ‘Woman Seeks refreshment from marriage’, HIV Positive Woman abused by husband, Man takes spoiled panties, used condoms to wife’s workplace.

## 4.2. Media overstepping its freedom

### 4.2.1 Sensationalism of domestic violence cases

The media present domestic violence cases in an exaggerated way to make it seem more interesting. The media houses maintained that the reporting of domestic violence cases in the media was consistent with media professionalism and media ethics. However other editors admitted that in certain situations there was an overstep in the reporting for instance where the defence of the respondent was being continually used as the headline yet the court had granted the protection order. In the headline '**ABUSED BY DRUNK WIFE**' the respondent had made the allegations in his response yet it was the wife who approached the court seeking for a protection order and the order was granted. The heading gives the impression that the wife is the one who was abusing her husband and to a person who will not proceed to read the story but just saw the headline it will give an impression that women are abusing men. In a way the media would have feed the public with wrong news and wrong picture of what is obtaining in society.

Such kind of headlines is in a way framing victims of domestic violence. It is unethical to turn a story depicting deep physical and psychological wounds into a source of entertainment<sup>50</sup>. The media should not give room for the ridiculing of domestic violence victims as this will only discourage others to come out and be rescued from torture. Media reports domestic violence in such a way that there is sexualisation, titillation and pornification of female victims, for instance the following headlines<sup>51</sup> **Man demands sex, My hubby is a sex maniac, Sex starved wife drags hubby to court.** The portrayal of woman as sex objects prevents people from seeing this as a crime against a human being.

### 4.2.2 Taking pictures

By taking pictures of litigants the media is overstepping on their freedom. The pictures of the litigants are taken without the consent of the litigants and also in a craft manner to ensure that the litigants do not notice that their pictures are being taken. One of the research

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<sup>50</sup> MMPZ

<sup>51</sup> Headlines such as , 26 years no sex, My hubby is a sex maniac, Sex starved wife drags hubby to court, man demands sex.

respondents<sup>52</sup> during the interview said that when they inquired from the media on how they obtain the pictures of the litigants the response was that a reporter will be in court taking notes and when the litigants have been excused by the court the reporter inside will then communicate on phone by texting to the photographer details of the litigants they are interested in. The details are usually about the clothes the litigants are wearing and their structure. The photographer will be under a tree across the road from the court exit and will be obscured by cars such that the litigants never notice. This is actually preying on litigants in the manner it is done showed that the media is aware that there is something amiss about their actions.

A respondent<sup>53</sup> from a media organisation who is a media practitioner said taking pictures of victims of domestic violence without their consent is not a right of media even when it is at a court which is regarded as a public place. It is not a right because it may not help the victim. She further stated that a person's intimate story should not be publicised without their consent.

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

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

The other respondent also stated that media ethics is a lot more than whether what is reported is true or false. The editor should look at what is the implication of their story on the survivor

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<sup>52</sup> A magistrate interviewed on 26 January 2016.

<sup>53</sup> An officer from HER Zimbabwe interviewed in Harare on 19 November 2015

of the domestic violence. Their standing at school, work and in society. Some of the reports are so graphic even when there are no pictures. You cannot read it aloud to another person<sup>54</sup>. She further stated that although such graphic reporting may not be in breach of a particular law it is unprofessional. The media should understand that the newspaper is a family paper which is read by all ages. The news is for consumption to the public so they should therefore consider what the public will feel about certain news content.

On the headline ‘ **Married cheat bashed**’ it was reported in the first paragraph of the story that the complainant approached the court seeking for a protection order stating that the respondent forces to have sex with her even during her monthly period. The parties’ names were disclosed. When I called her seeking for an appointment to interview her, she told me that she could not talk to me in case I was a journalist wanting her comments so that I could publish again what she was saying. She then immediately hung up on me. Her voice was actually trembling as she was talking to me such that I could feel her fear through the phone which I think indicates how much she was affected by the media reporting.

In South Africa, the courts have held that the right to privacy is also invaded by publishing someone’s photograph without their consent. In the case of *O’ Keeffe v Argus Printing and Publishing Company Limited*<sup>55</sup>. As Neethling et al explain the principle established: ‘no person need tolerate that even his image (photograph)... is disclosed to an unlimited number of persons against his determination and will.’ (Currie and de Waal, 2013: 296)

#### **4.2.3 Disclosing the HIV Status of Litigants**

It can be noted that the court reports of domestic violence cases have gone further even to report the HIV status of the litigants even in cases where the status was not in issue.

The Constitution<sup>56</sup> protects the right to privacy of every person, which includes the right not to have their health condition disclosed. This right is not qualified as to who should not disclose that health condition. Before the enactment of the 2013 Constitution this right would only arise in relation to the medicinal professionals<sup>57</sup>. The provision of the constitution being

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<sup>54</sup> Media Monitoring Project

<sup>55</sup> 1954 (2) SA 244

<sup>56</sup> Section 57 (e)

<sup>57</sup> Health Professions Act

general means therefore that no one should disclose the health condition of anyone. This includes the media in their reporting of court cases because the moment the media discloses that condition the impact is usually greater than that of an individual and the breach is actually amplified. The media has a duty to ensure that their conduct does not breach the rights of the litigants further. For instance ‘meanwhile a woman is suing her ex- husband accusing him for of disclosing her HIV+ Status to the public.’<sup>58</sup>

Publication of a person that they are suffering domestic violence causes stigma to the victim. On the other hand disclosure of one’s HIV + status is also stigmatising. When the two happens to one person there is a double impact. In other instances it is actually traumatising for the victim of violence.

Disclosing that someone is HIV positive is an invasion on their privacy. (Currie and de Waal , 2013:296) In the case of *NM v Smith*<sup>59</sup> the Constitutional Court of South Africa on appeal held that disclosure of the fact that persons were HIV positive where defendants were certainly aware that the plaintiffs had not given their consent or at least foresaw the possibility that the consent had not been given to the disclosure was a breach to the right to privacy. Invasion of privacy in reporting domestic violence cases sometimes actually breaches a victim’s right to personal security<sup>60</sup>. In the case of a litigant whose domestic violence case was reported in the media as well as her HIV status it had far reaching human rights abuse implications. As a result of the media publicity she was discriminated by society in Epworth where she stayed. Even her children who were nine and twelve years respectively suffered discrimination and stigma at school. The nine year old one was born HIV positive and other children at school were asking her about her HIV status because of her perennial

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<sup>58</sup> Herald 22 July 2015 page 4. The headline was ‘**Man assaults granny (100) over witchcraft**’

<sup>59</sup> 2007 (5) SA 250 (CC)

<sup>60</sup> Section 52 ‘Every person has the right to bodily and psychological integrity which includes the right (a) to freedom from all forms of violence from public or private sources.’

illness. Some children even refused to share the desk with her and many children no longer wanted to play with her. Some even told her blankly that they were afraid of being infected with HIV despite that her HIV status was not confirmed to those children.

The litigant earned her living from cooking meals at the shopping centre in the open place where other women cooked. On several occasions, when drunk, a number of her male clients confronted her accusing her of trying to kill them by cooking for them when she knew she was HIV positive. At one point a man insulted and assaulted her and went on to pour water on her cooking fire and threw away her pots and gave her an ultimatum not to cook again for the public as she was risking people's lives. He called her a murderer and said she is the one who was supposed to be taken to court because she was abusing people's rights. She was saved by the intervention of the police. Her business was affected by the report. Her in-laws also blamed her for infecting the husband saying that if she was not the one who was an AIDS carrier she would not have told the media to publish it. That is the other dimension of the report. Victims are suspected of having given the news to the media because the court's decision was in their favour. She narrated her ordeal as follows:

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

Respondents told me they were distressed to discover that their cases had been reported in the media without prior notice to them and it was available even on the internet for the whole world to see.<sup>61</sup> They stated that having your HIV status disclosed to the public without your consent was emotionally traumatising. It is so painful and it makes the person feel miserable.

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<sup>61</sup> Hubby abuses HIV Positive Wife. H- Metro March 2011.

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

When I went to court for hearing I did not tell anyone at work. I just took a day off. The following day after lunch my superiors called me to their office and asked me what was going on. They told me they had read the case in the newspaper. That is when I first knew that the case had been published. They said I should have told them that I was going to court when I took the day off. The reason why I did not tell them is because they would ask why I was going to court and I did not want anyone to know. Imagine walking around the hospital with everyone talking about you. You noticed that the newspaper reported that my husband is HIV positive. My colleagues were asking when I discovered that he was positive and when I had been tested and whether I am not on window period or I could be infected but my anti bodies were still active since our tests in Zimbabwe do not reveal that you have the virus but it is inferred when your anti bodies had decreased. People were concerned to the extent that the concern was agonising. The stigma caused by such reporting is for a lifetime. I really felt that my privacy had been invaded. My father even phoned me later in the day asking if I was aware that my case was in the media. He had not seen the newspaper but only came to know about it when his work colleagues were asking whether it was me in the Herald report. At least my father knew about the case since I had told him. It is so humiliating to the whole family. People who know would want you to explain what really is the matter. And this is not an interesting story that you want to be narrating the whole day.<sup>62</sup>

#### **4.2.4 Inaccuracy of media reports.**

In terms of the laws of Zimbabwe court reports must be accurate, fair and balanced. The state is entitled in the public interest to report on all court proceedings therefore they should communicate accurate information. The court reporter must exercise meticulous care in gathering and checking his information. He must ensure that no vital facts are left out and that he has not distorted the facts. In summarising the reports the court reporter must ensure that the report does not become distorted, garbled, inaccurate or misleading (Feltoe, 2003). Journalists should not disseminate falsehood or rumours or half truths that reduce the value of information. This can amount to a human rights violation as false information can harm

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<sup>62</sup> **MAN TAKES USED CONDOMS, PANTIES TO WIFE'S WORKPLACE.** Herald 26 January 2016. Reported by Evan Zhakata.

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

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

Reporting these cases inaccurately<sup>63</sup> shows that the media trivialise the cases and does not respect the litigants involved. The journalists should understand the extent to which the common person believed in the media. Publishing inaccurate reports is feeding their consumers with wrong information which then affects people's perspectives of domestic violence.

#### **4.3 In the Spotlight**

Publication of domestic violence cases in the media puts the litigants on the spotlight. The research findings revealed that the publicity is not desired by the litigants anyway. This is because there are various unintended consequences which come with publication. These include distress, humiliation, stigma, straining of relations, escalation of domestic violence, loss of earnings (employment or business), and psychological abuse on children.

A respondent who is a professor of law said,

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

One of the research respondents said:

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<sup>63</sup> **'Cheating wife bashed'** yet the parties were not married. They had cohabited before but by the time of the case they had been on separation for more than 6 months. Also the headline **'Woman Seeks refreshment from marriage'**

Reporting of domestic violence cases should be looked at from two angles, that is, what does the reporting help the complainant with and what does it help the public when a person is reported by name. Really we cannot say the media's right to freedom of expression should override an individual's right to dignity. A lot comes with it. There are issues of stigma, your reputation at work or among peers. People will be saying that is the woman who is assaulted by her husband. You are labelled. Your self esteem is lowered. It can actually affect your performance at work. Everyone has their own space. My relatives, neighbours, church mates, workmates, colleagues, schoolmates. Perception of society still has not changed. It becomes an issue that a person is stigmatised in society for instance, her mother was in the newspaper for domestic violence. People may blame you saying why didn't you go to your family elders.<sup>64</sup>

A litigant said it was a disgrace to have her sex life published in the newspapers considering that she had daughters in law and sons in law. She said it lowered her self esteem<sup>65</sup>. Her case was reported in the Herald as '**Man (72) threatens wife with death... 26 years no sex**', and in the H-Metro as '**MEET THE COUPLE. 26 YEARS NO SEX**'<sup>66</sup>. In both reports the pictures of the litigants were inserted.

The reporting of cases identifying the litigants sometimes escalates the violence. It also strains relations with in laws who will blame the complainant for taking their relatives to court. In our society when a wife takes her husband to court people usually think that she wants him incarcerated. Many litigants, especially women, are blamed for the publishing of the court case in the media because they will be the applicants. One respondent said:

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

Another respondent said,

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<sup>64</sup> A woman interviewed in Harare on 6 December 2015.

<sup>65</sup> Reported by Prosper Dembedza in Herald 20 July 2015

<sup>66</sup> H-Metro 25 July 2015.

I always thought that cases which are reported in the newspapers are those in which one of the parties voluntarily engaged the media.<sup>67</sup>

One of the respondents whose case was reported as, ‘**Man sees wife’s boyfriends in dreams**’<sup>68</sup> was suing his wife for defamation damages on the basis that she reported him to the media who published falsehoods about him that degraded his character. He said,

She applied for custody of our two minor children I had taken from her because she cannot properly take care of the children. In court she was making false allegations that I am not a responsible father and that I threw her out of the house and she was now living on the streets. This was false. Yet the local media took it as news and published it. As a known banker and risk control professional my reputation was damaged. The public knows me in social, business and employment circles across the country and also in countries like United Kingdom, South Africa and Australia. She also lied that I have girlfriends and I was exposing my children to those affairs. She advised the court that I believe in children of darkness. She sensationally claimed that these children visited me in my sleep and provided visions of her boyfriends. Yet it was untrue. She was simply harassing me. The defamation was gross and with far reaching reputational consequences. Even my employer asked me to explain what was happening. Local media reported on it. For this I demand defamation damages of two hundred and eighty thousand United States Dollars (\$280 000-00) from her.

Media reports of domestic violence that reveal the names of the complainants also have economic impact. A police officer whose case was reported as ‘**COP HANDCUFFS, BASHES WIFE**’ stated that when the domestic violence case was reported in the media his superiors called him to explain and they almost charged him had it not been that he was now living peacefully with his wife.<sup>69</sup> He said,

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

He however insisted that she was lying to court about being handcuffed. He said the two were having problems in their marriage but he never assaulted her. She made the false report of verbal abuse because she was influenced by neighbours. When I interviewed the wife she just

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<sup>67</sup> A respondent in the Harare gardens.

<sup>68</sup> Reported in the H-Metro on 17 September 2013.

<sup>69</sup> Reported by Prosper Dembedza in the Herald on 20 July 2015.

said what she said in court is what was happening. Both parties however stated that they were now living peacefully in their marriage.<sup>70</sup>

#### **4.4 Interventions**

In the short term the media should be advised on the effects of reports that are sensational, inaccurate, disclose the names of litigants, or their HIV status and put the litigants on the spot light . They should then be trained on human rights and gender sensitive reporting. Further, public interest litigation can be used to clarify the legal position of constitutional right to privacy and media freedom. This will protect litigants meanwhile awaiting for amendment of the Act to provide for cases to be conducted in camera and non publication of the identity of litigants as in South Africa<sup>71</sup>. Public interest litigation includes strategic litigation and provision of legal aid to indigent individuals to facilitate justice. Strategic litigation uses the court system to attempt to create broad social change through law or public policy reform.

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

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

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<sup>70</sup> The interview was conducted on 3 December 2015, almost 5 months after the court report.

<sup>71</sup> Section 11 of Domestic Violence Act No 116 of 1998

## **4.5 Conclusion**

The findings in this chapter revealed that the media overstep on its freedom by sensationalising domestic violence cases, taking pictures of litigants and disclosing their HIV status. Chapter 5 will discuss the role of the legislature and judiciary in protecting the identity of litigants of domestic violence and the role of the media in raising awareness and deterrence in domestic violence issues.

## Chapter 5

### 5.0 Introduction

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

### 5.1 Role of judiciary and legislature in protecting right to privacy of litigants

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

The judiciary can protect litigants by invoking the Courts and Adjudicating Authorities (Publicity Restrictions) Act<sup>72</sup> which empower courts to impose restrictions on what information may be revealed about the proceedings if it considers it necessary or expedient to do so where publicity would prejudice the interests of justice, particularly where it is satisfied that a witness or his family members will suffer harm if his identity is revealed ; or to protect the private lives of persons concerned in the proceedings; or to protect the safety or private lives of persons related to or connected with any person concerned in the proceedings.

The judiciary has failed to protect litigants because they have not been invoking this section despite admitting that the way media reports on domestic violence cases calls for protection of litigants in domestic violence cases. One magistrate<sup>73</sup> had this to say:

I am not happy about the way media is reporting on domestic violence issues. Those are seriously personal issues. It is like a person going to the doctor and saying I have this sexually transmitted infection please assist, treat me. They would not want anyone to know why they visited the doctor. What they want is the professional assistance they can get because they are desperate. These are not joking matters. I even at my own instance approached the resident magistrate and told him that I was not comfortable with over presiding certain matters in open court. So I took it upon myself to

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<sup>72</sup> Section 3 (i) ,(v) and (vi) of

<sup>73</sup> Interviewed in Harare on 19 October 2015

proceed with such matters that I think are sensitive in the chambers. Imagine someone seeking a protection order against a husband who defects and urinates in blankets. These are people who want to go back home and continue staying together. I think magistrates should have the powers to decide *mero motu* that a case is sensitive and should be heard in chambers and further protect the identity of the parties should the matter be published. The record will be endorsed that the names of the parties shall not be disclosed.

It could be said that though the magistrate did not invoke provisions of the Courts and Adjudicating Authorities (Publicity Restrictions) Act she was in a way acting in a way that protects the litigants. However the measures which the magistrate took to protect the litigants were not completely effective because the media could still access the records. There was also need to ensure that the court records are endorsed so that the cases cannot be published in the media.

Some resident magistrates indicated that they had tried to protect the litigants by conducting domestic violence cases in chambers but this was not sustainable and practicable because they were understaffed. Again the media will still have access to the records. However conducting the matters in chambers besides the issue of ‘running away from the media’ would actually assist litigants in clearly articulating their cases without the uneasiness associated with an open court where people may laugh or make sounds of disapproval whilst someone is leading evidence. This may affect the person giving evidence or other litigants such that they surf which words and statements to use in a manner that jeopardise their cases. Another magistrate commented that the court in itself is not a friendly environment even for lawyers. Whatmore a litigant? You may even find that the litigant is afraid of the court environment and is finding it difficult to express themselves. There is real need for a victim friendly environment when dealing with complainants in domestic violence cases.

Another magistrate had this to say,

As the bench we can just but go so far in protecting the identity of litigants. You cannot invoke the Courts and Adjudicating Authorities Act in every other case, or decide to conduct all cases in chambers. You can lose your job. The bosses will think that you have some sinister interests in the matters. Also the lawyers and litigants will complain saying there is no longer transparency. Already when you ask parties to come in chambers they will start thinking that you want to be corrupt. The best way to tackle the problem

is law reform providing for the cases to be conducted in camera and non disclosure of the names of litigants.<sup>74</sup>

The research findings revealed that there was also a bad attitude by some magistrates towards women litigants. A magistrate said,

I do not see anything wrong with the newspaper headlines. The problem is with the woman who comes to tell the court that her husband is sexually abusing her. Those are issues which cannot be said in public. We know the type of women who say that. They are not mannered. The newspaper is trying to advertise them. But it will not help because if they divorce no man is going to be interested in her because of that. These women just want to taint the reputations of their husbands. Also I blame the courts which allow those women to go all the way to describe such abuse. People should know that domestic violence is about physical abuse not all these other things.<sup>75</sup>

A female magistrate said

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

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

Section 57 of the constitution of Zimbabwe provides for the right to Privacy. However the right to privacy of litigants in domestic violence cases is infringed on a daily basis. This is because the legislature in crafting the Domestic Violence Act failed to provide privacy for it

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<sup>74</sup> Interviewed on 26 January 2016 in Harare

<sup>75</sup> Interviewed on 12 December 2015 in Bindura

resulting in the common law position of open court prevailing and failed to comply with international instruments.

Article 14 (1) of the ICCPR is the most significant. It provides as follows:

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

The SADC Protocol on Gender and Development<sup>76</sup> provide that states parties shall ensure that cases of gender based violence are conducted in a gender sensitive environment.

The legislature failed to protect the litigants in domestic violence in civil cases by failing to incorporate a suppression clause which provides that the court proceedings shall be held in camera and that the identity of the parties shall not be revealed in any report including law reports. Section 11 of the Domestic Violence Act of South Africa<sup>77</sup> provides that domestic violence cases shall be held in camera and categorically states that the cases shall not be reported in any manner and that should they be reported in law reports the identity of the parties or witnesses shall not be revealed or any information that may lead to their identity. this section is watertight in the protection of litigants of domestic violence cases. However in the case of Zimbabwe from the research both litigants and women’s rights activists clearly stated that they would want domestic violence to be reported in the media for awareness raising purposes. The revelation of identity of litigants is what is undesirable since it re-victimises the victim.

Basically the media is not accountable to anyone in Zimbabwe. The media has a very long rope and they do what they want<sup>78</sup>. There are no mechanisms of making an individual reporter accountable. Ideally the media is accountable in its reporting. There are different structures to that. The Zimbabwe Media Commission is suppose to put measures that the

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<sup>76</sup> Article 20 (6)

<sup>77</sup> Act No.116 of 1998

<sup>78</sup> Media Practitioner interviewed on 30 October 2015

media is accountable in terms of the code. Under the Media Commission there is the Media Council of Zimbabwe which is a complaints board but is still not in place.<sup>79</sup> An interview with the Media Commission revealed that the Media Council is not yet fully operational because of funding constraints though it has decided on a few matters none of which had anything to do with gender based violence. Further, the Media commission is a statutory board which was created by the Access to Information and Privacy Act<sup>80</sup>. It follows therefore that for the media to be said that it has acted unlawfully it should have contravened sections of AIPPA yet in the act there is no provision that can be used to protect litigants of domestic violence cases.

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

The VMCZ receive all complaints relating to the media. but to what extent is it effective? Can it enforce its decisions? It is a voluntary organisation. It can only go so far but if a media house does not want to comply then the VMCZ cannot really do anything. Therefore their effectiveness depends on the willingness to cooperate of the parties involved.<sup>81</sup>

An interview with the VMCZ revealed that:

The guiding principles for reporting are accurate, fair, truthful and balanced..... Acceptability of publishing certain issues is another thing altogether. Most of our reporting is interpretive. The journalist is just parroting what was said in court. If the HIV status of a litigant or other humiliating issues which are published were said in court then there is nothing wrong with the media report.<sup>82</sup>

The legislature has a role to protect citizens from unwarranted intrusion on their privacy. The Divorce Act of South Africa<sup>83</sup> prohibit the publication of ‘any particulars of a divorce action or any information that comes to light in the course of such an action. In light of the South

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<sup>79</sup> Respondent from MISA

<sup>80</sup> AIPPA Chapter 10:27

<sup>81</sup> Respondent from MISA

<sup>82</sup> VMCZ Director

<sup>83</sup> Act 70 of 1979

African Constitutional Court's order in *Johncom Media Investments v M* it is contempt of court to publish the identity of, and any information that may reveal the identity of, any party or child in any divorce proceedings before any court. In Australia<sup>84</sup> a person commits an offence if they publishes an account or report of a proceeding on an application for a protection order.<sup>85</sup>

Section 196 of the Criminal Procedure and Evidence Act<sup>86</sup> provides for the concealment of the identity of complainants and witnesses in certain cases including cases of sexual assault. The aim of the legislature was, among other reasons, to protect the privacy, dignity and integrity of the witnesses and complaints in sexual abuse cases. The magistrates in civil cases of domestic violence can therefore invoke section 3 of the Court and Adjudicating Authorities Act where the cases involve sexual abuse<sup>87</sup> because our legislature have shown the intention of protecting such cases from publication.

### **5.1.1 Interventions**

It is important to align the Domestic Violence Act with the constitutional provision on the right to privacy and to be in line with regional and international law directives on court reporting<sup>88</sup> and provide that cases shall be held in camera and forbids publication and where publication is allowed the identity of the parties should not be revealed.

Establishment of a Family Court where access is restricted to those with interest in the matter.

Stiff penalties for journalist in case of breaching the laws, such as being struck off the role which happens with such professions as law and medicine. Currently the media is not accountable to anyone in Zimbabwe. The media has a very long rope and they do what they want<sup>89</sup>. There are no mechanisms of making an individual reporter accountable.

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<sup>84</sup> Section 111 of the Domestic Violence and Protection orders Act 2008.

<sup>85</sup> Maximum penalty is 50 penalty units, imprisonment for six months or both.

<sup>86</sup> Chapter 9:07

<sup>87</sup> For instance Married cheat bashed, Man sexually abuses wife, Meet the couple... 26 years no sex, Possessed woman demand sex in minor's presence, My hubby is a sex maniac, Wife takes condoms home.

<sup>88</sup> ICCPR

<sup>89</sup> Media Practitioner interviewed on 30 October 2015

There is need to garner political will. This can be done through lobbying parliamentarians so that they realise the gaps that are within the Domestic Violence Act and how those gaps are impeding the proper implementation of the Act. Of target should be the women's parliamentary caucus, the parliamentary committee on human rights, the parliamentary committee on legal affairs, the parliamentary committee on women's affairs and the parliamentary committee on media.

Media should follow up to cases they report to the final judgement. In the headline, **SEX STARVED WIFE DRAGS HUBBY TO COURT**,<sup>90</sup> the reporter mentioned that the ruling in the matter was being handed down on the day of publication. The ruling in the matter was never reported. The effect is that the news consumers are left hanging on what was the verdict of the court. The silence of the media is misleading. This leaves the readers hanging and gives wrong impressions. They might think that the order for conjugal rights was granted. Media coverage can be a powerful source in framing issues, either facilitating or inhibiting public understanding of domestic violence (Lindsay-Brisbin et al, 2014)

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<sup>90</sup> Herald 27 January 2016

## **5.2 Can positive reporting play a part in deterrence and awareness?**

The media is a very powerful source of shaping the way people think and many people regard media as the truth.<sup>91</sup> Media has the role to entertain, educate, inform and act as a fourth estate in holding the government accountable. It also has a role of promoting the constitutional rights of citizens like the right to privacy and to report domestic violence.<sup>92</sup> The effects of mass media cannot be underestimated. The media has the capability to influence what the audience knows, thinks and does. According to Muchemi, the mass media play an important role in the transmission of attitudes, perceptions and beliefs. Under certain conditions the media become important socialisation agencies in determining the attitudes of young people. (Muchemi' 2015:86). Therefore the media can be used as a strategic partner in fighting domestic violence.

### **5.2.1 Media as the fourth estate.**

From a human rights perspective journalists are seen as agents of change. (Loewenstern and Moyo, 2003:24). Some of the ways in which media can promote human rights are, raising awareness of human rights among all people, holding government accountable to the commitments made by ratifying international agreements since they are binding and set ideal standards in human rights promotion and protection, the media should report the successes and failures of government and society in according people their human rights, and the media must make sure that all rights are protected and promoted.

The media is generally seen as the watchdog of people's human rights. It must protect and promote human rights. The watchdog concept says that the media is the fourth estate after the legislature, the executive and the judiciary. The media as the fourth estate monitors the other estates to make sure they do not abuse power and infringe on other people's rights. The diagram below explains the relationship of the media to the other estates, and the responsibilities of each of the estates. The media's role as the fourth estate is complementary to roles of the judiciary, the executive and the legislature. Each of the estates has a very

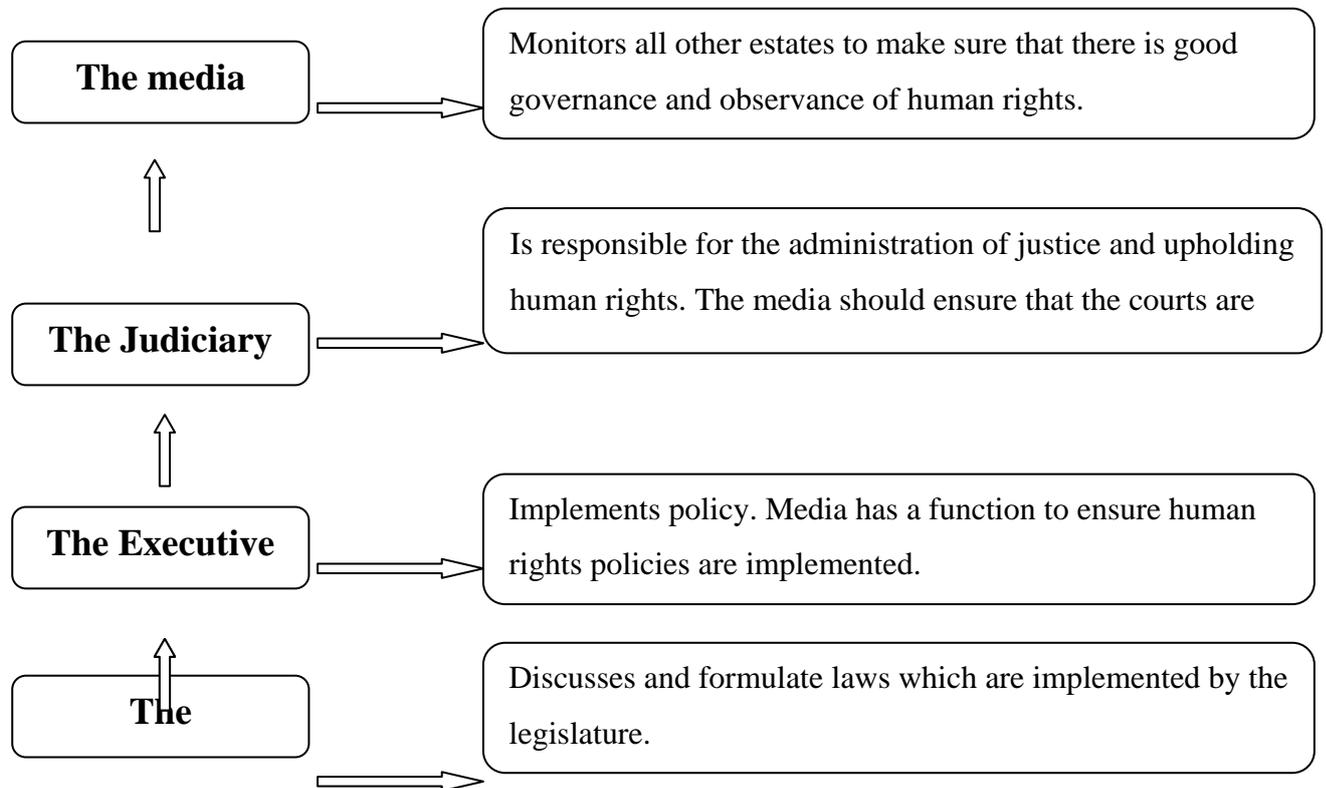
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<sup>91</sup> Respondent from the Media Commission of Zimbabwe

<sup>92</sup> MISA officer

special role that it plays to ensure that there is respect for human rights. As the fourth estate the media assumes the role of overseer ensuring that there is rule of law.

Figure 1 : Relationship of the media to other estates



#### 4.2.2 Sensitive reporting of domestic violence cases

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

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

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

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

According to Okwemba, the media should dig deeper to investigate causes or patterns of violence, linking them to poverty levels, lack of knowledge about human rights protections and the challenges in enforcing the court orders (Okwemba, 2011:245).

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

Sensitive reporting is also about pro active reporting rather than depending on court cases. This calls for techniques such as gathering information that does not easily present itself, and much more field reporting and moving among communities to observe, investigating and checking and cross-checking information, new sources of information, knowledge, patience and sensitivity (Made, 2002). Pro active articles are written with the intention of educating the public about domestic violence more generally, for instance domestic violence prevalence and consequences or community organisations that address domestic violence. It also show case domestic violence events, for instance the opening for a domestic violence related non profit organisation.

They even go on to inform the reader of where they can get assistance if they are facing domestic violence. It is more informative than a court report which just reports an event and does not give further information.

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

- Provide comprehensive educational information or resources about domestic violence and situate domestic violence in a community context.
- Smaller , local newspapers<sup>93</sup> can play a particularly important role in informing residence about domestic violence in their communities, and put the incident in the community context of larger social issues and referring to other incidents of domestic violence that happened in the community.
- Education about the physical consequences of domestic violence, mental health problems that can result and education about the impact of domestic violence on children.
- Produce content aimed at connecting the public with resources.
- Voices of the victims should be reported as well as legal experts, gender experts and counsellors who can provide important information on local resources and background of domestic violence.
- Both the media and the public need to be educated about domestic violence.

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

‘As the media we report to the public what happens in court because the whole country cannot fit into the courts. The media therefore broadens the court room thus enabling everyone else to benefit from lessons in the court. People learn from other people’s mistakes. Our reports on court cases is also an opportunity for people to learn from the provisions of the constitution.

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<sup>93</sup> For instance Manica Post in Mutare, Nehanda in Bindura, Masvingo Mirror in Masvingo, H-Metro in Harare, B-Metro in Bulawayo.

Majority of Zimbabwean are unaware of many forms of domestic violence especially marital rape. As the media we have a part to play to ensure that it stops. We identify litigants by name for authenticity reasons<sup>94</sup>.

It is true that media reports enlighten the public on what is obtaining in society. They can deter other perpetrators and would be perpetrators when they realise that the justice delivery system frown on domestic violence. The reports can encourage victims of domestic violence to report their cases when they realise that other victims are being protected by the courts. However an overreliance on court proceedings and events for domestic violence stories deprive readers of in-depth and analytical coverage of issues. Event based coverage is often reactive and not issue based. Domestic violence can only be reduced if media maintains sustained coverage of issues.

The power of domestic violence testimony is not in the name but it is in the deed, the story of what happened and how it was overcome<sup>95</sup>. You can make people aware of the issue not of the individual. The media should address the issues, the root causes of domestic violence and critique what happens to society if we accept domestic violence.

A gendered lens allows journalist to gain deeper insights into the various events and issues that they regularly cover (Joseph, 2011). This is a missing angle to much of the reporting in the media. To ensure effective sensitive reporting there is need for participation of female journalists in news gathering and also in editorial levels. The Glass Ceiling<sup>96</sup>, revealed that women are more likely to access women news sources than men. In the region women constitute thirty one percent (31%) of stories written by women journalists in the region compared to fifteen percent (15%) in stories written by men. The findings suggest that while increasing the proportion of women managers makes little difference to gender responsiveness of news content, increasing the presence of women journalists does make a difference. This also goes a long way in challenging gender stereotypes in media content. (Ndlovu, 2011:18). There is also need for strategising on how to get credible and reliable women sources especially where expert comments or analysis is involved. Lessons can be learnt from the Mauritius Directory of Women Sources (Seedoyal, 2011:222) which

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<sup>94</sup> H-Metro Assistant Editor

<sup>95</sup> Information Officer at Sexual Rights Centre

<sup>96</sup> Gender and media progress study 2011

comprises at least five women sources in almost forty categories, which media can access to improve the number of women's voices and views reflected in coverage.

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

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

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

In other jurisdictions there are newspapers that have introduced specific human rights content. Stories carried in specialist publications or pages are purposefully written from a human rights perspective with a human rights angle and as such human rights stories are of a better quality than those which just happen to have a human rights content, for instance, court reports (Mutumbwa, 2002). The use of commentaries, features, editorials and blogs can be more informative and interactive with the audience.

Positive reporting also includes, 'what issues are at stake?', that is, what is domestic violence. There have been several headlines of cases which were purportedly domestic violence court

reports. However such headlines and allegations do not constitute an act of domestic violence, for instance when parties are depriving each other conjugal rights<sup>97</sup>.

Positive reporting of domestic violence includes respecting the dignity and privacy of the litigant where the identity of litigants is disclosed with their consent. Otherwise the media further perpetuates violence against litigants by disclosing their private life to the whole nation, if not the world, since these cases are also posted on the internet such that anyone can have access to them.

‘I would want my case to be reported in the media so that it helps other people. But I want my identity to be anonymous. Is it not we read other stories where the reporters write giving parties names saying these are not their real names? Also on television there are reports where people’s faces are shielded so that you cannot recognise who the person is. Why cannot the media do the same in reporting domestic violence cases?’<sup>98</sup>

Many litigants<sup>99</sup> did not mind having their cases reported in the media but they did not want their identities to be revealed. Many argued that being identified in the media for domestic violence even if you are the victim it is humiliating, shameful and stigmatising. A respondent said ,

‘At work, when you see people looking at you think that they are talking about you. You will not be able to work. The media should use pseudonyms when reporting and desist from inserting pictures of litigants in the reports.’<sup>100</sup>

Another respondent sated,

To ensure positive reporting of domestic violence cases we should tailor make our programmes to engage the media more. We need women in decision making positions in the media houses. Also about civil society its training should be ongoing. Gender issues are complex, for instance, a person has been socialized for thirty years, a one day or two workshops will not be enough for them to unlearn. Do a series of workshops with the same people. Rigorous and systematic trainings. We are engaging the media on sending out information but not training them. Staff turnover at the media houses and civic

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<sup>97</sup> Meet the couple: 26 years no sex, Sex starved wife drags hubby to court, man demands sex.

<sup>98</sup> Respondent, an accounts assistant aged 53 years.

<sup>99</sup> Participants at focus group discussions held at ZWLA on 16, 19 and 23 November 2015 said they wanted their cases reported in the media but them did not want their identities disclosed.

<sup>100</sup> ZWLA client who was being assisted with protection order application against her husband. She is aged 26 years.

organizations is another problematic factor. It is also tied to funding issues. Media is an important stakeholder in involving them in our programming. Thank you for these insights. As UNWOMEN we have not been engaging the media. We have not been structuring programmes specifically meant to engage media moreso in reporting domestic violence.<sup>101</sup>

The need for a continuous and systematic engagement and training of media cannot be overemphasised. Strengthening the role of media in responsible reporting that is consistent with protecting human dignity of women and girls is crucial (National Gender policy,2013)<sup>102</sup>.

### **5.3 Conclusion**

The chapter revealed that there is a lacuna in the Domestic Violence Act which results in names of litigants being disclosed in media reports. The legislature should bridge the gap by amending the Act so that names of litigants are not disclosed in media reports. The judicial has failed to utilise provisions of the Courts and Adjudicating Authorities (Publicity Restrictions) Act. It is however noted that the provisions of this Act are not watertight as they have to be invoked per case an exercise which may cast doubt on the transparency of the court procedures. The chapter further discussed that media is an important stakeholder in raising awareness and deterrence of domestic violence issues as it has the power to influence and shape attitudes and perceptions. In doing this task the media should report in a gender sensitive manner and use commentaries, editorials and features as a way of analysing and informing the public about domestic violence. Chapter 6 will conclude and recommend on the findings of the research.

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<sup>101</sup> Respondent from UNWOMEN

<sup>102</sup> Art 5.8 (v)

## **Chapter 6**

### **6.0 Conclusions and recommendations**

This chapter provides the conclusions and recommendations for each assumption accordingly.

#### **6.1 Conclusions**

From the findings of the research the following conclusions are drawn:

##### **6.1.1 The media in reporting domestic violence cases stereotypes women as helpless victims of domestic violence thereby trivialising issues of domestic violence.**

That media reports of domestic violence cases stereotype women as deserving to be abused, as perpetrators of domestic violence, as abusing protection order applications and as having gone awry. Such stereotypes trivialises domestic violence issues. The reports do not show wrongfulness of the actions of the perpetrator but blames the victim. The reports also trivialise domestic violence by writing inaccurate stories and disclosing the names of complainant.

##### **6.1.2. There is an overstep of freedom of expression and freedom of the media in relation to protection of the privacy of a person in reporting of domestic violence cases.**

That the media overstep on its freedom by sensationalising domestic violence cases, taking pictures of litigants and disclosing their HIV status. Freedom of the media is meant to safeguard democracy in the nation and not to invade the privacy of individual citizens in a way that will expose them to ridicule and humiliation.

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

That there is a lacuna in the Domestic Violence Act which has resulted in the names of litigants being disclosed in media reports. The legislature should bridge the gap by amending the Act so that names of litigants are not disclosed in media reports. The judicial has failed to utilise provisions of the Courts and Adjudicating Authorities (Publicity Restrictions) Act. It is however noted that the provisions of this Act are not watertight as they have to be invoked per case an exercise which may cast doubt on the transparency of the court procedures.

**6.1.4 Positive reporting of domestic violence cases in the media can play a part in deterrence and awareness.**

That media is an important stakeholder in raising awareness and deterrence of domestic violence issues as it has the power to influence and shape attitudes and perceptions. The media reports missed opportunities to provide educational information or resources about domestic violence and failed to situate domestic violence in the community. Smaller, local newspapers could play a particularly important role in informing residents about domestic violence in their community. Domestic violence is reported as an isolated event yet it is a social pervasive social menace. The reports are reactive and not pro active.

## **6.2 Recommendations**

From the above conclusions the following recommendations are made:

### **6.2.1 The media in reporting domestic violence cases stereotypes women as helpless victims of domestic violence thereby trivialising issues of domestic violence**

That there is need to train media on gender sensitive and human rights reporting. The trainings should be well coordinated and systematic. The Ministry of Women's Affairs should partner with the Human Rights Commission, other relevant government departments and non-governmental organisations in conducting these trainings so that they are holistic and there is no duplication of programme.

### **6.2.2 There is an overstep of freedom of expression and freedom of the media in relation to protection of the privacy of a person in reporting of domestic violence cases.**

In the short term media houses can be engaged and be sensitised of the effects of reporting that are inaccurate, sensationalise, disclose the names of litigants or their HIV status and insert pictures without their consent. They should then be trained on human rights and gender sensitive reporting.

Test case litigation. Lawyers can approach the constitutional court for an order to stop the media from identifying the litigants in domestic violence civil cases arguing that such disclosure is an invasion of the litigant's private lives which is not justified.

Sue the media in regard to disclosing the HIV status of litigants since it is a blatant breach of section 57 (e)<sup>103</sup> of the constitution.

The media should be encouraged to report using pseudonyms or to seek the consent of the parties involved before reporting the case using their actual names. They should not publish any information that can lead to the identity of the litigants

Pictures of litigants should not be published.

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<sup>103</sup> It states that, 'Every person has the right to privacy, which includes the right not to have their health condition disclosed.'

Use of other dispute resolution mechanisms, for instance counselling and mediation which ensures privacy can be adopted. The Domestic Violence and Protection orders Act of Australia<sup>104</sup> provides for comprehensive counselling and the services are accessed at the court.

Empowerment of litigants and the public with legal knowledge that they can request from the court for their cases to be held in camera for reasons of protection of their families. With empowerment the issue of legal aid is also very crucial. Domestic violence litigants should be entitled to legal representation provided by the state.

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

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

That the Court should protect litigants ‘*ex mero motu*’ by invoking section 3 of The Courts and Adjudicating Authorities (Publication Restrictions) Act<sup>105</sup> in order to protect the privacy of litigants and their families.

Amending the Domestic Violence Act .It is important to align the domestic violence Act with the constitutional provision on the right to privacy. The act should also be in tandem with regional and international law directives on court reporting for instance the ICCPR and on right to privacy.

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

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

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

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

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

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<sup>105</sup> Chapter 7:04

(b) Nothing in this subsection limits any other power of the court to hear proceedings in camera or to exclude any person from attending such proceedings.

(2) (a) No person shall publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings.

(b) The court, if it is satisfied that it is in the interests of justice, may direct that any further information relating to proceedings held in terms of this Act shall not be published: Provided that no direction in terms of this subsection applies in respect of the publication of a bona fide law report which does not mention the names or reveal the identities of the parties to the proceedings or of any witness at such proceedings.’

Establishment of a Family Court is another strategy which ensures that there are specialised courts for domestic violence cases.

Stiff penalties for journalist in case of breaching the laws, such as being struck off the role which happens with such professions as law and medicine.

There is need to garner political will. This can be done through lobbying parliamentarians to support the cause.

#### **6.2.4 Positive reporting of domestic violence cases in the media can play a part in deterrence and awareness.**

- Training media on human rights and gender sensitive writing. The training should include important background information that can help journalists come to grips with terms like gender and patriarchy to get a sense of the history of women's subordination (Joseph, 2011:38).
- The media when reporting domestic violence should seek the voice of the victims.
- Media should also seek the voices of experts in the area of domestic violence, for instance, lawyers, the judiciary, social workers, psychologists, health experts and the police.
- Introduction of specific human rights content and the use of commentaries, features, editorials and blogs can be more informative and interactive with the audience.

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