

13 Zimbabwe



1 INTRODUCTION

Zimbabwe became the then British colony of Southern Rhodesia in 1923. In 1965, the leader, Ian Smith, made a unilateral declaration of independence as Rhodesia, which was immediately declared illegal by Great Britain. In the late 1960s and during the 1970s, armed liberation movements launched an internal guerrilla war of liberation. In 1979, Ian Smith's government was forced to the negotiating table at Lancaster House, where agreement was reached on a democratic constitution.

Robert Mugabe was the first democratically elected leader of Zimbabwe, which has a population of approximately 12 million people. Some 30 years down the line, however, the United States State Department's 2010 Human Rights Report on Zimbabwe believes that the past four elections – in 2002, 2005, 2008 and the presidential run-off elections also in 2008 – were 'not free and fair'. Zimbabwe's declining gross domestic product, inflation woes, declining life expectancy rates, political violence and generally low levels of political freedom, including freedom of the press and other media, are well documented.

In 2008, the so-called Global Political Agreement – a power-sharing agreement – was entered into between the ruling party, the Zimbabwe African National Union – Patriot Front (ZANU-PF), and both factions of the Movement for Democratic Change (MDC). This power-sharing arrangement resulted in a new Constitution being negotiated and endorsed in a national referendum in March 2013. At the time of writing, the date for the proposed elections remains to be finalised. In addition,

there are still worrying examples of political violence and widespread doubts as to whether there is a genuine commitment to free and fair elections on the part of Zimbabwe's ruling party.

This chapter introduces working journalists and other media practitioners to the legal environment governing media operations in Zimbabwe. The chapter is divided into five sections:

- Media and the constitution
- Media-related legislation
- Media-related regulations
- Media self-regulation
- Media-related common law based on decided cases

The aim of this chapter is to equip the reader with an understanding of the main laws governing the media in Zimbabwe. Key weaknesses and deficiencies in these laws will also be identified. The hope is to encourage media law reform in Zimbabwe, to better enable the media to fulfil its role of providing the public with relevant news and information, and to serve as a vehicle for government–citizen debate and discussion.

2 THE MEDIA AND THE CONSTITUTION

In this section you will learn:

- ☐ The definition of a constitution
- ☐ What is meant by constitutional supremacy
- ☐ How a limitations clause operates
- ☐ Which constitutional provisions protect the media
- ☐ Which constitutional provisions might require caution from the media or might conflict with media interests
- ☐ What key institutions relevant to the media are established under the Constitution of Zimbabwe
- ☐ How rights are enforced under the Constitution
- ☐ What is meant by the 'three branches of government' and 'separation of powers'
- ☐ Whether there are any clear weaknesses in the Constitution of Zimbabwe that ought to be strengthened to protect the media

2.1 Definition of a constitution

A constitution is a set of rules that are foundational to the country, institution or

organisation to which they relate. For example, you can have a constitution for a soccer club or a professional association, such as a press council. Such constitutions set out the rules by which members of the organisation agree to operate. However, constitutions can also govern much larger entities, indeed, entire nations.

This chapter is unique in the handbook because it focuses on the new Constitution of Zimbabwe, which was passed on 1 February 2013 but is yet to come into effect. The new Constitution was approved by over 95% of participants in a national referendum that took place in March 2013.

Although not yet in effect, it is clear that the new Constitution will replace the existing Zimbabwe Constitution, which is contained in a schedule to the Zimbabwe Constitution Order of 1979 (S.I. 1979/1600 of the United Kingdom), after having been agreed to by the United Kingdom, the Zimbabwean liberation movements and the former Rhodesian government, following a protracted war. Throughout this chapter, reference to the 'Constitution' thus means reference to the new Constitution of 2013.

The Zimbabwe Constitution sets out the country's founding values and principles in section 3(1). For the purposes of the media, the following values and principles that Zimbabwe is said to be founded on are particularly important. These are the rule of law, fundamental human rights and freedoms, and good governance.

2.2 Definition of constitutional supremacy

Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law. It is important to ensure that a constitution has legal supremacy: if a government passed a law that violated the constitution – was not in accordance with or conflicted with a constitutional provision – such law could be challenged in a court of law and could be overturned on the ground that it is 'unconstitutional'.

The Zimbabwe Constitution does make provision for constitutional supremacy. 'Supremacy of the Constitution' is listed in section 3(1)(a) as the first founding value or principle on which Zimbabwe is founded. In addition, section 2(1) specifically states that: 'This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency'. Section 2(2) goes on to specify who is bound by the Constitution. Section 2(2) states:

The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them.

The effect of this wording is that constitutional obligations are binding on every person and not just organs of state.

2.3 Definition of a limitations clause

It is clear that rights are not absolute as society would not be able to function. For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false defamatory statements made with reckless disregard for the truth. Clearly, governments require the ability to limit rights in order to serve important societal interests; however, owing to the supremacy of the constitution this can only be done in accordance with the constitution.

The Constitution of Zimbabwe makes provision for two types of legal limitations on the exercise and protection of rights contained in Chapter 4, the Declaration of Rights – namely, public emergency limitations and general limitations as contained in Part 5 of Chapter 4, which part is headed ‘Limitation of fundamental rights and freedoms’.

2.3.1 Public emergency limitations

Section 87 of the Zimbabwe Constitution, read with the Second Schedule to the Constitution, makes it clear that the fundamental rights and freedoms set out in Chapter 4 of the Constitution may be limited by a written law providing for measures to deal with situations arising during a period of public emergency. This is, however, subject to certain requirements:

- Such a law must be published in the Government Gazette.
- Any limitation which the law imposes on a fundamental right or freedom must not be greater than is strictly required by the emergency.
- No such law (or any other law) may indemnify the state for any unlawful act or limit the following rights: life, human dignity, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment; the right not to be placed in slavery or servitude, the right to a fair trial or the right to obtain a habeas corpus order.
- If a public emergency is declared in relation to only a part of Zimbabwe, emergency law may not limit fundamental rights or freedoms in any other part.

- As set out in the Second Schedule, there are a number of specific protections given to people detained under a declaration of a public emergency, including the establishment of a tribunal to review the cases of detainees and which must be given notice of every detention within ten days.

2.3.2 General limitations

The second type of limitation is a general limitations provision. General limitations provisions apply to the provisions of a bill of rights or other statement setting out fundamental rights. These types of clauses allow a government to pass laws limiting rights, generally provided this is done in accordance with the constitution.

The general limitations clause applicable to the constitutional chapter which sets out the Declaration of Rights can be found in section 86 of the Zimbabwe Constitution, headed 'Limitations of rights and freedoms'. Section 86(1) provides that the fundamental rights and freedoms set out in Chapter 4 must be exercised reasonably and with due regard for the rights and freedoms of other persons. Section 86(2) provides that the fundamental rights and freedoms may be limited only:

- In terms of a law of general application. This means that the law may not single out particular individuals and deny them their rights
- To the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors including:
 - The nature of the right or freedom
 - The purpose of the limitation, in particular whether it is necessary in the interest of defence, public safety, public order, public morality, public health, regional or town planning or the general public interest
 - The nature and extent of the limitation
 - The need to ensure that the enjoyment of rights and freedoms by any person does not prejudice the rights and freedoms of others
 - The relation between the limitation and its purpose
 - Less restrictive means to achieve the purpose

These factors are important because they show that the limitation of a right has to be narrowly tailored and that its purpose must be interrogated by a court when deciding whether or not the limitation of the right is constitutionally sound.

It is also important to note that at least one of the rights contained in the Declaration of Rights is subject to what is known as an 'internal limitation'. This is where the

Constitution sets out, in the text of the right itself, what the limits of such a right are. This is done, for example, in the right to freedom of expression and freedom of the media. The details of such an internal limitation are dealt with in section 2.5 below.

2.4 Constitutional provisions that protect the media

The Zimbabwe Constitution contains a number of important provisions in Chapter 4, Declaration of Rights, that directly protect the media, including publishers, broadcasters, journalists, editors and producers. There are provisions elsewhere in the Constitution that also assist the media as it goes about its work of reporting on issues in the public interest, and those are included in this section too.

2.4.1 Rights that protect the media

FREEDOM OF EXPRESSION AND FREEDOM OF THE MEDIA

The most important section that protects the media is section 61, which sets out a number of detailed and important provisions protecting freedom of expression and freedom of the media, including the broadcast media. Section 61(1) provides that:

Everyone has the right to freedom of expression, which includes –

- (a) freedom to seek, receive and communicate ideas and other information
- (b) freedom of artistic expression and scientific research and creativity; and
- (c) academic freedom.

Importantly, section 61(2) specifically enshrines the right of every person to freedom of the media, which includes ‘protection of the confidentiality of journalists’ sources of information’.

The next two subsections of section 61 relate to the electronic and state-owned media. The specificity and detail of the protections enshrined are testimony to the abuses that have been evident in the broadcasting sector in Zimbabwe’s recent past.

Section 61(3) governs broadcasting generally. It provides that:

Broadcasting and other electronic media of communication have freedom of establishment subject only to State licensing procedures that –

- (a) are necessary to regulate the airwaves and other forms of signal distribution; and
- (b) are independent of control by government or by political or commercial interests.

Section 61(4) is noteworthy because it focuses on state-owned media. It provides that:

All state-owned media of communication must –

- (a) be free to determine independently the editorial content of their broadcasts or other communications;
- (b) be impartial; and
- (c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

These provisions need some explanation.

- These rights and freedoms apply to ‘everyone’ or ‘every person’ and not just to certain people, such as citizens. Hence, everybody enjoys these rights and freedoms.
- The basic freedom is not limited to speech (oral or written) but extends to non-verbal or non-written expression. There are many examples of this, including physical expression (such as mime or dance), photography or art.
- The right in section 61(1) specifically enshrines the freedom ‘to seek, receive and communicate ideas and other information’. This right of everyone’s to receive information is a fundamental aspect of freedom of expression, and this subsection enshrines the right to the free flow of information. Thus the information rights of audiences, for example, as well as the expression rights of the media are protected. This right is important because it also protects organisations that foster media development. These organisations facilitate public access to different sources and types of information, particularly in rural areas which traditionally have little access to the media.
- Section 61(2) specifies that every person enjoys ‘freedom of the media’, which freedom includes ‘protection of the confidentiality of journalists’ sources of information’. This is very important because it:
 - Makes it clear that this right can apply to corporate entities, such as a media house, a newspaper or a broadcaster, as well as to individuals
 - Makes it clear that the right encompasses the media as a whole, meaning that it extends beyond the press, with its connotations of the news media. Media generally includes, for example, fashion, sport, gardening or business publications or television channels, thereby protecting all media, including the press

- Clearly protects journalists' sources – a critical protection if proper investigative journalism (often based on whistleblowing) is to flourish. This kind of provision is extremely uncommon and will undoubtedly have a major impact on journalism in Zimbabwe
- Section 61(3) makes it clear that broadcasters have the right to 'freedom of establishment'. While this is subject to licensing procedures, it is clear that the state will no longer have the right simply to refuse to grant licences.
- Section 61(4) makes it clear that the state-owned media (including institutions such as the Zimbabwe Broadcasting Corporation) are to have editorial independence and are expected to be impartial and to air dissenting opinions.
- Section 61(5) lists expression which is excluded from the protections of the freedoms set out above. These are detailed in section 2.5 below.

RIGHT OF ACCESS TO INFORMATION

Another critically important provision that protects the media is section 62, which enshrines the right of access to information.

Section 62(1) provides that:

every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level in so far as the information is required in the interests of public accountability.

Section 62(2) provides that:

every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right.

Section 62(3) provides that:

every person has a right to correction of information, or the deletion of untrue, erroneous or misleading information, which is held by the State or any institution or agency of government at any level, and which relates to that person.

Section 62(4) provides that:

Legislation must be enacted to give effect to this right, but may restrict access to information in the interest of defence, public security or professional confidentiality, to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.

This right requires some explanation.

- Sections 62(1) and (2) essentially provide for the right to access two types of information:
 - The first is a right to information which is required in the interests of public accountability. This right is available only to citizens or those with permanent residence. Note that Zimbabwean juristic persons and the media are specifically included. Further, only a state or government institution is required to provide such information. In other words, private companies or persons cannot be required to provide information on this ground.
 - The second is a right to information which is required for the exercise and protection of such a right. There are no pre-requirements for this right – everyone has the right to such information; that is, there is no citizenship or permanent residency requirement in respect of the exercise of this right. In addition, this right applies in respect of information held by ‘any person’. This formulation is broad and includes natural persons, private juristic persons and, specifically, the state.
- It is important to note the constitutional right to correct information or to delete untrue, erroneous or misleading information held by the state, provided by section 62(3). Note that this right is not applicable in respect of information held by non-state persons or institutions.
- The provisions of section 62(4) require legislation to be passed to give effect to this right. This is significant because it means that Zimbabweans can look forward to the passage of access to information legislation. This is critical in the practical implementation of access to information rights.
- It is important to note, however, that section 62(4) does implicitly contain an internal limitation clause, which is dealt with more fully in section 2.5 below.

The right of access to information is vital in the ‘information age’. When states wield enormous power, particularly with regard to the distribution of resources, the right of access to information is one of the most important rights in ensuring transparency and holding public power – that is, government – accountable.

If one considers that the media plays an enormous role in ensuring transparency and government accountability through providing the public with information, having this right of *access* to information is critical to enable the media to perform its functions properly.

RIGHT TO ADMINISTRATIVE JUSTICE

A third important provision that protects the media is section 68, headed ‘Right to administrative justice’. Section 68(1) provides that every person ‘has the right to administrative action that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair’. Section 68(2) provides that any person ‘whose right, freedom, interest or legitimate expectation, has been adversely affected by administrative action has the right to be given promptly and in writing the reasons for the conduct’. Section 68(3) requires that an act of Parliament be passed to give effect to the rights provided for in sections 68(1) and (2), and which must provide for a court or independent tribunal to review administrative action and promote an efficient administration.

This right requires some explanation.

- This provision is important for journalists and the media because it protects them (as it does all people) from administrative officials who act unfairly and unreasonably and who do not comply with legal requirements. It also entitles them to written reasons when administrative action results in them being adversely affected.
- An administrative body is not necessarily a state body; indeed, these bodies are often private or quasi-private institutions. So these constitutional requirements would apply to non-state bodies too.
- Many decisions taken by bodies are ‘administrative’ in nature. This requirement of administrative justice is important as it prevents or corrects unfair and unreasonable conduct on the part of administrative officials. Furthermore, having a constitutional right to written reasons is a powerful tool in ensuring rational and reasonable behaviour on the part of administrative bodies. It also aids in ensuring transparency, and, ultimately, accountability.

Importantly, section 68(3) provides that national legislation must be enacted to give effect to the right to administrative justice. This is significant because it means that Zimbabweans can look forward to the passage of administrative justice legislation. This is critical in the practical implementation of administrative justice rights.

PRIVACY

A fourth protection is contained in section 57, headed ‘Right to privacy’. Section 57 specifies that every person has the right to privacy, which includes the right not to have their:

- Home, premises or property entered or searched
- Person searched
- Possessions seized
- Privacy of their communications infringed upon
- Health condition disclosed

Note that this protection of privacy of communications (which would include emails, SMSes and telephone conversations) is an important right for working journalists.

FREEDOM OF ASSEMBLY AND ASSOCIATION

A fifth protection is provided for in section 58, which grants every person the right to freedom of assembly and association, thereby guaranteeing the rights of the press to form press associations, as well as media houses and operations. An interesting feature of the drafting of this right is that section 58 stresses the right *not* to assemble or associate, including the right not to be compelled to belong to an association or to attend a gathering. This is doubtless due to Zimbabwe’s recent experience of coerced attendance at political meetings and of forced party membership.

FREEDOM OF CONSCIENCE

A sixth protection is contained in section 60, which guarantees every person the right to freedom of conscience. This includes not only ‘freedom of thought, opinion religion or belief’ – s60(1) – but also ‘freedom to practise and propagate and give expression to their thought, opinion, religion or belief, whether in public or in private and whether alone or together with others’ – s60(2). The freedom of opinion is important for the media as it protects commentary on public issues of importance. It is noteworthy that the Zimbabwe Constitution expressly protects the right to propagate and give expression to such opinion. This bolsters the general right to freedom of expression and freedom of the media.

FREEDOM OF PROFESSION, TRADE OR OCCUPATION

Section 64 guarantees everyone the right to choose and carry on any profession, trade or occupation, but the practise of a profession, trade or occupation may be regulated by law. Note that in and of itself this is not a dangerous internal limitation, it merely allows for appropriate regulation to protect the public, such as ensuring against malpractice by members of, for example, the medical profession or unethical behaviour by lawyers.

2.4.2 Other constitutional provisions that assist the media

It is important to note that there are provisions of the Zimbabwe Constitution, apart from the provisions of Chapter 4, Declaration of Rights, which are important and which assist the media in performing its functions.

PROVISIONS REGARDING GOOD GOVERNANCE

One of the provisions of the preamble to the Zimbabwe Constitution provides for ‘recognising the need to entrench democracy, good, transparent and accountable governance and the rule of law’.

Section 3 of the Constitution is headed ‘Founding values and principles’, and one of these is a commitment to good governance. Section 3(2) sets out in more detail what the principles of good governance are. For the purposes of the media, two principles of good governance that are particularly important are:

- A multi-party democratic political system
- Transparency, justice, accountability and responsiveness

Section 9 of the Constitution is headed ‘Good governance’. Section 9(1) provides that the state must adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity, and financial probity in all institutions of government. In particular:

- Appointments are to be made primarily on merit
- Measures must be taken to expose, combat and eradicate corruption and abuse of power

The Zimbabwe Constitution is interesting because it has an entire chapter (Chapter 9) devoted to principles of public administration and leadership.

Section 194 of the Constitution is headed ‘Basic values and principles governing public administration’. Some of these are important for the work of the media. For example:

- Efficient and economical use of resources must be promoted
- Public administration must be development oriented
- Services must be provided impartially, fairly, equitably and without bias
- People’s needs must be responded to within a reasonable time and the public must be encouraged to participate in policy-making
- Transparency must be fostered by providing the public with timely, accessible and accurate information

Section 196 of the Zimbabwe Constitution is headed ‘Responsibilities of public officers and principles of leadership’. Section 196(1) provides that the authority assigned to a public officer is a public trust, which must be exercised in a manner that:

- Is consistent with the Constitution
- Demonstrates respect for the people and a willingness to serve them rather than rule them
- Promotes public confidence

Section 196(3) provides that public officers in leadership positions must abide by the principles of:

- Objectivity and impartiality in decision-making
- Honesty
- Accountability
- Discipline and commitment in the service of the people

Furthermore, section 198 requires that legislation be passed to enforce the provisions of Chapter 9 of the Constitution, which legislation is to include measures:

- Requiring public officers to make regular disclosures of their assets
- Establishing codes of conduct

- Specifying standards for good corporate governance for government-owned entities
- Providing for disciplining of persons who contravene the provisions of Chapter 9 of the Constitution or of any applicable code of conduct

These are relevant to the media because references to transparency, efficient use of resources and the provision of information assist the media in performing its various public information roles.

PROVISIONS REGARDING THE FUNCTIONING OF PARLIAMENT

A number of provisions in the Constitution regarding the functioning of Parliament are important for the media:

- Section 141 of the Zimbabwe Constitution is headed ‘Public access to and involvement in Parliament’. In brief, it provides for a number of mechanisms to facilitate public access to Parliament, including the following:
 - Parliament is to facilitate public involvement in legislative and committee processes.
 - Parliament (including its committees) is to conduct its business in a transparent manner and hold its sittings in public. Parliament is entitled to take measures to:
 - Preserve order
 - Regulate public access, including of the media, and including to exclude them
 - Search persons entering Parliament and, where appropriate, to refuse entry or to remove persons from Parliament

But such measures have to be fair, reasonable and justifiable in a democratic society based on openness, justice, human dignity and freedom.

- Section 148 of the Zimbabwe Constitution is headed ‘Privileges and immunities of Parliament’. It specifically protects freedom of speech of the president of the Senate, the speaker and members of Parliament (MPs). This means that they cannot be arrested, face criminal prosecution, be sued in the civil courts, or face imprisonment or damages for anything said in, produced before, and submitted to Parliament or any of its committees.

These provisions assist the media in two key ways. First, they ensure that the media has a great deal of access to the workings of Parliament – in other words, that the

media is physically able to be in Parliament. Second, they protect parliamentarians. The provisions allow MPs to speak freely in front of the media without facing arrest or charges for what they say.

2.5 Constitutional provisions that might require caution from the media or might conflict with media interests

Just as there are certain rights or freedoms that protect the media, other rights or freedoms can protect individuals and institutions *from* the media. It is important for journalists to understand which provisions in the Constitution can be used against the media. There are a number of these:

2.5.1 Right to human dignity

The right to human dignity is provided for in section 51 of the Zimbabwe Constitution, which states that: ‘Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected’. Dignity is a right that is often raised in defamation cases because defamation, by definition, undermines the dignity of the person being defamed. This right is one that is often set up against the right to freedom of the press, requiring a balancing of constitutional rights. The formulation of this right is interesting because it specifically protects dignity in a person’s ‘public life’ as well as private life. This could potentially be used to bolster the rights of public figures in defamation cases.

2.5.2 Right to privacy

Similarly, the right to privacy (discussed in some detail above) is often raised in litigation involving the media, with the subjects of press attention asserting their rights not to be photographed, written about or followed in public. The media has to be careful in this regard and should be aware that there are always ‘boundaries’ in respect of privacy which need to be respected and which are dependent on the particular circumstances, including whether or not the person is a public figure or holds public office, and the nature of the issue being dealt with by the media.

2.5.3 Internal limitation to the right to freedom of expression

It is important to note that the right to freedom of expression is one of the few rights in the Declaration of Rights that is subject to an ‘internal limitation’.

Section 61(5) provides that the right to freedom of expression and freedom of the media does not extend to four types of expression, namely:

- Incitement to violence
- Advocacy of hatred or hate speech
- Malicious injury to a person's reputation or dignity
- Malicious or unwarranted breach of a person's right to privacy

It is important to understand the nature of the provisions of section 61(5). There is a misconception that the Zimbabwe Constitution 'outlaws' or makes illegal these kinds of expressions. That is not correct. The Constitution states that these kinds of expression do not fall within the right to freedom of expression – in other words, they are simply not constitutionally protected.

What is the effect of this? Quite simply, it means that government may prohibit these kinds of expression without needing to meet any of the requirements contained in the general limitations clause. Why not? As there is no right to make these kinds of expression, there is no need to justify the limitation of these kinds of expression. The danger in this, of course, is that the government is free to be heavy-handed and to legislate in a disproportionate manner when regulating these kinds of expression.

Furthermore, it is important to note the provisions of sections 61(5)(c) and (d), which deal with malicious injury to reputation or breach of privacy. These are extremely unusual provisions and could have a negative impact on the actual exercise of freedom of expression by the media if they are interpreted broadly by a court. In our view, dignity and privacy require to be balanced against the rights to freedom of expression in all situations and should not be allowed to 'trump' freedom of expression.

2.5.4 States of emergency provisions

It is also important to note the provisions of section 113, which deal with states of public emergency. A state of emergency may be declared by the president for a period of 14 days (although this can be extended for up to three months at a time) with Parliament's approval. As set out above, section 87 specifically allows for emergency legislation to provide for the derogation of rights laid down in the Declaration of Rights (including all of the rights that are important to the media, such as the right to freedom of expression, privacy, access to information, administrative justice, etc.), where this is strictly required by the emergency.

2.6 Key institutions relevant to the media established under the Constitution of Zimbabwe

A number of important institutions in relation to the media are established under the Zimbabwe Constitution. These are the judiciary, the Judicial Service Commission, the

Human Rights Commission, the Zimbabwe Media Commission, the National Peace and Reconciliation Commission and the Zimbabwe Anti-Corruption Commission.

2.6.1 The judiciary

In terms of section 162 of the Zimbabwe Constitution, judicial authority of the republic vests in the courts. These are: the Constitutional Court (the apex court in respect of constitutional matters); the Supreme Court (the apex court in respect of non-constitutional matters); the High Court; the Labour Court; the Administrative Court; magistrates' courts; customary law courts; and any other court established in terms of an act of Parliament.

The judiciary is an important institution for the media because the two rely on each other to support and strengthen democratic practices in a country. The judiciary needs the media to inform the public about its judgments and its role as one of the branches of government, and the media is essential for building public trust and respect for the judiciary, which is the foundation of the rule of law in a society. The media needs the judiciary because of the courts' ability to protect the media from unlawful action by the state and from unfair damages claims by litigants.

Section 164(1) specifically provides that the courts 'are independent and subject only to this Constitution and the law, which they must apply impartially, expeditiously and without fear, favour or prejudice'. In terms of section 180, judges are essentially appointed by the president, acting on the recommendation of the Judicial Service Commission (JSC). In terms of section 182, magistrates are appointed by the JSC. In terms of section 187, judges are removed by the president acting on a finding by a tribunal of suitably qualified people appointed by him and following a recommendation by the JSC to investigate. Grounds for removal are inability to perform the functions of the office, gross incompetence or gross misconduct.

2.6.2 The Judicial Service Commission

The JSC is a constitutional body that is established in terms of Part 3 of Chapter 8 of the Constitution, which chapter is headed 'The judiciary and the courts'. Section 190 sets out the functions of the JSC. These include promoting judicial independence and accountability, tendering advice to government on the judiciary, and functions relating to the employment, discipline and conditions of service of persons employed in the courts.

The JSC is relevant to the media because of its critical role in the judiciary, the proper functioning and independence of which are essential for democracy.

In terms of section 189(1), the JSC is made up of the chief justice, the deputy chief justice, the judge president of the High Court, one judge nominated by the judges of the Constitutional Court, the Supreme Court, the High Court, the Labour Court and the Administrative Court; the attorney-general, the chief magistrate, the chairperson of the Civil Service Commission, three practising legal practitioners with at least seven years' experience designated by the association representing the Zimbabwe legal profession, one professor or senior law lecturer designated by an association representing the majority of law teachers in Zimbabwe; one public accountant or auditor designated by an association representing such auditors and public accountants; and one person with at least seven years' experience in human resources management, appointed by the president.

2.6.3 The Human Rights Commission

The Human Rights Commission is also an important organisation in respect of the media. It is a Chapter 12 body – that is, an independent commission supporting democracy. Its brief is extremely wide, in terms of section 243(1) of the Constitution, and includes:

- Promoting awareness of, respect for, and the protection, development and attainment of human rights
- Monitoring, assessing and ensuring observance of human rights
- Receiving and considering public complaints
- Protecting the public against abuse of power and maladministration by the state
- Investigating the conduct of any authority or person, where it is alleged that human rights have been violated
- Securing appropriate redress, including recommending the prosecution of offenders
- Directing the police to investigate suspected criminal violations of human rights
- Recommending to Parliament effective measures to promote human rights
- Conducting research into issues relating to human rights and social justice
- Visiting and inspecting prisons, refugee camps, and places housing the mentally ill

in order to ascertain conditions and to make recommendations to the responsible minister regarding those conditions

Section 242 provides that the Human Rights Commission consists of a chairperson (who must be a lawyer with at least seven years' experience) appointed by the president after consultation with the JSC and the Committee on Standing Rules and Orders (note that this is a parliamentary committee) and eight other members from a list of not fewer than 12 nominees submitted by the Committee on Standing Rules and Orders. All members are to be chosen for their integrity, and their knowledge and understanding of, and experience in, the promotion of human rights.

In terms of section 237, a member of the Human Rights Commission can be removed only on the grounds of inability to perform the functions of his or her office, gross incompetence, gross misconduct, or if he or she has become ineligible for appointment. Note that the procedure for the removal of judges applies to the removal of a member of the Human Rights Commission.

2.6.4 The Zimbabwe Media Commission

Section 248 of the Zimbabwe Constitution will, hopefully, be critically important for the media in Zimbabwe. It establishes the Zimbabwe Media Commission. It is also a Chapter 12 body – that is, an independent commission supporting democracy. The functions of the Zimbabwe Media Commission are set out in section 249(1):

- (a) to uphold, promote and develop freedom of the media;
- (b) to promote and enforce good practices and ethics in the media;
- (c) to monitor broadcasting in the public interest and, in particular, to ensure fairness and a diversity of views broadly representing Zimbabwean society;
- (d) to encourage the formulation of codes of conduct for persons employed in the media, and where no such code exists, to formulate and enforce one;
- (e) to receive and consider complaints from the public and, where appropriate, to take action against journalists and others employed in the media or broadcasting who are found to have breached any law or any code of conduct applicable to them;
- (f) to ensure that the people of Zimbabwe have fair and wide access to information;
- (g) to encourage the use and development of all the officially recognised languages of Zimbabwe;
- (h) to encourage the adoption of new technology in the media and in the dissemination of information;
- (i) to promote fair competition and diversity in the media; and

- (j) to conduct research into issues relating to freedom of the press and of expression, and in that regard to promote reforms in the law.

It is important to note that section 249(2) provides that an act of Parliament may confer power upon the Zimbabwe Media Commission to:

- Conduct enquiries into circumstances that appear to threaten the freedom of the media and the conduct of the media
- Take or recommend disciplinary actions against media practitioners who are found to have breached any law or any applicable code of conduct

Furthermore, section 249(3) specifically provides that an act of Parliament may provide for the regulation of the media; however, the section is silent as to what kind of regulation this may consist of.

Section 250 specifically provides that the Zimbabwe Media Commission may, through the appropriate minister, submit reports to Parliament on particular matters relating to the media which, in the Commission's opinion, should be brought to Parliament's attention.

Section 248 provides that the Zimbabwe Media Commission consists of a chairperson appointed by the president after consultation with the Committee on Standing Rules and Orders and eight other members from a list of not fewer than 12 nominees submitted by the Committee on Standing Rules and Orders. All members are to be chosen for their integrity, their competence in administration, and their knowledge and understanding of human rights and best practices in media matters.

In terms of section 237, a member of the Zimbabwe Media Commission can be removed only on the grounds of inability to perform the functions of his or her office, gross incompetence, gross misconduct, or if he or she has become ineligible for appointment. Note that the procedure for the removal of judges applies to the removal of a member of the Zimbabwe Media Commission.

2.6.5 National Peace and Reconciliation Commission

Although not directly related to the media, the proposed National Peace and Reconciliation Commission, which is established in terms of section 251, may well prove useful for the media. Its aims, which are set out in section 252, include:

- Bringing about national reconciliation through encouraging people to tell the

truth about the past, and facilitating the making of amends and the provision of justice

- Developing procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations and other groups, in order to prevent conflicts and disputes arising in the future

The National Peace and Reconciliation Commission is also a Chapter 12 body – that is, an independent commission supporting democracy.

Section 248 provides that the National Peace and Reconciliation Commission consists of a chairperson (who must be a lawyer with at least seven years' experience) appointed by the president after consultation with the JSC and the Committee on Standing Rules and Orders, and eight other members from a list of not fewer than 12 nominees submitted by the Committee on Standing Rules and Orders. All members are to be chosen for their integrity, their knowledge and understanding of, and experience in, mediation, conciliation, conflict prevention and management, post-conflict reconciliation or peace building.

In terms of section 237, a member of the National Peace and Reconciliation Commission can be removed only on the grounds of inability to perform the functions of his or her office, gross incompetence, gross misconduct, or if he or she has become ineligible for appointment. Note that the procedure for the removal of judges applies to the removal of a member of the National Peace and Reconciliation Commission.

2.6.6 Zimbabwe Anti-Corruption Commission

The Zimbabwe Anti-Corruption Commission is established in terms of section 254 of the Constitution and falls under Chapter 13 of the Constitution, headed 'Institutions to combat corruption and crime'. Although not directly relevant to the media, certain of the aims of the Commission are of relevance to the media and will assist in creating an overall climate of transparency and accountability.

Section 255(1) sets out the functions of the Zimbabwe Anti-Corruption Commission. These include:

- Investigating and exposing cases of corruption in both the public and private sectors
- Promoting honesty, financial discipline and transparency in the public and private sectors

Section 254 provides that the Zimbabwe Anti-Corruption Commission consists of a chairperson appointed by the president after consultation with the Committee on Standing Rules and Orders and eight other members from a list of not fewer than 12 nominees submitted by the Committee on Standing Rules and Orders. All members are to be chosen for their integrity and their knowledge of, and experience in, administration or the prosecution or investigation of crime or for their general suitability for appointment.

In terms of section 256, read with section 237, a member of the Zimbabwe Anti-Corruption Commission can be removed only on the grounds of inability to perform the functions of his or her office, gross incompetence, gross misconduct, or if he or she has become ineligible for appointment. Note that the procedure for the removal of judges applies to the removal of a member of the Zimbabwe Anti-Corruption Commission.

2.6.7 Important features of the independent commissions supporting democracy

Three institutions listed above (the Zimbabwe Human Rights Commission, the Zimbabwe Media Commission and the National Peace and Reconciliation Commission) are Chapter 12 bodies – that is, independent commissions supporting democracy. It is important to note that the Zimbabwe Constitution lays out a number of provisions specifically intended to bolster the independence of these bodies.

Section 233 sets out certain general objectives applicable to all the Chapter 12 commissions and for the media. The following are particularly important:

- To support and entrench human rights and democracy.
- To promote transparency and accountability in public institutions.
- To secure the observance of democratic values and principles by the state, and all institutions and agencies of government.

Section 235 states that all such commissions:

- Are independent and are not subject to the direction or control of anyone
- Must act in accordance with the Constitution
- Must exercise their functions without fear, favour or prejudice
- Are accountable to Parliament for the efficient performance of their functions

Section 236 contains a number of provisions designed to ensure that members of the

independent commissions are and remain non-political. Section 237(1) contains additional provisions regarding the appointment of members of these commissions. Importantly, the Committee on Standing Rules and Orders is required to advertise a position, invite public nominations, conduct public interviews of prospective candidates, and prepare a list of appropriate number of nominees for appointment for submission to the president.

2.7 Enforcing rights under the Constitution

A right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a bill or declaration of rights, and yet remain empty of substance because they cannot be enforced.

Section 85 of the Constitution provides that rights are generally enforceable through the courts. The Constitution envisages the right of people, including individuals or associations acting on their own behalf or on behalf of one or more others, to assist in the enforcement of rights through having jurisdiction to bring such court action.

Perhaps one of the most effective ways in which rights are protected under the Zimbabwe Constitution is through the provisions of the Constitution which entrench Chapter 4, the Declaration of Rights. Section 328(6) of the Constitution requires that a constitutional amendment to Chapter 4 be passed by two-thirds of the members of the National Assembly and the Senate, and must be submitted to a national referendum, thereby providing significant protection for the Declaration of Rights provisions.

2.8 The three branches of government and separation of powers

All too often, politicians, commentators and journalists use political terms such as ‘branches of government’ and ‘separation of powers’, yet working journalists may not have a clear idea what these terms mean.

2.8.1 Branches of government

It is generally recognised that governmental power is exercised by three branches of government, namely: the executive; the legislature; and the judiciary.

THE EXECUTIVE

In an unusual formulation, section 88(1) of the Zimbabwe Constitution provides that ‘[e]xecutive authority derives from the people of Zimbabwe and must be exercised in

accordance with this Constitution’. Section 88(2) goes on to specify that executive authority vests in the president and is exercised by him, subject to the Constitution, through the Cabinet.

In terms of section 105(1) of the Zimbabwe Constitution, the Cabinet is made up of the president (head of Cabinet), the vice-presidents and ministers appointed by the president. Section 110 sets out the executive functions of the president and Cabinet. These include the following:

■ President

- Summoning Parliament, the National Assembly or the Senate to an extraordinary sitting
- Making presidential appointments
- Calling elections in terms of the Constitution
- Calling referendums
- Deploying the defence force

■ Cabinet

- Directing the operations of government
- Preparing, initiating and implementing national legislation
- Developing and implementing national policy
- Advising the president

Generally, the role of the executive is to administer or enforce laws, to make governmental policy and to propose new laws.

THE LEGISLATURE

In terms of section 117(1) of the Zimbabwe Constitution, legislative authority in Zimbabwe vests in the legislature. In terms of section 116, the legislature of Zimbabwe consists of Parliament and the president.

In terms of section 118 of the Zimbabwe Constitution, Parliament consists of the Senate and the National Assembly. In terms of section 117(2), this legislative authority has the power to amend the Constitution, to make legislation and to confer subordinate legislative powers (for example, the power to make regulations) upon another body. Parliament also fulfils other important functions. In terms of section 119(3), these functions include being the body that all institutions and agencies of the state and government at every level are accountable to.

In terms of section 120, the Senate consists of 80 senators, of whom:

- Six are elected from each of the provinces by a system of proportional representation in terms of which party lists are made up of male and female candidates, listed alternately and headed by a female candidate
- Sixteen are chiefs, of whom two are elected by the provincial assembly of chiefs from each province other than the metropolitan provinces
- One is the president and another the deputy president of the National Council of Chiefs
- Two are elected to represent persons with disabilities

In terms of section 124, the National Assembly is made up of:

- 210 members elected by secret ballot from constituencies into which Zimbabwe is divided
- an additional 60 members, six from each of the ten provinces elected through a system of proportional representation. This applies only for the life of the first two Parliaments after the effective date of the Constitution

THE JUDICIARY

As already discussed in this chapter, judicial power in Zimbabwe vests in the courts. The role of the judiciary is essentially to interpret the law and to adjudicate legal disputes in accordance with the law.

2.8.2 Separation of powers

It is important in a functioning democracy to divide governmental power between different organs of the state in order to guard against the centralisation of power, which may lead to abuses of power. This is known as the separation of powers doctrine.

The aim, as the Zimbabwean Constitution has done, is to separate the functions of the three branches of government – the executive, the legislature and the judiciary – so that no single branch is able to operate alone, assume complete state control and amass centralised power. While each branch performs a number of different functions, each also plays a ‘watchdog’ role in respect of the other. This helps to ensure that public power is exercised in a manner that is accountable to the general public and in accordance with the constitution.

2.9 Weaknesses in the Constitution that ought to be strengthened to protect the media

The new Zimbabwe Constitution contains a number of significant improvements upon the previous Constitution, and represents a new era for the media in Zimbabwe. There are, however, still a number of weak points. If these provisions were strengthened, there would be specific benefits for Zimbabwe's media.

2.9.1 Remove internal constitutional limitations

The internal limitation contained in section 61(5) of the Constitution and applicable to the right to freedom of expression and freedom of the media ought to be repealed. These provisions are unnecessary because the provisions of the general limitations clause give the government the power it needs to limit fundamental rights reasonably. Consequently, the legislature already has the power to pass legislation limiting hate speech, unreasonable invasions of privacy and other kinds of expression that are the subject of the internal qualifier found in section 61(5).

2.9.2 Licensing powers to be given to the Zimbabwe Media Commission

Broadcasting is currently regulated by the Broadcasting Authority of Zimbabwe (BAZ); the relationship between the BAZ and the proposed Zimbabwe Media Commission (to be established in terms of the Constitution) is unclear. We believe that the proposed constitutional Zimbabwe Media Commission will be additionally responsible for licensing broadcasting services in order to ensure that broadcasting licensing matters are carried out by a body with real independence.

2.9.3 Constitutional protection for the public broadcaster

The state broadcaster, the Zimbabwe Broadcasting Corporation (ZBC), suffers from a great deal of governmental interference. Most Zimbabweans access news and current affairs information via the ZBC. The Constitution should therefore specifically protect the ZBC's independence and ensure that it operates in the public interest in order to guarantee impartiality and to expose Zimbabweans to a variety of views.

3 THE MEDIA AND LEGISLATION

In this section you will learn:

- ☐ What legislation is and how it comes into being
- ☐ Key legislative provisions governing the publication of print media

- ☐ Key legislative provisions governing news agencies
- ☐ Key legislative provisions governing the broadcast media in general
- ☐ Key legislative provisions governing the public broadcasting sector
- ☐ Key legislative provisions governing broadcasting signal distribution
- ☐ Generally applicable statutes that threaten a journalist's duty to protect sources
- ☐ Generally applicable statutes that prohibit the publication of certain kinds of information
- ☐ Generally applicable statutes that prohibit the interception of communication
- ☐ Generally applicable statutes that specifically assist the media in performing its functions

3.1 Legislation: An introduction

3.1.1 What is legislation?

Legislation is a body of law consisting of acts properly passed by the legislature, that is, the president and Parliament. As already discussed, in terms of the Constitution, Parliament in Zimbabwe is made up of the Senate and the National Assembly.

Chapter 6 of the Zimbabwe Constitution deals with the legislature, and Part 6 thereof deals with its legislative and other powers. In respect of legislation, sections 130–133 are important.

In terms of section 130 of the Constitution, both houses of Parliament – that is, the Senate and the National Assembly – have the authority to initiate, prepare, consider or reject legislation.

Section 131(2) provides that an act of Parliament is a bill which has been:

- Presented in and passed by both houses of Parliament
- Assented to and signed by the president

There are detailed rules in Schedule 5 to the Zimbabwe Constitution, headed 'Procedure as to bills and other matters in Parliament', which set out the different law-making processes that apply to different types of legislation. It is important for journalists and others in the media to be aware that the Constitution requires different types of legislation to be passed in accordance with particular procedures. The procedures are complicated and need not be explained here. Journalists should, however, be aware that in terms of the Constitution of Zimbabwe there are three different kinds of legislation, each of which has particular procedures and/or rules applicable to it. These are:

- Legislation that amends the Constitution – the procedures and/or applicable rules are set out in section 328 of the Zimbabwe Constitution
- Ordinary legislation – the procedures and/or applicable rules are set out in sections 131–133 of the Constitution
- Legislation that deals with taxation issues – the procedures and/or applicable rules are set out in paragraph 7 of Schedule 5 of the Constitution

3.1.2 The difference between a bill and an act

A bill is a piece of draft legislation that is debated and usually amended by parliament during the law-making process. If a bill is passed by the Zimbabwe Parliament in accordance with the various applicable procedures required for different types of bills, as set out above, it becomes an act once it is signed by the president (signifying his assent to the bill), in terms of section 131 of the Constitution.

An act must be published promptly and takes effect or comes into force when it is published or on a date specified in the act itself, in terms of section 132 of the Constitution. Besides the ‘checks’ upon legislation that are built in to the system of having both houses of Parliament consider and vote upon a bill, the Constitution provides for other mechanisms of reviewing a bill passed by Parliament before it becomes an act. If the president has reservations about the constitutionality of any bill passed by Parliament, she or he may refer it back to the National Assembly for reconsideration, in terms of section 131(6)(b) of the Constitution. After the reconsideration has taken place and it has been re-passed, the president must either accept the bill (that is, sign it such that it becomes an act) or refer the bill to the Constitutional Court for a ruling on its constitutionality, in terms of section 131(8). If the Constitutional Court rules that the bill is constitutional, section 131(9) requires the president to assent to and sign the bill.

3.2 Statutes governing the print media

Zimbabwe’s print media environment has been one of the most repressed and censored, and routinely features extremely low on international barometers of media freedom. There are a number of limitations on the ability to operate as a print media publication in Zimbabwe or even as a journalist. Many of the laws impose obligations upon the print media. They are clearly unreasonable and unjustifiable in a democratic society and impinge greatly upon the public’s right to know. New – and controversial – legislation provides for a statutory body, the Zimbabwe Media Commission, to regulate, among other things, the print media. This is not in line with international

best practice, which does not consider statutory regulation of the print media to be in accordance with the basic principles of press freedom.

3.2.1 Printed Publications Act, 1975

The Printed Publications Act, 1975 (Chapter 25:14) is a pre-independence piece of legislation that has been amended post-independence. There are certain key requirements laid down by the Printed Publications Act in respect of a ‘book’, which is defined in section 2 as including ‘a newspaper, periodical or other printed publication published at regular or irregular intervals’, but specifically excludes parliamentary papers in terms of section 3.

- Section 4(1) requires printers of books printed in Zimbabwe to include the following information in a legible imprint:
 - Full and correct name of the printer and the place where such book was printed.
 - Full and correct name of the publisher and his or her place of business.
 - Year of publication.
- Section 4(2) provides that failure to comply with section 4(1) is an offence, and upon conviction a person would be liable to a fine, imprisonment not exceeding three months or both.
- Note that section 4(3) provides that the minister of home affairs (or whichever minister is responsible for the administration of the Printed Publications Act) may exempt certain books from compliance with section 4(1), where the book is used for the purposes of the state, the courts, statutory bodies, or trade or business, or other books subject to conditions that he may impose.
- Section 5(1) requires a publisher, at its cost, to supply a copy of each book published, within 30 days, to the Directory of the National Archives, the director of the National Library and the authority having control of the Public Library, Bulawayo.
- Section 5(4) provides that failure to comply with section 5(1) is an offence, and upon conviction a person would be liable to a fine, imprisonment not exceeding three months or both.
- Note that the schedule to the Printed Publications Act contains a list of books which are exempt by the minister from being provided by the publisher in terms of section 5(1). These include diaries, bookplates, Christmas cards, colouring

books, forms, postcards, commercial, entertainment or industrial catalogues and the like.

3.2.2 Access to Information and Protection of Privacy Act, 2002

The Access to Information and Protection of Privacy Act, 2002 (AIPPA) (Chapter 10:27) is one of the most notorious pieces of legislation to emanate from the Zimbabwean Government and is seen as symptomatic of the country's descent into undemocratic practices. Despite its name, AIPPA contains numerous sections that do nothing to secure access to information or protect privacy. Many of its other provisions have had severe implications for freedom of the press, particularly of the print media.

REGISTRATION OF THE MEDIA

- Section 65 of AIPPA restricts ownership of 'mass media', which is defined in section 2 as including newspapers, magazines, or broadcasting services that are intended to be read, seen or heard by an unlimited number of people. Sections 65(1) and (2) make it clear that only individuals who are Zimbabwean citizens or permanent residents, or corporate entities which are controlled by Zimbabwean citizens or permanent residents, may hold or acquire shares in a mass media service – that is, a newspaper, magazine or broadcasting service. Note, however, that section 65(4) grants the minister for information sole and absolute discretion to grant exemptions from this local ownership requirement.
- Section 66 provides that a mass media owner may carry on the activities of a mass media service only after registering (in the prescribed manner) and receiving a certificate of registration in terms of AIPPA. Such an application for registration is made to the Zimbabwe Media Commission, which is established in terms of section 38 of AIPPA. The Zimbabwe Media Commission is required to deal with an application for registration within one month of receipt of the application. Note that certificates of registration issued by the Zimbabwe Media Commission are valid for a period of five years and may be renewed upon application.
- Section 67 requires the responsible person of a mass media service to notify the Zimbabwe Media Commission if the:
 - Owner is replaced
 - Co-owners change
 - Name, language, form and frequency of the periodical dissemination of mass media products is altered
 - Area where the mass media products are circulated is changed
 - Editorial office changes its place of location and form

- Section 68 sets out a list of exemptions from registration and includes a:
 - Mass media service founded in terms of an act of Parliament – that is, state media
 - Mass media service licensed in terms of the Broadcasting Services Act
 - Representative office of a foreign mass media service permitted to operate in Zimbabwe in terms of section 90 (which section contains its own registration provisions for foreign mass media entities, which are valid for 12 months)
- Section 69 sets out the grounds upon which the Zimbabwe Media Commission may refuse to register a mass media service. These were amended in 2008 and now deal with essentially administrative details, such as foreign ownership contraventions, incorrect information, failure to pay the prescribed fee, etc.
- Section 72 provides that a person who operates a mass media service without a valid registration certificate is guilty of an offence and is liable, upon conviction, to a fine, imprisonment for a period not exceeding 18 months, or both. Furthermore, all products, equipment or apparatus used in the production of a mass media service may be forfeited to the state.
- Note that sections 75 and 76 of AIPPA also require the publisher's imprint and that free copies of a periodical be sent to the Zimbabwe Media Commission and the National Archives.

REGISTRATION OF JOURNALISTS

- Section 78(4) of AIPPA provides that no mass media service shall employ any journalist on a full-time basis unless such journalist is accredited with the Zimbabwe Media Commission. Furthermore, in terms of section 78(1), only accredited journalists have certain 'privileges', including:
 - Visiting Parliament or any other listed public body
 - Access to records in terms of this act
 - Attending any national event (that is, as prescribed as such by a minister in the Government Gazette) with the purpose of carrying out duties as a journalist
 - Attending any public event (that is, any event which the public is permitted to attend) with the express purpose of carrying out duties as a journalist
 - Making recordings with the use of audio-visual equipment, photography and cinematography in connection with the carrying out of duties as a journalist

- Section 78(2) makes it an offence for any person to hold him or herself out as an accredited journalist without being so accredited. Upon conviction, such person is liable to a fine, a period of imprisonment not exceeding two years or both.
- Section 79 sets out the process of accreditation for journalists. Note that in terms of sections 79(3) and (4), a journalist who is not a citizen or permanent resident of Zimbabwe may not be accredited for a period of longer than 60 days, unless specific exemption is granted by the Zimbabwe Media Commission. Section 82 provides that the Zimbabwe Media Commission is to maintain a roll of accredited journalists. Note that accreditation lasts for only 12 months, in terms of section 84, although this can be renewed.

REGULATION OF THE MEDIA

- Section 38 of AIPPA establishes the Zimbabwe Media Commission. The Commission comprises a chairperson and eight other members appointed by the president from a list of not fewer than 12 nominees submitted by Parliament's Committee on Standing Rules and Orders. Note that section 2 of the Fourth Schedule to AIPPA sets out grounds of disqualification for appointment to the Zimbabwe Media Commission. These include:
 - Not being a citizen of Zimbabwe
 - Having a financial interest in broadcasting
 - Insolvency
 - Previous convictions
 - Being an MP or a member of two or more other statutory bodies
- Section 39 sets out the many functions of the Zimbabwe Media Commission. These include:
 - Upholding and developing freedom of the press
 - Promoting and enforcing good practice and ethics in the press
 - Ensuring that the people of Zimbabwe have equitable and wide access to information
 - Ensuring the equitable use and development of all indigenous languages
 - Commenting on the implications of proposed legislation or programmes of public bodies on access to information and protection of privacy
 - Conducting investigations to ensure compliance with this act
 - Considering accreditation applications by journalists
 - Registering the mass media
 - Monitoring the mass media and raising user awareness of it

- Investigating complaints against any journalist or mass media service
- Besides its accreditation functions, one of the most important functions of the Zimbabwe Media Commission is to appoint the members of the Media Council to exercise disciplinary control on behalf of the Commission, in terms of section 42A.
- The Media Council consists of 15 members, namely:
 - A chairperson who is a member of the Zimbabwe Media Commission (other than the Commission's chair or deputy chair)
 - Two representatives of an association of accredited journalists nominated by associations that, in the opinion of the Commission, are fairly representative of journalists and appointed by the Commission
 - Two representatives of an association of publishers nominated by associations that, in the opinion of the Commission, are fairly representative of publishers and appointed by the Commission
 - Two representatives of an association of advertisers or advertising agencies nominated by associations that, in the opinion of the Commission, are fairly representative of advertisers or advertising agencies and appointed by the Commission
 - A representative of an association of mass media trainers nominated by associations that, in the opinion of the Commission, are fairly representative of mass media trainers and appointed by the Commission
 - A representative of an association of churches or other religious bodies nominated by associations that, in the opinion of the Commission, are fairly representative of churches or other religious bodies and appointed by the Commission
 - A representative of an association of businesspeople nominated by associations that, in the opinion of the Commission, are fairly representative of businesspeople and appointed by the Commission
 - A representative of any trade union or federation of trade unions nominated by associations that, in the opinion of the Commission, are fairly representative of trade unions [Note that the legislation in fact states 'businesspeople', but we think this is an obvious error] and appointed by the Commission
 - A representative of an association of women or women's groups nominated by associations that, in the opinion of the Commission, are fairly representative of women or women's groups and appointed by the Commission

- A representative of an association of youth or youth groups nominated by associations that, in the opinion of the Commission, are fairly representative of youth or youth groups and appointed by the Commission
 - A representative of the legal profession selected by the Commission from a panel of nominees submitted by the Council of the Law Society
 - A representative of the legal profession selected by the Commission from a panel of nominees submitted by the faculties of law in any tertiary educational institution invited by the Commission to make such nominations
- In terms of section 42B of AIPPA, the Zimbabwe Media Commission, in consultation with the Media Council, is required to develop a Code of Conduct and Ethics governing the rules of conduct to be observed by journalists and mass media services, including in respect of ‘injurious allegations’ (defined in section 2 as an allegation ‘which is false or which unlawfully infringes [on] a person’s dignity, reputation or privacy’) and penalties to be imposed for breaches of the code.
- The Zimbabwe Media Commission and the Media Council are responsible for enforcing the Code of Conduct and Ethics and sections 42B-H, along with the administrative aspects of such enforcement. The process is as follows:
- A complaint regarding an alleged ‘injurious allegation’ or contravention of AIPPA or the Code of Conduct and Ethics is lodged with the Zimbabwe Media Commission.
 - The Zimbabwe Media Commission investigates, hears both parties (by way of written representation) and refers the matter to the Media Council for inquiry.
 - The Media Council conducts the inquiry, including summoning witnesses, etc., and then makes a recommendation to the Zimbabwe Media Commission in respect of actions to be taken by the Zimbabwe Media Commission. These include:
 - *In respect of an accredited journalist:* A caution, payment of a monetary penalty, suspension of accreditation for a maximum period of three months, imposing conditions of practice, deleting his or her name from the roll of journalists, or referring the matter for criminal prosecution.
 - *In respect of a non-accredited journalist:* A caution, payment of a monetary penalty, suspension of practice as a journalist for a maximum period of three months, imposing conditions of practice, or referring the matter for criminal prosecution.

- *In respect of a mass media service:* A caution, payment of a monetary penalty, suspension of its registration certificate for a maximum period of three months, imposing conditions for the breach, cancelling its registration certificate, or referring the matter for criminal prosecution.
 - *In respect of an injurious allegation made or broadcast by any journalist or mass media service:* Requiring the broadcast of an apology and/or a correction or retraction, requiring the complainant to be given a right of reply, imposing a requirement that it not engage in any conduct that might result in a repetition of the injurious allegation.
- The Zimbabwe Media Commission has wide discretion to accept or not accept the Media Council's recommendations with or without modification. Note that orders of the Zimbabwe Media Commission can be registered in the High Court and enforced in the same way as a judgment of that court.
 - Note that any person aggrieved at any findings, order or penalty of the Zimbabwe Media Commission may appeal to the Administrative Court.
 - A person who fails to comply with an order of the Zimbabwe Media Commission is guilty of an offence, and upon conviction can be sentenced to a fine, a period of imprisonment not exceeding six months or both.
- It is also important to be aware that the Zimbabwe Media Commission has wide powers in terms of section 50 of AIPPA to conduct inquiries, and is granted the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act.

MEDIA AND INFORMATION FUND

- Part IV of AIPPA is headed 'Media and Information Fund'. Section 43 thereof establishes the Media and Information Fund, which is administered by the Zimbabwe Media Commission.
- Section 44 sets out the objects of the Media and Information Fund. These include:
 - Standardising the mass media services and maintaining high standards of quality in the provision of such services
 - Training of persons in the provision of mass media services
 - Promoting and contributing to research and development in the field of information and mass media

- Promoting public awareness of the right of access to information and the protection of privacy

These objects are to be furthered by way of annual implementation plans prepared by the Zimbabwe Media Commission in consultation with registered mass media services.

- Section 45 sets out the sources of funding of the Media and Information Fund. These include:
 - Levies which are raised from every mass media owner other than a broadcasting licensee
 - Monies appropriated by Parliament
 - Surplus income
 - Accreditation fees
 - Other income to which the Media and Information Fund is lawfully entitled

3.3 Statutes governing news agencies

Section 74 of AIPPA also governs news agencies:

- It is an offence for any person to operate a news agency, defined in section 2 as ‘an organisation that collects and prepares news reports for sale and distribution to the mass media’, without a valid registration certificate (which is valid for three years) issued by the Zimbabwe Media Commission. The penalty for such contravention is a fine, imprisonment for up to two years or both. Furthermore, all products, equipment or apparatus used in the production of a mass media service may be forfeited to the state.
- Section 74(6) requires that any materials belonging to the news agency and distributed by a mass media service shall state the name of the news agency.

3.4 Statutes governing the broadcast media generally

3.4.1 Statutes that regulate broadcasting generally

Broadcasting in Zimbabwe is regulated in terms of the Broadcasting Services Act, 2001 [Chapter 12:06].

The Broadcasting Services Act establishes and empowers the Broadcasting Authority of Zimbabwe (BAZ) – the authority that regulates broadcasting.

3.4.2 Establishment of the Broadcasting Authority of Zimbabwe

The Broadcasting Services Act establishes, in section 3, the BAZ. In terms of section 4, it operates through a board called the Broadcasting Authority of Zimbabwe Board.

3.4.3 Main functions of the BAZ

In terms of section 2A read with section 3(3) of the Broadcasting Services Act, the main objects of the BAZ and of the Broadcasting Services Act include:

- Ensuring efficient use of the broadcasting service bands
- Encouraging modern and efficient infrastructure
- Promoting the provision of a wide range of broadcasting services that are of a high quality and calculated to appeal to a wide variety of tastes and interests, providing education, information and entertainment
- Providing sufficient broadcasting services throughout Zimbabwe
- Ensuring that broadcasting services provide:
 - Regular news services
 - Public debate on political, social and economic issues of public interest
 - Programmes on matters of local, national, regional and international interest or significanceso as to foster and maintain a healthy plural democracy
- Promoting peace, stability and national cohesion through the provision of broadcasting
- Promoting public, community and commercial broadcasting services in the public interest
- Ensuring the independence, impartiality and viability of public broadcasting services
- Ensuring that providers of broadcasting services are able to do so efficiently, continuously and are independently financially viable
- Developing broadcasting systems in accordance with international standards and public demand

- Promoting the interests of consumers, purchasers and others with regard to quality and variety of broadcasting services
- Maintaining and promoting effective competition
- Ensuring the application of standards to provide adequate protection against:
 - Material that is harmful or offensive to members of the public
 - The unfair treatment of individuals in television or radio programmes
 - Unwarranted infringements of privacy
- Preserving national security and the integrity of Zimbabwe
- Fostering a Zimbabwean national identity and Zimbabwean values

In order to achieve these and other objectives, the BAZ is granted the following powers and functions in terms of section 3(2) of the Broadcasting Services Act:

- Planning and advising on the allocation and distribution of the available frequency spectrum
- Advising the minister on the adoption of standards and codes for broadcasting equipment
- Receiving, evaluating and considering applications for the issuing of any broadcasting licence
- Monitoring tariffs charged by broadcasting licensees
- Advising the minister of ways to improve the regulatory environment so as to ensure the development of a broadcasting industry that is efficient, competitive and responsive to audience needs and the national interest
- Encouraging diversity in the control of broadcasting services
- Ensuring Zimbabweans have effective control of broadcasting services
- Promoting high-quality and innovative programming
- Encouraging providers of commercial and community broadcasting services to be responsive to the need for fair and accurate coverage of matters of public interest

- Ensuring the provision of means of addressing complaints about broadcasting services
- Ensuring that broadcasting services place a high priority on the protection of children from exposure to programme material which may be harmful
- Ensuring compliance with the Broadcasting Services Act and licence conditions
- Carrying out functions as may be prescribed by the minister, subject to the Broadcasting Services Act

3.4.4 Appointment of BAZ board members

In terms of section 4(2) of the Broadcasting Services Act, the BAZ Board is made up of 12 members appointed as follows:

- Nine members (of whom at least three shall be women) are appointed by the president after consultation with the minister of information and publicity and Parliament's Committee on Standing Rules and Orders as follows:
 - Two shall be persons chosen for their experience or qualifications in the field of broadcasting technology and broadcasting content, respectively.
 - One shall be a chief, as defined in the Traditional Leaders Act and nominated by the Council of Chiefs referred to in that act.
 - One shall be a legal practitioner of not less than five years' standing.
 - One shall be a public accountant of not less than five years' standing.
 - One shall be a representative of churches or other religious bodies, chosen from a list of nominees submitted by groups considered by the minister to be representative of churches or other religious bodies.
 - Three other members.
- Three members (of whom at least one must be a woman) are to be appointed by the president from a list of six nominations submitted by the Committee on Standing Rules and Orders.

Section 4(4) read with section 2 of the Third Schedule to the Broadcasting Services Act sets out grounds for disqualification of BAZ board members. These include being foreign, having a financial conflict of interest, prior convictions, or being a member of Parliament or a member of two or more statutory bodies.

3.4.5 Funding for the BAZ

In terms of section 5 read with the Fourth Schedule to the Broadcasting Services Act, the BAZ is funded from a range of sources, including:

- Fees, charges and other income derived from licences issued and other things done by the BAZ in terms of the Broadcasting Services Act
- Proceeds of any monetary penalties imposed by the BAZ for violations by licensees of applicable codes of conduct
- Money appropriated by Parliament – in other words, funding for the BAZ must be provided for in the national budget

3.4.6 Making broadcasting regulations

The Broadcasting Services Act, at section 46, sets out the BAZ's regulation-making powers. The BAZ is given wide powers to make regulations that are required or permitted to be prescribed by the Broadcasting Services Act or that, in the opinion of the BAZ Board, are necessary or convenient to be prescribed for the carrying out or giving effect to the act.

Note, however, that section 46(6) of the Broadcasting Services Act provides that the BAZ's regulations are of no force and effect until they have been approved by the minister of information and publicity and published in the Government Gazette.

3.4.7 Licensing regime for broadcasters in Zimbabwe

CATEGORIES OF BROADCASTING SERVICES

Section 7(2) of the Broadcasting Services Act provides that there are ten categories of broadcasting services:

- *Commercial:* This is a free-to-air radio or television service operated for profit and which is intended to appeal to the general public and is capable of being received by commonly available equipment.
- *Community:* This is a free-to-air radio or television service not operated for profit and which provides programmes for community purposes and is capable of being received by commonly available equipment. It also does not broadcast programmes or advertisements on behalf of any political party.

- *Subscription satellite*: This is a service which transmits programmes by satellite and which is made available to persons on payment of a subscription fee.
- *Subscription cable*: This is a service made available to the general public on payment of a subscription fee and provides programmes intended to appeal to the general public.
- *Subscription narrowcasting*: This is a service which is made available to persons on payment of a subscription fee and the reception of which service is limited by reason of:
 - Being targeted to any special interest group or otherwise not intended to appeal to the general public
 - Being intended only for reception at particular locations
 - Being provided during a limited period or to cover a specific event
- *Open narrowcasting*: This is a service which is not made available to persons on payment of any subscription fee, and where the reception of which service is limited by reason of:
 - Being targeted to any special interest group or otherwise not intended to appeal to the general public
 - Being intended only for reception at particular locations
 - Being provided during a limited period or to cover a specific event or is limited for some other reason
- *Datacasting*: This is an information service that delivers information, whether in the form of data, text, speech, images or any other form, to persons having appropriate receiving equipment, where the delivery of the service uses the broadcasting service bands.
- *Roadcasting*: This is the broadcasting of pre-recorded programmes for reception by passengers of any public service vehicle as defined in the Road Motor Transportation Act.
- *Railwaycasting*: This is the broadcasting of pre-recorded programmes for reception by passengers of any railway service.
- *Webcasting*: This is a computer-mediated broadcasting service.

It is important to note that in terms of section 2(2) of the Broadcasting Services Act, the minister of information and publicity may by notice in the Government Gazette determine other categories of broadcasting services.

BROADCASTING LICENSING PROCESSES

In terms of section 9 of the Broadcasting Services Act, the BAZ must, subject to frequency availability and after having planned the broadcasting service bands, publish a notice in the Government Gazette and in a national newspaper inviting applications for a licence to provide:

- National free-to-air radio broadcasting services
- National free-to-air television broadcasting services

in addition to those provided by the public broadcaster, the Zimbabwean Broadcasting Corporation.

In terms of section 10 of the Broadcasting Services Act, the BAZ must, subject to frequency availability and after having planned the broadcasting service bands, publish a notice in the Government Gazette and in a national newspaper inviting applications for a licence to provide the broadcasting services specified in the notice. An applicant responding to such an invitation must submit its application in the prescribed form and with the prescribed fee.

Within seven days of the submission of its application, an applicant must also publish its application at its own cost in a national newspaper. Written objections by the public must be lodged with the BAZ within 14 days of the publication of any licence application. The BAZ then examines and short-lists qualified applicants. Short-listed applicants are required to attend a public hearing.

The BAZ has the discretion to issue or to refuse to issue a licence. If a licence is issued, the licensee is to publish the licence in a national newspaper at its cost. If a licence is refused, the BAZ must provide reasons for such refusal.

FREQUENCY SPECTRUM LICENSING

Section 27(1) of the Broadcasting Services Act requires the BAZ's authority, whether through licensing or otherwise, to transmit signals, erect broadcasting apparatus, or use a mode of transmission. Section 27(2) makes it an offence to contravene section 27(1), and the punishment, upon conviction, is a fine, a period of imprisonment for up to two years or both. Note that in terms of section 27(5), the minister of information and publicity may order any person having the technological means to do so to stop, scramble, obliterate or interfere with a broadcasting transmission which the minister has reason to believe is being provided in contravention of the Broadcasting Services Act.

3.4.8 Responsibilities of broadcasters in Zimbabwe

ADHERENCE TO LICENCE CONDITIONS, INCLUDING STATUTORY STANDARD TERMS AND CONDITIONS

Section 11 of the Broadcasting Services Act sets out the various conditions that apply to broadcasting licences. The standard terms and conditions are listed in the Fifth and Seventh schedules to the Broadcasting Services Act. These schedules contain hugely detailed provisions regarding a range of topics. A summary of these are given below:

■ *Conditions applicable to all broadcasters:*

■ Conditions relating to political matters:

- During an election period a broadcaster who broadcasts election matter must give reasonable and equal opportunities to all political parties.
- Conditions regarding the broadcasting of election advertisements – essentially, election advertisements are not allowed.
- Identification of political matter: Where a broadcaster broadcasts political matter at the request of another person, a number of particular details of the requestor and particulars about the matter must be kept. Details of the requestor and the matter must be announced in a form approved in writing by the BAZ, and specific details thereof must be forwarded to the BAZ upon written request.
- Records of political subjects, whether provided as part of current affairs, news, statements, commentary, etc. are to be kept in the form approved by the BAZ in writing, for a period of six weeks or until a complaint is resolved or as per the BAZ's specific written request.

■ Conditions relating to medicines: Commercial television/radio and subscription broadcasters must not broadcast a medicine advertisement unless the text has been approved by the relevant government official.

■ News: No broadcaster may broadcast any matter that contains false or misleading news.

■ Advertisements containing political matter: No broadcaster may broadcast these.

■ *Conditions specific to commercial licensees:* There is a long list of these in both schedules, the critical ones are the following:

- Licensee's articles of association must provide for the disposal of

shares held by a person if that shareholding would contravene any of the provisions of the Broadcasting Services Act, and must also provide for director's details to be provided to the BAZ.

- All commercial broadcasters are required to broadcast, free of charge, items of national interest if so required by the minister of information and publicity and, further, even hand over control of all broadcasting facilities to persons authorised by the Ministry during an emergency.
- The broadcaster will not broadcast something which has been refused classification or prohibited in terms of the Censorship and Entertainments Control Act.
- Broadcasting services cannot be used to commit an offence.
- Collectively, they must:
 - Provide a diverse range of programmes
 - Make programmes available in all languages used in the broadcast area
 - Reflect the culture, character, needs and aspirations of the people in the broadcast area
 - Provide a significant amount of Zimbabwean programming
 - Regularly include news and information programmes, including discussions of matters of national, regional and local significance
 - Meet the highest standards of journalism
- *Conditions specific to community licensees:* There is long list of these in both schedules. The critical ones are as follows:
 - Licensees cannot broadcast 'any political matter'. Note this is undefined.
 - Licensees must encourage community participation in operations, programming and membership of its governing body.
 - Time, content and display limits on sponsorship announcements are required.
 - Licensees must provide a distinct service dealing with community issues not normally dealt with by the public or commercial broadcasters.
 - Informational, educational and entertaining programming is required.
 - Licensees are to concentrate on highlighting community issues, such as developmental issues, health care, basic information and general education, environmental affairs, and the promotion of local culture.
 - Licensees are to promote a sense of common purpose within the community.

- *Requirements for public broadcasters:* There is long list of these in the Seventh Schedule, the critical ones being to:
 - Make programmes available in all languages used in Zimbabwe
 - Reflect both unity, and cultural and language diversity
 - Provide news and public affairs programming that meets the highest standards of journalism and which is fair, unbiased and independent of government, commercial or other interests
 - Include significant amounts of educational programming
 - Support traditional and contemporary artistic expression
 - Offer a range of services aimed at women, children, the youth and the disabled
 - Include programmes commissioned by independent producers
 - Include programmes featuring national as well as developmental and minority sports

- *Language requirements:* Section 11(4) of the Broadcasting Services Act imposes the following language requirements:
 - Ten per cent of the total programming of all licensees shall be in any of the national aboriginal languages of Zimbabwe other than Shona and Ndebele.
 - Ten per cent of the total programming of a television licensee must be broadcast in a manner that may be understood by audiences who have a hearing impairment.

- *Government broadcasting rights:* Section 11(5) of the Broadcasting Services Act requires every broadcaster to make available one hour cumulatively per week of its broadcasting time for government to explain its policies to the nation.

- *Copyright compliance:* Section 11(5) of the Broadcasting Services Act requires every broadcaster to comply with the Copyright and Neighbouring Rights Act.

- *Compliance with the Access to Information and Protection of Privacy Act:* Section 11(11) of the Broadcasting Services Act requires all broadcasters to comply with AIPPA in relation to the conduct and accreditation of journalists employed by them. This has already been discussed in detail above.

ADHERENCE TO LOCAL CONTENT CONDITIONS

The Sixth Schedule to the Broadcasting Services Act sets out local content requirements for various broadcasting services. It is also important to note that the minister is empowered in terms of this Sixth Schedule to prescribe other local content

requirements. The local content requirements provided for in the Sixth Schedule are briefly as follows:

■ *Television broadcasting services:*

- Single channel service: 75% of the programming content at all times must be local television content and material from Africa.
- Multi-channel services: 30% of programming content at all times must be local television content.
- In complying with the above conditions, at least:
 - 70% of drama must consist of Zimbabwean drama
 - 80% of current affairs must consist of Zimbabwean current affairs
 - 70% of social documentaries must consist of Zimbabwean social documentaries
 - 70% of informal knowledge-building must consist of Zimbabwean informal knowledge-building
 - 80% of educational programming must consist of Zimbabwean educational programming
 - 80% of children's programming must consist of Zimbabwean children's programming

■ *Subscription television broadcasting services:*

- At least 30% of its encoded programming (or a higher figure as determined by the BAZ) must consist of local television content within such programme categories as may be determined by the BAZ.
- At least 50% of its unencoded programming, if any, must consist of local television content within such programme categories as may be determined by the BAZ.

■ *Independent television production:* Television and subscription television broadcasting services must ensure that at least 40% of their local television content consists of independent productions spread reasonably evenly between Zimbabwean drama, social documentary, informal knowledge-building, and children's and educational programming.

■ *Radio:*

- 75% of music broadcast must be Zimbabwean music
- 10% of music broadcast must be music from Africa

■ *Subscription radio:*

- Encoded services:

- 30% of music broadcast must be Zimbabwean music
- 10% of music broadcast must be music from Africa
- Unencoded services:
 - 75% of music broadcast must be Zimbabwean music
 - 10% of music broadcast must be music from Africa

ADHERENCE TO CODES OF CONDUCT

In terms of section 24(1) of the Broadcasting Services Act, the BAZ ‘in consultation with broadcasters’ must develop codes of conduct governing:

- Rules of conduct to be observed by broadcasters
- Standards and practices to be observed in advertising by broadcasters

In terms of sections 24(6) and (8) of the Broadcasting Services Act, the BAZ is to recommend that such codes be published in the Government Gazette as well as the penalties for breaches of such codes.

ADHERENCE TO OWNERSHIP AND CONTROL REQUIREMENTS

Regulating ownership and control of broadcasting licences is an important part of the BAZ’s regulatory work. The Broadcasting Services Act contains a number of restrictions in relation to ownership and control of broadcasting services:

- *No party political broadcasters or signal distributors:* Section 20 of the Broadcasting Services Act prohibits any broadcasting or signal carrier licence to be given to any political party or organisation.
- *Limitations on foreign ownership, control or funding of broadcasting or signal distribution services:*
 - Section 8(1) of the Broadcasting Services Act prohibits a person who is not a citizen of Zimbabwe or an organisation that is not controlled by citizens of Zimbabwe from being issued a broadcasting licence. However, in terms of section 8(8), the minister of information and publicity has wide discretion to grant exemptions from these prohibitions and to permit the BAZ to grant licences to such approved persons.
 - Section 8(6) also prohibits the granting of a licence to a person whose broadcasting service is funded wholly or in part by foreign donations or contributions.
 - Section 22 of the Broadcasting Services Act prohibits a person who

is not a citizen of Zimbabwe from being a director of a broadcasting licensee.

3.4.9 Is the BAZ an independent regulator?

It is clear from a range of provisions that the BAZ is not an independent regulator. The Broadcasting Services Act does not even use the word ‘independent’ when establishing the BAZ in section 3, and numerous provisions make it clear that the minister of information and publicity has extraordinary powers in relation to the regulation of the media in Zimbabwe. For example:

- Section 4B(1) entitles the minister to give the BAZ Board general directions relating to policy which he considers ‘necessary in the public interest’. The section further requires that the BAZ ‘is to observe [the direction] in the exercise of its functions’. It is, however, important to note that the BAZ Board must be given notice of a proposed policy direction and must have an opportunity to comment in writing thereon in terms of section 4B(2).
- Section 46(6) requires ministerial approval before the BAZ’s regulations or orders have any legal effect.

As Zimbabwe moves into its next phase politically under a new constitution, it remains to be seen whether the constitutionally mandated Zimbabwe Media Commission will become a broadcasting regulator and whether it will steer Zimbabwe’s broadcasting climate in a new and more democratic direction.

3.4.10 Weaknesses in the legislation that should be amended to strengthen the broadcast media generally

In our view, neither AIPPA nor the Broadcasting Services Act complies with international standards of democratic broadcasting regulation.

- First and foremost, the regulatory environment is focused on prohibiting free expression rather than fostering it. This is clear from content prohibitions and from the extremely unusual and problematic registration requirements for media houses and journalists (outside of the context of ordinary broadcasting licensing).
- There is a clear bias against foreigners operating as journalists, media owners, broadcasters or signal distributors. This does not support investment in and growth of the media sector, and is clearly aimed at quashing freedom of expression.

- None of the bodies established by AIPPA (the BAZ, the Media Council or the Zimbabwe Media Commission) is even notionally independent. These bodies ought to be clearly independent and ought to be appointed by the president following a public nominations process and a short-listing process involving a multi-party body such as Parliament.

The laws must be changed to allow for self-regulatory systems, that is, codes of conduct and enforcement mechanisms developed by the media itself.

3.5 Statutes regulating the public broadcast media

3.5.1 Introduction

The Zimbabwean Broadcasting Corporation (ZBC) is Zimbabwe's public broadcaster, although it clearly operates as a state broadcaster.

The activities of the ZBC are governed by the Broadcasting Act [12:01], the Zimbabwe Broadcasting Corporation (Commercialisation) Act, 2001, and the Broadcasting Services Act, which has already been discussed above.

3.5.2 Establishment of the ZBC

The ZBC was originally established in terms of section 3 of the Broadcasting Act. The ZBC started life as a company offering both signal distribution and broadcasting services, but these functions were split between two different corporate entities, in terms of section 3 of the ZBC Commercialisation Act.

3.5.3 The ZBC's mandate

Section 4(2) of the ZBC Commercialisation Act sets out the objects of the ZBC, which are to:

- Provide broadcasting services
- Provide video and audio production services
- Provide integrated datacasting, roadcasting and webcasting services nationally
- Provide online multimedia news and programme services
- Perform any other function as set out in its memorandum of association

The requirements for public broadcasters that are set out in the Seventh Schedule to the Broadcasting Services Act (outlined above) are also applicable and inform the nature of the services that must be provided by the ZBC.

3.5.4 Appointment of the ZBC Board

In terms of section 4(1) of the Broadcasting Act, the operations of the ZBC are controlled by a board of governors consisting of between six and nine members. All board members are appointed by the minister, after consultation with and in accordance with any directions the president may give him/her. In terms of section 4(2) of the Broadcasting Act, the minister also designates one governor as chairman and another as vice-chairman of the board.

Considering the wide appointment discretion given to the minister, it is not surprising that the Broadcasting Act sets out no criteria for board appointments apart from certain usual grounds of disqualification, such as being an un-rehabilitated insolvent, having a criminal record, or not being a citizen or permanent resident.

3.5.5 Funding for the ZBC

Section 19 of the Broadcasting Act provides that the funds of the ZBC shall consist of:

- Money payable to the ZBC in terms of legislation. Note that section 38B of the Broadcasting Services Act requires every ‘listener’ (defined, essentially, as a person, other than a dealer, who is in possession of a ‘receiver’, which in turn is defined as an apparatus ‘capable of being used for the reception of a broadcasting service’) to have a licence issued by the ZBC. The licence fee is determined by the ZBC, with the approval of the minister. Section 38C of the Broadcasting Services Act specifies that licence fees are to be paid into the general funds of the ZBC for its use.
- Money appropriated by Parliament – in other words, funding for the ZBC must be provided for in the national budget
- Money or assets that belong to the ZBC by virtue of its operations

3.5.6 The ZBC: Public or state broadcaster?

There is no doubt that the ZBC is a state broadcaster and that it is clearly used to bolster the fortunes of the long-standing party in power, ZANU-PF. From a legal point of view, the role of the minister is particularly problematic in relation to the appointment of ZBC board members; a genuine public broadcaster is clearly required to have a board appointed with the participation of a multi-party body such as Parliament.

3.5.7 Weaknesses in the Broadcasting Act which should be addressed to strengthen the public broadcaster

There is little doubt that the role and position of the ZBC needs to be addressed as part of the new constitutional dispensation. There are significant hurdles to the ZBC being transformed into a public broadcaster.

Broadcasting statutory reform would require, at the very least, that:

- The ZBC's independence and accountability to the public be provided for
- Parliament and the public in general play a more active role in the appointment, removal and assessment of the board and its members in order to greatly reduce the level of executive interference that currently exists
- The public broadcaster be genuinely only one tier of broadcasting in Zimbabwe. This would require the licensing of free-to-air commercial and community radio and television broadcasters to play their respective roles in the media landscape. The ZBC has dominated the Zimbabwean broadcasting sector in ways that are reminiscent of the pre-liberation Rhodesian regime, which was also characterised by the domination of approved media sources

3.6 Statutes governing broadcasting signal distribution

The Broadcasting Services Act and the Zimbabwe Broadcasting Corporation (Commercialisation) Act have particular relevance to broadcasting signal distribution, which is the technical process of ensuring that the content-carrying signal of a broadcaster is distributed such that it can be heard and/or viewed by its intended audience.

3.6.1 Licences required by broadcasting signal distribution providers

Section 7(1) of the Broadcasting Services Act makes it clear that, apart from the ZBC, no person may operate as a signal carrier in Zimbabwe except in accordance with a signal carrier licence.

In terms of section 7(3), such licence shall authorise a licensee to operate a signal transmitting station for the purpose of transmitting a radio or television broadcasting service. Any person who operates a transmitting station without a signal carrier licence is guilty of an offence and is liable to a fine, a period of imprisonment for up to two years or both, in terms of section 27 of the Broadcasting Services Act.

3.6.2 The regulatory framework for broadcasting signal distributors

The ZBC Commercialisation Act specifically provided for the ZBC to be divided into a broadcasting company and a ‘digital convergence signal carrier company’. The objects of the digital convergence signal carrier company are set out in section 4(1) of the ZBC Commercialisation Act and include:

- Providing signal transmitting services
- Migrating from terrestrial analogue to digital technology
- Expanding multimedia services by providing internet, web development and e-commerce services
- Establishing sound recording studios and facilities for film and video production. This last function is in line with section 3(b) of the ZBC Commercialisation Act, which states that in addition to its function as a signal carrier company, the new digital convergence signal carrier company is to ‘carry on business arising from the convergence of broadcasting, telecommunications and computer technologies’

In relation to ordinary signal carrier companies, it is important to note that section 8(6)(a) of the Broadcasting Services Act provides that no signal transmission station shall be licensed, where it is wholly or partly funded by foreign donations or contributions.

Furthermore, section 22 of the Broadcasting Services Act prohibits a person who is not a citizen of Zimbabwe from being a director of a carrier signal licensee.

3.7 Statutes that undermine a journalist’s duty to protect his or her sources

A journalist’s sources are the lifeblood of his or her profession. Without trusted sources, a journalist cannot obtain information that is not already in the public domain. However, sources will often only be prepared to provide critical information if they are confident that their identities will remain confidential and will be respected and protected by a journalist.

This is particularly true of whistleblowers – inside sources that are able to provide journalists with information regarding illegal activities, whether by company or government personnel. Consequently, democratic countries often provide special protection for journalists’ sources. It is recognised that without such protection, information that the public needs to know would likely not be given to journalists.

3.7.1 Access to Information and Protection of Privacy Act

Section 42C read with section 42B of the Access to Information and Protection of Privacy Act [10:27] empowers the Media Council, established in terms of section 42A of AIPPA, to summon any person as a witness and, where it thinks fit, to require him or her to produce any book, record, document or thing for the purposes of an inquiry into whether or not a journalist or mass media service has committed a breach of the Code of Conduct developed by the Zimbabwe Media Commission.

Note that in terms of section 42C(3), a failure or refusal by any witness so summoned to attend before the Media Council or to refuse to produce any required book, record, document or thing is an offence. The penalty upon conviction is a fine, imprisonment not exceeding six months or both.

3.7.2 Criminal Procedure and Evidence Act

Sections 113C and 232 of the Criminal Procedure and Evidence Act [9:07] (CPEA) entitle a public prosecutor or court, respectively, to subpoena a witness.

Furthermore, sections 113D and 237 of the CPEA, respectively, make it an offence to fail to obey a subpoena issued in terms of the CPEA unless that person had a reasonable excuse for such failure. Upon conviction, the penalty is a fine, a period of imprisonment not exceeding one month or both.

It is also important to note section 295. This oddly-worded section essentially provides that, subject to the CPEA, no witness shall be compelled to give evidence in any criminal proceedings where, if such proceedings were taking place in the Supreme Court of Judicature in England, such witness would not be compelled to give evidence by reason, on the grounds of public policy and with regard to public interest, that the fact, communication, etc. ought not to be disclosed and is privileged from disclosure. We are of the view that journalists may use this section to protect their sources.

However, whether or not requiring a journalist to reveal a source is in fact an unconstitutional violation of the right to freedom of expression will depend on the particular circumstances in each case, particularly on whether the information is available from any other source and whether the information is required for the investigation of a crime.

It is therefore extremely difficult to state that these provisions are, by themselves, a violation of the right to freedom of expression under the Constitution.

3.8 Statutes that prohibit the publication of certain kinds of information

A number of statutes contain provisions which, looked at closely, undermine the public's right to receive information and the media's right to publish information.

These statutes are targeted and prohibit the publication of certain kinds of information, including:

- Identities of minors in court proceedings
- Certain kinds of information regarding legal proceedings
- Information relating to defence, public safety, public order, official secrets, policing, and prisons
- False news
- Insulting the president
- Criminal insult
- Invasion of privacy
- Criminal defamation
- Obscenity
- Threats to public health
- Threats to economic interests of the state
- Causing offence to persons of a particular race, religion, ethnicity, etc.
- Advertising on roadsides or near railways

It is often difficult for journalists or media houses to find out how laws that would seem to have no direct relevance to the media can impact upon their work. Key provisions of these kinds of laws are therefore set out below.

3.8.1 Prohibition on the publication of a minor's identity in legal proceedings

Section 195 of the Criminal Procedure and Evidence Act [Chap 9:07] makes it an offence to publish the identity of an accused person in criminal proceedings if that accused person is under 18 years old, unless the court rules that such publication would be just and equitable and in the public interest.

The penalty upon conviction is a fine or imprisonment not exceeding one year, or both.

Section 197 of the CPEA makes it an offence to publish the identity of a witness in a trial if that witness is under 18 years old, unless the presiding officer has given his or her written consent. The penalty upon conviction is a fine, imprisonment not exceeding one year or both.

3.8.2 Prohibition on the publication of certain kinds of information relating to legal proceedings

CENSORSHIP AND ENTERTAINMENTS CONTROL ACT [CHAP. 10:04]

In terms of sections 13(1) and (2) of the Censorship and Entertainments Control Act, it is an offence for a person to import, print, publish, manufacture, make or produce, distribute, display, exhibit, or sell or offer or keep for sale any publication that has been declared undesirable by the Censorship Board in terms of the act. The penalty upon conviction is a fine, imprisonment for up to two years or both. Note that the grounds of undesirability include a publication that is likely to disclose, with reference to any judicial proceeding:

- Any matter which is indecent or obscene or harmful to public morals or any indecent or obscene medical, surgical or physiological details, the disclosure of which is likely to be offensive or harmful to public morals
- Relating to marriage, any particulars other than:
 - The names and occupations of parties and witnesses
 - A concise statement of the allegations, defences or counter-allegations in support of which evidence has been given
 - Submissions on any point of law arising and the decision of the court thereon
 - The judgment and verdict of the court and any observations made by the judge in giving judgment

Note that in terms of section 13, the above grounds do not apply to official court documents such as transcripts, volumes of the law reports, or scientific, professional or religious publications.

Note that the Censorship Board has the power to grant exemptions in writing from section 13 of the act to any person or institution, and these can be subject to conditions.

CRIMINAL PROCEDURE AND EVIDENCE ACT [CHAP 9:07]

Section 9A(1) of the CPEA provides that a court or tribunal may institute proceedings for contempt of court against any person who is alleged to have impaired its dignity, reputation or authority *in the presence of the court or tribunal* (our emphasis). However, in terms of section 9A(2), only the attorney-general or someone acting on his or her express authority shall institute proceedings for contempt of court in circumstances other than those referred to in subsection (1).

Section 196 of the CPEA makes it an offence to publish the identity of any person charged in respect of indecent acts, extortion or who is a witness in such proceedings unless the judge has consented thereto in writing. Upon conviction, the penalty is a fine, imprisonment for a period not exceeding two years or both.

3.8.3 Prohibition on the publication of state security–related information

CENSORSHIP & ENTERTAINMENTS CONTROL ACT [CHAP. 10:04]

In terms of sections 13(1) and (2) of the Censorship & Entertainments Control Act [Chap. 10:04], it is an offence for a person to import, print, publish, manufacture, make or produce, distribute, display, exhibit, or sell or offer or keep for sale any publication which is undesirable. The penalty upon conviction is a fine, imprisonment for up to two years or both. Note that the grounds of undesirability include a publication that is likely to be contrary to, among other things, the interests of defence, public safety and public order. Note that the Censorship Board has the power to grant exemptions in writing from section 13 of the Censorship Act to any person or institution, and these can be subject to conditions.

In terms of section 9 of the Censorship Act, it is an offence to distribute, televise or publicly exhibit any film unless the film has been approved by the Censorship Board. The penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

Section 10(2) sets out the grounds upon which the Censorship Board shall not approve a film. In terms of section 10(2)(b), the Censorship Board shall not approve any film which, in its opinion, is likely to be contrary to the interests of defence, public safety and public order.

OFFICIAL SECRETS ACT [CHAP. 11:09]

The Official Secrets Act, at section 4 of the act, sets out a number of provisions relating to the disclosure of security-related information. It essentially makes it an offence to publish a range of security-related information, such as official codes or passwords, or confidential information that has been entrusted to a person by the government. The penalty for such disclosure is a fine, imprisonment for a period not exceeding 20 years or both.

THE POLICE ACT [CHAP. 11:10]

Sections 24 and 25 of Schedule 1 to the Police Act do not directly prohibit the

publication of information but do make it an offence for a member of the police to communicate:

- Any secret or confidential information other than to the person for whom such information is officially intended
- Without authority, any matter to the press or to the public, the communication of which results or is reasonably likely to result in any prejudice to the administration, discipline or efficiency of the police force

In terms of section 29 of the Police Act, the penalty upon conviction for any of the above offences is a fine, imprisonment not exceeding five years or both. In our view, these provisions, although not unusual, would impact negatively on the media's ability to obtain information from members of the police.

PRISONS ACT [CHAP 7:11]

Section 84(3) of the Prisons Act makes it an offence to publish, without the authority of the minister of justice, legal and parliamentary affairs, or any other minister tasked with the administration of the Prisons Act, the whole or part of a letter or document which he has reasonable cause to believe was written in a prison by or on behalf of a prisoner, and which has not been endorsed by the officer in charge of the prison in terms of section 84(1). In terms of section 84(4) of the Prisons Act, the penalty upon conviction for such publication is a fine, a period of imprisonment not exceeding six months or both.

3.8.4 Prohibition on the publication of false news

ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT [10:27]

It is an offence in terms of:

- Section 64 of AIPPA, in relation to a person registered under AIPPA, to make use of a mass media service
- Section 80 of AIPPA, in relation to a journalist,

to publish:

- Information which he or she intentionally and recklessly falsified in a manner which:

- Threatens the interests of defence, public safety, public order, the economic interests of the state, public morality or public health
- Is injurious to the reputation, rights and freedoms of others
- Information which he or she maliciously or fraudulently fabricated
- Any statement:
 - Threatening the interests of defence, public safety or public order, the economic interests of the state, public morality or public health
 - Injurious to the reputation, rights and freedoms of others,

In the following circumstances:

- Knowing the statement to be false or without having reasonable grounds for believing it to be true
- Recklessly, or with malicious or fraudulent intent, representing the statement as a true statement

The penalty upon conviction is a fine or a period of imprisonment not exceeding three years, or two years in the case of a journalist.

CRIMINAL LAW (CODIFICATIONS AND REFORM) ACT [CHAP 9:23]

Section 31 of the Criminal Law (Codifications and Reform) Act (Criminal Code) makes it an offence to communicate or publish certain false statements prejudicial to the state. The penalty upon conviction is a fine, a period of imprisonment not exceeding 20 years or both.

The false statements are, in brief, where there is a real risk or possibility of:

- Inciting or promoting public disorder or public violence and endangering public safety
- Undermining public confidence in a law enforcement agency, the prison service or the defence force
- Interfering with any essential service

Section 33 of the Criminal Code makes it an offence to make any statement concerning the president or an acting president with the knowledge or realising that there is a real risk or possibility that the statement is false and that it may:

- Engender feelings of hostility towards
- Cause hatred, contempt or ridicule,

the president, an acting president, whether in respect of the president personally or the President's Office. The penalty upon conviction is a fine, imprisonment not exceeding one year or both.

3.8.5 Prohibition on insulting the president

Section 33 of the Criminal Law (Codifications and Reform) Act [Chap 9:23] makes it an offence to undermine the authority or insult the president by publicly, unlawfully and intentionally making any abusive, indecent or obscene statement about or concerning the president, or an acting president, whether in respect of the president personally or of the President's Office.

The penalty upon conviction is a fine, imprisonment not exceeding one year or both.

3.8.6 Prohibition on the publication of criminal insult

Section 95 of the Criminal Law (Codifications and Reform) Act [Chap 9:23] makes it an offence, by words or conduct, seriously to impair the dignity of another person. The penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

There are no provisions in this section regarding defences such as truth in the public interest.

3.8.7 Prohibition on invasion of privacy

Section 95 of the Criminal Law (Codifications and Reform) Act [Chap 9:23] makes it an offence, by words or conduct, seriously to invade the privacy of another person by observing that person in a state of partial or complete undress.

The penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

Note that section 95(5) does provide a defence to this offence, which is that the conduct was motivated solely by the desire to obtain evidence of the commission of adultery and is available to a private investigator or anyone else engaged to obtain evidence of such adultery by the spouse of that person.

3.8.8 Prohibition on the publication of criminal defamation

Section 96 of the Criminal Law (Codifications and Reform) Act [Chap 9:23] makes it an offence to publish a statement with the intention of harming the reputation of another person which:

- He or she knew, when he or she published it, that it was false in a material respect or realised that there was a real risk or possibility that it might be false in a material respect
- Causes, or creates a real risk or possibility of causing serious harm to that other person's reputation.

The penalty upon conviction is a fine, imprisonment for a period not exceeding two years or both. Note, however, that the accused will be entitled to avail him or herself of any defence that would be available to him or her in civil proceedings for defamation.

3.8.9 Prohibition on the publication of obscenity

CENSORSHIP & ENTERTAINMENTS CONTROL ACT [CHAP. 10:04]

The Censorship Act is a pre-liberation piece of legislation that remains on the statute books but which has been amended post-liberation. It is the main mechanism for regulating obscene materials in Zimbabwe.

MATERIALS REGULATED UNDER THE CENSORSHIP ACT

The Censorship Act regulates a wide range of materials including films, video and film material, publications, pictures, statues, records and the giving of public entertainments. Focus here, however, is only on those provisions affecting publications and films.

BODIES ESTABLISHED UNDER THE CENSORSHIP ACT, APPOINTMENT OF MEMBERS, KEY FUNCTIONS

The Censorship Act establishes two key bodies:

- *The Board of Censors:*
 - In terms of section 3, the minister of home affairs or whichever minister is responsible for the administration of the Censorship Act is to appoint a Board of Censors of not fewer than nine members.

- In terms of section 4, the functions of the Board of Censors are to:
 - Examine any article or public entertainment submitted to it
 - Make enquiries it considers necessary in regard to any publication, picture, statue, film, record or public entertainment which is alleged to be or which the Board of Censors has reason to believe may require to be prohibited or to be subject to conditions in terms of section 17
 - Advise the minister
 - Perform any other function assigned to it under the Censorship Act or any other statute
- *The Appeal Board:*
 - In terms of section 18(1), the Appeal Board consists of a president and two members appointed by the minister.
 - In terms of section 19, any person who is aggrieved at a decision of the Board of Censors may appeal to the Appeal Board, which shall enquire into the matter and may confirm, vary, or set aside the decision of the Board of Censors or give any other decision it considers just and, subject to section 20, the Appeal Board's decision shall be final.
 - Note that in terms of section 20, questions of law, whether a matter is a question of fact or law, and questions regarding the admissibility of evidence can be referred to the Supreme Court for determination.

It is, however, critical to point out that the minister plays a significant role in the carrying out of the Censorship Act and is able to intervene in the affairs of the Board of Censors and Appeal Board. Some examples:

- In terms of section 21, the minister has wide discretion to issue certificates prohibiting disclosure to the Appeal Board or to a court of law, with the result that only the actual result of the deliberations of the body concerned is to be disclosed, unless the body specifically orders otherwise.
- In terms of section 23, the minister has the power to overturn a decision by the Board of Censors and the Appeal Board rejecting a film or declaring a film, publication, picture, statue or record to be undesirable if the minister is satisfied that this is in the public interest. Note further that there is no requirement to hear the parties concerned on the matter.
- In terms of section 34, the minister is given wide regulation-making powers regarding numerous aspects of the Censorship Act.

CLASSIFICATION OF PUBLICATIONS

Section 14 of the Censorship Act empowers the Board of Censors to examine any publication (or picture, statue or record) and to declare whether or not it is ‘undesirable’ in the opinion of the Board of Censors.

Section 13(2) sets out the grounds of upon which a publication can be found to be ‘undesirable’; many of these are set out elsewhere in this chapter. In relation to obscenity, it is important to note that in terms of section 13(2)(a), a publication shall be deemed to be ‘undesirable’ if it or any part thereof is indecent, obscene, offensive or harmful to public morals. Section 33 details the definitions of these terms:

- Indecent or obscene – if
 - It has the tendency to deprave or corrupt the minds of persons who are likely to be exposed to the effect or influence thereof, or it is in any way subversive of morality
 - Whether or not related to any sexual conduct, it unduly exploits horror, cruelty or violence
- Offensive to public morals – if it is likely to be outrageous or disgusting to persons who are likely to read, hear or see it
- Harmful to public morals – if it deals in an improper or offensive manner with criminal or immoral behaviour

In terms of sections 13(1) and (2), it is an offence for a person to import, print, publish, manufacture, make or produce, distribute, display, exhibit, or sell or offer or keep for sale any publication that is undesirable. The penalty upon conviction is a fine, imprisonment for up to two years or both. Note that the Board of Censors has the power to grant exemptions in writing from section 13 of the Censorship Act to any person or institution, and these can be subject to conditions.

Note further that in terms of section 26, possession of a publication, picture, statue or record which is indecent or obscene is an offence; however, no prosecution shall be instituted without the written authority of the attorney-general. The penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

CLASSIFICATION OF FILMS

In summary, section 9 of the Censorship Act makes it an offence to distribute, televise or publicly exhibit any film unless the film has been approved by the Board of

Censors. The penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

Section 10(2) sets out the grounds upon which the Board of Censors shall not approve a film (some of these are set out elsewhere in this chapter).

In relation to obscenity, it is important to note that in terms of sections 10(2)(a) and (c), the Board of Censors shall not approve any film that in its opinion depicts any matter which is, or depicts any matter in a manner that is, indecent, obscene, offensive or harmful to public morals. Section 33 sets out the definitions of these terms:

- *Indecent or obscene* – if
 - It has the tendency to deprave or corrupt the minds of persons who are likely to be exposed to the effect or influence thereof, or it is in any way subversive of morality
 - Whether or not related to any sexual conduct, it unduly exploits horror, cruelty or violence.
- *Offensive to public morals* – if it is likely to be outrageous or disgusting to persons who are likely to read, hear or see it.
- *Harmful to public morals* – if it deals in an improper or offensive manner with criminal or immoral behaviour.

Note further that in approving a film, the Board of Censors may impose one or more of the following conditions:

- In the case of a film to be televised, that it shall not be televised except:
 - Between specified hours
 - After notices indicating that the film is unsuitable for viewing by a specified class of people
 - After any specified portion has been cut
- In the case of a film other than one to be televised, that it shall not be distributed or exhibited:
 - To persons of a specified age or sex
 - Except after any specified portion has been cut

Failure to comply with the conditions for televising or otherwise exhibiting a film is an offence, and the penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

An approved film is given a certificate by the Board of Censors in terms of section 11 of the Censorship Act. Note that the Board has the power to grant exemptions in writing from sections 9 and 10 of the Censorship Act, and these can be subject to conditions. Note further that in terms of section 26, possession of recorded video or film material which is indecent or obscene is an offence; however, no prosecution shall be instituted without the written authority of the attorney-general. The penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

3.8.10 Prohibition on the publication of threats to public health

In terms of sections 13(1) and (2) of the Censorship & Entertainments Control Act [Chap. 10:04], it is an offence for a person to import, print, publish, manufacture, make or produce, distribute, display, exhibit, or sell or offer or keep for sale any publication that is undesirable. The penalty upon conviction is a fine, imprisonment for up to two years or both. Note that the grounds of undesirability include a publication that is likely to be contrary to, among other things, the interests of public health.

Note that the Board of Censors has the power to grant exemptions in writing from section 13 of the Censorship Act to any person or institution, and these can be subject to conditions.

In terms of section 9 of the Censorship Act, it is an offence to distribute, televise or publicly exhibit any film unless the film has been approved by the Board of Censors. The penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

Section 10(2) sets out the grounds upon which the Board of Censors shall not approve a film. In terms of section 10(2)(b), the Board of Censors shall not approve any film which, in its opinion, is likely to be contrary to, among other things, the interests of public health.

3.8.11 Prohibition on the publication of threats to the economic interests of the state

In terms of sections 13(1) and (2) of the Censorship & Entertainments Control Act [Chap. 10:04], it is an offence for a person to import, print, publish, manufacture, make or produce, distribute, display, exhibit, or sell or offer or keep for sale any publication that is undesirable. The penalty upon conviction is a fine, imprisonment for up to two years or both. Note that the grounds of undesirability include a publication that is likely to be contrary to, among other things, the economic interests of the state.

Note that the Board of Censors has the power to grant exemptions in writing from section 13 of the Censorship Act to any person or institution, and these can be subject to conditions.

In terms of section 9 of the Censorship Act, it is an offence to distribute, televise or publicly exhibit any film unless the film has been approved by the Board of Censors. The penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

Section 10(2) sets out the grounds upon which the Board of Censors shall not approve a film. In terms of section 10(2)(b), the Board of Censors shall not approve any film which, in its opinion, is likely to be contrary to, among other things, the economic interests of the state.

3.8.12 Prohibition on the publication of statements causing offence to persons of a particular race, religion, ethnicity, etc.

Section 42 of the Criminal Law (Codifications and Reform) Act [Chap 9:23] makes it an offence to make any insulting or otherwise grossly provocative statement that causes offence to persons of a particular race, tribe, place of origin, colour, creed or religion, intending to cause such offence or realising that there is a real risk or possibility of doing so. The penalty upon conviction is a fine, a period of imprisonment not exceeding one year or both.

3.8.13 Prohibition on advertising on roadsides or near railways

The provisions of the Advertisements Regulation Act [Chap. 14:01] are probably of more interest to media owners than to media practitioners, but it is important to note that this act makes it an offence to erect or display an advertisement on or near a railway or within any area that the minister responsible for the administration of the Advertisements Regulation Act has declared to be a prohibited area. The penalty is a fine, a period of imprisonment not exceeding three months or both.

Note that the act does specifically provide that it does not apply to:

- Advertisements within the area of jurisdiction of a local authority, town ward, or rural district council or upon any station, yard, platform or station approach belonging to the railways
- Advertisements on land and which relate to the sale or lease of such land or the hire of livestock, implements or produce of such land

- Advertisements displayed within 100 metres of any licensed hotel or general dealer's store premises indicating the situation thereof
- Advertisements approved by the minister and displayed by any automobile, publicity or other association approved by the minister

3.9 Legislation prohibiting interception of communication

The legality of monitoring, recording and intercepting communications is governed by the Interception of Communications Act [Chap. 11:20]. Section 3 of the Interception Act makes it an offence to intercept any communication in the course of its transmission by means of a telecommunications or radiocommunications system or through the post. The penalty upon conviction is a fine, a period of imprisonment not exceeding five years or both.

There are certain important exceptions to the general prohibition in section 3 that journalists need to be aware of. Section 3 specifically allows a person to intercept (note the definition of this includes recording or copying of the content thereof) communication if:

- He or she is a party to the communication (defined as meaning a person whose access to the information is or might reasonably be known by all other parties)
- He or she has the consent of the person to whom, or by whom, the communication is sent
- He or she is authorised by a warrant

The effect of these exemptions is that if, for example, a journalist is in the office of a news source and the source is party to a conversation which takes place over a speaker phone in his office, the journalist may record the conversation and make use of the contents thereof without this being an offence under the Interception Act, even though the other party to the conversation is not aware of the journalist's presence and has not consented to the recording or to the publication or broadcasting thereof.

3.10 Legislation that specifically assists the media in performing its functions

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

In countries that are committed to democracy, governments pass legislation which specifically promotes accountability and transparency of public and private

institutions. Such statutes, while not specifically designed for use by the media, can and often are used by the media to uncover and publicise information in the public interest. There is little doubt that Zimbabwe's recent history makes it an unlikely candidate for a country committed to transparency; however, it has in fact passed legislation that provides for a right of access to information.

AIPPA has been roundly and correctly criticised for its draconian provisions on the registration of journalists and media outlets. There is little doubt that it is not a media-friendly statute. However, it is important to recognise that it does, at least ostensibly, provide a statutory right of access to information, and these provisions therefore might be of some assistance to the media.

Section 5(1) of AIPPA grants every person a right of access to any record, including a record that contains personal information that is in the custody or under the control of a public body, provided that such access shall not extend to excluded information. Section 5(2) further provides that where information can be extracted from a record containing excluded information, an applicant may have access to the part of the record that does not contain excluded information.

Note that in terms of section 5(3), the following people do not have rights to access information in terms of AIPPA:

- A person who is not a citizen or permanent resident of Zimbabwe.
- Any unregistered mass media service or unlicensed broadcaster.
- Any foreign state or agency.

Section 4 of AIPPA stipulates that the act applies to records (defined in section 1 as including books, maps, documents, drawings, letters, photographs, vouchers, papers or any other thing on which information is recorded or stored by graphic, electronic or any other means but does not include a computer programme) under the control of a public body (these are set out in the Second Schedule to AIPPA and include government departments, statutory corporations and authorities, government agencies, local authorities and various professional regulatory bodies, such as the Institute of Chartered Accountants of Zimbabwe, the Law Society and others) excluding those records listed in the First Schedule to AIPPA, namely:

- A personal note, communication or draft decision of a person acting in a judicial or quazi-judicial capacity
- Any record that is protected in terms of the Privileges, Immunities and Powers of Parliament Act

- A record created for or in the control of a person in terms of the Children’s Act
- A record or question to be used in an examination or test
- A record containing teaching materials or research information of employees of a post-secondary educational body
- Material placed in the National Archives or the archives of a public body by a person or agency which is not a public body
- Matters relating to the functions and powers of the president

Sections 6 and 7 of APPIA provide that any person requesting information from a public body must make the request in writing and must pay the prescribed fee. Note that section 8 imposes a duty upon the head of a public body to assist an applicant.

Part III of AIPPA, headed ‘Protected information’, sets out the information that is subject to non-disclosure provisions, which appear to be either mandatory (that is, where the head of the public body must not disclose) or discretionary (that is, where the head of a public body has discretion as to whether or not to disclose).

3.10.2 Mandatory non-disclosure provisions

- *Section 14 – Protection of deliberations of Cabinet and local government bodies:*
 - No information relating to the deliberations of Cabinet or any of its committees shall be disclosed to any person who is not authorised to receive same. Note that this prohibition does not apply to records of 25 years or older.
 - No information relating to the deliberations of a local government body which were held in camera shall be disclosed to any person who is not authorised to receive same.
- *Section 15 – Protection of advice relating to policy:* No information relating to advice or recommendations given to the president, a Cabinet minister or a public body shall be disclosed. Note that there are a large number of exceptions, including opinion polls, statistical surveys, employee appraisals, economic forecasts, reports on the state of the environment, audit or performance reports of a public body, consumer test reports, feasibility or technical studies, field research, reports of a committee, council or similar body established to make such reports to a public body, information that has been publicly cited, decisions made in the exercise of discretionary powers, information that is at least ten years old.

■ *Section 16 – Protection of information subject to attorney-client privilege*

■ *Section 17 – Protection of information whose disclosure will be harmful to the law enforcement process and national security*

■ Information shall not be disclosed if this would:

- Prejudice the law enforcement process, including:
 - Revealing the identity of a confidential source or law enforcement information
 - Revealing information relating to criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organised criminal activities
 - Compromising the effectiveness of investigation techniques and procedures
 - Endangering the life or physical safety of a law enforcement officer or anyone else
- Prejudice the defence and national security of the country and the safety or interests of the country
- Prejudice the defence and national security of a country with which Zimbabwe has entered into a defence pact
- Prevent the detection, prevention or suppression of espionage, sabotage or terrorism
- Reveal information relating to prosecutorial discretion
- Facilitate the escape from custody of a person under lawful detention
- Harm the security of any property or system, including a building, vehicle, or computer or communications system
- Prejudice the operations of defence and security forces
- Result in or facilitate the commission of an offence
- Result in exposing a person to civil liability for disclosing personal information contained in a law enforcement record
- Prejudice the custody, supervision or release of a person in custody

- Note that there are a number of exceptions to the above disclosure prohibitions. These include: the contents of reports prepared in the course of routine inspections by an agency authorised to enforce compliance with any statute; the content of a report on the degree of success of a law enforcement programme; statistical information regarding the prosecution of offences and reasons for a decision not to prosecute.

- *Section 20 – Protection of research information:* No research information shall be disclosed if disclosure will result in the loss by the researcher or the right of first publication of the results of such research or any intellectual property rights.
- *Section 24 – Protection of information relating to business interests of a third party:*
 - In terms of section 24(2), the head of a public body shall not disclose information contained in a tax return form or gathered for the purposes of determining a person's tax liability or collecting outstanding tax.
 - There are exceptions to the above ground for non-disclosure, namely where the:
 - Third party consents to the disclosure
 - Information is contained in the national archives
 - Information is contained in a record that is at least 30 years old
- *Section 25 – Protection of personal privacy:* The head of a public body shall not disclose personal information to an applicant if the disclosure will result in the unreasonable invasion of a third party's personal privacy. Note that this long provision contains provisions detailing:
 - The consideration of relevant circumstances
 - When disclosure would be presumed to be an unreasonable invasion of privacy
 - When disclosure would not be presumed to be an unreasonable invasion of privacy

3.10.3 Discretionary non-disclosure provisions

- *Section 18 – Information relating to inter-governmental relations or negotiations*
 - The head of a public body may, on the advice of the minister of home or foreign affairs, refuse to disclose information if such disclosure may affect relations between the government and/or divulge confidential information received by:
 - A municipal or rural district council
 - The government of a foreign state
 - An international organisation of states
 - Note that the above does not apply to records 20 years old or older.
- *Section 19 – Protection of information relating to the financial or economic or financial interests of a public body or the state*
 - The head of a public body may refuse to disclose information which

may result in harm to the planning, financial or economic interests of a public body or the state, including:

- Trade secrets
- Financial, commercial, scientific or technical information that belongs to a public body or to the state and has monetary value
- Plans that relate to the management of personnel, the administration of a public body or the state, and that have not yet been implemented or made public
- Information whose premature disclosure may result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party
- Information relating to a public body or the state's negotiations

- Note that the above grounds do not apply as a general rule to results of product or environmental testing unless this was done as a service to a specific person or organisation who paid a fee therefor or for the purposes of developing testing methods.

- *Section 21 – Protection of information relating to the conservation of heritage sites:* The head of a public body may refuse to disclose information if the disclosure will result in damage to or interference with the conservation of:

- Fossil sites, natural sites or sites that have an anthropological or heritage value
- An endangered, threatened or vulnerable species, subspecies or race of plants, vertebrates or invertebrates
- Any other rare or endangered living species

- *Section 22 – Protection of information relating to personal safety:* The head of a public body may refuse to disclose personal information concerning the applicant if such disclosure will result in a threat to the applicant's or another person's safety or mental or physical health.

- *Section 23 – Information is otherwise available to the public:*

- The right of access to information shall not be held to be denied where the head of a public body refused to disclose information:
 - That is otherwise available to members of the public upon payment of a specific fee
 - That will be published or released to members of the public within 60 days of the date of receiving the request for access to the information

■ *Section 24 – Protection of information relating to the business interests of a third party:*

- In terms of section 24(1), the head of a public body may refuse to disclose information that will reveal the trade secrets or commercial, financial, scientific or technical information of a third party that was supplied in confidence to the public body and the disclosure of which could reasonably be expected to:
 - Significantly harm the competitive position or interfere with the negotiating position of the third party
 - Result in similar information no longer being available to the public body when it is in the public interest that such information continues to be provided
 - Result in undue financial loss or gain to any person or organisation
 - Reveal information supplied to an arbitrator, mediator, labour official or other person or body appointed to enquire into a labour dispute
 - Reveal information that will harm the economic interests of the state
- There are exceptions to the above grounds of non-disclosure, namely where the:
 - Third party consents to the disclosure
 - Information is contained in the national archives
 - Information is contained in a record that is at least 30 years old

The access to information provisions of AIPPA could be critically important for the media and, if used properly (particularly in respect of on-going investigative journalism), could provide access to extremely valuable information.

4 REGULATIONS AFFECTING THE BROADCAST MEDIA

In this section you will learn:

- ☐ What regulations are
- ☐ Key regulatory provisions governing broadcasting
- ☐ Other key media-related regulations

4.1 Definition of regulations

Regulations are subordinate legislation. They are legal rules made in terms of a statute.

Regulations are a legal mechanism for allowing ministers or organisations such as the Zimbabwe Media Commission (ZMC) or the Broadcasting Authority of Zimbabwe (BAZ) to make legally binding rules governing an industry or sector, without parliament having to pass a specific statute thereon. The empowering statute will empower the minister or a body such as the ZMC or BAZ to make regulations on particular matters within the scope of the functions and powers of that minister or body.

4.2 Key regulations governing broadcasting

The BAZ has made the Broadcasting Services (Licensing and Content) Regulations, 2004, which have been approved and published by the minister in terms of section 46 of the Broadcasting Services Act. For our purposes, the most important aspect of the Broadcasting Regulations is Part IV thereof, headed ‘Programme content and presentation’. This part contains numerous provisions regulating content, many of which are repetitive. However, it also contains important regulatory provisions regarding records to be kept and consumer protection issues. A brief summary of the key provisions of this part are detailed below.

- *Section 13 – Programme content and presentation:* Every licensee shall ensure that programming:
 - Upholds national sovereignty, national unity, national interest, national security and Zimbabwe’s economic interests
 - Projects Zimbabwean national values and national points of view
 - Observes good taste and decency
 - Upholds public morality
 - Avoids intrusion into private lives
 - Does not injure the reputation of individuals
 - Protects children from negative influences
 - Does not incite or perpetuate hatred against or vilify any group or persons on the basis of ethnicity, race, gender, religion or disability
- *Section 14 – News and current affairs programmes:*
 - Every licensee shall ensure that where issues of public importance are discussed, reasonable effort is made to present a fair, accurate, balanced and impartial view.
 - Where the licensee allows the expression of personal views, the audience should be informed thereof in advance and should have an opportunity to respond to such views.
 - Advance audience advisories are required for news items containing accounts of extraordinary violence, sexual conduct or gruesome accounts of death.

- Court and parliamentary proceedings must be reported accurately and reporting must not contain premature conclusions which might prejudice the outcome of a case.
- *Section 15 – Political broadcast during an election:*
 - During an election period, every broadcaster shall give reasonable and equal opportunities for the broadcasting of election matter to all political parties contesting an election.
 - Every broadcaster shall be guided by the provisions of the Broadcasting Services Act when dealing with election advertisements, identification of election matter and keeping records of matters broadcast.
- *Section 16 – Investigative reporting:* Investigative reporting should be balanced fair, accurate and complete.
- *Section 17 – Privacy:*
 - A licensee shall not use material relating to a person's personal or private affairs or which invades an individual's privacy, other than where there is a compelling public interest.
 - The identities of rape victims and victims of other sexual offences shall not be divulged without the prior written consent of the victim.
 - The identities of minors who are victims of rape or any other crime shall not be divulged.
- *Section 18 – Live programmes:* Every licensee must:
 - Be technically equipped in handling live programmes so as to avoid broadcasting obscene and undesirable comments from participants, callers and audiences
 - Ensure that contributors and participants are treated fairly and avoid discrimination or denigration
- *Section 19 – Retractions, corrections or apologies:* Where the broadcaster recognises that a programme has been biased, alleges wrongdoing or incompetence, or was a damaging critique of an individual or organisation, the opposing views or those aggrieved should be given a timely opportunity to respond or comment and the broadcaster shall promptly correct errors with due prominence.
- *Section 20 – Sponsorship:*
 - Every licensee shall adopt and deposit with the BAZ a sponsorship policy, which will ensure that:

- Advertising material from the sponsor is clearly distinct from programming
 - The content and format of individual programmes is not influenced by the sponsors thereof
- Sponsorship of news and current affairs programmes is prohibited.
- *Section 21 – Programme repeats:* Programmes may be repeated during suitable times. For subscription broadcasting services, an adult programme can be re-transmitted only between 22h00 and 05h00.
- *Section 22 – Scheduling:*
 - There is a need to protect children from unsuitable programme material.
 - For a subscription broadcasting service, programmes dealing with extreme violence, sexual conduct and disturbing social and domestic friction should not be broadcast between the hours of 05h00 and 22h00.
- *Section 23 – National languages:* Every free-to-air licensee shall:
 - Ensure that not less than 10% of its total programming content shall be in any of the national languages of Zimbabwe other than Shona or Ndebele
 - Refrain from using language meant to mislead or unnecessarily cause alarm and despondency
 - Take particular care to avoid blasphemy and to take account of cultural and religious sensitivities
- *Section 24 – Explicitness:*
 - Every licensee is required to ensure that in programmes broadcast, sexual activity shall be:
 - Suggested only in discreet visual or verbal reference and never in graphic detail
 - Infrequent and not gratuitous
 - Broadcasters must take into account community values on exposure to unsolicited sexual material.
 - For subscription services, discussion of sexual matters must be broadcast during the watershed period (22h00 to 05h00) although educational material targeted at children may be broadcast before the watershed period.
 - No programme may depict actual sexual activity but may depict simulation of sexual activity.

- Nude scenes showing the genitals shall not be broadcast.
 - Where a news story has a sexual aspect, it should be presented without undue exploitation. The extent of explicitness in the report should be measured against the time of day of the broadcast.
- *Section 25 – Programme classification, labels or warnings:*
- During the early hours of the watershed period (22h00 to 05h00) audience advisories must be provided prior to the commencement of each programme. These are to be both verbal and displayed in writing on the screen.
 - During the normal viewing period (that is, not during the watershed period), broadcasters are also required visually to display classification symbols and what these denote.
 - The regulations set out various warning symbols for such things as offensive language, violence, etc.
 - The regulations set out various age restriction classifications.
- *Section 26 – Violence:* Free-to-air-broadcasters shall:
- Protect children from violent material
 - Ensure that programmes broadcast do not:
 - Incite or glamorise violence or brutality
 - Contain gratuitous violence
 - Show methods of inflicting injury which are capable of easy imitation
 - Portray conduct likely to encourage antisocial behaviour, and abuse of drugs or alcohol
 - Contain frightening and excessive special effects featuring violence
 - Contain a titillating combination of violence and sex
 - Portray violence against women so as to encourage the idea that women are to be exploited or degraded through violence, or are the willing victims of violence
 - Portray violence against women as erotic
- *Section 27 – Advertising content:*
- There shall be a clear separation between programming and advertising content.
 - Every licensee shall:
 - Broadcast a maximum of five minutes of advertising in any 30 minutes of broadcasting

- Insert a maximum of two advertising breaks in a 30 minute programme
 - Ensure that every advertisement does not exceed 30 seconds in duration
- A presenter broadcasting a live advertisement must clearly state at the beginning and end of the advert that it is a commercial or public service announcement.
- No licensee shall broadcast an advertisement which:
 - Is contrary to good morals
 - Discriminates against or vilifies a person or group
 - Promotes the consumption of alcohol without warning of the hazards of such consumption
 - Promotes smoking tobacco or consuming intoxicating drugs without warning of the hazards of such consumption
 - Is misleading or is likely to cause damage to a competitor
- *Section 28 – Stereotypes and portrayal:*
 - Broadcasters shall:
 - Not broadcast material which promotes or glamorises discrimination based on race, ethnicity, origin, colour, religion, race, mental or physical disability
 - Ensure that the programmes portray the intellectual and emotional equality of the sexes
 - Portray men and women as having equal capabilities in performing societal functions
 - Avoid:
 - Identifying people by their colour or ethnic origin
 - Using derogatory terms when speaking about people or a particular ethnicity or race
 - Presenting a group as an undifferentiated mass rather than a collection of people with different interests and beliefs
 - Depicting women as sexual objects
 - Be sensitive to the rights and dignity of people who are mentally or physically challenged
- *Section 30 – Community service:* Every licensee shall:
 - Provide sufficient coverage of national events, including various public holidays
 - When providing information services, provide a fair, balanced, accurate and complete service

- *Section 31 – Complaints handling procedure:* Every licensee shall:
 - Establish a complaints handling procedure, a copy of which is to be lodged with the BAZ
 - Acknowledge the right of audiences to make complaints
 - Make arrangements to ensure that:
 - Both verbal and written complaints are recorded
 - Complaints are investigated and addressed within 14 days
 - Advise complainants of their right to refer the complaint to the BAZ
 - Make the records of complaints available for inspection at the request of the BAZ

- *Section 32 – Programmes not to be broadcast:* This section essentially repeats a number of previous prohibitions on violence and sexual content. Two that have not been mentioned previously are prohibitions on broadcasting:
 - Simulated news or events which mislead or alarm viewers
 - The actual process of hypnosis

- *Section 34 – Programme schedules and recordings to be kept:*
 - Licensees are required to publish their programme schedules in a national newspaper one month in advance and must adhere thereto unless the licensee is obliged to broadcast spontaneous events of national and international significance.
 - Licensees shall submit to the BAZ:
 - A quarterly programme schedule 14 days before each quarter
 - Monthly transmission reports detailing programmes actually broadcast and music play-lists detailing all the music broadcast within seven days of the end of each month
 - Licensees shall maintain copies of all off-air transmission recordings for at least six calendar months.

- *Section 35 – Disabling of services and consumer protection for subscribers:*
 - Subscribers to a service must be connected within 24 hours of payment for such service.
 - Licensees must:
 - Respond timeously to repairing faults
 - Compensate subscribers for downtime caused by the licensee
 - Have a duty of confidentiality towards subscribers
 - Not, without the subscriber's consent, disclose personal information to anyone other than a related entity for the purpose of providing the service

- Accept a monthly minimum subscription fee
- *Section 36 – Community broadcasting codes:* Community broadcasting stations shall:
 - Provide their services in the public interest
 - Have organisational mechanisms to provide for active community participation
 - Demonstrate independence in programming as well as in editorial and management decisions
 - Present programmes that contribute to the social and economic development of the community
 - Seek to widen the community's involvement in broadcasting and encourage participation by those not adequately served by other media
- *Section 37 – Violations and penalties:* After affording a licensee a reasonable opportunity to be heard, the BAZ shall impose monetary or other penalties for breaches of the regulations.

4.3 Other key media-related regulations

One of the most important of these is the Access to Information and Protection of Privacy (Registration, Accreditation and Levy) Regulations, 2002.

It is important to note that these contain, among other things, the application forms for accreditation or renewal of accreditation as a mass media service, news agency, journalist and representative office of a foreign mass media service.

5 MEDIA SELF-REGULATION

Besides the quazi-governmental Media Council of Zimbabwe established in terms of the Access to Information and Protection of Privacy Act, there is in fact a proper self-regulatory body, the Voluntary Media Council of Zimbabwe (VMCZ).

The VMCZ has established a Media Complaints Committee (MCC), which aims to promote and protect a set of common professional standards of conduct for media practitioners, whether these are members of the VMCZ or not. The MCC therefore will hear a complaint against any media practitioner or institution in Zimbabwe.

The VMCZ has developed a complaints procedure for the MCC, which requires complaints to be made in writing and within 30 days of the cause of complaint. In

brief, the complaints procedure contains a number of provisions regulating, among other things, the:

- Lodging of complaints
- Fact that a complainant who uses the procedure must waive his or her rights to institute legal action in regard to the complaint
- Ability of the chairperson to reject complaints upon grounds such as frivolousness, failure to take steps to settle the matter amicably, the institution of legal action, no apparent breach
- Adjudication procedure and the powers of the MCC in adjudication. These include that adjudication must be provided in writing and that the MCC has the power to:
 - Dismiss the complaint
 - Find in favour of the complainant
- Issue a reprimand
- Order the publication of a prompt retraction and apology

Note that the MCC does not have the power to impose a financial penalty, but it may order the unsuccessful party to pay the costs of the complaint. While there is no appeal from a ruling of the MCC, its decisions are reviewable for procedural irregularities in the High Court.

In brief, the VMCZ's Code of Conduct for Zimbabwean Media Practitioners provides for the following to apply to media practitioners and institutions:

- **General standards**
 - To maintain the highest professional and ethical standards in performing their functions of informing, educating and entertaining.
 - To defend the principle of freedom of the media to freely access, collect and disseminate information and to publish comments and criticisms. To oppose censorship, suppression of news and the dissemination of propaganda.
- **Accuracy and fairness**
 - To report and interpret news with scrupulous honesty and take all

reasonable steps to disseminate accurate information, to depict events fairly and without distortion.

- Never to publish information known to be false or maliciously make unfounded allegations with intent to harm reputations.
- To check facts and take care not to publish inaccurate material. Editors are to ensure that all steps that a reasonable media practitioner would take to check accuracy of facts have been taken.
- Special care must be taken in regard to stories that may cause harm to individuals, organisations or the public interest. Before publishing a story of alleged wrongdoing, all reasonable steps must be taken to obtain a response from the alleged wrongdoer, and any response must be published together with the report in question.
- To provide full, fair and balanced reports of events and not suppress essential information. Avoid distortion by exaggeration, one-sidedness, improper emphasis, reporting facts out of context or suppressing relevant facts. Avoid misleading headlines or billboard postings.

■ **Correction of inaccuracy or distortion**

- Upon discovery that it has published a report containing significant inaccuracy or distortion, a media institution must publish a correction at the earliest opportunity and with comparable prominence.
- Upon discovery that it has published an erroneous report that has caused harm to a person or institution, it must publish an apology promptly and with due prominence.
- Media institutions must report fairly and accurately on the outcome of a defamation action against it.

■ **Right of reply**

- Where a person or institution believes that a media report contains inaccurate information or unfair criticism, the media institution concerned must provide a fair opportunity to reply to enable the correction of inaccuracies and to respond to criticism.

■ **Comment**

- A comment or expression of opinion must be a genuine and honest comment or opinion relating to established fact.
- Comment or conjecture must not be presented so as to create the impression that it is established fact.

■ **Bribes and inducements**

- Media practitioners and institutions must not suppress or distort

reports or omit or alter vital facts in return for the payment of money or other gifts or rewards.

■ **Pressure or influence**

- Media practitioners and institutions must not suppress or distort information because of pressure or influence from their advertisers or others who have a corporate, political or advocacy interest in the media institution concerned.

■ **Hatred or violence**

- Media practitioners and institutions must not publish material that is intended or likely to engender hostility or hatred towards persons on the grounds of race, ethnic origin, nationality, gender, sexual orientation, physical disability, religion or political affiliation.
- Media institutions must take utmost care to avoid contributing to the spread of ethnic hatred or political violence.

■ **Reporting of elections**

- Election reporting must be fair and balanced.
- Before reporting a damaging allegation against a candidate or political party, a media practitioner must obtain, wherever possible, a comment from the candidate or party concerned.
- Media practitioners and institutions must not accept gifts, rewards or inducements from a politician or candidate.
- As far as possible, media practitioners report the views of candidates or political parties directly and in their own words.
- Media practitioners must take care when reporting on opinion polls. Where possible, they must include details of the methodology used in conducting the poll and by whom it was conducted.

■ **Reporting on police investigations and criminal court cases**

- The media must refrain from publishing articles prejudging the outcome in criminal cases or seeking to influence the outcome of cases.
- The media is entitled to inform the public about arrests of suspects and the trials of accused persons, but should avoid naming suspects until formal charges have been filed against them, unless the public interest requires otherwise.
- Where the media has begun to report on a criminal case, it must follow up and report subsequent developments with due prominence.

■ Privacy

- It is normally wrong for a media practitioner to intrude into and report upon a person's private life without his or her consent.
- Reporting on a person's private life can be justified only when it is in the public interest to do so, including:
 - Exposing criminal conduct
 - Exposing seriously antisocial conduct (note this is not defined)
 - Protecting public health and safety
 - Preventing the public from being misled by a statement or action of an individual
- The media may probe and publish details about the private moral behaviour of a public official, where this conduct has a bearing on his or her suitability as a public official.

■ Intrusion into grief or shock

- In cases involving personal grief or shock, sympathy and tact are required when making enquiries.
- Members of the media must identify themselves to a responsible official and must obtain permission before entering non-public areas of hospitals or similar institutions.

■ Interviewing and photographing children

- The media should not normally interview or photograph children under the age of 16 in the absence of a parent or adult responsible for the child.
- Special sensitivity and sympathy is required when interviewing or photographing children in difficult circumstances or with disabilities.
- Children at a school, crèche or similar institution should not be interviewed or photographed without the permission of the appropriate authorities.

■ Children in criminal cases

- Media institutions must not publish the names of any person under 16 who is arrested or on trial.

■ Victims of crime

- Media institutions must not identify victims of sexual assault or publish material likely to contribute to such identification unless the victim has consented to such publication or the law authorises such publication.

■ Innocent relatives or friends

- Media institutions should avoid identifying relatives or friends of persons accused or convicted of a crime unless this is necessary for the full, fair and accurate reporting of the crime or legal proceeding.

■ Surreptitious gathering of information

- Open methods of gathering information in which media practitioners clearly identify themselves should be used. Generally, media practitioners should not seek or obtain information through misrepresentation, deception, subterfuge or undercover techniques.
- Surreptitious methods of information gathering may be used only where open methods have failed to yield information which is in the public interest. Surreptitious methods may be used if they will help to detect or expose criminal activity or bring to light information that will protect the public against serious threats to public health and safety.

■ National security

- Media institutions must not prejudice the legitimate national security interests of Zimbabwe or place members of the defence force who are on active military duty at risk.
- However, this does not prevent the media from exposing corruption in security or defence agencies, or from commenting on levels of defence expenditure.

■ Plagiarism

- Media practitioners must not engage in plagiarism. Plagiarism consists of making use of another person's words, pictures or ideas without permission and without proper acknowledgement and attribution of the source of those words, pictures or ideas.

■ Protection of sources

- Where a person has agreed to supply information on condition of anonymity and the media practitioner agrees to this, the media practitioner must respect this undertaking and refuse to reveal the identity of the source.
- However, the media practitioner may tell the source that his or her identity might have to be revealed if it becomes clear that this information is needed to prevent or expose serious criminal conduct.

6 COMMON LAW AND THE MEDIA

In this section you will learn:

- ☐ The definition of common law
- ☐ How the Zimbabwe courts have ruled on certain key aspects of the law of defamation, namely organ of states' rights with regard to defamation and assessing the amount of damages
- ☐ How the Zimbabwe courts have ruled on the constitutionality of provisions prohibiting the publication of false news
- ☐ How the Zimbabwe courts have ruled on a journalist's right to protect his or her sources
- ☐ How the Zimbabwe courts have ruled on the constitutionality of the statutory monopoly given to the Zimbabwe Broadcasting Corporation

6.1 Definition of common law?

The common law is judge-made law. It is made up of judgments handed down in cases adjudicating upon disputes brought by people, whether natural (individuals) or juristic (for example, companies).

In common law legal systems such as Zimbabwe's, judges are bound by the decisions of higher courts and also by the rules of precedent. This requires that rules laid down by the court in previous cases be followed, unless they were clearly wrongly decided. Legal rules and principles are therefore decided on an incremental, case-by-case basis.

6.2 Defamation

6.2.1 Can an organ of state sue for defamation and does a statutory corporation constitute an organ of state?

In *PTC v Modus (Pvt) Ltd 1997 (2) ZLR 492 (S)*, the issue was whether the Posts and Telecommunications Corporation (PTC), a statutory corporation incorporated under Zimbabwean law, could sue a newspaper for defamation. The Supreme Court, in a unanimous judgment, confirmed three key issues in relation to defamation.

- It confirmed that an 'artificial person' [that is, a juristic person such as a company] can sue for defamation – at page 494.
- It held that the state cannot sue for defamation – at page 494. It is important to note that a number of common law jurisdictions have upheld the principle that 'it would be contrary to the public interest for the organs of government, whether

central or local to have that right’ [that is, the right to sue for defamation] – see page 497.

- It held that the PTC could not sue for defamation because the PTC, although having a separate legal personality, was nonetheless an ‘organ of State’ and therefore had no basis to sue – at page 502.

6.2.2 Factors to be taken into account in assessing damages

In *Shamuyarira v Zimbabwe Newspapers (1980) Ltd & Another 1994 (1) ZLR (H)*, the High Court set out (at page 502) a list of relevant factors in determining damages in relation to the defamation in question, many of which are of general application:

- The content of the article, which includes the defamatory matter.
- The nature and extent of the publication, including the aspect of the re-publication of the defamatory matter.
- The plaintiff’s standing – that is, his reputation, character and status.
- The nature of the defamation.
- The probable consequences of the defamation.
- The conduct of the defendants from the time the defamatory matter was published up to the time of judgment, including:
 - Their reliance on and persistence in a plea of justification
 - The question of any malice on their part
 - The question of any retraction and apology for the publication of the defamatory matter
- The recklessness of the publication.
- Comparable awards of damages in other defamation suits and the declining value of money.

6.3 Constitutionality of provisions prohibiting the publication of false news

In *Chavunduka & Another v Minister of Home Affairs and Another 2000 (1) ZLR 552 (S)*, the applicants (an editor and senior reporter of a weekly newspaper) challenged the constitutionality of section 50(2)(a) of the Law and Order Maintenance Act

[Chap. 11:07] – a pre-independence piece of legislation still on the statute books in Zimbabwe.

Section 50(2)(a) made it an offence to publish a false statement, rumour or report which is likely to cause fear, alarm or despondency among the public or any section of the public. The Supreme Court unanimously declared section 50(2)(a) unconstitutional in that it infringed on the right to freedom of expression guaranteed by section 20(1) of the Constitution. (Note that the Constitution being referred to in this judgment is not the one that is dealt with in this chapter and which was recently approved in a public referendum in Zimbabwe.)

6.4 A journalist's right to protect sources

In *Shamuyarira v Zimbabwe Newspapers (1980) Ltd & Another* 1994 (1) ZLR (H), the High Court upheld the right of a journalist not to reveal his or her sources during a civil defamation trial. The High Court made the following important statement on the issue:

[U]nless our courts are seen to be prepared to lean over backwards to protect, in the public interest, a journalist's source where the journalist has publicly uncovered corruption or some other form of iniquity on the part of those holding high office, whether in government or elsewhere, the courts will be guilty of a grave disservice to Zimbabwean society and to the principles of democracy upon which that society is founded [at page 483].

It is, however, also important to note that the High Court did set out instances where it would be appropriate to require a journalist to reveal his or her sources.

6.5 Constitutionality of provisions granting the Zimbabwe Broadcasting Corporation a monopoly in respect of broadcasting

In *Capital Radio (Pvt) Ltd v Minister of Information* (1) 2000 (2) ZLR 243 (S), the Supreme Court declared that section 27 of the Broadcasting Act [Chap. 12:01], which provided that '[n]o person other than the [Zimbabwe Broadcasting] Corporation shall carry on a broadcasting service in Zimbabwe', was inconsistent with the freedom of expression guarantee contained in section 20(1) of the Constitution. (Note that the Constitution being referred to in this judgment is not the one that is dealt with in this chapter and which was recently approved in a public referendum in Zimbabwe.)

