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THE REALISATION OF MEDIA FREEDOM AS A TOOL TO COMBAT CORRUPTION IN ZIMBABWE: LESSONS FROM SOUTH AFRICA

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ABSTRACT

Corruption is rife in South Africa and Zimbabwe. The media plays an important role in exposing corruption. In South Africa, the media exposed a multi-billion-dollar corruption saga in 2016 involving the former president and his business associates which the media dubbed “state capture”. Most of the state-owned entities were captured and served as vehicles for grand corruption. Today, South Africa has yet to recover from the saga exposed in 2016. In fact, the incumbent South African president, Cyril Ramaphosa, has also been under investigation for money laundering and corruption while simultaneously reaffirming his ruling party’s fight against corruption. The media continues to keep the executive on its toes and should be praised for their efforts. South Africa’s neighbour, Zimbabwe, has a different outlook. While corruption in Zimbabwe is even worse than in South Africa, the media does not have the similar freedom to expose corruption. There exists a constant fear of retaliation for blowing the whistle on corrupt activities. It is common for journalists to be detained for speaking out. Media laws should be adopted to affirm media freedom. Instead they have often been adopted, especially in Zimbabwe, to demonise the media. This paper essentially analyses the importance of the media in exposing corruption in Zimbabwe and how their role can be protected and enhanced. This paper makes an important contribution towards the protection of media freedom in light of strengthening anti-corruption efforts in South Africa and Zimbabwe. It is one of the first studies to examine the achievements and shortcomings of media freedom in relation to corruption in South Africa and Zimbabwe. The article will commence by examining conceptual aspects regarding corruption and the role of the media. It will then examine the regulatory framework governing the rights of media in both jurisdictions. What follows next is an analysis of several case studies amplifying the problems faced by the media in Zimbabwe. This is followed by analysing the lessons Zimbabwe can learn from South Africa’s approach to media freedom. The article will conclude by providing several recommendations.

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1. INTRODUCTION

On 19 October 1977, media freedom was severely violated in apartheid South Africa. Various newspapers were banned and journalists were arrested for speaking out against apartheid, in what became known as Black Wednesday.¹ In 2023, however, the South African media and the press in general has freedom to cover any case, including corrupt activities by the state.² It was the media, with the help of whistleblowers, who exposed “state capture”, South Africa’s biggest state corruption scandal to date.³ Between 2009 and 2016, approximately R500 billion (US\$26 billion) was looted by various role players in the government of former president Jacob Zuma.⁴ State-owned entities such as South African Airways, Denel, Transnet and several others were used to engage in corrupt practices.⁵

In neighbouring Zimbabwe corruption has also been evident in the government. In 2023, Al Jazeera Investigative Unit uncovered a massive grand corruption scandal in Zimbabwe.⁶ The investigation, among others, highlighted how rampant and well-coordinated corruption is in Zimbabwe. It exposed the involvement of high-ranking officials from the Zimbabwean government in smuggling and money laundering, which helps the country get around the crippling grip of Western sanctions. Ambassador Ubert Angel and President Emmerson Mnangagwa were both among a host of high-ranking officials that were involved in illicit gold smuggling activities.⁷ These activities rob the country of the huge

1 President of the Republic of South Africa (2022) “Media freedom in South Africa is Cause for Optimism and Pride”, available at <https://www.stateofthenation.gov.za/newsletter/media-freedom-in-south-africa-is-cause-for-optimism-and-pride> (visited 21 August 2023).

2 In this article, freedom of the media and freedom of the press will be used interchangeably. This includes printed and electronic media. We will not deal extensively with the role of social media in the fight against corruption, but mostly the role of investigative journalists in their capacity as media representatives.

3 See Commission of Inquiry into State Capture (2022) “Final Reports”, available at <https://www.statecapture.org.za/site/information/reports> (visited 21 August 2023).

4 Ryan C (2022) “State Capture Scorecard: R500bn Looted, Zero Assets Recovered” *Moneyweb*, available at <https://www.moneyweb.co.za/news/south-africa/state-capture-scorecard-r500bn-looted-zero-assets-recovered/> (visited 21 August 2023).

5 See Commission of Inquiry into State Capture (2022) “Final Reports”, available at <https://www.statecapture.org.za/site/information/reports> (visited 21 August 2023).

6 Al Jazeera (14 April 2023) “Six Secrets Uncovered by Al Jazeera’s Gold Mafia Investigation”, available at [six-secrets-uncovered-by-al-jazeera-s-gold-mafia-investigation](https://www.aljazeera.com/news/2023/4/14/six-secrets-uncovered-by-al-jazeera-s-gold-mafia-investigation) (visited 30 August 2023).

7 Al Jazeera (14 April 2023) “Six Secrets Uncovered by Al Jazeera’s Gold Mafia Investigation”.

amounts of money that could be used for developmental projects. The reporting of these activities is nearly impossible by the Zimbabwean local media due to undue media scrutiny by the government to cover up corrupt activities and political reasons.

It is evident that media freedom is under unprecedented attack across the globe.⁸ At the same time, corruption is also at an all-time high.⁹ This is not a coincidence as these events are correlated. Corruption thrives in an environment where the freedom of the media is severely limited.¹⁰ Reporters Without Borders publishes the World Press Freedom Index annually.¹¹ It ranks all the countries on a scale from 0 to 100. Countries with a score closer to 100 are deemed to guarantee media freedom whereas a score closer to 0 indicates little to no press freedom. South Africa received a score of 78.6 in 2023 while Zimbabwe received a score of 48.17.¹² South Africa received a score of 75.56 in 2022 whereas Zimbabwe received 44.94.¹³ The situation in both countries has improved slightly. Reporters Without Borders reported that “South Africa guarantees press freedom and has a well-established culture of investigative journalism.”¹⁴

In terms of Zimbabwe, it stated that “the media situation in Zimbabwe has improved slightly since the dictator Robert Mugabe’s ouster in 2017. Access to information has increased and self-censorship has declined”.¹⁵ North Korea, last on the index, received a score of 21.72, a country where independent journalism is prohibited.¹⁶ Norway was first, with a score of 95.18.¹⁷ It is then not coincidental that Norway is rated as one of the world's

8 See Reporters Without Borders (2023) “2023 World Press Freedom Index”, available at <https://rsf.org/en/index> (visited 26 June 2023).

9 Transparency International (2023) “Corruption Perceptions Index 2022”, available at https://images.transparencycdn.org/images/Report_CPI2022_English.pdf (visited 26 June 2023).

10 Steien S (2017) “The Relationship between Press Freedom and Corruption: The Perception of Journalism Students” in Frey E, Rhaman M & El Bour H (eds) *Negotiating Journalism: Core Values and Cultural Diversities* Gothenburg: Nordicom at 67.

11 See Reporters Without Borders (2023).

12 See Reporters Without Borders (2023).

13 See Reporters Without Borders (2023).

14 See Reporters Without Borders (2023).

15 See Reporters Without Borders (2023).

16 See Reporters Without Borders (2023).

17 See Reporters Without Borders (2023).

least corrupt countries.¹⁸ A strong and independent media creates a culture of anti-corruption, something which is lacking in Zimbabwe. Yet, while South Africa might have an independent media, it still has some way to go to prosecute those responsible for state capture as the first case against those involved ended up in an acquittal.¹⁹ The fact remains that if it was not for the media, state capture would not have been exposed and investigated.

Corruption remains a significant problem throughout the African continent. South Africa and Zimbabwe are both perceived as countries where corruption flourishes. Transparency International measures perceptions of corruption within countries and publishes it annually in their Corruption Perceptions Index.²⁰ Countries receive a score of between 0 and 100. A score closer to 100 resembles a country with little corruption and a score closer to 0 represents a country with high levels of corruption. In 2022, South Africa received a score of 43 and Zimbabwe a score of 23.²¹ The authors argue that the contrast in scores can in part be contributed to the difference between media freedom in South Africa and Zimbabwe. A resilient and fearful media will undoubtedly be able to expose more corruption as opposed to a media controlled and manipulated by the state.

This article focuses specifically on the role of the media in exposing corruption and how it can be used as a tool to combat it. It seeks to investigate how South Africa has been able to secure media freedom and how Zimbabwe can adopt some of the measures used by South Africa. This is an important study because the lack of media freedom is one of the key reasons for a thriving culture of corruption in Zimbabwe. The article makes a significant contribution to the field of anti-corruption law by focusing on how Zimbabwe can strengthen the independence of its media in an effort to combat corruption. South Africa and Zimbabwe are selected as the desired jurisdictions not only because the authors are from these countries, but also because media freedom can be improved in both countries,

18 It was rated as the fourth least corrupt country in the world. See Transparency International (2022) "Corruption Perceptions Index 2022", available at <https://www.transparency.org/en/cpi/2022> (visited 22 August 2023).

19 *S v Thabethe and Others* (08/2022) [2023] ZAFSHC 126 (21 April 2023).

20 See Transparency International (2022).

21 See Transparency International (2022). Denmark was perceived as the least corrupt country with a score of 90 whereas Somalia received a score of 12, the most corrupt country according to the Index.

especially in Zimbabwe. South Africa provides an important case study particularly due to the recent grand corruption that was exposed by the media. The article limits itself mainly to grand corruption, a form of corruption usually committed by government officials including ministers and heads of state.²² Failure to address grand corruption inevitably affects the poor and cripples the economy.²³ It therefore becomes increasingly important to secure the freedom of the media as they often serve as the first point of contact for whistleblowers and informers who report corruption within the government.²⁴

The article will commence by examining conceptual aspects regarding corruption and the role of the media. It will then examine the regulatory framework governing the rights of the media in both jurisdictions. What follows next is an analysis of several case studies amplifying the problems faced by the media in Zimbabwe. This is followed by analysing the lessons Zimbabwe can learn from South Africa's approach to media freedom. The article will conclude by providing several recommendations.

2. UNDERSTANDING THE ROLE OF THE MEDIA IN THE FIGHT AGAINST CORRUPTION

Corruption is a secret crime.²⁵ It is well-planned and orchestrated. It is a crime that is not easily exposed. Whistleblowers often fulfil the role of exposing corrupt practices.

Whistleblowers often work closely with corrupt officials and must make a decision whether to expose the corruption openly, confidentially or remain silent.²⁶ Most whistleblowers, however, expose corruption confidentially.²⁷ Kohn explains: “this marks a radical change from the high-profile public disclosures that popularized whistleblowing over the previous

22 See, for example, Van Vuuren H (2006) *Apartheid Grand Corruption* Cape Town: Institute for Security Studies.

23 See Myint U (2000) “Corruption: Causes, Consequences and Cures” 7(2) *Asia-Pacific Development Journal* 33 – 58 at 34.

24 See generally Hambursin C (2006) “When Whistleblowers go to the Media: Analysis of how Journalists Report Whistleblower’s Stories” in Catellani A, Libaert T & Pierlot JM (eds) *Contredire l’entreprise* Louvain-la-Neuve: Presses Universitaires de Louvain.

25 See generally Wallis S (2012) *Secret Corruption* Maitland, Florida: Xulon Press.

26 Kohn SM (2023) *The Rules for Whistleblowers: A Handbook for Doing What’s Right* Guilford, Connecticut: Lyons Press at 7.

27 See Delmas C (2015) “The Ethics of Government Whistleblowing” 41(1) *Social Theory and Practice* 77 – 105 at 84.

five decades, often with disastrous personal consequences.”²⁸ This is not an easy choice as many whistleblowers have not only lost their lives but have also suffered severe mental health illness.²⁹ In South Africa, it has become increasingly dangerous to expose corruption. In August 2021, Babita Deokaran, the then Chief Director of Financial Accounting of the Gauteng Health Department, was shot nine times in front of her Johannesburg home.³⁰ Weeks before her death, Deokaran flagged suspicious payments by members of the Tembisa Hospital to the value of R850 million.³¹ She feared for her life as noted in a WhatsApp message to her Chief Financial Officer (CFO) which read “Morning CFO I am just worried that the guys in Tembisa are going to realise we are not releasing their payments and know that we on to something. Our lives could be in danger.”³² Sadly, her fears became a reality. In August 2023, the six accused who were arrested and charged in connection with her murder, pleaded guilty to her brutal murder.³³ The media often faces the same type of danger when exposing corruption which makes the protection of whistleblowers in South Africa and Zimbabwe important. An in-depth study of the protection of whistleblowers falls outside the scope of this article but future research should be conducted on this topic.

It is, however, important to note in this study, that instead of going directly to the police or lodging a complaint against the corrupt official at the company or state office, whistleblowers often turn to the media. This section will focus on grand corruption, as this type of corruption has been most prevalent in Zimbabwe and South Africa.³⁴ Grand

28 Kohn (2023) at 7.

29 See Van der Velden PG & Pecoraro M (2019) “Mental Health Problems Among Whistleblowers: A Comparative Study” 122(2) *Psychological Reports* 632 – 644 at 633.

30 See Ngcobo S & Mvuyana BYC (2022) “National Health Insurance Pilot Phase and Service Delivery Evaluation in Rural Areas of KwaZulu Natal, South Africa” 11(7) *International Journal of Research in Business & Social Science* 357 – 366 at 358; NEWS24 (2023) “Silenced: Why Babita Deokaran was Murdered”, available at <https://specialprojects.news24.com/silenced/index.html> (visited 26 June 2023).

31 Bhengu C (2023) “Why Babita Deokaran Was Killed: Calls for Protection of Whistleblowers at Documentary Premiere” NEWS24, available at <https://www.news24.com/news24/southafrica/news/why-babita-deokaran-was-killed-calls-for-protection-of-whistleblowers-at-documentary-premiere-20230422> (visited 26 June 2023).

32 NEWS24 (2023) “Silenced: Why Babita Deokaran was Murdered”, available at <https://specialprojects.news24.com/silenced/index.html> (visited 26 June 2023).

33 Pheto B (2023) “Babita Deokaran: Six Men Plead Guilty to Murder of Whistleblower, handed Jail Sentences” NEWS24, available at <https://www.news24.com/news24/southafrica/news/just-in-babita-deokaran-six-accused-plead-guilty-to-murder-of-whistleblower-20230822> (visited 22 August 2023).

34 See generally Juwita R (2023) “Exploring Corruption as a Violation of Human Rights in the Practices of International Human Rights Institutions” 15(1) *Journal of Human Rights Practice* 302 – 321.

corruption, as we will see later, is one of the most dangerous types of corruption to expose, as state officials and politicians are often involved in multi-million-dollar corrupt practices and will do anything to silence the exposure.³⁵

2.1 Conceptualising corruption and grand corruption

The definition of “corruption” has received widespread academic attention³⁶ and does not warrant a detailed study, but will be briefly defined to provide context. In fact, “corruption” does not have a universal or official definition. The United Nations Convention against Corruption (UNCAC) does not define it nor does any of the other conventions dealing with economic crimes. The United Nations Office on Drugs and Crime (UNODC) provides “that a comprehensive definition of corruption was neither necessary nor feasible. Corruption is a fluid concept, signifying different things to different people. More importantly, it is an evolving concept”.³⁷ Indeed, corruption does “signify different things to different people” which includes denying it as an offence. President Zuma once held that corruption is a victimless crime, while criminal law in general also regards corruption as a victimless offence.³⁸ The truth is that corruption has a detrimental effect on the economies of countries which results in widespread poverty and other consequences. In South Africa, the money that was looted during state capture could have been spent on healthcare and housing for the poor.³⁹

Corruption has, however, been defined by civil society and within academic circles. Transparency International defines corruption as the “abuse of entrusted power for private gain”. This is a widely used definition as it includes private and public corruption. The words

35 See generally David-Barrett E & Fazekas M (2020) “Grand Corruption and Government Change: An Analysis of Partisan Favoritism in Public Procurement” 26(3) *European Journal on Criminal Policy and Research* 411 – 430.

36 See generally Rotberg RI (2020) *Anticorruption* Cambridge, Massachusetts: MIT Press; Kochan N & Goodyear R (2011) *Corruption* London: Palgrave Macmillan; Jansen JD (2023) *Corrupted: A Study of Chronic Dysfunction in South African Universities* Johannesburg: Wits University Press.

37 United Nations Office on Drugs and Crime (2003) “Convention against Corruption: Q&A”, available at https://www.un.org/webcast/merida/pdfs/03-89373_factsheet2.pdf (visited 23 August 2023).

38 See De Man A (2022) “Strengthening the Fight Against Corruption through the Principle of Accountability” 25(1) *Potchefstroom Electronic Law Journal* 1 – 30 at 5.

39 See Davis R (2021) “The Total(ish) Cost of the Guptas’ State Capture: R49,157,323,233.68” *The Daily Maverick*, available at <https://www.dailymaverick.co.za/article/2021-05-24-the-totalish-cost-of-the-guptas-state-capture-r49157323233-68/> (visited 23 August 2023).

“entrusted power” are important in the context of large-scale corruption as government officials are elected by the people to serve the people, not to loot them. Obura defines corruption as “an illegal (not merely immoral) act that arises from the abuse of public (not private) entrusted authority and which benefit private (not public) interest”.⁴⁰ Again, the word “trust” features, which suggests that corruption is indeed an act which is often committed by people in positions of trust but who abuse such trust for their own personal gain. This article focuses specifically on the corruption committed by those in powerful positions, offences which are not easily exposed, if it was not for the role of the media.

Grand corruption, which can be regarded as a form of corruption, involves the abuse of high-level power that includes a systematic plan of action involving high-level public officials that causes serious economic harm to the masses.⁴¹ The UNODC defines it as the conduct of a public official that leads to a substantial loss of income for the citizenry as a result of bribery, embezzlement or other corrupt practices.⁴² Moody defines grand corruption as “the abuse of public power by heads of state, ministers and senior officials for private and pecuniary gain”.⁴³ Consistent grand corruption within a country also causes stigma to that country which ultimately affects investment.⁴⁴

State capture is one of the ultimate examples of grand corruption. State capture is not a term reserved for the events that unfolded in South Africa. Hellman and Kaufmann already explained in 2001 that “in transition economies, corruption has taken on a new image – that of so-called oligarchs manipulating policy formation and even shaping the emerging rules of the game to their own, very substantial advantage”.⁴⁵ Indeed, the Guptas who could be viewed as the South African “oligarchs” manipulated various policies of the South African

40 Obura K (2014) “Unmasking the Phenomenon of Corruption: Perspectives from Legal Theory” 28(1) *Speculum Juris* 124 – 160 at 126.

41 Transparency International (2023) “Grand Corruption”, available at <https://www.transparency.org/en/our-priorities/grand-corruption> (visited 24 August 2023).

42 UNODC (2016) “Grand Corruption Occurs When”, available at https://www.unodc.org/documents/NGO/Grand_Corruption_definition_with_explanation_19_August_2016_002_1.pdf (visited 24 August 2023).

43 See Moody-Stuart G (1994) *A Good Business Guide to Bribery* Berlin: Transparency International.

44 See Okojie P & Momoh A “Corruption and Reform in Nigeria” in Bracking S (ed) *Corruption and Development* London: Palgrave Macmillan at 104.

45 Hellman J & Kaufmann D (2001) “Confronting the Challenge of State Capture in Transition Economies” 38(3) *Finance and Development* 31 – 31.

government and also dictated the conduct of members of State owned entities, including Eskom.⁴⁶ The Gupta's also attempted to control the media by establishing a newspaper, called *The New Age* and a television network, namely Africa News Network 7. It was indeed a "new age" in South Africa's history of grand corruption. Yet, while the Gupta's attempted to paint a picture of prosperity through its media channels, the mainstream media was about to expose its propaganda and grand corruption. This would have been impossible if the media did not have freedom.

2.2 Understanding media freedom

Article 12 of the African Union Convention on Preventing and Combating Corruption calls upon governments to fully engage with the media in combating corruption.⁴⁷ Yet, what is meant by the media? The media can act as a force against corruption in ways that are both tangible and intangible.⁴⁸ In a tangible way it focuses on the press and electronic media, which mainly includes the work of investigative journalists or whistleblowers who approach news agencies with allegations of corrupt practices.⁴⁹ This is what this article mostly focuses on. In an intangible manner, the media can influence debate among the public about corruption and drive policy.⁵⁰ This research excludes the significant role of civil society in exposing corruption as well as reporting through the use of crowdsourcing and social media, but should be analysed further in future research especially in the context of Africa.⁵¹ In India, for example, the online platform called "I Paid a Bribe4", provides a platform for citizens to anonymously post incidents of corruption.⁵² The exposure of corruption on social

46 Commission of Inquiry into State Capture (2022) "Report Part 6 Vol 4 – Recommendations", available at https://www.statecapture.org.za/site/files/announcements/672/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_IV_-_Recommendations.pdf (visited 21 August 2023) at 41.

47 See African Union Convention on Preventing and Combating Corruption, 1 July 2003.

48 Stapenhurst R (2000) *The Media's Role in Curbing Corruption* Washington DC: World Bank Institute at 2.

49 See Stapenhurst (2000) at 2 – 3.

50 See Stapenhurst (2000) at 2 – 3.

51 UNOCD (2023) "Knowledge Tools for Academics and Professionals: Module 10 Citizen Participation in Anti-Corruption Efforts", available at https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_10_Citizen_Participation_in_Anti-Corruption.pdf (visited 25 August 2023) at 12.

52 Strom S (2012) "Web Sites Shine Light on Petty Bribery Worldwide" *The New York Times*, available at <https://www.nytimes.com/2012/03/07/business/web-sites-shine-light-on-petty-bribery->

media platforms is becoming more prevalent and provides an alternative to the traditional press.⁵³

Yet, long before social media, it was always the press and investigative journalism that uncovered grand corruption. The Watergate Scandal was largely investigated by Washington Post reporters Carl Bernstein and Bob Woodward who published several articles that connected the burglary at Watergate with the White House, which eventually resulted in former President Nixon's resignation from the oval office.⁵⁴ It has been argued that the term "money laundering" was first used by Al Capone in the 1930, yet it was the press during the Watergate Scandal which gave it prominence and worldwide attention.⁵⁵ Various other scandals including the Panama Reports⁵⁶ were uncovered with the help of the media.

The media can only combat corruption if it has the right to report freely. A free media promotes good governance, guarantees civil liberties and human rights and provides a formal check on government.⁵⁷ Media freedom is a global right. Article 19 of the United Nations (UN) Universal Declaration of Human Rights states that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".⁵⁸ Article 11 of the Charter of Fundamental Rights of the European Union provides that "the freedom and pluralism of the Media shall be respected".⁵⁹ The UN Sustainable Development Goals, in relation to Goal 16, emphasises the importance of peace,

worldwide.html?mtrref=www.google.com&mtrref=www.nytimes.com&gwh=C4C1C3B94660214461A60DE0A5EE90A0&gwt=pay (visited 25 August 2023).

53 See at Riwanto A (2022) "Construction of Legal Culture Model for Corruption Prevention through Social Media in Indonesia" 11(3) *Jurnal Hukum dan Peradilan* 385 – 404 at 388.

54 Ritchie DA (1998) "Investigating the Watergate Scandal" 12(4) *OAH Magazine of History* 49 – 53 at 50.

55 See, for example, Ryder N (2008) "The Financial Services Authority and Money Laundering: A Game of Cat and Mouse" 67(3) *Cambridge Law Journal* 635 – 653 at 635.

56 See for example, The Guardian (2023) "Panama Papers", available at <https://www.telegraph.co.uk/panama-papers/> (visited 29 August 2023).

57 Solis JA & Antenangeli L (2017) "Corruption is Bad News for a Free Press" 98(3) *Social Science Quarterly* 1112 – 1137 at 1114.

58 UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948.

59 See European Union, Charter of Fundamental Rights of the European Union, 2012/C 326/02, 26 October 2012.

justice and strong institutions.⁶⁰ Goal 16.10 particularly provides for access to information and the protection of fundamental freedoms in accordance with international agreements and national legislation. Media freedom falls under the ambit of freedom of opinion and expression and should therefore be regarded as a human right. There have also been calls for media freedom to be regarded as a separate fundamental human right, which should be considered by the United Nations.⁶¹

It is disappointing that the African Union (AU) Agenda 2063 does not include a section on the freedom of the media.⁶² This document, which declares it “provides a robust framework for addressing past injustices and the realisation of the 21st Century as the African Century” should have addressed the freedom of the media in combating corruption.⁶³ The Agenda mentions corruption only once, but does mention that it aspires that by 2063 “corruption and impunity will be a thing of the past”.⁶⁴ By not acknowledging media freedom or the protection of whistleblowers, the African Union (AU) does not seem that it is fully committed to combating corruption. The AU should address this lack of recognition and lead from the front in the combating of corruption through the strengthening of the media and its ability to report freely.

3. LEGISLATIVE FRAMEWORK

This section examines the regulation of the freedom of the media in South Africa and Zimbabwe. It provides important insights into the reasons why the media in South Africa ostensibly has more freedom than in Zimbabwe.

3.1 South Africa

60 See UN (2023) “Sustainable Development Goals: Goal 16: Promote Just, Peaceful and Inclusive Societies”, available at <https://www.un.org/sustainabledevelopment/peace-justice/> (visited 25 August 2023).

61 See Tambini D (2021) “A Theory of Media Freedom” 13(2) *Journal of Media Law* at 135 – 152 at 136.

62 See African Union (2023) “Agenda 2063”, available at https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf (visited 25 August 2023).

63 See African Union (2023).

64 See African Union (2023).

Corruption is a scourge in the Republic and the role of the media, who is free to report it, has been significant in exposing the rot. The same cannot be said about the media during the apartheid regime. The main media outlets were controlled by the apartheid government and journalists lived in fear.⁶⁵ The dawn of democracy introduced a new era of human rights in South Africa. The Constitution of the Republic of South Africa, 1996, is the supreme law and the right of the media to report corruption freely is protected by it. Section 16(1)(a) of the Constitution provides that “everyone has the right to freedom of expression, which includes – (a) freedom of the press and other media”.⁶⁶ This right to freedom of expression does not extend to incitement of imminent violence, propaganda for war and the advocacy of hatred based on religion, race and ethnicity.⁶⁷ Freedom of expression is pivotal in a society based on equality and freedom and without freedom of expression, openness is severely endangered and compromised.⁶⁸ It is the right which every member of society should be interested in, including the media who expose corruption.⁶⁹ Additionally, the right to human dignity is often seen as the all-encompassing right in the Bill of Rights and embodies the right of the media to freedom of expression. It is common cause that every journalist would feel that their human dignity is violated if they are prevented from reporting freely about corruption. Reporting news is their duty and limiting this right prevents them from living a life of dignity. It is therefore important to ensure that this fundamental right is respected and valued.⁷⁰ Human dignity in the new South Africa reflects the departure from apartheid and the lodestar by which South Africa wishes to progress.⁷¹

The South African media has undergone a deep transformation from one that lived in fear of being silenced to one that strives for justice and openness without fear and favour. However, it has not been all smooth sailing since democracy. The African National Congress

65 See generally Moseki M (1988) “Black Journalists Under Apartheid” 7 *Index on Censorship* 22 – 24.

66 See also *Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International and Another* 2005 (8) BCLR 743 (CC) para 47.

67 Sec 16(2) of the Constitution of the Republic of South Africa, 1996.

68 *NM and Others v Smith and Others* 2007 (7) BCLR 751 (CC) para 66.

69 See *S v Mamabolo* 2001 (5) BCLR 449 (CC) para 28.

70 See *Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others* 2000 (8) BCLR 837 para 34.

71 Barak A (2015) *Human Dignity: The Constitutional Value and the Constitutional Right* Cambridge: Cambridge University Press at 7.

(ANC) called for the regulation of the media and proposed a move away from self-regulation to an independent-co regulatory system.⁷² Between 2002 and 2013 it suggested a number of controversial proposals, including the Protection of State Information Bill and the Media Appeals Tribunal (MAT), which were never signed into law.⁷³ Former presidents Thabo Mbeki and Jacob Zuma pushed for the establishment of the MAT, yet to no avail, as it was widely criticised by several key stakeholders including the media.⁷⁴ It would have severely limited the ability of the media to report grand corruption and would have reignited the experiences of the media during apartheid.⁷⁵ The media is self-regulated by the Press Council or Press Ombudsman, and comprises of the South African National Editors' Forum (SANEF), the Association of Independent Publishers, the Forum of Community Journalists, and the Interactive Advertising Bureau South Africa.⁷⁶ The Press Code of Ethics and Conduct for South African Print and Online Media also plays an important regulatory role.⁷⁷ Article 2 of the Code provides that the media should not allow political, commercial, non-professional, personal or other considerations to influence reporting. This ensures that the media is independent and able to report on grand corruption.

One of the reasons why South Africa scored high on the World Press Freedom Index is because SANEF has played a significant role in regulating the media in South Africa and driving its vision. SANEF was established in 1996 when the Black Editors' Forum, who mainly included Black journalists, merged with the Conference of Editors, largely consisting of White journalists.⁷⁸ Its vision is to promote the ethics and quality of journalism, to champion media freedom and to reflect the diversity of South Africa.⁷⁹ Its mission is to be a catalyst

72 Sindane S (2018) "Press Regulation in South Africa and its Implications for Press Freedom" 23 *Journal for Juridical Science* 155 – 164 at 156.

73 See Sindane (2018) at 155.

74 Thomas MKT & Sookrajowa SS (2017) "The Media Appeals Tribunal and the Protection of Information Bill as challenges to freedom of expression and good governance in South Africa" 30 *Afrika Focus* 29 – 50 at 35.

75 See, generally Sindane (2018).

76 See Press Council "Why is there a Press Council?", available at <https://www.presscouncil.org.za/> (visited 31 August 2023).

77 Press Code of Ethics and Conduct for South African Print and Online Media, 2022.

78 SANEF (2023a) "Founder Members", available at <https://sanef.org.za/about-us/founder-members/> (visited 31 August 2023).

79 SANEF (2023b) "About Us", available at <https://sanef.org.za/about-us/> (visited 31 August 2023).

and resource for achievement of its vision through action programmes and debate.⁸⁰ Its values are tolerance, accountability, public interest and integrity.⁸¹ SANEF has a strong foundation which has given the South African Press a solid springboard to investigate corruption. The Constitution of SANEF provides that the Forum is a non-profit entity and a juristic person.⁸²

Its Constitution provides for numerous provisions safeguarding the freedom of the media. Section 4.2.9 of the Constitution permits SANEF “to defend media freedom through all available institutions, including the Constitutional Court”. Indeed, South African courts have delivered important judgments in the realisation of media freedom. In *South African National Editors' Forum and Others v The Economic Freedom Fighters and Others*, the Economic Freedom Fighters was brought before the Equality Court after Julius Malema, its leader, threatened several members of the media and the Court had to determine whether his conduct qualified as hate speech, which it did not.⁸³ The Equality Court held that the Constitution recognises and specifically protects the freedom of the media.⁸⁴ The significance of the media in our society has also been repeatedly reaffirmed by South African courts.⁸⁵ In *Khumalo and Others v Holomisa* the Constitutional Court affirmed the important role that the media plays in the enjoyment of the freedom of expression.⁸⁶ Also, in *Holomisa v Argus Newspapers Ltd*, the Western Cape High Court held that the success of our constitutional venture depends on a robust media and its ability to criticise the exercise of power by government.⁸⁷ All in all, media freedom in South Africa is fully regulated and protected and all the efforts that have been poured into realising this freedom should be applauded. Can we say the same of the Zimbabwean legal framework?

80 SANEF (2023b).

81 SANEF (2023b).

82 Art 3 of the Constitution of SANEF, 2020.

83 *South African National Editors' Forum and Others v The Economic Freedom Fighters and Others* [2019] ZAEQC 8 (24 October 2019) at para 106.

84 *South African National Editors' Forum and Others* para 60.

85 *South African National Editors' Forum and Others* para 60.

86 *Khumalo and Others v Holomisa* 2002 (8) BCLR 771 para 22.

87 See *Holomisa v Argus Newspapers Ltd* 1996 (2) S A 588 (W) at 608J – 609D; *National Media Ltd and Others v Bogoshi* [1998] 4 All SA 347 (A) at 42.

3.2 Zimbabwe

Corruption is endemic in Zimbabwe. This has led to detrimental effects on its society, economy, and governance.⁸⁸ Consequently, the country has assumed both domestic and international laws to create a legal framework that is able to combat corruption. Zimbabwe's anti-corruption legal framework is an essential pillar in the country's continuous fight against corruption. In fact, Zimbabwe has a robust anti-corruption legal framework. However, equally important is the media's legal framework as it allows the media to play its key roles in the fight against corruption. It is, therefore, crucial that a detailed appraisal of Zimbabwe's media legal framework be conducted with the objective of understanding its application to combat corruption.

It is common cause that freedom of expression plays a critical role in fostering democracy and respect for human rights. It serves as an instrument for the free exchange of ideas, strengthens democratic processes and offers citizens an indispensable tool for informed participation. It is indeed the cornerstone upon which the very existence of a democratic society rests. The media investigate and report on issues of public interest, particularly relating to the political process, the conduct of public officials, the positions taken by government and the opposition, among other things. In addition, the media provide a broad spectrum of entertainment and can play an important role in the provision of educational services. As such its regulation in Zimbabwe and elsewhere is one that requires utmost good faith from all stakeholders, in particular, the government.

The International Covenant on Civil and Political Rights was ratified by Zimbabwe in 1991. Everyone has the right, it states in Article 19, "to hold opinions without interference" and "freedom of expression", which includes the freedom to seek out, acquire, and disseminate information and ideas of all kinds, without regard to geographic boundaries, whether orally, in writing or in print, in the form of art, or through any other media of his choice.⁸⁹ Article 19 binds the conduct of all stakeholders in Zimbabwe. Additionally, the

88 Lederman D, Loayza N & Soares R (1999) "On the Political Nature of Corruption" in Stapenhurst R et al (eds) *Curbing Corruption: Toward a Model for Building National Integrity* Washington DC: The World Bank at 27.

89 The International Covenant on Civil and Political Rights, art 19.

African Union (AU), of which Zimbabwe is a member, also upholds the right to freedom of expression. The Declaration of Principles on Freedom of Expression in Africa, which serves as a helpful benchmark for any media policy in Africa, was endorsed by the AU's Commission on Human and Peoples' Rights in 2002.⁹⁰ Among others, the declaration states that authorities are required under freedom of expression to take proactive steps to support diversity.⁹¹ It further states that the right to information shall be guaranteed by law.⁹² Broadcasting and telecommunications supervisory authorities should be independent and adequately protected against interference particularly of a political or economic nature to ensure sound media operation.

By providing fundamental rights, developing systems for oversight and responsibility, and outlining the separation of powers, the Constitution offers a strong foundation for media freedom in Zimbabwe. The Constitution of Zimbabwe cites good governance, transparency and accountability as invaluable values that are key to its founding.⁹³ In accordance with these principles the state is mandated to implement legislations and policies that enable good governance in all institutions and agencies of government at every level and in every public institution.⁹⁴ Thus effort must be made to expose, combat and eradicate all forms of corruption and abuse of power by those holding political and public offices. However, to effectively fulfil this mandate, the Constitution also cites the importance of having freedom of expression through various media forums in section 61 of the Constitution of Zimbabwe 2013.

Section 61 of the Constitution provides that everyone has the right to freedom of expression which includes among others freedom to seek and communicate ideas.⁹⁵ In section 61(2) freedom of media is guaranteed which includes protection of journalistic

90 Media Alliance of Zimbabwe (2015) "Media Policy Framework for Zimbabwe", available at <https://westminsterresearch.westminster.ac.uk/download/7f387784677bd9bbb6b4f66852a3ec906d635dc306e6a258f40f9a26c2e97361/473519/MEDIA%20POLICY%20Framework%20for%20Zimbabwe-%20a%20model%5B1%5D.pdf> (visited 31 August 2023) at 2.

91 The Declaration of Principles on Freedom of Expression in Africa, art III.

92 The Declaration of Principles on Freedom of Expression in Africa, art IV.

93 The Constitution of Zimbabwe 2013, sec 3(2)(g).

94 The Constitution of Zimbabwe 2013, sec 3(2)(g).

95 The Constitution of Zimbabwe 2013, sec 61(1)(a).

information such as sources and confidentiality.⁹⁶ When it comes to broadcasting media and electronic media, freedom of establishment is guaranteed. The only permissible conditions are that of adherence to justifiable state licensing procedures.⁹⁷ These licensing procedures include procedures relevant to regulate the airwaves and other forms of signal distribution and must be independent of control by government or by political or commercial interests. The operation of State media should be one that allows for diverging views and opinions the Constitution reiterates in section 61(4).⁹⁸ In this paper the authors contend that freedom of expression and diverging views are aspects that should be promoted, especially in a country such as Zimbabwe, which is riddled by corruption and misgovernance.

Section 62 provides for the right to access to information which is a requirement for the media to effectively contribute to the fight against corruption. Every citizen or permanent resident of Zimbabwe, including legal representatives and the Zimbabwean media, has the right to access any information held by the State or by any institution or agency of government at every level, insofar as the information is necessary for the purposes of public accountability.⁹⁹ Further, it provides for all the stakeholders to have access to information that is privately held for as long as the information is required to protect a right.¹⁰⁰ Moreover, the Constitution also burdens the legislature with the task to enact legislation that gives effect to the right to access to information. This paper argues that access to information is an invaluable privilege that ought to be awarded to media stakeholders for them to effectively wage war against corruption in Zimbabwe.

Legislatively, media law in Zimbabwe is governed by a series of legislation. These laws range from ones that warrants registration and accreditations to ones that govern access to information. However, the application and crafting of these laws has been hugely criticised by domestic, regional and international stakeholders alike. To fully understand why there still exists a challenge for the media to fully expose and challenge corruption in Zimbabwe

96 The Constitution of Zimbabwe 2013, sec 61(2).

97 The Constitution of Zimbabwe 2013, sec 61(3)(a) – (b).

98 The Constitution of Zimbabwe 2013, sec 61(4).

99 The Constitution of Zimbabwe 2013, sec 62(2).

100 The Constitution of Zimbabwe 2013, sec 62(2).

despite the bold assurances rendered by the Constitution, we need to examine some of the most prominent media laws in Zimbabwe.

The Access to Information and Protection of Privacy Act (AIPPA),¹⁰¹ is one of the most prominent media laws in Zimbabwe. It can be argued that it gives and takes the right to access to information. In section 5, the Act provides that every person, including the media, shall have a right of access to any information including a record containing personal information, that is in the custody or under the control of a public body.¹⁰² There is a caveat, however, in the same provision which holds that the right to access to information is subject to the provisions of section 10. In addition to complying with section 10, the information must also not be information that is excluded.¹⁰³ It further goes on to say that the right is not available to persons or organisations deemed to be foreign. Moreover, any media persons that are not registered in accordance with the Act nor licensed in terms of the Broadcasting Services Act [Chapter 12:06] (BSA) do not enjoy the right to access to information granted by section 5.¹⁰⁴ This paper contends that despite the guarantee of the right of persons, including the media to access information, the right is not fully enjoyed. The main reason being that the determination of what amounts to protected information is done potentially by the stakeholders the media ought to scribe against. The accreditation requirements in both the AIPA and BSA are dubious and quite restrictive.

The Broadcasting Services Act [Chapter 12:06] (BSA),¹⁰⁵ is a crucial piece of legislation as it provides for the registration of media stakeholders before they can be permitted to operate within the Zimbabwean jurisdiction. Section 7 provides that no person may provide a broadcasting service or act as a signal carrier in Zimbabwe except in accordance with a broadcasting licence or a signal carrier licence, subject to this Act and the Zimbabwe Broadcasting Corporation Act [Chapter 12:01].¹⁰⁶ This paper contends that the registration

101 The Access to Information and Protection of Privacy Act 2003.

102 The Access to Information and Protection of Privacy Act 2003, sec 5(1).

103 The Access to Information and Protection of Privacy Act 2003, sec 5(2).

104 The Access to Information and Protection of Privacy Act 2003, sec 5(3).

105 The Broadcasting Services Act [Chapter 12:06] (2016 Amendment).

106 The Broadcasting Services Act [Chapter 12:06] (2016 Amendment), sec 7(1).

of stakeholders should be done in a manner that is not arbitrary. In terms of the application of this Act the next chapter will highlight the challenges that make it difficult for media stakeholders to get accreditation particularly if they are deemed to be independent media. That by default renders it difficult for media stakeholders to take their place in the fight against corruption.

It is evident that Zimbabwe has a robust legal framework that is aimed at combatting corruption. However, despite the existence of a robust legal framework, challenges persist in effectively implementing and enforcing anti-corruption laws in the country. In the same vein Zimbabwe has various laws that constitute its legal framework for the media. The contribution of the media in the fight against corruption also faces challenges. These challenges include limited resources, institutional capacity gaps, political interference, and a culture of impunity. Overcoming these obstacles requires sustained efforts and a holistic approach that addresses not only legal aspects but also societal attitudes, ethical standards, and institutional reforms.

4. CHALLENGES FACED BY THE MEDIA IN THE FIGHT AGAINST CORRUPTION IN ZIMBABWE

A free and independent media is crucial in the fight against corruption. Schauseil argues that when it pertains to corruption the media plays three key roles which are to be the watchdog of corruption, to promote integrity and to engage citizens in anti-corruption efforts.¹⁰⁷ However, media freedom is often challenged in Zimbabwe, with restrictive laws, impunity for both crimes against journalists and corruption crimes, intimidation, and censorship hindering the media's ability to operate freely. Consequently, this has jeopardised the role the media plays in the fight against corruption. It is pertinent, therefore, to look at the challenges the media is facing in Zimbabwe in its efforts to combat corruption. For the purposes of this paper focus will be placed on repressive media laws, because all the other challenges are by-products of these repressive laws.

107 Schauseil W, Zúñiga N & Jackson D (2019) "Media and Anti-Corruption" *Transparency International* 1 – 17 at 2.

The foundation for the onslaught of the media in Zimbabwe was laid by the ZANU PF government that viewed independent media as the enemy of the state and puppets of the West. One such instance occurred in 1999 in a case that involved the arrest and torture of two journalists, Ray Choto and Mark Chavunduka who worked for *The Standard News Paper*, for reporting that some senior army officers had been arrested in connection with a coup attempt.¹⁰⁸ In response, the then President of Zimbabwe, Robert Mugabe, spoke on national television saying that the journalists “had through their deliberate and treasonable act invited that reaction. Any media organisation which wilfully suspends the truth necessarily forfeits its right to inform and must not cry foul when extraordinary reaction visits them”.¹⁰⁹ This sentiment laid the foundation for media purging by those in power. The purging process assumes many forms including; suppression of independent media, manipulation of the media narrative, lack of access to information, threats and intimidation and impunity for crimes committed against journalists.¹¹⁰

Suppression of the independent media in Zimbabwe was dawned by the enactment of controversial legislation: The Broadcasting Services Act 2001, passed on 3 April 2001, gives the government very extensive control over private broadcasters.¹¹¹ This was followed by the Public Order and Security Act 2002 (POSA). POSA imposes a number of stringent content restrictions on the media and also poses strict limits on demonstrations and public gatherings. The application of POSA is identical to that of the Access to Information and Protection of Privacy Act (AIPPA), which is equally repressive.¹¹² Despite the fact that the Zimbabwean Constitution guarantees both the right to freedom of expression and assembly, both these Acts tend to thwart these constitutional fundamentals in their application. AIPPA provides that:

108 Chitagu PT (2018) “The Dangerous Game: Relations Between Zimbabwe’s Independent Media and ZANU PF” *Thomson Reuters Foundation* 1 – 44 at 11.

109 Chitagu (2018) at 11.

110 Chitagu (2018) at 11.

111 For example, the influence of the Executive is clear in section 4(2) of the Act which provides that the Broadcasting Authority of Zimbabwe Board “shall consist of not fewer than seven members and not more than nine members appointed by the Minister after consultation with the President and in accordance with any directions the President may give him.”

112 Mukasa SD (2003) “Press and Politics in Zimbabwe” 7(2) *African Studies Quarterly* 171 – 172 at 172.

[A]ny published statement, which is intentionally, unreasonably, recklessly, maliciously or fraudulently false and either threatens the interest of defence, public safety, public order, the economic interests of the state, public morality or public health or, is injurious to the reputation, rights and freedoms of other persons, will be punished.¹¹³

The application of these provisions is open to abuse by the government as it allows officials to suppress independent media. The Media Institute of Southern Africa echoes this notion by observing that the legislation is dangerous and unacceptable as it places limitless powers on the state agencies responsible for controlling the media.¹¹⁴ This results in the direct suppression of the media as it will not be free to report the corrupt activities of those in power.

Similarly, the passing of the Criminal Law Codification and Reform Amendment Bill 2022 on 7 June 2023, commonly referred to as the “Patriotic Bill”, has been met with an outcry in Zimbabwe and abroad. Amnesty International held that “the passing of the ‘Patriotic Bill’ by the Senate is deeply concerning and signals a disturbing crackdown on Zimbabweans’ rights to freedom of expression, peaceful assembly and association”.¹¹⁵ The Bill criminalises anyone caught “wilfully injuring the sovereignty and national interest of Zimbabwe” as well as those who attend gatherings with the goal of advocating calls for economic sanctions against the country.¹¹⁶ If passed, this law would allow for infringement of the human rights to free expression, peaceful assembly, and association. Furthermore, the punishments authorised by the Bill range from loss of citizenship to denial of the ability to vote to the death penalty.¹¹⁷ The wording of this Bill is vague and open to abuse by those in power. This directly jeopardises the role of the media as journalists can easily be targeted in the name of infringing the provisions of the Patriotic Bill if it eventually becomes law.

The passing of these repressive laws is a direct onslaught on the effectiveness of the media in the fight against corruption in Zimbabwe. The laws, cumulatively, results in a high degree of control on the part of the government over the flow of information and a

113 The Access to Information and Protection of Privacy Act Chapter 10:27, secs 64 & 80.

114 Mukasa (2003) at 172.

115 Amnesty International (2023) “Zimbabwe: Parliament’s Passing of ‘Patriotic Bill’ is a Grave Assault on Human Rights”, available at <https://www.amnesty.org/en/latest/news/2023/06/zimbabwe-parliaments-passing-of-patriotic-bill-is-a-grave-assault-on-the-human-rights/> (visited 12 July 2023).

116 Amnesty International (2023) “Zimbabwe: Parliament’s Passing of ‘Patriotic Bill’.

117 Amnesty International (2023) “Zimbabwe: Parliament’s Passing of ‘Patriotic Bill’.

corresponding shrinking of the space for freedom of expression in Zimbabwe. One could argue that the rights awarded to the media are not absolute just like any other rights available to individuals. Consequently, the right to freedom of expression is not absolute. However, the limitation of this right has to be done justifiably. The authors contend that the limitation of the right to freedom of expression, access to information and a host of other media rights in Zimbabwe is not justified as highlighted by the flawed application of media laws. The Declaration of Principles on Freedom of Expression in Africa provides in Article II, no one shall be subjected to arbitrary interference with his or her freedom of speech. Any restrictions on freedom of expression must be granted by law, serve a legitimate interest, and be required in a democratic society.¹¹⁸

The Article in its second part lays down a test that ought to be passed for the justifiable limitation of, among others, freedom of expression. First, it proposes that limits on freedom of expression must be based on a law enacted by parliament and cannot be imposed by a presidential decree or in a similarly undemocratic fashion.¹¹⁹ Secondly, the limitation must protect a legitimate interest, for example the right to privacy.¹²⁰ Additionally, the restrictions on freedom of expression must be necessary in a democratic society, that is, essential to address a pressing social need; the restriction must be proportionate to the aim, and the reasons given to justify the restriction must be relevant and sufficient.¹²¹ Although the repressive media laws in Zimbabwe are made by parliament they fail to satisfy the last two requirements laid down by article 11 of the Declaration of Principles on Freedom of Expression.

5. LESSONS FROM SOUTH AFRICA

Thus far, the article has demonstrated that the media in South Africa and Zimbabwe share certain similarities but also several differences. This section focuses on the main lessons that Zimbabwe can learn from the South African regime.

118 The Declaration of Principles on Freedom of Expression in Africa, art 11.

119 The Declaration of Principles on Freedom of Expression in Africa, art 9(a).

120 The Declaration of Principles on Freedom of Expression in Africa, art 9(b).

121 The Declaration of Principles on Freedom of Expression in Africa, art 9(c).

A big difference that affects media freedom between the two countries is the political landscape. While South Africa suffered from the horrors of apartheid, Zimbabwe gained independence and flourished for a period of time. South Africa's transition from a failed state to a democracy was fast and enlightening. The media went from having limited freedom to unlimited freedom. The situation in Zimbabwe, however, deteriorated as the global community started to withdraw its support from Zimbabwe during the 1990s.¹²² Many foreign journalists also retreated from Zimbabwe after Mugabe launched a propaganda war against the media in 1992.¹²³ It is argued that the Zimbabwean government must reconsider its aggressive stance towards journalists and start practising respect and dignity for the media. This has been done in the case of South Africa as the media fulfils an important role in exposing grand corruption, as seen with state capture, even though the government did try to regulate the press after President Zuma became president, however, such initiatives failed.

It failed because South Africa has a self-regulated press. The situation is vastly different in Zimbabwe. Zimbabwe should also adopt a self-regulatory system, adopt press codes and have bodies such as SANEF. South African media laws are not weaponised. The situation in Zimbabwe is a complete contrast. The laws that ought to guarantee media freedom are curved, in their application, to purge the media. Zimbabwe should adopt the South African approach where there is a rational nexus between the law and the purpose of their enactment. Additionally, courts in South Africa are renowned for their independence. The Constitutional Court has made sound decisions against high profile individuals including the former President Jacob Zuma and the former police commissioner Jacob "Jackie" Selebi.¹²⁴ In Zimbabwe the high and mighty are usually beneficiaries of impunity when it concerns grand corruption. The recent gold mafia scandal is testamentary, as high-profile individuals such as Ambassador Hubert Angel and even the President of Zimbabwe Mr

122 See generally Munangagwa CL (2009) "The Economic Decline of Zimbabwe" 3 *Gettysburg Economic Review* 110 – 129.

123 Louw R (2001) "Zimbabwe: Silencing the Media" 18(1) *Indicator SA* 83 – 88 at 83.

124 New York Times (2015) "Jackie Selebi, South Africa Police Head Convicted in Corruption Case, Dies at 64", available at <https://www.nytimes.com/2015/01/24/world/africa/jackie-selebi-south-african-police-head-convicted-in-corruption-case-dies-at-64.html> (visited 12 October 2023).

Emmerson Mnangagwa were implicated in the scandal, but no one was convicted or brought to account.¹²⁵

South Africa has also established various commissions of inquiry that were aimed at investigating corruption. These commissions have contributed positively towards the exposure of corruption. Some of these commissions were established due to the investigative work done by the media to expose corruption, such as state capture. The Judicial Commission of Inquiry into Allegations of State Capture, known as the Zondo Commission, was the most effective commission of inquiry to date.¹²⁶ What these commissions do, among other things, is to create public awareness of the nature and extent of corruption in that jurisdiction during the period of the commission and after.¹²⁷ Zimbabwe should incorporate the practise of commission of inquiries as it allows a judge to examine extensively whether corruption has been committed in a certain case and allows the media to report about this corruption during the commission.

The media in Zimbabwe is occasionally harassed by the police. While the Zimbabwean Constitution protects the rights of the media from being harmed and harassed, the enforcement of these rights is lacking. In South Africa, while there have been several cases of harassment of journalists, such cases usually end up in court or receive widespread media attention.¹²⁸ The South African Police Service (SAPS) and other law enforcement agencies are also well aware of the consequences of harassing or harming a member of the media. Standing Order (General) 156 of SAPS concerning media communication provides that “a media representative may not be prohibited from taking photographs or making visual recordings”.¹²⁹ Zimbabwe should include such a provision in their media freedom legislation to ensure that law enforcement has no right to harass media.

125 The Africa Report (2023) “South Africa probes ‘Gold Mafia’: Another Wild Goose Chase?”, available at <https://www.theafricareport.com/309741/south-africa-probes-gold-mafia-another-wild-goose-chase/> (visited 12 October 2023).

126 This Commission of Inquiry is known as the Zondo Commission since it was chaired by the then Deputy Chief Justice, Raymond Zondo. Zondo is currently the Chief Justice of South Africa.

127 Peté SA (2020) “Commissions of Inquiry as a Response to Crisis: The Role of the Jali Commission in Creating Public Awareness of Corruption (part 1)” 41(4) *Obiter* 903 – 925 at 908.

128 See, for example, *South African National Editors' Forum and Others v The Economic Freedom Fighters and Others* [2019] ZAEQC 8 (24 October 2019).

129 Sec 3(a) of the Standing Order (General) 156: Media Communication in the South African Police Service.

Finally, Transformative Constitutionalism in South Africa has contributed towards this notion of ensuring that the Constitution is the supreme law and that individuals, including the media, are afforded the rights included in the Bill of Rights.¹³⁰ The Judiciary of South Africa should be commended for protecting the rights of the media. The Constitutional Court has ensured over the last few decades that the rights of the media are respected and protected. In *Print Media South Africa and Another v Minister of Home Affairs and Another*, the Constitutional Court held that one:

[C]annot neglect the vital role of a healthy press in the functioning of a democratic society. One might even consider the press to be a public sentinel, and to the extent that laws encroach upon press freedom, so too do they deal a comparable blow to the public's right to a healthy, unimpeded media.¹³¹

This indicates that the media has the backing of the judiciary even though the executive and the legislature have tried to suppress the media in the past. This support, by merely declaring the importance of media freedom in South Africa, is something that the Zimbabwean Judiciary should also strive towards. Lawyers should be encouraged to challenge limited media freedom cases to ensure justice for the media in Zimbabwe. A culture of media freedom in Zimbabwe can only be fostered if the suppressive laws are declared unconstitutional by its judiciary.

6. CONCLUSION AND RECOMMENDATIONS

The media serves its people and "their freedom provides for independent scrutiny of the forces that shape society, and is essential to realising the promise of democracy. It enables citizens to make informed judgments on the issues of the day".¹³² South Africa and Zimbabwe have failed their citizens in relation to social justice and the full realisation of media freedom with the goal of combating corruption. In South Africa, to report grand corruption has become a life-threatening endeavour as whistleblowers live in constant fear. In Zimbabwe, journalists have been imprisoned for speaking out against corruption. There is

130 See generally Kibet E & Fombad C (2017) "Transformative Constitutionalism and the Adjudication of Constitutional Rights in Africa" 17(2) *African Human Rights Law Journal* 340 – 366.

131 *Print Media South Africa and Another v Minister of Home Affairs and Another* 2012 (12) BCLR 1346 (CC) para 54.

132 Preamble of the Press Code of Ethics and Conduct for South African Print and Online Media, 2022.

a serious problem here and nothing is being done about it. The goal of this article was not to provide multiple solutions to solve the above issues, but to rather focus on how Zimbabwe could strengthen its fight against corruption by using its media and how South Africa can provide certain lessons for Zimbabwe in realising media freedom.

While this article has highlighted the importance of protecting media freedom, the fight against corruption requires a holistic effort. The exposure of corrupt offenders in the media has to be followed up by robust prosecution, free from any undue influence. The media and the prosecuting authorities in South Africa and Zimbabwe should be independent and protected from threats. Zimbabwean laws that weaponise media freedom should be abolished and replaced with legislation that cherishes and protects the freedom of journalists. The rise of the free press comes with its own challenges including the protection of whistleblowers. In addition, South Africa and Zimbabwe must reconsider their approach to protecting whistleblowers as the current model is insufficient. It is argued that if whistleblowers are not going to receive optimal protection in the future, the role of the media in combating corruption will be diminished. Media freedom also requires serious reform at a regional level. The African Union should lead the way. In a positive development, in September 2022, the African Union Advisory Board Against Corruption met with journalists across the continent to build capacity.¹³³ The African Union should continue to call for the eradication of corruption and make it an important item on the Agenda at its annual summit. Also, in June 2023, the South African Department of Justice and Constitutional Development published a document for public comment, known as the Discussion Document on Proposed Reforms for the Whistleblower Protection Regime in South Africa.¹³⁴ This is a promising step in further safeguarding the rights of whistleblowers who include members of the media. Zimbabwe should embark on a similar exercise to indicate their willingness to protect the rights of the media.

133 African Union (2022) “The Role of the Media in Advancing Anti-Corruption Practices Remains Critical: AUABC”, available at <https://au.int/en/pressreleases/20221017/role-media-advancing-anti-corruption-practices-remains-critical-auabc> (visited 29 August 2023).

134 See Department of Justice and Constitutional Development (2023) “Discussion Document on Proposed Reforms for the Whistleblower Protection Regime in South Africa”, available at <https://www.justice.gov.za/legislation/invitations/20230629-Whistleblower-Protection-Regime.pdf> (visited 23 October 2023).

In an ideal world, we envisage all African governments and the media work together to fight corruption. If a serious divide between government institutions and the media is unavoidable, then at least we should strive for a media regime that has the ability to combat grand corruption without fear and favour.