



ZIMBABWE MEDIA DEFENCE SEMINAR REPORT

8 November 2023

Meeting Venue: Bronte Garden Hotel, Harare

The Campaign for Free Expression (CFE) and Media Defence London, in collaboration with the Zimbabwe National Editors Forum (ZINEF) on 8 November 2023 held a Media Defence Seminar focusing on legal cases against journalists and publications.

Purpose of the meeting:

1. To analyse the environment in which journalists operate and identify the enabling factors behind Strategic Litigation Against Public Participation (SLAPP) cases.
2. To discuss the availability of a Media Defence Fund, application process and selection criteria.

The meeting attracted 36 participants, mostly journalists drawn from Zimbabwe's mainstream media including, The Zimbabwe Independent, Newsday, Newshawks, The Standard, Star FM, New Zimbabwe.com, Zimlive.com, ZiFM, Zimbabwe Now. Prominent among the 36 participants was award-winning Zimbabwe editor, Geoffrey Nyarota, the former editor of the old Daily News.

In opening, CFE Executive Director, Anton Harber introduced CFE and outlined the organisation's projects in Botswana, South Africa, Eswatini, and its plans for Zimbabwe - which include lobbying, research, campaigning, and providing funding to journalists fighting legal cases.

1. Unpacking the legal challenges faced by journalists and publications in Zimbabwe

Facilitator: Lynette Manzini, Open Parly Editor

Journalists bemoaned the repressive media laws such as the Cyber and Data Protection Act which have seen the arrests of several journalists. Leo Munhende, one of the victims of this piece of legislation said that it is the government's favourite weapon to cow journalists and their publications. There was a general consensus among participants that there were numerous challenges faced by the media, either legal in nature or non-legal but perpetuated by the legislative environment.

Some of the challenges mentioned were:

- Defamation, privacy and shield laws.
- Journalists reported being forced to reveal their sources
- Hate speech/Online harassment. Publishing stories critical of the government can lead to backlash on and offline.

- Political polarization of the media industry – journalists reported being forced to report positively on issues known to affect citizens negatively.
- Interception of communications – Internet shutdowns and surveillance without judicial oversight
- Unbalanced coverage of stories in favour of the ruling party.
- Self-censorship due to fear of being targeted.
- Arbitrary arrests

2. Analysis of the Political Environment and its influence on Press Freedom

Presenter: Nigel Nyamutumbu, Media Manager and head of Secretariat, the Media Alliance of Zimbabwe (MAZ).

Nyamutumbu gave an incisive and comprehensive analysis of Zimbabwe's prevailing political climate and its impact on press freedom. Nyamutumbu noted that Zimbabwean media was in a bad state owing to a myriad of challenges among them self-censorship, corruption, bribe-taking, harsh media laws and a toxic political climate. He said the bad economy – a direct result of poor governance - was wreaking havoc in the media industry, with the print media suffering from low circulation and poor advertising revenues.

Closed society/Political Pressure

He pointed out that bureaucracy in Zimbabwe remains a structural impediment to access to information, adding that Zimbabwe remains among the most closed societies in the world. Nyamutumbu noted that while on one hand there are indicators of progress, such as the increasing number of licensed broadcaster, there are systemic challenges that claw back against prospects of transforming Zimbabwe's media sector. He further noted that legal provisions are largely ignored and there is minimum respect for the professional code of conduct, pointing out that the media in Zimbabwe is structurally too weak to withstand political pressure and the legislative mechanisms are inadequate to respond to the current and emerging challenges.

Media Capture

There is conflation of all arms of the state to control the media. In what he described as state capture, Nyamutumbu said Zimbabwean media was largely in the hands of the state and ruling political elite in ZANU PF. Some of them also have significant stakes in private broadcast and print media. Nyamutumbu noted that events of November 2017 which parachuted President Emmerson Mangangwa into power courtesy of a military coup laid bare the structural deficits of Zimbabwean media. He asserted that the ruling elite directly dictate editorial content. While there has not been further interrogation on the frequency and extent at which there is this form of control of the media, the country's legislative framework provides space for entrenching media capture by the ruling elite.

Legislative controls

Nyamutumbu said the legislative environment in Zimbabwe's media industry has been at the heart of contestations. He noted that in Zimbabwe, statutory regulation had not been about

enforcing journalistic standards but more as a measure against dissenting voices and/or critical media. As a result, the laws introduced at the height of political contestations in the country such as the Access to Information and Protection of Privacy Act (AIPPA) and the Broadcasting Services Act (BSA) have been legacy reform issues that continue to curtail any meaningful growth of the sector.

While AIPPA has been repealed, he said there are remnants of legacy issues such as media regulation and criminalization of journalism that continue to stall progress towards realization of rights to media freedom, access to information and freedom of expression. He referenced media co-regulation, a principle which was approved by cabinet, noting that the progress in realizing the agreed principle has been slow and there is no clarity on the mechanisms of how the merged regulation of statutory and self- regulation will work.

Criminalization of free speech

Nyamutumbu said criminalization of free speech still finds expression in the country's statutes as obtained in the Data Protection Act and the Criminal Law Codification and Reform Act, which recently added patriotic provisions whose ambiguity threatens the enjoyment of freedom of expression.

Lack of independence of the broadcasting regulator

While the proposed amendments to the Broadcasting Services Act is a commendable development, the broadcasting regulatory framework must be independent of interference. Currently, the law bestows excessive powers on the Minister. He said there must be defined frameworks for licensing of broadcasters to safeguard against long waiting periods for new actors. Moreover, there is need to safeguard against single owners holding multiple frequencies to ensure that there is media diversity and not the obtaining scenario where the channels of expression are largely confined in a few hands.

3. Analysis of the Legal Landscape

Presenter: Douglas Coltart, Human Rights Lawyer and Member of the Zimbabwe Lawyers for Human Rights.

Coltart unpacked the existing legal provisions related to freedom of the press including defamation laws, national security legislation and media self-regulation. Although the Zimbabwe constitution provides for freedom of expression, some laws “limit” these freedoms. Coltart narrated how the government turned to alternative laws to arrest, harass, and intimidate journalists after it was forced to repeal the Access to Information and Protection of Privacy Act (AIPPA).

Repressive law via the backdoor

The Access to Information and Protection of Privacy Act (AIPPA) is a draconian piece of legislation struck off the statutes, but Coltart noted that the government was using new statutes to bring back, by the back door, some provisions of the old bad. Coltart mentioned several journalists that have been arrested and detained as a result, that he has represented – sometimes being detained with them.

Weapon against free expression

He noted that the Cyber and Data Protection Act and the Freedom of Information Act of 2021 are being weaponized to disproportionately regulate online media, noting that several Zimbabwean journalists have fallen victim to this piece of legislation, including well-known journalist turned political activist Hopewell Chin'ono.

4. Media Defence

Presenter: Hanna Uihlein, Media Defence London

Uihlein, who presented virtually, introduced the Media Defence fund, touching on the organizational background, criteria for cases, and the application process. News about the existence of the fund was welcomed with appreciation and participants expressed keen interest to utilize it.

Below are the criteria given for the funding of cases:

1. Emergency defense

To ensure quality legal representation is available to journalists by paying legal fees, connecting them to a lawyer if they do not have one, and providing those lawyers with technical legal support.

2. Strategic litigation.

Media Defence takes on strategic cases to challenge unjust laws or policies used to silence journalists. They identify and pursue cases that offer an opportunity for broader impact or systemic change that will benefit media freedom.

3. Training

Targeting community lawyers interested in taking up cases to defend the media, Media Defence builds local legal capacity to provide journalists around the world with the best possible legal defence.

4. Partners

Media Defence builds local capacity by providing financial assistance and practical support to organizations that either have or wish to establish a legal aid unit to provide free, high quality legal support to journalists and media outlets facing legal threats.

Beneficiaries

Uihlein said that the support outlined above is available to independent media outlets, journalists, bloggers, broadcasters, photojournalists, cartoonists and fact checkers.

Supported cases

Among others, Media Defence can support cases on civil defamation/ libel, criminal defamation/ libel, insult, arbitrary detention, false news, protection of sources, access to information, closure of a media outlet, physical reporting restrictions and sedition.

Not supported

Among those excluded are labour law cases, cases brought by a journalists against another journalist or media outlet, relocation/ asylum requests, closed cases (judgment handed down), cases not related to a journalistic activity, general support/ equipment/ health expenses etc

Procedure

Ms Uihlein explained that the amount awarded, averages between GBP 1,000 and GBP 2,500, and varies according to the country, the type of case, the court etc. She outlined the application procedure, grant assessment, review by Media Defence in-house lawyers (up to two weeks), the approval process and eventually the stages for the release of the funds in two instalments (half when the case is approved and the offer letter signed, and the balance on receipt of a copy of the judgment).

5. Fighting SLAPPS: Taking on the new form of censorship: Lawfare

Presenter: Anton Harber, CFE Executive Director

Harber focused on strategies for journalists and their media houses to counter SLAPP suits. Harber described SLAPPS as “baseless legal actions increasingly being used by governments and large corporates to intimidate and harass those who speak out against them – including activists and journalists.” He added that SLAPPS destroy free expression and are a threat to democracy.

Harber highlighted that there is a balance that must be struck by the courts between the right to protect one’s reputation and the right to freedom of speech. He outlined various reasons why journalists ought to protect themselves from frivolous actions intended to cow them from doing their work, among them, to protect the right to freedom of information by protecting those who report on issues of public interest.

Harber went named countries that have introduced anti-SLAPP legislation, such as Australia, 32 states in the United States of America and most states in Canada; alluding that Southern African countries should adopt such a stance too.

Tips that he offered to participants to push back on SLAPPS were to:

- Organise a concerted response to this growing threat to media freedom.
- Gather and share information about SLAPP cases.
- Draw on international support and precedent in organising such a response.
- Introduce the notion of SLAPP in courts and in human rights discourse; ensuring that lawyers and judges are aware of and make use of the growing precedents to stop SLAPPS.
- Start pushing for anti-SLAPP legislation or court procedures. This could be done at the continental level (AU), the regional level (SADC) or in each country.

During the plenary sessions, participants discussed the escalating trends of legal actions against journalists and publications in Zimbabwe and other Southern Africans concluding that in most cases they hesitate to report cases of violation because they have no confidence in the justice system. They highlighted donor fatigue as one of the underlining causes of regression in the operating environment of the sector; arguing that those that used to come to their defence have lost passion due to lack of resources.

Strategies on how to foster regional collaborations were discussed with a consensus to inaugurate such a platform in Zimbabwe and then link it with others in southern Africa where CFE is working.

Other suggestions made were as follows:

- To broaden the criteria for media defence cases, to consider supporting litigation featuring journalists or media organisations against each other.
- To establish a regional CFE network of independent journalists and media organizations that can start a movement against SLAPP cases and collaborate on campaigning for relevant laws.
- Raise awareness around SLAPP cases among journalists, policymakers and members of the judiciary.
- Public service media to have holistic legislative and policy interventions aimed at guaranteeing editorial independence and rebuilding trust. It was noted that the supreme law provides for the conduct of state media. What lacks however is enabling legislation and policy frameworks that provide for practical steps towards implementation of these constitutional provisions.

Overall, the seminar was a huge success - a much needed and timely intervention that participants described as informative. Wallace Mawire, one of the journalists present at the meeting - the coordinator of a loose network of freelance journalists known as Media Initiative on Peace, and writer for Pan African Visions, an online publication - applauded the CFE for bringing the seminar to Harare. He pointed out that freelancers are especially affected by SLAPPs since most of them do not have adequate resources to defend themselves.

Owen Gagare, the News Editor of Newshawks, one of Zimbabwe's leading investigative online publication and chairperson of the Zimbabwe Investigative Network, described the meeting as "great." "We got to understand more about SLAPPs and that it is a tool used by authoritarian regimes the world over," said Gagare. He added that frivolous and vexatious litigation was adversely affecting Zimbabwe's media organisations and the entire media landscape. He highlighted that the biggest SLAPP suit that his organisation received was from Impala Car Hire, a private car rental service company suspected to have close links with President Emmerson Mnangagwa's dreaded Central Intelligence Organization (CIO). The story exposed how the car rental company's vehicles are utilized for CIO abductions of opposition supporters and other perceived enemies of President Mnangagwa and the ruling ZANU PF.

Garage said Newshawks and other independent news publications appreciated the Media Defence Fund facility, adding that it would be handy in dealing with frivolous lawsuits by the political elite and big business.

Veteran journalist, Geoffrey Nyarota, said that he had been a victim of litigation within the Zimbabwe media sector for years, to the point of becoming impoverished.

CFE Executive Director, Anton Harber closed the meeting by thanking all participants for their contributions and announcing the organisation's plans to develop a campaign for media defence and enhanced protection of freedom of expression in Zimbabwe. To kick start this process – he announced plans to hold a Freedom of Expression Summit in Zimbabwe in 2024.

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