

**DEFAMATION OF THE PRESIDENT AND THE LAW'S EFFECT ON MEDIA
PERFORMANCE: A STUDY OF THE ZAMBIA DAILY MAIL AND THE POST
NEWSPAPER**

**By
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requirements for the Degree of Master of Mass Communication**

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DECLARATION

I, KAMUFISA MANCHISHI, do solemnly declare that this dissertation has not been submitted for a degree in this or any other university. I further declare that the information contained is my own research and where material is borrowed, due attribution is given.

Signature :.....

Date :

APPROVAL

The dissertation of KAMUFISA MANCHISHI is approved as partial fulfilment of the requirements for the award of Master of Mass Communication (MMC) Degree by the University of Zambia.

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ABSTRACT

Zambia has had several Constitutional review initiatives since pre-independence times. However, these initiatives have not brought about the much needed media reforms, thus allowing the existence of colonial legislation such as the Penal Code, which contains several provisions, among them the law on defamation of the President. As such, this study undertook to establish the effect of defamation of the President on media performance by observing key indicators in relation to coverage, portrayal and treatment of the President in news stories in The Daily Mail and The Post newspapers. The study also aimed to establish the rationale of the law on defamation of the President.

In that regard, a content analysis of six hundred hard news stories about the President was conducted from March to June, 2016. Additionally, eight in-depth interviews were conducted with individuals from relevant sectors pertaining to media performance in Zambia.

Despite the limitations posed by the law, the majority of the stories in the Daily Mail and The Post were still able to carry certain themes such as the performance or competence of the President. With regard to framing, the stories in the two newspapers are on opposite ends of the continuum. Whereas an extremely high number of stories analysed in the Daily Mail commend and portray the President as a hero, the stories in The Post are critical and portray the President as incompetent. Similarly, The Post newspaper was able to ‘defame’ the President, according to the operationalisation of the law, while the Daily Mail only carried stories in approval of the Presidency. Other findings under the story treatment/placement, sources and use of pictures as accompaniment to stories also corroborate this study’s conclusion.

The findings of the dissertation challenge theoretical assumptions that agenda setting and news framing by the media is highly dependent on the limitations posed by the law. The study concludes that the law is irrational and has lost its relevance as it does not meet the minimum benchmarks to be reasonably justifiable in a democratic political system like Zambia.

The study also concludes that media performance (defined by the watchdog role) and media’s framing of coverage or news stories about the President is affected by several factors other than the law alone. These factors, particularly political polarisation, ownership and business interests have more damaging effects on media performance and thus affect the watchdog role, news framing and agenda setting and not necessarily the law on defamation of the President.

DEDICATION

To my parents, Dr. Peter Chomba Manchishi and Mrs. Rita Chiwaya Manchishi who have supported and encouraged me throughout my educational journey from my first day in kindergarten to the day that I wrote the very last word in this dissertation. I would not have made it without your perseverance and unwavering support financially, morally and otherwise.

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LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and People's Rights
ACHR	American Convention on Human Rights
ADFEP	African Declaration on Freedom of Expression Principles
AFRIMAP	Africa Governance Monitoring and Advocacy Project
ANC	African National Congress
ECHR	European Convention on Human Rights
CRC	Constitutional Review Commission
CSO	Central Statistical Office
Cth	Commonwealth
DPP	Director of Public Prosecutions
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
IDEA	International Institute for Democracy and Electoral Assistance
IIDD	International Institute for Democracy and Development
IPI	International Press Institute
MIBS	Ministry of Information and Broadcasting Services
MISA	Media Institute of Southern Africa
MMD	Movement for Multiparty Democracy
MLDI	Media Law Development Initiative
NCC	National Constitutional Conference
NPP	National Progressive Party
PANOS	PANOS Institute Southern Africa
PAZA	Press Association of Zambia
TCDZC	Technical Committee on a Drafting the Zambian Constitution
TIZ	Transparency International Zambia
UFP	United Federal Party
UK	United Kingdom
UNIP	United National Independence Party
UPP	United Progressive Party

UDHR	Universal Declaration on Human Rights
UNZA	University of Zambia
US	United States
ZDM	Zambia Daily Mail
ZIMA	Zambia Independent Media Association
ZLDC	Zambia Law Development Commission
ZLII	Zambia Legal Information Institute
ZimLII	Zimbabwe Legal Information Institute

CHAPTER ONE

INTRODUCTION

1.1 Overview

The study was an undertaking to establish the effect of the law on defamation of the President on media performance by observing key indicators in relation to coverage, portrayal and treatment of the President in news stories in The Daily Mail and The Post Newspapers. This was based on theoretical assumptions under the agenda setting and framing theories of mass communication. The study also aimed to establish the rationale of the law on defamation of the President.

As such, this chapter presents a background of the study in relation to various aspects of the law on defamation of the President and media performance. The chapter also explains the framework of the study through the statement of the problem, objectives, research questions, purpose and significance, among others. Further, the chapter outlines the study's limitations in order to provide a context within which the problem was considered. Also, the study presents the conceptual and theoretical framework that guided the study.

1.2 Background

Zambia is a landlocked country located in Southern Africa to the east of Angola with a total area of 752, 618 square Kilometres, a population of 13, 092, 666 and an urban population of 5,173,450 (CSO 2012).

At the time of this research, there were, according to the Independent Broadcasting Authority (2016), ninety-four radio stations and thirty-three television stations broadcasting in the country, categorised as commercial, community, religious, and freelance.

Additionally, there were, also, at the time of this study, five major daily newspapers, namely the *Zambia Daily Mail*, *Times of Zambia*, *The Post*, the *Daily Nation* and *New Vision* out of a total of six hundred and thirty-five publications registered with the National Archives of Zambia.

According to the 2015 Freedom of the Press ranking, Zambia ranked “not free” with among others, a press freedom score of 62 (0=best, 100=worst), a legal environment score of 18 (0=best, 30=worst) and a political environment score of 25 (0=best, 40=worst), indicative of the state of the general media landscape in the country (Freedom House 2015).

On a similar score, in the Zambian Constitution, the only provision that empowers the practice of journalism, albeit impliedly, is Article 20 on the protection of the freedom of expression, with Article 20 (2) specifically providing for the override of any laws that derogate from the ‘freedom of the press’.

Notwithstanding, the Constitution, which is the supreme law, sets the general criteria for constitutional limitations in Article 3 for the protection of rights and freedoms as well as the protection of the public interest.

Other pieces of subsidiary legislation present specific limitations to the freedom of expression and consequently of the press. Among these statutes is the Penal Code, Chapter 87 of the laws of Zambia, which codifies criminal law. The code contains several provisions that some, such as Kantumoya (2004:87), have described as having a potential threat to the practice of journalism in general.

One such provision is Section 69 on defamation of the President, which states that *“any person who, with intent to bring the president into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable upon conviction to imprisonment for a period not exceeding three years”* [The Penal Code Act of 1965 (Cth) s69].

It is the effect of this law on media performance specifically at The Post and Zambia Daily Mail newspapers that this researcher set out to investigate as outlined in the various chapters of this study.

1.2.1 A Brief History of the Press

The first newspaper published in Zambia (erstwhile Northern Rhodesia) was the Livingstone Pioneer in 1906, with very little known about it other than it being a “partly hectograph and partly print” newspaper published on a weekly basis for a few months by its owner, W. Tranter (Kasoma 1986:34).

The Pioneer was succeeded by other newspapers for the white settlers at the time, such as what seemed to be a rival publication, the Livingstone Mail, set up by Leopold Frank Moore. Kasoma (1986:34) describes Moore as a politically ambitious chemist. The Livingstone Mail had advertising taking up as much as ninety per cent of its space, leaving only ten per cent for news.

The Livingstone Mail carried no stories about Africans unless they were of direct concern to the white settlers (Kasoma 1986:35). It was clearly a newspaper for the white settlers, often taking up the role of consolidating the superiority of the white settler community at the time. Other newspapers for the white settlers included the Northern Rhodesian Advertiser which was established in 1935 by an F. Mackenzie and the Northern News in 1943, which for sixteen years (1953-1969) was the only daily newspaper in the country. The Northern News later became the Times of Zambia, which is currently a state owned newspaper.

In that regard, Banda (2004:15) notes that the press in Zambia, like other countries on the continent, is a legacy of the country's colonial past with its development directly or indirectly linked to the colonial objectives of the British empire, which were mainly to consolidate its power.

The first government newspaper in Northern Rhodesia was established in 1936 and was called the *Mutende* or the African Newspaper. The *Mutende* took up an educational role of teaching Africans the idea of a newspaper as a tool for communicating news. This was because radio had not yet come to the territory and the traditional news communication media, the drum, smoke and fire were almost obsolete, explains Kasoma (1986:63).

The *Mutende* was superseded by another newspaper, the African Eagle, which existed from 1953 to 1962 during a period that witnessed the establishment of privately owned newspapers for the Africans. Among the privately owned newspapers were the African Times which was published by Dr. Alexander Scott in 1957 and the African Life Newspaper which was published and edited by Sikota Wina (the first African to publish a newspaper in Northern Rhodesia) in 1958 with the paper mainly serving as a UNIP mouth-piece.

Later, Dr. Alexander Scott, with financing from David Astor and the help of Richard Hall established African Mail Limited, the company that published the Central African Mail in 1960. The UNIP government bought off the Central African Mail in 1965 as a weekly newspaper and later transformed it into a daily publication in 1969 under the name *Zambian Mail*. Eventually the paper changed its name to the *Zambia Daily Mail* in 1983 with a circulation of 35, 400 copies according to figures recorded in Kasoma (1986:126).

In its formative years, the *Daily Mail* was outspoken, hard hitting and usually critical of government, notes Kasoma (1986:129). The paper maintained an editorial policy that was somewhat critical of the government, often contradicting official government thought as well as scrutinising prominent politicians despite the paper being an official government organ.

The Zambia Daily Mail often published hard hitting editorials, usually departing from the conventional style of a state owned newspaper at the time, where the President and the government were given prominence. For example, Kasoma (1986:177) observes that between 1976 and 1983 the Daily Mail only carried 398 lead (headline) stories of President Kaunda as compared to 2, 082 lead stories of other sources that were critical of the government.

The independence and critical reportage of the Daily Mail was short lived as the government later succeeded in influencing and controlling the editorial content of articles published in the paper (Chirwa 1997:7). The government enjoyed firm control as public media heads were appointed by the President and, consequently, any erring media head or journalist behind the publication of articles criticising the party (UNIP) and its government was disciplined.

Today, the Zambia Daily Mail exists mainly as a state owned and controlled newspaper with a print run of around 20, 000 and several bureaus across the country, according to information obtained from the Zambia Daily Mail. Other sources, such as the Africa Governance Monitoring and Advocacy Project (AFRIMAP) in Muchangwe (2011:6) placed the Mail at a circulation of 8, 500 in 2010 although circulation figures are not easily verifiable.

Makungu (2004:5) notes that after Zambia gained its independence, the ruling UNIP government generally increased its control over the mass media and shaped it to pander to the whims of the party and its government which ruled up to 1991 when the Movement for Multiparty Democracy (MMD) won the first multi-party elections after 17 years of one party rule. Kasoma (2000:213) confirms this by stating that:

The press in Africa had been firmly established to continue playing a role in politics which was mainly as a government information tool. As the newly independent countries grew older and their governments took on a more centralised authority which was soon to culminate in one party or military rule, in the 1970s and 1980s much of Africa's independent journalism died, leaving a sycophant press which gloried the leaders into deities of sorts.

In general, the mass media in Zambia historically functioned as a tool of the ruling class, to help it mobilise people, purportedly for the economic and social development of the country, but in reality, to help it remain in power (Makungu 2004:5).

The character of papers such as the Zambia Daily Mail and Times of Zambia which were critical in the immediate post-colonial period is quite similar to that of The Post, which is one of the newspapers under this study's consideration.

The Post Newspaper came to the fore at the height of the campaign for a return to multiparty democracy in Zambia in the early 1990s. The publication, which was clearly against UNIP, initially set out as an investigative newspaper, Banda (2004:52) states. The Post sought to promote the reform groups that emerged after Zambia's first President, Dr. Kenneth Kaunda lifted the ban on political pluralism. The Post, therefore, distinguished itself as the precursor of "secular independent journalism" in Zambia.

The idea to set up the Post was initiated by a print media consultant, Matsauso Phiri, along with two veteran journalists, John Mukela and Micheal Hall, who initially conceptualised the idea of The Weekly Post. The three later linked up with Fred M'membe, then an accountant at an auditing firm KPMG as none of them had the necessary business background to ensure that the newspaper would be financially viable (Chama 2014:61; Mungonge 2007:36,37).

Subsequently, The Post Newspaper limited was officially registered as a private company, while its sister company, Independent Printers Limited was registered as a private publishing company, thereby commencing the publication of The Weekly Post on 26th July, 1991. Later in November 1993, the paper was renamed to The Post Newspaper and increased its publication to Tuesdays and Fridays. In 1995, the paper finally became a daily tabloid and set the record as the second newspaper to go online in Africa, after South Africa's Mail and Guardian (Chama 2014:62).

Several scholars such as Banda (2004:53), Chama (2014:62) and Mungonge (2007:37) record that The Post was initially set up with an investment of USD 25, 000 mobilised from various people who at the time included Anderson Mazoka, Theo Bull, Simon Zucas, Bodwin Nkumbula, Arthur Wina, Ronald Penza and Enock Kavindele, among others.

Banda (2004:52) states that the newspaper eventually split shareholding among the founders and some investors (such as Ronald Penza and Enock Kavindele), with Fred M'membe later emerging as the majority shareholder and Managing Director. The paper carried a motto of "the paper that digs deeper", indicative of its mission statement which stressed the need to report accurately and objectively for the integrity of the tabloid as well as the need to advocate for fair and reasonable press laws. The paper therefore based its mission on quality, readership,

democracy and commercial imperative (Chama 2014:63; Chirwa 1997:7). In that regard, Banda (2004:53) states that:

Upon ascension of the MMD into political office, The Post's coverage, which most people may have expected to continue with its pro-MMD undertones, changed perceptibly. Broader issues of human rights, democracy, press freedom and good governance began to define the paper's reportage. It was in this vein that M'membe in 1996 became one of the founder members of MISA Zambia-the Zambian Chapter of the Media Institute of Southern Africa (MISA).

Similarly, Chama (2014:86) observes that The Post often took up the role of providing news that is critical of government, further providing alternative views over its period of existence since the early 1990s. Chama further notes that it is this stance that motivated several attempts by "political elements" to "drown" the newspaper.

At the time of this study, the Post newspaper had a print run of 50, 000 and several bureaus across the country, according to information obtained from The Post. Other sources, such as the Africa Governance Monitoring and Advocacy Project (AFRIMAP) in Muchangwe (2011:6) placed the Post at a circulation of 47, 000 in 2010.

1.2.2 History of Constitutional development in Zambia vis-à-vis media reforms

Zambia, a former British protectorate, gained its independence in 1964 under the leadership of UNIP. From 1973-1991, Zambia was a one-party state ruled by UNIP, under Kenneth Kaunda (Limpitlaw 2012:331).

Since gaining independence, the country has experienced at least three major phases in constitutional development inspired by various factors such as the changing political environment in the country. Other factors include the developments within the regional and global contexts which have played a part in shaping the country's Constitution.

The history of constitution-making in Zambia dates back to the colonial era, starting with the Federation of Rhodesia and Nyasaland (Constitution) Order-in-Council of 1953, which created the Federation of Rhodesia and Nyasaland despite outright opposition from the Africans in the two territories. The opposition was channelled through organisations such as the African Urban Council, the African Mine Workers Union and the African National Congress, among others (IIDD 2016; Sardanis 2014:19).

The Order-in-Council was followed by the 1962 Constitution, which was mainly based on the presentation of Ian Macleod's "15-15 proposal" for election of members of the Northern Rhodesian Legislative Council. The proposal was presented to the House of Commons in the United Kingdom on 21st February, 1961, and consequently attracted widespread negative reactions from both the white settler community in Northern Rhodesia and the Federal government, who viewed it as a sell out to the Africans. The Africans, on the other hand, felt that the proposals in the new Northern Rhodesian Constitution did not assure them of gaining majority rule at a most critical time (Bach 1994:7; Mwanakatwe 1994:30).

Later, in 1962, elections were held under the McLeod Constitution (albeit with revisions) and four political parties contested, namely UNIP, ANC, the Liberal Party and the United Federal Party. None of the parties obtained a clear majority in the elections given the "15-15-15" provision which intended to provide a balance of power. As such, a coalition government was formed by UNIP under Kenneth Kaunda and the ANC under Harry Mwaanga Nkumbula in December, 1962. The coalition facilitated the formation of an African government for the first time in Northern Rhodesia although colonial civil servants continued to hold key portfolios and the balance of power (Mwanakatwe 1994:34, 35).

Consequently, UNIP and the ANC expressed dissatisfaction with the 1962 constitution upon assumption of power. Their immediate goal was to bring about a Constitution based on universal adult suffrage and the granting of independence by Northern Rhodesia outside the Federation, which was eventually dissolved in 1963. Mwanakatwe (1994:37) and Sardanis (2014:20) both regard the disintegration of the Federation as one of the positive results of the MacLeod Constitution which was condemned universally.

Subsequently, elections were held in January of 1964 with an overwhelming victory by Kenneth Kaunda's UNIP. The elections were held on the basis of universal, adult suffrage and simple single-member constituency arrangements. Kenneth Kaunda was appointed Prime Minister on 22nd January, 1964 and was immediately asked to form a government by the last governor of Northern Rhodesia, Sir Evelyn Hone. Bach (1994:7) records that the independence Constitution, which came into being through the Zambia Independence Order of 1964, was worked out as a result of negotiations among the major political actors at the time, with constitutional arrangements that aimed to resolve various interests.

As such, the independence constitution, Mwanakatwe (1994:43) records, was a result of the London Conference on Zambia's independence which began on 2nd May, 1964. The conference

was preceded by talks with leaders of other parties. Mainly the ANC and NPP over the Constitution of the new republic. The work of the conference on the 1964 independence Constitution was disposed of satisfactorily with the creation of an executive President-a combination of the roles of both Prime Minister and President. With the independence Constitution in place, Northern Rhodesia became the new Republic of Zambia with Kenneth Kaunda as President on 24th October, 1964 at a colourful ceremony held at the Independence stadium in Lusaka, narrates Sardanis (2014:11).

Some commentators, such as Bach (1994:7,8) argue that the 1964 Constitution, like the previous constitutions was not entirely a creation of the people of Zambia despite the involvement of their representatives at the London Conference. Bach opines that the constitution was a duplication based on the Westminster model designed for emerging nations of the former British Colonies and Protectorates at the time.

Mwanakatwe (1994:208) seemingly subscribes to this view when he states subtly that “the constitution agreed finally in London for the independence of Zambia was a compromise but essentially a workable constitution intended to create a strong, viable and unitary state”.

The new multiparty system worked somewhat satisfactorily with minority parties in Parliament i.e. the ANC and UFP, respectively keeping their ruling counterparts under check. Towards the 1960s however, there was growing sectionalism and internal strife within UNIP, evidenced by the shock resignation of the UNIP Vice-President Simon Mwansa Kapwepwe to form his own party the United Progressive Party (UPP) in 1971. This roused Kaunda’s fears of likely tension between the newly formed UPP and UNIP as well as other political parties, leading to the ban of UPP in February, 1972 (Mwanakatwe 1994:86).

It is this, among other reasons, as recorded by Kasoma (1986:31) and Banda (2008:26), that led to the promulgation of the 1973 Constitution. which provided for a one party system as announced by President Kenneth Kaunda at a press conference on 25th February, 1972. Kaunda cited incessant and ever increasing calls for a one party system as motivation for his move in response to the growing disunity and fragmentation at the time.

President Kaunda immediately appointed a commission on the establishment of a one party state, citing the danger multi-partisan politics posed to national unity. The commission comprised twenty-one members, with Mainza Chona appointed as the Chairperson. The mandate of the Chona Commission was limited to the implementation of the one party system i.e. it was not open to the Chona commission to question the desirability of a one party state

and other issues. The major recommendation of the Chona commission was the incorporation of the philosophy of humanism in the republican constitution, protection of fundamental freedoms as well as reduction of the powers and authority of the President in a one party state (Mwanakatwe 1994:92).

The recommendations of the Chona commission were received by the Kaunda government with mixed feelings. Some of the recommendations were rejected while others were subsequently modified. The government strongly objected to the recommendation of electoral competition by at least three candidates at Presidential level in the party as well as the reduction of Presidential powers. The new constitution recommended by the Chona commission was passed through the national assembly in August, 1973. This ushered in the second republic, with President Kaunda sworn-in as President on 13th December, 1973 (Mwanakatwe 1994:94, 95).

The constitution is said to have particularly consolidated the excessive powers of the Presidency as all executive and other functions were seemingly concentrated around the office of the President. On this, Mwanakatwe (1994:92) observes that:

“...Kaunda emerged as victor in the power-sharing game. His position was much stronger as an Executive President in the one-party state. Although the new office of Prime Minister was introduced, Kaunda as President remained the sole executive. He retained all the power he held under the post-independence constitution. Now under the new constitution for the republic and UNIP his powers were greatly increased. He presided over the Central Committee then composed of twenty members”.

Sardanis (2014:92, 93) recalls that no one dared question the one party state save a few rare exceptions. He notes that the nation’s “self-appointed rulers” had risen to “Olympian heights of detachment” and were not able to notice anything untoward because as far as they were concerned, they were the ultimate in patriotism and wisdom. Because of this, they felt they could do whatsoever they liked. Anyone critical of the leaders or the establishment was seen as a “capitalist” and an enemy of the people, and such a critic was dealt with mercilessly.

Mwanakatwe (1994:112) describes the one party state created under the 1973 Constitution as “a monster to the people of Zambia in which most of the leaders became insensitive to the attitudes, feelings and interests of people who were not members of the ruling class”.

Another notable stage in Zambia's constitutional development is the promulgation of the 1991 Constitution which re-introduced multi-party politics following a nationwide movement that compelled the government. Sardanis (2014:118) records that Kaunda appointed a commission (the Mvunga Commission) on 8th October, 1990 to produce a new constitution. Following a year of consultations which included all civic organisations and the Movement for Multiparty Democracy (MMD) itself, the new constitution was enacted by parliament on 2nd August, 1991. The enactment of a new constitution necessitated elections on 31st October of the same year, ushering in the MMD's Frederick Chiluba as Zambia's second President. On this, Bach (1994:36) observes that:

Whereas the net effect of the 1973 constitution appears to have been to strengthen effective presidential power, the 1991 constitution moves in the opposite direction--on paper at least, toward some strengthening of legislative powers... the new constitution (and the accompanying transition act) preserved intact many of the President's powers... Under the constitution itself, he remains head of state in whom is vested the executive power of the nation.

The Chiluba government, which had expressed reservations on the new constitution adopted in 1991 undertook to reopen constitutional debate once multi-party politics became firmly established in the country. Chiluba's government promised several media reforms which were outlined in the MMD manifesto and many Zambians, especially media professionals, expected rapid changes (Makungu 2004:36; Mwanakatwe 1994:222).

Other phases in the country's attempts to review its constitution include the 1996 constitution amendment. This was based on the MMD's promises to review the constitution after assumption of power in 1991. In a bid to fulfil the promises of constitutional review, the MMD government appointed the Mwanakatwe Constitutional Review Commission in 1993 to kick-start the constitution review process. However, the government rejected most of the commission's recommendations, clearly departing, as Banda (2008:31) notes, from its original promise of introducing a constitution that would strengthen individual rights and freedoms as well as lessen the powers of the executive (mainly the President).

In spite of the widespread criticism at the time, the government proceeded to enact a constitution of Zambia amendment Act of 1996, whose major effect was a restrictive parentage clause for Presidential aspirants. This goes to confirm Bach's (1994:41) observations over the striking degree of continuity between the last constitution of colonial Northern Rhodesia and

the subsequent constitutions of independent Zambia, leading to a conclusion that in many respects, the 1962 colonial constitution became an influential model for its Zambian successors.

Other constitutional development efforts included the Constitutional Review Commission (CRC) which was established by President Levy Patrick Mwanawasa in 2003. Despite considerable consensus on the draft constitution compiled by the CRC in 2005, the process was suspended, disregarding initial promises to enact the constitution through a constituent assembly. Later in July, 2007, the National Constitutional Conference (NCC) was established with the task of reviewing the relevant sections of the CRC draft constitution and subsequently make recommendations. However, among other challenges, the MMD failed to get the required majority in Parliament to pass the proposed NCC amendments (IDEA 2016; Motsamai 2014:1).

The NCC was followed by a twenty-member Technical Committee on drafting the Zambian Constitution (TCDZC) which was appointed by President Micheal Sata in November, 2011, shortly after being ushered into power. The committee's task was to review the recommendations of all previous constitutional review commissions in order to draft and present a constitution which would reflect the will and aspirations of the people. In spite of the Patriotic Front government's promise of enacting a people driven constitution within 90 days, the work of the TCDZC went on for a longer period until the committee finally submitted a draft constitution amid wide calls for a clear roadmap. It is from this process that selected amendments were passed by Parliament through the Constitution (Amendment) Act No. 2 of 2016, which brought about electoral and other administrative reforms such as the majoritarian electoral system (Motsamai 2014:5,6).

Meanwhile, proposed enhancements to the Bill of Rights were subjected to a national referendum which did not, however, meet the minimum threshold and was therefore unsuccessful.

Sadly, as Limpitlaw (2012:331) notes, most of the constitutional reform in Zambia has not brought about the promised media (law) reforms. Despite several task forces and commissions on constitutional reforms, subsequent governments have done little to implement the many media-related recommendations which have been submitted, including, for example, the Access to Information Bill, which is still yet to be enacted.

Some commentators, such as Matibini (2006:4,11), note that constitutional review processes like the Chona Commission prior to the enactment of the 1973 constitution did not even

consider the freedom of the press when examining fundamental freedoms of the individual. Other commissions that took such issues into consideration (like the Mwanakatwe commission of 1993) had their progressive recommendations rejected by the government. If such recommendations had been accepted, they would have enhanced the constitutional safeguards and standards for the protection of the freedom of expression and of the press. However, what has resulted from most of the constitutional development processes, clearly, is the enactment of laws that have little or no impact on the status of the freedom of the press in Zambia.

1.2.3 The Zambian Penal Code

The status quo of failed objective constitutional reforms is in effect the related cause of the continued existence of some of the provisions that may have an effect on the freedom of expression. Some of these provisions include the insult laws in the Penal Code, Chapter 87 of the laws of Zambia. The Penal Code is the basic source of Zambian criminal law and an integral part of the Laws of Zambia.

Several commentators, such as Kantumoya (2004:84) and Limpitlaw (2012:362), note that the Penal Code (of 1965) is a modification of the colonial penal code introduced by the British authorities in 1930, maintaining several provisions, albeit with a few amendments over the thirty-four years prior to independence in 1964.

In that regard, a taskforce on media law reform was appointed by the Ministry of Information and Broadcasting in 1999 in consultation with several civil society and non-civil society actors to review pieces of legislation which impede on press freedom in Zambia. It is worth noting that the penal code, as described by the taskforce, is more of a substitute or comprehensive compilation that set out briefly the more important principles likely to be involved in criminal matters. This was because the volume of English Law and English Statutory Law dealing with criminal matters at the time had become so enormous that it was quite impossible to place it at the disposal of an “up- country magistrate” when called upon to deal with criminal offences (MIBS 2000:24)

The taskforce recognised that the logic behind the penal code was to place in the hands of judicial officers a code of statutory provisions in force in England on criminal matters. It was also to assist the officers not to overlook certain principles or act on decisions which were no longer law or non-existent at the time. Interestingly, the taskforce found that some of the offences in the Penal Code have never existed in the United Kingdom, a country whose criminal law it sought to consolidate. Additionally, some of the offences still in the Penal Code in

Zambia have been abolished in England with the European Court of Human Rights having questioned their constitutionality.

However, these provisions have maintained their place in the current Penal Code in Chapter 87 of the laws of Zambia. They include such provisions as the Prohibition of Publications and related matters in Sections 53, 54 and 55, offences in respect of Seditious Practices in Sections 57, 58, 59, 60 and 61, Publication of false news with intent to cause fear and alarm to the public in Section 67, defamation of foreign princes in Section 71, Obscene matters or things in Section 177 and criminal defamation in Section 191, among several others [The Penal Code Act of 1965 (Cth)].

This study, however, confines itself to the provision in Section 69 on the Defamation of the President which provides among other things, that any person who with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, is guilty of an offence and is liable to a period of imprisonment [The Penal Code Act of 1965 (Cth) S69].

1.2.4 Defamation of the President vis-à-vis criminal libel: rationale and critique

Defamation is generally the publication of a statement about a person that tends to lower his or her reputation in the opinion of right-thinking members of the community (Lustgarten, Norrie, Stephenson and Barendt 1997:3; Oxford Dictionary of law 2003:140).

Although defamation is usually in words and pictures, gestures and other acts also qualify as defamation. Thus, defamation is categorised into two. The first is slander, which covers defamatory communication in a transient or temporary form-such as gestures or the spoken word. The second is defamation in permanent form, such as written material which is termed as libel and may be treated differently at law, according to Kasoma (2001:245).

In that regard, defamation mainly exists to protect the reputations of individuals or entities with a legal personality. Despite being recognised as a legitimate restriction on the freedom of expression, various local and international legal instruments only acknowledge limitations for the protection of national security, public order, public health and public morals. In other words, restrictions on the freedom of expression must be provided by law, serve a legitimate interest and be necessary in a democratic society (Nordvik 2014:5; Pasqualucci 2006:379). It is worth noting that the legitimacy of defamation as a restriction on the freedom of expression is discussed further in chapter 2.2 below.

Criminal libel, under which the defamation of the President is somewhat covered, is considered to be actionable *per se* and includes the publication of seditious, blasphemous or obscene material resulting in the disturbance of the public peace (Kasoma 2001:246). It exists both as a crime and a tort or civil wrong. Criminalisation of a particular activity results from the state's interest in the regulation of that activity, such as the freedom of expression in this case.

Against this background, the law on defamation of the President, as indicated in sections 1.2.2 and 1.2.3 above, originated from colonial insult laws. The intent of the colonial insult laws was to limit the freedom of expression of the natives for the proper administration of the territory. The government also aimed to protect the reputations of top officials such as the governor as there was no written bill of rights or constitution in England, save the common law. The colonial government therefore formulated several laws on sedition and censorship as well as insult laws, from which the defamation of the President later emerged. The precursor of what later became 'defamation of the President', as an insult law, prohibited any document or political utterance which sought to bring the colonial government into ridicule or contempt, with criminal penalties such as maximum imprisonment of two years (Simutenda 2008:11).

It can be surmised, then, that the rationale of the law on defamation of the President is the protection of the President's reputation and dignity. This is best interpreted in the case of *The People v. Bright Mwape and Fred M'membe*, among other cases and judicial precedence which are discussed in 1.2.5 below. In the Bright Mwape/Fred M'membe case, the Supreme Court ruled that the protection of public officers from destructive attacks was even more self-evident where the public person was the President as the constitution elevates the President above everyone else and cannot, therefore, be compared to an ordinary citizen (ZLII 2016).

Notably, this concept is reminiscent of the ancient origin of insult laws which can be traced back to the fifth century Roman law of the twelve tablets which contained provisions referring to *iniuria* i.e. insult or injury. *Iniuria* meant to protect the honour and dignity of all citizens, with those of higher status entitled to higher compensation, as discussed in chapter 2.2.2 below.

Some scholars justify laws such as defamation of the President. For instance, Koffler and Gershman (1984:817) argue that the government is entitled to some secrets in the modern days of potential annihilation. Koffler and Gershman add that the point should instead be whether the government is entitled to those secrets simply because secrecy is necessary to enhance its reputation.

It follows, then, that there is a clear connection between the law on defamation of the President, an insult law, and criminal libel as they are both under the umbrella of criminal defamation. However, the former limits its protection to the President's honour and dignity (Walden 2001:7-8). Simply put, the law on defamation of the President has elements of both criminal defamation and an insult law.

Notwithstanding the school of thought on the justification of insult laws such as the defamation of the President, there is criticism of the law and its likely impact on society. For example, Kasoma (2001:248) observes that those holding public office may mask themselves behind criminal libel laws to shut off a probing press so that they can continue with their activities at will. As such, one question often asked is which should override the other, the public interest or the honour and dignity of public figures?

Similarly, the law on defamation of the President seemingly gives the President the power to defame opponents at will as he/she enjoys immunity and the provision on defamation of the President then criminalises the opponents even when their sentiments are simply commensurate to the President's initial statement (Chanda and Liswaniso 1999:49). This may, according to Norris (2000:5), affect the media's function of providing a platform for civic debate as discussed further in chapter 2.3.2 on measuring media performance.

Another danger of the law is that it does not clearly outline what really constitutes "insulting matter". This tends to give the police enough latitude to interpret at their discretion, which publication is defamatory or insulting and which is not, and this has the potential for abuse (Chanda and Liswaniso 1999:49). Similarly, the law on defamation of the President does not distinguish between truth and falsehoods as is the case in general defamation. This is because both truth and falsehood are seen to have the same seditious potential of irking the citizens and further leading to a possible insurrection. This is even worsened by the fact that the law does not distinguish between the office of President and the person occupying the office, an issue which is at variance with the actual intent of the law on defamation of the President.

Additionally, the law on defamation of the President is seen to have the net effect of stifling the freedom of speech and of the press as journalists would not be critical in their reportage in spite of repulsive behaviour on the part of the President (MIBS 2000:31). Notably, one of the objectives of this study is to ascertain the reality of this view by observing the press' coverage of the President and whether there is any effect on media performance through the methodology presented in chapter 4 below.

Generally, while the constitution guarantees freedoms of speech and expression, journalists and media outlets face restrictions under provisions of the Penal Code, such as the law on defamation of the President as noted in section 1.2.3 above.

This is polemical because logically, the media in their course of duty are bound to critique the President and his/her actions as a public officer and subject of news. This is in line with the media's agenda-setting and watchdog roles which are discussed further in chapter 2.3 below. Under the two roles, the media contribute to good governance, transparency and accountability by influencing what the citizens think about and consequently offering them a platform. Thus, the media as carriers of various messages about the President are likely to be held liable as they relay information gathered even after passing various ethical tests (Kantumoya 2004:87).

The two schools of thought on the justification and critique of the law on defamation of the President are ably discussed in chapter 2.2 below. Suffice to state that the alternative to criminal defamation and insult laws such as the defamation of the President is the retention of only the civil provision on defamation so that persons whose reputations have been injured, including the President, can seek civil remedy in the court of law (Chanda and Liswaniso 1999:49; Pasqualucci 2006:403). This is not a strange suggestion altogether as precedence was set in 2012 when President Micheal Sata (in his private capacity) sued the proprietor of a tabloid, the Daily Nation along with a lecturer from the University of Zambia claiming general and exemplary damages for defamation of character.

This alternative is strengthened by the existence of several laws other than the defamation of the President, which protect the honour and dignity of the Presidency. They include such laws as Section 57 on seditious practices, Section 60 on seditious intention and Section 61 on seditious publication, among several other laws.

In discussing the legal status of the law on defamation of the President, various local and international common law decisions are presented in section 1.2.5 below. Among the common law judgements discussed are the *Sullivan rules* and the corresponding case of *Micheal Sata v. Post Newspapers Ltd* on a higher threshold for public officials in proving allegations of defamation. Others include the *Lord Campbell Act* on truth as a defence in criminal libel, the case of *The people v. Bright Mwape and Fred M'membe* on the constitutionality of the law on defamation of the President in Zambia and the ACHPR case of *Konate v. Burkina Faso* and the consequent abolishment of criminal libel of public officials in Africa.

1.2.5 Relevant common law on defamation: legal status of criminal libel vis-à-vis defamation of the President

According to the Oxford Dictionary of Law (2003:94), common law refers to the “rules of law developed by the courts as opposed to those created by statute” or “a general system of law deriving exclusively from court decisions”.

Case law, which is created when judges rule the facts of a particular case has its origins from the common law of England. In order to be consistent and develop a uniform system of laws, the English jurisprudence system made it a policy to follow previous judicial decisions (Storm 2015:22). This common law practice made its way to various jurisdictions and in Zambia-a commonwealth jurisdiction, case law is subject to Constitutional supremacy as well as other statutes (Limpitlaw 2012:333). Common law plays a vital role as judges look to it for interpretation of certain statutes and terms, establishment of criminal procedure and it is also referred to in the making of criminal laws.

The subject of defamation of public officials and to what extent criticism of public officials should go unfettered is one such subject that is polemical. On one hand is the argument that public officials should enjoy less protection as they knowingly and inevitably lay themselves open to public scrutiny by merely taking up public office (IPI and MLDI 2015:25). This school contends that in line with several internationally accepted standards for defamation law, the public interest must be put ahead of the reputations of public figures (Limpitlaw 2012:70). Proponents of this view also contend that stifling criticism and scrutiny of public officials has a negative, chilling effect on the principles of transparency, accountability and even citizen participation in the governance process (Chanda and Liswaniso 1999:49; Kasoma 2001:248).

On the other hand, there is a school of thought which argues for the need to protect the honour and dignity of people occupying public office-such as the President (Walden 2001:7, 9) for them to command respect as well as for the public to have confidence in their decisions, (Nkandu 2012:36). Proponents of this view also contend that allowing the disparagement of public officers (such as Presidents) poses the danger of causing unrest as those in support of the public official may rise against those criticising. The criticism of public officials is seen to undermine the authority of the government and is somewhat equated to sedition (Walden 2001:9, 10; Koffler and Gershman 1984:821).

Chanda and Liswaniso (1999:47) and Pasqualucci (2006:399) argue that it is important for the courts to set a higher standard of proof for public figures who, unlike private individuals, need

to accept the necessary consequences of their voluntary involvement in public affairs. Additionally, public figures have access to the media to counteract or correct false statements which helps to minimise the effect of such statements on their reputation. This is particularly true in Zambia where the state controls or has considerable influence over most electronic and print media; most of the state media do not enjoy independence and are thus rarely critical of government leaders such as the President (Matibini 2006:67; Makungu 2004:97).

The following decisions show various viewpoints at law with regard arguments such as that of the public status of public officials vis-a-vis defamation, whether criminal defamation and insult laws are unconstitutional in a democratic context and other relevant global and continental decisions that may impact on criminal defamation.

1.2.5.1 The Sullivan Principles and defamation of public officials in Zambia

The doctrine that public officials should face a higher threshold in proving allegations of defamation originates from the United States Supreme Court in the famous case of *New York Times Co. v. Sullivan*. In this case, the Supreme Court of the United States laid down some principles grounded in the 1st and 14th Amendments to fetter libel actions by public officials in order to advance free speech and press freedom (Chanda and Liswaniso 1999:43).

The court concluded that for public officials to sustain an action for defamation, they must not only prove the falsity of the alleged defamatory material but also show ‘actual malice’ (Dent and Kenyon 2004:12). This entails that plaintiffs who are public officials or public figures need to prove the three basic elements of defamation i.e. publication, identification and defamatory meaning as would any other person alleging that their reputation has been injured. However, under the ‘Sullivan rules’ plaintiffs who are public officials or public figures must additionally prove that the defendant made the publication with ‘actual malice’ (IPI and MLDI 2015:26).

According to Dent and Kenyon (2004:12), ‘actual malice’ in this case entails proving that the publication conveys factual material that is actually false, which the publisher believed to be false when it was published. The plaintiff must prove that the publisher knew the material was false, or at least that the publisher had a high degree of awareness of the publication’s ‘probable falsity’ and recklessly disregarded that danger.

In the Sullivan case, the court criticised the notion that defendants in defamation cases should be required to prove the truth of their statements about public officials. The court noted:

“Would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which steer far wider of the unlawful zone. The rule thus dampens the vigour and limits the variety of public debate ...” (IPI and MLDI 2015:26).

In Zambia, the question of whether the standard of proof in defamation suits brought by public figures should be higher was decided in the case of *Micheal Chilufya Sata v. Post Newspapers Limited*. In this case, the High Court had to consider whether the law of defamation as currently applied derogates from the freedom of the press guaranteed by Article 20 of the constitution and, if so, what modifications would be reasonably required to be imported or imposed in order to give effect to the intention of the constitution (Chanda and Liswaniso 1999:43; ZLII 2016).

The defendants (Post Newspapers Limited) submitted that because Article 20 of the Constitution of 1991 specifically recognised, among others, the principle of freedom of the press, time had come to modify the common law principles of the law of defamation for plaintiffs who are public officials. This modification was sought in respect of the right of action, the burden of proof and the latitude the press should be permitted to subject public officials to criticism and scrutiny. The defendants urged the court to apply the case of *New York Times v. L. B. Sullivan* because of the similarity between the provision in the Zambian Constitution and that of the USA (ZLII 2016).

The court rejected most of the principles promulgated in the Sullivan case while accepting some. The court also endorsed the rejection of Sullivan in the Australian case of *Andrew Theophanus v. The Herald and Weekly Times Limited and Another* in which it was held that the protection of free communication does not necessitate a subordination of the protection of individual reputation as was the case in the *Sullivan rules* (Chanda and Liswaniso 1999:44).

In its ruling, the Supreme Court stated that the Zambian Constitution was less vague and agreed with the general principle of not simply allowing the existing law of defamation to operate without due regard to the need to lend greater meaning and effect to the provisions in Article 20. The court noted that the Constitution attaches equal importance to freedom of the press and the right to reputation without distinction as to whether such reputation belongs to a private or public individual (ZLII 2016). The court concluded that there was no need to formulate a new set of principles to impose new fetters on the right of a public official to recover damages. The court also held that there was an important public interest in the maintenance of the public

character of public officials for them to properly conduct public affairs which require that they be protected from destructive attacks upon their honour and character (Simutenda 2008:38; ZLII 2016).

The judgment stated in part:

“...where an allegation complained of can properly be regarded as comment on the conduct of a public official in the performance of his official duties or on conduct reflecting upon his fitness and suitability to hold such office freedom of speech and press can best be served in Zambia by the courts insisting upon a higher breaking point, or a greater margin of tolerance than in the case of a private attack before an obvious comment based on facts which are substantially true can be regarded as unfair. Although considerably stretched at the seams, the existing defence would remain intact and the public official still able to recover damages for comment that is rendered unfair by any outrageous or aggravating features in the case.” (Chanda and Liswaniso 1999:46; ZLII 2016).

Chanda and Liswaniso (1999:47, 48) regard the refusal of the Sullivan principles by the Supreme Court as a setback for the freedom of expression and particularly of the press in Zambia. The duo notes that the solution suggested in the court’s ruling does not offer strong protection for freedom of expression as it is dependent on whether or not the judge hearing the case is a strong libertarian.

The refusal to adopt the Sullivan principles equally has an impact as it would have, to a lesser extent, helped to mitigate the punitive nature of such criminal defamation laws as the defamation of the President which affect media performance through direct and institutional censorship postulated by Lustgarten et. al. (1997:192).

1.2.5.2 Lord Campbell’s Act of 1843 (Libel Act)

As established in the formative arguments of this chapter, truth or justification is generally not considered to be a defence in criminal libel-more specifically seditious libel as the alleged defamatory matter-whether true or false- still has the potential of inciting the public to a breach of the peace. The common law in the early stages of criminal libel prosecution was summed up in the maxim “the greater the truth, the greater the libel” until 1843 when Lord Campbell’s Act changed the law in England (Kasoma 2001:246; Overbeck and Belmas 2013:36).

The change was effected through the Libel Act, which resulted from an inquiry into the effect of the law of defamation on the press through two select committees-one appointed in 1834 and the other in 1843 which were chaired by Lord Campbell. The committees heard extensive evidence on how criminal libel affected the press (Mitchell 2008:28).

The 1843 committee proposed that slander be assimilated into libel, and that justification be accepted as a defence where the matter was published for the public benefit. This was included in the Libel Act and therefore formed the basis for common law on truth and justification of publication in public interest in matters of criminal libel (Mitchell 2008:29).

Even after Lord Campbell though, truth still never serves as a defence in cases of seditious, blasphemous and obscenity libels while in some countries it is not regarded as a complete defence (Kasoma 2001:246). Similarly, Mitchell (2008:29) observes that under Lord Campbell, the ‘public benefit test’ in relation to truth, for instance, limits what can be published, and makes it hard to predict what is permissible. Commenting on Lord Campbell, Mitchell further notes that much legislative emphasis was placed on the effect of limiting the defence of truth to matters of public benefit in particular with a view to curb the output of ‘scurrilous’ newspapers at the time. However, early legislative initiatives such as the Libel Act show the close attention paid by UK legislators to the effect of criminal defamation law on the press.

The rejection of Lord Campbell would almost render one defenceless in a case of criminal libel, especially more serious forms of libel offenses such as the defamation of the President in Section 69 of the Penal Code. Notably, international standards as shown in chapter 2.2 below seek to place public interest above reputations of public figures. On this, Limpitlaw (2012:70) observes: “a summary of the contours of internationally accepted standards for defamation law clearly lay out a progressive vision which puts the public interest ahead of reputations of, particularly, public figures. The reality however, is that most Southern African countries’ defamation laws fall far short of these standards”.

1.2.5.3 Constitutionality of the defamation of the President law in Zambia

In Zambia, the constitutionality of the defamation of the President law as provided in Section 69 of the Penal Code was brought to the test in 1996 in the cases of *The People v. Bright Mwape and Fred M’membe*, *Fred M’membe and Bright Mwape v. The People*, and *Fred M’membe, Masauso Phiri & Goliath Mungonge v. The People*. Both the High Court and the Supreme Court upheld the constitutionality of Section 69 on the ground that it was reasonably required

to forestall a breakdown of public order and that there was a proximate relationship between the two as required by the constitution (Chanda and Liswaniso 1999:48; ZLII 2016).

In the main case of *The People v. Bright Mwape & Fred M'membe*, the defendants were journalists from the Post newspaper accused of defaming President Fredrick Chiluba. When they were arraigned before the subordinate court, the duo asked the Court to determine the constitutionality of Section 69 on defamation of the President contending that Section 69 contravened Articles 20 and 23 of the Constitution. On appeal to the Supreme Court, it was submitted that the criminal provision in Section 69 offended against the right to freedom of expression, was discriminatory and thus in breach of Article 23 of the Constitution (ZLII 2016).

The Supreme Court held that Section 69 was “reasonably justifiable” in a democratic society as there was no pervasive threat inherent in the Section which endangered the freedom of expression. The Court also stated that it was undisputable that side by side with the freedom of speech was the equally very important public interest in the maintenance of the “public character of public men for the proper conduct of public affairs” which required that they be protected from destructive attacks upon their honour and character. The Court observed that when the public person was the head of state, the public interest was even more self-evident as the constitution elevated the President above everyone else and he could not be compared to an ordinary person (Chanda and Liswaniso 1999:49; ZLII 2016).

The Court was also of the opinion that it would not be authority for the non-criminalisation of defamation of the President just because there may be other measures to counteract attacks on him (ZLII 2016).

The judgment as delivered by Chief Justice Ernest Sakala stated in part:

The general rule of interpretation of the Penal Code is that it "shall be interpreted in accordance with the principles of legal interpretation obtaining in England"...Defamation is a well-known subject; even the criminal type of defamation and when it is appropriate to prosecute is well established under the English principles of law...there is a big difference between legitimate criticism or other legitimate expression and the type of expression encompassed by Section 69. The section under discussion is a valid law and I would myself not uphold the ground of appeal in this respect (ZLII 2016).

Chanda and Liswaniso (1999:49) describe the arguments upon which the judgment was predicated as “specious and speculative” as the President is a servant of the people and not their master and whether or not he has a good reputation depends on his conduct while in office adding that a good reputation must be earned, not legislated. As pointed out in the critique of the defamation of the President in Chapter 2.2.3 below, no one is forced to run for the office of President and those who do so must be ready to lose some level of privacy; they must be thick skinned enough while the civil law of defamation, among other existing laws may be sufficient to protect the President’s reputation.

1.2.5.4 The African Court on Human and People’s Rights (ACHPR) and criminal libel of public officials

At continental level, the constitutionality or validity of criminal defamation/libel of Public officials vis-à-vis journalistic writing was tested in 2013 in the case of *Konate v. Burkina Faso* at the African Court on Human and People’s Rights (ACHPR). In this case, the petitioner (Lohe Konate) was a journalist convicted by the High Court in Ouagadougou for publishing three articles which criticised a prominent public prosecutor. He was sentenced to one year imprisonment and slapped with a hefty fine as well as other penal sanctions under the country’s criminal defamation, public insult and contempt of court laws. The petitioner (Lohe Konate) appealed to the ACHPR following the decision of the Ouagadougou Court of Appeals to uphold the decision of the High Court.

In this case, the state of Burkina Faso argued that the protection of the reputation of others, including public figures, can be ensured appropriately and proportionately by civil law on defamation. He added that because of their severity, the sanctions meted out on him (imprisonment, fines, civil damages, shut down of his newspaper) violated his right to freedom of expression. Konate contended that the Burkinabe law violates the right to freedom of expression as it raises defamation and libel as criminal offenses because it punishes those offenses through a custodial sentence (ACHPR 2017).

The *Amici curiae* (friends of the court) in the case submitted that the 1993 Burkinabe law on information imposed criminal penalties for defamation in relation to exercising the right to freedom of expression which is protected by international instruments to which Burkina Faso was a party; and that this consequently violated its international commitments to protect human rights. They argued that laws on criminal defamation were a remnant of colonialism and were inconsistent with an independent and democratic Africa. They further argued that such laws

were obstacles to efforts aimed at ensuring accountability and transparency of government action. The *Amici curiae* further argued that criminalising defamation not only disproportionately penalised the accused, but also had a deterrent effect on public discussions or matters of general interest (ACHPR 2017).

In passing its ruling, the African Court on Human and People's Rights held that the Sections of the Penal Code of Burkina Faso under question were contrary to Article 9 of the African Charter on Human and People's Rights and Article 19 of the International Covenant on Civil and Political Rights. The court found that the Respondent State failed in its duty in that the custodial sentence meted out constituted a disproportionate interference in the exercise of the freedom of expression by journalists in general.

The court held that:

Apart from serious and very exceptional circumstances for example, incitement to international crimes, public incitement to hatred, discrimination or violence or threats against a person or a group of people, because of specific criteria such as race, colour, religion or nationality, the court is of the view that the violations of laws on freedom of speech and the press cannot be sanctioned by custodial sentences, without going contrary to the provisions of the African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights (ACHPR 2017).

The court ordered Burkina Faso to amend its legislation on defamation in order to make it compliant with Article 9 of the African Charter and Article 19 of the ICCPR, by repealing custodial sentences for acts of defamation. The state of Burkina Faso was also ordered to adapt its legislation to ensure that other sanctions for defamation met the test of necessity and proportionality, in accordance with its obligations under the African Charter and other international instruments (ACHPR 2017).

The ACHPR ruling has set a landmark in terms of common law on the African continent as it clearly holds criminal defamation and other criminal public insult laws to be in contravention of international instruments. The ruling specifically takes cognisance of the possible effect of such laws on the freedom of the press and consequently media performance.

1.2.5.5 African Commission on Human and People's Rights: Resolution 169 on repealing criminal defamation laws in Africa

The African Commission on Human and People's Rights at its 48th ordinary session in November, 2010 in Banjul-Gambia passed a resolution calling on states parties to repeal criminal defamation laws or insult laws which impede on freedom of speech. The resolution also called on African states to adhere to the provisions of freedom of expression articulated in the African Charter, the Declaration on Freedom of Expression Principles, and other regional and international instruments with regard to criminal defamation as highlighted in chapter 2.2 below (ACHPR 2010).

The resolution 169, titled "resolution on repealing criminal defamation laws in Africa", was passed as a follow up to previous resolutions on freedom of expression at the commission's session in 2001. Resolution 169 was also based on the African Charter on Human and People's Rights, the declaration on freedom of expression principles also of 2001, UDHR, ECHR, as well as the American Convention on Human Rights (ACHR).

State parties to the declaration were urged to refrain from imposing general restrictions that are in violation of the right to freedom of expression. The resolution also urged journalists and media practitioners to respect the principles of ethical journalism and standards in gathering, reporting, and interpreting accurate information, so as to avoid restriction to freedom of expression to guard against risk of prosecution.

The African Commission on Human and People's rights is one of the African Union's organs that has been instrumental in setting the common law on criminal defamation as demonstrated in the African Court's landmark ruling in *Konate vs. Burkina Faso*. Because of the judgment in *Konate vs. Burkina Faso* other countries on the continent can rely on it as a defence in criminal defamation and other insult laws such as the defamation of the President.

The commission's resolution 169 is reinforced by the *Konate* judgement by establishing the status of criminal defamation of public officials, such as the defamation of the President law in Zambia.

1.2.5.6 Criminal defamation, freedom of expression and press freedom in Zimbabwe

In Zimbabwe, the constitutionality and validity of criminal defamation vis-à-vis public figures was decided in the 2014 case of *Madanhire and Another v. the Attorney General*. This was a case in which an editor and a journalist from a Zimbabwean newspaper were charged with criminal defamation for publishing an article that alleged financial incapability of the Green Card Medical Aid Society and its Chairman. It was alleged that the duo published the statement knowing that it was false and intended to cause serious harm to the reputation of the society and its chairperson.

The two journalists applied for the matter to be referred to the Zimbabwean Constitutional Court for determination of constitutional questions. The journalists asked the court to declare the offence of criminal defamation as defined in the country's Criminal Law Code to be declared unconstitutional and struck down as being null and void (ZimLII 2017).

The journalists contended that the provision on criminal defamation was inconsistent with the provisions under the freedom of expression and consequently freedom of the press. The Court observed that the distinctive feature of criminal defamation, though not confined to that offence, was the stifling or deterrent effect of its very existence on the right to speak and the right to know, which was a more 'deleterious' consequence of its retention in the Criminal Law Code, particularly in the context of newspaper reportage (ZimLII 2017).

The Court noted that it is undeniable the vital role newspapers play in disseminating information in every society, whether open or otherwise and the art of that role is to unearth corrupt or fraudulent activities, executive and corporate excesses, and other wrongdoings that impinge upon the rights and interests of ordinary citizens. As such, according to the Court, it is inconceivable that a newspaper could perform its investigative and informative functions without defaming one person or another. It was observed that as a result, the overhanging effect of the offence of criminal defamation was to stifle and silence the free flow of information in the public domain consequently leaving the citizenry uninformed about matters of public significance and the unquestioned and unchecked continuation of unconscionable malpractices (ZimLII 2017).

The judgement reads in part:

...The harmful and undesirable consequences of criminalising defamation, viz. the deterrent possibilities of arrest, detention and two years imprisonment, are manifestly

excessive in their effect. Moreover, there is an appropriate and satisfactory alternative civil remedy that is available to combat the mischief of defamation. Put differently, the offence of criminal defamation constitutes a disproportionate instrument for achieving the intended objective of protecting the reputations, rights and freedoms of other persons. In short, it is not necessary to criminalise defamatory statements...the offence is not reasonably justifiable in a democratic society [and] accordingly, it is inconsistent with the freedom of expression guaranteed by s 20(1) of the Constitution (ZimLII 2017).

The decision of the Zimbabwean Constitutional Court contrasts with the decisions made by the Supreme Court in Zambia on similar matters with similar arguments. As stated in this section's preamble, the two schools of thought on criminal defamation i.e. one advocating civil legislation against defamation only as opposed to criminalisation of criticism of public officials, while the other advocates the protection of the 'honour and dignity' of public officials through criminal defamation with the various arguments adduced.

Such disparities on the common law on criminal defamation, such as the defamation of the President, may have a long standing effect that could equally affect a journalist's judgement, categorising the various deterrent effects that defamation may have on media performance.

1.2.5.7 Active cases pending determination on defamation of the President in Zambia

Among the active cases currently before the High Court in Zambia is the case of two Post Newspaper journalists, Joan Chirwa-the Managing Editor and Mukosha Funga-a reporter. The two were arrested on April 13, 2016 and charged with defamation of the President. They were jointly charged with the leader of an opposition political party-the Fourth Revolution, over a story (complemented by a picture) carried in The Post on May 9, 2015 alleging that President Edgar Lungu went night-clubbing and playing pool at tax payers' expense while on holiday, (Africa Review 2016).

1.2.6 Functions of the media vis-à-vis media performance

The media play several roles in society, key among them being that of watchdogs. The watchdog role is characteristic of the news media in particular as they monitor the activities of the public administrators and other institutions. In so doing, the media monitor public institution practices that directly and indirectly affect the public. The watchdog role takes many

forms depending on the nature of the medium concerned as well as other factors such as the state of the democracy and the level of development in a particular country. However, the primary watchdog function in either context is to provide information and to be the “eyes and ears” of the public by monitoring what is happening in public life and reporting on daily events as they unfold (McQuail 1992:121; Limpitlaw 2012:13).

The role of the media in society is emphasised through the agenda-setting function hypothesised by McCombs and Shaw (1972:176) who state that: “in choosing and displaying news, editors, newsroom staff and broadcasters play an important part in shaping political reality. Readers learn not only about a given issue but also how much importance to attach to that issue from the amount of information in a news story and its position”.

It follows then, as explained by Shaw (1979:96), that because of the news media, people are aware or not aware, pay attention to or neglect, play up or downgrade specific features of the public scene and that people tend to include or exclude from their cognitions what the media include or exclude from their content. This closely resembles the emphasis given to events, issues, and personalities by the mass media, such as the Presidency in this case.

In that regard, this study aims to establish, in part, whether ‘the exclusion of certain events’ in the Zambian media could be resultant of the influence and limitation posed by the law on defamation of the President, which is said to protect as earlier intimated, the honour, dignity and reputation of the President.

As such, the best way to gauge the performance of the news media is by taking into account the standards of media performance postulated by Norris (2000) and others such as McQuail (1992). Norris (2000:9) sums up three critical functions of the media under the normative assumptions of the news media in the context of a representative democracy, in which the specific indices of media performance can be developed.

The first measure of media performance is that of the media’s contribution to pluralistic competition (Norris 2000:3). Under this measure, it is assumed that the media should act as civic fora for debate. This standard can be measured mainly through a systematic content analysis of the amount and type of news and current affairs coverage, comparing media outlets like newspapers and television over time and across different countries. Under this measure, some of the questions that a researcher can ask in trying to measure performance in this regard include: “do the news media provide extensive coverage of news about politics and government especially during election campaigns? Do the news media provide a platform for a wide

plurality of political parties, groups and actors? Do the news media provide equal or proportional political coverage for different parties in terms of stopwatch, directional and agenda balance?”

The second measure of media performance is that of the media promoting conditions for public participation by acting as mobilising agents and in so doing encouraging political learning, interest and participation. To evaluate this standard of media performance, a researcher can ask how far the news media succeed in stimulating general interest in public affairs or how far the news media encourage citizens to learn about public affairs and political life. The researcher could also ask how far the news media facilitate and encourage civic engagement with the political process, which can be gauged through mass surveys of the knowledge, interest and activism of news consumers (Norris 2000:6).

The third measure of media performance as postulated by Norris (2000:5) is that of the media preserving the conditions for civil liberties and political rights. The news media in this regard act as watchdogs to hold government leaders accountable on behalf of the public. Under this measure, the researcher should ask how far the news media go to provide independent, fair and effective scrutiny of the government and public officials. This can be achieved through the use of historical case studies describing the role of the media in classic examples of abuse of power, power scandals and government corruption in order to see how far journalists act fairly and independently in the public interest to hold officials accountable.

On the watchdog role as a measure of media performance, McQuail (1992:121) states that “possibly the most important requirement of performance in respect of freedom is that media should deliver on the promise to stand up for the interests of citizens in the face of the inevitable pressures, especially those which come from government...criticism of office-holders has indeed always been a major topic of newspapers in both commercial and party political press systems”.

McQuail emphasises that if one is to assess the independence of the media, there is need to look for evidence that the watchdog role is being carried out.

It is mainly through a combination of the three measures of media performance that this study considers the critical question of the effect of the defamation of the President clause on media performance in Zambia.

1.3 Statement of the Problem

According to Norris (2000:9) and McQuail (1992:121), the media are expected to fulfil three duties which are quintessential to the functioning of a democratic society. First, the media must contribute to pluralistic competition by acting as civic fora for debate. Secondly, the media must promote conditions for public participation by acting as mobilising agents and, thirdly, preserve the conditions for civil liberties and political rights by acting as watchdogs to hold government leaders, such as Presidents, accountable on behalf of the public.

However, the law on defamation of the President in the Zambian Penal Code, Chapter 87 of the laws of Zambia places fetters on the communication of information about the President by stating that: *“any person who, with intent to bring the president into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable upon conviction to imprisonment for a period not exceeding three years”* [The Penal Code Act of 1965 (Cth) s69].

In that regard, the law on defamation of the President as an insult law is said to be an illegitimate restriction of the fundamental freedom of expression and the press in a democratic society and its relevance is often questioned (Chanda and Liswaniso 1999:49; Dent and Kenyon 2004:39; Lustgarten, Norrie, Stephenson and Barendt 1997:3; Mwanakatwe 1994:271; Nordvik 2014:55; Walden 2001:9;).

It is believed that the restrictions of the law could affect the media’s latitude to frame coverage and stories about the President in keeping with the duties identified by Norris (2000:9) and McQuail (1992:121).

However, in Zambia particularly, little research has been undertaken to actually examine media content to observe if there is any manifest effect on how media perform their watchdog and agenda setting functions with regard to the Presidency.

Thus, it is not known whether the restrictions of the law on defamation of the President influence the media’s ability to frame news stories, perform the watchdog function and set the agenda with regard to the Presidency i.e. does the law on defamation of the President affect media performance?

1.4 Purpose of the study

The study intended to ascertain the effect or influence, if any, of defamation of the President law on media performance through the observation of key media performance indicators. This

was done through a systematic content analysis of hard news articles about the President in two daily newspapers, a privately owned newspaper-The Post and a public newspaper-The Zambia Daily Mail, from March to June, 2016. The study also conducted in-depth interviews with key informants from among media practitioners at the two newspapers, the legal fraternity, academia, civil society/advocacy organisations and government, among others.

1.5 Objectives of the study

The objectives of the study were:

- To establish the sources and rationale for insult laws such as defamation of the President in Zambia.
- To analyse the coverage of the President in The Post and Zambia Daily Mail.
- To compare and contrast the extent of coverage and criticism of the President in The Post and Zambia Daily Mail respectively.
- To establish whether the law on defamation of the President has an effect on media performance.

1.6 Research Questions

The research questions that guided the study were:

- What are the sources and rationale for insult laws such as defamation of the President?
- How is the President covered in The Post and Zambia Daily Mail?
- What are the similarities and differences in the coverage of the President in The Post and Zambia Daily Mail Newspapers respectively?
- Does the law have an effect on media performance?

1.7 Significance of the Study

The study was of benefit to media practitioners through the findings and recommendations which helped them to improve their performance in order to fulfil their role in a democratic society.

The study was also of help to regulators such as the Independent Broadcasting Authority, the Zambia Media Ethics Council and law enforcement agencies in order to understand the context in which insult laws were being applied as well as appreciate the influence that their actions in enforcing the law had on media performance. Finally, the study, its findings and recommendations were of benefit to the work of advocacy organisations and government

policy makers while hopefully inspiring media scholars to use this study as a basis for further research on the impact of the law on media performance in Zambia.

1.8 Scope and limitations of the study

The study confined itself to reviewing two daily newspapers i.e. the Daily Mail and The Post. As such, the findings may not necessarily be generalised to all media outlets or practitioners, a possible issue of consideration for further research.

Additionally, the population was only limited to articles in the hard news section of the two newspapers for the ease of standard analysis and comparability. Hard news articles by their very nature rely on the standard 5Ws and H (who, what, where, when, why, how) and are more likely to carry political and current affairs stories.

The study was conducted in Lusaka District.

1.9 Conceptual and theoretical framework

This section seeks to define the main concepts used in the study, their relevance and operationalisation in the context of the problem under consideration. The main concepts under consideration are *defamation*, *media performance*, *mass media* and *press freedom*. The section also presents the theoretical framework in which the study was situated, particularly the *agenda setting* and *framing* theories of mass communication which helped to understand the phenomena at play in relation to the problem.

1.9.1 Conceptual framework

1.9.1.1 Defamation of the President

Defamation is generally the publication of a statement about a person that tends to lower their reputation in the opinion of right-thinking members of the community or to make them shun or avoid him or her (Chanda and Liswaniso 1999:32; Kantumoya 2004:90; Lustgarten, Norrie, Stephenson and Barendt 1997:3; Oxford Dictionary of Law 2003:140).

In that context, the defamation of the President is a form of criminal defamation (Kasoma 2001:248) protects the President's reputation (Chanda and Liswaniso 1999:48; Kantumoya 2004:87; Limpitlaw 2012:369). Therefore, according to the provision on defamation of the President in the Zambian Penal Code, *any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing,*

print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for up to three years (The Penal Code Act of 1965 (Cth) S69).

Criminal defamation laws, such as those that relate to the President, serve, as shown in subsection 2.2.1 of Chapter 2, to punish both truth and falsehood because the alleged ‘defamatory’ matter is seen to be the same whether true or false. This is so because it is assumed that to defame the President has the seditious potential to cause an insurrection by undermining the honour and dignity of public officials (Kasoma 2001:246; Overbeck and Belmas 2013:36; Walden 2000:1).

To operationalise defamation of the President, this study took into consideration the basic elements of general and criminal defamation (Chanda and Liswaniso 1999:38-39; Kasoma 2001:247; Lustgarten et. al. 1997:3; Overbeck and Belmas 2013:36; Walden 2000:1) as well as case law referred to in chapter 2 in section 1.2.5 above. The most salient elements are that in criminal defamation, it is sufficient for the defamatory matter to have been communicated only to the defamed person, that truth of the allegation is not necessarily a defence, that the matter was published maliciously and that the matter makes reference to the defamed official, thereby lowering his or her honour and dignity.

As such, in the operational context of this study, defamation of the President was considered to be any story whose content was generally critical and questioned the actions, honour, integrity and credibility of the President. This included (but was not limited to) suggestions of incompetence in the President’s performance, mental/physical incapacitation, impropriety, immoral conduct, corruption, theft or abuse of office.

The study aimed to establish whether the law on defamation of the President had any effect on media performance such as the type, placement and framing of stories about the President, and whether the media as watchdogs of society, were able to publish stories that were generally critical of the President. As pointed out by Lustgarten et. al. (1997:192) in chapter 2.4.2 below, defamation of the President may have structural and direct effects on press freedom and this study set out to establish whether these effects were manifest in media performance through journalistic writing and dissemination of news pertaining to the President in Zambia.

1.9.1.2 Press Freedom

According to Chanda and Liswaniso (1999:1) freedom of the press can be defined as the right to receive and impart ideas and information without interference, with the “interference” being

legislative constraint and executive control. It is also the “latitude and conditionality that accords a media practitioner the liberty to access and gather information, select and publish material in order to serve the public good without any interference or censorship from any quarters, provided of course that liberty is within the limits set by the individual rights of citizens” (Chirwa 1997:25; Tambini 2012:3). It follows, therefore, that press freedom is the right of journalists and media practitioners to seek out and communicate information without hindrance, or censorship, in various forms. Press freedom, however, means many things to different people in different contexts.

Press Freedom is mainly an extension of the freedom of expression which covers communication of ideas to the masses through various media forms, which mainly include the mass media. According to international instruments such as the ICCPR, the right to freedom of expression requires not only that everyone is free to express themselves but that they are free to do so over a range of media of their choice, including print or electronic media (Limpitlaw 2012:13).

In that respect, press freedom is essential in a democratic society because it enables open debate to take place. As Norris (2000:3-9) argues, when media fulfil certain functions such as being watchdogs on behalf of the society and hold office bearers accountable for their actions, they enjoy their freedom.

However, Tambini (2012:3) explains why the concept of press freedom is sometimes contested by stating:

A coherent definition of press freedom that would serve as a useful policy principle would need to specify whether press freedom should be conceived negatively (freedom from the state) or positively (rights or freedoms to do specific things). Since press freedom could hardly be absolute, a coherent notion of press freedom would need to specify under what conditions and by what means it can justifiably be constrained. It would have to specify the subject of liberty: whether this is a freedom of readers, journalists, editors, or owners of printing presses. These terminological challenges...the lack of any consensus on them helps explain why the term ‘press freedom’ tends to be used as a slogan to defend press interests rather than as an analytical term, or as a term that delineates a specific legal right of certain individuals

In the case of Zambia, press freedom is protected under the freedom of expression in Article 20 of the Constitution. In particular, Article 20 (2) states that “subject to the provisions of this

[the] constitution, no law shall make any provision that derogates from the freedom of the press”.

In this study, therefore, press freedom was considered to be the media’s aptitude to freely publish without undue censorship and in the absence of suppressive laws and licensing restrictions. Press freedom also referred to the absence of political violence and absence of legal persecution of journalists. The meaning was also extended to the application of due process in dealing with press violations, the absence of threats, the ability and freedom by the media to carry critical or dissenting views, and the facilitation of the free flow of information.

Furthermore, the study sought to establish whether the defamation of the President law interfered with or had an effect on press freedom as measured through media performance.

1.9.1.3 Media performance

The concept of media performance is ably discussed in sub-section 2.3.2 of chapter 2 below in relation to the role of the media in a democracy. Notwithstanding, media performance, according to McQuail (1992:11-12) has no single or precise meaning as it can mean many things in the discussion of mass media. It can refer to the self-assessment by the media industry in achieving its economic, product or audience goals, the evaluation of the working of public policies for mass media or the evaluation of the success of campaigns to inform, persuade, mobilise, sell and so on. More directly, however, media performance is the “critical evaluation of many possible aspects or cases of the work of media”.

Additionally, there is no clear criteria used for assessing media performance as performance is an issue of contestation and confusion. For instance, McQuail (1992:10) states that:

Research into what is called ‘media performance’ according to diverse criteria, seems to proliferate rather than diminish, for reasons which go beyond the fact of growth in the media sector itself and in the size of the research community. The reason may well be the increased dependence of citizens on public communication for their everyday needs. However, more directly influential is the dependence of political and economic institutions on the media both for instrumental communication purposes (advertising, information dissemination) and for purposes of securing status, influence, positive ‘image’, visibility (or invisibility) in public life.

Clearly, the mass media, perform several roles in society. For instance, Norris (2000:5-9) sums up three critical functions under the normative assumptions of the news media in a

representative democracy. Norris argues that in a representative democracy, specific indices of media performance can be developed. For example, the first measure of media performance is facilitating of pluralistic competition by acting as civic fora for debate. Secondly, media as facilitators of public participation do mobilise the people and in so doing, encourage political learning and interest. The third measure is that the media preserve the conditions for civil liberties and political rights. The news media, in this regard, act as watchdogs holding government leaders accountable on behalf of the public.

For the purpose of this study, media performance was taken to be in line with Norris (2000:9) and McQuail (1992:121) as the media's ability and latitude to criticise public office holders such as the President. McQuail (1992:121) in particular, specifically observes that this watchdog function should be given a prominent place by society and that if one is to assess the independence of the media, there is need to look for evidence that this role is being freely carried out. As such, this study considered the media to be watchdogs against the abuse of power and against corruption in public life.

The corollary to the above was to ascertain whether the provisions of the law on the defamation of the President have any effect on media.

1.9.1.4 Mass Media

According to Gawlikowska (2013:8), the term *mass media* refers to the channels of mass communication in modern societies that reach large numbers of people, sometimes instantaneously. In that regard, mass media play significant roles in shaping public perceptions on a variety of important issues. Others, such as Demers (2005:182), define mass media as “organisations that produce news or entertainment content and distribute that content to a large number of geographically separated people through a technologically based medium”.

Viswanath, Ramanadhan and Kontos (2007:275) note that mass media are among the most important mechanisms of integration into a society and its culture because they offer information, entertainment, persuasion and cultural transmission. Viswanath et. al. particularly state that mass media are influential because of their extensive reach and the cumulative effects of exposure to media messages over time. This stems from the fact that media institutions are organised and structured to reach the largest number of people at the same time with similar messages and this power is, arguably, unrivalled by other institutions.

The term 'media' is usually taken as a broad (not monolithic) term encompassing a variety of content provided to the public, or sectors of the public over a range of platforms. There is no closed list of content provided by the media from news to politics, business, current affairs, entertainment, gardening, religion and so on (Limpitlaw 2012:11).

However, authors such as Bennett (1982:30) argue that:

The new media distinctively associated with the 19th and 20th centuries-the press, radio and television, the cinema and the record industry have traditionally been grouped together under the heading 'mass media' and their study developed as a part of the sociology of mass communication. At one level, this inherited vocabulary fulfils a useful descriptive function; we know what is being referred to when such terms as 'the media of mass communication' are used. At another level, however, such terms may prove positively misleading. It is clear, for example that the media which are customarily referred to in this way resemble one another only superficially. The relationships between the state and broadcasting institutions, for example, are quite different from those which obtain between the State and the press or different, yet again, between the State and the cinema.

Although mass communication is often associated with mass media, the two terms are not identical. The internet, for example, has enabled individuals and non-media organisations to engage in mass communication, even though it may not fit the traditional definition of a 'mass media' institution. What distinguishes mass media, however, is that they are organised primarily for the purpose of producing mass communication. Mass media can therefore be said to be social institutions that produce messages (such as news, information, and entertainment programming) for mass communication. As social institutions, mass media are said to pursue goals and engage in repetitive activities (e.g., gathering the news) on a regular basis (Demers 2005:183).

As such, it can be surmised that mass media are channels of communication that involve transmission of information in some way, shape or form to a large, heterogeneous audience. It can also be concluded as intimated by Gawlikowska (2013:8) that mass media communication is usually impersonal, requires specific technology or a medium and is done simultaneously.

In this study, mass media were considered to be the conventional media forms of the newspaper, radio and television (Kasoma 2001:28) to which the large part of the population in any geographical area are exposed to as their main sources of information.

The study, therefore, aimed to establish if the mass media, particularly the Zambia Daily Mail and Post Newspaper, were able to fulfil the watchdog functions.

1.8.2 Theoretical Framework

The study was carried out within the precincts of two theories, particularly the *agenda setting theory* and the *framing theory*. The use of the two theories was more suitable as certain phenomena could only be explained or understood to occur due to an interaction of various conditions and interdependent factors advanced in the theories considered. Additionally, some of the observed phenomena as operationalised below are situated in the identified theories. According to Baran and Davis (2010:11), a theory is any organised set of concepts, explanations and principles of some aspect of human experience. Baran and Davis note that there are a number of different ways that communication functions in a complex world and it is through theory that these ways can be understood.

1.9.2.1 Agenda setting and priming

The core premise of the agenda setting theory is that the press may not be successful much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think about. As such, the agenda setting theory argues that it is from this situation that the world looks different to different people depending not only on their personal interests but also on the map that is drawn for them by the writers, editors and publishers of the papers they read (Baran and Davis 2010:294; McCombs and Guo 2014:251).

The Agenda Setting theory was initially promulgated indirectly by Walter Lipmann in 1922 when he theorised a mass society perspective, arguing that the news media are the principal bridges between the broad arena of public affairs and our perceptions of this arena. He elaborated that the news media transmitted truncated versions of the world to the public, whose mental pictures are the pseudo-environment that is the basis of public opinion and behaviour. Others to take this line of thought include Benard Cohen in 1963 who is credited with refining Lipmann's ideas into what came to be called the agenda setting theory (Baran and Davis 2010:294; McCombs and Guo 2014:251).

According to McCombs and Shaw (1972:176), who refined and tested the agenda setting theory,

In choosing and displaying news, editors, newsroom staff and broadcasters play an important role in shaping political reality. Readers learn not only about a given issue

but also how much importance to attach to that issue from the amount of information in a news story and its position. In reflecting what candidates are saying during a campaign, the mass media may well determine the important issues-that is, the media may set the “agenda” of the campaign

The main argument of the agenda setting theory is that there is a strong correlation between the emphasis that mass media place on certain issues (e.g. based on relative placement or amount of coverage) and the importance that is attributed to these issues by mass audiences (Sheufele and Tewksbury 2007:11). The thrust is that the mass media force attention to certain issues and build up images of political figures. The mass media are thus seen to be constantly presenting objects suggesting what individuals in the mass should think about, know about and have feelings about (McCombs and Shaw 1972:177).

Additionally, McCombs and Guo (2014:252) argue that agenda setting is not a deliberate and premeditated effort by the news media to influence public opinion but rather an inadvertent result of the media’s need to focus on a few key topics in the presentation of their news.

In fact, as highlighted by Baran and Davis (2010:297), McComb’s agenda setting operates at two levels or orders: the object level and the attribute level. Conventional agenda-setting research focuses on the object level and assesses how media coverage influences the priority assigned to objects. In doing this, media tell us “what to think about”. However, media can also tell the audience “how to think about” some objects. The media do this by influencing what is called the second order “attribute agendas”; this is done by telling the audience which object attributes are important and which ones are not.

An important idea related to agenda setting is that of priming, which according to Baran and Davis (2010:296) holds that even the most motivated citizens cannot consider all that they know when evaluating complex political issues but instead people consider the things that come easily to mind. Hence, while agenda-setting reflects the impact of news coverage on the perceived importance of national issues, priming refers to the impact of news coverage on the weight assigned to specific issues in making political judgments. It follows that priming occurs when news content suggests to news audiences that they ought to use specific issues as benchmarks for evaluating the performance of leaders and governments. Priming is considered to be an extension of agenda setting.

It is argued, however, that for agenda setting to really take place there is need for substantial exposure to a message; people attending to a particular message and engaging in some level of

elaboration of it are most likely to recall information about it later. It follows that the accessibility of an issue—and therefore its place on the issue agenda—may be higher when people attend to messages about it (Sheufole and Tewksbury 2007:13).

The agenda setting theory is seen to have its roots in the mass society theory. Such theory presumes the existence of cognitive and societal-level media effects. This however, is polemical as the true extent of media influence on audiences, especially active ones has been a subject of debate for decades. However, media power arguments add to the critique of the agenda setting theory for being too situation-specific to news and political campaigns as validated by McCombs and Shaw (1972:177) who specifically tested the theory during the 1968 Presidential campaign in the US (Baran and Davis 2010: 297; Sheufole and Tewksbury 2007:13).

In this study, the agenda setting theory was used to understand whether the media are able to set the agenda and if there is any effect derived from the law on defamation of the President especially that agenda-building is a corollary of the watchdog function of the media (McQuail 1992:121).

As such, under the agenda setting theory, this study assumed that the media's fulfilment of agenda building is dependent on the watchdog and accountability role of the media (as discussed in section 2.3. Simply put, because the law on defamation of the President may have a possible chilling effect (Nordvik 2014:54-55; Lustgarten et. al. 1997:191) on the watchdog role, the agenda setting function of the media could consequently be undermined.

1.9.2.2 The framing theory

The framing theory is in many ways tied to the agenda setting theory of mass communication as it also focuses on how the media draw the public's attention to specific topics, thereby setting the agenda to a certain extent.

Scheufole and Tewksbury (2007:11) state that the roots of the framing theory can be traced back to both cognitive psychology and sociology with its basis on the assumption that how an issue is characterised in news reports can have influence on how it is understood by audiences.

The framing theory postulates that exposure to news coverage results in learning that is consistent with the frames that structure the coverage. Hence, if the coverage is dominated by a single frame, especially one originating from an elite source, learning will tend to be guided by this frame. According to the framing theory and other subsequent research, news coverage

can strongly influence the way news readers or viewers make sense of news events and their major actors and as such, news coverage is usually framed to support the status quo (Baran and Davis 2010:338).

At macro-construct level, the term ‘framing’ mainly refers to the modes of presentation that journalists and other communicators use to present information in a way that resonates with existing underlying ‘schemas’ among their audience (Sheufole and Tewksbury 2007:12).

In amplifying the premise of the framing theory, Baran and Davis (2010:336) state:

The framing theory challenges a long accepted and cherished tenet of journalism—the notion that news stories can or should be objective. Instead, it implies that journalism’s role should be to provide a forum in which ideas about the social world are routinely presented and debated...this forum is dominated by social institutions having the power to influence frames routinely used to structure news coverage of the social world. These institutions are able to promote frames that serve to reinforce or consolidate an existing social order and to marginalise frames that raise questions about or challenge the way things are.

This view of the framing theory is consistent with works by other authors such as Norris (2000:3) who regard the media as civic fora for debate based on the type of news and current affairs coverage. As such, aspects such as the level or extent of coverage, whether the news media provide platforms for a wide plurality of political parties, groups and actors as well as whether the news media provide equal or proportional political coverage for different parties in terms of stopwatch, directional and agenda balance are somewhat a result of framing (Baran and Davis 2010:337).

From the above, it can be surmised that framing goes further than just setting the agenda towards creating a frame around how the information (news) is presented. It can be considered to be a conscious choice by journalists who, as gate keepers, organise and present the ideas, events and topics they cover, which is the frame.

In this study, it is assumed that journalists and other media practitioners are expected to expertly and freely frame stories and other news material about the President, to imbue a clear understanding of many issues surrounding the Presidency as a way of increasing citizen participation in governance issues as discussed in 2.3.1 and 2.3.2 below. It is also assumed that

how the media frame coverage or stories pertaining to the President is dependent on many factors, among them the law.

1.10 Ethical Considerations

Overall, the study was conducted independently and without any partiality. In conducting the study, quality and integrity of the research and related data were ensured. Full, informed consent was sought for in-depth interviews while the confidentiality of the respondents was respected. The study ensured that participants participated in the study voluntarily while avoiding any harm to them.

1.11 Organisation of the Study

This dissertation is organised into six chapters. The first chapter presents a brief introduction, background and focus of the study while the second chapter examines and reviews various literature around the main concepts under study. The third chapter outlines the research methodology that was employed in conducting the study. The fourth chapter presents the findings which are later discussed in chapter five. A conclusion is finally made in chapter six with subsequent recommendations presented.

1.12 Conclusion

This chapter has laid a foundation for the study by outlining the background, current status as well as the purpose, significance and limitations in order to contextualise the problem under study. Additionally, the chapter also presented the conceptual and theoretical framework in which the study was situated. The next chapter undertakes an examination of various literature pertaining to the key concepts of the study.

CHAPTER TWO

LITERATURE REVIEW

2.1 Overview

This chapter undertakes a review of literature pertaining to defamation of the President law vis-à-vis criminal libel; the chapter also discusses press freedom vis-à-vis media performance and the role/functions of the media in a democracy. In so doing, various publications and studies relating to the problem are considered to help situate the discussion in a particular context. The analysis in this chapter is hinged on the interaction between the defamation of the President law and media performance.

The review shows the sources and status of the defamation of the President law in connection with civil and criminal defamation, its effect on the functions of the media as well as relevant common law in relation to defamation of the President.

Notably, little scholarly literature exists on defamation of the President or general insult laws vis-à-vis media performance in depth, save as separate minor subjects.

2.2 Defamation and the freedom of expression

Defamation is the publication of a statement about a person that tends to lower his reputation in the opinion of “right-thinking members of the community” or make them shun or avoid the person. The defamatory meaning of the communication may be apparent at “face value” or may arise from extrinsic circumstances. Defamation is generally provided for under Chapter 68 of the laws of Zambia (Chanda and Liswaniso 1999:32; Kantumoya 2004:90; Lustgarten, Norrie, Stephenson and Barendt 1997:3; Oxford dictionary of law 2003:140).

Lustgarten et. al. (1997:3) argues that defining defamation is not easy as the standard definition above is vague and this is one reason for the media to be on guard as it is sometimes unclear as to what constitutes a defamatory allegation as the determination of the status of particular words in question may sometimes fall squarely on the judge.

Defamation is usually in words although pictures gestures and other acts can also be defamatory. In this regard, when the defamatory communication is in a transient or temporary form-such as gestures or the spoken word, it is known as ‘slander’ while defamation in a permanent form, such as written material, is known as ‘libel’ and may be treated differently at law (Kasoma 2001:245; Lustgarten et. al. 1997:2; Oxford Dictionary of law 2003:140).

For content to qualify as defamatory, it must meet three main conditions. First, it must have been published or broadcast, second, the offended person must be clearly identified or referred to in the publication or broadcast and third, the content must be defamatory *per se* (at face value) or *per quod* (as interpreted or imputed). In terms of identification or reference, the plaintiff need not be mentioned specifically i.e. it is enough for the statement to reasonably implicate the plaintiff and the use of pseudonyms does not help the defendant in this regard (Chanda and Liswaniso 1999:39; Kasoma 2001:246, 249; Lustgarten et. al. 1997:2).

The justification for defamation law is the protection of the reputations of individuals (or of entities with the right to sue and be sued) against injury described earlier which tends to lower the esteem in which the defamed is held in the community or exposes them to public ridicule and hatred-causing them to be shunned or avoided. Simply put, defamation laws exist to guard the reputation of the individual against unjustified attacks or injury (Article 19 2000:5; Kantumoya 2001:90).

It is this same principle embodied in Article 19 of the ICCPR which seeks to attain a balance between the freedom of expression and the corresponding obligation to protect the reputation of individuals (ICCPR, Article 19). Defamation law is therefore recognised as a legitimate restriction of the freedom of expression for the purpose of preserving the right to reputation.

Other international instruments, such as the European Convention on Human Rights, the American Convention on Human Rights, the African Principles of Freedom of Expression Declaration and the Zambian Constitution in Article 20, highlight the need to protect the reputation of others as an acceptable limitation on the freedom of expression among other interests (Limpitlaw 2012:68; the Constitution Act 1996; Nordvik 2014:5-6).

Particularly, the standard restrictions permissible on the freedom of expression according to the ICCPR are only those necessary for the protection of national security, public order, public health or public morals. These restrictions, according to the ACHPR, must be provided by law, serve a legitimate interest and be necessary in a democratic society (ACHPR 2002; ICCPR; Nordvik 2014:5; Pasqualucci 2006:379).

In this regard, the Zambian Constitution in Article 20 (3) (b), permits the state to impose restrictions on the freedom of expression and the press for the purpose of protecting the reputations of other persons, stating that “nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention [of the Article 20] to the extent

that it is shown that the law in question makes provision-that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings...”.

The African Declaration on Freedom of Expression Principles in part 12 (1) specifically outlines standards for defamation laws; the declaration states that individuals shall not be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances. The declaration also states that public figures are required to tolerate a greater degree of criticism and sanctions for defamation should never be so severe as to inhibit the right to freedom of expression by others (ACHPR 2002).

Despite the protection of the reputations of others being a legitimate ground for regulating or even prohibiting expression by the media, laws relating to defamation must not criminalise defamation but instead impose post-publication civil sanctions such as damages (Limpitlaw 2012:69). Also, defamation law must not inhibit public debate about the conduct of officials or official entities who are required to tolerate a greater degree of criticism than ordinary members of the public. This is discussed further in section 2.2.1 on criminal libel.

Limpitlaw further notes that defamation laws must provide for legal defences to a defamation suit and ensure the burden of proof falls on the plaintiff in cases involving the conduct of public officials and other matters of public interest. Also, the scope of defamation laws must be defined as narrowly as possible.

There are three main defences in defamation; the first is ‘justification’ (truth of the allegation)- which is considered to be an absolute or complete defence to an action for defamation even in a case where the defendant was actuated by ill-will or spite as the defendant’s action is seen to have reduced the plaintiff’s reputation to its proper level. The second defence is ‘fair comment on a matter of public interest’ when expressed as an opinion and not an assertion of fact. The third defence is ‘privileged communication’, which may either be absolute or qualified privilege (Chanda and Liswaniso 1999:55; Lustgarten et. al. 1997:9-11).

As redress for defamation, the court may award damages which may be either compensatory or exemplary damages (Chanda and Liswaniso 1999:61; Lustgarten et. al. 1997:21-23). However, the awarding of excessive damages to the plaintiff may have a chilling effect on the

freedom of expression and particularly of the press as it may inhibit public debate, criticism and investigative journalism among others as shown in sub-sections 2.4.1 and 2.4.2 below.

It therefore becomes a challenge to strike a judicious balance between the legitimate interests of individuals not to have their reputations tarnished and the interest of the public to have access to relevant information as well as unhindered debate in the enjoyment of the freedom of expression.

It is widely suggested that redress in defamation should be non-pecuniary and aimed directly at remedying the wrong caused by the defamatory statement. Redress in this regard could be an apology, correction or other ‘proportionate’ remedy as directed in most international instruments on limitation of freedom of expression most of which recommend taking least restrictive remedies as redress for a damaged reputation (IPI and MLDI 2015:24; Pasqualucci 2006:379).

2.2.1 Criminal libel

With this general understanding of defamation, it is prudent to delve into the intricacy of criminal defamation, particularly the defamation of the President, which builds on general defamation and is, in part, the subject of this dissertation.

Of the two forms of defamation discussed earlier in the introduction on defamation in 2.2 i.e. libel and slander, libel exists both as a crime and a ‘tort’ (civil wrong) and is considered actionable *per se*. Criminal libel usually includes the publication of seditious, blasphemous and obscene material which would normally result in the disturbance of public peace (Chanda and Liswaniso 1999:32; Kasoma 2001:246; Nordvik 2014:7).

In Zambia, criminal libel is covered in Section 191 and 192 of the Penal Code, which defines it as “the unlawful publication by print or writing of any defamatory matter concerning another person with the intent to defame that person”. The defamatory matter is further defined in a subsequent provision as “matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation” [Limpitlaw 2012:373; The Penal Code Act of 1965 (Cth) S191].

Criminal libel in Zambia extends to the publication of seditious matters about the Zambian or foreign President and is also covered in the Penal Code in Section 69 and 71 respectively. As established in chapter 1.2.1, Zambia inherited these statutory and common laws on criminal libel from its coloniser-England (Kasoma 2001:246).

It should be noted that criminalisation of a particular activity implies state interest in the control of that activity as a justification for its involvement. The rationale behind the state's involvement is that there is perceived to be a public interest in the state initiating criminal prosecution-going beyond the right of the individual to protect his or her reputation in this case. It is closely related to the concept of sedition and/or 'seditious libel' in the common law (IPI and MLDI 2015:18; Oxford Dictionary of Law 2003:128).

Kasoma (2001:247) extrapolates this by outlining the main features of criminal libel in contrast to libel as a tort. Criminal libel is concerned with the preservation of peace and is actionable even after the complainant has died. Also, in criminal libel the offender is fined and/or imprisoned-with the money going to the state. Additionally, in criminal libel the burden of proof lies with the state.

On the other hand, tortious libel is concerned with pacifying the individual and is not actionable after the death of the plaintiff. In tortious libel, the offender is fined and compensates the plaintiff while the burden of proof is upon the defendant as the plaintiff only needs to show that the matter in question meets the three basic conditions of defamation. These conditions are that the statement or matter is defamatory at face value or as imputed, the plaintiff is clearly identified in the defamatory matter which should have been published to at least one other person. Among other contrasting features, truth or justification is considered to be a complete defence in libel as a tort (Kasoma 2001:247; Limpitlaw 2012:68, 69; Kantumoya 2004:90; Oxford Dictionary of law 2003:140).

Pasqualucci (2006:403) notes further differences between criminal and tortious libel

Civil law suits for defamation combined with the right to reply can provide *restitutio integrum* (full restitution) to victims. Civil defamation suits are adjudicated between the parties in civil courts, whereas criminal defamation suits are prosecuted by the State as criminal offenses. Otherwise, the primary distinction between civil and criminal defamation is in the remedies awarded. The victim's remedy in a civil defamation suit is compensatory damages and perhaps punitive damages. The formal remedy in criminal libel is incarceration or the payment of a fine to the government.

Notable among the features of criminal libel as postulated by Kasoma (2004:247) and supported by others such as Walden (2000:1) is that in criminal libel prosecution (traced from its ancient origin), it does not really matter whether the allegation was true or false with the opposite actually holding true-"the greater the truth, the greater the libel". In most Western

jurisdictions such as England, this was the practice only until 1843 when Lord Campbell's act changed the law to provide for truth to be a defence to any charge of criminal libel provided it was published for the public benefit (Kasoma 2001:246; Nordvik 2014:7).

Dhar (2011:6, 7) contends that treating unequal offences equally-such as defamation and other 'serious' crimes like rape, murder or robbery amounts to over-criminalisation. This is based on Dhar's categorisation of the elements of crime which include crime as a public wrong affecting the community or causing distinct harm to the community; crime is an activity that causes social volatility and is *mala in se* (inherently immoral).

Kasoma (2001:248) remarks:

"It is a great twist of irony that the aim in criminal libel is to protect the general public from disorder arising from a breach of the peace. The journalists accused of the crime, are themselves trying to serve public good by ensuring that people holding public office are accountable to the people as democracy and good governance require... [for example] if indeed, a riotous situation develops because the public have found out that their President or cabinet minister has stolen money, who should be blamed, the press for making the revelation-assuming it is true-or the President or minister for mismanaging public affairs?."

It can be surmised that there is a nexus between the defamation of the President in Section 69 and Criminal libel in Section 191 of the Penal Code-that is to say both are criminal defamation provisions, with the former limiting its benefits to the President among other aspects. If anything, insult laws are a sub-set of criminal defamation as they are designed to protect "honour and dignity" rather than strictly reputation (Walden 2001:7-8).

The difference between insult laws and criminal defamation is that because defamation legislation is designed to help protect reputation against libel, it is concerned with the impact such expressions have on third parties. On the other hand, insult laws are concerned with the impact libellous expressions have on have on the feelings of the insulted person, on his or her honour and dignity. As a result, it can be surmised that the defamation of the President law has elements of both criminal defamation and insult law. This is so because the distinctions between defamation and insult can sometimes be blurred in practice, and vaguely defined libel laws can lead to defamation convictions where the expressions uttered are in fact insults or disrespect (Nordvik 2014:7).

According to Section 69 of the Zambian Penal Code, “any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable upon conviction to imprisonment for a period not exceeding three years”. The elements of criminal libel outlined above by Kasoma (2001:247) are vivid in this definition of ‘defamation of the President’ (The Penal Code Act of 1965 (Cth) s69).

2.2.2 *Defamation of the President: justification vis-à-vis criminal libel*

The rationale behind the provision on defamation of the President is to protect the President’s reputation and the dignity of his office as interpreted in the case of *The People v. Bright Mwape and Fred M’membe* among others, in which the Supreme Court upheld the constitutionality of the provision on defamation of the President (Chanda and Liswaniso 1999:48).

Further, it follows that the Presidency should be an office that commands respect and no one is expected to show disrespect for the person occupying that office. In like manner, no one is expected to bring the Presidency into public odium and contempt (Nkandu, 2012:36). Thus, the reputation of the President must be upheld and protected if people are to have confidence in the decisions made by the person occupying the office.

The logic behind the existence of the provision is that alongside freedom of speech should be the equally important public interest in the maintenance of the public character of public men and women for the proper conduct of public affairs (Chanda and Liswaniso, 1999:48) which may require that they be protected from destructive attacks upon their honour and character, (Walden 2001:9; Nordvik 2014:7). In the case of *The People v. Bright Mwape and Fred M’membe*, the court held that the public interest in the protection of public officers from destructive attacks was even more self-evident where the public person was the President as the constitution elevates the President above everyone else and he could not, therefore, be compared to an ordinary person (ZLII 2016).

This view resonates well with the origin of ‘insult laws’ from which criminal defamation and the defamation of the President may have evolved. According to Walden (2000:1), insult laws trace their origins from the ancient French concept of *lèse majesté* which meant an offense to the dignity of the sovereign based on the divine right of kings who could do no wrong. As such, insulting the king, his officials, institutions and symbols was a ‘hanging offense’.

Insult laws can also be traced to the fifth century BC Roman law of the Twelve Tablets which contained provisions referring to *iniuria* (insult or injury), meant to protect the honour and dignity of all citizens, with those of higher status entitled to greater compensation. This is, of course, in contrast to today's version of similar insult laws which are narrower and offer protection to governments, public officials or royal families-a typical evolution of which the defamation of the President in Zambia is (Walden 2001:9).

Insult and criminal libel laws borrow from the general law on defamation where it is postulated that utterances alone can inflict harm on the sovereign. As such, an attack on the dignity or respectability of authority was historically deemed to undermine its credibility and to subvert the affection of its subjects in the same manner that libel or slander was deemed to injure an individual's reputation. Criminal libel is thought to disturb the inner tranquillity of the state and throw its members into a "distemper" just as defamation is thought to disturb the "inner tranquillity" of a person. Historically, this metaphor of the state as a body reinforced the notion of natural subordination, the domination of the appetitive, non-rational parts of the body-the people-by the head-the sovereign's reason and central intelligence (Koffler and Gershman 1984:821).

Koffler and Gershman (1984:817) argue that the government is entitled to some secrets in the modern days of potential annihilation and that the point should instead be whether government is entitled to those secrets simply because secrecy is necessary to enhance its reputation.

Koffler and Gershman state:

Ever since medieval days, authority has attempted to suppress rumours and scandalous discussions about itself on the grounds that such discussions cause a disturbance of the peace. Authority has had a point. For dissent calls into question official orthodoxy and critics put themselves on an equal footing with the authority criticised. Historically, whenever scandalmongers and disaffected persons vilified their superiors, they could indeed create conditions of unrest (Koffler and Gershman 1984:817).

Part of the historical justification of criminal defamation, such as the defamation of the President, is that the malicious defamation of an official, whether true or false, deserves more severe punishment than the defamation of a private person. This is so because the defamation of an official is seen to occasion not only a breach of the peace but also a scandal, injuring the government, which itself is sacred (Koffler and Gershman 1984:823; Walden 2001:9-10).

It is from this history that the school of thought justifying the existence of the Defamation of the President law draws its reasoning. The Supreme Court, in the case of *The People v. Bright Mwape and Fred M'membe* contended that the mere fact that the President enjoys a special status is legitimate and justifiable enough to seek protection for his reputation as does Section 69 on defamation of the President. Others rationalise the existence of the law on defamation of the President as a tool for the preservation of public peace, arguing that allowing people to defame the President could lead to a breakdown of law and order as supporters of the President may physically attack those defaming the President (Simutenda 2008:36; ZLII 2016).

Ideally, according to Koffler and Gershman (1984:816), the distinguishing feature of the intent of criminal libel law as related to seditious libel in most instances is suggested by its nomenclature. It exists simply to protect against injury to the reputation of government or its functionaries.

2.2.3 Criticism of the defamation of the President law

Some authors, such as Chanda and Liswaniso (1999:49) and Kasoma (2001:248) have described rationalisation of criminal libel, particularly the defamation of the President as “specious and speculative” as well as “anachronistic”. They argue that as a servant of the People, the President’s reputation is dependent on his conduct while in office and a good reputation must therefore be earned-not legislated as is the case and intent of Section 69 of the Penal Code on defamation of the President.

If anything, in a democracy and according to internationally acceptable standards laid out in section 2.2 above, the public interest should override the reputations as well as honour and dignity of public figures protected in insult laws, which is not the reality especially in most Southern African countries as established by Limpitlaw (2012:70) and Nordvik (2014:24).

The danger of the defamation of the President law and other special protection through various insult laws is that those holding public office may mask themselves behind criminal libel laws or in this case the defamation of the President to shut off a probing press so that they can continue with their activities at will with regard to public affairs (Kasoma 2001:248; Walden 2001:9).

In addition to the protection that the President has by virtue of his office, the provision in Section 69 on defamation of the President gives special privilege and liberty to the President to defame his opponents at will by immunising him from legal suits while making it criminal

for the opponents to defame him, a status that may affect media functions as the media are expected to act as a conduit-a forum for civic debate (Chanda and Liswaniso 1999:49; Norris 2000:5).

The law on defamation of the President was introduced in Zambia in 1965-shortly after independence along with two other laws in the Penal Code-Section 68 which makes it an offence to insult the national anthem and Section 70 which makes the expression or showing of hatred, ridicule or contempt of people on account of race, tribe, place of origin or colour an offence (MIBS 2000:31; The Penal Code Act of 1965 (Cth) S68 S70). The two were necessary at the time for the purpose of national unity and this unifying intent is apparent in Section 68 and Section 70, but this cannot be said of Section 69 on defamation of the President.

Another danger with the law on defamation of the President is that it does not lay down any guidelines for determining what constitutes insulting matter, giving the Police enough latitude and discretion to decide which publication is defamatory or insulting and which is not (Chanda and Liswaniso 1999:49; Simutenda 2008:35). In fact, by this token alone the provision on defamation of the President is arguably nebulous-an aspect observed by Kasoma (2001:248) who concludes that the vague nature of the law may allow for abuse by those occupying public office to stifle any criticism they may not be happy with.

Given this and other observations (Chanda and Liswaniso 1999:49; Kasoma 2001:248; Mwanakatwe 1994:271, 266; Simutenda 2008:35) the provision in Section 69 on defamation of the President is seen to be in conflict with the basic ideals of democratic governance which espouse principles of accountability, transparency and open debate through freedom of speech and of the press. It is this very view of similar laws in Zimbabwe that has led to “avoidance strategies” by the media in order to cope with the restrictive effect of the legislation as discovered by Nordvik (2014:25, 55), who’s study is presented in sub-section 2.4.4 below.

One important concept worth consideration is that of the ‘public’ status of the President and any other person occupying public office. Chanda and Liswaniso (1999:49) explain this by stating that “in a democratic state, the President is a public figure accountable to the people and should be transparent in his actions. This requires that the people-including the press, are not subjected to criminal sanctions for making unpalatable remarks about the President”.

This argument stems from the principle of a higher standard of proof for public figures which arose from the landmark ruling in the famous case of *New York Times Co. vs. Sullivan* (Dent and Kenyon 2004:12; IPI and MLDI 2015:26) which originated what are now called the

‘Sullivan rules’-this is discussed further in sub-section 1.2.5.1 on common law within and outside Zambia.

Further to the *Sullivan principles* and subsequent concepts, it is worth noting that no one is forced to run for the office of President and those who volunteer to run for public office, such as the Presidency, must be thick-skinned and be prepared to lose a certain level of privacy (Chanda and Liswaniso 1999:49; Pasqualucci 2006:399-400). In fact, the very fact that the President’s actions are subject to public ridicule may help to keep his conduct within the law and sensitive to the citizenry.

It holds that the President is not above politics-he is an executive and not titular President seen as a symbol of national unity. The constitutional order is such that it allows for competition to the highest office of the land, which invariably demands that the President is scrutinised along with other candidates usually by the press in performing their core function as watchdogs of society (McQuail 1992:121). This process of scrutiny may attract some level of criticism which may extend to the examination of the President’s personal character and in-turn ridicule the President (MIBS 2000:32).

Additionally, the law on defamation of the President does not distinguish between the ‘office’ of President and the ‘person’ occupying the office of President which is at variance with the intent and rationale behind the existence of the law. Moreover, the protection of the institution of Presidency in this regard is adequately catered for in other pieces of law such as Section 57 of the Penal Code on offences in respect of Seditious Practices, Section 60 on Seditious Intention and Section 61 on Seditious Publication among other laws. The effect is that all journalist writing that is critical of the President-whether the ‘office’ or the ‘person’ occupying the office may be classified as offensive under the law on defamation of the President (MIBS 2000:31; The Penal Code Act of 1965 (Cth) S57, S60, S61)

It follows then that the law on defamation of the President in Section 69 of the Penal Code has the net effect of stifling freedom of speech and particularly of the press as journalists would fail to be critical in their reporting in spite of repulsive behaviour on the part of the President (Chanda and Liswaniso 1999:49; Nordvik 2014:55). The fear of imprisonment upon conviction would cause a lot of journalists to steer clear of reporting on anything that might be considered defamatory of the President-more like a ‘sword of Damocles’, and this may even stifle legitimate criticism in the media (Kantumoya 2004:87; Nkandu 2012:36; Simutenda 2008:36).

Such a situation could affect media performance, a subject which is discussed in detail in subsection 2.3.2.

The net effect of laws such as the defamation of the President is commonly called a “chilling effect” and impacts media performance in various ways. The chilling effect is classified into direct effect (self-censorship) and structural effect (institutional censorship) according to Lustgarten et. al. (1997:192).

The alternative to criminal defamation and insult laws, as opined by experts such as Chanda and Liswaniso (1999:49), Limpitlaw (2012:69) and Pasqualucci (2006:403) is to retain only civil defamation laws such as the Defamation Act in Chapter 68 of the laws of Zambia (a tort) so that those aggrieved-including the President can seek monetary or other compensation through the court of law as opposed to criminal defamation where the remedy sought is not so much compensation as incarceration of the accused. When the accused is a journalist, the chilling effect is even more pronounced as media performance is affected.

Moreover, as demonstrated earlier, there are sufficient laws, other than the defamation of the President in Zambia for example, to protect the honour and dignity of the office of Presidency and one can surmise that Section 69 is therefore a redundant law (Nkandu 2012:37). Similarly, the danger with criminal defamation – and one of the reasons why defamation should be a purely a tort – is that the involvement of the state in prosecuting alleged defamers shifts the matter very quickly into the punishment of dissent (IPI and MLDI 2015:20; Pasqualucci 2006:404).

On this Pasqualucci (2006:404) observes:

..Defamation suits are not as problematic as criminal defamation suits. In civil suits, there is no potential for prosecutorial misconduct. As criminal prosecutors exercise considerable discretion in determining which complaints to prosecute, criminal defamation laws may be inconsistently enforced, and enforcement may be politically motivated, especially when the alleged victim of the statement is a public official or influential person.

Precedence of a sitting President seeking civil redress for defamation was set in 2012 when President Micheal Chilufya Sata-in his personal capacity sued the proprietor of a tabloid, the Daily Nation along with a lecturer from the University of Zambia claiming general and exemplary damages for defamation of character. President Sata also applied for an injunction

to restrain the newspaper from further publishing similar articles. The case later fell off in 2014 after the death of the plaintiff-President Sata (*The Zambia Daily Nation* 11 May 2015).

2.3 Media and democracy

2.3.1 The role of the media in a democratic society

The media play several roles in society depending on a range of factors related to the nature or type of media i.e. the content (whether news, current affairs or light entertainment) and the medium used (whether print, broadcast or internet based). These roles are often summed up into three basic functions of informing, entertaining and educating (Limpitlaw 2012:12).

In this regard, the media are indispensable in a democracy, which cannot function properly without the participation of this critical sector often referred to as the ‘fourth estate’ (Makungu 2004:1). This is because access to information and information dissemination are fundamental in the process of development as well as participatory governance.

A free press is actually seen to be an essential component of a free and rational society; this is so because a free press facilitates access to information which further translates into informed citizens that make informed choices, rather than out of ignorance or misinformation (Makungu 2004:1; Mwanakatwe 1994:276). This then helps to facilitate the democratic values of accountability and transparency through citizen participation (Limpitlaw 2012:13).

For individuals to be informed, aware and active citizens, they must be free to publish and receive information and opinions-even those deemed to be critical or dissenting. Kasoma notes that the freedom to publish and receive information and opinions itself is hardly possible without a free press (Kasoma 2000:24).

Mwanakatwe (1994:272) adds that:

Unless there is free expression in society, it is impossible to assess the conduct and performance of political leaders and the bureaucratic elite in order to make them accountable to the public...free expression enables people to develop public opinion; a society is dynamic when its members are free to discuss new and better ideas about the economy or about the governance of their country...the press which publishes newspapers, pamphlets, magazines and even books has an important role in a democratic society by facilitating access to all ideas.

It follows then that when a State acts to curtail or silence the operations of the media, whether print or broadcast media, it not only violates the expressive rights of the media and of the journalists, editors and publishers but also the rights of the citizens to receive information and ideas freely (Limpitlaw 2012:11). This includes critical opinions about the Presidency in the context of the defamation of the President law which is this study's subject of consideration.

Thus, in order for the media to 'give meaning' to democratic participation, they must fulfil certain roles which are quintessential to democracy as will be discussed below.

One of the traditional and important characterisations of the role of the news media is that of a 'watchdog of society', monitoring the activities of public administrations and other institutions and practices that directly and indirectly affect the public (Limpitlaw 2012:13). In this case, the watchdog role could include holding public officials (such as Presidents) accountable for their actions. As opined in chapter 1.2.5 of this dissertation, laws such as the defamation of the President could pose a challenge to this function of the media (Chanda and Liswaniso 1999:49; Kasoma 2001:246; Mwanakatwe 1994:276).

The watchdog role of the media takes many forms depending on the nature of the medium concerned as well as other factors such as the state of the democracy and the level of development in a particular country. However, the primary watchdog function in either context is to provide information; to be the "eyes and ears" of the public by monitoring what is happening in public life and reporting on daily events as they unfold (McQuail 1992:121; Limpitlaw 2012: 13).

The watchdog role places the media between government agencies and the public (Limpitlaw 2012:12; Mwanakatwe 1994:274); this is only true to a certain extent as a number of media outlets are fundamentally part of government (like state media) and may not take up any role that is not supportive of the government (Makungu 2004:25).

Another important role worth considering, in the context of this study, is that of the media as advocates of democracy and good governance. However, this role is seen to be controversial because it places the media as both advocate and impartial reporters (Limpitlaw 2012:16). Under this role, the media are firmly on the side of the ordinary citizen whose life can be improved or otherwise worsened depending on how public authority is exercised (Kasoma 2001:246, 247).

The advocacy role is closely linked to the watchdog role, but advocacy goes further as the media not only report on what is happening but also what should be happening (Limpitlaw 2012:16). An example of the advocacy role of the media is that played during an election where the media can help to strengthen democratic processes as well as vocalise democratic standards by which public authorities should be held to account for conduct during elections.

In this sense, the media, as agents of independent journalism, offer checks and balances and consequently act as the ‘fourth estate’ based on the classic separation of powers in a political system (Nordenstreng 2016:2).

McQuail (1992:121) observes that the various roles of the media are labelled by the type of reporting involved, such as “advocacy”, “participative”, “active”, investigative”, and “critical” reporting.

Overall, if the media fulfil the roles outlined above, they can act as ‘catalysts’ for democracy (Limpitlaw 2012:18) and make public participation in democracy meaningful beyond serving the public interest. Limpitlaw couldn’t explain this better than when she writes:

The stronger the media become in a particular country, the better they are able to fulfil their various roles as watchdogs, detectives, educators, good governance advocates and catalysts for democracy and development. The more the press are able to fulfil these roles, the more the public is informed about public interest issues. The more the public is so informed, the more it is able to hold public power accountable and relate to government, the private sector and even civil society in a manner that is informed (Limpitlaw 2012:18).

However, to look at ‘the media’ as a uniform or monolithic concept can be misleading as there are different types of media in any given society based on different media systems and models in a democratic context (Nordenstreng 2016:2). As such, McQuail (2005:185) in Nordenstreng (2016:2) promulgated a typology of media based on normative approaches, leading to four models. The first of the four models is the liberal pluralist or market model, followed by the social responsibility or public interest model as well as the professional model and the alternative media model.

From these political models of the media in different countries, four broad roles of the media in society are postulated based on the media’s relation to the dominant political-economic powers on one hand and the citizens of the civil society on the other. These roles can therefore

be ‘monitoring’ (for reporting the power), ‘facilitative’ (for serving civil society), ‘radical’ (for questioning the political system) and ‘collaborative’ (for serving the state and other power institutions). These roles are seen to be an offshoot of normative theory of media in a democratic context and are thus integral to democracy (Nordenstreng 2016:2).

2.3.2 Measuring media performance

Some scholars, such as McQuail (1992) and Norris (2000), have promulgated various strategies for the measurement of the performance of the media in fulfilling the roles outlined in subsection 2.3.1. Particularly, Norris (2000:9) sums up three critical functions of the media under the normative assumptions of the news media in the context of a representative democracy, in which specific indices of media performance have been developed. The functions and their consequent measurement postulated by Norris (2000) help to reinforce the objectives of this study on the possible influence of the defamation of the President clause on the media’s performance of the identified functions.

The first measure of media performance is that of contribution to pluralistic competition (Norris, 2000:3) where it is assumed that the media should act as a civic forum for debate. This standard can be measured mainly through a systematic content analysis of the amount and type of news and current affairs coverage, comparing media outlets like newspapers and television over time and across different countries. Some of the questions that can be asked in trying to measure performance in this regard include whether the news media provide extensive coverage of news about politics and government especially during election campaigns or whether the news media provide a platform for a wide plurality of political parties, groups and actors. The researcher can also ask if the news media provide equal or proportional political coverage for different parties in terms of stopwatch, directional and agenda balance.

The second measure is that of the media promoting conditions for public participation by acting as mobilising agents and in so doing encouraging political learning, interest and participation. To evaluate this standard of media performance, Norris (2000:6) proposes that the researcher should ask whether the news media succeed in stimulating general interest in public affairs or how far the news media encourage citizens to learn about public affairs and political life. The researcher could also ask how far the news media facilitate and encourage civic engagement with the political process, doing this through mass surveys of the knowledge, interest and activism of news users.

The third measure that Norris (2000:5) postulates, which is also of particular interest to this study, is that of the media preserving the conditions for civil liberties and political rights. The news media in this regard act as a watchdog to hold government leaders accountable on behalf of the public. Under this measure, the researcher should ask how far the news media go to provide independent, fair and effective scrutiny of the government and public officials. This can be achieved through the use of historical case studies describing the role of the media in classic examples of abuse of power, power scandals and government corruption in order to see how far journalists act fairly and independently in the public interest to hold officials accountable.

On the watchdog role as a measure of media performance, McQuail (1992:121) states that “possibly the most important requirement of performance in respect of freedom is that media should deliver on the promise to stand up for the interests of citizens in the face of the inevitable pressures, especially those which come from government...criticism of office-holders has indeed always been a major topic of newspapers in both commercial and party political press systems”.

McQuail emphasises that if one is to assess the independence of the media, there is need to look for evidence that the watchdog role is being carried out. This is critical to understanding the performance of the media vis-à-vis the existence of the defamation of the President law in fulfilling the watchdog and advocacy functions by holding leaders (such as Presidents) accountable.

In this regard, Chirwa (1997:28) states that press freedom may be endangered or stifled by direct measures such as the imposition of repressive press laws among other restrictions on journalists which border on censorship of materials before and after publication. The corollary is that such restrictions pose a threat to the media’s performance and fulfilment of their roles and functions.

2.4 Related research studies and findings

2.4.1 Defamation law’s chilling [self-censorship] effect: a content analysis of Australian and US newspapers (Dent and Kenyon 2004)

One study that is significant in the context of the effect of defamation on media performance is Dent and Kenyon (2004). The two scholars investigated the impact of defamation law’s deterrent effect on media performance by observing journalistic publishing and writing. Dent and Kenyon conducted a comparative content analysis of more than 1400 Australian and US

newspaper articles and concluded that defamation law makes a difference in terms of what is published in newspapers.

The use of content analysis in the study of the impact of (defamation) law is not so common and Dent and Kenyon's study is a trendsetter in this regard as sociological methods are not often explored in research on media law (Dent and Kenyon 2004:17).

Dent and Kenyon (2004:26) found that US articles contained more apparently defamatory allegations at nearly three times the rate of the Australian sample. In the Australian sample, media appeared to be less comfortable making allegations in relation to corporate affairs as opposed to political figures, compared to their US counterparts. The US articles included far more extreme commentary than the Australian sample. This confirms some of the fears expressed by the authors on media performance in sub-section 2.3.2 above that repressive provisions such as criminal defamation laws may have a negative effect on the media's ability to perform the watchdog function. The corollary is that the quality of public debate (through the media) about political and public interest matters is thought to be limited by the media's fear of defamation law-especially criminal defamation and this is also demonstrated in Lustgarten et. al. (1997:191).

Dent and Kenyon's study coded 429 articles in Australia and 986 in the United States and found that journalists in the United States appeared to be more comfortable making allegations about corporations and corporate figures than politicians. Overall, the US prominence of defamed corporations and related individuals substantially exceeded Australian results. When compared to the combined total of twenty per cent for politicians and officials, the findings showed that the US media were more focused on watching corporate interests than politicians owing to the provisions on defamation such as the *Sullivan principles* which were ably discussed in chapter one above.

Dent and Kenyon's results reinforce suggestions that defamation law impacts on media content with the US law's greater protection for opinion and specific recognition of the media's watchdog role appearing to allow stronger critical commentary than in Australia.

These findings support suggestions that journalists would rather steer clear of reporting on anything that might be considered defamatory of public officials-acting more like a 'sword of Damocles' which could stifle legitimate criticism in the media (Kantumoya 2004:87; Nkandu 2012:36; Nordvik 2014:55; Simutenda 2008:36).

In comparison to the Zambian scenario as shown under the relevant common law in chapter one, the *Sullivan principles* do not necessarily apply and were rejected in the case of *Micheal Sata v. The Post Newspapers Limited* (Chanda and Liswaniso 1999:48, 49; ZLII 2016). What this entails, therefore, based on Dent and Kenyon's findings, is that journalists would even be more apprehensive in writing stories about public figures (such as Presidents) as the status of the common law on *Sullivan* is clear and may not help to mitigate any punishment thereby affecting media performance.

Dent and Kenyon note in this regard:

The press is often identified as the 'fourth estate', with an important 'watchdog' role. The media is seen to carry out an essential task in the processes of accountability. If this is an important job for the press, then it is useful to investigate whether laws are limiting the media's capacity to fulfil these obligations. This study has not aimed to argue that the media's function is best understood as a check on public power, but it has aimed to establish whether media products appear to be affected by the legal rules relating to defamation (Dent and Kenyon 2004:39).

However, it is worth noting that Dent and Kenyon's study considered defamation from a general point of view as opposed to focusing on either criminal or civil defamation. This could perhaps explain the difference in the findings for the two jurisdictions (Australia and the US) as different rules apply to the different categories of defamation. On the methodology side, Dent and Kenyon (2004:38) recommend increased use of content analysis and research into the impact of defamation law on the media.

This dissertation borrowed from Dent and Kenyon's study by considering the effect of the defamation of the President (a criminal libel law) on media performance by applying the methods of content analysis in establishing the media's coverage of the President and the extent of criticism carried by the media outlets under consideration.

Dent and Kenyon's findings are also confirmed in other international and local studies summarised below some of which add critical elements while others focus on criminal libel and related insult laws such as the defamation of the President.

2.4.2 *Libel and the media: the ‘chilling [deterrent, self-censorship] effect’* (Lustgarten et. al. 1997)

Dent and Kenyon’s (2004) findings are confirmed by others such as Lustgarten et. al. (1997) who opine that defamation, particularly libel (both criminal and civil), has a ‘chilling [deterrent, self-censorship] effect’ on the media and the type of stories published by the media by effecting self-censorship in fear of legal and pecuniary implications. Lustgarten et. al. conclude that uncertainty in both the principles of defamation law and their practical application induce great caution on the part of the media.

Lustgarten et. el. (1997:44) conducted their study in Great Britain through structured interviews with individuals responsible for libel complaints in various newspapers, solicitors working for firms engaged by newspapers to give advice on libel, managing editors, editors and journalists working in high risk areas with regard to libel. They conducted interviews over a period of two years at intervals with nine daily newspapers, 1 specialist newspaper, 6 Sunday newspapers and selected broadcast media houses. The study by Lustgarten et. al. (1997:159) took a slightly different focus in Scotland given the minor differences with regard to legal provisions and defences for libel as well as the set-up of the media landscape. The overall objective was to establish the impact of libel law on the media in Great Britain.

In affirming the validity of libel law’s deterrent effect on the media, Lustgarten et. al. (1997:191) argue that it requires reformulation to fully reflect the complexity of the ways in which its pernicious effects are brought about. They conclude that the effect is manifested mainly in two ways. The most obvious manifestation is the direct effect, which occurs when articles, books and publications are specifically changed in light of legal considerations. This could take the form of omission of material the author believes to be true or the re-writing of articles to alter meaning and recast statements of fact into those of opinion. This direct effect is not uniform but is experienced by different media with notably different force, bearing more heavily on the regional than national press (Lustgarten et. al. 1997:192).

The other manifestation of the effect as found by Lustgarten et. al. is what they call the structural effect which functions in a preventive manner by stopping, for example, the creation of certain material to lessen risk of prosecution. It may exist in an institution as a conscious policy for preferred news subjects/categories and ‘no-go’ areas. In essence, the structural effect is a form of preventive self-censorship which narrows the range of what is publishable while removing certain topics altogether from public exposure and scrutiny, (Lustgarten et. al.

1997:192). When contrasted with the direct chilling effect, the structural chilling effect has a uniform force across various media types whether national or regional.

Lustgarten et. al.'s study could have been strengthened methodically through the use of even more scientific methods to verify the manifestation of this chilling effect in media content as opposed to secondary narrations obtained in semi-structured interviews. This approach of undertaking an actual verification of journalistic material is put in use by Dent and Kenyon (2004) in 2.4.1 above by employing content analysis, which is actually a rarely used method in media law research.

Lustgarten et. al.'s findings, however, when combined with actual verification and analysis of content may help to explain certain phenomenon observed and situate one's findings within a particular lens. The deterrent effects promulgated by Lustgarten et. al. could be among the factors that were considered in some of the common law on defamation outlined specifically in 1.2.5.4 in the *Konate* judgement, 1.2.5.6 in the *Madanhire* judgement as well as 1.2.5.5 in the African Commission on Human and People's Rights resolution. The effects identified in Lustgarten et. al. may have an impact on media performance as discussed in 2.3.2.

2.4.3 Journalism and defamation law: contesting public speech

Some scholars have undertaken studies to establish whether defamation law has an impact on the media. As observed by Lustgarten et. al. (1997), this is an area that has been neglected by academic lawyers as well as socio-legal and communication law scholars. As a consequence, very little scholarly material exists in such areas as defamation and media performance pointed out in the introduction in 2.1 above. This is even more evident in the Zambian context.

Notwithstanding, Kenyon and Marjoribanks (2008) conducted a multi-year study into defamation law and media content production, centred on news, current affairs and commentary. Their study involved semi-structured interviews with journalists, editors and managers within the media and with lawyers working in media companies or private practice in the UK, US and Australia, (Kenyon and Marjoribanks 2008:6). The interviews focused on participants' perceptions and experiences of news production generally, of defamation litigation, and of the relationship between media content production and defamation law more specifically.

The duo's contention is that to explore the extent to which media provides space for public speech and debate in contemporary democratic societies, an analysis of the institutional context

within which media is located becomes necessary. In the case of Kenyon and Marjoribanks' study, the law was the institutional context which was analysed to understand whether, and how, journalism contributes to public debate.

Kenyon and Marjoribanks (2008:11) found that relative to the US, Australian (media) speech is chilled, particularly in relation to investigative reporting and criticising business, a finding which is consistent with Dent and Kenyon (2004:26) who actually undertook a content analysis of newspapers from the two jurisdictions.

This finding also seems to reinforce Lustgarten et. al. (1997:191) on the forms of chilling effects arising from libel law.

However, the situation as found by Kenyon and Marjoribanks (2008:12) was markedly different in the US where the interviewees did not recognise any substantial impact from the US defamation law. Most of the interviewees as reported by Kenyon and Marjoribanks rejected assertions that defamation law had an influence on a newspaper's content. According to the findings in Kenyon and Marjoribanks (2008:12), in the US journalism-within the constraints of resources and marketing among other factors drives stories rather than defamation law.

This may be attributed, perhaps, to the progressive common law in the US jurisdiction, such as the *Sullivan rules* among several others. The *Sullivan principles* hold that for public officials to sustain an action for defamation, they must not only prove the falsity of the alleged defamatory material but also show 'actual malice' (Dent and Kenyon 2001:12). This entails that plaintiffs who are public officials or public figures need to prove the three basic elements of defamation i.e. publication, identification and defamatory meaning as would any other person alleging that their reputation has been injured. However, under the *Sullivan rules* plaintiffs who are public officials or public figures must additionally prove that the defendant made the publication with 'actual malice' (IPI and MLDI 2015:26). This then gives the media a lot of latitude in the performance of their watchdog functions of holding leaders accountable and may thus explain the views above as found by Kenyon and Marjoribanks (2008:12).

On the other variables studied by Kenyon and Marjoribanks (2008:12), it was found that the relative availability of evidence, especially the public availability of documents which is greater in the US is a significant factor in allowing investigations to occur, and to be published. Kenyon and Marjoribanks (2008:13) underscore the value of comparative research in media and law to explore how differences in law may have different influences on media practice.

Kenyon and Marjoribank's study is significant in understanding the impact of the defamation of the President law on media performance, even though the findings in Kenyon and Marjoribank's study cannot be generalised to the Zambian context. As pointed out earlier in the review of the common law in 1.2.5 above, the common law on (criminal) defamation in Zambia does not offer many defences (such as truth) and leeway in view of journalistic practice and media performance. This could also have an effect on the media's judgement in story preparation, framing and presentation as shown in Lustgarten et. al. (1997:191) in their categorisation of the various 'chilling effects', as well as in Dent and Kenyon (2004:26). This is yet to be established in the Zambian context.

2.4.4 Defining the margin of terror: explaining the chilling [deterrent, self-censorship] effect of insult and defamation laws on the media and artists in Zimbabwe.

Nordvik (2014) undertook a study to examine the effect that legislation on insult and defamation law has on media practitioners and artists in Zimbabwe. Nordvik was guided by the question of how the Zimbabwean legislation (regarding insult laws and criminal defamation of public officials) affected critical voices (media, artists)-and in which way it could be said that legislation had a chilling effect on public expressions.

Nordvik conducted semi-structured interviews based on an interview guide. The participants in Nordvik's interviews included journalists, media experts, human rights lawyers and scholars who were purposively sampled. Nordvik's study also undertook a desk review of relevant literature in order to situate the findings in the interviews. The main methodological challenge as reported in Nordvik (2014:4) was to identify and separate the effects caused by legislation and the effects caused by other factors as there is an interrelationship between legislation, policies, politics and other social factors.

Nordvik (2014:24) assumed that media in Zimbabwe were not operating freely given the legislation that restricts media operations in addition to the country's extremely low international press freedom ranking. Nordvik observed that the effect of the legislation on insult laws and criminal defamation differed depending on which media house or newspaper one worked for in Zimbabwe because of a high level of political division which was also reflected in the media with the state-controlled media on one side and the independent or privately owned media on the other. This prompted Nordvik's study to focus on the effect the identified legislation has on oppositional voices. Representatives from the state-controlled media were not interviewed in Nordvik's study on this score.

It was found that the legislation on insult and criminal defamation has a real deterrent effect on public expressions while there is a high willingness among media practitioners in Zimbabwe to violate the legislation which is seen to be illegitimate and unconstitutional. In the same vein, Nordvik establishes that official practices such as immediate detention after an expression has been made, the use of violence or threats of violence either by police officials or unofficial groups as well as the lack of trust in the government's willingness to abide by the law increase the deterring effect of the legislation. As such Nordvik establishes that it is the combination of the legislation with the (real or perceived) lawlessness that makes it freezing or deterring (Nordvik 2014:54).

To cope with the restrictive legislation on insult laws and criminal defamation, the journalists in Zimbabwe, according to Nordvik (2014:55), apply multiple "avoidance strategies". The strategies include self-censorship, anonymity, the use of metaphors or multi-layered communication and the resort to faceless online publications.

The self-censorship as an avoidance strategy takes different forms. One form is that a journalist simply does not investigate something that could lead to a story. Another form is that the journalist has the information but fails to publish anything on it or the journalist alters the story by not giving all the information that has been obtained. Another possible form of self-censorship as an avoidance strategy is the journalist twisting the focus of the news story so as not to cause offence (Nordvik 2014:26). On this, Nordvik records:

Due to the specific legislation protecting the President, several of the informants said that special attention was given to articles where the president himself was implied in a story in a negative way, which indicates that special caution must be taken when publishing a story where the President is involved....comments regarding the President can lead to charges...since criticism of the President can be deemed as being prejudicial to the state (Nordvik 2014:26).

On anonymity as a strategy used by Zimbabwean media to avoid the legislation on insult laws and criminal defamation, Nordvik holds that several articles in both printed and online publications will not have a name in the by-line, just "staff reporter" as a common way of not drawing attention to oneself as a journalist. Anonymity is however not a completely safe mode as journalists still face criminal charges given the fact that editors will always be responsible for the content of the media production (Nordvik 2014:32).

Another avoidance strategy being employed by Zimbabwean journalists and media owners is to move the publications out of the country either by printing abroad or by publishing stories online that would ordinarily be curtailed under the insult and criminal defamation laws. Nordvik (2014:33) states that “the establishment of such online publications confirms the assumption that the legislation in itself has a chilling effect, since stories are published online that could not have seen the light of day in traditional Zimbabwean publications. On the other hand, the story also shows that such online publications have a risk of falling into the trap of unprofessionalism and gossip”.

Nordvik’s findings lead to the conclusion that in order to ensure full freedom of expression in Zimbabwe, it is necessary to revise the insult laws and criminal defamation laws as they have a chilling effect that needs to be reduced; that the combination of legislation with extra-judicial measures means that merely changing the laws is not sufficient.

The effects of insult laws and criminal defamation as found by Nordvik (2014:54) affirm the postulations by Lustgarten et. al. (1997:191) of different types of effects and the need for reformulation to fully reflect the complexity of the ways in which their pernicious effects are brought about.

2.4.5 General perspective on research studies and findings

Generally, most of the past research considered was based on the review of secondary data as well interviews with secondary respondents which tends to limit the extent to which the findings may represent the actual situation as some aspects may have been viewed through a secondary subjective lens. Neuman (2007:240) notes that the use of secondary data poses several limitations and it therefore becomes important for the researcher to have sufficient primary knowledge about a topic and the study area or context to avoid making erroneous or false assumptions.

Also, it can be surmised from the studies considered that a broad approach was used without necessarily segregating the types of defamation (Kasoma 2001:247) in some of the studies and zeroing into one for greater effectiveness. This is so because different types of defamation are treated differently and may have different principles applying in different jurisdictions, which makes it difficult to undertake a comparative study as most laws are not uniform and practice may be influenced by certain geo-political and historical factors.

Despite some of the studies clearly grouping various variables using a ‘one size fits all’ approach, the studies segregate the impact the law would have on the press, for example, whose function exposes them to a higher risk of ‘defaming’ public officials such as Presidents more frequently based on some of their functions, such as that of being society’s watchdog (McQuail 1992:121; Norris 2000:5).

Building on this and considering lessons from similar studies on the existence of deterrent effects or the lack thereof, this dissertation aimed to fill the gap identified by undertaking a content analysis of the Post and Zambia Daily Mail Newspapers to establish the press’ portrayal of the President vis-à-vis the limitations posed by the defamation of the President law. This goes a step further than the past research by attempting to ascertain whether the defamation of the President law has any observable effect on media performance as summarised by Chirwa (1997:28).

Notably, this research study adopted some of the methods for media law research in Dent and Kenyon’s (2004) study which equally used content analysis (albeit at a larger scale); this study aimed to go further by employing the use of in-depth interviews to help corroborate some of the would-be findings in the analysis of content.

2.5 Conclusion

The review of literature in this chapter has shown the nature, intent, justification and criticism of insult and criminal defamation laws such as the defamation of the President law. The review has also shown the sources of the various laws-particularly defamation of the President.

It has been established in the review of literature that media play various roles in society, particularly the watchdog and advocacy roles which are critical in the measurement of media performance and can be affected by legislation through various effects in specific instances.

Also, the common law considered in the review shows that various defences exist as mitigation for journalists in cases of criminal libel, but that most of these defences are not recognised as common law in Zambian jurisprudence or are left to the discretion of the judge presiding over a particular matter.

Finally, the literature review in this chapter has shown that most of the research into the impact of criminal defamation and insult laws (such as defamation of the President) has only partially established whether media content is actually affected by the existence of such legislation especially that media practitioners-given their line of work-are more likely to suffer the effects

of such provisions. Most of the past research was found to have taken a broad approach coupled with the heavy reliance on secondary data despite defamation being in different forms and categories. The next chapter presents the methodology that guided the study.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Overview

The previous chapter presented the literature and scholarly arguments with regard to the law on defamation of the President and media performance. This chapter goes further to outline the research methodology that guided the study, using both qualitative and quantitative approaches while encompassing various techniques to support the selected research design.

3.2 Research Design

Research design is critical in any study as it influences the research methodology and informs the approach to be taken. This is because the research design is a framework for action that serves as a bridge between research questions and the execution or implementation of the research strategy. As such, the goal of research design is to provide results that are judged to be credible. Research design is said to be the actualisation of the purpose of a particular study (Mafuwane 2011:68; Neuman 2007:15).

In that regard, this study was both exploratory and descriptive in nature to help understand and adequately answer the research questions on defamation of the President and media performance. Exploratory research is the examination of a new area or problem in order to familiarise oneself and have a better understanding of the problem. Hence, because exploratory research does not aim to produce definitive or conclusive answers, it tends to be broad in focus, mainly helping the researcher identify key variables and issues. Descriptive research, on the other hand, is the presentation of a picture of the specific details of a situation, social setting or relationship. It is the presentation of a description of observations or characteristics of particular phenomena under study. In that regard, a descriptive research design considers the “how?” or “who?” questions of a problem under study while an exploratory design considers the “what?” question (Neuman 2007:16).

Thus, in an exploratory study, the researcher examines a new arena to formulate precise questions that he or she can address in future research. On the other hand, in a descriptive study, the researcher begins with a well-defined subject and conducts a study to describe it accurately and the outcome is a detailed picture of the subject i.e. a picture of the types of people or social activities. Hence, descriptive and exploratory research often blend together in practice and the line between the two tends to blur in certain instances (Creswell 2014:50; Neuman 2007:16).

As indicated in the introduction in section 2.1 of chapter two above, very little scholarly literature, if any, exists on the law on defamation of the President in Zambia vis-à-vis media performance. This point was further validated by the review of past research in in chapter 2.4 above which could not find local studies that were undertaken to actually establish the effect or impact of the law on defamation of the President on media performance in Zambia despite several regional, continental and international developments and studies indicating the possible existence of an effect.

This study was, therefore, more of an exploration of the problem of defamation law on media performance, and thus it mainly mapped out the study area and the factors at play. In doing so, the study delved into the realm of media performance measurement to identify trends with regard to the two newspapers: the Zambia Daily Mail and the Post. This kind of measurement required the use of descriptive research methods.

In that regard, the combination of elements of descriptive and exploratory research designs enabled for the adequate consideration of the research objectives and questions outlined in chapter 1.5 above. Also, there was a consideration of the conceptual and theoretical framework that is outlined in chapter 1.9 above. The objectives of the study were operationalised by the research questions and could best be answered through a combination of the two designs. Creswell and Plano (2006:62) and Neuman (2007:16), argue that the integration of descriptive and exploratory research designs allows for the collection of different but complimentary data on the same topic to best understand the problem. The combination of the two designs brings together the different strengths and non-overlapping weaknesses of various methods. This, in turn, allows for the comparison and contrast of quantitative results with qualitative findings or the validation/expansion of qualitative results with quantitative findings. Some of the questions that necessitated the combination of the two designs in this study include “what effect does the law on the defamation of the President have on media performance?”, “how is the Zambian President covered in the Zambia Daily Mail and Post newspapers?”, “What similarities or differences exist in the two newspapers’ coverage?” and “what is the rationale for insult laws?”.

The combination of research designs was the framework for this study and the sections below present the methodology by outlining the specific research methods used, data collection techniques, sampling procedures and data analysis.

3.2.1 Research Methods

The study used a mixed methods approach i.e. qualitative and quantitative methods to support the selected designs. According to Creswell (2014:32), qualitative and quantitative approaches should not be viewed as rigid, distinct categories or polar opposites but as representatives of two ends on a continuum. That is, while the two approaches differ, they complement each other (Neuman 2007:85). Thus, mixed methods research involves the collection of both qualitative and quantitative evidence as was the case in this study. However, there is debate on the use of mixed methods with some scholars arguing that the philosophical differences between the qualitative and quantitative approaches makes it difficult to combine the two. For instance, Ritchie and Lewis (2003:38) observe that:

Some writers argue that the approaches are so different in their philosophical and methodological origins that they cannot be effectively blended. Others, while recognising the very different ontological and epistemological bases of the two paradigms, suggest that there can be value in bringing the two types of data together. But even within the latter context it is often emphasised that the purpose of bringing different approaches together is to yield different types of intelligence about the study subject rather than simply to fuse the outputs from qualitative and quantitative enquiries...there can be benefit in harnessing qualitative and statistical enquiry provided that the two methods, and the data they generate, can be clearly delineated.

It can be held, from Ritchie and Lewis' observations, that some of the questions that needed to be addressed in a study such as this one required the collection of both qualitative and quantitative data. Some of the research questions required a greater understanding of the impressions, nature or origins of issues at play, while other questions required a quantitative description of characteristics. Hence in this study, the use of the two approaches provided distinctive but complimentary evidence to support the study's conclusions. As argued by Ritchie and Lewis (2003:38-39), when used together, qualitative and quantitative methods can offer powerful data and insight to inform and illuminate policy or practice.

However, the specific methods used in data collection-both qualitative and quantitative, are presented and discussed below.

3.2.1.1 Quantitative content analysis

In applying quantitative content analysis methods, the Zambia Daily Mail and Post Newspapers were studied over a period of four months. Neuman (2007:227) defines content analysis as a “technique for gathering and analysing the content of text” while Dent and Kenyon (2004:18) define it as “a research technique for the objective, systematic and quantitative description of the manifest content of communication”. The content is generally understood to refer to words, meanings, pictures, symbols, ideas, themes, or any message that can be communicated while the text is anything written, visual, or spoken that serves as a medium for communication.

In this study, the content that was collected and analysed included hard news stories in the Zambia Daily Mail and Post Newspapers in line with the sampling procedures described in sub-section 3.2.2 below. This helped to identify the trends in the limitations imposed on media performance by the law on defamation of the President. The findings of the content analysis were further corroborated by interviews conducted with stakeholders, including journalists from the two newspapers that were reviewed. This is further discussed in this section below and particularly in 3.2.2.1 on the content analysis sampling procedure.

In doing so, the content analysis study used objective and systematic counting and recording procedures to produce a quantitative description of the symbolic content in the text.

As Neuman (2007:228) states:

Content analysis can reveal messages in a text that are difficult to see with casual observation. The creator of the text or those who read it may not be aware of all its themes, biases or characteristics. A researcher can measure large amounts of text (e.g. years of newspaper articles) with sampling and multiple coders...it is helpful when a topic must be studied "at a distance"...content analysis can be used to study historical documents, the writings of someone who has died, or broadcasts in a hostile foreign country.

Likewise, the study followed Neuman’s parameters to establish whether the media were able to perform the watchdog function based on the operationalisation of media performance in chapter 1.9.1.1 above. Among the characteristics of interest were *frequency*, *direction*, *intensity* and *space* (Neuman 2007:228). The study thus used content analysis to establish the *sources used*, *length* (in column inches), *direction*, *placement*, *headline treatment*, *use of pictures/art*,

common themes, framing, defamatory status, portrayal of the President and fairness in hard news articles pertaining to the President.

In the same vein, Dent and Kenyon (2004:17), argue that content analysis as a technique is arguably well suited to gain a perspective on the impact of law on media content, as it lends itself well to the systematic charting of long-term changes and trends in media products. The two scholars note that this aspect qualifies the varied use of content analysis for studies of a single country or media outlet over time.

Additionally, content analysis is nonreactive because the process of placing words, messages, or symbols in a text to communicate to a reader or receiver occurs without influence from the researcher who analyses its content (Neuman 2007:227).

The use of content analysis in addition to other qualitative and quantitative methods helped to give credence to the findings of the research and further buttressed the study's validation of the relationship between defamation and media performance. Neuman (2007:115) notes that reliability and validity are central issues in all measurement. Both are concerned with how concrete measures are connected to constructs. Reliability and validity are salient because constructs in social theory are often ambiguous, diffuse, and not directly observable. Neuman also notes also that perfect reliability and validity are virtually impossible to achieve.

Dent and Kenyon (2004:17) observe that content analysis, which considers the content of communication, is quite common within media studies. However, very few studies have applied content analysis to the study of media law topics such as defamation. In research on media law, empirical sociological methods are not often explored.

Consequently, this study used content analysis as a flexible technique to suit the analysis and mapping of key characteristics in the Zambia Daily Mail and Post Newspapers relying on the wider value of content analysis as a method for media law research.

Hence, in this study, content analysis of news articles helped to describe the patterns of media performance with regard to the limitations of the law on defamation of the President.

3.2.1.2 In-depth interviews

An in-depth interview is a qualitative research technique that involves conducting intensive individual interviews with a small number of respondents to explore their perspectives on a particular idea, program, or situation. In-depth interviews are useful when seeking detailed

information about a person's thoughts and behaviours or new issues in depth. Interviews are often used to provide context to other data, such as outcome data (Boyce and Neale 2006:3).

The in-depth interview method is a field research tool which is based on naturalism, used to study other phenomena e.g. oceans, animals, plants, etc. In this regard, naturalism involves observing ordinary events in natural settings, not in contrived, invented, or researcher-created settings. Further, a field researcher's goal is to examine social meanings and grasp multiple perspectives in natural social settings (Neuman 2007:278). He or she aims to get inside the meaning system of members and then return to an outside or research viewpoint.

Thus, the primary advantage of in-depth interviews is that they provide much more detailed information than what is available through other data collection methods, such as surveys or content analysis. Such in-depth interviews also provide a more relaxed atmosphere in which to collect information i.e. people may feel more comfortable having a conversation about a particular issue as opposed to filling out a survey (Ritchie and Lewis 2003:139).

Additionally, interviews allow the researcher to observe the surroundings. This allows the use of non-verbal communication and visual aids. The researcher can also ask complex questions in addition to extensive probes even on issues such as the defamation of the President which tends to be of a sensitive nature.

As such, in-depth interviews are said to be generative in the sense that new knowledge or thoughts are likely, at some stage, to be created. The extent to which this is so may vary depending on the research questions, but it is highly likely that the participant will at some point direct themselves, or be directed by the researcher, down avenues of thought they have not explored before concerning the subject of study (Neuman 2007:190; Ritchie and Lewis 2003:190). It was this direction of thoughts that the study aimed to ignite on the defamation of the President and media performance.

Consequently, this study used in depth interviews to elicit rich, qualitative insight on some of the trends observed in the news content analysed with regard to the defamation of the President law and media performance.

The in-depth interviews were conducted with experts and key informants from specific groupings of legal practitioners, law enforcers, media freedom advocates, media practitioners and government. This helped to make the study's findings richer and more meaningful as the interviews provided an in-depth understanding of the problem under study.

The interviews, which were semi-structured, gathered data from the carefully selected interviewees on knowledge, attitudes, practice and experiences regarding the law on defamation of the President and media performance. Specifically, the interviews established whether the defamation law had any effect or limitations on media performance as well as the press' portrayal/coverage and carriage of critical views. The interviews also ascertained the relevance and justification of the law on defamation of the President in a democracy.

3.2.2 Sampling procedures

The study used both probabilistic and non-probabilistic sampling methods to accommodate the selected research methods and data collection techniques. These methods are explained in this section.

3.2.2.1 Content analysis sample

The contents of The Post and Zambia Daily Mail Newspapers were systematically reviewed over a period of 4 months (March-June, 2016). The two newspapers, Zambia Daily Mail and Post Newspapers were purposively chosen because of their wide circulation and reach. As Neuman (2007:142) argues, purposive sampling is ideal for the selection of cases that are especially informative or the identification of particular cases for investigation based on prior knowledge.

Under the content analysis, the population comprised the coded units of measurement which were news articles/stories in the Zambia Daily Mail and Post Newspapers particularly those referring to the Presidency. Out of all the stories in the Zambia Daily Mail and Post Newspapers, stories were selected based on a *two-step definition*: firstly, stories had to be hard news stories. These were then subjected to the second stage of scrutiny in which they had to be in relation to the President. The latter aspect was determined by a manifest coding system specifically, if they contained phrases like “republican President”, “head of state”, “President Edgar Lungu” and/or “ruling party president”. Stories meeting the two-step definition or parameters were then included as part of the sampling frame.

On the other hand, in selecting individual stories into the sample for analysis and measurement, stratified sampling methods were used. In stratified sampling, the researcher divides the population into sub-populations and then draws a random sample from each subpopulation. This allows for the regulation of the relative size and representativeness of the sample i.e.

evenly spread over the entire 4 months of the content analysis period. Because of this, stratified sampling is considered to be advantageous (Neuman 2007:153).

According to a preliminary examination of The Post and Zambia Daily Mail newspapers, the average issue of each newspaper contained seven articles fitting the sampling element. Also, during the period of review, the newspapers were published on a daily basis. With the timeframe being March to June, 2016 (122 days), the total number of articles expected was $7 \text{ articles} \times 122 \text{ days} = 854$. Taking into consideration the limitations highlighted in chapter 1 above, the sample size was limited to 600 articles. Thus the sampling ratio was $600 \text{ articles} / 854 = 70\%$. The study then stratified the sample size by publication i.e. Daily Mail and Post Newspaper which translated into $600 \text{ articles} / 2 \text{ publications} = 300 \text{ articles per publication}$ for the entire period of review. To further ensure the sampled articles were evenly distributed across each of the 4 months, the study stratified the articles by months as follows: $300 \text{ articles} / 4 \text{ months} = 75 \text{ articles per month}$. This helped to achieve representative sampling across the two publications over the entire period of review.

The articles were then drawn randomly using a random numbering table to select 75 numbers for 75 sample articles for each newspaper in each of the four months under review i.e. March to June, 2016.

After that, the articles were then coded according to a standard coding system and analysed using a standard code frame. The framework for analysis included various categories in line with the concepts discussed in chapter 1 above. Among the categories of analysis were the standard measurements of frequency, direction, intensity and space (Neuman 2007:228). The specific measurement and observation considered the main source (s) in the story, the message direction, story theme, framing and placement, whether the story was critical of the President or not, the apparent defamatory status, headline treatment and the use of art among others.

3.2.2.2 In-depth Interviews

Purposive sampling was used to select participants for the in-depth interviews. Purposive sampling can be used in situations where an expert uses judgment in selecting cases with a specific purpose in mind. The method is generally common in exploratory research (Neuman, 2007:142).

Purposive sampling, according to Neuman (2007:143) is helpful when the researcher wants to identify particular types of cases for in-depth investigation. The aim is less to generalise to a

larger population than it is to gain a deeper understanding of types. Hence, the researcher uses subjective information and experts to identify a sample for inclusion in the research. Also, the researcher actually uses many different methods to identify the cases, because his or her goal is to locate as many relevant cases as possible.

Thus, in this study, six semi-structured interviews were conducted with carefully selected stakeholders based on prior knowledge given the magnitude of effort required to successfully carry out in-depth interviews.

The participants were selected based on their placement in strategic institutions that would likely come in contact with matters relating to defamation of the President and media performance. These included one interviewee each from the National Prosecutions Authority, the Ministry of Information and Broadcasting Services, PANOS Institute (a media NGO), the University of Zambia-School of Law, one senior editorial or management official each from the Zambia Daily Mail and Post Newspapers respectively and a veteran media activist.

The interviews were recorded using an interview guide as explained in 4.1.3 on the data gathering techniques below.

3.2.3 Data gathering

It should be pointed out that in gathering data, various methods were used.

For example, in content analysis, articles/stories were gathered from the Zambia Daily Mail and Post Newspaper according to the sampling criteria indicated in 3.2.2.1 above. Coding assistants were engaged to assist in coding the stories from the two newspapers. To ensure consistency, a pre-test was conducted in order to achieve inter-coder reliability and any unclear questions on the coding sheet were subsequently addressed. The stories were then analysed in line with a coding sheet and followed themes like *frequency*, *direction*, *intensity* and *space*. The coding sheet featured 18 questions including background and identification data such as serial number, date, headline and story length among others. A physical examination of each newspaper on each day from March 1st – June 30th was undertaken. A record and copy of coding sheets for each of the qualifying stories was kept for easy reference and verification.

Semi-structured interviews were conducted using an interview guide, with individuals as recommended or directed by the six institutions that were written to. The interviews were conducted over one month at the respondents' preferred location. Recordings of all interviews were later transcribed for easy thematic analysis. The use of the interview guide helped to keep

the interviews focused on the topic while allowing for extensive probes. The interview guide had a total of seven thematic questions each with a set of probing and follow up questions. Information collected in the interviews was verified through rechecking at the end of each interview by restating and summarising the information to determine accuracy.

3.2.4 Data analysis

The second method followed was data analysis which assisted in organisation, summary and presentation of the information. After the data was collected and coded, the completed coding sheet was entered in the Statistical Package for the Social Sciences (SPSS) software by assigning numbers to the selected options on the coding sheet. This was then used for data analysis to enable, among other things, cross tabulations, frequency graphs and/or other demonstrations. The statistical analysis was performed to infer certain properties of the various sampled newspapers and further analyse the data collected as this was cardinal in contextualising the study.

The use of the SPSS software yielded quick and efficient results and enabled the formulation of the statistical tables, graphs and charts. Other software used for analysis included the Microsoft Excel Package to support the thematic arrangement of data collected from in-depth interviews. After transcription of the in-depth interviews, the data was logically organised and analysed by selecting key themes relevant to the study for easy presentation.

To allow for validation and comparison of the findings, the author looked at the objectives and research questions individually and collectively. These were then correlated with the results obtained from the content analysis and the interviews conducted.

3.2.5 Pre-test

It should also be noted that pre-tests of content analysis and in-depth interview exercises were undertaken before going into the field. For content analysis, the pre-testing exercise happened over one month for each newspaper with 30 qualifying articles from each newspaper, that is from 1st – 31st January, 2016 for the Zambia Daily Mail and 1st – 29th February, 2016 for the Post Newspaper. A random sample from each of the two months was exchanged between the coders to achieve inter-coder reliability and ensure consistency in the coding and interpretation of the code book.

One in-depth interview was conducted with an independent journalist while the interview guide was also subjected to input from experienced researchers.

The pre-testing exercise provided the researcher with insight to further refine and improve the data collection instruments through the feedback and challenges observed.

3.3 Conclusion

This chapter explains that the research designs followed were both qualitative and quantitative and that a hybrid of exploratory and descriptive research designs helped to adequately address the research questions.

The next chapter presents the findings in line with the research questions and methodologies used in the study.

CHAPTER FOUR

PRESENTATION OF FINDINGS

4.1 Overview

The previous chapter presented the methodology that guided the research, mainly comprising a hybrid of exploratory and descriptive research designs and related methods. This chapter presents the findings from the two data collection methods i.e. content analysis and in-depth interviews. The chapter first presents the findings of the content analysis of the Zambia Daily Mail and Post Newspapers respectively. The aim of the content analysis was to assess the type of coverage and media's portrayal of the President despite the existence of the law on defamation of the President. The analysis also aimed to establish the type of themes the media frequently cover about the President, sources, balance, placement of stories, treatment, use of art, framing of stories and whether the media were able to carry stories about the President deemed to be critical and apparently defamatory.

Secondly, the chapter presents the findings of the in-depth interviews which were conducted to ascertain the knowledge, attitudes and practices in relation to the law on defamation of the President vis-à-vis media performance in Zambia. The interviews were particularly conducted to establish the sources, rationale, justification and effect of the law on defamation of the President in Zambia.

4.2 Content analysis findings: The Post and Daily Mail Newspapers

Samples were collected from stories in the Daily Mail and Post Newspapers in line with the sampling procedures in chapter 3.2.2.1 above. As such, a total of 840 stories met the criteria or parameters set in chapter 3. From the Daily Mail, a total of 401 stories were collected, while 439 were collected from The Post. Of the total number of stories, 600 stories (300 from each newspaper) were shortlisted into the sample in line with the sampling procedures in chapter 3.2.2.1. The stories were then analysed as presented in this section.

4.2.1 Story source, direction and balance

This section of the analysis established trends on the number of sources used in the stories, the type of sources, overall balance and the direction of the stories i.e. whether pro-government/state actor, pro-opposition/non-state actor, critical of government/state actor, critical of opposition/non-state actor or neutral.

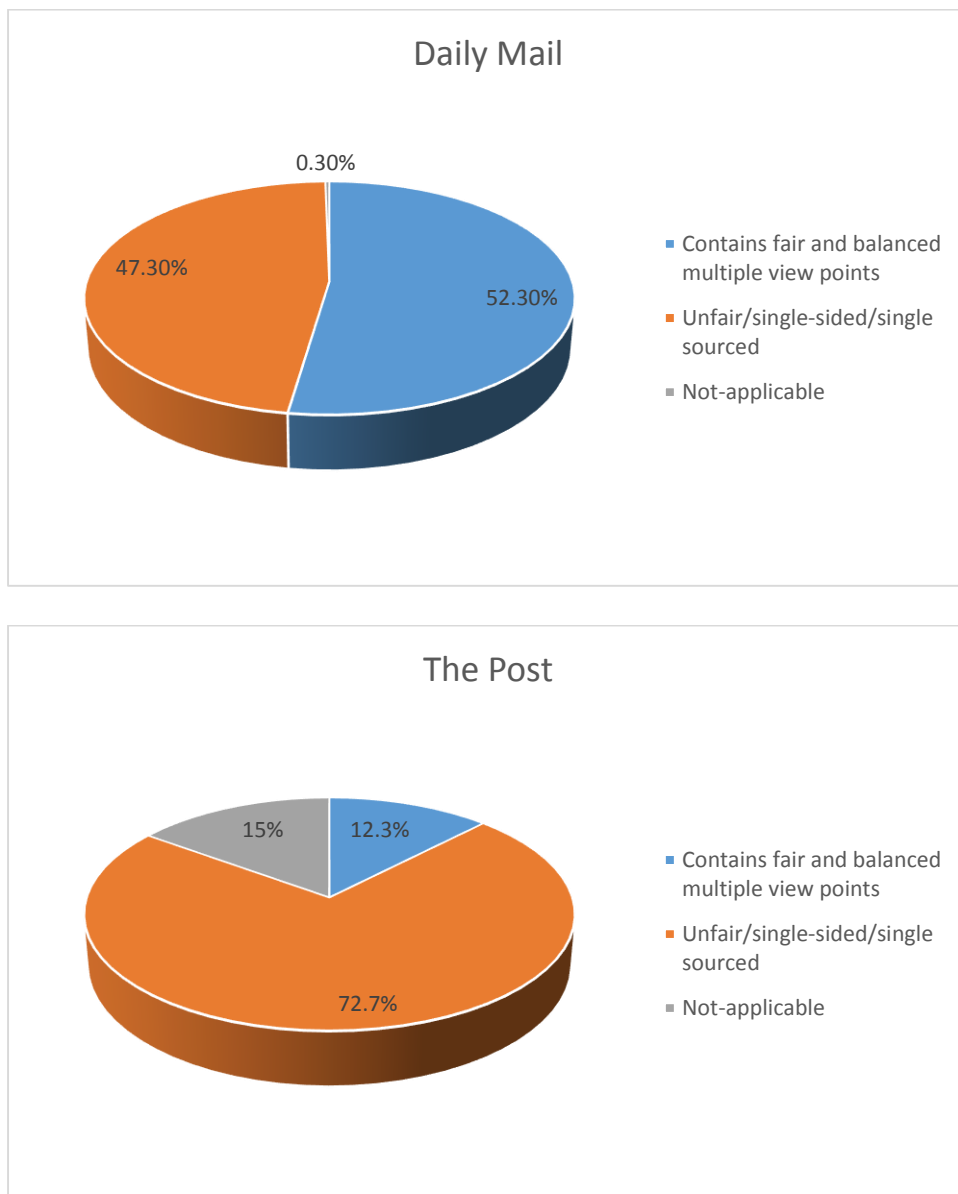
In the Daily Mail, what emerged was that the majority of the stories were single sourced i.e. 144 out of 300 stories. This represents 48 per cent of all the stories examined. In the same vein, 26.3 per cent of the stories quoted up to two sources, 16.7 per cent quoted up to three sources while 4.7 % of the stories quoted up to four sources. Only 3 per cent of the stories quoted between five and eight sources. Under the story direction, what emerged was that a higher percentage of the stories were found to be pro-government, accounting for 69 per cent i.e. 207 out of 300 stories, while only 0.7 per cent of the stories were critical of government. In the same vein, 15.3 per cent i.e. 46 out of 300 stories were neutral, while 13 per cent i.e. 39 out of 300 stories were critical of the opposition or non-state actors.

Further, it emerged that the top four sources quoted exclusively in the Daily Mail were the President (16 per cent i.e. 49 out of 300 stories), government officials (13 per cent i.e. 39 out of 300 stories), ruling party officials (12.3 per cent i.e. 37 out of 300 stories) and ordinary citizens (4.3 per cent i.e. 13 out of 300 stories).

Similarly, the majority of the stories in The Post were found to be single-sourced, accounting for 70.3 per cent i.e. 211 out of 300 stories. Meanwhile, 21 per cent i.e. 63 out of 300 stories quoted up to two sources, 5.7 per cent i.e. 17 out of 300 stories quoted up to three sources, 2 per cent i.e. 6 out of 300 stories quoted up to four sources and only 1 per cent i.e. 3 out of 300 stories quoted between five and eight sources. With regard to story direction, it emerged from The Post that the highest percentage of stories were critical of government, accounting for 64.7 per cent i.e. 177 out of 300 stories, while 12.3 per cent i.e. 37 out of 300 stories were pro-government, 0.7 per cent i.e. 2 out of 300 stories were pro-opposition or non-state actors and a further 2 per cent i.e. 6 out of 300 stories were critical of opposition or non-state actors. On the same score, 19.3 per cent i.e. 58 out of 300 stories were neutral, while the direction was not clear for 1 per cent of the stories, which represents 3 out of 300 stories examined.

With regard to sources, it emerged that the top four sources quoted exclusively in The Post were opposition leaders or officials (36.7 per cent i.e. 110 out of 300 stories), civil society officials or activists (15 per cent i.e. 45 out of 300 stories), the President (8.7 per cent i.e. 26 out of 300 stories) and government officials (5.3 per cent i.e. 16 out of 300 stories).

Figure 1: Pie charts showing the story balance in the Daily Mail and The Post.



4.2.2 Treatment

The treatment section considered such aspects as the page-placement and the use of pictures or art in the Daily Mail and The Post. This was based on the legal standard of pictures and other art being admissible as subjects of defamatory action as established in chapter 2.2 above.

As such, it emerged that the majority of the stories about the President in the Daily Mail were placed on the front page, accounting for 48.3 per cent i.e. 145 out of 300 stories. Further, 23.7 per cent i.e. 71 out of 300 stories were placed on page two, 15.3 per cent i.e. 46 out of 300 stories were placed on page three, while 5 per cent i.e. 15 out of 300 stories were placed on

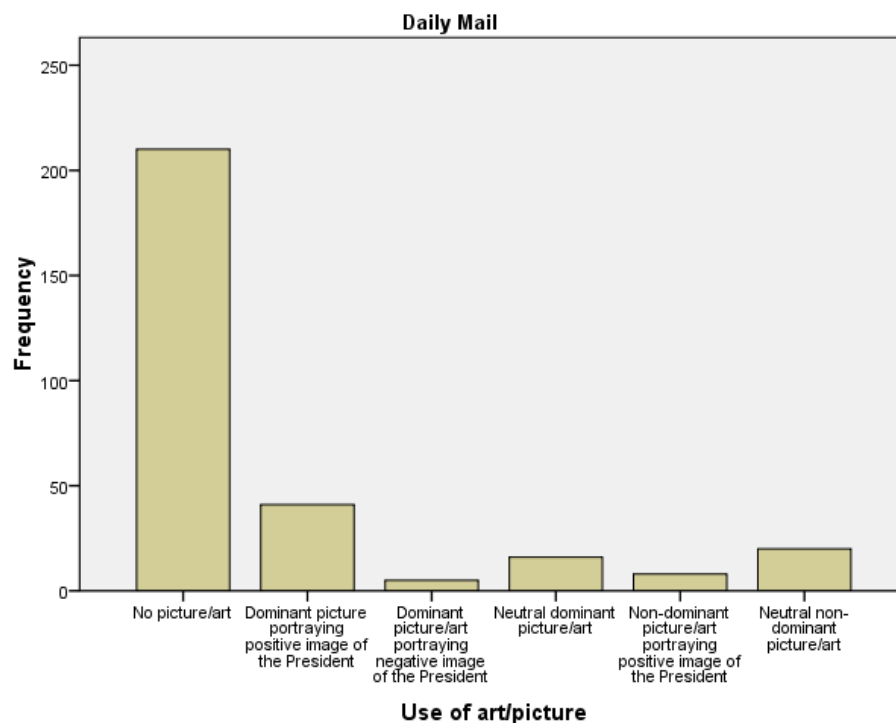
page four, 7.3 per cent i.e. 22 out of 300 stories on page five and only 0.3 per cent i.e. 1 out of 300 stories examined were placed beyond page five.

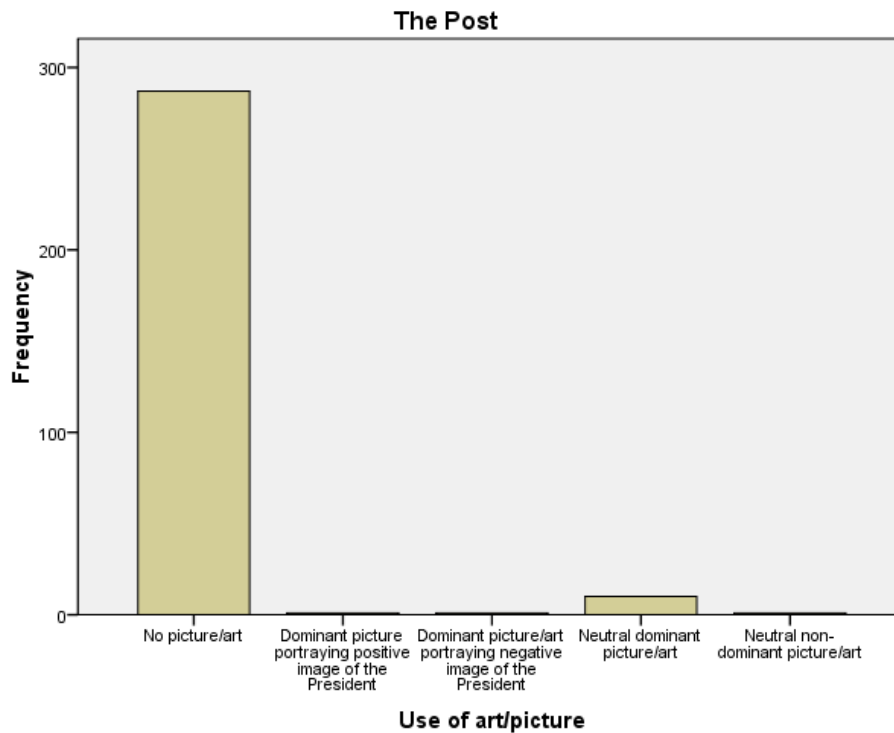
With regard to the use of pictures or art as an accompaniment, it was found that the majority of the stories examined in the Daily Mail had no picture or any art, representing 70 per cent i.e. 210 out of 300 stories.

In The Post, the majority of the stories were equally placed on page one, which represents 39 per cent i.e. 117 out of 300 stories. This was seconded by stories placed beyond page five, which accounted for 30.7 per cent i.e. 92 out of 300 stories. Additionally, 14 per cent i.e. 42 out of 300 stories were placed on page four, 7.3 per cent i.e. 22 out of 300 stories on page two, 3.3 per cent i.e. 10 out of 300 stories on page three and 5.7 per cent i.e. 17 out of 300 stories on page five.

On the use of pictures or art, a high number of stories in The Post (95.7 per cent i.e. 287 out of 300 stories) had no picture or any art as an accompaniment to the story.

Figure 2: Bar charts showing the use of art or pictures in stories about the President in the Daily Mail and The Post.





4.2.3 Story theme and subject

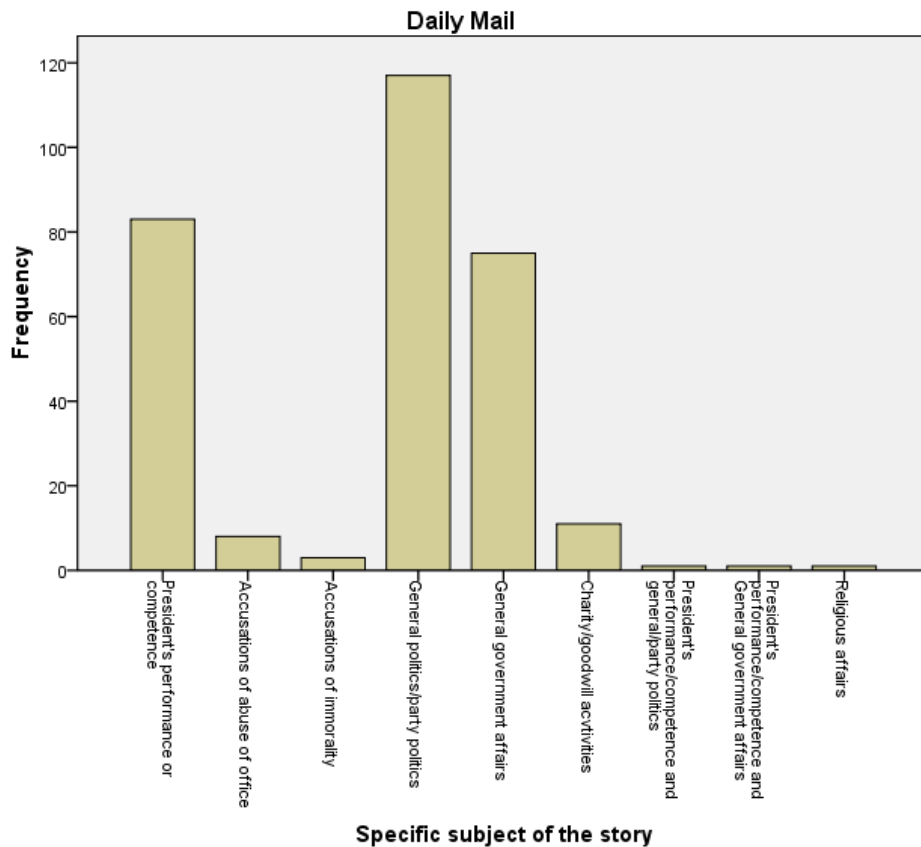
In the analysis of the themes and subjects of stories, the first step was to look at the general or overarching theme and then the specific subject of the story in relation to the President. This helped to identify which issues the media wrote about the President in spite of the restrictions presented by the law on defamation of the President concerning what can be said or written about the President. The restrictions are outlined in detail in chapter 1.9.1.1 above.

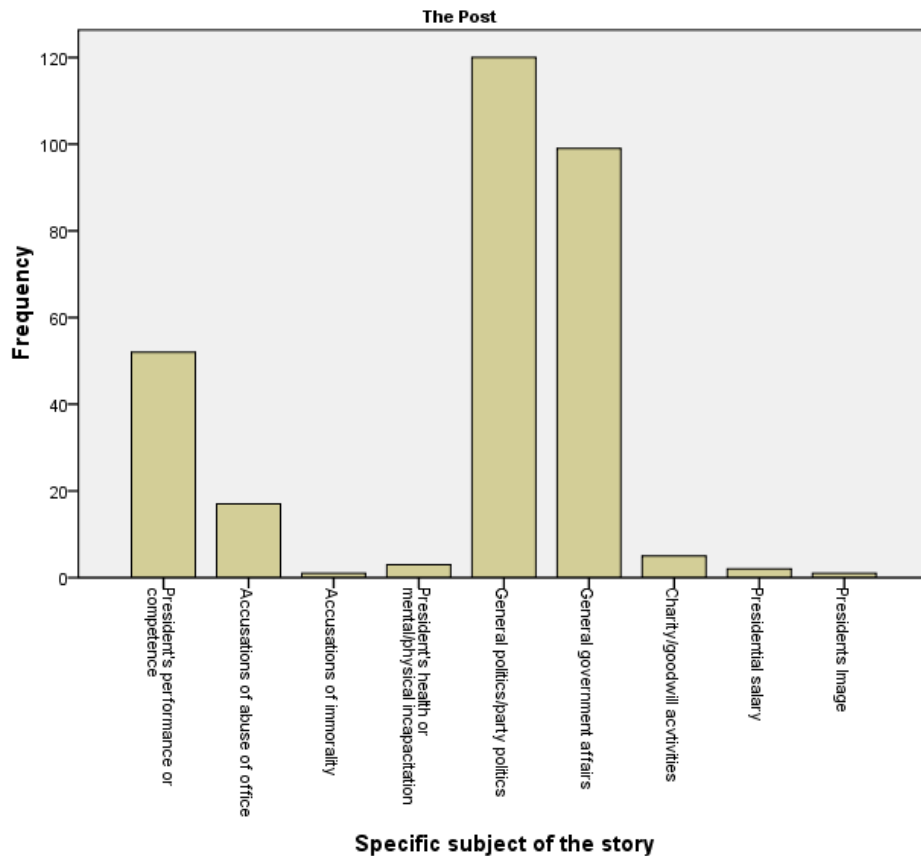
Thus, the analysis revealed that in the Daily Mail, a high number of the stories examined were election related, representing 54 per cent i.e. 162 out of 300 stories, followed by the economy, which accounted for 8.3 per cent i.e. 25 out of 300 stories. For the specific focus on the President, the majority of the stories in the Daily Mail were about general party functions and politics, which represented 39 per cent i.e. 117 out of 300 stories. On the other hand, 27.7 per cent i.e. 83 out of 300 stories, were discussing the President's competence or performance.

In The Post, it was observed that the majority of the stories were election related, accounting for 59.3 per cent i.e. 178 out of 300 stories. This was followed by stories under the general theme of economy, which represented 8.3 per cent i.e. 25 out of 300 stories examined. With regard to the President, it was found that the majority of the stories in The Post were about the President in relation to general party politics, representing 40 per cent i.e. 120 out of 300 stories,

while 33 per cent i.e. 99 out of 300 stories, were about government affairs/functions and 17.3 per cent i.e. 52 out of 300 stories, were about the President's competence or performance.

Figure 3: Bar charts showing a variety of specific subjects in news stories about the President in the Daily Mail and The Post.





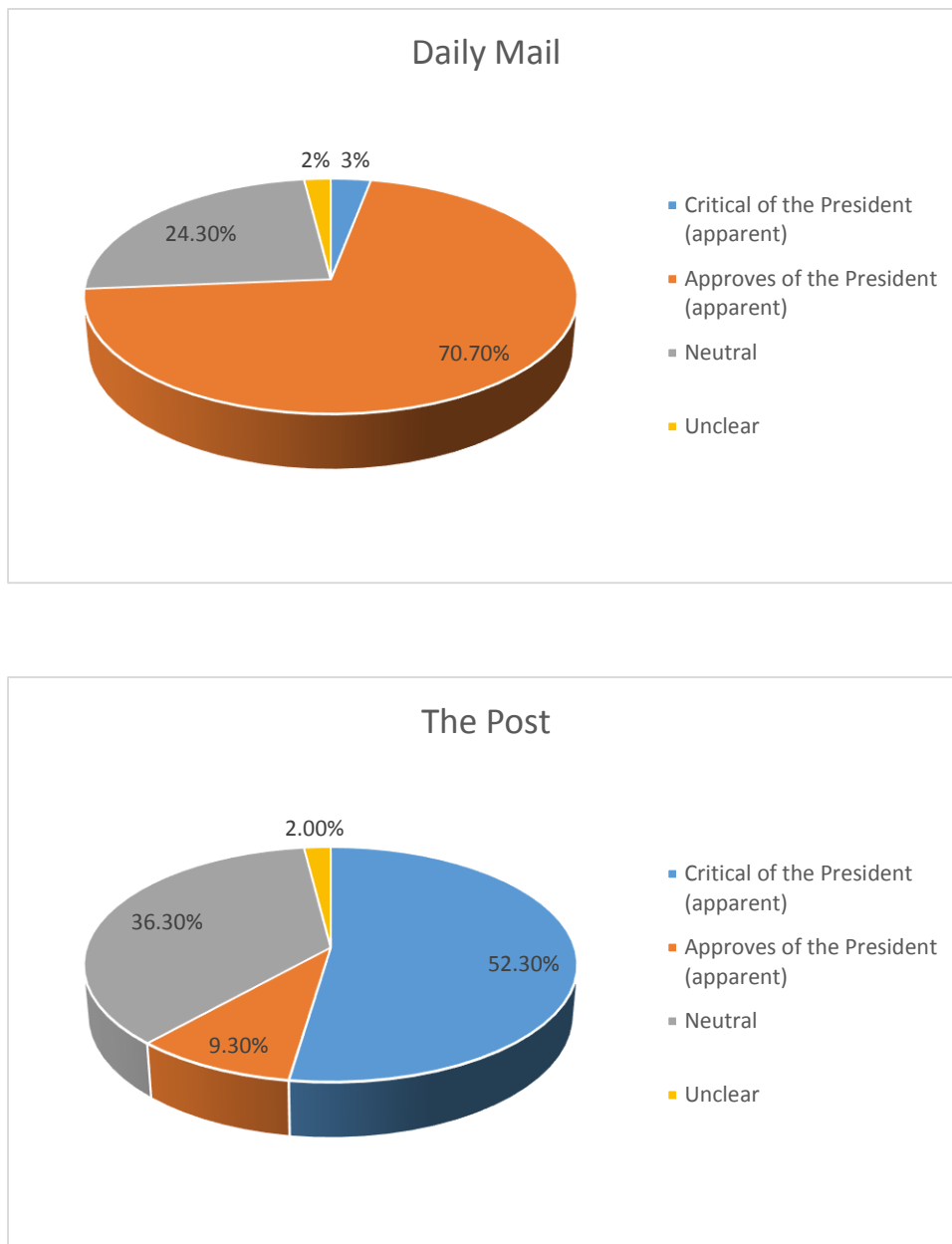
4.2.4 Story frame

In terms of framing, consideration was whether the stories were apparently critical of the President, approval or commendation and whether they were neutral or unclear.

In the Daily Mail, it emerged that a high percentage of the stories approved or praised the performance of the President, accounting for 70.7 per cent i.e. 212 out of 300 stories while only 3 i.e. 9 out of 300 stories were critical of the President.

In The Post, however, the majority of the stories, or 52.3 per cent i.e. 157 out of 300 stories, were critical of the President as compared to 9.3 per cent i.e. 28 out of 300 stories which commended the President's performance.

Figure 4: Pie charts showing the frames of stories about the President in the Daily Mail and The Post.



4.2.5 Status of the story

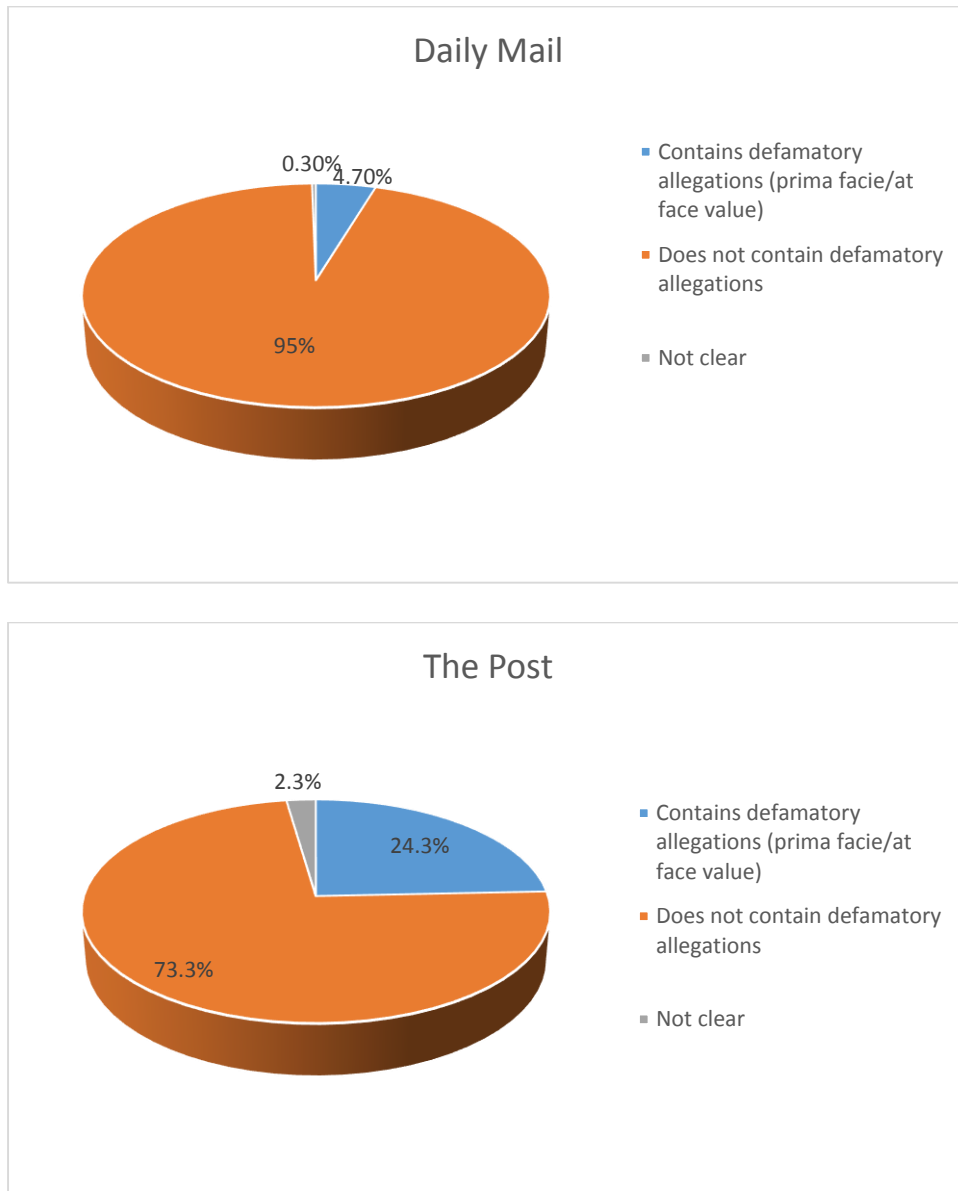
Under status, the aim was to establish whether the media, in performing the watchdog role, were able to carry stories about the President in relation to various themes that are typically classified as defamation as established in the operationalisation of the law on defamation of the President in chapter 1.9.1.1 above.

As such, it was found that 95 per cent i.e. 285 out of 300 stories in the Daily Mail were neither defamatory nor carried any critical views that could typically be classified as defamation of the

President. On the other hand, only 4.7 per cent i.e. 14 out of 300 stories in the Daily Mail could be categorised as defamation of the President.

In The Post however, it was observed that 24.3 per cent 73 out of 300 stories carried critical views that could be defamatory of the President at face value.

Figure 5: Pie charts showing the defamatory status of stories about the President in the Daily Mail and The Post.



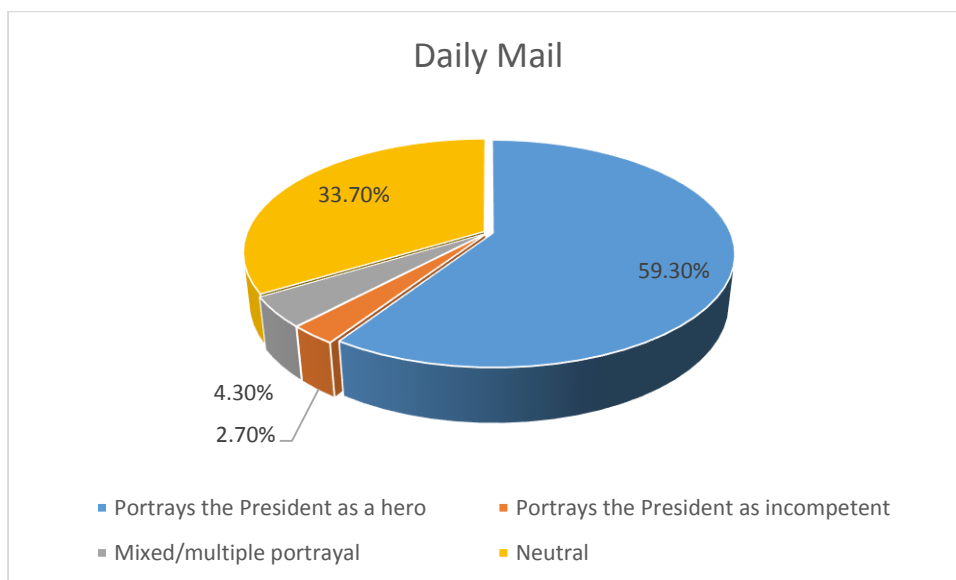
4.2.6 Portrayal of the President

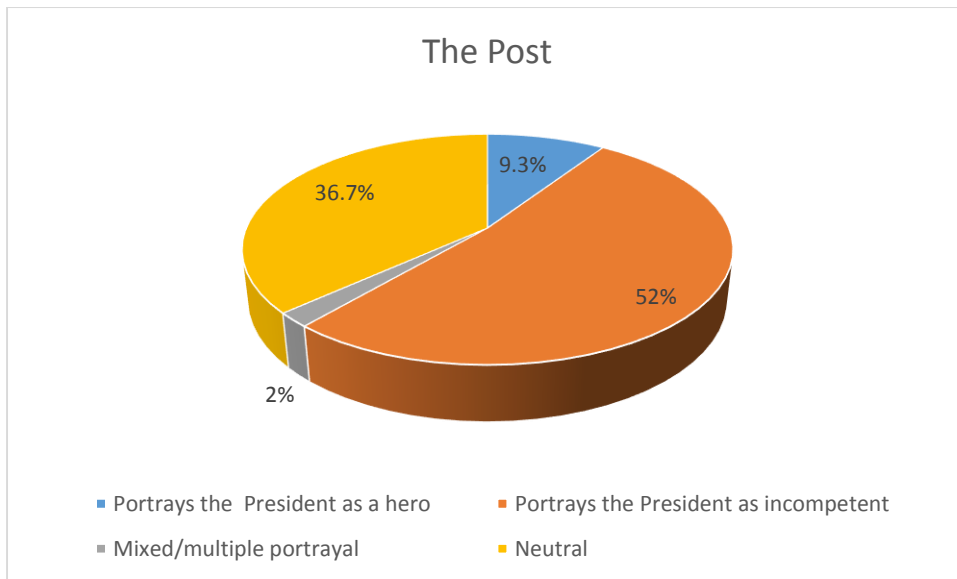
The benchmark of the portrayal of the President was in relation to the media's function of holding leaders accountable vis-à-vis the law of defamation. This section aimed to establish the overall portrayal of the President.

Hence, in the Daily Mail, it was established that the majority of the news stories portrayed the President as a hero, representing 59.3 per cent i.e. 178 out of 300 stories, whereas 33 per cent i.e. 101 out of 300 stories were neutral.

Comparatively, 52 per cent i.e. 156 out of 300 stories in The Post portrayed the President as incompetent, while 36.7 per cent i.e. 110 out of 300 stories were neutral.

Figure 6: Pie charts showing how the Daily Mail and The Post portrayed the president in their stories.





4.3 In-depth interviews

A total of eight interviews were conducted with eight individuals from relevant sectors and with experience in regard to media performance in Zambia. Three of the interviews were with media practitioners at different levels. Two of the media practitioners were from the Zambia Daily Mail and The Post, while one is an independent journalist.

Of the other five interviews, one was with a representative from the Ministry of Information and Broadcasting Services, while the others were with the head of the Daily Mail, the leader of a media rights advocacy organisation, a media law academician and a state prosecutor. A list of the respondents and their designation is included in Appendix 1.

Analyses of the interviews were conducted using a combination of deductive and inductive reasoning. This involved the use of theory, a hypothesis, observation and then confirmation. Themes were identified using a brief coding process and these followed themes from the study’s conceptual framework in chapter 1.9.1 above.

The main themes drawn from the conceptual framework and categorised were “Defamation of the President”, “Press Freedom” and “Media Performance”. The findings of the interviews are presented below according to these themes and related sub-themes.

4.3.1 Defamation of the President

Most of the respondents perceived the law as heavy handed, misunderstood and misapplied as it is associated with the President's immunity. Some respondents noted a quandary that is created by the law when weighed against the principles of good governance. The law was also seen as a negation of the very essence of democracy.

On the justification and relevance of the law, the responses were varied. One consistent view was that despite the need to protect the Presidency, it was noted that respect cannot be forced or legislated through punitive measures. Respect is earned through fitting conduct of the person occupying the office. Some respondents, however, argued that the office of President must be held in high esteem as the character of the President reflects the character of the nation at large. Consequently, if this character is ridiculed then there will be negative effects on other activities of the state. One outstanding question from the majority of the respondents, was who exactly the complainant would be in a case of defamation of the President. Respondents asked whether the President, who enjoys immunity, could be called to court as the complainant to demonstrate what injury he/she may have suffered? It also emerged from the responses that the law is, to a greater extent, not justified and irrelevant, especially that it is a colonial piece of law.

Additionally, respondents viewed the law as unfair mainly because it is misunderstood not only by the citizens but by law enforcers also, who end up abusing its provisions. Respondents noted that the law was only given prominence by increased arrests of media practitioners deemed to be critical of the state. Also, the application of the law is seen to be selective. This is in addition to the fact that the law is vague and insensitive to the context in which some words may exist either as an insult or as a mere harmless description of reality. Such an example given was the word "stupid", which could have several connotations. Further, it was noted that ruling party officials tend to feel they have power to regulate what media practitioners can write about the President based on the law and this brings in abuse.

4.3.2 Press freedom and media performance

Respondents observed two main forms of censorship of the media in relation to the law on defamation of the President. The forms of censorship identified are institutional and self-censorship. It was revealed that journalists get tempted to censor themselves in order to avoid coming into conflict with the law. However, it emerged that self-censorship is more as a result of the inherent fear of the Presidency than the provisions of the law on defamation.

Most of the respondents held that the role of the media is to hold anyone accountable especially those that hold public office. The respondents noted that this role requires an understanding of the authority, limitations, roles and scope of each office in order to offer checks and balances. However, some respondents bemoaned some of the shortcomings of the media in fulfilling their roles in society. One such shortcoming is the high levels of political polarisation among media institutions which tend to affect media performance when holding public office bearers, such as Presidents.

4.3.2.1 Media performance-the watchdog role

Most of the respondents held that the Presidency is a public office and the decisions made in that office have the potential to affect all citizens. In that regard, citizens and the media should have opportunities to critique the Presidency. Respondents stated that despite the Presidency being the highest authority in the country, it is not above reproach and should be brought to account. However, it was also noted that there is a need to strike a judicious balance between respect and criticism. This is because the office of President is a public office. In the same vein, it emerged that the law is restrictive as it limits how far the media can go on a particular issue. It was also observed that journalists sometimes get excited, even in situations where they do not have sufficient evidence and thus end up defaming the President. Overall, it was noted that the Presidency had too much power such that anything said against the President is misconstrued to be offensive and often attracts punitive consequences for the media.

Nonetheless, respondents observed that most media houses in Zambia are able to openly criticise the Presidency. This criticism, however, is mainly from the private media, while state media rarely publish anything negative about the President.

Most of the respondents strongly argued that the law does not necessarily have an effect on the media's performance and latitude to carry stories that are critical of the President. The failure by some media houses to criticise the Presidency was attributed to business/commercial interests and political polarisation/patronage as well as the state's undue influence over the media industry in Zambia.

4.4 Conclusion

This chapter presented the findings from research of The Post and Daily Mail. Two main research methods were followed: content analysis and in-depth interviews.

The results of the content analysis were thematically presented.

Similarly, in-depth interview findings were also summarised under the themes identified in the conceptual framework in chapter 1.9.1 above.

The thematic arrangement of the findings set the stage for the next chapter, which interprets and discusses the data within the context of this study's objectives.

CHAPTER FIVE

INTERPRETATION & DISCUSSION OF FINDINGS

5.1 Overview

The previous chapter presented an objective view of the findings of the study in line with relevant themes identified. This chapter discusses the findings within the context of the specific objectives and research questions as outlined in chapter 1.4 and 1.5 above. The main objective of the study was to ascertain whether the law on defamation of the President has any observable effect on media performance at The Post and the Daily Mail.

The research was guided by specific objectives which were operationalised through consequent questions. This chapter, thus, considers the significance of the findings in line with each of the study's objectives and consequent questions.

Additionally, consideration of trends in other research findings, authorities as well as the theoretical framework laid out in the first and second chapters above is undertaken.

The main aim of this study was to ascertain whether the law on defamation of the President had any effect on media performance, in line with the key concepts defined in both theoretical and operational terms in chapter 1.9.1 and 1.9.2 above. The discussions are grouped as follows: rationale for insult laws or defamation of the President; coverage of the President in The Post and Daily Mail newspapers, and; defamation of the President and media performance.

5.2 Rationale for insult laws: defamation of the President

Specific objective: To establish the sources and rationale for insult laws such as defamation of the President in Zambia

The study, as indicated in chapter 4.3 above, found that the rationale for the law on defamation of the President was not clear. For example, respondents questioned the logic of the law in its current form as it negates the essence of democracy and stifles media freedom. This is because the Presidency is a public office and the public interest should therefore override the reputation, honour and dignity of the person occupying that office. Additionally, a high number of stories observed were about the President's performance or competence, showing how often the media discuss the Presidency and this will be discussed further in 5.4 below.

The lack of clarity on the rationale of the law is not unusual as criminal defamation and insult laws are generally seen to be an infringement on the freedom of expression and consequently

that of the press. According to Griffen (2015:7), the criminal sanctions presented by insult laws compared to civil remedies, carry a greater potential to generate a deterring effect on the media and on freedom of expression more broadly. Additionally, insult or criminal defamation laws are usually prone to abuse given the use of state resources for the prosecution of such cases. This is confirmed in chapter 2.2.2 above.

The use of criminal defamation laws is quizzical as observed by Kirtley (2003:2) who notes that “whatever justifications might exist for allowing criminal sanctions for false and defamatory statements about individuals, there is no justification whatsoever for imposing them when it is the institutions of government that are the target of censure, or ridicule. A government that is criticised, whether ‘fairly’ or not, is not diminished, but strengthened”.

Further, the rationale of laws on criminal defamation is questionable as the initial justification postulated by Kofler and Gershman (1984:821) in the review of literature in chapter 2.2.2 of subverting potential insurrections arising from attacks on the dignity and respectability of the sovereign is not as valid. Kirtley (2003:2) argues against this, stating that:

The rationale supporting criminal libel seems counterintuitive to modern sensibilities. At its heart, criminal libel was believed to be an essential weapon to avert breaches of the peace, by duelling or vigilantism, by those who sought satisfaction for affronts to their honour or dignity. Defamation, either real or supposed, is the cause of most of those combats which no laws have yet been able to suppress. Duelling no longer seems a realistic threat, yet most countries retain criminal libel laws on their books, under a variety of pretexts.

It is partly for this reason that various international instruments such as the ICCPR and the ACHPR among several international conventions, outline certain principles to help determine the bounds of insult or criminal defamation laws. According to Nordvik (2014:6) as discussed in chapter 2.4.4, limitations on the freedom of expression, such as the laws on defamation of Heads of State, must be clearly defined and should not jeopardise the exercise of the right itself. Also, criminal defamation and insult laws, as limitations of the freedom of expression, must be necessary and proportionate to the objective they seek to achieve. They should include the least intrusive means possible.

Most importantly, the honour and dignity of public officials protected under criminal defamation and insult laws must not override the public interest. In the case of the law in Zambia as buttressed by Mwanakatwe (1994:2), the protection of the President’s reputation

must not be at the expense of the freedom of expression and media freedom as raised also in chapter 2.2.

In this regard, some scholars contend that in order for such laws to attain some level of reasonableness, there is need for the law to clearly distinguish between the character and reputation of the public officials being protected. Otherwise, criminal defamation and insult laws that do not make this distinction will be ill-placed and this is consistent with the provisions international instruments and standards such as the ICCPR, ACHPR, ACHR and ECHR among others referred to in chapter 2.2. Some scholars such as Veeder (1904:33) state that:

Character is what a person really is; reputation is what he seems to be. One is composed of the sum of the principles and motives-be they known or unknown-which govern his conduct. The other is the result of observation of his conduct-the character imputed to him by others. It is, therefore, reputation alone that is vulnerable; character needs no adventitious support. Not only are the two not synonymous, but they may be directly contrary to each other. A man may have a good character and a bad reputation, being unjustly judged by the public; or he may have a bad character and a good reputation, standing in a false light before the public. In most cases reputation reflects actual character.

Veeder's observations reinforce 'truth' as a necessary and minimum defence with regard to criminal defamation or insult laws. However, as noted in chapter 1.2.5.2, despite such legal precedence as Lord Campbell's, truth is still not accepted as a defence in criminal defamation. Again for such laws to have some level of reason, they need to accommodate truth as a defence as observed by Veeder among others such as Kasoma (2001:246), Mwanakatwe (1994:2) and Overbeck and Belmas (2013:36). In Zambia, the law, as established in the review of the common law in chapter 1.2.5, does not recognise truth as an absolute defence neither does the public interest have any unique bearing on the defence. As such, the law falls far short of the international standard of public interest above the reputation, honour and dignity of public officials as analysed in the review of literature in chapter 2.2.

The conflation of the character and reputation is traceable to the early origins of criminal libel and insult laws which aimed to protect the honour and dignity of public officials. The laws trace their origins to the ancient French concept of *lese majeste* and the fifth century BC Roman law of *iniuria* (Walden 2000:9) which are both discussed in chapter 2.2.1 above in the review of literature. The two concepts presented the defamation of an official as occasioning not only

a breach of the peace but also a scandal, injuring the government which itself was sacred hence the non-admittance of truth as a defence. This does not hold true, especially in a country like Zambia where there is an executive and not a titular President. Veeder (1904:44) recounts that:

...if the matter was defamatory the court would permit no inquiry into its truth. The sweeping application of this rule was due, as has been pointed out, to the indiscriminate use of rule of Roman law which was applicable only to certain modes of publication, with the addition of the reason that libels tended to create a breach of the peace. Whatever may have been the semblance of justification for this interpolation at the time it was made, as a principle of law in settled and civilised community it is plainly irrational and unscientific.

Thus, it becomes important for the law to be reasonably justifiable in a democracy if the agenda setting function of the media is to be performed as assumed in chapter 1.9.2 above. The core premise of agenda setting is that the news media are the principal bridges between the broad arena and our perceptions of this arena. If anything, in setting the agenda, the media focus our attention to a particular set of issues and also influence our perspectives and understanding of the topics in the news, such as the Presidency (McCombs and Valenzuela 2007:47). Hence, the media make a considerable difference in how people view a particular issue through which specific aspects of an issue they cover, and the relative emphasis on the various aspects of that issue. This could affect the measures of media performance as discussed in chapter 2.3.2 and the role of the media in a democratic society as discussed in 2.3.1 in the review of literature. As McCombs and Valenzuela (2007:49) note,

From the pattern of news coverage, the public learns what journalists consider the important issues and the prominent public figures of the day to be. From the details of this coverage —the agenda of attributes presented by the news media— the public forms its images and perspective about these issues and public figures. Influencing the focus of public attention is a powerful role, but, arguably, the apogee of media effects is influencing the agenda of attributes, opinions and attitudes, even observable behaviour, regarding issues and political figures.

Agenda setting in that regard, as opined by McCombs and Valenzuela (2007:47) and affirmed in the role of the media as discussed in chapter 2.3.1, usually takes place in relation to several other theoretical aspects such as framing, priming and gatekeeping, among others.

Of particular interest is the aspect of priming which stems from the agenda-building process (McCombs and Guo 2014:251). In priming, even the most motivated citizens cannot consider all that they know when evaluating complex political issues but instead consider the things that come easily to mind (Baran and Davis 2010:296).

Priming, therefore, occurs when news content suggests to news audiences that they ought to use specific issues as benchmarks for evaluating the performance of leaders and governments. However, according to authors like Coronel (2003:1), agenda setting and related aspects such as priming are challenged by several factors, key among them stringent laws. This leads to the rationale of the law on defamation of the President coming under question, especially if the provisions do not meet the minimum acceptable benchmarks. As indicated in this section and chapter 2.2 above, most criminal defamation and insult laws do not meet the minimum benchmarks to allow media to effectively perform the agenda setting role and priming.

For example, the President's reputation should be earned and not legislated. This allows for the media to effectively evaluate the President's actions and decisions-which actually affect the livelihood of all the citizens. In the current scenario, those holding public office, such as Presidents, may simply hide behind the veil of the law to stifle any media activities in line with the agenda setting role. This, then affects the various functions of the media as discussed in 2.3 above. Hyde Haguta, a long serving journalist observes that:

You do not get honour by putting laws or instilling fear in your subjects or citizens. Honour is acquired on account of good leadership and delivering what people want. So, when people question what you are not doing right, does that amount to dishonouring the President?

Similarly, Mukosha Funga, a former journalist at The Post Newspaper observes that:

The President's office is a public office and his decisions affect everyone. As a result, you cannot run away from criticism. It is not an issue of striking a balance but bearing in mind that his office is a public office and that he is subject to criticism.

Clearly, there is a feeling among respondents that the law is suppressive and detrimental to the interests of democratic principles, which simply confirms the conundrum discovered in chapter 2.2 and 2.3 on which should be superior, the reputation of public officials or the public interest.

Additionally, the law, as discussed in detail in the review of literature in chapter 2.2.3, is vague and leaves the interpretation of what is defamatory open for law enforcement agencies to decide

what is defamatory and what is not, which allows for arbitrary application (Chanda and Liswaniso 1999:49). It is also worth noting that the President, and anybody else occupying public office enjoys 'public status' i.e. they become public figures accountable to the people and should thus allow for transparency. This implies that the people-including or represented by the press, must be able to discuss the Presidency without being subjected to criminal sanctions. On this postulation, one respondent, Youngson Ndawana, a lecturer and media consultant notes that:

In a democratic dispensation, that law is out of place. Defamation of the President as a civil suit is fine because he [the President] should enjoy the same privileges of a good reputation, good character and a good name but to criminalise it is not justifiable. Just because you are occupying that office you are not infallible, omnipotent or almighty but a human being who is prone to make mistakes. So when people criticise the President without malice they should not be criminalised but if he feels that this person is malicious in their critique, they should be able to pursue that person under civil law.

However, some respondents, such as Nerbert Mbewe, Managing Director of the Daily Mail argues to the contrary. Mbewe states that:

...the President must be held in very high esteem and the character of the President perhaps reflects the character of the nation and so if a person's character is falsely brought into ridicule then that has got an extensive impact on the rest of his activities as an office bearer of the nation.

In general, it can be concluded that despite the law being originally intentioned for the protection of the honour and dignity of public officials as opined by Koffler and Gershman (1984:821), Chanda and Liswaniso (1999:48) and Kasoma (2001:247), it has lost its place in what is now a democratic political system in Zambia. This is consistent with the findings in chapter 2.2 and 1.2.5 above. Some of the hallmarks of such a system include the freedom of expression and accountability (Mwanakatwe 1994:271), which cannot accommodate suppressive laws. In that regard, the rationale of such a law is highly questionable in the current setup as it presents an opportunity for abuse or arbitrary application in order to stifle dissent/criticism. This is consistent with related literature as reviewed in chapter 2.4.2, particularly Lustgarten et. al. (1997:192), who hold that defamation, particularly criminal libel, has the effect of a deterrent on the media.

Thus, from the findings in this study, it can perhaps be surmised that the law has lost relevance in its current form as it does not meet the minimum benchmarks to be reasonably justifiable in a democracy. Also, the Presidency is ably protected by several other provisions and this is clearly raised in chapter 2.2.3. Further, the law on defamation of the President is misplaced and unjustified as the media are more likely to carry a lot of stories about subjects deemed to be offensive in line with the various functions of the media in a democratic society in 2.3.1.

For example, a significant number of the stories in both the Daily Mail and The Post were about the President's competence or performance i.e. 27.7 per cent in the Daily Mail and 17.3 per cent in The Post. This is because the decisions made by the person holding the office of President have an effect on the welfare of every citizen. Thus, all citizens must be accorded as much leeway to scrutinise such decisions for their own interests. This leeway should not be unnecessarily hindered by such laws as the defamation of the President. This is consistent with Mwanakatwe (1994:272) who states that:

In a society in which free expression is severely restricted, there is a strong probability of inhibiting the democratic process. Unless there is free expression in society, it is impossible to assess the conduct and performance of political leaders and the bureaucratic elite in order to make them accountable to the public.

However, it also emerged from the respondents as shown in chapter 5.3.1 that despite the law being unjustified and irrational in its current form, there is need to ensure that some reasonable and considerate level of protection is accorded for the President's reputation. This draws from the history of the law itself where it is held that utterances alone can inflict harm on the sovereign. This observation is consistent with the alternative school of thought outlined in the review of literature in chapter 2.2.2 above.

This was equally noted in the landmark case of *The people v. Bright Mwape & Fred M'membe* (discussed in chapter 1.2.5.1 above) where the court ruled that side by side with the freedom of speech was the equally important public interest in the maintenance of the character of public men and women for the proper conduct of public affairs.

As such, there is need for a certain level of protection but this has to be done in a very considerate and tolerant manner in line with the minimum international benchmarks discussed in chapter 2.2 above.

Notwithstanding, the law can be said to be irrational in its current form as it does not conform to the minimum standards that allow for the functioning of the freedom of expression and consequently of the media.

5.3 Coverage of the President in The Post and Daily Mail Newspapers.

Specific objectives: to analyse the coverage of the President in The Post and Zambia Daily Mail; to compare and contrast the extent of coverage and criticism of the President in The Post and Zambia Daily Mail respectively.

5.3.1 Story source, placement, direction and treatment

In chapter 4, it was established that the majority of the stories in both the Daily Mail and The Post were single-sourced i.e. 144 out of 300 stories in the Daily Mail and 211 out of 300 in The Post. However, most of the stories in the Daily Mail were mainly pro-government while most of the stories in The Post were critical of government i.e. 207 out of 300 stories in the Daily Mail and 177 out of 300 in The Post. Notably, the top source quoted in the stories in the Daily Mail was the President, representing 16 per cent i.e. 49 out of 300 stories. On the other hand, the top sources quoted in The Post were opposition leaders or officials, accounting for 36.7 per cent i.e. 110 out of 300 stories.

Similarly, with regard to treatment, the majority of the stories in both the Daily Mail and The Post were placed on the first page i.e. 48.3 per cent in the Daily Mail and 39 per cent in The Post. Likewise, an extremely high percentage of the stories in both papers had no picture or art as an accompaniment, accounting for 70 per cent in the Daily Mail (i.e. 210 out of 300 stories) and 95.7 percent in The Post (i.e. 287 out of 300 stories). It should be noted that pictures or art are admissible as subjects of defamatory communication as discovered in the review of literature in chapter 2.2.1.

This is further confirmed in the law on defamation which states that “any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for up to three years” [The Penal Code Act of 1965 (Cth) S69].

Additionally, it emerged that the majority of the stories in the Daily Mail portrayed the President as a hero, representing 59.3 per cent i.e. 178 out of 300 stories while in The Post, the

majority of the stories portrayed the President as incompetent, accounting for 52 per cent i.e. 156 out of 300 stories.

The findings under story source, direction, treatment and portrayal are significant in the measurement of media performance with regard to the coverage of the President as raised in the related literature in chapter 2.4 as well as the theoretical framework in chapter 1.9.

According to Norris (2000:9), one of the key considerations in measuring media performance is whether the media contribute to pluralistic competition by acting as civic fora for debate. In that regard, media are expected to provide extensive coverage of news about politics and government especially during election campaigns. The media are also expected to provide a platform for a wide plurality of political parties, groups and actors. As such, the media should provide equal or proportional political coverage for different parties or stakeholders. On this view, Norris (2010:392) explicitly notes that:

As gatekeepers, or indeed, gate openers, it is claimed that the news media should ideally serve as the classical agora by bringing together a plurality of diverse interests, voices, and viewpoints to debate issues of public concern. It is hoped that if the media perform this gatekeeping role well, citizens are more likely to be empowered and informed about their governments, thus keeping political leaders responsive. Gatekeeping also serves to educate citizens and facilitates rational debate and informed public opinion. This gatekeeping role is often regarded as particularly important during election campaigns, when citizens can make an informed choice only if media cover all parties and candidates fairly, accurately, impartially, and without undue favouritism toward those in power.

Clearly, in covering the Presidency, media should be able to balance up their stories to ensure that there is pluralism which could in turn help to keep office bearers such as Presidents in check. In this regard, media make public participation more meaningful. This postulation also agrees with the arguments in chapter 2.3.2 above with regard to media performance.

Because of this, public support for such media houses grows and government officers-including Presidents-come under public pressure to be more transparent and accountable (Limpitlaw 2012:18). It can be surmised, generally, that the role of the media in reportage about the President is to provide a platform for debate and for ordinary citizens, among several other stakeholders, to also air their views. This is because the media are expected to act like

‘conveyor belts’ between the people and the leaders (Limpitlaw 2012:13). Coronel (2003:4), couldn’t exemplify this better than when she writes that:

The media also serve as a conduit between governors and the governed and as an arena for public debate that leads to more intelligent policy- and decision-making. Indeed, the Enlightenment tradition of the press as public forum remains strong... in new democracies, the expectation is that the media would help build a civic culture and a tradition of discussion and debate which was not possible during the period of authoritarian rule.

As such, the media are further expected to act as watchdogs-as opined by McQuail (1992:121) in chapter 2.3.2-by standing up for citizens in the face of inevitable pressures as well as monitoring the activities of public institutions and administrators (Limpitlaw 2012:13). The media are also expected to generally provide information to the public-even about Presidents-by reporting on daily events as they unfold. In so doing, the media must facilitate access to all ideas (Mwanakatwe 1994:272). The watchdog role of the media is actually discussed at length in chapter 2.3 above.

The media’s performance of the watchdog role in relation to coverage of the President despite the existence of the law has everything to do with framing. This study assumed in chapter 1.9.2 that journalists and other media practitioners are expected to expertly and freely frame stories and other news material about the President. This is in order to imbue a clear understanding of many issues surrounding the Presidency as a way of increasing citizen participation in governance issues. The study assumed, however, that this process, is affected by the provisions of the law.

5.3.2 Media and framing

The framing theory is in many ways tied to the agenda setting theory of mass communication as it also focuses on how the media draw the public’s attention to specific topics, thereby setting the agenda to a certain extent. The framing theory, however, holds that news coverage can strongly influence the way readers or viewers make sense of news events and their major actors (Baran and Davis 2010:338). Thus, framing is a conscious choice by journalists who as gate keepers organise and present the ideas, events and topics they cover-which constitute the frame. In the case of this study, the frame comprises the source, placement, pictorial treatment, direction and portrayal of the President in the stories. This is in line with the conceptualisation in chapter 1.9.1.

Media frames are said to be overt, subtle aspects which can make them difficult to detect in a story. However, despite this, frames can have impact on interpretation and audience response or opinions towards particular events as they unfold or become part of the public agenda. This is so because frames are self-reinforcing in that the way the media portray a particular individual can become a self-fulfilling prophecy (O’Gara 2009:11).

Coronel (2003:1), reinforced by others such as Nordvik (2014:24), notes that there are a number of factors that affect media framing other than the law. Some of the factors are monopolistic ownership, state control, the threat of brute force and competitive media markets. Coronel states that if anything, media framing is resultant of battles between rival political groupings in which the media are used as proxies. One aspect that affects framing as noted by scholars such as Norris (2010:141), is that of the media’s reliance on ‘official sources’, which leads to a preclusion of other stakeholders such as civil society groups or ordinary citizens.

This is at variance with scholars as held in chapter 2.3 on the roles and functions of the media in a democracy such as Zambia’s because one of the functions of the media, as it was discovered, is to provide a platform for pluralistic competition.

As such, framing in the context of fledgling democracies such as Zambia, can mainly be attributed to what Norris (2010:142) terms as episodic framing, which is important in understanding the quality of public debate. Norris states that:

Almost all news is essentially storytelling. Reports follow a clear narrative structure that focuses on a distinct event and a main actor – often stereotyped as hero or villain – who is depicted as being responsible for the problem or its solution. Thus, political issues are usually presented in an ‘episodic frame’ that is person- centred and event-driven rather than in a ‘thematic frame’ that covers the broader social, economic or historical context of a problem.

This could explain, to a greater extent, the findings in this study with regard to framing i.e. source, placement, direction, pictorial treatment and portrayal of the President in the stories. For instance, the stories in the Daily Mail and The Post show the two papers on opposite ends of the political spectrum. Whereas the framing of stories in the Daily Mail mostly stereotype the President as a hero, ignoring any negative traits, the framing of stories in The Post stereotype the President as incompetent-ignoring any positive traits. This was also observed in the stories in the Daily Mail, which were mainly pro-government while those in The Post

mostly condemned the government. As Nerbert Mbewe, the Daily Mail Managing Director, states:

Newspapers have various policies as there are certain newspapers whether private or public whose policies may be driven around pushing an agenda to promote the activities of government. Then certain institutions' agendas may be driven by those that parade themselves as monitors who provide checks and balances for the government and they will therefore skew their stories in such a way that they begin to show that that person is not doing the right thing.

Additionally, the same trend of episodic framing can be observed with regard to sources in the stories as established in chapter 4.3.1. While the single sourcing can be attributed to the fear instilled by the law, another possible reason for the single sourcing of stories is that of the polarisation of the media. This has contributed to the media, including public media, taking up extreme positions on particular issues. This has led to the exclusion of those groups or individuals seen to be inconsistent with the media outlet's position or preference. This observation is consistent with Nordvik (2014:24) discussed in the review of related literature in chapter 2.4.4. Nordvik study suggests that political polarisation and state interference with the media has a higher influence on framing of the Presidency than the law. The situation of the Daily Mail and The Post on opposite ends of the political continuum could, perhaps, be explained by their formation and origins as established in chapter 1.2.1 above. In that regard, Youngson Ndawana, a lecturer and media consultant notes that:

The Zambian media landscape is polarised and it is easy for the private media as a good number of them write both in the editorial or opinion pieces as well as objective stories. The state owned media rarely do such whether it is an opinion or a fact or hard news story; a story that criticises the President would never appear.

On selection of sources, Lillian Kiefer, the Executive Director of the PANOS Institute observes that:

I think it [defamation law] is being used as a tool to silence people who disagree with the President's opinion. For example, if the President's office holds an opinion and another person had a different opinion and they wanted to bring it out, then this law would be used. It is being used as a tool to shut up the people that want to question the Presidency.

As pointed out in chapter 2.2, pictures or art also qualify as subjects of defamatory communication. Thus, with regard to the use of pictures and art, the fact that both newspapers seem to restrain themselves from the use of pictures or art (especially negative pictures) as accompaniment to stories about the President could be symptomatic of the ‘direct effect’ suggested by scholars such as Lustgarten et. al. (1997:192) in chapter 2.4.2 above. The direct effect is observed when articles, books and publications are specifically changed in light of legal considerations. In the case of the Daily Mail and The Post, for example, this could take the form of omission of material such as pictures in relation to news stories about the President. The media’s function of contributing to pluralistic competition is to act as civic fora for debate as observed in chapter 2.3.2, including the provision of a variety of content in news framing, such as pictures (Norris 2000:9).

In that regard, the fact that the majority of the stories in the Daily Mail and The Post were placed on the first page indicates that the two newspapers have some leeway in the coverage of the President as they can exercise their judgment on certain aspects such as placement, which equally affects the story frame. This is because stories on the first page will likely have the highest visibility and for a media house to place a story about the President on that page is indicative of some level of freedom in editorial judgement despite the limitations posed by the law. Inversely, stories further away from the first page tend to suggest less importance and may thus attract less attention from the reader. This observation is consistent with the findings of Kenyon and Marjoribanks (2008) in the review of relevant literature as presented in chapter 2.4.3 above.

Thus, it can be concluded that the framing process is not affected by the law but by other factors. This is against the background of the theoretical assumptions made in chapter 1.9.2 that how the media frame their stories is mainly dependent on the law. What this means, therefore, is that the media are able to fulfil their roles and functions under media performance as outlined in chapter 2.3.2 despite the provisions of the law. Lillian Kiefer, Executive Director of the PANOS Institute, observes that:

The way the press covers the President is a combination of factors. If we look at the state media, those are mandated to build a positive profile of the President and are driven by that mandate than the fear of the law. When we look at the private and commercial media/platforms, to some extent they are controlled by the existence of that law.

5.4 Defamation of the President and media performance

Specific objective: to establish whether the law on defamation of the President has an effect on media performance.

The study's main objective was to ascertain the effect of the law on media performance as discussed in the review of literature in chapter 2.4.2 above. As such, the study considered the theme of stories and whether they were able to criticise the President despite the law's restrictions. Some of the restricted subjects are identified in the conceptual framework in chapter 1.9.1.1. The subjects include discussion of the President's competence or performance, suggestion of mental/physical incapacitation and accusations of abuse of office, among other topics.

It was established in chapter 4.2.3 above that the majority of the stories in both papers were about general party functions and politics, which represents 39 per cent in the Daily Mail i.e. 117 out of 300 stories and 59.3 per cent in The Post i.e. 178 out of 300 stories. Stories discussing the President's competence or performance ranked second in the Daily Mail, accounting for 27.7 per cent i.e. 83 out of 300 stories and third in The Post, accounting for only 17.3 per cent i.e. 52 out of 300 stories.

With regard to overall story frame, it emerged from the Daily Mail that a high percentage of the stories approved or commended the performance of the President, representing 70.7 per cent i.e. 212 out of 300 stories while only 3 per cent i.e. 9 out of 300 stories were critical of the President. From The Post, it emerged that the majority of the stories were critical of the President, representing 52.3 per cent i.e. 157 out of 300 stories as compared to those commending or approving of the President's performance which accounted for 9.3 per cent i.e. 28 out of 300 stories.

Taking into consideration the parameters of the law as operationalised in chapter 1.8.1.1 above, the study was able to establish whether the stories could be deemed 'defamatory' under the provisions of the law and in line with the specific elements of defamation discussed in chapter 2.2.1 above also. This was to help understand the nature of the stories as well as the extent to which the Daily Mail and The Post 'defamed' the President by ignoring the restrictions of the law. It was therefore established that 95 per cent of the stories in the Daily Mail i.e. 285 out of 300 stories were neither defamatory nor carried views that could be classified as defamation of the President. Meanwhile, 4.7 per cent i.e. 14 out of 300 stories in the Daily Mail could be classified as defamation of the President. In The Post, it was established that 24.3 per cent i.e.

73 out of 300 stories could be deemed defamatory under the provisions of the law at face value, while 73.3 per cent did not qualify as defamation of the President at face value.

It is in these trends that the crux of this study lies. According to Mwanakatwe (1994:276) and McQuail (1992:121), the most significant role of the media as discovered in chapter 2.3.2 is that of being watchdogs of society. McQuail particularly notes that: “possibly the most important requirement of media performance in respect of freedom is that media should deliver on the promise to stand up for the interests of citizens in the face of the inevitable pressures, especially those which come from government...criticism of office holders has indeed always been a major topic of newspapers in both commercial and party political press systems”. Likewise, Mwanakatwe underscores this view, by stating that:

...those paid by the public are answerable to the public through the watchful eyes of the media. Sometimes, they are tempted within the bounds of the law and common decency to investigate private lives of public officials if what they are doing could one day affect their performance. Therefore, the Constitution of Zambia guarantees freedom of the press regardless who opposes publication of a particular story. It may be said that this has given too much power to the press and electronic media. That supposition may be valid. It is justified, however, because a free press is the foundation of genuine democracy. It plays a watchdog function in a democratic society. It enables the people to make informed choices.

Norris (2010:113) observes that the idea of the press as watchdogs is a widely accepted concept that has been in existence for hundreds of years. The watchdog press generally monitors the day-to-day workings of government, thereby helping citizens assess the efficacy of its performance. Watchdog reporting mainly covers exposure journalism, ranging from low to high-level officials such as Presidents. The distinguishing factor of watchdog journalism is that it aims to bring to account (in the public interest), those endowed with public power and responsibility. This is in line with the normative assumptions of the functions of the media as made in chapter 2.3.2 under media performance and theoretical assumptions made in chapter 1.9.2. Ultimately, watchdog reporting warns citizens about the leaders who are doing them harm and empowers them with the information they need.

In that regard, the watchdog role is considered to be quintessential to the measurement of media performance (see 2.3.2 above). Norris (2000:5) opines that one measure of media performance

is the media's preservation of the conditions for civil liberties and political rights. The news media should therefore act as watchdogs to hold government leaders (including Presidents) accountable on behalf of the public. The media should provide independent, fair and effective scrutiny of the government and public officials. This means that the press should be able to independently write on various themes without undue interference.

As such, the watchdog role of the media cannot be overemphasised as it is archetypal to the function of democracy. In performing the watchdog role, the media contribute to the function of democracy. On this, Coronel (2003:4-5) states that:

A fearless and effective watchdog is critical in fledgling democracies where institutions are weak and pummelled by political pressure. When legislatures, judiciaries and other oversight bodies are powerless against the mighty or are themselves corruptible, the media are often left as the only check against the abuse of power. This requires that they play a heroic role, exposing the excesses of presidents, prime ministers, legislators and magistrates despite the risks.

Hence, effective watchdog press ensure that individuals and institutions that are supposed to serve the public remain transparent and are held accountable in spite of such laws as defamation of the President. This state of affairs has necessitated reference to the media as the 'fourth estate' (Norris 2010:111; Coronel 2003:4). As watchdogs, media set the public agenda as opined in chapter 1.9.2.

McQuail (1992:121) notes that if one is to assess the performance of the media, there is need to look for evidence that the watchdog role is being carried out, in view of the roles of the media identified in chapter 2.3.1 above. Thus, media, as watchdogs, should do more than just observe and report. McQuail further explains the watchdog role of the media by identifying evidence in performance of the inter-related concepts of watchdog journalism.

McQuail holds that as watchdogs, media must report criticism, praise, evaluation of policies or persons rather than simply giving the facts. The media must clearly express editorial opinions on difficult issues, especially where the opinions offered are unpopular or deviate from the consensus. Media must pay attention to subjects of a conflictual, negative and uncomfortable kind, which are not likely to be immediately rewarding in audience terms. The media must also adopt a challenging and enquiring stance against claims made by business, government or other

power-holders as well as carry out investigative campaigns on difficult issues. Additionally, the media must be active and enterprising in the approach to news while also reporting news which records strong disagreement between the protagonists.

The elements identified by McQuail aid the establishment of whether the provisions of the law affect media performance. When considered plainly, if the media fulfil the watchdog role religiously, they will to a great extent 'defame' the President given the sensitive and suppressive provisions of the law as outlined in chapters 1.9.1.1, 1.2.5 and 2.2.3 above. Considerably, the law was found to be irrational as raised in 5.1 above as it could make the fulfilment of the watchdog role difficult.

Therefore, fulfilment of the watchdog role by the media is important in establishing whether media performance is affected by the law on defamation. As stated by scholars Norris (2000:113) and McQuail (1992:121) in discussing media and democracy in 2.3.1 above, the surest way to measure media performance or any effect on it is to consider whether the media are able to perform the watchdog role. In relation to the law, this would mean establishing whether the media are able to perform the watchdog role despite the limitations posed by the law i.e. whether the media are able to criticise and scrutinise public officials such as Presidents, whether they are able to hold government accountable and whether they are able to write on various themes-even those deemed to be negative, among other aspects.

It is against this background that assumptions were made under the agenda setting theory as outlined in chapter 1.9.2. This study assumed that because agenda setting is somewhat a corollary of the watchdog role, media are able to set the agenda with the law being the main consideration. The study therefore postulated that the media's fulfilment of agenda building is mainly dependent on the law on defamation and this is discussed in detail in chapter 1.9.2.1 above.

The main premise of the agenda setting theory is that there is a strong correlation between the emphasis that the mass media place on certain issues and the importance that is attributed to these issues by mass audiences (see 1.9.1.1 above). It follows that the mass media force attention to certain issues and consequently build up images of political figures. It is worth noting that agenda setting operates at two levels-the object and attribute level. Of particular interest to this study was the attribute level at which the media tell the audience how to think

about some objects. The media will usually do this by influencing what is called the second order attribute agendas by telling the audience which object attributes are important and which ones are not (Baran and Davis 2010:297; McCombs and Shaw 1972:177; Sheufele and Tewksbury 2007:11).

In that regard, second order agenda setting and framing share common concerns for attribute agendas (or frames) and are usually used in relation to each other as they can both explain certain phenomena (Baran and Davis 2010:297). This, McCombs and Valenzuela (2007:47) explain by stating that:

The agenda-setting role of the news media is not limited to focusing public attention on a particular set of issues, but also influences our understanding and perspective on the topics in the news... While some attributes are emphasised, others receive less attention, and many receive no attention at all. Just as objects vary in salience, so do the attributes of each object. Thus, for each object there also is an agenda of attributes, which constitutes an important part of what journalists and, subsequently, members of the public have in mind when they think and talk about news objects. The influence of the news agenda of attributes on the public is the second level of agenda setting. The first level, of course, is the transmission of object salience. The second level is the transmission of attribute salience.

As stated in chapter 1.9.2.1 above, the agenda setting theory, in this study, is used in relation to priming which according to Baran and Davis (2010:296) occurs when news content suggests to news audiences that they ought to use specific issues as benchmarks for evaluating the performance of leaders and governments. Specifically, what this entails is captured more vividly by McCombs and Valenzuela (2007:48) as follows:

Also at the first level of agenda-setting, the influence of the media on the prominence of issues can influence the standards by which individuals evaluate governments and public figures, a process called priming. When asked their opinions about political topics such as performance of the president, most citizens do not engage in comprehensive analysis of their total store of information. Rather, individuals use information shortcuts and draw upon those considerations that are particularly salient. In other words, audience members rely upon their agenda of salient objects, an agenda that is set to a considerable degree by the mass media. This agenda determines the criteria, sometimes the single criterion, on which an opinion is based.

It should be noted that in order for media to influence the standards by which individuals evaluate governments and public figures, there is need for freedom or latitude to carry stories even on subjects deemed critical in order to set the agenda as opined in chapter 1.9.2.1 above. On the Presidency, specifically, it would become difficult for the media to influence the evaluation of the person occupying the office if they cannot discuss his/her competence or performance because of the limitations presented by the law.

It is for this reason that the watchdog function of the media is very important and affects other processes such as agenda setting, priming and framing. As such, it follows that the media in setting the agenda should fulfil the watchdog role of being the ears of the public as well as facilitate the free flow of information and exchange of ideas for better decision making, transparency and accountability (Limpitlaw 2012:13; Mwanakatwe 1994:271; Norris 2000:6, 9).

Nonetheless, the law on defamation as assumed in the formative part of this study might have some influence on the agenda setting function which is mostly determined by the media's fulfilment of the watchdog role. However, fulfilment of the watchdog role, which involves criticism and negative exposure, will usually be at variance with the law and its parameters. Nevertheless, it appears that the law may only have a minimal effect on media performance as some of the traits of the watchdog function can be observed in *The Post* and the *Daily Mail*. These traits, however, are different from the norm and actually indicative of the influence of other factors other than the law. This was also observed in related research findings by Norris (2014:24) and Kenyon and Marjoribanks (2008) as discussed in chapter 2.4.3 and 2.4.4 above.

It for this reason that Coronel (2003:1) observes that in budding democracies such as Zambia, the media do not always live up to the ideal. They are hobbled by "stringent laws, monopolistic ownership, and sometimes the threat of brute force". Among other constraints on media performance particularly agenda setting and the watchdog function, are state controls and competitive media markets that put a premium on shallow and sensational news. Also, Coronel observes that media are sometimes used as proxies in the battle between rival political groups.

Coronel (2003:8) further notes that ownership plays a key role in media performance, particularly with regard to the watchdog and agenda setting aspects. As such, it would be common place to see particular trends of media performance based on the ownership model of a particular media house. On this, Coronel (2003:8) observes specifically that:

State ownership, meanwhile, allows government functionaries to clamp down on critical reporting and recalcitrant reporters and enables the government to propagate its unchallenged views among the people. The interests of media owners often determine media content and allow the media to be manipulated by vested interests

Other factors that affect agenda setting and the watchdog function as shown by the findings and related literature include news values. These tend to affect the quality of political information produced by the media as they set the standard of story selection and setting of the public agenda (Norris 2010:142). The media will often apply these news values in a bid to produce news that is 'saleable' and this reinforces Kenyon and Marjoribanks (2008) who found that marketing interests and resource constraints as opposed to the law being factors that affect media performance as outlined in chapter 2.4.3.

One notable factor that affects media performance is that of partisanship, political bias or simply political polarisation. Partisanship, according to Norris (2010:143) affects how media frame issues and whether those issues make it to the media agenda. Such partisanship will usually toe the line of ownership as indicated earlier. On this aspect, Norris (2010:143, 145) states that:

Another important factor that affects the way the media report on political matters is partisanship, that is, bias. Since biased media present political issues from a particular point of view, while ignoring, or even dismissing, opposite views, partisanship is seen as an impediment for the media to fulfil their responsibilities to provide reliable information. The audience of a biased newspaper or television channel learns only half of the truth and hence might be less equipped to make informed and effective choices...It is usually no problem, and often even desirable, when individual media outlets take sides for particular causes. However, external diversity can become problematic when the whole system is segmented along opposing lines and when there is no forum that provides a space to bring all these divergent voices together.

With regard to the findings under the defamation of the President and media performance, it is clear that the Daily Mail and The Post were able to carry stories on a number of subjects, even those deemed to be defamatory despite assumptions made in chapter 1.9.1.1. However, when weighed against the story frame, it emerged that the Daily Mail was only able to carry these

stories that approved of, or commended, the President's competence. The Post, on the other hand, was able to carry stories critical of the President even on subjects deemed defamatory despite the existence of the law.

What this observation suggests is that there are other motivations beyond the law that influence the performance of the Daily Mail and The Post i.e. agenda building and the watchdog role as indicated by Norris (2010:143) and Coronel (2003:8) in chapter 2.3.2. The trends also confirm, to a greater extent, the findings of Kenyon and Marjoribanks (2008:12) in chapter 2.4.3, who posit that criminal defamation law may not actually have much effect on media performance. The effect, according to Kenyon and Marjoribanks, comes from other factors such as business interests. In like manner, Hyde Haguta notes that:

Media houses nowadays align themselves to get commercial favours from government in order to help keep their businesses running...those perceived to be anti-government will not be able to get the benefits which come about when they lean towards [support] the Presidency.

Another respondent, Nerbert Mbewe, Daily Mail Managing Director observes that:

For us to sustain our operations we must sell as a newspaper and meet the expectations of our readers and so in deciding a story, we must see which story will meet the expectations of our readers. Of course our readers have diverse views about what they want to read in the newspaper but there will be one story [which] may have the attraction [attention] of everyone.

While business interests, as observed by some of the respondents, have an effect on media performance, some scholars, such as Nordvik (2014:24) as outlined in 2.4.4 above, suggest that political polarisation and state interference with the media have a higher influence on performance than the law. This is evident in the trends observed where a high number of stories in the Daily Mail, which is state controlled, mainly commended the President and avoided any critique of the Presidency. On the other hand, the stories in The Post, which is independently owned, portrayed the President as being incompetent. These are two extremes on a political continuum. However, the fact that The Post was able to carry critical stories on subjects deemed defamatory despite the restrictions of the law strongly suggests that there may be other factors that influence the type of themes the media choose to write about as discovered in the review of literature in chapter 2 above. On this, Mumba Mwansa from the Zambia Daily Mail states:

The state owned media will always portray a good image of the President and government despite the situation and the private media will always somehow be negative on the President.

On the other hand, concerning heavy criticism of the Presidency in the privately owned media, Isaac Chipampe, Press and Media Development Director in the Ministry of Information observes:

It is beyond journalism to criticise someone from day one that he has never ever done a good thing and that he can never do something sensible and this kind of attitude for a journalist is moving towards unprofessionalism. Sometimes the criticism just shows that we have all these hidden agendas.

However, the view that the private media may be more affected by the law than the public media could be true to a lesser extent as shown by the ranking of story subjects. Particularly, fewer stories on the President's performance or competence were observed in The Post than the Daily Mail. In retrospect, it emerged that the Daily Mail was only able to discuss the President's competence only when the news stories were in approval. This means that despite the paper carrying stories about the President's competence albeit positively, there is seemingly a level of restraint which inhibits the performance of the watchdog role which involves scrutiny, whether positive or negative.

In the case of The Post, it is possible, perhaps, that the newspaper gains some courage from its status as the largest privately owned newspaper with unsurpassed circulation figures as shown in chapter 1.2.1 above i.e. 20, 000 for the Daily Mail and 50, 000 for The Post. Because of its wide readership, there is a possibility that the paper envisages public support in the event of the provisions of the law being invoked for criticising the Presidency. This could therefore explain why the law seems to have no damaging effect on The Post's critical coverage of the President in spite of the law. This is consistent with findings of the review of related literature in chapter 2.4 above, particularly Nordvik (2014) who found that there was a high willingness by the media to violate the provisions of law which were seen to be illegitimate because they do not meet the minimum benchmarks identified in 2.2 above.

The findings also reaffirm the position held by Lustgarten et. al. (1997:192) in 2.3.2 above on the existence of a 'structural effect' which is derived from the law. From the findings, this may be true to a lesser extent as the failure by the Daily Mail to offer scrutiny of public officers could perhaps be attributed to the structural effect. The structural effect opined by Lustgarten

et. al. functions in a preventive manner by stopping, for example, the creation of certain material to lessen risk of prosecution or other retribution as shown in the findings on sources, story theme and subject and the story frame in chapter 4 above respectively. Simply put, the alleged structural effect could affect content production.

On this trend, Isaac Chipampe observes:

It [the law] inhibits freedom of expression because people are scared of going to jail if they say something about the President as a result, one is scared of commenting on the performance of the President because you are scared as you do not know what will come next.

Similarly, Hyde Haguta states:

The journalists from the public media have challenges which include; they cannot bite the finger which feeds them starting with this, we are afraid that we will be punished by the system but if we are to be careless in our writing the on libel or defamation maybe invoked and this inhibits the journalists from giving critical analysis and criticism to the President because in their understanding, fear and thinking is that if they went an extra mile in criticising the government, it will be seen as them trying to work against the government.

It can be posited further that the use of avoidance strategies could be a reality at The Post and the Daily Mail. This is in line with Nordvik (2014:55) in chapter 2.4.4 above, who established that journalists in Zimbabwe apply multiple avoidance strategies in order to cope with the restrictive legislation. One such avoidance strategy is self-censorship. Nordvik observes that one form of self-censorship as an avoidance strategy is that a journalist simply does not investigate something that could lead to a story or the journalist may have the information but fails to publish anything on it. Similarly, the journalist may even avoid including any information that could alter the story. On this, Mukosha Funga notes that:

The state owned media is programmed not to say anything [bad] about the President. For example, even if you heard that the President was involved in a money laundering scheme you will not attempt to take it to your editors instead you will try and leak the information to online media publications.

The implications of the study are clear. The findings challenge the theoretical assumptions made in chapter 1.9.2 above that the media's agenda building (among other processes) is dependent on the watchdog function of the media which is consequently affected by the law.

This, however, is not the case as the findings in chapter 4 above suggest otherwise, such as the high percentage of stories in the Daily Mail that commended the President while those in The Post were on the opposite end i.e. critical of the President; also, the failure to fully discuss certain themes such as the President's performance or competence.

5.5 Conclusion

The chapter discussed the findings within the precincts of the study's objectives and suggested that the law on defamation of the President does not have manifest effect on media performance. If anything, the trends shown in this chapter indicate that factors other than the law, such as political polarisation, ownership, news values and commercial interests, among others, may have more influence on media performance.

The next chapter presents the overall conclusion and makes recommendations drawing from the outcomes of the study.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Overview

This dissertation was divided into six chapters. The first chapter presented an introduction, the background and focus of the study as well as the conceptual and theoretical framework, the second chapter examined and reviewed various literature around the main concepts of the study. The third chapter outlined the research methodology that was employed in conducting the study. The fourth chapter presented the findings which were subsequently discussed in chapter five. As such, this chapter makes the overall conclusion from the lessons learnt in this study. The chapter also presents recommendations for the enhancement of media performance.

6.2 Scope of the study

Zambia has had at least seven phases of constitutional development, from the Federation of Rhodesia and Nyasaland (Constitution) Order-in-Council of 1953 to the 1962 constitution, the 1964 independence Constitution, the 1973 Constitution, the 1991 Constitution, the 1996 Constitution and, finally, the 2016 Constitution Amendment.

Unfortunately, the constitutional development initiatives failed to pass any meaningful media reforms and thus all the emerging constitutions, despite some minor advancements, continued with the same colonial provisions, most of which were aimed at stifling any form of dissent. Among subsidiary laws that are a remnant of the colonial regime is the Penal Code, which has been maintained in its form since independence, save a few minor amendments.

The law on defamation of the President, which is contained in Section 69 of the Penal Code is generally seen to be an anachronism belonging to the past as it is considered to be a danger to the freedom of expression and consequently of the press. This is so because it goes beyond general defamation and combines the elements of criminal defamation with insult law provisions in a bid to protect the reputation and image of the person occupying the office of President.

A review of the common law also shows that most of the common defences are not accepted under the law on defamation of the President in Zambia. Additionally, the constitutionality of the law is often questioned as it seemingly negates the fundamental freedoms, key among them the freedom of expression, from which the media derive their mandate.

Thus, the law is mainly seen to interfere with media performance, particularly the watchdog role as well as interfering in the provision of fora for public debate and citizen participation on various topics. Also, the law is seen to affect how the media cover the President especially in setting the agenda and news framing. Added to this, very few research studies in Zambia have ever undertaken to examine media content to confirm if the law actually has an effect on journalistic writing and publishing.

It was against this background that the study set out to establish whether the law had any manifest effect on media performance. This was done through content analyses of two newspapers, the Daily Mail (state owned) and The Post (independently owned), while in-depth interviews were also conducted with relevant stakeholders based on their placement in order to corroborate the study's findings.

Regarding the rationale behind the law, the study established that the rationale for its existence was unclear as the Presidency is a public office which should be amenable to criticism from the citizens without any hindrances, such as those posed by the law. Additionally, the study established that the law does not meet the internationally acceptable benchmarks and is thus not reasonably justified in a democracy. The law is, thus, irrelevant.

On the coverage of the President, the study established that the framing process is not only affected by the law but other factors. This was because most of the news coverage analysed seemed to be moulded around other factors and not the limitations of the law alone. These elements include political allegiance, state control and self-censorship among others. This was evidenced, for example, by the single-sourcing and imbalance of stories in both the Daily Mail and The Post, the direction of stories, the exclusion of pictures in the majority of the stories as well as the portrayal of the President, among other aspects.

With regard to media performance and the law, the study equally established that it is not necessarily the law, but other factors that have influence on media performance. Particularly, political polarisation and ownership seemed to determine the role played by the two newspapers. The Daily Mail, which is state owned, was not able to criticise the Presidency but instead carried an extremely high volume of stories commending the President's performance, while The Post, which is privately owned, carried a high volume of stories that were critical of the Presidency as opposed to an extremely low number of stories commending the President's performance. Additionally, both newspapers were able to write on selected subjects despite the existence of the law, although this seemed to depend on political position. This was

substantiated, perhaps, by the history of the Daily Mail and The Post. The former, despite starting out as a critical newspaper, acquiesced to the position of a state newspaper after nationalisation by the UNIP government, thereafter mostly producing content in favour of the government. The latter sprang up as part of the struggle for multi-party democracy and thus identified itself with the position of holding governments accountable i.e. to be the voice of the people, especially with its high circulation.

Likewise, the study established that business interests i.e. the newspaper's desire to increase sales and readership motivates the type of coverage accorded to the Presidency, in spite of the provisions of the law. As such, the desire to gain favourable treatment from the state was found to be a motivating factor in how the President is covered and whether the media fulfil the watchdog role as a defining element of media performance.

The study found that the top source quoted exclusively in the Daily Mail was the President (49 out of 300 stories) while the top sources quoted exclusively in The Post were opposition officials (110 out of 300 stories). Also, the majority of the stories in both the Daily Mail and The Post had no picture or art as an accompaniment to the news stories about the President. In terms of subject of stories, a high number of the stories in the both newspapers were about general party functions and politics, while stories discussing the President's competence or performance ranked second in the Daily Mail and third in The Post. Also, while the majority of the stories in the Daily Mail approved of the President's performance while those in The Post were mostly critical of the President. This was further shown in the portrayal of the President, where the majority of the stories in the Daily Mail portrayed the President as a hero compared to the majority of the stories in The Post which portrayed the President as incompetent.

On the other hand, respondents viewed the law as being unfair, noting a conundrum that is created by the law when weighed against the principles of good governance. Most respondents strongly argued that the law does not necessarily have an effect on the media's performance and latitude to carry stories that are critical of the Presidency. The failure to criticise the President, according to the respondents, can be attributed to other factors such as business interests and political patronage among others.

The implications of this study are very clear. Political polarisation, ownership and business interests have more damaging effects on media performance and thus affect the watchdog role, news framing and agenda setting as compared to the law on defamation of the President.

Arising from these findings, the following is recommended:

6.3 Recommendations

- i. Media coverage should provide independent, fair and effective scrutiny of public officials such as the President in keeping with the watchdog role. The media should thus embrace multiplicity and diversity of sources to enhance diversity of views. This is because there is a direct link between the number and variety of sources used and the diversity of views expressed in any given story. This is in keeping with the function of the media civic fora for debate. In that regard, there is need to enhance the capacity of the state media to perform the watchdog role and hold the Presidency accountable. Likewise, private media must not only act as a mouth piece for the opposition and dissenting views but must provide fair, balanced and in-depth coverage of the Presidency.
- ii. The law on defamation of the President should be repealed as it is irrational, irrelevant and a duplication of other legal provisions. It does not serve any purpose as demonstrated. The existence of the law is a recipe for abuse as any sitting President can invoke its ambiguous provisions to avoid criticism. To that end, there must be renewed effort among all stakeholders i.e. academia, civil society organisations and government to put in place the relevant media reforms.
- iii. There is need for further research into media performance in Zambia. The research can delve into the relationship between media performance and other factors such as ownership, political influence and business interests. This will help to understand the true extent of the influence posed by these factors.

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APPENDICES

Appendix 1-List of interview respondents

ID	NAME	DESIGNATION	WORKPLACE	PLACE INTERVIEW CONDUCTED
Respondent 1	Hyde Haguta	Long serving journalist and currently Head of News and Current Affairs-Radio Phoenix	Radio Phoenix	Radio Phoenix- North Mead-Lusaka.
Respondent 2	Nerbert Mbewe	Managing Director	Zambia Daily Mail	Zambia Daily Mail Headquarters
Respondent 3	Mukosha Funga	Former reporter- current affairs	The Post Newspaper	Newsdiggers, Nyumbayanga- Lusaka.
Respondent 4	Lilian Kiefer	Executive Director	PANOS Institute	PANOS- Nyumbayanga- Lusaka.
Respondent 5	Mwansa Mumba	Sub-editor	Zambia Daily Mail	Interviewee's residence, Kamwala South-Lusaka.
Respondent 6	Yuma Zacks	State prosecutor	National Prosecutions Authority (NPA)	Subordinate court complex-Lusaka.
Respondent 7	Youngson Ndawana	Lecturer/media consultant	UNZA	UNZA, Department of Media and Communication Studies
Respondent 8	Isaac Chipampe	Director-Press and Media Development	Ministry of Information and Broadcasting Services	Ministry of Information and Broadcasting, 5 th floor, Government Complex-Lusaka.

Appendix 2-Content Analysis coding sheet

Pre-coding check

-Does the story pass step one of the definition (hard news story)

-Does the item pass step two of the definition (concerning the President)

Content Analysis Coding Sheet	
ID No.	
1. Serial number	
2. Coder	
3. Newspaper date	
4. Story headline	
5. Story length (column cm)	
6. Source (s) quoted in the story	0) None observed 1) The President 2) Government Official 3) Opposition Leader/official 4) Civil Society/NGO official 5) Diplomat 6) Traditional Leader 7) Ordinary Citizen 8) Ruling party official 9) Document 10) Other (Specify) -----
7. Number of sources	-----
8. Direction of story	1) Pro-government 2) Pro-opposition/non-state actor 3) Critical of government 4) Critical of opposition/non-state actor 5) Neutral
9. Page placement	1) Page 1 2) Page 2 3) Page 3 4) Page 4 5) Page 5 6) Beyond page 5
10. Fold-line placement	1) Above fold-line 2) Below fold-line 3) Spread across
11. Headline treatment	1) Banner Headline 2) Flush left headline 3) Inverted Pyramid Headline 4) Cross-line Headline

12. Use of Pictures/dominant art	0) No picture/art 1) Dominant picture/art portraying a positive image of the President 2) Dominant picture/art portraying a negative image of the President 3) Neutral dominant picture/art 4) Non-dominant picture/art portraying a positive image of the President 5) Non-dominant picture art portraying a negative image of the President 6) Neutral non-dominant picture art
13. General theme	0) Not-applicable 1) Gender 2) Election related/electoral process 3) Economy 4) Media 5) Judiciary and legal affairs 6) Health 7) Service delivery 8) Human rights 9) Infrastructure 10) National development 11) Agriculture 12) Education 13) Environment 14) Local government 15) Poverty Alleviation
14. Specific subject of the story (in relation to the President/Presidency)	1) President's performance or competence 2) Accusations of abuse of office 3) Accusations of immorality 4) President's health or mental/physical incapacitation 5) General politics/party politics 6) General government affairs 7) Charity/good will 8) Other (Specify) -----
15. Story framing	1) Critical of the President (apparent) 2) Approves of/praises the President (apparent) 3) Neutral 4) Unclear
16. Status of story	1) Contains defamatory allegations (prima facie/apparent/per se) 2) Does not contain defamatory allegations 3) Not clear
17. Portrayal of the President	1) Story portrays President as a hero 2) Story portrays President as a failure/incompetent 3) Story has mixed/multiple portrayals 4) Neutral
18. Story balance	1) Contains fair & balanced multiple view points 2) Unfair/single sided/single sourced 3) Not-applicable

Appendix 3-In depth interview guide

Good morning/afternoon. My name is _____ and I am a student at the University of Zambia.

This interview is being conducted to get your input for an academic research on the Penal Code provision (S69) on the defamation of the President and its effect on media performance. I am especially interested in your views regarding the Zambian experience and any recommendations you may have on the subject.

If it is okay with you, I will record our conversation. The purpose of this is to get all the details accurately but at the same time be able to carry on an attentive conversation with you. I assure you that all your comments will remain confidential as this research is purely for academic purposes in partial fulfilment of the requirements for the attainment of a degree of Master of Mass Communication. I will be compiling a research report which will contain all comments without any reference to individuals unless you expressly permit me to do so. If you agree with these terms may we proceed?

I'd like to start by having you briefly describe your organisation, your work, position and your responsibilities.

QUESTION	PROBE/FOLLOW-UP
1. Do you know about the provision in Section 69 on defamation of the President?	<ul style="list-style-type: none"> • What is your brief understanding of the intent of this law? • In your view would most people know about the existence of this provision?
2. What are your thoughts on the existence of this provision vis-à-vis the freedom of expression?	<ul style="list-style-type: none"> • Is it reasonably justifiable in a democratic dispensation like Zambia? Why? • Would you say the provision is serving its purpose to maintain honour and dignity of the Presidency? (Probe: How so?) • Would you agree that Section 69 is a suppressive provision? Is it an illegitimate restriction of the freedom of expression and of the press?
3. In your view, does the President enjoy too much protection under the constitution?	<ul style="list-style-type: none"> • Would you agree that the defamation of the President is a redundant law as there already exist other laws to sufficiently protect the Presidency e.g. Seditious libel, criminal libel, Seditious publications etc.? (Probe: Why) • Is there a danger of the President/authorities abusing the provisions of Section 69 to stifle dissenting/critical views? • How would you describe the implementation of this law by the authorities-particularly the Police and judiciary? Is the law being applied fairly? • Would you support the idea of restricting defamation to a tort and not criminal offence with penal sanctions? (If the respondent doesn't understand civil vs. criminal defamation explain). Why?

<p>4. Could the law on defamation of the President have a chilling effect? If so, how?</p>	<ul style="list-style-type: none"> • In your experience are people afraid to discuss issues to do with the Presidency because of this provision? • How can a balance be stricken between freedom of expression and the genuine need to protect the office (not person) of the Presidency? (If respondent doesn't understand difference between the <i>Institution of Presidency</i> and the <i>person in the office of Presidency</i>, explain.) • In your understanding what should constitute the defamation of the President in a political system like Zambia?
<p>5. In your opinion does the defamation of the President law have any effect on how the press portray the President and whether they carry critical stories about the President?</p>	<ul style="list-style-type: none"> • In your view how have journalists fared in terms of their coverage of the President and issues to do with the Presidency? Probe: How can they improve their coverage of the Presidency? • Could it be possible that the defamation of the President provision prevents media practitioners and citizens alike from holding the President accountable? (Probe: Is this what is currently obtaining? Is the quality of reportage affected?) • Should journalists be given special protection or exemption from the provision in Section 69? • Would you say the defamation of the President clause has an effect on media performance? Probe: What effect-Positive, negative-Why?
<p>6. Would you agree that the provision on Defamation of the President be struck down?</p>	<ul style="list-style-type: none"> • Probe: If not why? • Probe: If yes what is the best way to achieve this? • Is it feasible in the Zambian setting?
<p>7. What are your recommendations?</p>	<ul style="list-style-type: none"> • For journalists? • For the judiciary? Police? • For the advocacy organisations? • For the government and President?