

THE EFFECT OF THE SOUTH AFRICAN MEDIA ON HIV/AIDS AWARENESS

By Nicole King*

1 Introduction

A gap exists in the South African media law with regards to HIV/Aids because HIV/Aids is normally dealt with in a scientific context rather than looking at the issue from a media law perspective. HIV/Aids is, however, still an issue which is highly relevant, particularly in a South African context, and oftentimes there is insufficient emphasis which is placed on the ever-growing pandemic in our country. Radio, television, newspaper and other forms of media possess the power to reach many people across the country and therefore they have an important and integral role to play in the fight against HIV/Aids. The media can have a significant impact on the stigmatisation of a person living with HIV/Aids and they will also have a role to play in the promotion of various preventative campaigns. The impact of the media on the disclosure of one's HIV/Aids status should also be considered. Therefore, by conducting research and exploring these topics, it can be determined whether the media are fully utilising their power as an educational and preventative tool in the fight against HIV/Aids or whether there is room for improvement.

2 The effect of the South African media on the stigmatisation of a person living with HIV/Aids

2.1 Introduction

According to the *South African Pocket Oxford Dictionary*¹ the definition of 'stigmatise' is to 'regard or treat as shameful'² or 'a mark or sign of disgrace'.³ In South Africa, those people who are living with HIV/Aids are often subjected to a certain degree of stigmatisation because of how the disease is transmitted from one person to another. A person living with HIV/Aids is often seen by others as someone who has led a promiscuous lifestyle or taken drugs

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1 C Soanes (ed) *South African Pocket Oxford Dictionary* (2002) 893.
2 Soanes (n 1 above) 893.
3 As above.

intravenously⁴ and therefore, these people are regarded as having diverged from the socially recognised norms that govern our community. This then results in a negative social context surrounding people living with HIV/Aids and can result in the loss of employment, friends and family.

However, South Africa is aiming to move away from the discrimination that surrounds people living with HIV/Aids. In the Employment Equity Act,⁵ an individual may not be subject to discrimination based on their HIV/Aids status and a person's HIV/Aids status may not be tested for, except in certain circumstances.⁶ In the Bill of Rights,⁷ all of the basic socio-economic rights, such as the right to basic education,⁸ the right to privacy⁹ and the right to bodily and psychological integrity,¹⁰ must be available to people living with HIV/Aids.

The South African media plays a very important role in the fight against discrimination towards those people living with HIV/Aids, because the media has a direct influence on the public's perception of the world that they live in. If the media presents the disease in a positive light and aims to destroy some of the negative connotations surrounding the disease, then the public too will follow this positive example. However, because of the power of the media, the language and reporting styles that they use can also have a very damaging effect on people living with HIV/Aids' reputation. Therefore, there are two aspects which must be looked at more closely namely; the amount of media coverage which surrounds the topic of HIV/Aids, and then the way in which journalists are reporting on matters dealing with HIV/Aids. By examining these two issues, and the way in which they affect each other more closely, it can be determined whether the South African media is having a positive or negative effect on the way in which the community perceive people living with HIV/Aids.

2.2 Media coverage regarding HIV/Aids

The powerful influence of the media on the stigmatisation of a person living with HIV/Aids comes not only from the amount of time that newspapers, radio stations and television broadcasters report on matters dealing with HIV/Aids, but also the length and placement of the newspaper articles or the duration, time slot and particular radio

4 National Institute on Drug Abuse 'HIV/AIDS and Drug Abuse: Intertwined Epidemics' <http://www.drugabuse.gov/publications/drugfacts/hiv-aids-drug-abuse-intertwined-epidemics> (accessed 7 July 2015).

5 Sec 6(1) of the Employment Equity Act 55 of 1998.

6 Sec 7(2) of the Employment Equity Act.

7 Sec 7(1) of the Constitution of the Republic of South Africa, 1996.

8 Sec 29(1) of the Constitution.

9 Sec 14 of the Constitution.

10 Sec 12(2) of the Constitution.

station or television channel of a television or radio broadcast. Also, the genre of the television or radio show and whether the person whom the story is about, is a public or well-known figure. These are factors that can easily influence the public's perception on how to view a person who is HIV-positive because these are tools that the media uses to subconsciously persuade the society to view the world in a certain way. It all depends on whether the media wants to use these tools to persuade the South African community to think in a positive or negative light.

2.2.1 Reporting in the newspapers

In 'HIV/Aids reporting in three South African newspapers'¹¹ it is revealed that since the HIV/Aids epidemic first came about some 25 years ago, there has been extensive media reporting on the issue. However in 'HIV/AIDS and the Media: A literature review'¹² it is argued that even though there is now a large volume of articles being written about HIV/Aids, the newspapers 'have yet to do full justice to the impact and scale of the epidemic'.¹³ In the article by Swanepoel, three South African newspapers namely, *Sunday Times*, *Sunday Sun* and *Rapport*, were evaluated to see if their articles dealing with HIV/Aids related issues were in accordance with reporting which was ethically acceptable.¹⁴ The results revealed that both the frequency and prominence of certain news articles can lead to the impression that the issue is top of the news agenda.¹⁵ In the *Sunday Times* there was more emphasis placed on the issue of HIV/Aids because there was an average of 5.2 HIV/Aids related items per copy of the newspaper which was higher than any of the other newspapers, and the editor confirmed that the *Sunday Times* wants to take an active role in the fight against HIV/Aids.¹⁶ *Rapport* had the lowest average number of items per copy and the reason given for this was that the white population of South Africa was less likely to become infected with HIV/Aids and therefore the issue was not relevant to the readers of this predominately Afrikaans newspaper.¹⁷ This notion is not true and currently there is an increase in the spread of the disease in the white, wealthy populations of South Africa,¹⁸ but because *Rapport* has decreased the number of articles reporting on the disease, the readers of *Rapport* not only think that they will never be affected by

11 T Swanepoel 'HIV/Aids reporting in three South African newspapers' (2007) 12 *Journal for Communication Sciences in Southern Africa* 74.

12 Stein J 'HIV/AIDS and the Media: A literature review' http://www.cadre.org.za/files/LITREV_media_and_HIVAIDS.pdf (accessed 23 March 2015) 10.

13 As above.

14 Swanepoel (n 11 above) 76.

15 Swanepoel (n 11 above) 78.

16 As above.

17 Swanepoel (n 11 above) 79.

18 As above.

it but they also create the misconception that a person who is living with HIV/Aids will probably be black.

The most common manner in which HIV/Aids related issues are presented in the newspapers is through news reports.¹⁹ This creates a problem because there is no background information or contextualisation given, which can result in the misinterpretation of the information that is given in a short news report.²⁰ This means that currently there is a need for in-depth reporting on HIV/Aids related issues so that society can be fully informed about the disease when they make important decisions. Even though the *Sunday Times* prefer short news reports rather than in-depth articles, the newspaper allows articles and editorials to be written by 'role players in the field'²¹ which is important as it inserts a personal element into the reporting and allows the reader to form their own opinions which are based on the views of people who they can relate to.²²

2.2.2 Reporting on the television

Specific types of television broadcasts are more likely to garner more attention from viewers than other type of broadcasts. For example, a news broadcast may not grab the attention of a teenager because they think that listening to news is boring or irrelevant to their lives and age group. However, a reality show or a soap opera, for example, may be attractive to a young teenager who is seeking drama and excitement whilst watching television. This becomes very important when looking at the media's influence on the stigmatisation of a person living with HIV/Aids because if these programmes include storylines dealing with issues surrounding HIV/Aids, then they can become a useful tool in educating an audience who may not be interested in watching or reading the news. However, in 'Sex, "soaps" and HIV: Multiple and concurrent partnerships in South African soap operas',²³ it is revealed that the HIV/Aids theme does not feature prominently in many of the local South African soap operas. According to 'Isidingo – The Need: A mainstream approach to HIV/AIDS communication?',²⁴ there is a need for the broadcasting of 'edutainment-strategies'²⁵ which will combine education on the topic

19 As above.

20 As above.

21 As above.

22 As above.

23 N Ridgard & H Struthers 'Sex, "soaps" and HIV: Multiple and concurrent partnerships in South African soap operas' (2010) 29 *Journal for Communication Sciences in Southern Africa* 48.

24 N Wildermuth 'Isidingo – The Need: A mainstream approach to HIV/AIDS communication?' https://www.academia.edu/408755/Isidingo_The_Need_A_mainstream_approach_to_HIV_AIDS_communication_extended_version_ (accessed 23 March 2015).

25 Wildermuth (n 24 above) 1.

of HIV/Aids with an entertainment factor that will draw the audience's attention in the first place. This will then enable broadcasters to use more creative and innovative ways to report on issues which are not necessarily perceived as having an entertainment value.²⁶ An example of such an edutainment programme is *Soul City*²⁷ which is a locally produced soap opera.

The problem with portraying very important and sensitive information about HIV/Aids in soapies arises from the melodramatic nature of the genre.²⁸ Soap operas are renowned for their over-the-top storylines and combining these sensational stories with educational information may be confusing for viewers who know that soapies have a reputation for being dramatic. An example of this in *Isidingo* is when a young girl, Lolly, was gang raped as a teenager but her HIV status has never been tested.²⁹ This shows that the need to make the soap opera more dramatic has resulted in a failure to educate the audience on the dangers of gang rape and the need for prompt HIV-testing. In the *Isidingo* episodes watched by Wildermuth, he also noticed that only one character asked their sexual partner to get tested for HIV/Aids³⁰ which again fails to place any emphasis on the need for prior testing between sexual partners.

2.2.3 Reporting on celebrities and public figures

Media reports pertaining to the HIV/Aids status of certain celebrities or public figures are more likely to be viewed or read by the community because the public holds a certain fascination with this group of people. In 'HIV/AIDS and the Media: A literature review',³¹ it is revealed that there was an approximate 29% increase in HIV-testing after the media extensively covered basketball player Magic Johnson's HIV diagnosis.³² In 'HIV/Aids reporting in three South African newspapers',³³ the *Sunday Sun* newspaper would only deal with HIV/Aids stories which relate to sensational information about celebrities such as DJ Fana Khaba.³⁴ The role and influence that public persons have over the lives of the everyday person is evident here and this can be used as a tool by journalists to reach out to the members of the community.

26 Wildermuth (n 24 above) 2.

27 Ridgard & Struthers (n 23 above) 41.

28 Wildermuth (n 24 above) 12.

29 Wildermuth (n 24 above) 15.

30 As above.

31 Stein (n 12 above) 5.

32 As above.

33 Swanepoel (n 11 above) 80.

34 Swanepoel (n 11 above) 80.

2.3 How the media covers an issue dealing with HIV/Aids

Despite the frequency of reporting on HIV/Aids issues, if the issues are not reported in a manner which decreases the stigmatisation of a person living with HIV/Aids then it almost seems as if the matters should not be reported at all. The media makes use of various techniques in order to influence the audience's reaction to a publication. The language which is used by writers in their articles or broadcasts can result in connotations being formed which can then affect the overall tone of the article or broadcast. If the tone of the publication is positive then it will lead to the audience forming a positive perception of people living with HIV/Aids; but the audience can also form a negative perception about an HIV-positive person if the overall tone is negative. Another aspect that can have a large effect is how educated a journalist is about HIV/Aids. Journalists need to have sufficient knowledge and experience to be dealing with such a sensitive topic and a lack of education can have a detrimental effect on the way that the public is informed about HIV/Aids in South Africa. It will be determined if all of these factors can largely influence the media's role in the stigmatisation of a person living with HIV/Aids.

2.3.1 Guidelines for HIV/Aids reporting

Even though the media has reported on the topic of HIV/Aids fairly frequently, as was indicated above, there is still an issue with regards to the manner in which the issues are presented. It was revealed in 'HIV/Aids reporting in three South African newspapers',³⁵ that some South African journalists have 'struggled to develop a positive attitude towards the epidemic since its onset',³⁶ which then leads to a stigma surrounding the disease. Even though there is criticism of the manner in which journalists report on HIV/Aids related issues, there have been no formal guidelines created which will help journalists to report on these issues accurately.³⁷ Currently, journalists are merely following the general guidelines,³⁸ set out by the Press Ombudsman, for ethical reporting and are simply applying these guidelines to the reporting of HIV/Aids.³⁹ Previously, the code of the South African Union of Journalists set out accurate criteria for HIV/Aids reporting, but this code is now inactive.⁴⁰ This means that there is a gap in our law with regards to ethical reporting about HIV/Aids-related issues and this needs to be filled in order to avoid stigmatisation.

35 Swanepoel (n 11 above) 75.

36 As above.

37 Swanepoel (n 11 above) 76.

38 South African Press Council 'South African Press Code' <http://www.presscouncil.org.za> (accessed 4 November 2015).

39 Swanepoel (n 11 above) 76.

40 As above.

2.3.2 *Tone of the publications*

In the three newspapers which were studied, namely *Sunday Times*, *Sunday Sun* and *Rapport*, there was a balance between negative reporting, and reporting which created a positive and uplifting impression that the disease can be managed and controlled with the correct medicine and care.⁴¹ If a newspaper continuously publishes articles about the disease as being a death sentence, then this will have vast ethical implications and will further the stigmatisation of a person living with HIV/Aids. Therefore, articles about HIV/Aids must not predominately pursue a negative tone because this can lead to the misconception that persons living with HIV/Aids will only bring negativity to those who interact with them.

2.3.3 *Images which accompany the publications*

When journalists report on HIV/Aids, very little graphic material accompanies the coverage and this is in line with the framework of ethical reporting, according to Swanepoel.⁴² However, there is also a lack of visuals pertaining to HIV/Aids prevention. According to Ridgard & Struthers, images of condom use were only shown four times during the monitored soapie episodes.⁴³ Despite the fact that this will have an impact on the prevention of HIV/Aids; it will also influence the way in which one views people living with HIV/Aids. Therefore, an audience may view a HIV-positive person as being the cause of their infection as they were irresponsible when it came to protection, but in many circumstances this will not be the case. Images of HIV/Aids patients who were 'in a passive, submissive position – reclining, huddled ... lying in a hospital bed'⁴⁴ are images which will have a profound impact on the negative social context of a person living with HIV/Aids and should be avoided. Therefore, graphics must be used correctly as a deterrent and educational tool, rather than contributing to the stigma of an individual living with HIV/Aids as being in need of constant care.

2.3.4 *Language used in the publications*

The use of language, has the biggest effect on the stigmatisation of a person living with HIV/Aids. Language which is firm, explains that the disease is of utmost concern in our country, and can have a devastating effect on the lives of the people who become infected must be used to show the community that they should treat HIV/Aids

41 Swanepoel (n 11 above) 82.

42 Swanepoel (n 11 above) 83.

43 Ridgard & Struthers (n 23 above) 52.

44 Stein (n 12 above) 9.

as a serious concern.⁴⁵ However, the language must also not ‘fall into the trap of sensationalism’.⁴⁶ An example of the correct use of language, which avoids sensationalism, is instead of using the words ‘prostitute’ and ‘innocent victim’ rather use ‘sex workers’ and ‘person living with HIV/Aids’.⁴⁷ When a person living with HIV/Aids is represented as a ‘patient’ by the media then the public perception that this person is in need of care and sympathy and cannot lead a normal life, is fuelled.⁴⁸ This will then eliminate the impression that a person living with HIV/Aids is a victim and is rendered helpless by the disease, which can cause members of the community to view a HIV positive person as different. Therefore, the language used by journalists must not be underestimated and they must be careful to represent persons living with HIV/Aids in a positive light. In doing so, the media will influence members of the community to have an optimistic attitude towards people living with HIV/Aids.

HIV/Aids terminology is comprised of mainly scientific terms, and if the media use these terms incorrectly or do not explain these terms in an easy-to-understand language then this can result in a failure, on the part of the media, to provide an adequate analysis of the disease or an incorrect social standpoint.⁴⁹ However, the medical terms must not be simplified to such an extent that they lose their meaning completely. Therefore, a balance must be achieved between representing the medical information accurately, but still in a way which is easy for the ordinary member of society to understand.

2.3.5 Stereotypes created by the media

One of the hardest stigmas to reverse is the idea, created by the media, that all HIV/Aids sufferers are poor, black woman. The characters who are HIV positive in the storylines of the soap operas are all black women and this creates an extremely unfair stereotype that black women are the face of HIV/Aids.⁵⁰ An example of such a character is Nandipha in *Isidingo* who not only is a black woman living with HIV/Aids, but is also ‘depicted as passive, silent and selfless’.⁵¹ Other male characters’ involvement in HIV/Aids is implied but never seen.⁵² This is a very serious problem of stigmatisation that must be urgently addressed in order to dispel the impression that HIV/Aids chooses who to infect, which is not the case. HIV/Aids does not discriminate and being part of a certain group will not make a person

45 Swanepoel (n 11 above) 85.

46 As above.

47 As above.

48 Stein (n 12 above) 7.

49 Stein (n 12 above) 6.

50 Ridgard & Struthers (n 23 above) 54.

51 Wildermuth (n 24 above) 17.

52 As above.

more prone to getting HIV/AIDS.⁵³ This stereotyping will also lead to more unsafe behaviour in persons who do not fall within the stereotypical 'poor, black woman' group as they believe that they are immune from contracting the virus.⁵⁴ This example of stereotyping and stigmatisation can easily be eliminated by ensuring that journalists make reference to all races and genders when reporting on people who are HIV-positive.

2.3.6 Journalists' lack of education

When a journalist is not educated on the topic of HIV/AIDS, it quickly becomes apparent in their writings. According to 'SA media's blind spot on AIDS',⁵⁵ the biggest problem pertaining to HIV/AIDS reporting is the lack of knowledge and sensitivity about the topic, which can result in reporting which is 'sensational rather than educational'.⁵⁶ The use of incorrect terminology or spelling the terminology incorrectly is a clear indicator of this lack of knowledge.⁵⁷ Journalists who do not write about HIV/AIDS topics frequently are also more likely to make mistakes and they find it very difficult to contextualise the situation so that the report is accurate and in-depth.⁵⁸ In the *Sunday Times* news reports there is often an overload of information given, in-depth reporting and lots of background information about the disease which allows readers to successfully form their own opinions and make informed decisions.⁵⁹ Therefore, it is clear that in order to reduce uniformed and biased reporting, training should be given to journalists to provide them with the knowledge and the empathy that is required to report on HIV/AIDS related matters.⁶⁰ A specialised HIV/AIDS desk in media newsrooms will also ensure educated reporting.⁶¹

2.3.7 Journalistic sources

The use of appropriate sources by the media is integral in ensuring that the readers can relate to the article or broadcast. According to Swanepoel, the three newspapers do use appropriate sources but they do not make use of alternative types of sources.⁶² The sources that would be the most relevant to a reader who has HIV/AIDS would be perspectives of a person living with HIV/AIDS because they would be

53 Ridgard & Struthers (n 23 above) 54.

54 Wildermuth (n 24 above) 17.

55 Anonymous 'SA media's blind spot on AIDS' (2004) 2 *Media Tenor International* 30.

56 As above.

57 Swanepoel (n 11 above) 85.

58 Swanepoel (n 11 above) 86.

59 As above.

60 Anonymous (n 54 above) 31.

61 Stein (n 12 above) 13.

62 Swanepoel (n 11 above) 86.

the most qualified to make comments about the disease.⁶³ According to Stein, *The Sowetan* and *Cape Times* make regular use of columns which present the views of HIV-positive journalists and *Cape Talk* radio station started an HIV/Aids-related talk show which is co-hosted by people who are HIV positive.⁶⁴ This is important because if the public is constantly exposed to only one opinion then they could become bored and they will only be able to form their own opinions based on a single view of the epidemic.⁶⁵ If this source creates a negative view about a person living with HIV/Aids, then this can result in the stigmatisation of a person living with HIV/Aids. The use of statistics is also important because this ensures credibility of a report.⁶⁶

2.3.8 Positive journalism

In *Isidingo* the only HIV positive character, Nandipha, is portrayed as healthy, she leads a normal life⁶⁷ and she is able to touch and kiss members of her family without infecting them.⁶⁸ This is an example of counter-stigmatisation and is used to depict the image that a person living with HIV/Aids is capable of leading an ordinary life whilst living with a terminal disease. This is how the writers and producers of *Isidingo* are trying to inspire a 'positive-optimistic' storyline,⁶⁹ which can be used to help educate the viewers that people who are living with HIV/Aids are no different to people who are not, even though their personal struggles with the disease may differ somewhat. The struggle of a person living with HIV/Aids must not be portrayed in a despondent manner but rather as an encouragement.⁷⁰ It is this sort of approach that all newspapers and broadcasts should strive to achieve.

2.4 Conclusion

After exploring the research on these issues, it can be deduced that there is a careful link between the frequency and manner of reporting on HIV/Aids related issues. It is irrelevant whether HIV/Aids related issues are frequently reported or broadcasted, because if these issues are not reported or broadcasted in an accurate manner then this will directly lead to the increase in stigmatisation. It appears that, despite the media taking steps to reduce the negative stigmatisation of a

63 As above.

64 Stein (n 12 above) 13.

65 Swanepoel (n 11 above) 86.

66 Swanepoel (n 11 above) 87.

67 Wildermuth (n 24 above) 18.

68 Wildermuth (n 24 above) 19.

69 Wildermuth (n 24 above) 18.

70 As above.

person living with HIV/AIDS, there is still much more that can be done. Instead of increasing the frequency of reporting rather ensure that there are in-depth and contextualised articles which provide the reader with sufficient information so that they can make informed decisions, and programmes with an 'edutainment'-oriented approach so that viewers are both entertained and educated about HIV/AIDS simultaneously. In order to ensure that the manner in which these issues are reported on is accurate and uplifting, journalists should aim to shed a positive light on the issue of HIV/AIDS in their publications. Then the public will view a person who is living with HIV/AIDS not as a victim, but as someone who is determined not to let this disease get them down. The need for journalistic training as well as a set of accurate guidelines is imperative in order to educate the media on not only the scientific side of the disease, but also on what images should be used, how the article or programme should be written and what type of sources will be the most relatable to a person who is affected by HIV/AIDS. The media plays an important role in the stigmatisation of a person living with HIV/AIDS and, because of their power over the South African community, they can single-handedly reverse the negative social context that currently surrounds those who are living with HIV/AIDS.

3 The effect of the South African media on the prevention of HIV/AIDS, specifically referring to educational programmes and campaigns

3.1 Introduction

The lack of a medical cure for Aids puts the spotlight on preventative measures.⁷¹

This quote indicates that there is a need for effective campaigns and educational tools in order to prevent the spread of HIV/AIDS in the South African community. There are various HIV/AIDS awareness campaigns out there such as *loveLife*, which was launched in 1999 and is South Africa's largest HIV/AIDS prevention campaign aimed at young people,⁷² and *ZAZI*, which was launched in 2013 under the guidance of the South African National AIDS Council and is aimed at women and girls.⁷³ These campaigns utilise various methods in order to convey their messages to the public. Direct, face-to-face interactions are the

71 SR Melkote *et al* 'What makes an effective HIV/AIDS prevention communication campaign? Insights from theory and practice' (2014) 9 *Journal of Creative Communications* 85.

72 Anonymous 'About Us' <http://www.lovelife.org.za> (accessed 20 July 2015) 1.

73 Anonymous 'New campaign calls on South Africa's women and girls to ZAZI' <http://www.zazi.org.za> (accessed 20 July 2015).

most popular method of reaching the community,⁷⁴ but HIV/Aids campaigns also make use of the media to create awareness.

As a result of the media's popularity and influence over society,⁷⁵ the media's role in the prevention of HIV/Aids and the creation of awareness about educational programmes and campaigns becomes important. However, there is a need for the media to combine efforts with HIV/Aids testing stations, the distribution of condoms and door-to-door education in order to ensure that every member of the community is reached.

The main point of discussion is whether media-based HIV/Aids awareness campaigns are actually effective in South Africa. It must, therefore, be established whether the media is presenting the right type of information in their campaigns in a manner which is able to reach the individuals who need to be educated on how to prevent HIV/Aids. In order to fully understand the media's influence on the prevention of HIV/Aids the community must be questioned on what impact the media campaigns have had on them personally. By questioning the community, the media's role in the promotion of educational programmes and campaigns can be established and it will also be determined whether media campaigns are actually more effective than door-to-door campaigns. Finally, by giving examples of various media campaigns from here in South Africa and from around the world, it can be determined what exactly forms a successful media HIV/Aids awareness campaign. By discussing these issues in detail it can be determined whether the South African media has a positive or negative effect on the prevention of HIV/Aids.

3.2 What makes an effective campaign?

The lack of a cure for HIV/Aids makes media-based campaigns essential in the fight against HIV/Aids, but it is often questioned whether these campaigns are actually effective. Media campaigns have the ability to reach a large audience, all at once, and the manpower required to do so is low, therefore, it is suggested that media campaigns should be the most successful way to reach the community. However, if the incorrect information is portrayed by the media then these media-based campaigns can cause more harm than good. By determining whether media campaigns are relaying the correct information to the people who need to be educated on this topic, the effectiveness of these campaigns can be established, which will then indicate whether the South African media is having a positive or negative effect on the prevention and education of HIV/Aids.

⁷⁴ As above.

⁷⁵ Global Media AIDS Initiative 'The Media and HIV/AIDS: Making a difference' http://data.unaids.org/publications/irc-pub06/jc1000-media_en.pdf (accessed 23 March 2015) 4.

3.2.1 *Are campaigns in South Africa effective?*

HIV/AIDS awareness campaigns are a necessary step in the prevention of HIV/AIDS because they provide the public with information about the virus. They illustrate ways in which the virus can be spread, how to prevent the spread of the virus and what to do if you are a person living with HIV/AIDS.⁷⁶ Campaigns also encourage communication about the virus and therefore reduce discrimination and stigmatisation.⁷⁷ They also persuade members of the community to go and get tested at their nearest testing station.⁷⁸ Therefore, it is essential that the media creates successful campaigns in order to decrease the spread of HIV/AIDS in South Africa. According to Swanepoel,⁷⁹ the question of whether media campaigns are effective is not a novel question and no exact answer has yet been established.⁸⁰ In South Africa, the obvious answer to this question must be no, because the spread of HIV/AIDS has not yet decreased.⁸¹ However, due to a lack of research into this topic it is virtually impossible to know why media campaigns are not effective in South Africa.⁸² In order to determine the effect of a media-based campaign 'process evaluations' are needed to work out the link between the impact of the campaign, and its design process and features,⁸³ but these process evaluations are limited in South Africa.

South African media campaigns are targeted at very diverse audiences and there are certain individual factors which are not taken into account when establishing a campaign.⁸⁴ These factors can include culture, gender, language, illiteracy, access to precautionary resources such as condoms, and poverty.⁸⁵ Therefore, 'an over-reliance on mass-media to effect HIV/AIDS related behaviour changes'⁸⁶ becomes problematic, and because the campaigns are not specified to the context of a particular community, the individual element of the campaigns becomes lost.⁸⁷ In order to combat these problems, various models, for example the Intervention Mapping model, for the design of the media-campaigns, have been created.⁸⁸

76 Avert 'Introduction to HIV and AIDS Education' www.avert.org (accessed 24 August 2015) 1.

77 As above.

78 As above.

79 P Swanepoel 'Stemming the HIV/AIDS epidemic in South Africa: Are our HIV/AIDS campaigns failing us' (2005) 31 *South African Journal of Communication Theory and Research* 61.

80 Swanepoel (n 79 above) 64.

81 Swanepoel (n 79 above) 65.

82 As above.

83 As above.

84 Swanepoel (n 79 above) 68.

85 As above.

86 As above.

87 As above.

88 Swanepoel (n 79 above) 69.

These models can therefore, be used to create an effective media campaign which is both extensive and specific to the particular community at whom it is aimed.

3.2.2 What are the requirements of an effective campaign?

According to Swanepoel,⁸⁹ the only way to design a successful campaign is to adhere to a set of design guidelines.⁹⁰ Sticking to these guidelines will then ensure that the campaign is in line with what Swanepoel describes as the requirements of an effective campaign.⁹¹ The requirements for a successful campaign are:⁹²

- The campaign must be theory and evidence based.
- The campaign must be designed in accordance with the feedback given by target audiences, to ensure that the specific problems within the area where the campaign will be targeted are addressed.
- The campaign must be culturally sensitive and aimed at a specific audience.
- The campaign must be meticulously pretested before it is produced and implemented in the community.

3.2.3 Designing an effective campaign

The design of a campaign is fundamental in ensuring that campaign's effectiveness. There are certain behaviour changing strategies that can be used to create an HIV/Aids awareness campaign that will be successful.⁹³ Currently, the most successful behaviour changing strategy experienced worldwide is the ecological approach.⁹⁴ According to this approach, media-based campaigns must be:

... supported by various and different types of interventions; must be tailored to the stages of the epidemic within a community, and must target audiences with regard to where they find themselves on the continuum of behaviour change.⁹⁵

This basically means that HIV/Aids awareness campaigns must be targeted at the desires and culpabilities of specific audiences in order to have an effective impact on those audiences.⁹⁶ Therefore, as mentioned above, South African media-based campaigns need to follow a more community-based approach in order to ensure that each community, regardless of the problems experienced by that

89 Swanepoel (n 79 above) 63.

90 As above.

91 As above.

92 As above.

93 Swanepoel (n 79 above) 66.

94 As above.

95 As above.

96 Swanepoel (n 79 above) 67.

community, will be able to receive the preventative information. There are also various design models which can help with the creation of an effective campaign. As previously stated, the Intervention Mapping Model is such an example. This model aims to make use of a target group of people from a specific community throughout the development of the media-based campaign to ensure that it will be effective in that community.⁹⁷ Therefore, it appears from the above that by applying the Intervention Mapping Model and the ecological approach, a HIV/Aids media-based campaign can be created which will be effective, successful and assist in the prevention of HIV/Aids.

One of the most important aspects of designing a campaign is the messaging, and it is necessary to ensure that the message targets the critical beliefs that encourage members of the community to engage in HIV/Aids causing risky behaviours.⁹⁸ In order to determine what these critical beliefs actually are, empirical research and subsequent analysis must be conducted in each community, as the critical beliefs may differ from one community to the other.⁹⁹ Another important aspect of the message is the language used.¹⁰⁰ South Africa has twelve official languages, therefore it is essential that a HIV/Aids media campaign makes use of the language spoken by the majority of the community where the campaign is targeted. However, most campaigns only appear in English with a few appearing in Afrikaans.¹⁰¹ The use of other African languages such as Sotho and Nguni is very low.¹⁰² This will mean that as a result of the language barrier, some of the important information in the campaign will be missed by the members of the community. A final problem encountered when establishing the campaign message has to do with the literacy levels of the target community. It is vital to ensure that the campaign message makes use of simple language which does not contain any medical terminology.¹⁰³ This is where the use of images becomes necessary in order to combat the language barrier as well as make the message more attractive and memorable.¹⁰⁴ Therefore, by targeting those specific critical beliefs in the campaign messaging, ensuring that the campaign is in a comprehensible language and making use of simple language or visuals, the community will be able to engage better with the campaign on a more personal level and understand the campaign's purpose as well as how to take steps to prevent the spread of HIV/AIDS.

97 Swanepoel (n 79 above) 69.

98 Swanepoel (n 79 above) 71.

99 As above.

100 O Shisana 'South African national HIV prevalence, behavioural risks and mass media' (2002) 7.

101 Shisana (n 100 above) 7.

102 Shisana (n 100 above) 93.

103 M Ahmad-Hanan 'HIV/AIDS prevention campaigns: a critical analysis' (2007) 5 *Canadian Journal of Media Studies* 149.

104 Ahmad-Hanan (n 103 above) 145.

Therefore, it is evident that there is a need for media-based campaigns to up their game in order to become more effective within South Africa. There is a need for various models and strategies to be followed in order to produce campaigns that are not generalised within the whole country, but rather focus on a community-based, individualised approach. It is also important to use the correct message when creating a campaign to ensure that it will be related to that community's critical beliefs. The South African people are very diverse and therefore, a media-based HIV/Aids awareness campaign that does not cater for that diversity will remain ineffective and unsuccessful.

3.3 Community Attitudes

In the United States 72% of Americans have revealed, in national surveys, that television, radio and newspapers are their primary source of HIV/Aids awareness campaigns, and in India 70% of respondents in a survey revealed that they received their HIV/Aids information predominantly from the media.¹⁰⁵ These surveys reveal that the success of HIV/Aids prevention campaigns all depends on what effect that campaign has on the community at whom it is aimed. It is also essential to obtain the opinions of the members of the community to ensure that the personal element is not ignored in the fight against HIV/Aids. By obtaining the opinions of the community, this will enable government and other organisations to produce the most effective educational campaigns. These personal attitudes towards various media campaigns will then indicate what affect the South African media is having on the prevention of HIV/Aids.

3.3.1 Survey in Wesselton Township

A survey was done on four male and four female members, aged 25-30 years, of the community of Wesselton Township which is situated in Ermelo in Mpumalanga,¹⁰⁶ where the participants were questioned about their knowledge and perception of HIV/Aids prevention and awareness campaigns.¹⁰⁷ The participants defined HIV/Aids awareness campaigns as people who are involved in teaching members of a community about the virus,¹⁰⁸ people who provide support for those who have been infected,¹⁰⁹ and people who encourage members of the community to go for HIV/Aids testing.¹¹⁰

¹⁰⁵ Global Media AIDS Initiative (n 75 above) 8.

¹⁰⁶ NM Khoza 'HIV/Aids awareness campaigns as perceived by young people in Wesselton Township, Mpumalanga' (2012) 8 *New Voices in Psychology* 18.

¹⁰⁷ Khoza (n 106 above) 19.

¹⁰⁸ As above.

¹⁰⁹ As above.

¹¹⁰ Khoza (n 106 above) 20.

When first questioned about the awareness campaigns, most of the participants did not identify any campaigns that made use of assorted forms of media, and it was only after being probed further did they mention that they did know of some campaigns on the television or radio.¹¹¹ Only one participant said that they had seen a campaign advertised in print media and none of the participants mentioned campaigns that made use of billboards.¹¹² When questioned on the lack of knowledge about media campaigns the participants said that although they own televisions and radios they do not have enough time to watch or listen to them.¹¹³ They also indicated that they had forgotten about the campaigns portrayed by the media, which could indicate that these campaigns did not have a great impact on the participants because of the ordinary, everyday names that are being used.¹¹⁴ The campaigns were also being depicted by the media in a way that the participants did not recognise them as being HIV/Aids awareness campaigns.¹¹⁵ Therefore, the HIV/Aids media campaigns were unimpressable on the participants of the survey.

However, several of the participants indicated that reality television programmes are effective awareness campaigns.¹¹⁶ In these reality television programmes people who are affected and living with HIV/Aids are interviewed and they speak out about how they contracted the virus and how they live with it.¹¹⁷ These HIV positive members of the community then educate other members of the community on the prevention of HIV/Aids, and because they deal with HIV/Aids on a daily basis, their opinions are highly regarded.¹¹⁸

3.3.2 Analysis of the survey

In 'HIV/Aids awareness campaigns as perceived by young people in Wesselton Township, Mpumalanga',¹¹⁹ it is indicated that, in comparison to previous reports which identify radio as being the most relied upon source of awareness campaigns; door-to-door campaigns were the most memorable campaigns according to the participants of the survey, followed by television.¹²⁰ The reason given for this was that, although members of Wesselton have access to televisions, radios and billboards, they have limited exposure to them as they do not have the time to watch TV or listen to the radio.¹²¹ Therefore,

111 As above.

112 As above.

113 Khoza (n 106 above) 21.

114 As above.

115 As above.

116 Khoza (n 106 above) 23.

117 As above.

118 Khoza (n 106 above) 24.

119 As above.

120 As above.

121 As above.

because the door-to-door campaigns were more influential their impact on the participants was greater and this made them more successful than the campaigns promoted by the media.

Creators of HIV/Aids awareness campaigns are under the assumption that, by making use of media platforms, they will reach a large number of people around the country, but they do not bear in mind the possibility that not all households may own a television or radio or have the time to watch or listen to them.¹²² Therefore when establishing a campaign these types of factors must be considered and it would be ideal to make use of many different platforms to allow the relevant information to reach all types of people.¹²³ It is necessary to make use of various methods of campaigning 'as one channel might be useful for certain individuals and not for others'.¹²⁴ Therefore, in my opinion, there is a need to individualise campaigning methods which allows them to be specific to each area's means of receiving important information. However, it is also important to ensure that 'the face of HIV/Aids awareness campaigns should be persons who have direct HIV/Aids experience',¹²⁵ as this makes the information more authentic and believable.¹²⁶

Therefore, it appears as if the community attitude is that there is a need for various platforms to be utilised in order to create an effective awareness campaign. Above it was revealed that in the survey it was determined that HIV/Aids campaigns have reduced risky behaviour and promoted the use of condoms and monogamous relationships by the participants; but that, even though the information is available to the community it is still up to the individual to make use of this information. Therefore, HIV/Aids media campaigns need to be supplemented with door-to-door campaigns to ensure that the educational message is being conveyed to all members of the community, despite their individual circumstances.

3.4 Examples of HIV/Aids media-based campaigns

Including examples of various media-based HIV/Aids awareness campaigns is fundamental in establishing what the characteristics of a successful campaign are and which design flaws to avoid when creating a campaign. Examples of campaigns that have had success in other countries are also important, as these campaigns can serve as a model for the establishment of future South African campaigns. However, the design of these foreign campaigns should not be too heavily relied upon, because of the individuality of every country and

122 Khoza (n 106 above) 25.

123 As above.

124 As above.

125 Khoza (n 106 above) 27.

126 As above.

therefore, awareness campaigns should be tailor-made to suit the circumstances of each country and to identify with the different communities within those countries.

3.4.1 Campaigns around the World

In 2001, all members of the United Nations adopted the Declaration of Commitment on HIV/AIDS and even though this new Declaration helped to boost resources and create a fresh political commitment to fighting against the virus,¹²⁷ there is still more that needs to be done before the United Nations Millennium Development Goal of stopping and starting to reverse the spread of HIV/Aids can be achieved.¹²⁸ Therefore, there is a need for more campaigns to be utilised worldwide which are in line with the United Nations' Goal to stop the spread of HIV/Aids. India's national television service, Doordarshan, has created a programme which combines education with entertainment.¹²⁹ *Jasoos Vijay (Detective Vijay)* was created to give the audience information about HIV/Aids and how to prevent it, whilst entertaining them simultaneously.¹³⁰ This 'edutainment'-driven approach has proved extremely popular all over the world and these types of programmes have been linked to successful awareness campaigns.

In Africa there are also different countries that are utilising various media platforms in order to get the message out to their populations. In Tanzania, Radio Tanzania has utilised radio as a form of media to create a soap opera, first broadcast in 1993, called *Twende na Wakati (Let's Go with the Times)* which opened the channels of communication about HIV/Aids.¹³¹ After surveys were done, eight in ten Tanzanians said that, after listening to the radio soap opera, they had taken up an HIV/Aids safety measure.¹³² This radio show allows members of the community to talk openly about the virus, which does not only reduce the stigma surrounding people living with HIV/Aids, but also serves as an effective awareness campaign measure; because the more the people talk about a campaign the more likely it is to have an impact on them and reach all the members of the community. The Straight Talk Campaign in Uganda also encourages open communication about HIV/Aids.¹³³ This campaign makes use of the publication of various newspapers and a radio show which is broadcast in English as well as a range of local languages.¹³⁴

127 Global Media AIDS Initiative (n 75 above) 7.

128 As above.

129 Global Media AIDS Initiative (n 75 above) 19.

130 As above.

131 Global Media AIDS Initiative (n 75 above) 14.

132 As above.

133 Global Media AIDS Initiative (n 75 above) 15.

134 As above.

These media platforms offer the youth of Uganda a safe space to talk about their problems and struggles. They can also listen to the stories of other youths who are in the same situation, which can help them to relate, which will then lead them to feel safe and not so ashamed of living with HIV/Aids.¹³⁵ Therefore, there is a need for campaigns to create an intimate and safe space in which open discussions about HIV/Aids can be had. *SIDA dans la Cité (AIDS in the City)*, which is produced in Cote d'Ivoire, is shown all across West Africa and aims at promoting the use of condoms,¹³⁶ instead of just making use of a media campaign. Population Services International, who produces the series, tries to make condoms readily available to members of the audience who will be influenced to use them as they have seen the condom use in the programme and therefore will associate the two together.¹³⁷ Therefore, programmes should promote condom use and then make those condoms used in the show available to the public; because the impact of the series will then encourage the audience to make use of the protection.

3.4.2 Campaigns in South Africa

In South Africa there are various examples of successful campaigns. *Soul City* is a popular soapie which was developed by the Soul City Institute of Health and Development Communication, a non-governmental organisation.¹³⁸ This soapie, which was first broadcast in 1994 on South African televisions, deals with predominately HIV/Aids-related storylines and helps to bring 'about social policy change at a national level'.¹³⁹ *Soul City* has a large impact on the community and, together with The National Network on Violence against Women, its media campaigns even influenced the government to implement the Domestic Violence Act in 1999. According to the *Soul City* website, *Soul City* aims at 'strengthening individuals, communities and society'¹⁴⁰ in order to develop the quality of health for all South Africans. The Soul City Institute of Health and Development Communication makes use of various multi-media campaigns¹⁴¹ which means that their information is being received by all members of the community regardless of their age, economic wealth, literacy level or access to a television or radio. Therefore, this increases the impact that the campaign has on the community and makes it an effective one. The children's character Kami, which means 'acceptance' in Tswana, is a HIV-positive character on the popular children's show

135 Global Media AIDS Initiative (n 75 above) 1.

136 Global Media AIDS Initiative (n 75 above) 17.

137 As above.

138 Global Media AIDS Initiative (n 75 above) 16.

139 As above.

140 Anonymous 'Soul City Institute for Health and Development Communication' <http://www.soulcity.org.za> (accessed 27 July 2015).

141 As above.

Takalani Sesame.¹⁴² This character was created to educate young children about HIV/AIDS. Storylines where Kami has been isolated and picked on by his friends because of his HIV-status have been aired to show how Kami copes with this type of negative prejudice and how he overcomes it.¹⁴³ Kami is portrayed as full of life, energetic and active¹⁴⁴ which therefore creates the impression on young children that people living with HIV/AIDS can lead normal and happy lives despite the virus that they have been infected with. Therefore, it is necessary to start HIV/AIDS awareness campaigns early so that children can be educated, whilst they are still impressionable, on how to treat a person living with HIV/AIDS and be made aware of the seriousness of the virus. As already mentioned, *loveLife* is South Africa's largest HIV/AIDS prevention campaign. *loveLife* wanted to extend the reach and extent of its media campaigns; so it joined forces with key media organisations in order to reduce costs.¹⁴⁵ Therefore, by partnering up with The South African Broadcasting Corporation, *loveLife* is able to receive 'extensive radio and television airtime, as well as co-production funding'.¹⁴⁶ This resulted in more than three quarters of respondents in a national survey admitting that *loveLife* made them conscious of the dangers involved in unprotected sex.¹⁴⁷ It can be said that *loveLife* was innovative. They saw that there was an issue of financial support and they came up with a solution that would help with the money shortage, as well as have an extensive impact on audiences. Therefore, in order to mimic the success of the *loveLife* campaign, ground-breaking ideas are needed to keep ahead of any current problems being faced.

3.5 Conclusion

It appears as if the South African media are not doing everything within their power to create effective and successful campaigns which will assist in the prevention of HIV/AIDS in our country. Even though there are examples of effective media-based campaigns, most of the campaigns need guidance in order to become more successful. It appears as if there is a need for a more community-based approach, as opposed to campaigns which are related to the country as a whole. By gathering information about the problems which a particular community faces and designing a campaign specific to those issues, the campaign will have a greater impact on the members of that community.

142 Global Media AIDS Initiative (n 75 above) 16.

143 As above.

144 As above.

145 Global Media AIDS Initiative (n 75 above) 19.

146 Global Media AIDS Initiative (n 75 above) 20.

147 As above.

It is also important to note that not every household will have access to a television or radio. Therefore, it is essential to ensure that media-based campaigns collaborate with door-to-door campaigns and other media platforms, such as newspapers or billboards, to ensure that the message is communicated to the whole community. It is also necessary to look at effective foreign campaigns for ideas and then modify them to the South African context. Relying on various models and approaches in order to guarantee that when a campaign is being designed, it is following some sort of researched guidelines is crucial in ensuring a campaign's success. Therefore, in my opinion, media-based campaigns have the potential to revolutionise the prevention and education of HIV/Aids in a country which is so diverse but in order to achieve this campaigns which are innovative, community-based and ingenious need to first be designed.

4 The effect of the South African media on the problem of disclosing a person's HIV/Aids status

4.1 Introduction

In *NM and Others v Smith and Others*,¹⁴⁸ Madala J of the Constitutional Court indicated that the disclosure of an individual's HIV/Aids status warrants protection because of the negative social context which surrounds the disease, as well as the potential discrimination and intolerance which can be a consequence of disclosure.¹⁴⁹ This means that disclosing a person's HIV/Aids status without their consent will amount to a wrongful publication of a private fact, which is an infringement upon a person's constitutional rights to privacy and dignity.¹⁵⁰ However, what will the case be if an individual's HIV/Aids status is published by a journalist exercising their freedom of expression? Can a balance be achieved between an individual's right to privacy¹⁵¹ and dignity,¹⁵² and a journalist's right to freedom of expression?¹⁵³ The views of the Freedom of Expression Institute,¹⁵⁴ who was admitted as *amicus curiae* in this case, will be examined to see if this balance can indeed be achieved.

In *NM*¹⁵⁵ the Constitutional Court also had to decide whether the common law remedy of the *actio iniuriarum* could be developed to

148 2007 7 BCLR 751 (CC) para 42 (*NM case*).

149 *NM* (n 148 above) para 42.

150 *NM* (n 148 above) para 47.

151 Sec 14 of the Constitution.

152 Sec 10 of the Constitution.

153 Sec 16 of the Constitution.

154 *NM* (n 148 above) para 66.

155 *NM* (n 148 above) para 56.

include negligence as a requirement instead of intention. By taking a closer look at the majority and minority judgments in this case, it can be examined what impact this potential development would have on the right to freedom of expression.

The problem of disclosure is ultimately an individual one and various HIV/AIDS awareness campaigns will try to highlight the positives and negatives about disclosing one's HIV/AIDS status. By examining the advantages and disadvantages of disclosure set out in the *Living positively* campaign, it can be determined whether disclosing one's status is in the best interest of a person living with HIV/AIDS, and if they decide that it is, how to go about disclosing their status to family and friends.

4.2 The Constitutional Court in *NM and Others v Smith and Others*

*NM*¹⁵⁶ is a very important case as it deals directly with the wrongful disclosure of an individual's HIV/AIDS status and what effect this disclosure has on the individual as well as what effect non-disclosure will have on the right to freedom of expression. The case examines whether the disclosure of a person's HIV/AIDS status constitutes an infringement of the applicants' constitutional rights and which of those rights it will infringe. It also examines the opinions of the Freedom of Expression Institute on whether a balance can be achieved between the protection of the applicants' constitutional rights and the exercise of the respondents' right to freedom of expression.

4.2.1 Facts and judgment

The *NM*¹⁵⁷ case follows the story of three applicants whose names and HIV statuses were disclosed without their consent in a biographical book about politician Patricia de Lille's life.¹⁵⁸ The three applicants took part in a clinical trial run by the University of Pretoria which aimed to decrease the patients' HIV levels.¹⁵⁹ However, due to some concerns about the trial; an inquiry was held and a report about the inquiry was drafted.¹⁶⁰ In this report the applicants consented to having their names and HIV statuses disclosed and the report was sent to Patricia de Lille because of the role she played in the initial inquiry.¹⁶¹ When author Charlene Smith (1st respondent) was compiling information to write de Lille's autobiography, she came

156 *NM* (n 148 above) para 1.

157 As above.

158 As above.

159 *NM* (n 148 above) para 7.

160 *NM* (n 148 above) para 8.

161 *NM* (n 148 above) para 15.

across the report and made use of the names and statuses of the applicants in her book.¹⁶² The applicants then wanted to sue the respondents for damages in the Johannesburg High Court¹⁶³ as a result of the infringement of their constitutional rights to privacy, dignity and psychological integrity. The trial court said that the disclosure of the applicants' names was not unlawful because the respondents did not act negligently when assuming that consent had already been given in the report.¹⁶⁴ In the Constitutional Court the applicants reiterated that there had been a violation of their constitutional rights and said that the common law must be developed in order for them to receive damages in terms of the *actio iniuriarum*.¹⁶⁵ The majority found that the applicants' right to privacy, dignity and psychological integrity had been infringed, because the disclosure of private medical information amounts to the violation of fundamental rights.¹⁶⁶ However, the majority stated that the common law remedy of the *actio iniuriarum* should not be developed to include negligence as a requirement instead of intention;¹⁶⁷ even though there was no need for this development in the first place as the court decided that the respondents had indeed acted intentionally.¹⁶⁸

4.2.2 Freedom of Expression Institute

The Freedom of Expression Institute was admitted as *amicus curiae* in *NM*.¹⁶⁹ They reiterated to the court that the constitutional right to freedom of expression is very important in our open and democratic society based on freedom and equality, and that without this right, the concept of openness will certainly be compromised.¹⁷⁰ However, they said that the right to freedom of expression is not central to our democracy¹⁷¹ and the Constitutional Court has only recognised it as one of a 'web of mutually supporting rights'.¹⁷² The Freedom of Expression Institute was very clear that if the common law remedy of the *actio iniuriarum* were to be developed to include negligence as a requirement, this would impose an added burden on the right to freedom of expression and would be an unjustifiable limitation of this right.¹⁷³ However, because the majority judgment was against this

162 *NM* (n 148 above) para 16.

163 *NM* (n 148 above) para 19.

164 *NM* (n 148 above) para 23.

165 *NM* (n 148 above) para 21.

166 *NM* (n 148 above) paras 47-48.

167 *NM* (n 148 above) para 57.

168 *NM* (n 148 above) para 65.

169 *NM* (n 148 above) para 6.

170 *NM* (n 148 above) para 66.

171 *NM* (n 148 above) para 67.

172 *S v Mamabolo (E TV and Others Intervening)* 2001 (3) SA 409 (CC) in *NM* (n 148 above) para 66.

173 *NM* (n 148 above) para 67.

common law development; the limitation on the right to freedom of expression was avoided.¹⁷⁴

Therefore, it becomes clear that the Freedom of Expression Institute is of the opinion that even though the right to freedom of expression is important in our democratic society; it is secondary to the rights to privacy and dignity. Therefore, it is essential for the parties involved to weigh up the need for protection of an individual's rights to privacy and dignity against the right to freedom of expression.¹⁷⁵ Because an individual may suffer harmful effects as a result of the disclosure of private medical information which, in turn, may affect their ability to make certain basic choices,¹⁷⁶ it seems that in the case of the disclosure of a person's HIV status, the need to maintain an individual's rights to privacy and dignity outweighs a journalist's freedom of expression.¹⁷⁷

4.3 Developing the Common Law

The majority decided that the common law remedy of the *actio iniuriarum* should not be developed to include negligence as a requirement.¹⁷⁸ However, the dissenting judgments of Langa CJ and O'Regan J indicated that there should be some development. O'Regan J held that the respondents did not act intentionally when disclosing the applicants' HIV statuses,¹⁷⁹ but that they acted negligently and therefore, the *actio iniuriarum* should be developed so that the respondents can be held accountable for their wrongful disclosure under the remedy.¹⁸⁰ As has already been discussed above, the Freedom of Expression Institute is of the opinion that the development of the common law remedy of the *actio iniuriarum* will have a negative effect on the balance between the right to privacy and freedom of expression. However, O'Regan J seemed to think otherwise.

4.3.1 *The dissenting judgment of O'Regan J*

O'Regan J revealed that in order to fully understand the right to privacy one must understand that 'the right to privacy might suggest that certain facts should not be published while at the same time the right to freedom of expression might suggest that those same facts should be able to be published'.¹⁸¹ She concurred with the Freedom

174 *NM* (n 148 above) para 69.

175 *NM* (n 148 above) para 43.

176 *NM* (n 148 above) para 41.

177 *NM* (n 148 above) para 45.

178 *NM* (n 148 above) para 57.

179 *NM* (n 148 above) para 125.

180 *NM* (n 148 above) para 189.

181 *NM* (n 148 above) para 144.

of Expression Institute that the right to freedom of expression is important in our society as it allowed for the open exchange of ideas.¹⁸² O'Regan J insisted that freedom of expression develops human dignity as it is fundamental in ensuring the growth of individuals by allowing them to form opinions and exchange ideas freely.¹⁸³ Therefore, there is a close and direct link between the constitutional rights to freedom of expression, privacy and dignity because the underlying notion of all these rights is that individuals will be able to be self-sufficient human beings who can independently form beliefs and then take action on them.¹⁸⁴

However, it is clear that O'Regan J did not believe that freedom of expression has no limit as she indicated that in some cases it is necessary for the right to freedom to be limited in order to protect another constitutional right.¹⁸⁵ Therefore, a balance must be achieved between these rights and it was in O'Regan J's opinion that the *actio iniuriarum* could be used to regulate this relationship.¹⁸⁶

In making the decision whether to develop the common law remedy of the *actio iniuriarum*, O'Regan J relied on the decision in *National Media Ltd and Others v Bogoshi*.¹⁸⁷ In this case it was decided that the *actio iniuriarum* should be developed to include negligence as a requirement in cases of wrongful defamation.¹⁸⁸ According to Scott,¹⁸⁹ applying the judgment of *National Media Ltd*¹⁹⁰ to cases where there was a wrongful disclosure of a private fact was incorrect, because O'Regan J just assumed that by adding a negligence requirement to the *actio iniuriarum*, a balance would be achieved between the right to privacy and the right to freedom of expression.¹⁹¹ However, the media's defence of a reasonable publication in cases of defamation will result in a better protection of the right to freedom of expression; whereas when the negligence requirement replaces intention in terms of the *actio iniuriarum* in the case of the wrongful publication of private facts, the right to freedom of expression will be notably limited.¹⁹² According to Scott, the fact that the development of the common law remedy of the *actio iniuriarum* will limit rather than support the right to freedom of expression has not been discussed or even noted by the dissenting

182 As above.

183 *NM* (n 148 above) para 145.

184 As above.

185 *NM* (n 148 above) para 146.

186 *NM* (n 148 above) para 147.

187 1998 (4) SA 1196 (SCA) (*National Media Ltd* case) in *NM* (n 145 above) para 177.

188 *NM* (n 148 above) para 173.

189 H Scott 'Liability for the mass publication of private information in South African law: *NM v Smith*' (2007) 18 (3) *Stellenbosch Law Review* 398.

190 *National Media Ltd* (n 185 above) 1998 (4) SA 1196 (SCA) para 1.

191 Scott (n 189 above) 398.

192 As above.

judgment of O'Regan J.¹⁹³ This is also in line with the views expressed by the Freedom of Expression Institute on the balance between the right to privacy and dignity and the right to freedom of expression.

Therefore, it appears that the judgment of O'Regan J was not a sound one, which means that the majority judgment that the common law remedy of the *actio iniuriarum* should not be developed to include negligence as a requirement was correct, and served to promote the right to freedom of expression rather than restrict it.

4.4 The Advantages and Disadvantages of Disclosure

When a person chooses to disclose their HIV status there are a number of dangers they face, such as discrimination, being treated unfairly, being denied access to various services,¹⁹⁴ being rejected or ostracised from the community or facing sexual abuse or violence.¹⁹⁵ An individual may also experience discrimination in the workplace as a result of a non-consensual disclosure of their HIV status, which may lead to a person not being able to take out life insurance policy or become a medical aid member.¹⁹⁶ Overcoming these dangers on a daily basis will dramatically reduce the general quality of life of a person living with HIV/Aids.¹⁹⁷

The answer to the question of whether to disclose or not is not a simple one, as it depends on the personal circumstances in which each individual finds themselves.¹⁹⁸ There are no rules or guidelines in place which can help individuals make the personal choice whether to disclose their HIV status or not, and even though campaigns try to offer some assistance, there is still a long way to go before disclosing one's HIV status will not give rise to stigmatisation and a negative social context.

4.4.1 Advantages

Living positively, an HIV/Aids awareness campaign, tries to convince people living with HIV/Aids to disclose their HIV status to friends and family.¹⁹⁹ The *Living positively* pamphlet says that if an individual decides to disclose their status they will experience feelings of relief, and instead of being met with hostility and intolerance, they will only experience feelings of love, support and care from their family and

193 As above.

194 A Le Roux-Kemp 'HIV/Aids, to disclose or not to disclose: That is the question' 2013 (16) *Potchefstroom Electronic Law Journal* 202.

195 Le Roux-Kemp (n 194 above) 230.

196 As above.

197 As above.

198 Le Roux-Kemp (n 194 above) 202.

199 Swanepoel (n 79 above) 85.

friends.²⁰⁰ Before disclosing one's status, one must decide who to disclose this information to and how to go about doing it.²⁰¹ *Living positively* says that making a list of trust-worthy friends and family is a good way to start.²⁰² Once the list is made, a HIV-positive person can educate their friends and family about HIV/Aids by giving them pamphlets and encouraging them to talk about HIV/Aids and their fears surrounding the virus.²⁰³ This will help friends and family feel more at ease. Therefore, the *Living positively* campaign tries to promote the fact that disclose is in the best interest of a person living with HIV/Aids because there is a bigger advantage in disclosing one's status rather than keeping it a secret.

4.4.2 Disadvantages

The *Living positively* campaign says that by giving examples of the disadvantages of disclosure, individuals will be persuaded to disclose their statuses because it will show that the advantages outweigh the disadvantages.²⁰⁴ However, the main problem with disclosing one's HIV status to friends and family is predicting how people will react to the revelation.²⁰⁵ Even the *Living positively* pamphlet does not offer sound advice on what to do if friends and family react negatively, and it appears as if the authors of the pamphlet simply assumed that a person living with HIV/Aids will be accepted.²⁰⁶ Another problem the disclosure process faces is whether those friends and family who have been chosen will keep that information confidential.²⁰⁷ A person living with HIV/Aids fears a breach in confidentiality because this will open them up to the threat of stigmatisation and prejudice.²⁰⁸ The campaign also does not mention ways in which a person living with HIV/Aids should cope with the emotional distress endured by those to whom the information was disclosed.²⁰⁹

Therefore, it appears that the *Living positively* campaign encourages people living with HIV/Aids to disclose their statuses and gives them a method on how to go about doing this, but then does not provide them with good enough reasons why they should disclose. It seems as if the disadvantages and fear of discrimination outweigh advantages of disclosure given in the pamphlet. Herein lies the critical problem that media awareness campaigns have yet to address.

200 As above.

201 As above.

202 As above.

203 Swanepoel (n 79 above) 86.

204 Swanepoel (n 79 above) 85.

205 Swanepoel (n 79 above) 86.

206 Swanepoel (n 79 above) 87.

207 As above.

208 As above.

209 As above.

4.5 Conclusion

Therefore, it appears that there is some conflict between the media and people living with HIV/Aids on the topic of disclosure. On the one hand, the media has a right to exercise their freedom of expression, but on the other hand, it is shown that disclosing one's HIV status will open them up to a multitude of potential discrimination and stigmatisation. Wrongful disclosure of a person's HIV status infringes upon their fundamental constitutional rights, and it is revealed that a balance cannot be achieved between these rights and the right to freedom of expression. It has also been revealed that the development of the common law remedy of the *actio iniuriarum* to include negligence as a requirement will only further damage the relationship between these rights, as this development would lead to an additional restriction on the right to freedom of expression. Campaigns try to promote the disclosure of an individual's HIV status but they have yet to come up with enough convincing reasons why this is so. Therefore, it appears as if the media are trying to have a positive effect on an individual's decision on whether to disclose their HIV status; but the need for a balance between the various constitutional rights and the lack of good enough advantages in disclosing, are standing in the way of this positive effect.

5 Conclusion

When establishing what effect the South African media has on the stigmatisation of a person living with HIV/Aids, it appears that the South African media has often portrayed a person living with HIV/Aids in a negative fashion and has therefore added to the stigma surrounding such a person. Even though the media is taking various steps towards reducing the negative social context surrounding a person living with HIV/Aids, a lack of journalistic training and appropriate guidelines on how to report about HIV/Aids-sensitive topics means that the media is indeed having a negative effect on the stigmatisation of a person living with HIV/Aids.

When looking at the effect of the South African media on the prevention of HIV/Aids, it can be said that the need for more community-specific awareness campaigns has not been met by the South African media, which in turn means that a national campaign may not have a great an impact on the members of a particular community. The media must also be aware that not every member of the community will have access to television or radio, therefore combining media campaigns with door-to-door platforms will result in the most effective spread of preventative information. Therefore, it appears as if the media is not having a direct negative effect on the

prevention of HIV/Aids, however, there is still plenty room for improvement in this field.

When examining what effect the South African media has on the problem of disclosing a person's HIV/Aids status, it was established that there is a need for a balance to be achieved between the right to freedom of expression, and the disclosure of private information. Although a need for a balance between the different constitutional rights exists, this balance has yet to be achieved, and the proposed development of the common law remedy of the *actio iniuriarum* will only obstruct the search for this balance. It is also crucial that the South African media ensure that utmost importance be given to protecting a person's HIV/Aids status. The media are trying to offer members of the community advice about disclosing their statuses through various campaigns, and even though the disadvantages do not seem to outweigh the advantages given in these campaigns, the media is still making the effort to resolve the problem of disclosure in a way that will reduce the stigmatisation of a person living with HIV/Aids. Therefore, despite the intention to have a positive effect; at this stage the South African media are having a negative effect on the problem of disclosing a person's HIV/Aids status.

The South African media still has a long way to go before they achieve an overall positive effect on HIV/Aids awareness in this country. There is a gap in the South African media law with regards to HIV/Aids, and there is room for legislation, rules and guidelines to be formed which can help regulate the relationship between the media and HIV/Aids. There is a need for more empirical research to be done on the ways in which the media are impacting those living with HIV/Aids within their specific communities. Only then will government, non-governmental organisations, non-profit organisations and various other groups be able to determine exactly how to create a relationship between the media and a person living with HIV/Aids that is positive, reduces stigmatisation and discrimination; results in effective prevention and education; and leads to disclosure without the fear of prejudice.