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DIRECT ACCESS TO THE MEDIA IN ELECTION CAMPAIGNS

A REVIEW OF INTERNATIONAL PRACTICE AND SOME RECOMMENDATIONS FOR ZIMBABWE

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INTRODUCTION

The media play a vital role in allowing voters to make an informed choice in democratic elections. Indeed, if the media are not given the chance to report freely on election issues, the vote cannot be properly described as free and fair.

Three different rights are at stake:

- The right of voters to have accurate information on which to make their democratic choice
- The right of parties and candidates to put their views across to the voters
- The right of the media to report freely on election issues in ways that it sees fit.

Take away any one of these three rights and the others fall away too. For example, if candidates are stopped from expressing their views, then the media do not have a free choice on how to report election issues and the voters do not get the information that they need. If the media are restricted in their reporting, then this inhibits the ability of candidates to convey their views and the right of voters to receive information. And so on.

This is why the Media Monitoring Project attaches such importance to monitoring the role of the media in the forthcoming election.

THREE TYPES OF MEDIA COVERAGE

Media coverage of elections is often divided into three different types:

- Voter education – material that tells the electorate what they are voting for, why they should vote and how they should go about it. This will often be produced by the electoral authorities, but may be produced by the media themselves.
- Editorial coverage – that is, all news and current affairs coverage that is under the editorial control of the media themselves, rather than the political parties or candidates, or the electoral authorities.

- Direct access coverage – material that is produced by the political parties or candidates themselves, in order to use the media to tell the electorate about their policies.
- It is this third type of coverage that is the subject of this paper and MMPZ's workshop.

DIRECT ACCESS: ISSUES TO DISCUSS

There are a number of different approaches to allocating direct access coverage to parties and candidates. These have evolved under different political systems according to local conditions. So there is no right or wrong answer about which is the "best" system. Yet this does not mean that they are all equally fair to the candidates or equally informative to the public. All it means is that if it wants to take account of previous experience in devising its own direct access system, Zimbabwe has a lot to draw upon.

What follows is a summary of some of the main issues to be decided about direct access:

- Will it be a system of paid advertising or free access to the media? Or a mixture of both?
- Will the same system apply to broadcasting and the print media?
- Will the same system apply to privately and publicly owned media?
- If private advertising is allowed, will any limit be placed on the amount of advertising allowed for each candidate?
- If free direct access is allowed, how will it be decided what time or space is allocated?
- Who will make these decisions?
- Who will produce the direct access material?
- Who will pay for the direct access material?
- Will there be any restrictions on the content of direct access materials? If so, what criteria are used and who decides?
- Should the media be held responsible (or legally liable) for the content of direct access material?
- In direct access broadcasting, at what time will broadcasts take place? Who decides this?
- Are there limits on campaign political spending (that might affect advertising spending)?
- Should free time or space given to a candidate be counted as a campaign donation?

This paper reviews Zimbabwe's recent experience with direct access media coverage. Then it will discuss the list of questions above, drawing not only on Zimbabwe's experience, but also upon good practice elsewhere. On each issue the paper will offer a recommendation from MMPZ (or in some cases prioritised options). These can form the basis for discussion at the workshop.

Direct access coverage in Zimbabwe – recent experiences

Zimbabwean electoral law says nothing about direct access coverage of parties and candidates in the media, so it is not surprising that the actual practice has varied considerably from election to election.

Before the 1995 parliamentary elections, the Zimbabwe Broadcasting Corporation set up an Election Coverage Committee (ECC). One explanation that has been given for this development is that in the previous parliamentary election, in 1990, the ruling party went too far in breaching good taste and fair coverage in television advertisements that compared the main opposition party to car crashes and AIDS. Since the ZBC had a broadcasting monopoly, the

ECC effectively had power to control all broadcast coverage of the election. The ECC decided that political parties fielding candidates in at least 15 constituencies would receive 30 minutes of free airtime on ZBC TV, and Radios 1, 2 and 4. Parties with fewer candidates would receive five minutes on each channel.

For the 2000 constitutional referendum no such ground rules were set down. In practice the ZBC chose to run advertising material on behalf of (and under the editorial control of) one of the contending campaigns – the Yes campaign – but not on behalf of the No campaign. The National Constitutional Assembly (NCA) challenged this in the High Court and won a ruling in its favour on 14 January 2000. The ZBC refused to comply with the ruling (and indeed its news programmes failed even to report the court's decision). Eventually ZBC did broadcast some, but not all, of the NCA's material. The grounds it gave was that it was "unbalanced". In a statement on 28 January 2000, the corporation stated that it was legally barred from showing "pornographic material", the implication being that some NCA material fell into this category. This was never clarified.

One characteristic of the direct access material broadcast by ZBC for the referendum was a serious blurring between editorial and advertising – in other words, there was no clarity on what was under the control of the "Vote Yes" campaign and what was the ZBC's own material. Short advertisements (broadcast invariably in prominent slots) were clearly Constitutional Commission "Vote Yes" campaign material. Yet there were also six 55-minute television "documentaries" produced by a private production company on behalf of the Constitutional Commission. These were presented (as were the later NCA "documentaries") by prominent ZBC personalities.

According to MMPZ's calculations at the time, during the six-week period before the referendum, ZBC television alone broadcast Constitutional Commission material at a cost of Z\$10 million according to its own advertising rates. MMPZ appealed to the Constitutional Commission to publish the accounts of its campaign in order to determine whether this money had in fact been paid to secure air time. This information has not yet been made public.

Shortly after the referendum, the ZBC published an advertisement in *The Herald* inviting political parties to submit advertising material for broadcast during the forthcoming parliamentary election campaign. In practice, however, ZBC did not run political advertisements throughout most of the campaign. Direct access coverage rather consisted of a 15-minute television slot for each party, divided into three five-minute English, Shona and Ndebele segments. There was no direct access slot on the radio, which is the main source of news and political information for most Zimbabweans. The Election 2000 television programme also provided each party with a 25-minute slot towards the end of the campaign to present their views. Once again a similar slot was not available on radio.

However, although there was equality of a sort in the ZBC's direct access coverage – or lack of it – the reality was that the corporation's news coverage was massively skewed in favour of ZANU-PF. On 13 June 2000, the Movement for Democratic Change (MDC) succeeded in securing a ruling from the Supreme Court, ordering that the ZBC fulfil its obligation to carry broadcasting services impartially, without discrimination on the basis of political opinion and without hindering persons in their right to impart and receive ideas and information. This ruling appears to have been entirely ignored by the ZBC which, on the eve of the election, ran two ZANU-PF advertisements, the only ones of the entire election campaign.

This brief account shows that there has been no consistent practice in Zimbabwe for organizing direct access coverage. This has been a problem, in that it has allowed the broadcasters to

constantly shift the rules in order to deny full access to opposition parties. But it is also an opportunity, in that there have been positive judicial rulings on the issue and – in principle at least – the way is still open for a fair system to be put in place.

But what would be a fair system? This is the question that the remainder of this paper tries to address, as will the discussions at the workshop.

Paid advertising, free direct access – or a mixture of the two?

Those who argue in favour of political parties being able to buy advertising during election periods usually do so on grounds of freedom of speech. In the United States, for example, any suggestion of limiting political advertising has been greeted with horror from many quarters. From this point of view, political advertising provides the best possibility for new political parties to challenge the political establishment. Of course, the US experience, where politics is dominated by two established parties with not much ideological difference between them, hardly bears this argument out.

The argument against paid advertising for political purposes actually rests in part upon the same consideration – the opportunity it would give to new political parties. This argument would be that just because you do not have much money, it does not follow that your political ideas are not worth hearing. If you have the capacity to field election candidates, then you should be entitled to put your message across. So the argument goes.

In practice, many countries operate a mixed system. Even many European countries that would not contemplate paid political advertising on the airwaves still allow it in the printed press. Other countries, such as Barbados and Montenegro, allow candidates to "top up" their free allocation of air time with paid advertising. Still other countries, such as Venezuela, operate a different system for publicly and privately-owned media. No paid political advertising is allowed on the former, but it is very extensively run on the private broadcasting networks.

It should be added, that even in relatively unregulated systems of paid advertising, such as the United States, operate a principal of equal access to advertising. Broadcasters must offer to sell equal time to all candidates for federal office. This must be available at the lowest rate charged to non-political advertisers. Equal opportunity means that stations that sell time to one candidate must give the opportunity to others.

MMPZ recommends:

- **Zimbabwe should adopt a system of free direct access by parties in election periods, at least for broadcasting. Paid political advertising would not be permitted.**
- **Failing that, any media that offer advertising time or space to one party or candidate should do so at their lowest non-political rate of advertising and should make similar time or space available to all parties or candidates.**

Will the same system apply to the public and private media?

Whatever mixture of paid and free direct access is adopted, most countries that have publicly funded media work on the principle that these media have the obligation to give different political parties and candidates a platform to put across their views. This is because they are

owned by the public and therefore may not serve any narrow or sectional interest – nor may they narrowly serve the government or ruling party of the day.

This was the principle enunciated by the United Nations Special Rapporteur on Freedom of Expression, Abid Hussein of India.

government media are balanced and impartial in election reporting, do not discriminate against any political party or candidate in granting access to air time and ensure that news, interviews and information programmes are not biased in favour of, or against, any party or candidate;

If a public asset, such as the publicly funded broadcasting station were used to advance the campaign of one particular political party, this would be as corrupt and improper (and in most countries, including Zimbabwe, illegal) as the use of any other public property such as an office or a vehicle.

It is perfectly possible, therefore, to have different rules governing direct access to the public and private media, since the same considerations do not apply in both cases. In practice, when there are private broadcasters, these have to be licensed by a public authority and are making use of a public asset – the frequency spectrum. Therefore, under most systems, private broadcasters are not given free rein to give direct access to one party and not another. A common system would be to say: there is no obligation on private broadcasters to run direct access broadcasts. But if they do they should make the same opportunity available to all parties on the same terms (whether this is in the form of paid advertising or free direct access programmes).

MMPZ recommends:

If private broadcasters opt to run direct access they should do so under the same system of free programming that applies to ZBC.

If private advertising is allowed, will any limit be placed on the amount of advertising allowed for each candidate?

Few countries allow totally unrestricted spending on political advertising. The United States, where the system is relatively unregulated, still makes campaigns subject to strict laws on financing (which affects TV advertising in particular as the largest item in the campaign budget). Canada also has paid advertising during elections, but has a system similar to that which regulates free direct access in many countries, which sets a limit to the amount that any party may spend. Barbados, which allows candidates to top up their free access with paid advertising, nevertheless sets limits on how much can be bought.

MMPZ recommends:

- **If paid political advertising were to be allowed in broadcasting (which MMPZ regards as an undesirable option) then strict limits should be placed on spending.**
- **In any event, all sources of campaign funding should be made public. Failure to publish audited campaign accounts should be a criminal offence.**

If free direct access is allowed, how will it be decided what time or space is allocated?

There are broadly two systems of allocating free direct access time or space:

- A system of **equality** – all parties or candidates receive the same amount.
- A system of **equity** (or fairness) – all parties or candidates receive a fair amount.

The argument in favour of an equality system is that every party gets a chance to put its view across. It will then be the electorate that chooses, rather than the electoral authority or the state broadcaster. This is a particularly popular system in a country's first democratic election when no one is sure how much support the different parties enjoy.

But the argument against equality is that it always favours the incumbent party, since it promotes no-hope opposition parties and minimizes access for those parties that might actually topple the incumbent. There is also the danger that it encourages frivolous candidates who are merely seeking the free publicity. Also, if all parties have equal access there may be more information than the electorate can take in – again this will be most likely to favour the incumbent.

Equality tends to be more popular in presidential elections, where the choice is simpler than in parliamentary elections that might involve party lists and complicated systems of transferring votes. Thus countries like Brazil and France operate a system of equality in presidential elections. Denmark, Norway, the Netherlands and the Italian public broadcaster (all long-established democracies) operate systems of equal access. Some of these countries, however, operate a threshold system, whereby a party has to gain a certain level of public support before it has the opportunity of equal direct access time.

The alternative system of equity also has arguments in its favour. It means that parties are able to speak to the electorate roughly in proportion to the amount of support they enjoy. The electorate thus gets to hear the arguments between the main contenders for office.

The main disadvantage of the equity system is that it may be an obstacle to the emergence of new parties. However, the equity system can be modified to make sure that all parties or candidates get at least some direct access time.

There is no right or wrong answer to which approach is best. These are some considerations:

- Equality may work better when there are fewer parties or candidates. When there are too many then the "cake" may have to be cut into impossibly tiny slices, or made so large that there is too much election broadcasting for anyone to take in.
- Equality may work better in a new or "transitional" democracy. This perhaps contradicts the previous point, since new democracies often have many parties (and ruling parties in new democracies may encourage this). But the point is that if there has been no previous democratic election, then there will be no commonly agreed measure of how much popular support each party has.
- Conversely, equity may work better in an established democracy where there are clear measures of past electoral support. Or are the equality advocates right, and does this just obstruct the emergence of new political alternatives?

But these are only pointers. As indicated, many established democracies use the equality system. And new democracies, including Namibia and South Africa, have used the equity system.

MMPZ recommends:

Zimbabwe should adopt an equity system for allocating direct access broadcasting time. However, this system should contain a substantial allocation of time for new parties or candidates.

The system adopted in South Africa, which MMPZ believes is a good one, takes three elements into account in allocating direct access time:

- All parties or candidates receive a basic allocation, regardless of past support or how many candidates they are fielding.
- Parties or candidates receive an additional allocation based upon past electoral support.
- And they receive an additional allocation based upon the number of candidates they are fielding.

MMPZ recommends that such a system is adopted in future for Zimbabwe's parliamentary elections. For presidential elections, the third element does not apply. Therefore MMPZ recommends that all presidential candidates should receive a basic allocation of direct access time. This should be substantially topped up with time allocated in proportion to the votes cast for each candidate's party in the last parliamentary elections.

Who is responsible for making this allocation?

The absence of a credible, impartial and authoritative electoral supervisory body dogs any attempt to establish a fair direct access system – as it does all other aspects of electoral management in Zimbabwe.

Allocation of direct access time should be the responsibility of an independent electoral commission.

Who will produce the direct access material? Who will pay for it?

We have referred up till now to “free” direct access material – but of course nothing is free. Direct access programmes or advertisements must be produced and this requires money and skills. One of the unanswered questions in the media campaign for the constitutional referendum was where the money came from to pay for the glossy Constitutional Commission advertisements and advertorial “documentaries”.

Other countries have adopted a number of different variants:

- Political parties themselves produce material, or pay for its production, out of campaign funds.
- The public broadcaster produces all broadcast material, free of charge, in-house.
- The electoral authorities make a grant to the parties to produce the material.

- The electoral authorities pay the public broadcaster to make programmes for the parties.
- There is a hybrid arrangement where parties can make their own material if they wish, or have it provided free if they are unable to do this themselves.

Once again the main issues are twofold: to ensure the incumbent does not have an unfair advantage by using government-controlled resources and to make sure that new and poor parties are not disadvantaged.

In Mozambique in 1994, for example, a number of parties did not have the facilities to make their own election broadcasts and were unaware of the procedures for providing video cassettes to the broadcaster. The result was that their slots went out with a blank screen, or at most a caption urging viewers to vote for the party.

By contrast, in Poland the state-owned television company has provided facilities for the parties to produce their broadcasts according to strictly defined criteria. It has made available a studio for recording, or a camera team consisting of three technicians and a journalist. (The parties can decide not to have the journalist if they felt that his or her presence would compromise their own editorial control of the broadcast.) The role of the team is purely technical.

MMPZ recommends:

There should at least be an option for parties to have direct access broadcasts made free of charge by ZBC. All editorial control would rest with the parties and ZBC's role would be purely technical.

A t what time should direct access programmes be broadcast?

It should go without saying that fair access to the airwaves by politicians will also include access to prime time broadcasting. This issue does not arise in relation to the print media – parties will generally place their advertisements in the publications that have the readership that they want to reach. But the tendency with broadcasting will be to allocate the best slots to the ruling party – this was happened in Chile, for example, in the plebiscite on the return to democracy. Pro-democracy broadcasts were only aired in the early hours of the morning – not that it seemed to affect the result. Most democracies divide up the prime slots among the parties. Sometimes, when there are too many parties to make this easy, allocation is done by drawing lots although this is unlikely to be necessary in Zimbabwe. However, the question of who broadcasts first and last may be of significance. It may be better if this is decided by a chance method.

MMPZ recommends:

- **The electoral authorities should ensure an equal division of prime broadcasting slots between parties with equal broadcasting time, and fair access to prime slots by parties with smaller allocations.**
- **The order of direct access broadcasts should be decided by drawing lots.**

How long should direct access broadcasts be?

This issue has become a matter of great controversy in some countries. In the past parties always vied to get the longest possible time. In countries such as the US, where television dominates campaigning, the aim now is to get many very short advertising slots. Some electoral authorities resist this desire to go for shorter slots on the grounds that it curtails serious political debate.

A solution adopted in some countries is to give each party a certain overall time allocation and allow them to divide it up as they choose. This is an attractive option in principle, but it would prove unwieldy in practice because of the problems that it would pose for broadcasting schedules.

MMPZ recommends:

The allocation of time for broadcasting should be divided into slots of a standard length – say five or 10 minutes, which would allow sufficient time for parties to explain their policy on a particular issue.

Should there be any restrictions on the content of direct access broadcasting?

This is one of the most difficult questions of all to answer, for obvious reasons:

- Election periods are one of the times when freedom of political speech is most important if there is to be a full exchange of ideas and options.
- Election periods are one of the times when violence is most likely to be inflamed by provocative or inflammatory language.

Different countries have a variety of different rules that regulate either the form or content of direct access material. For example, France has regulations that prohibit a presidential candidate from being portrayed in his or her place of work. This slightly strange restriction is intended to remove the advantage from the incumbent, who might otherwise be shown in the presidential palace. Other countries have restrictions on commercial product placement. Such issues are not our primary concern.

Some countries even prohibit personal criticism altogether – a provision that would seem unduly restrictive, especially in a presidential election where a central issue is the candidates' personal fitness for office.

In practice the main issue is how to deal with material (particularly broadcasts) that contain either material that is deliberately inaccurate or material that may incite people to commit violence.

There is a delicate balancing act between the right of free speech on the one hand, and the right not be a victim of either defamation or violence on the other.

The general move in many countries is to stick with various principles:

- Politicians – and especially government ones – should be prepared to put up with greater criticism, including very strongly worded criticism, not less than ordinary citizens.
- The threat of inciting violence should be dealt with by encouraging a variety of different voices, rather than limiting violent voices.
- Any restrictions prior to publication or broadcast should be kept to a minimum.
- The media should not be held legally liable for reporting illegal statements by others in the course of an elections campaign (such as defamation or incitement to violence). But they remain liable for their own illegal statements.

Bearing these points in mind, MMPZ recommends the following position:

- **The media should not be held legally liable for the content of direct access material.**
- **Members of the public or those who have been criticized should have the right to make a complaint to the electoral authority – this hinges on the existence of an independent and impartial electoral commission.**
- **The electoral commission is empowered to give the complainant a right of reply in the same media and of similar prominence, if it finds that the original material was seriously inaccurate or malicious.**
- **A right of reply would not apply in relation to statements of opinion, however strongly worded, unless they contained an explicit incitement to commit violence.**

Should free time given to a candidate be counted as a campaign donation?

A final issue to consider is what happens if a party or candidate exceeds their allocation of direct access time or space. This might happen because a newspaper or broadcasting station gives a candidate free advertising. There is currently no legislation in place on campaign spending limits that would apply to this, although a donation of time or space from a publicly funded media organ could clearly breach the law on funding of political parties. It would be the responsibility of the electoral authorities to pursue this vigorously.

Another situation that may arise is that what is ostensibly editorial coverage, for example at the public broadcaster, is in practice used as uncritical material urging a vote for one particular candidate. There are two possible remedies for this. One would be to deduct such time from the allocation available to the party benefiting. The other would be to grant a right of reply to other candidates. Neither is particularly desirable since they are an interference with the independent operations of a media organ. But the problem will only arise, of course, if that organ fails to exercise independent judgement. The second option – a right of reply – is probably preferable to the first since it does not require such precise calculation of the free time given to the candidate.

MMPZ recommends:

The legal provisions regarding public funding of political parties should be vigorously applied. Any time given to a party by a public media organization should be deducted from that party's statutory allocation of funds.

SUMMARY OF RECOMMENDATIONS

The following is a summary of the recommendations made in this paper. It must be stressed that these are suggestions for discussion and are not intended to preclude the workshop reaching different conclusions.

- Zimbabwe should adopt a system of free direct access by parties in election periods, at least for broadcasting. Paid political advertising would not be permitted.
- Failing that, any media that offer advertising time or space to one party or candidate should do so at their lowest non-political rate of advertising and should make similar time or space available to all parties or candidates.
- If private broadcasters opt to run direct access they should do so under the same system of free programming that applies to ZBC.
- If paid political advertising were to be allowed in broadcasting (which MMPZ regards as an undesirable option) then strict limits should be placed on spending.
- In any event, all sources of campaign funding should be made public. Failure to publish audited campaign accounts should be a criminal offence.
- Zimbabwe should adopt an equity system for allocating direct access broadcasting time. However, this system should contain a substantial allocation of time for new parties or candidates.
- MMPZ recommends that all presidential candidates should receive a basic allocation of direct access time. This should be substantially topped up with time allocated in proportion to the votes cast for each candidate's party in the last parliamentary elections.
- Allocation of direct access time should be the responsibility of an independent electoral commission.
- There should at least be an option for parties to have direct access broadcasts made free of charge by ZBC. All editorial control would rest with the parties and ZBC's role would be purely technical.
- The electoral authorities should ensure an equal division of prime broadcasting slots between parties with equal broadcasting time, and fair access to prime slots by parties with smaller allocations.
- The order of direct access broadcasts should be decided by drawing lots.
- The allocation of time for broadcasting should be divided into slots of a standard length – say five or 10 minutes, which would allow sufficient time for parties to explain their policy on a particular issue.
- The media should not be held legally liable for the content of direct access material.

- Members of the public or those who have been criticized should have the right to make a complaint to the electoral authority – this hinges on the existence of an independent and impartial electoral commission.
- The electoral commission is empowered to give the complainant a right of reply in the same media and of similar prominence, if it finds that the original material was seriously inaccurate or malicious.
- A right of reply would not apply in relation to statements of opinion, however strongly worded, unless they contained an explicit incitement to commit violence.
- The legal provisions regarding public funding of political parties should be vigorously applied. Any extra airtime given to a party by a public media organization should be deducted from that party's statutory allocation of funds.

Ends