



FACT-FINDING MISSION
TO
ZIMBABWE
JUNE 2004

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Report of the Fact Finding Mission to Zimbabwe, June 2004

Part I

Electoral processes in Zimbabwe

1.0 Introduction

At present there are four institutions involved in the organisation and conduct of elections in Zimbabwe. These are:

1. The Electoral Supervisory Commission (ESC);
2. The Delimitation Commission (DC);
3. The Registrar General's Office (RGO); and
4. The Election Directorate (ED).

All these bodies are directly appointed by the President. The ESC and the DC are constitutional bodies.

Zimbabwe uses the First-Past-The-Post system of elections, and the country is divided into 120 constituencies. There are 30 other Members of Parliament who are directly appointed by the President. Of the 30 appointed MPs ten (10) are Traditional Chiefs who are first elected by the Council of Chiefs; eight (8) are Provincial Governors, representing all of the country's eight provinces; and the remaining twelve (12) are individuals who the President may consider necessary to be in Parliament. Usually, these are Cabinet Ministers or Deputy Ministers, since the Constitution requires that Cabinet Ministers and Deputy Ministers must be Members of Parliament.

General elections have been held in Zimbabwe at regular five-year intervals since independence in 1980.

The last parliamentary elections were held in June 2000. As a result of those elections the ruling party, the Zimbabwe African National Union – Patriotic Front (Zanu-PF) won 62 seats against 57 of the opposition Movement for Democratic Change (MDC), Zanu (Ndonga) won 1 seat.

However, this parliamentary composition has since been altered as a result of a number of by-elections.

By 15 May 2004, 13 by-elections had been held in Zimbabwe. In those by-elections Zanu-PF maintained its four constituencies, and won an additional five which were held by the MDC.

There are now 67 parliamentary seats held by Zanu-PF, against 52 for the MDC and 1 one for Zanu (Ndonga).

The next parliamentary elections are due in March 2005.

Following the Constitutional amendment of 1987, Zimbabwe has shifted from a parliamentary system in which the head of Government was the Prime-Minister, who was also a Member of Parliament, into a presidential one.

Since then, the term of the President is one year longer (i.e. six years) than that of Parliament. In the last Presidential elections held in March 2002, President Robert Mugabe of Zanu-PF won 57 percent of the vote, beating his main opponent, Morgan Tsvangirai, of the MDC, who obtained 43 percent.

According to the law, both in Presidential and in Parliamentary election voters are required to cast their ballots in the constituencies where they are registered.

2.0 Administration of Elections

As stated above, the administration of elections in Zimbabwe is done by four Government institutions whose specific functions and manner of appointment of their officers are described below:

2.1 The Electoral Supervisory Commission (ESC)

The ESC has supervisory and monitoring functions over the conduct of elections. It is responsible for ensuring that elections are held within the norms established by the Constitution and the Electoral Act; that is guaranteeing that elections are held in a free, fair and transparent atmosphere.

The ESC derives its powers from Section 61 of the Constitution of Zimbabwe. Among such powers, it is responsible for the supervision of the registration of voters and the conduct of elections. The ESC consists of five members, all of whom are appointed by the President.

The chairman of the ESC and two other members are appointed in consultation with the Judicial Service Commission, while for the appointment of the other two members consultation is with the Speaker of Parliament.

During our mission, a lot of criticism was made against the ESC. In fact, it was considered to be irrelevant, and calls were made for the establishment of a properly constituted independent electoral supervisory and monitoring body that would ensure the integrity of the electoral process.

Four reasons were cited for the lack of effectiveness on the part of the ESC. These are that the ESC:

- (a) Is appointed by, and directly reports to the President, who as leader of a contesting political party and a candidate himself, can not be considered to be entirely impartial;
- (b) Is grossly understaffed;
- (c) Is underfunded; and
- (d) Is not independently funded, as it receives its budget from the Ministry of Justice.

Another criticism that our mission came across was that, because of the manner in which its members were selected, it would be difficult for it to operate independently and to be impartial.

One of the examples given was that the ESC had failed to intervene in order to prevent what was described as a selective voter registration which, it was said, favoured those

areas where the ruling party is considered to enjoy greater support, while neglecting those in which the opposition was relatively stronger.

This, it was said, is significant in that it can influence the delimitation of electoral boundaries in a manner that is biased towards the ruling party.

Voter registration for the forthcoming parliamentary elections started on May 1.

But the ESC was accused of having made little or no effort to publicise the exercise in order to inform potential voters on where they were supposed to register.

In the absence of an alternative electronic media, particularly radio, which has greater potential to reach the most remote areas of the country, lack of publicity on voter registration by the ESC can result in the disenfranchisement of a large number of potential voters.

In addition to that, the closure of the only private daily newspaper, *The Daily News*, meant that there was no alternative media in which independent organisations could place adverts to mobilise voters to register (The Daily Mirror is privately owned, it is however nor regarded as 'independent').

There have been calls for the establishment of an independent electoral commission that is adequately funded and backed-up by a strong team of professional staff.

The Government seems to be responding positively to such calls.

It was reported recently in the State media, and the President referred to it at the opening of Parliament in July, that changes would be made in that direction.

The proposed changes seek to remove the responsibility of running elections from the RGO and place them under a new, independent body, to be called the Zimbabwe Electoral Commission (ZEC).

It is aid that ZEC would be independent of Government, publicly funded and accountable to Parliament.

It will be accorded financial autonomy and the powers to appoint its own staff except the chief electoral officer, who will be appointed by the President.

The Commission will comprise of five members, all appointed by the President. But the novelty is that the President would appoint the chairman of the Commission in consultation with the Judicial Services Commission, while the other four members would be chosen from a list of seven names submitted by Parliament.

Among its functions, the ZEC will be responsible for organising, conducting and supervising presidential, parliamentary and council elections, appointment of monitors and accreditation of observers.

It will also supervise the registration of voters, approve and procure ballot boxes, monitor the organisation and operation of all political parties including their finances, as well as being responsible for administering finances allocated to political parties by Parliament.

As part of the proposed changes, elections will be held in one day, as opposed to the current two.

Electoral disputes are to be settled by an ad hoc court that will deal with such disputes within six months of the elections.

However, it was noted that although these changes were significantly positive, they would be meaningless in the face of section 158 of the Electoral Act, which gives the President powers to make any statutory instrument that can have the effect of amending the Act itself.

Because of its importance and the various interpretations that it has been subjected to, it is important to reproduce here what Section 158 of the Electoral Act says.

It is entitled **Regulatory powers of President**, and it reads as follows:

“The President may make such statutory instruments as he considers necessary or desirable to ensure that any election is properly and efficiently conducted and to deal with any matter or situation connected with, arising out of or resulting from the election.

Statutory instruments may provide for:

- (a) Suspending or amending provisions of this Act or any other law in so far as it applies to any election;
- (b) Altering any period specified in this Act within which anything connected with, arising out of or resulting from any election must be done;
- (c) Validating anything done in connection with, arising out of or resulting from any election in contravention of any provision of this Act or any other law;
- (d) Empowering any person to make orders or give directions in relation to any matter connected with, arising out of or resulting from any election;
- (e) Penalties for contraventions of any such statutory instrument, not exceeding the maximum penalty referred to in section 155.”

Section 155 of the Electoral Act refers to penalties not expressly provided for, but relating to offences that may contravene some provisions of the Act.

In the run up to the 2002 presidential elections, for example, these regulatory powers of the President were used to give the Registrar General extensive powers to make last minute changes to the voters’ roll, to restrict postal voting only to diplomats, military personnel then serving in the Democratic Republic of Congo (DRC) and the police.

There are other ways that allow the President to suspend the application of existing legislation or to introduce a new one to deal with what may not have been covered by any other piece of legislation.

The Presidential Powers (Temporary Measures) Act is a key instrument in that process.

In its introductory paragraph, the Act, as last amended in April 1986, states that it is intended “to empower the President to make regulations dealing with situations that have arisen or are likely to arise and that require to be dealt with as a matter of urgency; and provide for matters connected therewith or incidental thereto”.

This is what sub-section 1 of Section 2 of the Act says:

“When it appears to the President that –

- (a) a situation has arisen or is likely to arise which needs to be dealt with urgently in the interests of defence, public safety, public order, public morality, public health, the economic interests of Zimbabwe or the general public interest; and
- (b) the situation cannot adequately be dealt with in terms of any other law; and
- (c) because of the urgency, it is inexpedient to await the passage through Parliament of an Act dealing with the situation;

then, subject to the Constitution and this Act, the President may make such regulations as he considers will deal with the situation.”

According to Section 5 of this Act, regulations made in terms of Section 2, referred to above, prevail over any other law that may be inconsistent with the Act.

Such regulations are meant to last for 181 days, after which the President can not re-enact them for a period of six months.

But if he wishes to have them continued, he can bring them to Parliament in the form of a Bill, and if the President enjoys a parliamentary majority they can be modified and enacted into an Act of Parliament.

2.2 The Delimitation Commission

The Delimitation Commission is a constitutional body. According to sub-section (1) of Section 59 of the Constitution of Zimbabwe, from which the Commission derives its powers, all members of the Commission are appointed by the President, and they consist of:

- (a) a chairman, who shall be the Chief Justice or some other judge of the Supreme Court or the High Court appointed after consultation with the Chief Justice; and
- (b) three other members appointed after consultation with the Chief Justice.

The function of the Delimitation Commission is to determine the limits of the constituencies into which Zimbabwe is to be divided, taking into account a number of aspects, chief among which is the number of voters registered in each area. The report of the Delimitation Commission is submitted to the President, who thereafter shall, by proclamation in the *Gazette*, declare the names and boundaries of the constituencies.

With regards to the perfection of the work of the Delimitation Commission it was brought to the attention of our mission that there were a number of problems, and that previous commissioners had always complained that they were not given enough time in order to do a proper job.

In the newly proposed dispensation the Delimitation Commission will continue with its functions, and no changes are envisaged in as far as its composition and the manner in which its members are appointed is concerned.

2.3 The Registrar General's Office

The RGO has the key operational role in the conduct of elections. It is responsible for the registration of voters, as well as being the custodian of the voters' roll.

It also appoints the polling officers and accredits polling agents.

The RGO takes its instructions from the Elections Directorate, which is also part of the executive.

But in its normal functions, the RGO falls under the Ministry of Home Affairs.

Its normal functions are the issuance of birth and death certificates, civil identification cards and passports. It also handles all matters relating to acquisition of Zimbabwean citizenship by foreign nationals.

There has been a lot of criticism concerning the way the RGO has conducted its business in the process of elections.

One such criticism is that its functions straddle through two different Ministries (*i.e.* Home Affairs and Public Service), making it difficult to scrutinise its operations.

Under paragraph 3 Section 61 of the Constitution of Zimbabwe authority for the supervision of the registration of voters rests with Electoral Supervisory Commission. However, from what this mission was able to gather the ESC is so understaffed to enable it to effectively monitor the voter registration process.

Concerning the voters' roll, this mission came across systematic complaints that although this document was public, it has become increasingly difficult to access it, while names appearing on it can easily be struck off at the discretion of the Registrar General.

It would be in light of this, that one of the 15 points initially listed by the opposition and a number of civil society organisations as constituting the "minimum conditions for the holding of elections" calls specifically for an undertaking that the present Registrar General, Mr. Tobaiwa Mudede, "should not be involved in the running of the elections".

In the 2002 Presidential elections the RGO was accused of having failed to perform its functions in an efficient and transparent manner, as crucial information was either not submitted to the contesting parties, or was published very late.

For example, the law gives candidates the right to appoint their polling agents in every polling station and counting centre.

This is the only involvement of the contestants in the electoral administration, and is therefore crucial to the checks and balances of the process.

As such, parties or candidates must publish the names and assigned polling stations of their polling agents, before these can be accredited by the Registrar General.

In the 2002 Presidential elections the MDC published the names of their polling agents as required, but did not assign polling stations since at that time the party still had not received the final list of polling stations from the Registrar General. The Registrar General would not accredit the agents until the party published the names of the agents together with their assigned polling stations.

This is further complicated by the fact that in an environment of political intimidation and harassment, the publication of the names of polling agents can pose a serious problem to their safety.

2.4 The Elections Directorate

The Electoral Act defines the functions of the Election Directorate as follows:

- (a) coordinating the activities of Ministries and departments of Government responsible for the delimitation of constituencies, registration of voters, conduct of polls and other matters concerned with elections;
- (b) giving instructions to and make recommendations to the Registrar General with regard to the exercise of his functions as prescribed in the Act and other persons employed by the State to ensure efficient, proper, free and fair conduct of elections.

According to the law, the Election Directorate consists of a chairman who is appointed by the President for his ability and experience in administration or his professional qualifications or suitability otherwise for appointment; the Registrar General and no less than two or more than ten others appointed by the Minister. It is not clear which Minister, but presumably is the Minister of Home Affairs or Public Service.

It follows from this that the Election Directorate is the central authority in the conduct of elections, issuing instructions and coordinating the activities of all other departments of Government that take part in the running of elections.

3.0 Civic and Voter Education

Civic and voter education is a highly contested terrain in the context elections in Zimbabwe. In the past, a number of organisations have been involved in this process. However, that space is gradually being reduced, as Government seeks to control not only the process, but also who gets involved in it.

One of the main civic organisations involved in voter education and election observation is the Zimbabwe Electoral Support Network (ZESN). ZESN was established in 1999, in the run up to the February 2000 constitutional referendum and the June 2000 parliamentary elections.

Officials from ZESN complained to the mission that their organisation had since been downgraded from monitoring the elections to a mere observer status, and that monitoring of elections was now being done by civil servants, the military and the intelligence, who are regarded as biased towards the ruling party.

A Bill has been tabled before Parliament, seeking to ban voter education by any other organisation or person than the ESC and the contesting political parties. However, this can be relaxed marginally by a provision in the Bill that allows the ESC to appoint and register persons who may assist it in providing voter education. The preconditions for such registration are specified in the Bill, and they include one which states that in respect of association of persons, its members must either be citizens or permanent residents of Zimbabwe.

Under the provisions of the Bill, the ESC may choose to register individual members of any civic group, but not the group itself.

During our mission a number of concerns were raised over this provision of the Bill.

It was seen as a potential element in curtailing the effectiveness of organisations and compromising the independence and integrity of such individuals, as well as their allegiance to their respective organisations.

Foreign funding for such activities is equally prohibited, unless it is channelled through the ESC.

Non-Zimbabweans are disqualified from undertaking any activities related to voter education, and materials related to such activities must be subject to approval by the ESC.

The ban on voter education was seen as contravening sections 20 and 21 of the Constitution of Zimbabwe, in that it curtails the right to freedom of expression, particularly the right to receive and impart ideas and information without interference, and freedom of assembly and association.

The work of civic bodies and other NGOs is further curtailed by a plethora of security and media legislation, which impose stringent conditions for such organisations to operate freely.

The Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA) and the Private Voluntary Organisations Act (PVOA) were often cited as such legal instruments that restrict the work of NGOs, thus denying the majority of voters of their right to make informed choices.

The ability of NGOs and other civic organisations to operate freely is likely to get even worse if plans to introduce a new law governing their activities are to go ahead.

On July 20, President Mugabe announced a new Bill that, if passed into law, will require all NGOs to be registered, monitored, and even have their licenses withdrawn. Under the Bill, there will be a NGO Council composed of 5 civil society representatives and 9 Government representatives, all appointed at the discretion of the President.

The council shall be responsible for determining every application for registration and every proposed cancellation or amendment of a certificate of registration. The council will also conduct investigations into the administration and activities of NGOs 'and to take such disciplinary or other action as may be appropriate'.

Taken in the context of the scheduled elections, this can mean that NGOs that are involved in election activities run the risk of not being registered by the proposed council.

4.0 Political Violence and Intimidation

Political violence and intimidation seemed pervasive in what was described as an extremely volatile and polarised political environment.

Political violence and intimidation in times when the political tempo increases is not a phenomenon peculiar to Zimbabwe.

However, it appears that in the case of Zimbabwe such violence and intimidation, if not promoted by the Government, are at the very least tolerated when the victims are members or supporters of the opposition.

This mission was informed that veterans of the liberation struggle, members of the Youth National Service, and members and supporters of the ruling party appeared to act with impunity when their actions were directed against opposition supporters, who are often

described as traitors, working hand in glove with the British and other imperialist forces to derail the land redistribution programme.

Sometimes these acts of violence are carried out even in the full view of the police, who are accused of being partisan and selective in their enforcement of the law.

The following were described as the main characteristics of the behaviour of the police force in Zimbabwe:

- (a) arbitrary arrests of Government opponents and critics, often without any reasonable grounds;
- (b) police officers often ignore crimes committed against members or supporters of the opposition and fail to intervene when these crimes are committed in their presence;
- (c) the police hardly ever interfere with rallies or protest marches by the ruling party or its supporters, even when they turn violent; and
- (d) however, the police prohibit most political meetings and rallies by the opposition and civic organisations that are deemed not to be supportive of Government policies.

The level of violence has made it increasingly difficult for people to participate in electoral processes in a manner that truly reflects their wishes on who should govern their country.

Because of the high level of violence and intimidation, people can not freely express themselves as members or supporters of one political party for fear of retribution just in case it happens to be wrong party.

Candidates are not spared, and sometimes have found it difficult to even submit their nomination papers.

Violence, which is fuelled by the polarisation the country has lived through over the past four years, cuts across the whole spectrum of public life in Zimbabwe.

Civic organisations, professional bodies, the churches and student organisations have all become entangled in this web of mistrust and intolerance. If it is not physical violence, it is psychological pressure.

One example cited was that of the Catholic Bishop of Bulawayo, Pius Ncube, who has been subjected to a campaign of vilification, ridicule and psychological pressure because of the views he has expressed against politically motivated and sponsored violence.

What we were told during our mission was that basically, the space for dissention in Zimbabwe, however small, was systematically being closed down.

Violence seems to be encouraged by what was described as hate messages that are carried out in the State media, particularly the Zimbabwe Broadcasting Corporation (ZBC) and the country's main daily paper, *The Herald*.

The State media was also said to be used to propagate hate messages against minorities and incite hatred against a selected group of inconvenient individuals.

The State media hardly makes mention of any activities carried out by the opposition, and when it does, it is invariably in derogatory terms, projecting opposition leaders and their supporters as unpatriotic, sell outs, subversive elements seeking to overthrow the Government and instigators of violence.

Sometimes, jingles are used to propagate such hate messages. Violence and intimidation is extensive to journalists and lawyers. Independent journalists are not allowed to cover certain events, while lawyers find it increasingly difficult to access their clients who would have been arrested on politically trumped up charges.

We were informed that lawyers no longer had easy access to the courts for the submission of papers on behalf of their clients, and often face harassment at such institutions.

At the Voice of the People (VOP), a radio station that produces programmes which are then beamed into the country from the Netherlands, two journalists were arrested last year when they tried to interview people who they thought were students from the University of Zimbabwe during what had been billed as “the final push”. The presumed students turned out not to be students, but members of the Youth National Service.

The two journalists were beaten up before being taken to the ruling party head offices, and then handed over to the police.

The residence of their director was searched by plainclothes policemen and files taken away from computers. The material was, however, returned by the officers, who were now less hostile and seemed to be sympathetic to their victim.

Another VOP journalist was harassed while covering the Zanu-PF congress in Masvingo. He was taken to the Central Intelligence Organisation (CIO) offices in Masvingo where he was interrogated for about 30 minutes, and then transferred to the local CID, where the interrogation went on for three hours.

5.0 Secrecy of Ballot

Secrecy of the ballot is a critical element in order to safeguard the integrity of any electoral process.

However, in the context of Zimbabwe the secrecy of the ballot appeared to be a major concern among those we interacted with.

Such appears to be its importance that it is listed as one of the five points that are seen as crucial in order to successfully hold a free, fair and transparent election.

We were told of the difficulties that persist in failing to maintain the integrity of the vote through the actions of individuals, purporting to be supporters of the ruling party or war veterans, who systematically tell people that their vote is not so secret after all.

An example was given concerning the latest by-election in the constituency of Lupane, in Matabeleland North, where voters queuing to cast their ballot were given pieces of paper and told that they should write down on them the number of their ballot papers.

These pieces of paper were to be surrendered upon voting. This, the voters were told, would help in identifying who they would have voted for.

The secrecy of the ballot is further compromised by a system of distribution of food aid that is considered to be politicised.

This mission was informed that people were often removed from the list of food aid beneficiaries on the basis of their perceived political leanings, and that in any case, people needed to present a party card in order to register for food assistance.

6.0 Conclusion

The political environment in Zimbabwe is extremely volatile and polarised. The two main political parties each see their continued existence and dominance as only possible with the elimination of the other. This breeds violence.

There were allegations that in many instances the police has failed to act in order to prevent violence from sprawling out of control, particularly where acts of violence were perpetrated by members or supporters of the ruling party against those of the opposition.

The incidence of violence is so high, particularly during a election period, that as recently as July this year, at a police pass out parade, President Robert Mugabe made reference to it while urging the police to act decisively against unruly elements. That the President found it important to address this issue is clear evidence of the scale of the problem.

Also, that the President has sought to use his authority as Commander-In-Chief of the Defence and Security Forces to dissuade violence and to encourage members of the security forces to act against elements promoting violence must be seen as a positive step towards the normalisation of the situation in Zimbabwe.

This is critical if the integrity of the elections is to be upheld, so that those who get elected can remain confident that those who elected them did so out of their free choice.

The legal framework is too restrictive to allow people to participate freely in the conduct of the affairs of their country. New, more restrictive legislation that is being proposed will just make things even worse.

The Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA) and the Private Voluntary Organisations Act (PVOA) are some of the pieces of legislation that have been singled out as such.

Legislation dealing with elections was found to be inadequate to allow for free and fair elections, while setting up an institutional framework that is sometimes so confusing and cumbersome. However, it is important to note that moves are underway to amend the Electoral Act, specifically making some improvements in the manner in which institutions responsible for the administration of elections are constituted, and streamlining the institutional framework for the conduct of elections.

It has been suggested that the Office of the Registrar General be relieved of the duties of running elections.

But this would require the harmonisation of the Constitution and the Electoral Act.

Currently, the Electoral Act is seen as a potential cause for conflict between the Electoral Supervisory Commission and the Office of the Registrar General, as the Act detaches the Election Directorate from the Electoral Supervisory Commission, leaving the Registrar General torn between two organisations, namely the ESC and the Election Directorate.

It was suggested that the harmonisation of the electoral process should begin with the creation of one single electoral management entity that would handle all aspects related to elections, including the registration of voters, compilation, maintenance and inspection of the voters' roll, management of polling and counting processes, and announcement of results.

But the mission was constantly reminded of the fact that changes in legislation alone will not necessarily ensure a free and fair election.

A concerted effort will have to be made in order to address a number of critical issues such as political violence and intimidation.

Specific proposals, considered to be the 'minimum conditions' for a free and fair election have been put forward. Initially, these proposals consisted of a 15-point document, which was eventually reduced to five points. It may be worth enumerating them here. They are:

- (a) Return to the Rule of Law;
- (b) Establishment of an independent electoral commission;
- (c) The repeal of those aspects of POSA and AIPPA that restrict the freedom of political parties to campaign freely and curtail media freedoms respectively;
- (d) Voting in one day, subject to sufficient numbers of polling stations being established and changes being made to the voting procedure to enable all to vote; and
- (e) Maintain the integrity of the vote by refraining from telling people that their vote is not after all secret.

And I add another point which is the guarantee for access by all parties to the public media.

It is believed that if these conditions are met, while accompanied by a strong political will and tolerance by political leaders to respect the rights of all individuals, conditions will have been created for the elections to be held in Zimbabwe in a free and fair environment.

Part II

MEDIA LANDSCAPE

Background:

First, it is worth noting that the electronic media in Zimbabwe is a monopoly of the state. At independence, in 1980, the government of the day loosened the grip on the media - electronic and print. Zimbabwe led the way in developing and modernizing the concept of public media by establishing independently run public companies. The public owned shares and controlled Zimbabwe Mass Media Trust and Zimbabwe Broadcasting Corporation. The two institutions were independent of the government. From the information collected, for years, the two institutions exerted themselves, providing a much needed platform for the ordinary Zimbabweans – who could criticize the government without fear of being, shut up. This has changed.

1.0 Legal Environment

1.1 Freedom of Expression is guaranteed under the Zimbabwean constitution. Under Protection of freedom of expression, the constitution expressively states that: *Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive, and impart ideas and information without interference, and freedom from interference with his correspondence*¹.

1.2 This is the founding principle in which freedom of the media is based on, and can therefore, not be interfered with at will. But this constitutional guarantee has not guaranteed freedom of expression, of the media, in Zimbabwe. Instead, the government has in recent times intensified a program to reverse the intentions and principles of press freedom. The introduction of legislations such as the Access to Information and Protection of Privacy Act (AIPPA), and the Public Order and Security Act (POSA), has effectively closed the media space in Zimbabwe.

1.3 These laws, and others that continue to confuse and repress freedoms of the Zimbabwean people, seem to have emerged in reaction to the political climate, therefore creating ripples across the Zimbabwean political and social landscape. But, as with any laws that are intended to protect public scrutiny of the leadership, the media has become the direct and first target.

1.4 This legal environment goes against the international norms and practices, and effectively undermines the Zimbabwean peoples the right to receive and impart information. The two laws, AIPPA and POSA, in particular, go against the grain of thought, and the principles of protection of peoples' rights as contained in the African Charter on Human and Peoples Rights (Article 9), and many other international protocols and declarations which Zimbabwe is signatory to.

1.5 Among the many other things, AIPPA registers and dictates who is supposed to write, for whom and for how long. The responsibility to do that lies with a

¹ Article 21 (2) of the Zimbabwe Constitution

statutory body called the Media Information Commission (MIC), whose composition is supposed to be an agreed process between the stakeholders, but in reality is a political appointment by the Minister of Information. The result of MIC acts is such that:

- 1.5.1 Newspapers have been denied the right to operate. The well known case in point is that of the *Daily News*, which has had to go through a messy court case to be allowed to register, but at the end of the day failed to operate as the process saw to the depletion of its resources – in both human and financial capital. As the report will show later, laws such as AIPPA have been used, within the short period of existence, not only to deny opponents of the ruling party the space to air their views, it has been used to settle personal scores. The recent closure of *The Tribune* is a case in point. The Mission was informed of the widely held view that *The Tribune* suffered the wrath of MIC following the publisher's (a Zanu-PF parliamentarian) public pronouncements against the AIPPA.
- 1.5.2 Professional Journalism has been criminalized. The Mission heard disheartening stories of journalists who “dare criticize” the government, and/or the Minister, whose applications to operate have been turned down, and can therefore not find employment even within the limited or non-existent space of independent media. This act has also ensured that professionalism is sacrificed, especially in the public media, where journalists are forced – first by dictates of the Ministry, and second by the need to survive, to toe the political line.
- 1.5.3 One instrument used effectively against the media is the Public Order and Security Act of 2002. The Act criminalizes “false statements prejudicial to the state”. A person may be fined up to 5 years for publishing a “false” statement likely to incite public disorder, affect the defence and economic interest of the country, or undermine public confidence in the police, armed forces or prison officers. Section 16 makes it an offence to make a public statement with the intention to, or knowing there is a risk of “undermining the authority of or insulting” the President.
- 1.5.4 All these threats have a chilling effect leading to widespread self-censorship in the independent media.

2.0 Government monopoly of the Media

Like in many other developing countries, radio is critical to the lives of many in Zimbabwe. For the rural communities, radio remains the main, and in some cases sole, source of mass information. And like in many other developing countries, this main source of information, radio, is solely in the hands of the government of the day. But the major difference between Zimbabwe and many developing democracies, in southern Africa in particular, is that instead of liberalizing the airwaves, the reverse seems to be the trend. In Zimbabwe, broadcasting services – Radio and Television – remain in the hands of the government.

Monopoly in the media extends to print. The years of struggle and sweat to establish world class print media in Zimbabwe, have, in recent times, been reversed with the

introduction of a series of repressive laws – in particular the Access to Information and Protection of Privacy Act and the Public Order and Security Act. These laws have seen an introduction of heavy-handed control, closure of newspaper, and criminalizing the best of journalism.

One thing that stands out about the Zimbabwean media is that it is very polarized. The “battle lines” is no longer the terrain of the political opponents. The media is the “battle field” and in the fight for dominance, on the one hand, and survival on the other, journalistic ethics are being compromised.

2.1 Electronic media:

2.1.1 Zimbabwe Broadcasting Corporation/Zimbabwe Broadcasting Holdings

The electronic media in Zimbabwe, as stated above, remains the preserve of the government. The Zimbabwe Broadcasting Corporation, established by an act of Parliament, was, from independence in 1980, a public broadcaster. Under ZBC, were the television station, Ztv, and four national radio stations. The four radio stations are:

Station	Type	Language
Radio 1	Mainstream (Adult and conservative)	English
Radio 2	Educational	English
Radio 3	Youth &Urban	English
Radio 4	Rural	Shona and Ndebele

The format dates to the pre-independence era. That was then, pre-2000.

2.1.1(a) While ZBC, for years after independence, was universally accepted as a relatively independent public broadcaster, the format and controlling power has changed.

ZBC is now the Zimbabwe Broadcasting Holdings, established by two Acts of Parliament – the Broadcasting Services Act (Chapter 12:06), and the Zimbabwe Broadcasting Corporation (Commercialization) Act (Chapter 12:01). The latter Act split ZBC into two companies – the ZBC and Transmedia, a provider of signal transmission services.

Under the new dispensation, ZBC had to undergo a transformation – from a state funded public media, to a commercial public broadcaster, a Holding Company with nine subsidiaries – ZTV, Newsnet, On-Air Systems, Channel C, National Television (Bulawayo) and the four Radio Stations – Radio Zimbabwe (Mbare studios, Harare), Power FM (Gweru), National FM (Pockets Hill studios) and SFM (Montrose Studios). Each of the subsidiaries is headed by a Chief Executive Officer.

2.1.1(b) While ZBH's core business is to provide a service to the Zimbabwean peoples regardless, the Corporation has been found to be wanting. The mission was informed of the corporation's "blatant abuse of power" by the politically appointed heads of the different subsidiaries, the political leadership – in particular the Minister of Information. The Minister, in particular, was accused of not only interfering in the programming and editorial independence of ZBH, but was said to be of the habit of using the public broadcaster as a personal property. Accusations ranged from the Minister dictating editorial content, programming, using Radio in particular to demonize political opponents – through news broadcasts and the "infamous" advertising jingles. One of the charges that stood out and was of a great concern to many, was the fact that as Zimbabwe prepares for the next elections, ZBC is being used as a "weapon" against political opponents – at times against ZanuPF leaders falling out of favour with "the arm that controls" – by airing inciting and hateful messages.

The "enemy" list, according to information gathered, goes beyond the main opposition, the Movement for Democratic Change. It now include the opposition parties, opposing views within the ruling party, non-governmental organizations, trade unions not associated with the ruling party, independent and private media, media practitioners, media institutions such as MISA, advocacy groups and civil rights activists, etc.

2.1.1 (c) Parliamentary Investigation

The concern about the role of the public broadcaster post-2000 is not only limited to the opponents of the state, and the greater civil society. In 2003, Parliament's Portfolio Committee on Transport and Communications conducted an enquiry into the ZBH, to determine:

- The extent to which ZBH fulfils its mandate as a public "national" broadcaster.
- The extent to which ZBH adheres to the provisions of the Zimbabwe Broadcasting Services Act.
- ZBH policy on programming
- And, assess the viability of the Company.

In short, the Committee found ZBH to be going through a confusing period – an ill-resourced operation expected to deliver a service to the nation regardless, and even more importantly, operating without the basic Code of Ethics in place. Among other things, the committee established:

i) Editorial and programming interference by the Ministry.

²It was the Committee's considered view that if the Department of Information and Publicity in the Office of the President could have the audacity to intervene with the work of a Parliamentary Committee which derived its mandate from the Standing Orders, it followed that it also interfered with the operations of its parastatals.

ii) Abuse of allocated government airtime.

² Second Report: Portfolio Committee on Transport and Communications on Zimbabwe Broadcasting Holdings (ZBH). Section 4.3.3.1, Page 10.

³*The Broadcasting Services Act demands one hour cumulative per week. The air time application has generally been utilized for flighting of jingles for the government, for the now Sendekera Mwana Wevhu. The jungle is surrounded by controversy. While some sections of the community view It as a State jingle, others view it as a political party jingle, which would be in violation of the provisions of the law which states that it should be State information time.*

- iii) Disregard of the law regarding fair and balanced coverage. The Committee found that, ⁴ *It is submitted that the way ZBH covers events especially political ones left a lot to be desired.*

The report further states that, as prescribed by law, in the coverage of the elections, the public broadcaster shall give reasonable and equal opportunities to all political parties contesting the elections. “The situation prevailing has shown that ZBH is not complying with this requirement.”

It is worth noting that most of the recommendations made in 2003, by a Parliamentary organ, are still to be implemented. The mission was informed that if anything, the management of the public broadcaster seems to be losing the control, and that as Zimbabwe undertakes another election process, there is blatant editorial interference. Some of the committee recommendations, whose emphasis on need for editorial independence and non interference by the Minister/Department, included:

- ZBH should serve the whole nation regardless of political, religious, tribal, economic and professional affiliation.
- ...the quality of programming at ZBH must be of the highest standards and marketable to the rest of the world.
- The autonomy of the ZBH Board and senior management must be guaranteed. ...It is recommended that if it is desired to retain the current powers of the Minister both in the Broadcasting Services Act and the ZBH Commercialization Act, **those powers be limited to appointing persons from candidates short listed by a Select Committee of Parliament.**

The committee further states that: “Lessons may be drawn from South Africa’s ICASA which is comparatively and relatively immune from political control.”

- ZBH must give a voice to the minorities both in radio and television.
- As a public broadcaster, the ZBH must also play its watchdog role by reporting on abuses in all sectors of society. This point is strongly linked to the need for the ZBH to have editorial independence.
- Whoever is at the helm of the ZBH and has been given the mandate to get the institution back on track should be given sufficient latitude to do so with minimum interference.
- The ZBH as a public broadcaster must be open and accountable media with guaranteed independence.

³ Second Report: Portfolio Committee on Transport and Communications on Zimbabwe Broadcasting Holdings (ZBH). Section 5.1.7.1. Page 17

⁴ Second Report: Portfolio Committee on Transport and Communications on Zimbabwe Broadcasting Holdings (ZBH). Section 5.1.9.1.6. Page 19

- Whilst it is necessary to enhance and support Transmedia, efforts must be made to open the sector to other players for the benefit of indigenous people.

2.1.2 Private/Unlicensed Broadcaster

In a repressive and stifling environment, always other ways to ensure a flow of information will be found. In Zimbabwe, there are three radio programmes transmitting from outside the country that - against international law – are criminalized by Zimbabwean legislation.

The law governing the licensing of the airwaves reads:

⁵*“the provision, reception or transmission of a broadcast service includes provision or reception within, transmission to, from or within, Zimbabwe of such service transmitted by satellite or any other means.”*

This section is important to mention here because the two of the three private radio stations the Zimbabwean government has raised concern about, and even dragged in neighbouring Botswana about, operate outside the borders of Zimbabwe. The three radio networks are:

- Studio 7: A Voice of America service.
- SW Africa
- Voice of the People

2.1.2(a) Studio 7:

The radio station, according to the Zimbabwean government, is transmitted through a VoA transmitter based in the northern mining town of Selibe-Phikwe, in Botswana. The issue has created a major diplomatic rift between the two neighbours. Botswana government continues to deny knowledge of this service, and had to send a minister responsible for information to Zimbabwe to discuss the matter. In fact, a day before the mission landed in Harare, Zimbabwe’s Information minister, Jonathan Moyo was hosting his Botswana counterpart, Boyce Sebetela, in Harare to discuss the matter.

2.1.2(b) SW Africa

The channel is aired on Shortwave medium, and though difficult to access, it is apparently a popular station with the political information starved Zimbabweans. The London-based channels are run by Zimbabwean nationals living in the UK.

2.1.2 c) Voice of the People

Another unlicensed radio station operating within Zimbabwe is the Voice of the People. It is also a post-2000 development, founded on the need for a multiplicity of voices. Currently, the station operates from a secret

⁵ Broadcasting Services Bill, of 2001, Chapter 3 (a)

location in the heart of Harare, and is transmitted over Short Wave – on a Netherlands radio platform.

According to the management of the station, initially government did not bother with their work – some government officials encouraging the existence of Voice of the People by regularly taking advantage of its facilities to air their views. But the more independent it got, the more problems arose. Like many private media houses in the country, Voice of the People

- operates under the fear of closure
- They have had to start from scratch when their offices were bombed in 2002
- Their journalists are always thrown out, or are denied access to public places and public meetings because they operate without being registered with AIPPA. (Under the law, a journalist has to work for a registered media house to register as a practitioner.)
- They face constant harassment, have to face the beatings and even arrests by the different structures of official and non-official security forces, (who include the ‘War veterans’ and the Youth Brigade).

The Zimbabwean government dismisses the three stations as nothing but propaganda tools of the “western sponsored stooges”. The three channels rely heavily on the contributions of local stringers, most said to be unemployed Zimbabwean journalists – the victims of the repressive legislations, in particular, The Access to Information and Protection of Private Act.

While the mission could not attest to the effectiveness and as to whether or not those “illegal” Zimbabwean radio stations operating within and outside the borders of Zimbabwe operate within the ethical and professional framework of the media, it did, however, emerge that such mediums have become the much needed alternative voice. Their impact might be extremely limited because not many people have SW receivers.

2.2 Print Media

Like with the electronic media, the Zimbabwe government monopolizes the print media. Following the closure of the *Daily News*, and now *The Tribune*, the public/state media remains the dominant player in the wider and national coverage of Zimbabwe.

2.2.1 State media

2.2.2 At independence, the people of Zimbabwe decided that media plays a critical part of development and re-building of a new nation. It was even more critical for Zimbabweans to have some form of control of the mass media, because the biggest media house of the day was the Argus Group, a South African company. With the help of

friends from within the African continent – in the likes of the Nigerian government of the day - the government of Zimbabwe and other stakeholders, bought the majority shares. The government, as a custodian of the nation, and a group of individuals and companies within Zimbabwe, started a public media house, known as the *Zimbabwe Mass Media Trust*. The Trust operated several newspapers, and some are still operational today. There are:

Title	Frequency	Language	Circulation**
The Herald	Daily	English	80 000
The Chronicle (Bulawayo)	Daily	English	25 000
Manica Post	weekly	English	15 000
Sunday Mail	weekly	English	110 000
Kwayedza	weekly	Shona	not available
Sunday News	weekly	English	30 000

And several provincial newspapers, majority of which many can't attest to their existence today. Also in the stable was ZIANA, the news agency.

For a long time, there was no great sense of a hurry/or need to establish independent newspapers to compete with these. The feeling was that these newspapers were independent, of the shareholders (and to some extent the majority shareholder – the government), and therefore posed no threat to press freedom. It will be hard today to find universal sentiments supporting that view.

2.2.3 The change of the political landscape, in particular during the mid and late 1990s, automatically saw the emergence of private and independent media. The ZimInd Publishers (Pvt) Ltd is the biggest of the private newspaper groups.

Title	Frequency	Language	Circulation**	Legal Status
The Standard	weekly	English	42 000	Registered
The Independent	weekly	English	30 000	Registered
Masvingo Star (provincial)	weekly	English	10 000	Registered
*The Daily Mirror	daily	English	10 000	Registered
*Financial Gazette	weekly	English	40 000	Registered
The Daily News	daily	English	80 000	Banned
*The Tribune				Suspended

* - owners associated with the ruling ZanuPF. The Financial Gazette's majority shareholder is the Governor of the Reserve Bank.

** - circulation figures provided are estimates

Other independent publications include *The Worker* (owned by the ZCTU) and the newly launched *ZimOnline* (internet news service based in Johannesburg.)

2.2.4 The closure of *The Daily News* last year, and recently *The Tribune*, has significantly shut out alternative voices. At its peak, the *Daily News* had a print run of an estimated 80 000 copies a day, and was at least for the last two years Zimbabwe's largest circulating daily, sales exceeding those of *The Herald*. The newspaper's closure meant the greater alternative view had been lost. The same goes for the *Tribune*.

The current set-up, of the two ZimInd Publishers (Pvt) Ltd – The Independent and The Standard – does not adequately address the alternative voice to the government view. Apart from having a low distribution compared to the government controlled newspapers (the *Herald* and the *Chronicle*), the two publications are seen more as “elitist” and urban. Therefore, the majority, and in particular, the rural, are left to the mercy of the government-controlled print and broadcast media.

Fear! Closed space

- 2.3 The level of intimidation – through the law and through the different structures of the security forces (official and non-official). Throughout the Mission, words which were consistent throughout were “fear”, “hate speech” and “the closing of the media space”.
- 2.4 As discussed above, the closure of the space is felt more now than ever with the closure of independent mass publications and the use of laws to deny the journalist the right to work without fear or favour.
- 2.5 Fear: In the past year, attacks on the media in southern African region had dropped dramatically. But Zimbabwe registered the highest number ever, even more than of the ten other countries mentioned in the annual “So this is Democracy” report of MISA. Zimbabwe registered 102 attacks on the media – the majority being serious attacks of assault, imprisonment and legal threats. This has created a feeling of uncertainty among the practicing journalists and media houses. Because of fear, trust is lost. Journalists no longer trust each other. The public has lost trust and faith in the media, and vice versa. Journalists feel restricted, and find it more and more difficult to hold the government accountable.
- 2.6 As stated earlier, the Zimbabwean media is highly polarized. Journalists, from the government media in particular, have fallen into the habit of supporting the government/ZanuPF positions without question, and demonize anything that represents the opposing voice, at times even taking a position on factions within the ruling party. Even more worrying is that professionalism is lost to the profession. With newspapers being forced – by law and economy – to shut operations, the public is left to the mercy of the government media, which in most cases seem to have very little regard for the principle of public interest. Once attacked – fairly or unfairly – the Zimbabwean public has no recourse. The mission heard over and over that the concept of “Right of Reply” is hardly ever applied, and when it does, it is when it affects members of the ruling party.

- 2.7 The opposing views have been shut out of the media. We heard that the only time the public media covers the opposition parties, is when they are demonized, and or, unfounded allegations are made against them.

3.0 Women and the Media

- 3.1 The intensity in the fight for political and media space in Zimbabwe has adversely affected reportage about women and gender issues, particularly in the print media. Women voices, while have always been inaudible, have now been literally been silenced as the “muscle” battle took root.
- 3.2 The research carried out by the women’s organization, Women in Politics Support Unit (WiSPU), last year, revealed that:
- Women MPs are lowly covered;
 - when women MPs are covered, the stories are mostly negative in tone and nature;
 - women MPs are hardly called upon to comment on issues of national interest.

4.0 Conclusion

- 4.1 With the current media landscape, it is our view that:
- 4.1.1 The media landscape is uneven, therefore cannot be utilized as a watchdog for the public;
 - 4.1.2 Abuse of power and interference by political leadership will intensify as the country nears the elections;
 - 4.1.3 Under present circumstances free and fair elections in 2005 are highly unlikely.