



Media and the 2005 Parliamentary Election -

Briefing Paper 1

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“A free and fair electoral process is virtually impossible to attain without the active participation of an economically healthy, free and effective mass media.”¹

Media Coverage of the 2005 Parliamentary Election

Zimbabwe's 2005 Parliamentary elections cannot be deemed to be free and fair if the media are not able to report freely. In addition, voters must be able to access accurate information that allows them to make an informed democratic choice about the representatives they vote for. Similarly, candidates have a right to convey their views to the electorate.

The electorate has a right to be informed at all times, especially during elections, and this should not be portrayed as a privilege. Information disseminated by the media should enable individuals to develop their own opinions and make informed decisions. To do this, voters require fair and accurate information about a party's policies and programmes, as well as information about aspiring candidates.

Media institutions should be especially aware of their basic professional responsibility to provide fair, accurate and balanced coverage of elections, particularly relating to the parties contesting the election. This applies to:

- Voter education – material, *telling the electorate why and how they should vote*, produced by electoral authorities or the media themselves
- Editorial coverage – *news and current affairs* coverage under editorial control of the media. (this coverage of the election is not controlled by the authorities or the candidates.)
- Direct Access coverage – This is *material produced by the political parties or the candidates themselves* in order to use the media to tell the electorate about their policies.

¹ *Behind the Smokescreen: The Politics of Zimbabwe's 1995 General Elections*, John Makumbe and Daniel Compagnon, University of Zimbabwe Publications, 2000

Political opponents of government have a right to be heard in the publicly funded media, which is usually controlled by governments (particularly in Zimbabwe), especially at election time. Precisely because these media use public funds they have a responsibility to cover all contesting parties and candidates fairly and without discrimination.

In addition, all media institutions should not be unduly restricted in carrying out their activities. As noted by former UN Special Rapporteur on Freedom of Opinion and Expression, Abid Hussein² ***“in pre-election periods...the State must ensure that the media is given the widest possible latitude”*** in order to achieve ***“the most fully informed electorate possible.”***

“The media – television, radio, newspapers, magazines, posters and pamphlets and other forms of verbal and written communication – are central to the electoral process. Without these, candidates and voters would be hard-pressed to gather and share information and views.”³

The main focus of scrutiny with regard to election coverage should be the public media, which depends on public funds. This includes Zimbabwe Broadcast Holdings (ZBH), the national public broadcaster. As all its four radio stations and the country's only television station are owned by the State – and not the government – it therefore has a national public duty to report without bias and provide equitable access to the airwaves to all political parties and their candidates.

Minimum Standards:⁴

There must be clear guidelines and minimum standards against which to measure media coverage of elections in terms of fairness and balance. There are no standards in Zimbabwe that have been set by a body that governs elections. Below we outline basic minimum standards that MMPZ has previously identified as being central to the media's duty to inform the electorate about election issues. At the very least:

- ▶ All publicly funded media, particularly ZBH, should carry impartial voter education, telling the electorate what the vote is for, as well as who is entitled to vote, and how and where to do so.
- ▶ Direct access programmes must be broadcast free of charge on an equitable basis according to rules set by the electoral authorities (the Electoral Supervisory Commission (ESC) or the Zimbabwe Electoral Commission). Political parties may receive additional paid access, but this should be subject to set limits.

² UN Doc. E/CN.4/1999/64 29 January 2004

³ *Election Reporting: A practical guide to media monitoring* by Article 19, International Centre Against Censorship, November 1998

⁴ Minimum standards for media coverage of elections are further examined in the publications *Election 2000: The Media War* by the Media Monitoring Project Zimbabwe (MMPZ), 2001 and *Media Under Siege: Report on media coverage of the 2002 Presidential and Mayoral elections in Zimbabwe* by MMPZ, 2003

- ▶ Allocation of airtime for direct access programmes by the public broadcaster must be on a fair and non-discriminatory basis. This includes providing equal prominence for the contesting parties and their candidates.
- ▶ A code of ethics governing the content of direct access programmes should be drawn up prior to the commencement of any election campaign. Ideally, these should be established and adhered to at all times, irrespective of elections.
- ▶ No direct access programming should be broadcast in the 24 hours before voting starts or on the day (or days) of the election itself.
- ▶ All media should report election news fairly and professionally, clearly distinguishing fact from comment.
- ▶ Media should not be legally liable for defamatory statements made by candidates and party officials during broadcasts, and an equal right of reply should be provided to offended parties.

An independent authority, such as an election commission acting in consultation with senior representatives from media organisations and the contesting political parties should ideally set these standards well before any election campaign. The Zimbabwe Electoral Commission (ZEC), a creation of recent legislation, was appointed on 20 January 2005. However, it is unclear how it will relate to the constitutionally established ESC,⁵ or whether it will improve the transparency of the election management process. At the time this report was being compiled no electoral authority had invited any debate about establishing election-reporting guidelines.

Direct Access to Public Media by Political Parties Competing in the Election

Direct access refers to the allocation of broadcast time for political parties during which they may broadcast material or programmes that they have produced themselves. The broadcaster should not edit direct access material, as it is the only vehicle for political parties to express themselves to the electorate directly outside of campaign rallies. 

MMPZ recommends that the allocation of direct access be the responsibility of a truly independent electoral commission, preferably in consultation with representatives of the political parties and media institutions. It is preferable for direct access in Zimbabwe to be provided free of charge by the public media, at least for broadcasting, mainly because opposition political parties are unlikely to be able to afford the same extent of paid political advertising as the governing party. Print media should offer advertising at the lowest rate of advertising and similar space should be available to all parties.

While there is an obligation on the public media to provide equitable direct access to political parties, there is no similar obligation on the private media. This is because the private media do

⁵ While there is no legal framework for their relationship, Minister Chinamasa informed parliament on 9 December 2004 that the Government had adopted the Mauritian Model according to which the ZEC will run the election while the ESC supervises the ZEC. (*The Sunday Mirror* 30 January 2005)

not depend on public money; their survival depends on their commercial success; their popularity in the market place. However, private media that do provide direct access must offer the service to all contesting parties on the same terms.

Below we outline the fundamental nature of direct access and how it should be applied.

- Similar space and time should be made available to all candidates and parties.
- Different systems of direct access may be applied to print and electronic media and to privately and publicly owned media.
- Limitations may be placed on the amount of private advertising allowed per candidate or party, as is the case with the amount of free access allocated, which must also be predetermined.
- Criteria, such as ethics and restrictions on the content of material, must be set out clearly by an independent authority presiding over the election.
- The media may choose to accept or refuse liability for material broadcast during direct access. However, it is preferable that the media not be held accountable for direct access programmes prepared by political parties.
- The broadcaster must decide on the time when broadcasts take place with the emphasis on achieving optimum exposure for candidates without adversely affecting programming schedules.
- Allocation of direct access should be done on the basis of equity or equality. This is examined in further detail in **Table 1** below.

Table 1:

Equality vs. Equity

<i>Equality</i>	<i>Equity</i>
The <i>same</i> amount of time for all parties contesting the election regardless of the amount of support that they command.	<i>Fair</i> amount of time for parties contesting in the election according to the amount of support that they command.
<i>Time</i> will be <i>split equally</i> amongst all contenders even frivolous ones with no supporters or those merely seeking free publicity.	<i>Main contenders</i> in the election are allocated the <i>most access</i> .
<i>Works best</i> where there are <i>fewer candidates and parties</i> . Or where the support that each party commands has not been determined by any previous election. Where there are too many contestants time	<i>Works best</i> in a <i>well established democracy</i> where clear measures of past electoral support exist. May however obstruct emergence of new political initiatives.

will have to be divided into impractically small portions.	
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MMPZ also recommends the following system for direct access that has been implemented in South Africa:

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

Past Experience with Direct Access in Zimbabwe

Table 2:

<i>Election & year</i>	<i>Summary of direct media access</i>
1990 – Presidential & Parliamentary	• ZBC broadcasting monopoly abused by ZANU PF. • Election adverts comparing the opposition to AIDS and car crashes dominate. • ZANU PF accorded 30 minutes per day and opposition parties 4 minutes per day.
1995 - Parliamentary	• Election Coverage Committee (ECC) established comprising the directors of ZBC. ECC controlled broadcast coverage of the elections. • All political parties contesting allocated 1 hour of coverage between 27 March and 7 April. • Those parties fielding candidates in at least 15 constituencies received an extra 30 minutes of free airtime on ZBC TV1 and Radios 1, 2 and 4. Parties with fewer than 15 candidates received only 5 minutes extra.
2000 - Parliamentary	• ZBC solicits advertisements from political parties for the parliamentary election campaign. But in practice political advertisements are not run throughout most of the campaign. • Direct access coverage consisted of a 15-minute television slot for each party divided into five-minute English, Shona and Ndebele segments. • There was no direct access slot on radio. • A television programme Election 2000 provided each party with a 25-minute slot towards the end of the campaign to present their views. • No similar slot was available on radio.

	• There was equality in direct access, however this was countered by heavily skewed news coverage in favour of ZANU PF. • 13 June 2000 – MDC secured Supreme Court ruling ordering ZBC to fulfill its obligations 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. • Ruling was largely ignored and on eve of the election two ZANU PF adverts were run - the only ones of the election.
2002 - Presidential	• ZBC established “10 golden rules” on direct access and political advertising for the period following the sitting of Nomination Courts on 31 January 2002 until the polling days on 9 and 10 March 2002. • ZBC decided on time allocated to party candidates and their representatives. “Each candidate or representative will be allocated time specified by ZBC”. This made no reference to equality or equity in access. • Direct access was restricted to political advertising that would be “accepted in the normal way”. • Use of inflammatory and defamatory language inciting members of the public to be violent was banned. However ZANU PF candidate, Robert Mugabe, was allowed to use such language, which was not edited out of news coverage. • ZBC reserved the right to drop or edit what it considered to be “offensive” material in political party programmes.

The lack of an independent electoral body to set guidelines for direct access and to monitor its implementation resulted in ZBC (now ZBH) establishing its own, often obscure and subjective, rules to govern direct access and subsequently monitoring their own performance. It also resulted, as evidenced above, in ZBC engaging in news coverage, current affairs programmes and interviews that are overtly biased in favour of the ruling party, ZANU PF.

The SADC Principles and Guidelines and Media Coverage of the 2005 Elections

Much emphasis has been placed on Zimbabwe implementing of the SADC Principles and Guidelines Governing Democratic Elections before the March 2005 Parliamentary Elections are conducted. Government has, on several occasions, asserted that it is taking all steps possible to ensure that it complies with the principles and guidelines. Indeed, according to President Mugabe, during his State of the Nation address on 9 December 2004, Zimbabwe is now “*more*

*than compliant with the standards and guidelines, we developed, agreed to and adopted at SADC and as SADC (sic).*⁶

The SADC Principles and Guidelines Governing Democratic Elections only briefly dwell upon media in relation to elections within the SADC region, however it is worth conducting a preliminary analysis of how Government has complied with this essential element of democratic election processes. Below are the sections of the SADC Principles and Guidelines Governing Democratic Elections that refer to the media:

2. *Principles for Conducting Democratic Elections*
SADC Member States shall adhere to the following principles in the conduct of democratic elections:
 - 2.2.5 *Equal opportunity for all political parties to access the state media.*
6. *Rights and Responsibilities of SADC Election Observers*
 - 6.1.3 *Unhindered access to and communicate freely with the media;*
7. *Responsibilities of the Member State Holding Elections*
 - 7.4 *Safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as **access to the media on the part of all stakeholders**, during electoral processes as provided for under 2.2.5 above;*

The SADC guidelines recognize access to the media and media freedom as a critical element of democratic elections. The call for equal access to the media in section 2.2.5 at the very least requires that all parties have an equal opportunity to express themselves to the public through the media for an equal length of time before an election. To satisfy the requirements of the SADC principles and guidelines, media coverage of elections must be fair and evenly balanced. By implication there must also be media freedom as a media sector that is heavily censored or risks censure for coverage of certain issues will be unable to offer equal access to all parties. Section 7.4 goes on to make it clear that the State is responsible for ensuring that an instrument is in place to facilitate equal access and that monitoring and enforcement mechanisms are in place to guarantee that the state media carries out this duty.

In addition to according equal access to the state media to all political parties, the Zimbabwe government must facilitate “*unhindered access*” to the media for SADC Electoral Observation Mission (SEOM). Any interference or attempt to limit communication between the media and the SEOM will constitute a violation of the principles and guidelines.

Government Sentiment

There has generally been confusion and contradictions regarding the extent to which Government intends to comply with the media-related requirements of the SADC Principles and

⁶ ZTV News, 9 December 2004, the emphasis is ours

Guidelines Governing Democratic Elections. In the *Zimbabwe Independent* of 17 September 2004, the Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, was quoted saying that the Government of Zimbabwe was ***“working on creating a conducive electoral framework in line with the SADC principles. This will include equal access to the public media by all political parties and programmes will be introduced on television and radio soon.”*** Chinamasa also reportedly told the *Independent* that ZBH had received a directive from Government to implement this.

Minister of Information and Publicity in the President's Office, Jonathan Moyo, later adopted a contradictory position that political parties with ***“no loyalty...should not expect to be treated fairly.”*** It was not made clear who would judge the loyalty of various political parties against what criteria. For the avoidance of doubt, Minister Moyo went on to make it clear that ***“until and unless we have a loyal opposition it will not be possible for them to have access to the public media. For them to get access to the public media, they should show their loyalty to the country.”***⁷

This absurdly impractical and subjective requirement for access to the public media, defined at the Government's discretion, inherently denies opposition political parties the SADC guidelines' requirement for ***“equal opportunity for all political parties to access the state media”***. Furthermore insisting that political parties must have the same ideology and practices as the ruling party before they can access the state media clearly goes against section 2.2.3 of the SADC principles and guidelines which identifies ***“political tolerance”*** as a principle of democratic elections. Government appears to remain ignorant of the fact that equal access to the media is not a privilege to be reserved for those they regard favourably, but a right of all political parties.

The Electoral Act (Cap 2:13) Section 3 (c) (iv) declares the right of political parties ***“to have reasonable access to the media”*** as a general principle of democratic elections. However it has been pointed out that this section does not confer a ***“specific and actionable right that can be claimed ...without reference to the laws governing the media in Zimbabwe.”***⁸ Government appears to have exonerated the print media in particular from providing political parties with access advising that ***“a newspaper can, in fact, decide not to cover any political party or candidate during an election and that decision would not be in contravention of any law.”***⁹ This perpetuates the situation in which Zimpapers may refuse to accept paid political advertisements from opposition political parties while flighting several full page advertisements per issue for the ruling party, as was the case during the March 2002 Presidential elections. Regulations must be put in place that compel the government-controlled print media to give paid access to political parties on an equitable basis if it decides to accept such advertisements.

⁷ Minister of Information and Publicity in the President's Office, Jonathan Moyo, *Sunday News* 3 October 2004. See also *Sunday Mail* 10 October 2004

⁸ Minister Moyo, *The Chronicle* 11 February 2005, *The Herald* 11 February 2005

⁹ *ibid*

Broadcasting of election material during election time is regulated under the Fifth Schedule of the Broadcasting Services Act (BSA) (Cap 2:06). Part 2 of this schedule lays out the conditions for broadcasting political matter and in section 2 (1) specifies that ***“if during an election period, a broadcaster broadcasts election matter, the broadcaster shall give reasonable and equal opportunities for the broadcasting of election matter to all parties contesting the election.”*** The broadcaster is therefore under no obligation under the Act to provide free broadcasting or indeed to provide any broadcasting of election matter at all. However should the broadcaster choose to do so they are required to provide ***“reasonable and equal opportunities...to all parties contesting the election.”***

Government has set no time frame for equal access to the media but has made it painstakingly clear that the time at which equal access shall be accorded has yet to begin. While ZANU PF has unlimited access to the electronic media for electioneering purposes, Minister Chinamasa has, since his comment in September, stated that media coverage will only be awarded to ***“parties contesting the election during election time.”***¹⁰ “Election time” is prescribed by the Broadcasting Services Act as ***“thirty-three days before the polling day for the elections and ends at the close of polling day or the last polling day.”***¹¹

Therefore it is most unlikely that opposition parties contesting the election will receive equitable media coverage before February 26 or 27, depending on the interpretation of this ambiguous statement. Chinamasa himself stressed this when he was reported as saying ***“you can’t have a country that is perpetually on elections from January to December. Outside election periods, broadcasters are free to determine what news to broadcast.”***¹²

According to the Broadcasting Services Act, ***“reasonable and equal opportunities”*** must be accorded to all contesting political parties to access the public media in the 33 days leading to the election. This remains to be seen.

Meanwhile, ZANU PF continues to be given unbridled media access for the purpose of campaigning for the March 2005 election well before the nomination courts were due to sit¹³, including extensive coverage of its primary elections. Such biased and exclusive coverage so close to an election is a clear violation of the spirit of the SADC Guidelines, which call for ***“equal opportunity for all political parties to access the state media.”***¹⁴

The Situation on the Ground

In December last year ZBH reportedly refused to accept MDC advertisements for broadcast citing the MDC’s indecision as to whether or not it would participate in the election as the reason behind the refusal.¹⁵ Rino Zhuwarara, ZBH board chairperson, claimed that the adverts had

¹⁰ ZTV News, 10 October 2004, 8pm

¹¹ See the Fifth Schedule of the Broadcasting Services Act (Cap 2:06).

¹² The Herald 14 October 2004

¹³ Nomination courts are due to sit on 18 February 2005

¹⁴ Section 2.1.5 of the SADC Principles and Guidelines Governing Democratic Elections

¹⁵ Zimbabwe Independent 23 December 2004

been turned down because the MDC had yet to confirm whether they would participate in the election and until their position was clear they would not be accorded access to the media. However MDC spokesperson, Paul Themba Nyathi, was reportedly informed that the adverts were considered '*confrontational*'. Since then, the MDC has announced its intention to contest the election¹⁷, but there was no valid reason even prior to this why ZTV should have denied the MDC an opportunity to flight an advertisement whether or not it was contesting the election.

In the print media, the government controlled Zimbabwe Newspapers Group (Zimpapers) has also refused to publish advertorial material from the MDC. However, the *Daily Mirror* and *The Weekly Times* have flighted advertisements placed by the MDC relating to its policies and encouraging the electorate to register to vote and to inspect the voters' roll.¹⁸ The *Daily Mirror* has also carried the MDC's advertisements regarding their decision to participate in the election. ZANU Ndonga, which has confirmed participation in the election, has written to ZBH requesting access to the media, but has yet to receive a response on ZBH's position regarding the matter.¹⁹

Interviews during ZTV News on 3 January with Welshman Ncube, MDC secretary-general, and on Radio Zimbabwe on 4 January 2005 with ZANU president Wilson Kumbula, were interpreted by the *Daily Mirror* as the beginning of equal access to public media for all political parties contesting the election. *The Financial Gazette* of 13 January 2005 echoed this sentiment: ***"the ZANU PF government under immense pressure to level the electoral playing field as Zimbabwe's crucial parliamentary polls draw closer, is partially opening the airwaves to opposition parties."***

Use of officials other than from ZANU PF as sources for political stories were interpreted as allowing the opposition equal access to the public media. ***"Remius Makuwaza (MDC) was widely quoted in the state controlled Herald of 6 January 2005, while another ZANU Ndonga official was quoted confirming his party's participation."***

However both parties and the Government itself, were quick to dismiss this suggestion. No framework for equal access has been drawn up and made public. George Charamba, Permanent Secretary in the Department of Information and Publicity in the Office of the President and Cabinet, pointed out that Kumbula and Ncube had only been on the news because they had ***"made news"*** that day and ***"nothing more"***. Furthermore, he clarified that the Government had only undertaken to avail equal access to the media during the arbitrarily defined 'election time' as described in the Broadcasting Services Act. Charamba went on to note that as at the date of the interview (4 January 2005) ***"We are still far away from that period."***²⁰

¹⁶ *Financial Gazette*, 31 December 2004

¹⁷ The MDC announced its decision to contest the election on 3 February 2005

¹⁸ *Weekly Times* 16 January 2005, *Daily Mirror* 18 January 2005

¹⁹ *The Herald*, 27 January 2005

²⁰ *The Daily Mirror*, 5 January 2005

Clearly, even by mid-February, conditions for fair and equitable access to the state media by all political parties still do not exist, and furthermore, these media organisations continue to favour the ruling party while suppressing the activities of the main political opposition. Neither the ESC nor the ZEC have set minimum standards for election coverage and for direct access and mechanisms for monitoring and enforcing these standards. Such instruments should be in place by now (six weeks before the election) and fair, equitable and balanced coverage of political parties should be a permanent standard for the public media sector. But at the time that the contesting parties launched their election campaigns, this was still not the case, and again represents a violation of the spirit of the SADC guidelines. On 10 February 2005, Minister Moyo announced that the Government would gazette regulations to govern access to the electronic media by political parties for campaign purposes on or after the sitting of the Nomination Courts on 18 February 2005. It remains to be seen whether these regulations, set without consulting media organisations or the political contestants, will provide a fair and effective framework for implementing equal access to the electronic media by the contesting parties, and whether ZBH will comply with the requirements of the Broadcasting Services Act.

Ends.