

PUBLIC SERVICE BROADCASTING AND THE RISK OF STATE CAPTURE: THE CASE OF THE ZIMBABWE BROADCASTING CORPORATION

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1. BACKGROUND

Broadcasting in Zimbabwe has been a contested terrain since the establishment of the Rhodesia Broadcasting Corporation, (RBC)². The Rhodesian Government took advantage of the RBC to spread out its propaganda throughout the country. This was because, broadcasting, whether radio or television, has a pervasive impact,³ for instance, the intensity of the genocide in Rwanda was *inter alia* fuelled by repeated messages of tribal hatred expressed over Radio-Television *Libre des Mille Collines* (RTLMC).⁴ The power of words, more so, visuals, hit directly into the minds of listeners and viewers, whether consciously or unconsciously and the repetition of the same messages make known falsehoods to sound real and truthful. Broadcasting has the potency to transform public perceptions

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 - ² Dumisani Moyo, 'From Rhodesia to Zimbabwe: Change without Change? Broadcasting Policy Reform and Political Control', Media, Public Discourse and Political Contestations in Zimbabwe, Henning Melber (Ed), 2004 p12.
 - ³ Walter G. Soluderlund and Kai Hildebrandt (2004) Canadian Newspaper Ownership in the Era of Convergence: Rediscovering Social Responsibility Preface pg. XV See also Jonathan D. Wallace, "The Scepter of Pervasiveness, Pacifica New Media and Freedom of Speech", <https://object.cato.org/sites/cato.org/files/pubs/pdf/bp-035.pdf> Accessed on 3 February 2017.
 - ⁴ RwandanStories, http://www.rwandanstories.org/genocide/hate_radio.html Accessed on 3 February 2017.

and understanding of issues of public interest. These views explain why broadcasting has always been a contested terrain in many countries ruled by oppressive regimes. The desire by some public officials to act as information gate valves is correspondingly high.⁵ As a consequence thereof, they put in place stringent broadcasting regulations to create legitimate legal excuses to discourage media pluralism and they only award radio and television broadcasting licences to persons or companies linked to the governing regime.⁶

2. INTRODUCTION

Until the *Capital Radio vs Minister of Information* 2000 (2) ZLR 243 (S) decision in which the Supreme Court declared as unconstitutional the monopoly on broadcasting services created by s 27 of the Broadcasting Services Act (BSA), Chapter 12:01, the Government of Zimbabwe was reluctant to liberalise the sector. Section 27 of the BSA gave Zimbabwe Broadcasting Corporation (ZBC) an exclusive right to provide broadcasting services in Zimbabwe⁷. What then followed after that decision were vigorous efforts employed by the Government to frustrate the execution of the judgment through agents like the Zimbabwe Republic Police (ZRP). The order issued by the Supreme Court in the *Capital Radio vs Minister of information* (Supra) allowed Capital Radio to;

- (a) operate and provide a broadcast service from within Zimbabwe.
- (b) import into Zimbabwe all radio and other broadcast equipment and to operate a commercial radio station within and outside Zimbabwe.⁸

⁵ The Financial Gazette, "Government Cancels ZBC/Econet Deal", 1 September 2016, <http://www.financialgazette.co.zw/government-cancels-zbceconet-deal/> Accessed on 15 February 2017

⁶ Zimbabwe Daily, 'New radio licences a "farce" and "unacceptable" - Tsvangirai ', 25 November 2011, <http://www.thezimbabwedaily.com/news/9761-new-radio-licences-a-farce-and-unacceptable-tsvangirai.html> Accessed on 15 February 2017.

⁷ *Capital Radio vs Minister of Information* 2000 (2) ZLR 243 (S) at pg244

⁸ *Ibid*, pg244

ZRP seized Capital Radio's broadcasting equipment in order to frustrate the latter's efforts to commence broadcasting services until the High Court issued an interdict restraining them from hindering Capital Radio from broadcasting and to return the equipment which ZRP had seized. Chatikobo J in *Capital Radio (Pvt) Limited vs Minister of Information and Others* 2000 (2) ZLR 265 (H) at 269 ordered that the warrant of search and seizure which ZRP had used to seize Capital Radio's broadcast equipment was invalid. He further ruled that in light of the *Capital Radio (Pvt) Limited vs Minister of Information* (1) 2000 (2) ZLR 243 decision, there was no offence which Capital Radio (Pvt) had committed. ZRP were, therefore, interdicted from interfering or confiscating Capital Radio's broadcasting equipment.

The Zimbabwe Republic Police resisted the interdict and Capital Radio (Pvt) Limited made another application for contempt of court in the matter of *Capital Radio (Pvt) Limited vs Minister of Information and Others* (3): *In re Ndlovu*.⁹ The facts of that matter are that after Chatikobo J's order in the matter of *Capital Radio (Pvt) Limited vs Minister of Information and Others*¹⁰ (supra) was served on Zimbabwe Republic Police's Assistant Commissioner Liberman Ndlovu, he refused to obey the order indicating that '*...he would not obey it as he did not take orders from the court but only from his superiors.*'¹¹ It was further indicated during the hearing that Assistant Commissioner Liberman Ndlovu also disregarded the advice of the Attorney General not to proceed with the search and seizure. Assistant Commissioner Liberman Ndlovu was reported as having broken down the doors to the Capital Radio's studio which was housed at the Monomotapa Crown Plaza Hotel in Harare and seized broadcasting equipment notwithstanding the existence of a valid court order. He was found guilty of contempt of court.

In order to further frustrate the efforts by Capital Radio's efforts to operate a radio broadcasting station the Government of Zimbabwe issued the Presidential Powers (Temporary

⁹ 2000 (2) ZLR 289 (H)

¹⁰ 2000 (2) ZLR 265 (H)

¹¹ Capital Radio Case (Note 6 above) pg. 291

Measures) Broadcasting Regulations 2000. These regulations were enacted as a stop gap measure to fill the legal lacuna created by the declaration made by the Supreme Court in *Capital Radio (Pvt) Limited vs The Minister of Information, Postal and Telecommunications*.¹² As noted earlier the Supreme Court had ruled that s27 of the Broadcasting Act 12:01 was unconstitutional in that the monopoly it granted to Zimbabwe Broadcasting Corporation (ZBC) was an infringement of the right to freedom of expression guaranteed under s20(1) of the old Constitution of Zimbabwe. The same order also struck down s14 of the Radiocommunications Services Act [12:04] for the same reason.

The Presidential Powers (Temporary Measures) Broadcasting Regulations, 2000 were then superseded by the Broadcasting Services Act, 2001, [Chapter 2:06] and this was about the same time Professor Jonathan Moyo was appointed Minister of Information. Prof. Jonathan Moyo's reign as Minister of Information was characterised by assaults on and closures of private television broadcasters and print media houses.¹³ He achieved this through some far reaching general media and broadcasting reforms which were meant to entrench the State's control of the public broadcaster the ZBC and other State-Owned Media houses like the Zimbabwe Newspaper Group Limited rather than promote media pluralism. At that time, ZBC TV was leasing its second television station to Joy TV, Munhumutapa African Broadcasting Corporation and LDM Broadcasting who were sharing broadcast air time during the day for broadcasting services provided within a 70km radius around Harare.¹⁴ These private broadcasters faced serious operational challenges in that they were not operating on the basis of broadcast licences issued to them but on the basis of individual lease agreements between them and ZBC. However, it must be pointed out that the lease agreements were illegal as will be later seen in the discussion below. The lease agreements did not give the concerned private television

¹² S-99-2000.

¹³ Daniel Compagnon, "The Media Battlefield", A Predictable Tragedy: Robert Mugabe and The Collapse of Zimbabwe University of Pennsylvania Press Philadelphia (2011) pg. 129.

¹⁴ Dumisani Moyo (Note 1 above) pg21.

broadcasters security of tenure because they violated s18 of the Broadcasting Services Act (BSA) which provided that:

No licensee shall assign, cede, pledge, transfer, sell his licence to any other person or surrender his programming duties to another entity outside his establishment. Any such assignment, cession, pledge, transfer, sale or surrender shall be void.

Therefore, the purported lease agreements were void *ab initio* because Joy TV, LDM Broadcasting and Munhumutapa Broadcasting were broadcasting on the basis of ZBC's television broadcasting licence. The assignment by ZBC of its rights and obligations to broadcast to third parties was not permissible under s18 of the Broadcasting Services Act. As a consequence thereof, there was no way, for instance, Joy TV, which was the last to have its lease cancelled, could have sought to enforce its rights under the lease agreement because of the effects of the maxim *exturpi causa non oritur action*. This illegal arrangement also compromised issues pertaining to sustainability of their operations and the independence of their broadcasting services since they were operating at the pleasure of the State and the ZBC.

It must be noted that as part of the terms of their operations under the lease agreement, these private broadcasters were not allowed to broadcast local news. Joy TV which had acquired broadcasting rights to air BBC News content¹⁵ was also barred from doing so. LDM and Munhumutapa African Broadcasting Corporation closed their operations as a result of viability issues¹⁶ whilst the Government directed ZBC to terminate their lease agreement with Joy TV.¹⁷

In the end, the Government's concession to allow the operation of private television broadcasters on the basis of an illegal

¹⁵ Media Institute of Southern Africa, 'Television Stops Broadcasting BBC Bulletins' 10 May, 2002 https://www.ifex.org/zimbabwe/2002/05/10/television_station_stops_broadcasting/ Accessed on 29 December, 2016.

¹⁶ Dumisani Moyo (Note 13 above) pg. 21

¹⁷ Daniel Compagnon, "The Media Battlefield", *A Predictable Tragedy: Robert Mugabe and the Collapse of Zimbabwe*. Philadelphia: University of Pennsylvania Press, 2011, pg. 130.

lease agreement was both a reluctant compromise and a dishonest attempt by the government at reforming Zimbabwe's broadcasting laws. Dishonesty, in the sense that they were not ready to revise the law and were therefore, comfortable with illegal contracts which they could terminate at any time, as they did. The other parties could not enforce their rights because the lease agreements were void *ab initio*. The restrictive condition pertaining to the ban on broadcasting of local news was again testimony to the fact that they were not sure of how an independent voice would report on local issues and how it would impact on the government's political standing. The print media which had just been liberalised with the registration of private newspapers such as the Daily News and the Standard was already giving the Government headaches. The Government was not ready to liberalise the airwaves hence the half-hearted attempt at reform *albeit* illegal. The desire of the Government was to keep the operational position of these broadcasters weak and to act as an indirect "censorship board" by ensuring that they did not broadcast content that was anti-government as was happening in the print media sector.

3. PROBLEM STATEMENT

The interest of the Government was to ensure that the information gate valve was secured in place for fear of publication of information which could destroy the credibility of the regime. One Government official was quoted as saying:

Why should we have a repeat of Basildon Peta on TV?
Why should we have a repeat of Geoff Nyarota on TV?
We do not want that and it's clear. They can cry tears of blood if they want. The evidence is clear. That means that anyone who is given a channel must be vetted thoroughly. We made a mistake because we reached a stage where a majority of newspapers in Zimbabwe were anti-Zimbabwean. Under no circumstances should we allow it in broadcasting...¹⁸

It must be noted that the duty of the media as the fourth estate is to keep the government action in check and to provide

¹⁸ Dumisani Moyo, (Note 1 above) pg. 22.

critical, independent and balanced reports on government actions. This duty is necessary in any democratic dispensation as it helps the public and the electorate in their search for truth and in judging the performance of the government in power. Most undemocratic governments fear independent public scrutiny of their actions hence they resort to stifling free speech and abuse public broadcasting services as their propaganda tools. The fear of public scrutiny and strong criticism by the media explains why the ZANU PF-led Government has been keen on keeping ZBC as the sole television broadcaster in Zimbabwe. Therefore, the reluctance to open up the airwaves was based more on political reasons rather than the radio frequency scarcity principle which gave justification for regulation of broadcasting services and the justifiable derogation of freedom of expression as held by the Supreme Court in *Capital Radio (Pvt) Ltd. v Broadcasting Authority of Zimbabwe and Others*.¹⁹

Anyone who was not pro-ZANU PF could not be trusted to be in charge of the television broadcasting bearing in mind the high level of visual impact that television broadcasting has on viewers. The Supreme Court acknowledged this potential impact of broadcasting when it noted in *the Capital Radio (Pvt) Limited vs Broadcasting Authority of Zimbabwe and Others* (Supra) that:

Radio and television, because of their pervasive and wide reach and influence on members of the public, constitute a most important means of mass communication.²⁰

4. POLITICS, CORPORATE GOVERNANCE AND THE CONTROL OF ZBC

The statement made by one of the first Ministers of Information in Zimbabwe, the late Dr Nathan Shamuyarira attests to ZANU PF's fears and the desire to control the ZBC for its own good when he said that the comrades who were running the Voice of Zimbabwe in Maputo had been deployed into key posts at ZBC so that they could direct the party's policy."²¹

¹⁹ S- 128-02

²⁰ S-128-02

²¹ Dumisani Moyo (note 1 above) pg18.

ZANU PF's intention has always been to control the ZBC as can be seen by the deployment of its cadres at the public broadcaster in order to ensure that they continue to broadcast content which advances ZANU PF's policies. Therefore, the basis for State capture of the ZBC was put in place immediately after ZANU PF took over the administration of Zimbabwe in 1980. As argued by Dumisani Moyo, broadcasting was expected to further extend the role it played during the liberation struggle²² in terms of mobilising the masses to support ZANU PF policies and programmes.

The State capture of the ZBC was also made easy by virtue of the Government's 100% shareholding in the public service broadcaster as provided for in s5 (1) and (2) of the Zimbabwe Broadcasting Corporation (Commercialisation) Act, 2001.

Therefore, the influence and control of the State over ZBC come through its equity control since it is a private company wholly-owned by the State. Furthermore, in the absence of statutory regulations governing the appointment of Board members of ZBC, it means that the appointment of Board members is done by the Minister responsible for Information, Media and Broadcasting Services. Regrettably, this scenario makes it is easier for the responsible Minister to appoint political cronies to run the affairs of the public service broadcaster in order to ensure that the Government remains in charge of the information gate valve.

It is common practice in Zimbabwe for ministers who are responsible for State-owned enterprises to appoint their political cronies and relatives to run State-owned enterprises as an extension of Government's political hand to control the affairs of such entities. This is worsened by the fact that the tenure of board members who are appointed to the boards of State-owned enterprises is not guaranteed. Board members can be removed from office at any time by the minister notwithstanding the provisions of the Companies Act, Chapter 24:03 which provides for the removal of directors from a board of a private Company.

²² Ibid pg18.

The subsistence of weak corporate governance system at the instance of the Government is a fertile catalyst for State capture of the State-owned enterprises in general. Another weakness which promotes State capture is that there is a tendency by some Government ministers not to appoint boards of directors for long periods. Situations like this allow the Minister to exercise direct control of the affected State-owned enterprise. During a period like that the Management of the State Owned Enterprise will be reporting directly to the Minister on both policy and operational matters. This is a clear and present risk for the ZBC and in any case, it has happened on many occasions.

The exertion of political control by ZANU PF over the public broadcaster is an issue which was raised under the Global Political Agreement (GPA) which resulted in the formation of a government of unity in Zimbabwe, involving ZANU PF, the Movement for Democratic Change-Tsvangirai (MDC-T) and the Movement for Democratic Change-Mutambara (MDC-M) as partners in 2009. The period preceding the GPA was characterised by media polarisation with ZBC restricting its media space to Zanu PF only. Hence, Article 19.1 (d) of the GPA tasked the Inclusive Government to;

- (d) ...ensure that the public media provides balanced and fair coverage to all political parties for their legitimate political activities.

During the period preceding the 2008 presidential and parliamentary elections, the MDC-T resorted to using foreign media outlets such as E.tv in South Africa to reach out to the Zimbabwean electorate with their party election broadcast advertisements because of restricted access ZBC. It was only fortuitous that MDC-T was able to advertise on E.tv in order to reach out to the electorate in the Southern Africa region. The influx of free-to-air decoders in Zimbabwe which could receive SABC and E.tv television signals made it possible for opposition political parties particularly MDC-T, which was a major threat to ZANU PF hegemony, to reach out to its supporters. The restriction of access to ZBC experienced by the MDC-T political party happened despite the provisions of Section 2A (d) (ii) of the Broadcasting Services Act which provides that;

...the broadcasting services in Zimbabwe, taken as a whole provide public debate on political, socioeconomic issues of public interest and so as to foster and maintain a healthy plural democracy.

Broadcasting pluralism fosters democracy because it allows different views on matters of public interest to be freely debated. Judge Learned Hand described democratic pluralism as “pre-supposing that right decisions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection...”²³

Free expression by a multitude of different voices underpins truly democratic societies as opposed to despotic societies that restrain free public discourse on issues of public interest by imposing restrictions on access to means of expression such as public service broadcasting facilities. Justice Brandeis in *Whitney vs California* opined that:

Public discussion is a political duty ...it is hazardous to discourage thought, hope, manipulation, that fear breeds repression, that repression breeds hate, that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies...²⁴

In the case of *Benard Wekare v The State and the Attorney General and the Zimbabwe Broadcasting Corporation CCZ-9-2016*, Malaba DCJ (as he then was) eloquently explained the importance of democratic pluralism when he noted that pluralism and diversity promotes the full enjoyment of freedom of expression in that they ensure that citizens have access to a wide range of information and ideas on a variety of subjects.’

DCJ Malaba (as he then was) went further to give a detailed analysis of the characteristics of a public broadcaster as defined in PART I of the Seventh Schedule to the Broadcasting Services Act outlined in paragraphs (a) to (i) thereof. One key responsibility of a public service broadcaster is stipulated in paragraph (d) which is;

²³ *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964) (quoting *United States v. Associated Press*, 52 F. Supp. 362, 372 [S.D.N.Y. 1943]

²⁴ 274 U.S. 357 (1927)

- (d) to provide news and public affairs programming which meets the highest standard of journalism and which is fair and unbiased and independent from government, commercial or other interests.

This provision is important in that it underpins freedom of expression and democratic pluralism. Nevertheless, the issue in Zimbabwe appears not to be the absence of the law but lack of political will to respect the rule of law. Furthermore, the poor corporate governance structure at the ZBC also militates against the independence of the public broadcaster. The appointment of the Board of directors of ZBC by the Minister of Information, Media and Broadcasting Services and the fact that the Board of directors serve at the pleasure of the Minister do not create enough safeguards for democratic pluralism. Again, the tenure of the Board of directors of ZBC is not guaranteed besides the lack of transparency in their appointment process. What is known is that the appointment process is unclear and that either relatives or friends or the minister's political party cadres are the only classes of people entitled to board appointments of most of the State Owned Enterprises (SoEs) including the ZBC. It is customary for Zimbabweans to wake up to the news that a new board of directors has either been dismissed or appointed for a SoE. In addition to that, there is no process of holding the minister to account for his decisions on board appointments. This situation gives the appointing minister the power to hire or dismiss a board of directors as he pleases, especially where the board refuses to follow ministerial directives or resist undue influence from the minister.

Consequently, the weaknesses in the appointment and dismissal processes of board members as noted above do not only compromise the independence of the board of directors of the ZBC but the institution's editorial independence. Editorial independence is a critical aspect of democratic pluralism in broadcast media. Under Zimbabwean law, editorial independence is underpinned by the provisions of Section 2A (1) (f) of the Broadcasting Services Amendment Act, Number 19 of 2007, which outlines the key objectives of broadcasting regulation as;

to ensure that the broadcasting services in Zimbabwe, taken as a whole, provide—

- (i) regular news services; and
- (ii) public debate on political, social and economic issues of public interest; and
- (iii) programmes on matters of local, national, regional and international interest or significance;
so as to foster and maintain a healthy plural democracy; and
- (e) to promote public, commercial and community broadcasting services in the interest of the public; and
- (f) to ensure the independence, impartiality and viability of public broadcasting services; and...

If a public broadcaster is unable to maintain editorial and programming independence as guaranteed by section 2A (1) (f) of the Broadcasting Services Act, it will lose credibility and it may possibly lose audiences to other broadcasters. In the case of the ZBC, it lost audiences to free-to-air (FTAs) decoders in respect of those viewers who could not afford the Multichoice DSTV subscriptions and to the latter for those audiences who could afford to pay the subscriptions.²⁵ The free-to-air decoders would *inter alia* give them access to some South African television channels such as SABC 1, SABC 2, SABC 3 and e-tv which usually carried Zimbabwean news content.

What is also important to note is that there is no transparent mechanism in place for holding a minister to account for his actions with regards to appointment and removal of a board of directors of a State Owned Enterprises. It is hoped that in future, aggrieved persons may demand for transparency and accountability through the provisions of s194 of the Constitution of Zimbabwe, which relate to the administration of Public Institutions. It would also be prudent for a law of general application to be enacted which will temper with ministerial powers in order to minimise the risk of them abusing their powers for either political or personal reasons. One hopes that the Public Service Corporate Governance bill, which is pending before the Parliament, will address such matters in

²⁵ <http://www.technomag.co.zw/2013/10/20/sabc-bounces-back-free-air-decoders/#sthash.borAP4hV.dpbs>

order to make transparent the appointment of Board members to State Owned Enterprises as well as secure their tenure from arbitrary removals by Ministers.

It must also be noted that the practice in most parastatals and SoEs is that all key senior positions are filled with the minister's approval after security vetting by the Central Intelligence Office. As a consequence, there is no way a minister would send for vetting individuals who may not be politically correct and are unlikely to serve the interests of the Government. This process of board recruitment is an immediate threat to the independence of the public broadcaster both in terms of its operations and editorial work. A flawed appointment process will in most cases yield politically compromised individuals who may not guarantee editorial and operational independence of a public service broadcaster. It is highly unlikely that persons who are perceived to be enemies of the ruling political party will be appointed to the ZBC Board. Therefore, the tendency is to nominate and appoint people who are friends, political party cadres and senior government staff members to sit on the ZBC Board and some of them may not have knowledge or experience of any sort in any form media or arts.

It is difficult to envisage how "the efficacy of the scheme for the provision of the public broadcasting services embodied in the Act which is dependent upon the existence of institutional editorial and financial independence of the ZBC"²⁶ will be achieved. The institutional structure of the ZBC does not promote editorial independence because in practice the governance structures are not independent from the appointing authority. In any case, the Ministry of Information, Media and Broadcasting Services does not regard ZBC as independent. This view is affirmed by the words of the Permanent Secretary of that Ministry, Mr George Charamba in response to a deal which the ZBC TV had entered into with Kwese TV for the provision of 2016 Olympic Games content. He is quoted as having angrily said,

²⁶ per DCJ Malaba, *Wekare vs The State and the Attorney General and the Zimbabwe Broadcasting Corporation(1)* and *Musangano Lodge vs The State and the Zimbabwe Broadcasting Corporation CCZ 9-2016*

There was an attempt to smuggle Kwese TV programmes onto our screens and we said get it out of our screens,” said Charamba. “I have differences with ZBC management’s view to introduce a competitor. We stopped it as the ministry. I don’t sit here to mould a competitor riding on our national broadcaster’s platform...”²⁷

This statement underscored the fact that ZBC has neither editorial nor operational independence. Therefore, it cannot fully discharge its mandate as a public service broadcaster as provided for in the BSA.

It must be noted that for as long as there is no restructuring of the corporate governance system at ZBC, independence in public service broadcasting in Zimbabwe will remain a lofty ideal that will never be realised. The current corporate governance system is susceptible to political manipulation and interference. This affirms the assertion that the public service broadcaster is a victim of state capture for political expediency.

In order to appreciate the weak governance structure of ZBC institution which makes it susceptible to yield to state influence and interference, it will be prudent to undertake a comparative jurisdictional analysis of various broadcast regimes.

5. COMPARATIVE ANALYSIS WITH OTHER BROADCASTING LEGAL AND REGULATORY REGIMES

5.1 Republic of South Africa

The South African Broadcasting Corporation (SABC) is the public service broadcaster in the Republic of South Africa in accordance with the provisions of s9 (1)(a) and (b) of the Broadcasting Act No. 4 of 1999. The objectives of the SABC are *inter alia* to provide, in its public broadcasting services, radio and television programming that informs, educates and entertains;

²⁷ Phillimon Mhlanga, ‘Government Cancels ZBC/Econet Deal’, *The Financial Gazette*, 1 September, 2016, <http://www.financialgazette.co.zw/government-cancels-zbceconet-deal/> Accessed on the 23rd of September, 2016.

More importantly, s6 (3) of the Broadcasting Act, No. 4 of 1999 provides that:

...The Corporation in pursuit of its objectives and in the exercise of its powers enjoys freedom of expression and journalistic, creative and programming independence as enshrined in the Constitution.

Freedom of expression is guaranteed under both the Broadcasting Act of 1999 and the Constitution of the Republic of South Africa. As noted elsewhere herein, freedom of expression is the 'lifeblood of any democratic State'²⁸ and it is critical for the effective discharge of public service broadcasting as noted in the judgment by DCJ Malaba in the *Bernard Wekare (supra)*²⁹.

Governance Structure of the SABC

Section 12 of the Broadcasting Act of 1999 provides for the constitution of the SABC board whilst s13 thereof provides for the appointment of the SABC board members. With respect to the ZBC, the nomination and appointment process is not provided in the BSA and therefore, members of the public do not know how Zimbabwe's public broadcaster's board members are nominated and appointed. What is known is that board members are selected and appointed by the minister in charge of broadcasting services.

By way of contrast to the Zimbabwean scenario, the board members of the SABC are appointed by the President of the Republic of South Africa on the advice of the National Assembly in terms of s13 (1) of the Broadcasting Act of 1999. Furthermore, under South African law, the process of nominating suitable candidates for membership to the board of directors of SABC is open in that members of the public are allowed to participate in the nomination process. Furthermore, shortlisted candidates are publicly interviewed to establish whether they are fit and proper persons to sit on the board of directors of SABC.

²⁸ Regina v. Secretary of State for the Home Department Ex Parte Simms (A.P.) Secretary of State for the Home Department Ex Parte O'Brien (Consolidated Appeals) on 8 July 1999.

²⁹ CCZ-9-2016

Individuals who qualify to sit on the Board of Directors of SABC must, in terms of s13 (4)(b) of the Broadcasting Act of 1999, “...be persons who are committed to fairness, freedom of expression, right of the public to be informed and openness and accountability of those who are holding public office.” Regrettably, members who sit on the Board of Directors of ZBC do not have to pass any fitness for office tests except the prohibitions outlined in s173 of the Companies Act [Chapter 24:03] of Zimbabwe. Therefore, members of the public do not know the criteria that is used to nominate and appoint members of the ZBC Board. The common speculation is that the appointees are either relatives, friends or political colleagues of the appointing Minister. The nomination and appointing criteria is so vague that one wonders whether the appointees fully appreciate the gravity of their responsibilities as guardians of democratic pluralism of public service broadcast media in Zimbabwe.

On the other hand, members of the SABC Board are charged with the responsibility of ensuring the implementation of s6 (2) of the Broadcasting Act of 1999, which relates to the Broadcasting Charter of SABC and they are therefore, accountable for its implementation or failure thereof.

The tenure of the SABC Board Members is guaranteed from arbitrary removal from office. On the other hand members of the ZBC Board of Directors serve at the pleasure of the minister. This makes it easy for ZBC Board members to be removed from office at any time if the minister is unhappy with them thereby weakening institutional and operational independence of ZBC. The weak corporate governance structure and unsecure board tenures combine to create a conducive environment for State capture of the public broadcaster.

On the other hand, members of the SABC Board are charged with the responsibility of ensuring the implementation of s 6(2) of the Broadcasting Act of 1999 which relates to the implementation of the Broadcasting Charter of the SABC. Therefore, the SABC Board is also held to account for the effective implementation or otherwise of the Broadcasting Charter.

The tenure of office of the members of the SABC Board is also guaranteed from arbitrary removal from office. The removal

of an SABC Board member is done in terms of s 15A (1) (a) of the Broadcasting Act of 1999 which provides that:

The National Assembly may, after due inquiry and adoption of a resolution recommend the removal of a member from office on account of any or all the following:

- i. Misconduct
- ii. Inability to perform duties of his or her office efficiently
- iii. Absence from three consecutive meetings of the Board without permission of the Board except on good cause shown.
- iv. Failure to disclose an interest in terms of s17 or voting or attendance at or participation in, proceedings of the Board while having an interest in s17
- v. His or her becoming disqualified as contemplated by section 16.

Individually, members of the SABC board have legislative protection from arbitrary removals from office and as a collective in terms of s15A (2) which provides a mechanism of an inquiry to be held and the passing of a National Assembly resolution before the board can be dissolved. Such legislative safeguards encourage the independent discharge of duties and responsibilities of the SABC board.

The governance arrangement under the Broadcasting Act of 1999 reduces the risk of State capture of the SABC but if that happens, the National Assembly is able to exercise an oversight role over the activities of the SABC and its Board. In a conducive environment such as the one created by the provisions of s15A (1) and (2), the curtailment of the influence of executive powers over the governance of State bodies that are meant to provide public services and more importantly, to implement and uphold fundamental constitutional rights like freedom of expression, such as is required of the SABC, will to a greater extent, provide safe cover for the independent discharge of their duties.

5.2 Australia

The public service broadcaster in Australia is the Australian Broadcasting Corporation (ABC), which is a statutory body created in terms of the Australian Broadcasting Services Act of 1983. The ABC is headed by a Governor General who is appointed by the Government. The ABC is run by a Board of Directors whose duties are set out in s8 of the ABC Act of 1983. The main duty of the Board is to ensure that the functions of the Corporation are performed efficiently with maximum benefit to the people of Australia and to maintain the independence and integrity of the Corporation.

The Australian legislation also creates what is known as a 'merit-based appointment process of non-executive directors of the ABC Board. The selection criteria are determined by the responsible Minister under s24 W (1) of the ABC Act, 1983 which provides that:

- (1) The Minister must, by legislative instrument, determine selection criteria for the appointment of a Director referred to in paragraphs 12(1) (b) or (c).

The current merit based process is as follows:

It is conducted by the Nomination Panel which is established under PART III A of the ABC Act. The nomination panel is established in terms of s 24A of the ABC Act and its key functions are set out in s 24B and they are *inter alia*:

- (a) To conduct the selection process for each director referred to in paragraph 12(1) (b) or (c)
- (b) To assess all applicants for the appointment against the selection criteria determined under s24W (1) and any additional selection criteria notified under subsection 24W (2) of the ABC Act.
- (c) To assess all the applicants for appointment on the basis of merit
- (d) To give a written report :
 - (i) If the appointment is of the Chairperson, to the Prime Minister and the Minister; or
 - (ii) If the appointment is not of the Chairperson to the Minister.

on the outcome of the selection process that contains a list of at least 3 candidates who are nominated for the appointment and a comparative assessment of those candidates.”

What is important to note about the Australian process of selecting and appointing suitable candidates is that it is guided by a set criteria unlike the Zimbabwean process which gives the Minister responsible for Information, Media and Broadcasting Services unfettered powers to select and appoint members of the Board of Directors of ZBC. It must be noted that s194 (2) of the Constitution of Zimbabwe, emphasises that appointments to offices in all tiers of Government, including Government institutions and agencies and Government-controlled entities and other public enterprises must be made primarily on the basis of merit. Government has not been following the provisions of s194 (2) in the appointment of Board members for its SoEs.

Whilst this is a noble constitutional provision, it may not be easy to implement in the absence of a comprehensive legislation that outlines the process of selection, appointment and removal of public officers. The process provided in the Constitution of Zimbabwe with respect to the selection, appointment and removal of judges and Commissioners of Independent Commissions established under Chapter 12 of the Constitution of Zimbabwe could be useful in the circumstances because it is generally transparent and accountable. Judges and Chapter 12 Commissioners' vacancies are advertised and the shortlisted candidates are publicly interviewed. This same process could be applied in the selection and appointment of members of board of directors of ZBC and other State Owned Enterprises.

Nevertheless, it is important to note that the Australian system is not full proof. There are also allegations of political manipulation of the public broadcaster but the rate of occurrence of such incidences is low. What also makes the Australian system better is that vacancies on the Board of ABC are publicly advertised in terms of s24B (3) of the ABC Act and a nomination committee is then tasked with the responsibility of selecting and making recommendations for the respective appointments. There is no such room for

transparency in the Zimbabwean system which makes the whole system prone to political manipulation which encourages State capture of the public broadcaster through political appointees.

In terms of s24C of the ABC Act, the Nomination Panel is not subject to direction by or on behalf of the Government of the Commonwealth. This legal arrangement strengthens the independence of the Nomination Panel in the selection process and they can appoint members who are fairly detached from the political relationships. On the contrary, the minister, who is the appointing authority of the members of the ZBC board, is a member of the Executive branch of the State and a political appointee who serves at the pleasure of the President of the Republic of Zimbabwe. The chances are that he will appoint members who are likely to serve the interest of the government at the expense of public interest because his survival as a Minister depends on how he or she performs on the political mandate given to him by the President.

The grounds for termination of membership in the Nomination Panel are also legislated which means that outside the grounds provided in the ABC Act, the Secretary to the Prime Minister of Australia may not remove any member from the 3Nomination Committee.

In his explanatory note to the selection criteria, the Minister explained that it is intended to reflect the duties, skills and desirable attributes of non-executive directors and further that it must substantially reflect experience or knowledge in some key professional disciplines. Furthermore, the candidates are also assessed on their leadership qualities, judgment and understanding of the Media environment'³⁰

This is a comprehensive criteria which facilitates the selection of highly competent people who are independent and are likely to resist political pressures. At least when the vacancies are advertised there will be no doubt as to what kind of people the public service broadcaster will be looking for to run its affairs. It is important for the selection process of public

³⁰ National Broadcasting Legislation Amendment Act 2012, No. 112, 2012

officers to be known, transparent, independent and accountable.

The selection process of ZBC board members lacks these fundamental corporate governance values. There are no advertisements to indicate the availability of vacancies on the ZBC Board neither is the public informed of the selection process. The public only gets to know of any new appointments to the ZBC Board through radio broadcasts or print media reports. Such an opaque process encourages unhealthy patronage by appointees towards the appointing administration. The appointees may feel that they owe their appointments and tenure to the good will of the Minister or the Government in power. Therefore, it is almost impossible to hold a Minister to account for his selection and appointments because of the *carte blanche* that a Minister has under the current legal regime in Zimbabwe. Presumably, this state of affairs suits the incumbent administration because the general allegation against the ruling party that they have been abusing resources of State Owned Enterprises for political expediency. In undemocratic regimes orderliness, transparency and accountability do not auger well for political manipulation. Consequently, it will be difficult to achieve a totally independent public service broadcasting in Zimbabwe that promotes democratic pluralism unless there are legal reforms and change of political attitudes.

The National Broadcasting Amendment Act which amended the ABC Act of 1983, provides further safeguards through the disqualification of certain categories of persons from holding directorship positions on the Board of Directors of the ABC. Section 12(5A) of the National Broadcasting Amendment Act disqualifies:

- (a) A member or former members of the Parliament of the Commonwealth;
- (b) A member or former member of the Parliament of the State, of the Legislative Assembly of the Northern territory;
- (c) A person who is or was a senior political staff member,

albeit for a period of 12 months from the date they ceased to hold such office. The importance of this cooling off provision is that it puts a restriction on the appointment of persons

who are politicians as non-executive directors of the ABC even though the period is short. This arrangement also aids in enhancing the independence of the ABC in its broadcast programmes and reduces the risk of State capture of the public broadcaster.

Notwithstanding the foregoing, it is important to note that the Australian system is not perfect. There were allegations pertaining to the politicisation of the ABC in the 1990s as noted by Dr Rhonda Jolly that:

The issue of the politicisation of the ABC Board has been contentious for some time. ABC Historian Ken Inghs notes that the government of Whitlam and Fraser 'had both replaced every commissioner appointed by the preceding regime, each giving the governing body a preponderance of people sympathetic to its own.'

Kathrine Murphy also made a similar accusation against the former Australian Prime Minister, Mr John Howard in her piece published in *The Age*. She noted that John Howard has transformed the leadership of the National Broadcaster in the past decade. There is no one who is serving on the ABC Board who has not been hand-picked by his Cabinet. Mr Howard's first step in changing the culture was to appoint his friend Donald McDonald as Chairman in July 1996³¹.

These are some of the allegations which led to the promulgation of the National Broadcasting Amendment Act of 2013. The National Broadcasting Amendment Act of 2013 introduced the requirement for appointments based on merit and experience. The process is to a good extent transparent and accountable and it also reduces the risk of appointment of political cronies.

Funding of ABC

In terms of the ABC Act, the Australian Public Broadcaster is funded through triennial funding arrangements and this includes Government funding that is legislated through the

³¹ Kathryn Murphy, "Gaining influence. It's as easy as ABC" 16 June, 2006, <https://www.theage.com.au/news/national/its-as-easy-as-abc/2006/06/15/1149964674521.html> Accessed 2 May, 2018

Annual Appropriation Bill Nos. 1 and 2 and the other main sources of funding are from independent sources that is principally from commercial activities involving sale of goods and services.³²

Under the Zimbabwean regime and in terms of s38 (B) (1) and (2) as read with s38E (1) (h) (i) of the Broadcasting Services Act, public broadcasting services are financed by listeners' licence fees that are levied on every person who possesses a receiver or a listener's device. DCJ Malaba in *Bernard Wekare* (Supra) further explained that:

The money is required to be paid into the general fund of the ZBC before it can be used by the Corporation as revenue to meet the costs of performance of its functions in providing public service broadcasting services in accordance with the provisions of the Act. The primary purpose of the provisions is to establish a mechanism for the funding of the provision by ZBC of public broadcasting services without interference from Government or powerful interests.

Whilst Deputy Chief Justice Malaba's (as he then was) finding regarding the purpose of the fund is theoretically correct, it may not be so in practice. The executive branch of government is involved in appointing Board members of the Public Broadcaster as well as its senior executive and editorial officers. This is a form of government interference as argued elsewhere herein above. The discretion to appoint Board members lies entirely in the hands of the minister responsible for Broadcasting for Information, Media and Broadcasting Services. Furthermore, the interference by the Permanent Secretary of the same Ministry regarding the aborted partnership between ZBC and Kwese.Com TV is indicative of the high level of operational interference over the affairs of ZBC by Government in violation of the BSA and s61(4)(a) of the Constitution of Zimbabwe.

Therefore, DCJ Malaba's (as he then was) view fails to recognise one or more views which indicate that:

³² Dr Rhonda Jolly, "The ABC, An Overview", RESEARCH PAPER SERIES, 2014-15 11 AUGUST 2014, pg38

- (a) there is no mechanism in place for holding ZBC to account in how they utilise the tax collected (listeners and viewers' licence fees) in relation to the provision of public service broadcasting. In one case Deaf Zimbabwe Trust's Executive Director had to engage the former Minister of Information, Media and Broadcasting Service, Prof Jonathan Moyo to direct ZBC's Acting Group Chief Executive Officer Mr Allan Chiweshe to provide Sign Language Interpreters during the 8 pm main news bulletin.³³ Their excuse was that they only had one camera even though they collect listeners' licence fees which could have been used to buy more TV cameras. There is also a pending legal suit by a group of Deaf youths who are arguing that ZBC has a legal obligation to make television accessible to Deaf people through the provision of captions to their programmes, which in other jurisdictions is a basic service under public service broadcasting.
- (b) Whilst the ZBC is expected to operate independently, that is not completely possible because of its ownership structure, an issue which has been extensively discussed herein. DCJ Malaba also makes a similar acknowledgment in the *Bernard Wekare* (Supra) wherein he argued that:
- “...Being wholly-owned by the State, the ZBC as a public broadcaster could be compromised by the pressures of operating with an inherent conflict in the discharge of the dual responsibility of reporting information and bringing critical judgment to bear on public affairs.”³⁴

This observation attacks the perception of the independence of the ZBC in the discharge of its public service obligations and it shows that the current legal arrangement promotes, rather than discourage State capture of the public service broadcaster by the State.

³³ Interview with Deaf Zimbabwe Trust's Executive Director, Ms Barbra Nyangairi, 17 September 2016

³⁴ Rhonda Jolly (Note 28 above) pg34

UNESCO provides a different definition of public service broadcasting which completely eliminates the aspect of State control in the ownership of the public broadcaster. UNESCO defines public service broadcasting as "...broadcasting made, financed and controlled by the public. It is neither commercial nor State-owned, free from political interference and pressure of commercial interests."³⁵ The current ownership structure of ZBC as well as its operational arrangement as described before, disqualify it from being a public service broadcaster under the UNESCO definition. The key points in the UNESCO definition which DCJ Malaba also alluded to in his judgment are:

- (i) Public service broadcasting must be financed by the public
- (ii) Not either commercially or State-owned
- (iii) Free from political interference and pressure of commercial interests.

ZBC fails the test in two aspects. Evidence on the ground suggests that it is both State-owned and controlled and further that it is weighed down heavily by political influence, hence the state capture. Lyndon Tuyani Nkomo observed in respect of point (iii) above that:

A public broadcaster which gives in to the massages of some political fingers can easily mutate into a propaganda tool, which is an affront to the key purposes of broadcast regulation pertaining to ensuring 'the independence, impartiality and viability of public broadcasting services.'³⁶

ZBC finds itself in this predicament of State control and State ownership which make the exertion of political influence over it very much easy. For instance, in the past few years, the ZBC has been giving unlimited broadcast airtime to ZANU PF praise songs by some individuals and groups and the most prominent ones were the late Elliot Manyika and Mbare

³⁵ Elizabeth Smith, *A Road Map to Public Service Broadcasting*, The Asia-Pacific Broadcasting Union, 2012 pg7

³⁶ Lyndon Tuyani Nkomo, 'Political Speech and Public Broadcast Media by Political Parties in Zimbabwe', Zimbabwe, Mired in Transition, E.V. Masunungure and J. M. Shumba (ed), pg37.

Chimurenga.³⁷ These circumstances make it difficult for the provisions of s2A (f) as read with PART 1 (d) of the Seventh Schedule to the Broadcasting Services Act to be realised.

Therefore, whilst legislative good intentions are expressed through the law, they remain theoretical for as long as there is no will power to enforce the law on the part of the ruling administration. This has been the case with Zimbabwe's Government and its relationship with ZBC which has effectively been captured by the former.

5.3 United Kingdom

The public service broadcaster in the United Kingdom is the British Broadcasting Corporation ("The BBC") which operates on the basis of a Royal Charter ("RC") granted to the BBC Trust by the British Queen. In terms of Article 1 (2) of the RC, the members of the BBC Trust and the Executive Board constitute the members of the Corporation whilst in terms of S5 (1) and (2) of the ZBC Commercialisation Act shareholders are appointed by the Minister after consulting the President and the nominees hold the shares on behalf of the Government.

The main purpose of the BBC is to serve "public interest" as provided in Article 3 (1) of the Royal Charter and its main objective is "*the promotion of its public purpose*" as stipulated in Article 3 (2) of the Royal Charter.

In terms of Article 5 (1) of the Royal Charter, the BBC's main activities should promote its main purpose and must have outputs consisting of information education, supplied by means of -

- (a) Television, radio and online services
- (b) Similar or related services which make output generally available and which may be in many forms or by means of technologies which either have not previously been used by the BBC or which have not yet been developed.³⁸

³⁷ Rhonda Jolly (Note 28 above) pg51

³⁸ Broadcasting, Copy of the Royal Charter for the Continuation of the British Broadcasting Corporation 2006

Independence

The independence of the BBC is guaranteed by Article 6 (1) of the Royal Charter which provides that *"The BBC shall be independent in all matters concerning the content of its output, the times and manner in which this is supplied and in the management of its affairs."*

Governance Structure

The BBC is governed by the BBC Trust and the Executive Board. Article 8 of the Royal Charter directs that these two organs are to act separately whilst Article 9 emphasises that the BBC Trust shall maintain its independence from the Executive Board and that it must not exercise or seek to exercise the functions of the Executive Board.

The members of the BBC Trust are appointed by the Queen on advice from the Department for Culture, Media and Sport Minister in the office of the Prime Minister. This arrangement does not eliminate the risk of political appointees to the BBC Trust in light of the strategic position of the BBC. However, the procedure is that when vacancies for Trustees arise, the positions are advertised and the trustees are chosen on merit and the process is regulated by the office of the Commissioner of Public Appointments.

Those who apply to be trustees are shortlisted and interviewed and the interview panel comprises a senior civil servant from the DCMS as Chairperson and some independent assessors including the Chairperson of the BBC Trust. The recommendations of the selection committee are then submitted to the Secretary of State for Culture, Media and Sport and then to the Prime Minister and the Queen.

It appears from the preceding submissions that the selection process is to a significant degree transparent and accountable unlike the Zimbabwean process which is opaque. Under the Zimbabwean regime, the power as well as the discretion to identify, nominate, select and appoint members of the ZBC Board lies in the hands of the Minister of Information, Media and Broadcasting Services. The Media Monitoring Project of Zimbabwe correctly observed that *"...the appointments of public broadcasting officials are political"* and that *"If these*

appointments continue to be made according to ideological affinities or as rewards to political friends ...they would undermine the very credibility of public broadcasting."³⁹ It appears that the Government of Zimbabwe is pursuing a deliberate agenda that excludes transparency and accountability in order to protect its political interests by ensuring that it has absolute control over the operations and affairs of the public broadcaster. The recent furore over a mooted ZBC TV and Kwese.com strategic partnership caused by the Permanent Secretary in the Ministry of Information, Media and Broadcasting Services, who is also the Presidential Spokesman affirms the Zimbabwe Government's objective to exercise absolute control over ZBC even at the expense of business growth⁴⁰.

The Permanent Secretary's statement violated the Broadcasting Services Act and it also ignored the operational independence of ZBC, as will more fully appear in the points outlined below:

First, section 61(4) (a) of the Constitution of Zimbabwe guarantees ZBC's freedom to choose and determine its programming content whilst s61 (3) (b) makes any purported control or interference by the Government in the establishment of broadcasting unconstitutional. ZBC is constitutionally obligated to act as an independent public service broadcaster but the ZANU PF led Government has been misusing it as its propaganda tool.

Section 2A (1) (f) of the Broadcasting Services Amendment Act of 2007 also provides as one of the key purposes and objectives of the Act as, "*to ensure the independence, impartiality and viability of public broadcasting services.*" The independence of the public broadcaster is critical to the impartial and competent discharge of its statutory mandate. However, undemocratic authorities will in many cases seek to manipulate public broadcasting institutions and abuse them

³⁹ Reclaiming the People's Voice: Broadcasting Reforms in Zimbabwe, pg8

⁴⁰ The Financial Gazette, "Government Cancels ZBC/Econet Deal", 1 September 2016, <http://www.financialgazette.co.zw/government-cancels-zbceconet-deal/> Accessed on 15 February 2017.

as their propaganda tools. Regrettably, ZBC has been a victim despite the provisions of s2A (2) of the Broadcasting Services Amendment Act of 2007 which emphasizes that:

The Authority, the Minister and all other persons required or permitted to exercise functions under this Act shall pay regard to the objectives set out in subsection (1) when exercising those functions.

Second, the proper option which the government should have taken was for it to seek an interdict from a competent court if they were of the view that the public service broadcaster was violating its mandate instead of issuing operational directives to the ZBC. The directive affirmed ZBC's capture by the Government.

Third, the fact that both ZBC's Board and Management complied with Mr Charamba's unconstitutional directive shows that they have no spine to stand up on matters of principle and that they are victims of State capture. It also shows that whilst the Constitution of Zimbabwe guarantees ZBC's editorial independence under the provisions of s61 (4) (a) of the Constitution of Zimbabwe, there is a possibility that members of both the ZBC board of directors and its management are politically compromised.

The government's reaction as noted above further shows that for as long as a public broadcaster is State-funded and the administration is appointed by the same authorities, it will be impossible for it to operate independently of the Government or the ruling administration. The notion of editorial independence in the operation of public service broadcasting in Zimbabwe will be a legal fiction.

6. CONCLUSION

In light of the foregoing submissions, I conclude that ZBC is a state captured institution because of the poor corporate governance structure and loose legal instruments which encourage unrestrained interference into its operations by the executive branch of the State. Both the Board and Management of ZBC are weak in that they owe their tenure in office to the pleasure of the government and not the legal instrument that established ZBC as a public broadcaster.

Therefore, ZBC's executive structure which includes the Board, Management and the editorial team deny themselves the independence which is given to them by both the Constitution of Zimbabwe and the BSA because of their political allegiance and their predisposition to accept the overly influential executive power over the operations of ZBC. Hence, there is an urgent need to reform the corporate governance structure of ZBC in line with the values outlined in s3 of the Constitution of Zimbabwe such as the rule of law, independence, transparency and good governance in the discharge of its public service broadcast mandate. State Institutions which must operate independently from government must be allowed to do so without the fear of political reprisals against their officials.

Furthermore, there is need to improve the nomination and selection process of the Board members by clearly setting out the selection process and the criteria to be used in the appointment process. The vacancies on the Board of Directors of ZBC must be publicly advertised. Potential candidates must be nominated by ordinary citizens and civic organisations. Those who would qualify for nomination must not be members of any political party. Consideration must be made to use the Parliamentary Committee on Media, Broadcasting and Information to shortlist and interview potential candidates. The same parliamentary committee must be given the power to remove individuals or the whole board of directors after public enquiries into alleged violations of the public service broadcasting mandate or such other punishable misdemeanours.

The ZBC Board must be allowed to recruit its own executive and editorial staff without interference from the Minister of Media, Broadcasting and Information. ZBC must not receive any form of funding from national treasury but should continue to fund its public service programming from listeners' and viewer's licences.

ZBC must also run commercial broadcasting services for them to cover the funding gap that may be created by inadequate listeners and viewers' licence fees. Furthermore, ZBC should find other ways of fundraising for grants and donations to support their public service programming.

The main objective of these proposed reforms is to put ZBC in a position which significantly mitigates the risk of state capture by either reducing or completely eliminate Government influence and control over the former.