

ARTICLE 19

Tunisia: Media Regulations for the Constitutional Assembly Elections

October 2011

Legal analysis

Executive summary

ARTICLE 19 welcomes the attention the Tunisian Interim Authority has paid to the issue of media regulation during elections. At the same time, we note that a number of provisions fall short of international standards on freedom of expression in relation to elections. ARTICLE 19 calls on the Tunisian Interim Authority to pay close attention to these issues in the critical time prior to historic elections on 23 October 2011.

The Media Regulations contain a number of positive features. There are strong provisions obliging the public and private media to educate the public on election issues, including the extensive provision of free and equitable direct access programming. The principles of impartiality and non-discrimination appear to be well integrated. Gender equality is guaranteed explicitly and its importance recognised in a number of provisions, encouraging the equal participation of men and women in the election as candidates, as voters, and as individuals represented in the media. Provisions also guarantee editorial independence for the media, free movement of journalists, and protections for journalists, their property and sources against acts of violence.

A number of provisions in the Media Regulations either directly undermine or are too weak in their protection of the right to freedom of expression. This problem is compounded by a lack of clear guidelines on how to balance rights and obligations that may sometimes conflict. The Media Regulations would benefit from a more categorical guarantee of the right to freedom of expression and its heightened importance during elections in a transitional democracy. Provisions on defamation are illegitimate due to their lack of regard for the public interest in certain expression. Finally, the broad availability of severe sanctions for violations of the Media Regulations, including the revocation of broadcasting licenses, lack assurances of proportionality.

ARTICLE 19 notes that a strong legal framework for the regulation of election coverage by the media is a foundation stone for the process of democratisation in Tunisia. The Constitutional Assembly, when elected, must seize the momentum of the previous months to fully institutionalise the right to freedom of expression and principles of transparency that are critical to the protection of democracy and other fundamental human rights.

Summary of Recommendations

1. The Media Regulations should explicitly guarantee the right to freedom of expression, its critical importance during elections in transitional democracies, and the criteria for balancing this right against conflicting interests.
2. Provisions on defamation must incorporate a public interest defence and recognise that electoral candidates are expected to display a higher degree of tolerance for critical speech.
3. Provisions allowing the revocation of broadcasting licenses for regulatory violations should be substituted with content-specific sanctions. All sanctions must conform to the principles of necessity and proportionality.
4. The public broadcast media must be obliged to provide technical assistance to parties without the means or expertise to produce direct access programmes.



Table of Contents

- About the Article 19 Law Programme 4**
- Introduction 5**
- International Human Rights Standards 7**
 - The Right to Political Participation 7
 - The Right to Freedom of Expression..... 7
 - Principles on Media Regulation During Elections 9
- Analysis of the Media Regulations for the Constitutional Assembly Elections 11**
 - Fundamental Importance of the Right to Freedom of Expression..... 11
 - Duty to Protect Journalists from Attacks..... 11
 - Duty to Inform Public 12
 - Impartiality and Non-Discrimination 13
 - Direct Access Political Broadcasts 14
 - Media Liability for Disseminating Unlawful Statements 15
 - Duty of Rapid Redress..... 17
 - Impartial Regulatory Authority..... 17
 - Proportionality of Sanctions 18
- ANNEX: Media Regulations for the Constitutional Assembly Elections..... 19**

About the Article 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <http://www.article19.org/resources.php/legal/>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org.

Introduction

ARTICLE 19 welcomes the draft Media Regulations for the Constitutional Assembly Elections (Media Regulations) as a significant improvement to Tunisia's existing election laws,¹ This Comment highlights provisions of the Media Regulations that are in compliance with international standards and indicates areas of concern in need of reform. With the recommended amendments, the Media Regulations are capable of setting a progressive regional standard in this area of the law.

The Constitutional Assembly Elections of the 23rd October 2011 will be the first elections since the autocratic former president Zine al-Abidine Ben Ali stood down in January following widespread protests. The broadcast and print media will be a crucial tool of expression for election candidates transmitting their manifestos and a critical resource for the public seeking to make well-informed decisions at the ballot box. The performance of the media and the regulation of their conduct will be closely monitored by the international community and people in the region hoping to attain comparable changes in their own political systems.

This analysis focuses on whether the Media Regulations strike an appropriate balance between the right to freedom of expression, the right to political participation, and other fundamental rights potentially engaged by the media's coverage of the elections. It draws upon Tunisia's obligations under international law as interpreted by the United Nations Human Rights Committee and the four special mandates on freedom of expression. The Comment frequently refers to ARTICLE 19's "Guidelines for Election Broadcasting in Transitional Democracies" and the ARTICLE 19 policy document "Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation", both of which consolidate international best practice principles and therefore provide authoritative guidance.

The Media Regulations contain a number of positive features. There are strong provisions obliging the public and private media to educate the public on election issues, including the extensive provision of free and equitable direct access programming. The principles of impartiality and non-discrimination appear to be well integrated. Gender equality is guaranteed explicitly and its importance recognised in a number of provisions, encouraging the equal participation of men and women in the election as candidates, as voters, and as individuals represented in the media. Provisions also guarantee editorial independence for the media, free movement of journalists, and protections for journalists, their property and sources against acts of violence.

However, this Comment finds that a number of provisions in the Media Regulations either directly undermine or are too weak in their protection for the right to freedom of expression. The Media Regulations would benefit from a more categorical guarantee of the right to freedom of expression and the heightened importance of this right during elections in a transitional democracy. This problem is compounded by a lack of clear guidelines on how to balance rights and obligations that may sometimes conflict. Provisions on defamation are illegitimate due to their lack of regard for the public interest in certain expression and the heightened tolerance for offense that public officers must demonstrate. Finally, the broad availability of severe sanctions for violations of the Media Regulations, including the revocation of broadcasting licenses, lack assurances of proportionality.

¹ ARTICLE 19 comment on the draft Decree on the Election of the National Constituent Assembly of Tunisia: <http://www.article19.org/data/files/pdfs/analysis/summary-comment-on-the-draft-decree-on-election-of-national-constituent-asse.pdf>.

ARTICLE 19 urges the Tunisian authorities to address the recommendations of this Comment in the future legislation on election issues. Enacting a regulatory framework for the media that conforms to international standards provides a crucial foundational block for the transition toward a more democratic and transparent form of government. The Tunisian Constitutional Authority must harness the momentum of this election to institutionalise respect for freedom of expression.

International Human Rights Standards

The Media Regulations for the Constitutional Assembly elections (the Media Regulations) engage a number of international human rights provisions that form the basis of the legal analysis in Section III. This section identifies those provisions most relevant to the protection of freedom of expression and their relationship to the regulation of the media during elections.

The Right to Political Participation

Article 25 of the Universal Declaration on Human Rights (UDHR) guarantees the right to political participation. The UDHR, as a UN General Assembly Resolution, is not directly binding on states. However, parts of it, including Article 25, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.²

The International Covenant on Civil and Political Rights (ICCPR) elaborates upon and gives legal force to many of the rights articulated in the UDHR. The ICCPR binds its 167 states party to respect its provisions and implement its framework at the national level.³ The right to participate in public decision-making processes is protected under Article 25 ICCPR in the following terms:

- Every citizen shall have the right and the opportunity ... without unreasonable restrictions:
- a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Tunisia signed the ICCPR on 30 April 1968 and ratified it on 18 March 1989. Tunisia is therefore legally bound to respect and to ensure the right to political participation as well as other ICCPR rights, including the right to freedom of expression as guaranteed by Article 19 ICCPR.

The Right to Freedom of Expression

Freedom of expression, including the right of access to information, is a fundamental human right enjoyed by all individuals, including those standing for public office in elections. The full enjoyment of this right is central to achieving individual freedoms and to developing democracy. Freedom of expression is a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of all human rights.

Article 19 of the UDHR guarantees the right to freedom of expression.⁴ The ICCPR elaborates on this right in its Article 19, protecting the right to hold an opinion as well as to impart and receive information in its first two paragraphs:

1. Everyone shall have the right to freedom of opinion

² *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

³ Article 2 ICCPR, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

⁴ UN General assembly Resolution 217A(III), adopted 10 December 1948.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

The role of freedom of expression in realising the right to take part in public affairs is well established. The United Nations Human Rights Committee (HR Committee), treaty-monitoring body for the ICCPR, issued General Comment No.25 emphasising the important relationship between Article 21 and Article 19. General Comment No.25 states that the right to freedom of expression is “essential ... for the effective exercise of the right [to participate in public affairs] ...and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, [and] poverty ... Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.”

The HR Committee outlined its concerns with restrictions on the right to freedom of expression surrounding political discourse and elections in General Comment No.34.⁵ The General Comment is contemporary to the Media Regulations and instructive on the unique role of the media in safeguarding freedom of expression in a democratic society. The General Comment specifically cites the blocking of access to sources of political commentary during elections in Tunisia under the autocratic rule of former president Ben Ali as a violation of the ICCPR.⁶

Although fundamental, the right to freedom of expression is not guaranteed in absolute terms. Article 19(3) ICCPR requires that restrictions on the right must be strictly and narrowly tailored and may not put in jeopardy the right itself. Determining whether a restriction is narrowly tailored is often articulated as a three-part test: restrictions must be: prescribed by law; pursue a legitimate aim; and conform to the strict tests of necessity and proportionality.⁷ General Comment No. 34 stresses that all restrictions on the media during election times must be compatible with the three-part test.

The Article 19(3) requirement that restrictions be prescribed by law is a normative assessment; to be characterised as a law a norm must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.⁸ Ambiguous or overly broad restrictions on freedom of expression deficient in elucidating their exact scope are therefore impermissible under Article 19(3).

Interferences with the right to freedom of expression must pursue a legitimate protective aim as exhaustively enumerated in Article 19(3)(a) and (b) ICCPR. Legitimate aims are those that protect the human rights of others, protect national security or public order, or protect public health and morals. General Comment No.34 states that it may be legitimate for a State party to restrict political polling imminently preceding an election in order to maintain the integrity of the electoral process.⁹ Narrow tailoring requires that permissible restrictions be content-specific e.g. it would be impermissible to close an organisation if it is possible to achieve a protective objective by isolating and removing offending content. Where a State does limit freedom of expression, the

⁵ 21 June 2011 CCPR/C/GC/34 at paragraph 37.

⁶ Concluding observations on Tunisia (CCPR/C/TUN/CO/5).

⁷ Velichkin v. Belarus, Communication No. 1022/2001, U.N. Doc. CCPR/C/85/D/1022/2001 (2005).

⁸ Leonardus J.M. de Groot v. The Netherlands, No. 578/1994, U.N. Doc. CCPR/C/54/D/578/1994 (1995).

⁹ 21 June 2011 CCPR/C/GC/34 at paragraph 37.

burden is on that state to show a direct or immediate connection between that expression and the legitimate ground for restriction.

States party to the ICCPR are obliged to ensure that legitimate restrictions on the right to freedom of expression are necessary and proportionate. Necessity requires that there must be a pressing social need for the restriction. The party invoking the restriction must show a direct and immediate connection between the expression and the protected interest. Proportionality requires that a restriction on expression is not over-broad and that it is appropriate to achieve its protective function. It must be shown that the restriction is specific and individual to attaining that protective outcome and is no more intrusive than other instruments capable of achieving the same limited result.

Principles on Media Regulation During Elections

In 2009, the four special mandates on freedom of expression issued a Joint Statement on the Media and Elections (Joint Statement).¹⁰ The Joint Statement highlights the key role of the media in framing electoral issues and informing the electorate. The four special mandates call on states to adopt a number of measures supporting free expression during elections. Among these measures are rules against discrimination in the allocation of political advertisement, entrusting all regulatory powers to independent bodies, exemption of the media from liability for disseminating unlawful statements made directly by parties or candidates.

Principles on transparent, open and pluralistic electoral campaigning in the media have been also outlined by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.¹¹ This includes placing an obligation on the media to allow sufficient opportunities to journalists to put questions to politicians, and ensuring the availability of electoral materials to groups historically excluded from the political process.

The Organisation for Security and Co-operation in Europe has released a number of detailed statements on the right to political participation that reflect international standards. The Copenhagen Document of June 1990 commits signatory states to “ensure that the will of the people serves as the basis of the authority of government” by, among other means, ensuring “that no legal or administrative obstacle stands in the way of unimpeded access to media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.”¹²

ARTICLE 19 has consolidated international standards and best state practice on media regulations during elections in two policy documents: “Guidelines for Election Broadcasting in Transitional Democracies” (ARTICLE 19 Guidelines)¹³ and “Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation” (Access to the Airwaves).¹⁴ Both policy documents provide

¹⁰ Joint Statement of Special Mandates on the Media and Elections, May 2009; available at <http://www.article19.org/data/files/pdfs/press/joint-statement-on-the-media-and-elections.pdf>.

¹¹ See for example, Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussain, UN Doc. E/CN.4/1999/64 29 January 1999, para. 17 available at [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.1999.64.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.1999.64.En?Opendocument)

¹² Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, para. 7.8.

¹³ ARTICLE 19 Guidelines for Election Broadcasting in Transitional Democracies, London, 1994; available at <http://www.article19.org/pdfs/tools/electionbroadcastingtrans.pdf>.

¹⁴ ARTICLE 19 Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation, March

authoritative guidance on implementing a regulatory framework that properly protects the right to freedom of expression and enhances democratic participation during elections. This Comment draws heavily on these two documents throughout its analysis of the Media Regulations.

The Guidelines and Access to the Airwaves focus on key areas, including: the duty of the media to inform the public on election issues; the duty of impartiality and non-discrimination; the provision of direct access of political parties to mass-media; liability exemptions and the duty of rapid redress; and the need for an independent regulatory authority, complaints and review mechanism. These specific requirements are integrated within the analysis of the Media Regulations in section III.

2002; at Section 9; available at <http://www.article19.org/pdfs/standards/accessairwaves.pdf>.

Analysis of the Media Regulations for the Constitutional Assembly Elections

The Media Regulations address many of the deficiencies of the May 2011 Draft Decree on the Election of the National Constitutional Assembly of Tunisia.¹⁵ This analysis builds on prior review of ARTICLE 19 of the regulation and indicates where further action is necessary to improve the regulatory framework.

Fundamental Importance of the Right to Freedom of Expression

The Media Regulations do not contain a sufficiently categorical assertion of the fundamental value of the right to freedom of expression. It is certainly positive that the first seven paragraphs of the Media Regulations enumerate the rights of the media, including important guarantees of editorial freedom, freedom of movement and access to electoral events, and freedom to report on election related questions. Individually each of these paragraphs guarantee important principles enumerated in the international legal framework as well as in Access to the Airwaves and the ARTICLE 19 guidelines. However, while the collective effect of these provisions suggests at a right to freedom of expression, they fail to explicitly guarantee its fundamental importance. The first provision of the Media Regulations should recognise the particular importance of this right during elections in a transitional democracy, including its instrumental value for the media in providing vigorous and critical commentary and debate on election issues.

The Media Regulations contain no guidance on ensuring that restrictions on the right to freedom of expression strike the appropriate balance between interests that are oftentimes antagonistic. The first two sections of the Media Regulations demonstrate the juxtaposition between “media rights” and “obligations of the media.” For example, the right to “editorial freedom” in the first section potentially conflicts with the obligation to “guarantee information on editorial freedom including the right of response.”¹⁶ Other restrictions on editorial freedom include the right of response,¹⁷ media blackouts¹⁸ and paid advertising.¹⁹ It is essential that the Media Regulations establish a clear standard for determining the legitimacy of restrictions on the right to freedom of expression. Without guidance, the appropriate balance may not be struck. The three-part test of Article 19(3) ICCPR provides a model, requiring that any restriction on freedom of expression be: prescribed by law, pursue a legitimate aim (including protecting the Article 25 ICCPR right to political participation) and be proportionate and necessary.

Recommendations:

- The Media Regulations should explicitly guarantee the right to freedom of expression and clearly articulate how that right may be restricted in accordance with Article 19(3) ICCPR.

Duty to Protect Journalists from Attacks

¹⁵ Ibid 1.

¹⁶ Media Regulations paragraph 8.

¹⁷ Media Regulations paragraph 13 and 14.

¹⁸ Media Regulations paragraphs 17 to 19.

¹⁹ Media Regulations paragraphs 20 and 21.

The physical attack or intimidation of journalists is the most direct form of media censorship. A legal framework designed to guarantee free and fair elections is superfluous if in practice it is undermined by violence, intimidation or more subtle mechanisms of coercion. Security is particularly essential in a democratic transition.

The obligation of the government to safeguard the physical security of all those within its jurisdiction is guaranteed under Article 9 ICCPR and is heightened where Article 19 ICCPR is engaged. ARTICLE 19 notes that paragraph 2 of the Media Regulations partially recognises this obligation by protecting the security of journalists, their sources and their property. However, we also note that this fails to illicit the full extent of the Government's obligation. As outlined in the third paragraph of the Special Mandates' Joint Statement, the Government must indicate measures to prevent acts of intimidation as well as acts of actual violence. Such instances must also be condemned, investigated, the perpetrators brought to justice and the victims compensated.²⁰ Although this obligation persists at all times, it serves an especially urgent need during elections.

Recommendations:

- The Media Regulations should specifically highlight the obligation to protect journalists, their sources and their property from acts of attack and intimidation during the election period, and oblige the government to condemn, investigate, and punish perpetrators.

Duty to Inform the Public

To maximise enjoyment of the right to political participation the state must educate the public on how to register for elections and vote, and provide information on candidates so individuals can make informed decisions at the ballot box. The mass media provide the most effective vehicle for discharging the Government's duty to inform the public. This may justify prescribing certain media practices to ensure that the public has adequate information to properly exercise its right to political participation. Any restriction on freedom of expression is only legitimate to the extent that it is necessary and proportionate to that end.

ARTICLE 19 appreciates that paragraph 8 of the Media Regulations obliges both public and private media to provide information on electoral issues, including the purpose of the elections and how to exercise the right to vote. In addition, the public media are obliged to provide information on key aspects of the elections and the political positions of the various parties and candidates taking part in the elections. This must be achieved through four types of programmes: news, political platforms, debates and free advertising. Their private counterparts have the option of engaging in this kind of coverage through either news or political debates. Paragraph 30 justifies the application of the Media Regulations to private broadcasters under the rationale that broadcast frequencies are limited public resources and prescribing their use to serve the public interest and diversity of opinions is necessary to the goal of public education. Although Access to the Airwaves Principles 29.2 places the primary burden of this duty on public broadcasters, obligations may also be placed on private media provided they are not "excessively onerous."

At the same time, ARTICLE 19 believes that the Media Regulations ought to go further in the content broadcasters and print media are required to carry. The Media Regulations should additionally require the media to reassure voters that the election is free, that the ballot is secret and that the personal safety of voters will be protected on polling day.²¹ This is particularly

²⁰ Joint Statement of Special Mandates, *supra*note 10.

²¹ See ARTICLE 19 Guidelines, p. 41 and Access to the Airwaves, Principle 30.

important given the relative lack of experience people in Tunisia have of free and meaningful elections.

Paragraph 8 partially complies with principle 29.3 of Access to the Airwaves by requiring that media reporting is mindful of gender equality. This affirms that the right to political participation applies irrespective of gender and that media reporting should reflect gender parity. The Tunisian Interim Authority has taken the progressive step of requiring that political parties present equal numbers of male and female political candidates. Supporting this initiative, the Arab Women Centre for Training and Research, in conjunction with the Council of Europe Venice Commission, has begun weekly trainings on fair media coverage involving 32 journalists.²² These efforts are particularly important in Tunisia and for the wider MENA region where women have historically been underrepresented and even formally excluded from politics. However, the principle of non-discrimination²³ requires that the media should promote the democratic integration of all minorities traditionally excluded from political participation including: indigenous people; isolated rural populations; the illiterate; and minority language speakers.²⁴

The Media Regulations are commended for ensuring the transparency of opinion polls. This reflects the recommendations of the Joint Statement of the special mandates, emphasising that the public must be given sufficient information to allow the electorate to understand properly the significance of opinion polls.²⁵ Context is important as they not only reflect public sentiments but also influence voting trends. Paragraph 15 requires that opinion poll results be accompanied with information on who commissioned the survey, the methodology used and the margin of error. Paragraph 16 is perhaps excessive in prohibiting the publication of opinion polls for the entire week preceding polling day. A more proportional period would be closer to 24 or 48 hours.²⁶

Recommendations:

- The Media Regulations should urge the media to reassure the Tunisian electorate that voting is free, by secret ballot and that the personal safety of voters will be protected.
- Public information programmes should encourage the political integration of all minority groups historically marginalised or excluded from democratic participation.

Impartiality and Non-Discrimination

As the principal vehicle of communication between election candidates and the electorate, the media must be cognisant of their ability to intentionally or unintentionally influence the outcome of an election.

The ARTICLE 19 Guidelines state that the media must ensure that their election coverage across all programming gives accurate, balanced and impartial exposure to each political party.²⁷ If a media entity provides airtime to one political party then it is obliged to devote equitable coverage to competing political parties. This derives directly from the fundamental rights of voters and candidates to freedom of expression, the principle of non-discrimination and the duty of the Government to ensure that the public are informed on election issues.

²² <http://www.tap.info.tn/en/en/media/5560-training-session-on-fair-coverage-of-nca-elections.html> .

²³ Article 2, ICCPR.

²⁴ See Article 19 Guidelines, p. 42.

²⁵ Joint Statement of Special Mandates.

²⁶ See ARTICLE 19 Guidelines, p. 39-40.

²⁷ ARTICLE 19 Guidelines, p. 76-77.

The obligations of impartiality and non-discrimination require that the media distinguishes between content that is news and content that is editorial. This ensures that factual news is not confused with political commentary. By extension of the same principle, the media are obliged to distinguish newsworthy activities of current public officials from coverage related to election campaigning. This is often a difficult determination as incumbent authorities often time political acts to gain favourable election coverage.

Paragraph 10 of the Media Regulations requires all media broadcasting information on the political positions of electoral candidates to comply with the principles of pluralism, transparency, equality and equality of opportunity. This is supported by the principle of fair access in news coverage of the elections; applicable to both public and private media through paragraphs 23 and 34. Fair access requires that all parties enjoy a fair, equitable and impartial introduction and access to the air under comparable scheduling conditions. In addition, paragraph 8 of the Media Regulations requires election coverage to comply with the principle of gender equality. The limited progress that paragraph 8 demonstrates is explained above.

The ISIE is required to judge the principle of fair access over one-week periods. This permits broadcasters greater editorial freedom to focus attention on parties generating the most news on a particular day, provided that this imbalance is redressed over subsequent days. This lessens the need to artificially prioritise activity from each political party each day simply to achieve equity of coverage.

Direct Access Political Broadcasts

ARTICLE 19 points out that access to mass media broadcasts is a critical campaign resource for candidates who seek to disseminate their political message to as broad an audience as possible. The corresponding benefit for the public is the enhancement of the right to political participation through opportunities to directly scrutinise candidates' political manifestos.

For this reason, principle 31 of Access to the Airwaves requires that both private and public broadcasters grant election candidates and parties direct access airtime for political broadcasts. Because airtime is a limited resource, it is important that allocation, scheduling and any charges levied are fair, equitable and non-discriminatory. There must also be an objective and transparent criteria for allocating airtime, taking into account levels of support, timing of access and fees.²⁸ Public broadcasters have the additional obligation of providing direct access programming free or at subsidised rates with technical assistance for production where needed.

The Media Regulations, at paragraph 27, oblige public audio-visual media to guarantee access for election candidates to three types of free direct access programming: political platforms, debates, and free advertising. A political platform is defined as a programme that gives a candidate a predetermined period of time to share their positions without the intervention of journalists. A debate is a programme that gives several candidates the opportunity to confront each other on election issues with journalist intervention. Free advertising takes the form of short, state-funded propaganda messages.

The Media Regulations are progressive for guaranteeing free direct access to each type of programme for all political candidates for free. However, no provision is made for free technical production assistance for candidates and parties without adequate expertise. In practice this may form an obstacle for access to direct broadcasts, particularly for smaller parties and independent

²⁸ Joint Statement of Special Mandates.

candidates.

The ISIE must allocate the direct broadcasting time for the three types of programme between public broadcasters according to the principles of fair access and equitable proportionality. Equitable proportionality relates directly to the allocation of speaking time and airtime. It implies “equality of speaking time and airtime between male and female candidates, in compliance with the principle of gender equality and equity.” These must be under “comparable scheduling conditions” and in “proportion to the presence of each party, political group or coalition of parties in the lists of each constituency.”

The formula adopted by the ISIE for allocating broadcasting time is objective and conscious of the fair access and equitable proportionality principles. It allocates airtime according to the number of constituencies an individual is represented in. In an example provided by the ISIE modelled on 50 candidates or parties running for election across 27 constituencies, a candidate or party is guaranteed between 3:30 minutes and 5:30 minutes of political platform airtime, between 1:30 minutes and 5:30 minutes of free advertising, and between 5 and 25 minutes in a political debate against 3 or 5 similarly situated candidates.²⁹ These are fairly substantial slots that take up most prime time television slots in the three-week run up to the election. While this is just a model and subject to modification according to the final number of candidates and constituencies, it appears to conform to the criteria recommended by ARTICLE 19’s Access to the Airwaves and the Joint Statement.

Under Media Regulations paragraph 40, the public written press may also be required by the ISIE to publish electoral propaganda inserts paid for by the State. These shall be equitable and at market cost.

There is no equivalent direct-access timing schedule available for the private media. The private media are not obliged to conduct political platforms but may conduct political debate programmes under the guidance of the ISIE. Paragraph 36 of the Media Regulations states that the private audio-visual media may be required to broadcast brief electoral propaganda adverts that are paid for by the state and allocated equitably by the ISIE. Paragraph 44 provides the same obligation for the printing of adverts in the private press.

At paragraphs 20 and 21 the Media Regulations prohibit paid direct access advertising in the three weeks preceding the election and during polling. Prior to this three-week period, paid advertising is permissible and does not appear to be subject to the principle of fair access. There is also a total ban on advertising any audio-visual or literary works with which political candidates are directly involved. ARTICLE 19 notes that principle 32 of Access to the Airwaves requires that where parties and candidates are permitted to purchase broadcast time to air political advertisements, broadcasters should be required to make such time available on an equal, non-discriminatory basis to all parties and candidates.³⁰

Recommendations:

- The public broadcast media must be obliged to provide technical assistance to parties without the means or expertise to produce direct access programmes.

Media Liability for Disseminating Unlawful Statements

²⁹ See Annex.

³⁰ Principle 32 Access to the Airwaves.

Under international standards, the necessity of protecting the media's role as a conduit for free expression justifies exempting their liability for unlawful statements in certain circumstances. During elections, the balance between freedom of expression and other rights, such as a candidate's right to a reputation, must be calibrated to also recognise the duty on the media to provide impartial election coverage and inform the public on election issues. A liability exemption bolsters these duties by allowing the media to convey news rapidly without the fear of litigation, removing the incentive for self-censorship.

Liability exemptions must not be a license to broadcast any content whatsoever. Where the media has an opportunity to prevent the dissemination of speech that is clearly and seriously unlawful, such as incitement to violence, they ought to do so.³¹ The exemption only protects the media to the extent that it acts as a conduit of expression and not where it endorses the unlawful statements of others.³² It is therefore appropriate for the exemption to apply to direct political broadcasts and political advertising as the media is obliged to carry this content and its editorial freedom is constrained.³³

The exemption only protects the media from liability; the person who made the statement may still be pursued for damages. The media are also obliged to provide election candidates with a right of rapid redress so untrue statements can be corrected. These remedies are thought to protect individuals' rights sufficiently as balanced against others' rights to freedom of expression and political participation.

Paragraph 5 of the Media Regulations exempts the media from liability for "offensive or injurious remarks made directly by the parties or candidates, in a live broadcast or in propaganda, unless the media had an opportunity to prevent it from being broadcast." The exclusion of liability for "offensive" expression is illegitimate as such speech should never be a basis of liability in the first place, particularly for cases involving candidates for public office during an election campaign. The provision does not make clear the media's obligation to prevent direct broadcasting content that amounts to hate speech or incitement to violence.

Paragraph 9 of the Media Regulations states that "all media are obliged not to broadcast defamatory, injurious, or untrue remarks." This seems to conflict with paragraph 5. It is assumed paragraph 9 applies to media programmes that are not covered by the more specific rule, i.e. any programme that isn't a "live broadcast" nor "propaganda." Paragraph 9 restricts the right to freedom of expression in a manner that does not satisfy the three-part test under Article 19(3) ICCPR.

ARTICLE 19 finds that these provisions fails to define its key terms or their scope and is therefore not prescribed by law. To conform to international standards on defamation, Article 9 must require that the defaming party had knowledge or a reckless disregard for the falsity of their statement and that they specifically intended to bring the defamed party into disrepute. This ambiguity prevents the media from confidently modifying their behaviour in accordance with the law.

We note again that Article 19(3) ICCPR allows for the right to freedom of expression to be limited in pursuit of an exhaustive list of legitimate interests, including the Article 17 "right of others" to a reputation. It is therefore legitimate for the Tunisian government to seek protection of this right through restrictions on free expression, but restrictions must be necessary and proportionate.

³¹ Joint Statement of Special Mandates; and Access to the Airwaves Principle 31.2.

³² 36/1993/431/510, Council of Europe: European Court of Human Rights, 22 August 1994.

³³ Access to the Airwaves, Principle 5.

Necessity and proportionality require that a provision be narrowly tailored to achieve the legitimate aim by the least intrusive means available. Paragraph 9 ought to contain a public interest defence that weighs the individual's reputation right against the particularly strong interest the public has in media freedom during elections. Public officials and candidates for public office are expected to display a greater degree of tolerance during these times.³⁴ Because paragraph 9 fails to recognise a public interest defence and the heightened obligation of election candidates to endure attacks on their reputation, it is not narrowly tailored and therefore violates Article 19 ICCPR.

Recommendation:

- Paragraph 9 of the Media Regulations should recognise a public interest defence strengthened during election coverage that requires candidates to display a higher degree of tolerate statements that may be defamatory or injurious.

Duty of Rapid Redress

According to international standards, the elections oversight body must have the power to oblige the media to provide candidates with the opportunity to quickly respond to illegal statements made about them.³⁵ The right of response protects both the right of the individual to a reputation and reinforces the media's duty to provide balanced election coverage that keeps the public informed on election issues. It ensures that both sides of a debate are aired, incentivising candidates to restrain from baseless attacks on opponents, thus increasing the quality of information the electorate receives. It also justifies limiting the media's liability for unlawful statements and expecting candidates to display a higher tolerance for offensive speech.

The Media Regulations in paragraph 13 provides for the duty of rapid response. This is defined as the "right to ask the media for a correction or response if a party or a candidate or a list has been maligned, or been the victim of any other abuse, by a statement made public by the media." This provision also obliges the media to provide the opportunity for correction within time limits to be set by the ISIE. The provision must make it clear when this obligation of the media is triggered; "any other abuse" may be broader than violations of the regulations themselves.

Paragraph 14 prohibits disseminating defamatory, injurious or untrue remarks or new electoral argument on a date or under conditions rendering a response impossible or ineffective. The media is therefore obliged to not carry certain content in the hours leading up to the polling day black-out on media coverage unless the party inclined to respond is immediately available to do so.

Recommendation:

- The Media Regulations should make it clearer when the duty of rapid response is triggered.

Impartial Regulatory Authority

Decree Law No.27 of the 18th April 2011 established the Instance Supérieure Indépendante pour les Élections (ISIE) as the independent regulatory body to oversee the implementation and enforcement of the regulations relating to the Constitutional Assembly Elections of October 2011. The body will disband after the result of this election is announced. The ISIE website is available in Arabic.³⁶

³⁴ Paragraph 47, General Comment No. 34 and the Joint Statement.

³⁵ Access to Airwaves Principle 33 and the Joint Statement.

³⁶ See <http://www.isie.tn/Ar/الرئىسىة-الصفحة> 46 3.

ARTICLE 19 notes that a system of media self-regulation is ultimately preferable to the establishment of a monitoring body. However, in the circumstances of a democratic transition the establishment of such an independent body is welcomed. The ISIE is charged by Paragraphs 45 to monitor the elections to ensure that the media and candidates conduct themselves in compliance with the Media Regulations. Paragraph 46 provides that all persons who witness or are victim to a violation of the Media Regulations may report that to the ISIE. Paragraph 49 provides that decisions of the ISIE will be subject to judicial review to the Appeal Chambers of the Administrative Court. The structure of this oversight body conforms to the standards articulated by the Special Mandates in their Joint Statement.³⁷

Proportionality of Sanctions

ARTICLE 19 expresses particular concern at the provision of a wide range of sanctions for violations of the Media Regulations in paragraph 47. These include the obligation to publicise the infringement, financial sanctions, the possibility of suspending programmes or publications and even revoking a broadcasting or publishing license for the duration of the campaign. It is noted that an independent regulator should principally be charged to promote the public interest in election coverage and not to police media conduct and impose sanctions. Fines should only be imposed after other mechanisms have been exhausted and the suspension or revocation of a license must only be imposed for repetitive and gross violations.³⁸

We note with concern that paragraph 47 of the Media Regulations does not conform to the three-part test in Article 19(3) ICCPR because it contains no reference to the principles of necessity or proportionality; there is no assurance that the severity of the sanction will strictly correspond to the severity of the regulatory violation. This lack of clarity may have a chilling effect on legitimate expression, particularly in a society without a robust or long-established culture of media freedom. The ability of the ISIE to impose apparently limitless fines on the media for violations without reference to the actual harm caused or the intentions of the speaker violate Article 19 ICCPR. The ability of the ISIE to revoke licenses without a showing that the violation is gross and that all other means of redressing the violation have been exhausted is contrary to international standards. General Comment No.34 states that restrictions on the media must always be content specific, rather than impose generic bans on the ability of an entity to disseminate information.³⁹ The Media Regulations do not appear to guarantee the media entity charged with a regulatory violation a right to be represented in determinations of violations. The availability of judicial review is not enough to guarantee due process in the initial proceedings, particularly as a review process is likely not to be completed before the polling stations are closed.

Recommendation:

- Paragraph 47 must ensure that the sanctions imposed by the ISIE are proportionate to the severity of the offense.
- The power of the ISIE to revoke licenses or suspend programmes must be severely limited, particularly where the regulatory violation involved political expression.
- The entity charged with a regulatory violation must be entitled to participate in proceedings against him or her.

³⁷ Joint Statement of Special Mandates.

³⁸ Access to the Airwaves Principle 26 and 27.

³⁹ 21 June 2011 CCPR/C/GC/34 at paragraph 43.

ANNEX: Media Regulations for the Constitutional Assembly Elections of 23rd October

Media Regulations for the Constitutional Assembly Elections of 23rd October 2011

The Instance Supérieure Indépendante pour les Élections (ISIE) [Independent Superior Election Authority]

In view of Decree Law N° 27 of 18th April 2011, relating to the formation of the Independent Superior Election Authority and in particular it's Article 4;

In view of Decree Law N° 35 of 10th May 2011 relating to the election of a National Constitutional Assembly and in particular it's Articles 44, 45 and 46;

After having deliberated,

Decides:

Definitions:

National media: National media means any information broadcasting media (press, radio, television or digital) which is registered on Tunisian territory and according to Tunisian laws.

Digital media: Digital media means any digital content and environments for entertainment, distribution of information or education which are commonly accessible via the Internet, mobile networks, games consoles or multimedia storage devices.

Audio-visual communication: Audio-visual communication means any communication of radio or television services to the public, regardless of the method of providing it to the public.

Press: Press means all periodic printed publications (or written media).

Right of response: Right of response means the right to ask the media for a correction or response if a party or a candidate or a list has been maligned, or been the victim of any other abuse, by a statement made public by the media.

News: News means television and radio news broadcasts, reports and investigation programmes.

Political platform: Political platform means a programme which gives the candidates an opportunity to state their positions for a predetermined period of time without the intervention of journalists.

Debate: Debate means a programme which gives several candidates at the same time the opportunity to confront each other via the intervention of one or more journalists.

Paid advertising: Paid advertising means any space purchased in any audio-visual, press or digital communication medium for electoral propaganda purposes.

Free advertising: Free advertising means short electoral propaganda adverts, paid for by the State, available to the parties, lists and candidates taking part in the elections.

Speaking time: Speaking time means any intervention by a candidate (if speaking directly) or his supporters.

Airtime: Airtime means speaking time plus all editorial elements devoted to a candidate and his supporters.

Proportional equality: Proportional equality means sharing out the speaking time and airtime given to the participating male and female candidates and their supporters, under comparable scheduling conditions, in proportion to the presence of each party, political group or coalition of parties in the lists of each constituency¹. This principle also implies equality of speaking time and airtime between male and female candidates, in compliance with the principle of gender equality and equity.

Fair access: The principle implies that: a) all parties and political groups enjoy a fair, equitable and impartial introduction and access to the air, under comparable scheduling conditions; b) plurality of opinion is assured with regard to access to the air for persons not belonging to parties and political groups; c) the reports, commentaries and presentations to which the consultation gives rise must be presented by the editorial staff with constant regard for moderation and honesty; d) the debate invitation programme must be balanced and representative of the multiplicity of parties and political groups, in compliance with the principle of gender equality and equity.

Area of application

These Regulations apply to all Tunisian national media, in particular the public audio-visual media, public press, private audio-visual media, private press and digital media; during the whole of the National Constitutional Assembly election process, in particular during the electoral campaign until the polling stations close.

Rules applicable to all media

Media rights

1. The media are entitled to free access to official electoral information sources and all campaign events.
2. They are entitled to security and protection for their journalists, their sources of information and their property.
3. They are entitled to retain their editorial freedom and freedom of movement.
4. They are free to report on any question related to the electoral process.
5. They are exempt from any liability that might be incurred as a result of disseminating offensive or injurious remarks made directly by the parties or candidates – in a live broadcast or in propaganda – unless the media had an opportunity to prevent it from being broadcast.
6. They are entitled to express their positions, always making a distinction between "information", characterised by an absolute duty of truth in stating facts and "opinion", marked by the ability to freely express their opinions on those facts.
7. They are entitled to fair access to public finance where this is provided by the ISIE.

Obligations of the media

8. The media are obliged to guarantee information on electoral questions and contribute to making voters aware, including the purpose of the elections and how to exercise the right to vote, in compliance with the principle of gender equality and equity.
9. All media are obliged not to broadcast defamatory, injurious, or untrue remarks and to provide impartial, accurate and faithful coverage of electoral events.
10. All media which broadcast information on the political positions of the various parties, political groups or coalitions of parties participating in the elections shall do so on the basis of compliance with the principles of pluralism, transparency, equality and equality of opportunity. They shall also be obliged to guarantee male and female candidates compliance with the principle of gender equality and equity, particularly with regard to the language employed, the topics dealt with and the use of images.

11. Television services shall ensure that the use of audio-visual archives containing images of public celebrities do not give rise to edited material or uses likely to distort the initial meaning of the document and that they are routinely accompanied by a mention of their source and date.
12. The radio, television and press services shall supply the ISIE, at its request, with all the necessary information, in particular for examining any case referrals sent to them. For this reason, the said services shall keep video or audio recordings of their broadcasts (or printed copies) available to the ISIE during the electoral campaign and polling, until three months after polling day.

Right of response

13. A party or candidate maligned, or who has suffered any other abuse, by a statement in the media during the electoral period, has a right of response. Any means of communication to the public, by electronic means and press, is obliged, where appropriate, to implement the right of response within the time limits established by the ISIE.
14. Publishers in particular shall be sure not to disseminate any defamatory, injurious or untrue remarks or those providing new electoral argument information, on a date or under conditions rendering a response impossible or ineffective.

Opinion polls

15. Any publication and broadcasting of opinion polls directly or indirectly connected with the elections, must give the following information on the survey organisation : its name, that of the purchaser, the number of people questioned and the dates of the survey; as well as the subject of the survey : the methodology and choice of sample, the full wording of the questions, the proportion of people who did not answer any of the questions and the margin of error.
16. In the week preceding polling and during it, the publication, broadcasting and commentary on any election related opinion poll, by any means whatsoever is prohibited.

Media blackout

17. With effect from 24 hours before polling day, no message of an electoral propaganda nature may be broadcast to the public by any means of communication including electronic, press or digital.
18. No partial or final election result may be communicated to the public by any public means of communication before the last polling station has closed.
19. No information likely to give an indication as to the outcome of polling may be broadcast to the public by any means of communication before the last polling station has closed.

Paid advertising

20. The use of any commercial advertising process for electoral propaganda purposes by any audio-visual, press or digital means of communication is prohibited in the three weeks preceding polling (the whole of the electoral campaign), and during polling.
21. The media shall be sure not to broadcast advertising messages in favour of audio- visual or literary works whose author is directly involved in the election or where the title or content are related to the issues of the election.

The public audio-visual media

22. The public audio-visual media are obliged to guarantee the information to voters on electoral questions, including the purpose of the elections, exercise of the right to vote, the key aspects of the elections and the political positions of the various parties and candidates taking part in the elections.
23. During the electoral campaign period, the ISIE shall apply to the public audio-visual media a principal of *proportional equality* to all candidates and their supporters, except in news programmes where the principal applied is that of *fair access*.
24. Every means of public audio-visual communication is obliged to comply with the principle of *proportional equality* between candidates, parties, political groups or coalitions of parties with regard to the reproduction of or comments on statements and written contributions of the candidates and the presentation of their person, except in news programmes.

25. Interventions from members of the government who are not connected with the elections, particularly those which refer to normal government activities, must not be put forward as support for a candidate or list of candidates, a party or political group.
26. Any interventions from members of the government which, by virtue of their content and context, relate to the political debate connected with the elections, particularly those which include an expression of support for a candidate or list of candidates, a party or political group, must be reported separately. Editors shall take this into account by ensuring that the other candidates, lists, parties or political groups also enjoy fair access to the air.
27. The public audio-visual means of communication shall guarantee coverage of the electoral process and access for the candidates and lists of candidates by means of four different types of programme: a) news, b) political platforms, c) debates and d) free advertising.
28. *Proportional equality* and *fair access* to news programmes must be calculated for each type of programme concerned and for a period of one week.
29. The order of appearance of the various parties and candidates on the political platforms, debates and free advertising shall be drawn by lots by the ISIE, before the campaign period begins, in the presence of representatives of the parties and media concerned.

The private audio-visual media

30. As the frequencies are public resources, available in limited numbers, the private audio-visual media using them are obliged to serve the public interest and guarantee pluralism and diversity of opinions.
31. The private audio-visual media are obliged to broadcast information on electoral questions and contribute to making voters aware, including the purpose of the elections and how to exercise the right to vote.
32. The private audio-visual media can decide to broadcast information on the political positions of the various parties and candidates taking part in the elections. In such case, they must declare this to the ISIE before the start of the electoral campaign. The ISIE shall establish the procedure, forms and submission times for that declaration.
33. The private audio-visual media which decide to broadcast information on the political positions of the various parties, lists and candidates taking part in the elections can do so in two different types of programme : a) news and b) debates. A detailed list of these programmes and an accurate timetable of the proposed programming during the electoral campaign must be submitted to the ISIE at the same time as the declaration mentioned in paragraph 32 of these regulations.
34. During the campaign period, the ISIE shall apply in respect of the private audio-visual media, a principle of *fair access* to all candidates and their supporters, both in the news and debates.
35. *Fair access* to news programmes and debates must be calculated for each type of programme concerned and for a period of one week.
36. The ISIE may decide to ask the private audio-visual media to transmit brief electoral propaganda adverts, paid for by the State (free advertising), available to the parties, lists and candidates taking part in the elections. In such case, access to public finance for the media concerned shall be equitable and at market prices; and the order of appearance of the various parties, lists, political groups or coalitions of parties shall be drawn by lots by the ISIE, before the campaign period begins, in the presence of representatives of the candidates, parties and media concerned.

The public press

37. The public press is obliged to guarantee the information to voters on electoral questions, including the purpose of the elections, exercise of the right to vote, the key aspects of the elections and the political positions of the various parties and candidates taking part in the elections.
38. During the electoral campaign period, the ISIE shall apply to the public press a principle of *fair access* to all candidates and their supporters.
39. *Fair access* to the public press must be calculated for each media concerned and for a period of one week.
40. The ISIE may decide to ask the public written press to publish electoral propaganda inserts, paid for by the State (free advertising), available to the parties. In such case, access to public finance for the media concerned shall be equitable and at market prices; and the order of appearance of

the various parties, political groups or coalitions of parties shall be drawn by lots by the ISIE, before the campaign period begins, in the presence of representatives of the parties, candidates and media concerned.

The private press

41. The private press is obliged to disseminate information on electoral questions and to contribute to making votes aware, including the purpose of the elections and how to exercise the right to vote.
42. The private press can decide to disseminate information on the political positions of the various parties and candidates taking part in the elections. In such case, it must declare this to the ISIE as provided in paragraph 32 of these regulations.
43. Any private written press which decides to disseminate information on the political positions of the various parties and candidates taking part in the elections must do so in compliance with these regulations.
44. The ISIE may decide to ask the private written press to publish electoral propaganda inserts, paid for by the State (free advertising), available to the parties. In such case, access to public finance for the media concerned shall be equitable and at market prices; and the order of appearance of the various parties, political groups or coalitions of parties shall be drawn by lots by the ISIE, before the campaign period begins, in the presence of representatives of the parties, candidates and media concerned.

Sanctions

45. The ISIE shall ensure that these regulations are applied by setting up a surveillance mechanism for the public and private media which decide to disseminate information on the political positions of the various parties, lists and candidates taking part in the elections.
46. Each representative of a media, political party, individual candidate or citizen, who believes they have witnessed or been the victim of an infringement of these regulations, is entitled to make a complaint to the ISIE.
47. Graduated sanctions are established: ranging from the obligation to publicise the infringement on the same media (and in the same programme or on the same newspaper page) as that which committed the infringement; financial sanctions; suspension of the programme or publication for a limited period; to partial withdrawal of the media's broadcasting or publication licence for the remainder of the electoral campaign.
48. Any means of public communication, electronic, press or digital, is obliged, where appropriate, to contribute to the execution of any sanctions decided by the ISIE.
49. As provided by Article 47 of Decree Law N° 2011-35 of 10th May 2011 : "Decisions taken by the ISIE in this regard may be appealed before the Appeal Chambers of the Administrative Court which must rule according to simplified procedures, within ten days of the date of submission of the said appeal".

+Distribution of speaking time for the official public radio and television campaign.

Preamble: In order to be able to apportion the speaking time given to candidates (or party representatives, political groups and party coalitions) we need to know the exact number of candidates registered in each constituency. As this information is not currently available, we shall take as a basis the random assumption that there are 50 candidates or parties registered in the 27 constituencies as follows:

Party or list		Number of constituencies in which they are registered
Party 1	Group 1	1
Party 2		1
Party 3		1
Party 4		1
Party 5		1
Party 6		2
Party 7		2
Party 8		2
Party 9		2
Party 10		3
Party 11		3
Party 12		3
Party 13		3
Party 14		4
Party 15		4
Party 16		4
Party 17		5
Party 18		5
Party 19		5
Party 20		6
Party 21		6
Party 22	Group 2	7
Party 23		8
Party 24		9
Party 25		9
Party 26		9
Party 27		10
Party 28		10
Party 29		11
Party 30		11
Party 31	Group 3	13
Party 32		13
Party 33		14
Party 34		14
Party 35		15
Party 36		15
Party 37		16
Party 38		18
Party 39	Group 4	19
Party 40		20
Party 41		20
Party 42		21

Party 43	Group 5	23
Party 44		24
Party 45		25
Party 46		25
Party 47		26
Party 48		27
Party 49		27
Party 50		27

The parties have been divided into 5 groups according to the organisation suggested in the *Media Regulations*: parties present in 6 or fewer constituencies, parties present in 7 to 12 constituencies, parties present in 13 to 18 constituencies, parties present in 19 to 24 constituencies and parties present in 25 or more constituencies.

Let us now think about apportioning the speaking time of the 50 parties, for a period of one week, in a **political platform**¹ programme which will be broadcast every day (during Prime Time and always at the same time, for example 7 p.m.) for a period of 1 hour (7 hours per week making a total of 420 minutes).

Each party in group 1 will be entitled to one unit of time, each party in group 2 will be entitled to two units of time, etc.

In accordance with the above table, there will be a total of 117 time units. Each time unit will be 3 minutes and 30 seconds (420 divided by 117 = 3.589 approximated to 3'30").

This means that, during the week in question, the speaking time given to each party will be as follows:

Group of parties	Speaking time
To each party in Group 1	3'30"
To each party in Group 2	7'00"
To each party in Group 3	10'30"
To each party in Group 4	14'00"
To each party in Group 5	17'30"

The order in which the various parties and candidates will appear on the political platforms will be drawn by lots by the ISIE [Independent Superior Election Authority], before the campaign period begins, in the presence of representatives of the parties and media concerned.

We can deal with the question of **free advertising**¹ in the same way. In this case, it is sufficient to define the length of each short advert.

For example, if each advert lasts 30" the number of adverts allocated to each party in a week could be as follows:

Group of parties	Spots
To each party in Group 1	1 30" advert
To each party in Group 2	2 30" adverts (total 1'00")
To each party in Group 3	3 30" adverts (total 1'30")
To each party in Group 4	4 30" adverts (total 2'00")
To each party in Group 5	5 30" adverts (total 2'30")

The short adverts will be broadcast at the same time every day (for example 8 p.m., before the news bulletin) and in this case too, the order in which the various parties and candidates will appear will be

drawn by lots by the ISIE, before the campaign period begins, in the presence of representatives of the parties and media concerned.

As far as the *Debates*¹ are concerned, the organisation must necessarily be a little different. Debates represent the most important time for an electoral campaign in the media, due to their ability to attract the attention of the public and enable them to make a direct comparison between the various candidates on topics suggested by journalists. The candidates cannot just talk about what they want to, but rather they must answer the questions, sometimes tricky ones, put by the journalists.

In order for a debate to be effective and useful, there must be a maximum of 5/6 candidates present at the same time.

For this reason, we could divide the 50 parties into two categories: a) the parties in groups 1 and 2, and b) the parties in groups 3, 4 and 5.

In respect of the first ones (30 in total) there could be 5 x 30 minute debates per week, with 6 candidates present at each debate (5 minutes per candidate).

In respect of the second (20 in total) there could be 5 x 60 minute debates per week, with 4 candidates present at each debate (25 minutes per candidate).

Both debates of different durations will be broadcast from Monday to Friday from 9 p.m., one after the other.