

Statement by ARTICLE 19 on the Election Commission Guidelines to the State and Private Media in Sri Lanka

November 2001

ARTICLE 19, Global Campaign for Free Expression, welcomes the Election Commission's Guidelines to the State and private media in relation to the Parliamentary General Election on 5 December 2001. The EC Guidelines provide a relatively clear framework for ensuring that coverage of elections by the broadcast media will be fair, balanced and impartial. Unfortunately, fundamental flaws in the Parliamentary Elections Act No. 1 of 1981 remain in place. The following statement is based on international standards on media coverage of elections.¹

Mechanisms for Regulating Broadcasts and Taking Action on Complaints

Article 126(1) of the Parliamentary Elections Act No. 1 of 1981 assigns responsibility to the Chairman of the Sri Lanka Broadcasting Corporation (SLBC) and the Chairman of the Sri Lanka Rupavahini Corporation (SLRC) for allocating broadcasting time to recognised political parties or independent groups. The Attorney General has also ruled that it is logical to assign them the task of monitoring broadcasts and telecasts. The problem is that the SLBC and the SLRC are not independent bodies; they are State broadcasters rather than public service broadcasters with governing boards and editorial structures that are independent of government. An independent body should be responsible for regulating and monitoring election broadcasts.²

The body should also have a mandate to receive complaints from political parties, candidates and members of the public.³ While ultimate recourse to the courts is essential, the cut and thrust of politics, particularly during elections, requires a rapid, accessible forum for addressing complaints. Actions and decisions of this body must also be subject to judicial review, which, given the short duration of election campaigns, must be carried out on an expedited basis.⁴

¹ See ARTICLE 19, *Guidelines for Election Broadcasting in Transitional Democracies* (London: August 1994) (<http://www.article19.org>) and Recommendation No. R (99) 15 of the Committee of Ministers of the Council of Europe on *Measures Concerning Media Coverage of Election Campaigns*, adopted on 9 September 1999 (<http://www.coe.fr/cm/ta/rec/1999/99r15.htm>). These documents are widely regarded as authoritative statements of international standards in this area.

² ARTICLE 19, Guideline 13.

³ *Ibid.*

⁴ ARTICLE 19, Guideline 14.

Limits on Prior Restraint and Media Liability

International law regards restraints on political speech, and particularly prior restraint, with extreme suspicion,⁵ especially since the value of information, particularly during an election, often depends on timely dissemination.⁶ Opinions concerning matters of political debate during election campaigns should, therefore, only be restricted in extraordinary circumstances.⁷ For example, the European Court of Human Rights has ruled that “there is little scope... for restrictions of political speech”, but acknowledged that the State might legitimately restrict incitement to violence.⁸ The Parliamentary Elections Act should therefore clearly state that the government or government media cannot interfere with the broadcast of an election programme, unless it constitutes a clear and direct incitement to violence.⁹

Neither the Parliamentary Elections Act nor the EC Guidelines address the particular problems raised by laws of general application during elections. It is particularly important that such laws should not prevent open political debate during election periods. For example, defamation laws often provide for liability not only of the author of statements but also of those who publish or broadcast the statements. But the media should not be required, or even allowed, to screen party election programmes for actionable or illegal content, except for statements which constitute a clear and direct incitement to violence. As a result, the media should be granted some form of immunity for unlawful statements made by candidates or party representatives during the course of elections campaigns. Candidates or party representatives should be held solely responsible for any unlawful statements they make.¹⁰

Recommendations

To ensure that broadcast media coverage of the upcoming Parliamentary General Election and future elections will be fair, balanced and impartial in accordance with international standards, ARTICLE 19 recommends the following:

⁵ For example, the European Court of Human Rights (ECHR) has ruled that, “freedom of speech of political debate is at the core of the concept a democratic society...” *Lingens v. Austria*, Judgment of 8 July 1986, Application No. 9815/82, para. 42. ECHR cases can be found at <http://www.humanrights.coe.int/>.

⁶ The European Court of Human Rights has emphasised “the dangers inherent in prior restraints” and noted that “news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.” *The Observer and Guardian v. UK*, Judgment of 26 November 1991, Application. No. 13585/88, para. 60. See also Article 13(2) of the American Convention on Human Rights which expressly prohibits all “prior censorship”.

⁷ The European Court of Human Rights has held that when information subject to restriction is a matter of “undisputed public concern”, which surely includes political debate during election campaign periods, the information may be restricted only if it appears “absolutely certain” that its diffusion would have the adverse consequences legitimately feared the state. *Sunday Times v. UK*, Judgment of 26 April 1979, Application. No. 6538/74, paras. 65-66.

⁸ *Arslan v. Turkey*, Judgment of 8 July 1999, Application. No. 23462/94, para. 46; *Gerger v. Turkey*, Judgment of 8 July 1999, Application. No. 24919/94, para. 48.

⁹ ARTICLE 19, Guideline 5.

¹⁰ ARTICLE 19, Guideline 6.

1. An independent body should be given clear responsibility for monitoring and regulating election broadcasts. This body should be responsible for the allocation of airtime to political parties or candidates in the public media and should have the power to hear complaints concerning broadcast-related violations and to take prompt action. Actions and decisions of this body must be subject to judicial review on an expedited basis.
2. The Parliamentary Elections Act should provide that the public media cannot refuse to transmit an election broadcast unless it constitutes a clear and direct incitement to violence.
3. The Act should exempt the media from legal liability for unlawful statements made during election broadcasts by candidates or party spokespersons.

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