
GUIDELINES FOR ELECTION BROADCASTING IN TRANSITIONAL DEMOCRACIES

August 1994 (Reprinted April 1997)

© ARTICLE 19

ISBN 1 870798 12 0

CONTENTS

[Acknowledgements](#)

[Notes on the Authors](#)

[Abbreviations](#)

[Background Note](#)

[Preface](#)

CHAPTER 1 - THE CONTEXT OF ELECTION BROADCAST ISSUES IN TRANSITIONAL DEMOCRACIES

Introduction

- 1.1 Freedom of Expression in the Electoral Process
- 1.2 The Context for Exercising Free Expression Through the Media
- 1.3 The Varied Circumstances of Democratic Transitions
- 1.4 Differences in Country Conditions Affecting the Importance of the Broadcast Media

CHAPTER 2 - PROBLEMS AFFECTING THE MEDIA'S ABILITY TO CRITICIZE, INVESTIGATE AND OPERATE FREELY IN THE ELECTION PROCESS

Introduction

- 2.1 Direct Government Censorship and Intervention
- 2.2 Intimidation, Attacks, and Failure of the Government to Protect the Media

CHAPTER 3 - ELECTION CAMPAIGN ACCESS TO THE BROADCAST MEDIA

Introduction

- 3.1 Types of Access
- 3.2 Amounts of Time Allocated to Direct Access Programming
- 3.3 The Timing of Direct Access Programmes
- 3.4 Financing Political Party Broadcast Access
- 3.5 Criteria for Allocating Air Time

3.6 Implementation Concerns

CHAPTER 4 - PROBLEMS WITH NEWS COVERAGE OF ELECTION CAMPAIGNS

Introduction

- 4.1 Imbalanced Coverage
- 4.2 Failure to Distinguish Between Government Activities and Campaigning
- 4.3 Manipulation of Coverage
- 4.4 Special Information Programmes
- 4.5 Opinion Polls and Election Projections
- 4.6 Foreign Media and Cable Television

CHAPTER 5 - VOTER EDUCATION AND SPECIAL ISSUES

Introduction

- 5.1 Voter Education
- 5.2 Special Importance of Election Broadcasting to Minority Groups, Indigenous Peoples and Women Voters
- 5.3 Local Elections
- 5.4 National Plebiscites and Referendums

CHAPTER 6 - MECHANISMS FOR DEVELOPING BROADCAST POLICY CONCERNING ELECTION CAMPAIGNS

Introduction

6.1 Government Mechanisms

6.2 Self-Regulation

6.3 Media Monitoring and Citizen Action

CHAPTER 7 - INTERNATIONAL AND COMPARATIVE LAW AND STANDARDS

Introduction

7.1 International and Comparative Law

7.1.1 The Right to Political Participation

7.1.2 Freedom of Political Debate as a Fundamental Right

7.1.3 The Role of the Press in Informing the Public and Acting as Watchdog of Government

7.1.4 Freedom of Expression: The Rights of Political Parties and Individuals to Have Access to Government Broadcast Media During Election Campaigns

7.1.5 Non-Discrimination and the Duty of Balance: The Obligation of Government-Controlled Media to Publish Opposition Views

7.1.6 The Right of Reply, Correction or Retraction in Government Media

7.1.7 Limitations on Media Liability for Republishing Unlawful Statements

7.1.8 Political Expression May be Restricted only for Extraordinary Reasons

7.1.9 Enhanced Protection for Criticism of Politicians and Government

7.1.10 Enhanced Protection for Political Opinions

7.1.11 Right to an Effective Remedy

7.1.12 Government Obligation to Protect the Safety of Media Personnel and Premises

7.1.13 Special Measures Where Freedom of Expression Has Been Unduly Restricted Previously

7.2 The Practice of Intergovernmental and Non-governmental Organizations

CHAPTER 8 - GUIDELINES FOR BROADCAST COVERAGE OF ELECTION CAMPAIGNS IN TRANSITIONAL DEMOCRACIES

Introduction

The Guidelines in Summary

[Guideline 1](#): Duty of Government Media to Inform the Public About All Matters Relevant to Elections

[Guideline 2](#): Duty of Balance and Impartiality

[Guideline 3](#): Special Obligations Where Laws Restricting Freedom of Expression are in Force

[Guideline 4](#): Government Obligation to Punish Attacks Against Media Personnel and Property

[Guideline 5](#): Limits on Prior Restraint

[Guideline 6](#): Limits on Media Liability

[Guideline 7](#): Replies, Corrections and Retractions

[Guideline 8](#): News Coverage

[Guideline 9](#): Direct Access Programmes

- (a) Allocation of Time to the Parties
- (b) Decisions Regarding Amount of Time to be Allocated
- (c) Scheduling of Direct Access Broadcasts
- (d) Process for Assigning Time Slots
- (e) Financing of Direct Access Programmes

[Guideline 10](#): Special Information Programmes

[Guideline 11](#): Voter Education

[Guideline 12](#): Opinion Polls and Election Projections

[Guideline 13](#): Mechanisms for Regulating Broadcasts and Taking Action on Complaints

[Guideline 14](#): Judicial Review

[Guideline 15](#): Plebiscites and Referendums

[Guideline 16](#): Local Elections

[APPENDIX I](#)

Relevant Texts From Selected International Human Rights Instruments Regarding Electoral Rights and Freedom of Expression

[SELECTED BIBLIOGRAPHY](#)

Please note that the web version of this document does not have all the endnotes contained in the printed version.

ACKNOWLEDGEMENTS

[Return to contents](#)

Chapters 1-6 of this study were prepared for ARTICLE 19 by Patrick Merloe while on leave from his post as attorney with the law firm of Heller, Ehrman, White & McAuliffe in San Francisco, California.

Sandra Coliver, ARTICLE 19's Law Programme Director, supervised the study and wrote Chapters 7 and 8, with assistance from Patrick Merloe.

Special thanks for their comments on drafts of this study are extended to Edward Fouhy, Executive Producer, Concord Communications Group and a former Executive Producer in charge of the 1988 and 1992 presidential debates at CBS News; Larry Garber, who at the time was Senior Associate for Electoral Processes at the National Democratic Institute for International Affairs (NDI); Alan Protheroe, CBE, Managing Director, The Services, Sound and Vision Corporation, and former Director of BBC News; and David Webster, Chairman of the Trans-Atlantic Dialogue on European Broadcasting. ARTICLE 19 also gratefully acknowledges the advice and assistance of Juan Manuel Garcia-Passalacqua, a lawyer, journalist and lecturer at Yale University; David Hartman,

President of Rodman Down, Inc. and formerly with ABC News; and Christopher Simpson, professor at the American University School of Communications. The International Human Rights Law Group and NDI provided valuable cooperation in making reports and other information available for this study.

The Westminster Foundation for Democracy and the European Human Rights Foundation provided financial support for this project.

The report was edited by Ann Naughton and Helen Darbishire. Elizabeth Schofield proofread the text and Susan York designed and typeset the report.

NOTES ON THE AUTHORS

[Return to contents](#)

Sandra Coliver was the Law Programme Director of ARTICLE 19. She has written, edited and co-edited a number of publications for ARTICLE 19 on international and comparative freedom of expression issues. She has also written several journal articles on freedom of expression and other aspects of human rights law and has filed numerous *amicus curiae* briefs on international human rights law issues with US courts, courts of Commonwealth countries, and the European Court of Human Rights in Strasbourg. She has served as an expert at UN and Council of Europe colloquia on media freedom issues. She practised criminal, constitutional and international law for several years and taught international law and international human rights courses in San Francisco law schools. She currently serves on the Board of the US Section of Amnesty International.

Patrick Merloe acted as Special Legal Counsel to ARTICLE 19 while on leave from his post as attorney with the San Francisco law firm of Heller, Ehrman, White & McAuliffe. He is currently Senior Associate at the National Democratic Institute (NDI) in Washington. He completed graduate studies in public policy analysis at the Institute for Policy Studies in Washington, DC and has taught international human rights law at the University of San Francisco. Mr Merloe has published in the field of international human rights and private law and co-edited another of ARTICLE 19's publications, *Press Law and Practice*. He was *pro bono* counsel to the International Human Rights Law Group and to the Lawyers Committee for Human Rights and previously assisted the NDI on electoral law reform and civic development programmes and as an election observer.

ABBREVIATIONS

[Return to contents](#)

African Charter	African Charter on Human and Peoples Rights
American Convention	American Convention on Human Rights
BBC	British Broadcasting Corporation
CSCE	Conference on Security and Co-operation in Europe
European Convention	European Convention on Human Rights
International Covenant	International Covenant on Civil and Political Rights
MP	Member of Parliament
NGO	Non-Governmental Organisation
OAS	Organization of American States
OAU	Organization of African Unity
Universal Declaration	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations

BACKGROUND NOTE

[Return to contents](#)

Between 1990 and 1992, more than 40 countries held multi-party elections for the first time in decades, and some for the first time ever. While the pace has slowed since that dramatic period, countries continue to plan for their first elections and, in countries that have already experienced their first landmark elections, the transition to democracy continues, often slowly and sometimes with serious setbacks. A major focus of those working for free and fair elections in transitional democracies is fair access to radio and television.

GUIDELINES FOR ELECTION BROADCASTING IN TRANSITIONAL DEMOCRACIES, the first in-depth examination of election broadcasting, surveys the

practice in a range of countries, including both transitional and well-established democracies, and highlights those practices that particularly impede and promote political communication.

Drawing on international and comparative law and standards, ARTICLE 19 presents an authoritative set of guidelines addressing the obligations of governments and government media to ensure fair and equitable broadcasting in election campaigns. GUIDELINES FOR ELECTION BROADCASTING IN TRANSITIONAL DEMOCRACIES is a practical and comprehensive resource book for governments, broadcasters, political parties, election monitoring and citizens groups, and all those concerned with the vital issue of free and fair elections.

Authors: Sandra Coliver and Patrick Merloe

PREFACE

[Return to contents](#)

This study is intended to contribute to a debate on the complex subject of election campaign broadcasting in transitional democracies. The growth of democratic movements around the world in recent years, from Albania to Zambia and numerous countries in between, often took governments and the international community by surprise. A key focus of the democratic movements' demand for free and fair elections has been their call for access to television and radio.

Some of the countries in transition are returning to democratic rule after an interval of dictatorship. Some have well-established political parties accustomed to electoral contests and a press familiar with the role of free expression in promoting the electoral franchise. Chile, with its history of over 100 continuous years of constitutional democracy, disrupted by 16 years of military rule, exemplifies this category.

Other transitional democracies have few democratic traditions and no history of multi-party elections. Mongolia is but one example in this latter grouping. Most transitional democracies fall between the ends of the spectrum. The differences do not necessarily make the transitions more or less difficult. They do, however, illustrate that there is no simple or uniform solution to any of the problems presented in democratic transitions.

One point that is common to all of these countries is the central role of the broadcast media and of freedom of expression generally. Respect for freedom of expression,

especially during campaign periods, is a touchstone for gauging the likelihood for success of a democratic transition.

Transitional democracies face problems not faced by well-established democracies in seeking to ensure the fairness of broadcast coverage of election campaigns. In many transitional democracies, the need for voter education is greater. Voters may require stronger assurances about the secrecy of the ballot, as well as more technical information about how to register and vote. Television and radio is often under government control and may be run by managers and staff who owe loyalty or are sympathetic to the ruling party.

Broadcasters may lack experience in covering elections, conducting rigorous interviews or orchestrating debates. It may be difficult to assess the relative electoral support for different parties and candidates, thus precluding allocation of air time based on proportion of popular support. Opposition parties, even major ones, may lack the resources to produce broadcasts that look as professional as those of the ruling party. Fear of physical or professional reprisal may deter journalists from broadcasting information that reflects poorly on ruling party candidates or may motivate them to give undue coverage to such candidates.

These circumstances are not absent from well-established democracies, but they are likely to be more significant in transitional elections. The obligation of governments and government media to ensure that voters receive sufficient, balanced information to enable them to exercise informed choice remains the same regardless of the stage of a country's democratic development. However, because voters in transitional democracies are not as experienced with elections and because the mechanisms to ensure the transmission of adequate, balanced information are not yet institutionalized, more detailed guidelines are necessary to guide broadcasting in new democracies.

This study draws from the experiences of both transitional and more mature democracies, as well as from principles of international law. The study arose in response to the interest expressed by political parties, broadcasters and non-governmental election-monitoring groups in transitional democracies, as well as by international election observers, in having a set of guidelines concerning broadcast coverage of election campaigns based on international law and practice. The guidelines were developed in consultation with, and reviewed by, several experts in elections and election broadcasting from a range of disciplines and countries. The study is by no means exhaustive, and points to areas where further examination, analysis and discussion are needed.

The first six chapters of this study are based on a broad sampling of international election observer delegation reports from an array of respected organizations. Research was carried out in late 1992 and early 1993 of 92 reports of international observer teams from 31 organizations, covering 56 elections in 41 countries. These reports present valuable information on the historical and political context of the various elections as well as information concerning the status of freedom of expression and the role of the mass media. Although most reports did not address the role of the broadcast media at any

length, we are confident that the size and breadth of the sample was sufficient to ensure representative data on the problems confronting broadcast media as well as to identify country practices that have consistently promoted or impeded fair coverage. We are confident also that reports from a sufficient number of organizations were examined to avoid any institutional biases that might have been present.

Chapter 7 examines the international and comparative law, standards and jurisprudence that underpin the right to freedom of political communication, including the right of parties and candidates to express their views freely through the mass media and the right of the public to hear those views. It also addresses the right of citizens to sufficient, balanced information to enable them to participate fully in the election of their government. The chapter includes a brief review of the technical assistance and election monitoring initiatives undertaken by inter-governmental and non-governmental organizations.

Chapter 8 consists of the Guidelines themselves, with commentary that references the most pertinent law, standards and practice from the preceding chapters. The Guidelines examine the obligations of governments and government media concerning three kinds of election broadcasts: (1) direct access programmes, over which the political party or candidate has complete editorial control; (2) interviews, debates, candidate forums, radio "talk-back" shows, voter education programmes and similar formats; and (3) news coverage.

The Guidelines address the obligations of governments to inform the public; abolish laws that restrict freedom of expression; refrain from censorship; bring to justice those responsible for any actual or threatened attacks on media personnel or offices; establish an independent body to monitor and regulate election broadcasts; and ensure that decisions affecting election broadcasts are subject to judicial review.

The Guidelines also apply to public-service broadcasters — media which are supported entirely or in part by government funds but are governed by boards that are independent of government and all political interests — because they have the same obligations as government media by virtue of their funding. The Guidelines do not address private media because such media do not have obligations under international law. However, ARTICLE 19 urges private broadcasters to comply with the Guidelines as a matter of professional responsibility if they choose to provide broadcast coverage of elections.

ARTICLE 19 hopes that this publication will assist governments, broadcasters and political parties involved in democratic transitions to establish effective mechanisms for ensuring fair and adequate coverage of election campaigns. It is intended also to assist those involved in monitoring elections and civic education. We hope that this publication may thereby contribute to the fairness of elections themselves.

Frances D'Souza, Executive Director. July 1994.

CHAPTER 1

[Return to contents](#)

THE CONTEXT OF ELECTION BROADCAST ISSUES IN TRANSITIONAL DEMOCRACIES

Introduction

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. ... The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

(Article 21 of the Universal Declaration of Human Rights)

The right of every citizen to participate in government through free and fair elections is well settled under international human rights law. While Article 21 of the Universal Declaration of Human Rights is the source most often cited for this point, numerous international instruments recognize electoral rights.

The International Covenant on Civil and Political Rights (International Covenant), the African [Banjul] Charter on Human and Peoples' Rights (African Charter), the American Convention on Human Rights (American Convention), and the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) all address electoral rights. These instruments also highlight the right of the public to receive information and ideas, as well as the right of the mass media to impart information and ideas. Governments have an obligation not to interfere with these rights.

Country practice underscores the international community's recognition that free and fair elections are a crucial component of civil and political rights. Indeed, it is impossible to conceive of people exercising their democratic aspirations without effective participation in the electoral process.

There is also a growing acceptance of the proposition that governments have a positive obligation to promote a diversity of viewpoints on matters of public interest in the media. This is especially true for issues under political debate. Further, where state-owned or state-controlled mass media exist, the government is obliged to ensure that there is no discrimination in programming, including on the grounds of political opinion. These obligations are applicable during election campaigns and help to ensure the conditions necessary for genuine, democratic elections.

The United Nations General Assembly, in its resolution on "Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections," stressed that "periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights of the governed ...". The resolution also stressed that the right to take part in government "is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social, and cultural rights...".

At the Paris meeting of the Conference on Security and Cooperation in Europe (CSCE) in June 1989, a proposal was made that free and fair elections become a CSCE standard. This concept was incorporated into the CSCE's 1990 Copenhagen Document, which states that the participating states "recognize that pluralistic democracy and the rule of law are essential for ensuring respect for human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character."

The CSCE's statement underscores that political stability and respect for human rights are enhanced by popular participation in a country's political process, which is reinforced by the people exercising their right to vote in periodic and free elections. When properly conducted, elections provide the population with a decisive role in choosing the country's political leaders or in deciding important national issues through referendums.

Elections, even when conducted in a relatively free and fair manner, may not of themselves secure a democratic transition. Election results, for example, are not always respected by the dominant political forces in a country. The 1989 elections in Panama, the 1990 elections in Burma (Myanmar), and the June 1993 elections in Nigeria prove this point all too graphically. Elections, even when their results are respected, represent one stage of an electoral process, and voting procedures on election day are not a sufficient indicator of the fairness of that process. The democratic character of an election must be considered in its context.

Respect for human rights, including the freedoms of expression, association and assembly, as well as the right to be free from intimidation, are central to an effective electoral exercise. Elections, therefore, provide an occasion to evaluate how other institutions are functioning in a country to ensure and promote a spectrum of civil and political rights.

A thorough analysis of the electoral process in any country must include the examination of a range of issues outside the scope of this report. Such issues include whether the military is neutral and acting as a professional body; whether the police and other security forces are acting to maintain order and to protect those seeking to exercise their rights in the electoral process; whether the judiciary is conducting itself impartially and whether the political parties and coalitions are free to build and spread their messages. Additionally, the degree to which the media is free to criticize the government and to report on the parties and events of significance in the election period are of crucial concern to the electoral process and are the focus of this report.

1.1 Freedom of Expression in the Electoral Process

[Return to contents](#)

Democracy depends on all contesting points of view being fairly and equitably communicated so that the people may make informed choices. The ability to express views freely in opposition to the status quo is essential to an effective electoral exercise.

The ability of the opposition, in addition to the ruling forces, to avail itself of the mass communications media is critical in this regard. There cannot be meaningful and vigorous debate of fundamental issues facing a country without a means for expressing views. The mass communications media provide that vehicle in many instances. It is at this point that the freedom of expression recognized in Article 19 of the Universal Declaration of Human Rights (as well as in numerous other international instruments) and electoral rights intersect. Article 19 acknowledges not only the right to hold opinions without interference but also the right "to seek, receive and impart information and ideas through any media and regardless of frontiers."

Three sectors of the population have critical free expression rights to consider in the electoral context: potential voters as part of the general population, the news media, and the political forces that seek to compete for elected positions or otherwise to affect the outcome of the vote. Voters, of course, depend upon the right to receive full and accurate information. The media depend on their right to question and criticize the government, the candidates, and the otherwise contending forces, free of censorship, intimidation or political pressures. The political parties and coalitions depend on the ability to present their messages freely without distortion or manipulation and with sufficient time for their messages to be understood.

1.2 The Context for Exercising Free Expression Through the Media

[Return to contents](#)

Analysis of freedom of expression for political parties in elections must include the extent to which the parties are free to organize and convey their messages to the public. It must also include the degree to which the government takes steps to eliminate inequities affecting the ability of the parties to communicate these messages. This latter factor is particularly important in countries in transition from military or one-party rule to democracy.

Factors including whether the parties are free to organize rallies, mass meetings, door-to-door canvassing and are generally free to communicate with potential voters affect the relative importance of the mass media for conveying political messages. Problems facing the parties in these areas may also indicate the types of pressures being placed on the media.

Material resources of the parties, including those used to finance communications with the public, are also important. Access of political parties to the mass media, through free public service time and purchased time, is usually a critical campaign resource. While absolute equality between parties in campaign resources is rarely possible, the degree to which the government acts to ensure the availability of equitable campaign resources is central to its ability to hold free and fair elections.

When approaching the role of the mass communications media in this regard, the legal and regulatory framework should be examined as well as the degree to which freedom of expression is respected in practice. While press freedom generally may be constitutionally and legally guaranteed, it may be undermined in practice by violence, intimidation, corruption or more subtle mechanisms.

The degree of regulation of the mass media and the independence of the regulatory body may be important in determining the actual conditions under which the media operate. Whether the media are government-owned or controlled is also significant. If the media are in private hands, it is necessary to know whether the owners are aligned with one or more political tendencies. It is also necessary to determine whether owners respect editorial independence.

The recent historical context of press freedom is also a relevant factor in evaluating free expression in an election. Some countries have a tradition of a relatively free and robust press even though they are presently in a democratic transition. In this regard, one branch of the news media may be more reliable than others. In Pakistan, leading up to the 1988 elections, for example, the print media were viewed by international observers as being amongst the most uninhibited amongst developing countries, while the broadcast media were completely government-controlled. In Chile, leading up to the 1988 national plebiscite on the return to civilian rule, radio provided considerably more balanced treatment of the two competing sides than did television or the printed press.

Other countries may have recently experienced restrictions on press freedoms. The Republic of Korea's 1987 presidential elections, for example, were conducted under the shadow of repression, which included the firing of 683 journalists in the 1980 "Purification Movement". Also, until just six months before the elections, the government issued daily press "guidelines" dictating how the news was to be covered. The nine-year state of siege in Argentina continued throughout the campaign period leading to the 1983 national elections. In Zimbabwe a state of emergency was still in force during the 1985 elections.

Extra-governmental forces may also affect the functioning of the press and its role as a vehicle for political parties to communicate their messages. In the year prior to the 1990 elections in Guatemala, for example, a television station was bombed, the offices of a periodical were destroyed by unidentified persons, the owner of two radio stations was assassinated and, less than two weeks before the vote, the founder of an opposition paper suffered an assassination attempt in which his wife was killed and he was seriously wounded.

1.3 The Varied Circumstances of Democratic Transitions

[Return to contents](#)

Democratic transitions take place under varied conditions. A country may be returning to democracy after a relatively short, if nonetheless dramatic, break from long-established democratic traditions. Argentina, Chile and Uruguay provide such examples. While national differences were significant, each had the advantage of well-organized political parties, developed news media, relatively advanced economies, and populations well-schooled in democratic processes.

Prior to their recent transition processes, countries such as Albania, Ethiopia and Mongolia had few democratic traditions, no history of multi-party elections, weak opposition parties, almost no truly independent news media, and relatively poor economies. Until Guatemala's democratic transition in 1985, the country had experienced more than 30 years without democratic rule, and more than 60 per cent of the voters were under 30 years of age.

In some countries the democratic transition is achieved quickly and is relatively smooth, as demonstrated in Czechoslovakia in 1989. The transition in other countries may be tortuous, including many set-backs, as Haiti's experience illustrates.

In many countries the first election in the transition process serves as a referendum on whether to reject the former or present regime. The 1986 elections in the Philippines, the 1990 elections in Bulgaria, and the 1992 elections in Kenya fall into this category. In

contrast, by the time the 1990 elections were held in Hungary, the transition had advanced to the point where the question was not whether to reject the past, but which direction to go in the future and at what pace.

1.4 Differences in Country Conditions Affecting the Importance of the Broadcast Media

[Return to contents](#)

The importance of news media in an election campaign may be increased where there is little time to conduct the campaign. This may be even more crucial where the amount of time is so short that the opposition has little opportunity to form political parties and select candidates known to and respected by the people. In Malaysia's 1990 elections, for example, the campaign period was restricted to two weeks due to what the government claimed were security precautions. Albania's 1991 parliamentary elections also were considered by international observers to be too brief for political parties to establish themselves or adequately present their messages to the voters.

The importance of the broadcast media can also be heightened by such factors as the limited availability of newspapers and materials published by political parties. National distribution systems may be inadequate to deliver printed materials outside large cities, or the incumbent political forces may be unwilling to deliver independent or opposition publications. This was a problem, for example, in Romania's 1990 elections.

The print media may not be independent and objective, thus restricting distribution of certain parties' messages, especially those of small parties. There may be shortages of newsprint, ink, or inadequate printing or distribution facilities. The price of newspapers also may be prohibitive, as happened in the 1990 elections in Bulgaria. Only two newspapers had a national circulation, and each was associated with just one political party.

Illiteracy may also increase the importance of the broadcast media in certain countries. In the 1989 Namibian elections, for example, it was estimated that 60 per cent of the population was illiterate. This heightened the importance of radio, which was estimated to be the main source of news and information for up to 90 per cent of the people. In Guatemala's 1985 and 1990 elections, illiteracy was estimated to be 50 per cent nationally and 70 per cent among indigenous peoples.

Access to radio and television sets also can affect the importance of the broadcast media, as happened in Kenya's 1992 elections. It was estimated that Kenya's approximately 25 million people had access to only 82,000 televisions and two million radios. By contrast, in Taiwan's 1989 elections it was estimated that over 90 per cent of families owned television sets, and almost all owned radios. An estimated 80 per cent of the population

had access to television in Chile at the time of the 1988 national plebiscite and the 1989 general elections. In addition, television was the only mass medium that reached all of the geographic regions of the country.

CHAPTER 2

[Return to contents](#)

PROBLEMS AFFECTING THE MEDIA'S ABILITY TO CRITICIZE, INVESTIGATE AND OPERATE FREELY IN THE ELECTION PROCESS

Introduction

The media's right to function freely during the electoral process is circumscribed by restrictions on their ability to criticize activities or inaction by the government and the political parties, to investigate corruption and to operate independently of political pressures. In a significant number of transitional democracies, broadcast and print media face government intervention through direct censorship and threats of censorship. They also face government-sponsored or government-tolerated physical threats and attacks. In these circumstances, censorship may significantly inhibit free and fair election campaign broadcasting.

Censorship includes a range of government-supported actions from direct censorship to murder. The term "direct censorship" refers to improper and unlawful prior restraints on publication. It also is used to refer to communications from government officials that explicitly or implicitly threaten direct censorship or some other consequence for publishing items unfavourable to the government.

Government action or inaction that places journalists in fear for their personal safety or the safety of their professional equipment constitutes a form of censorship which, though "indirect", is often even more powerful than the measures which are more traditionally viewed as censorship. Often measures of intimidation are coupled with more direct forms of censorship, such as detention of journalists, in order to drive home their meaning.

Media outlets that are subject to, or threatened with, measures of direct censorship or intimidation are likely to exercise a degree of what could be termed as self-censorship in

order to avoid the sanctions of government or the violence of government-tolerated groups. Such self-censorship is not exercised willingly.

Self-censorship also may be exercised by media outlets which are controlled by interests that are closely allied with the government and which impose censorship within their media outlets owing to support for, rather than fear of, the government.

2.1 Direct Government Censorship and Intervention

[Return to contents](#)

Censorship by Government-Controlled Media

Censorship may take a number of forms in the election context. In Zambia's 1991 elections, for example, political advertising was allowed, but the government-controlled Zambian National Broadcasting Company (ZNBC) refused to air the opposition's advertisements, apparently on grounds that they violated advertising ethics and could put ZNBC at risk of an action for libel. The Zambian High Court issued an injunction ordering ZNBC to run the advertisements but reversed its decision several days later. The opposition then agreed to delete portions of the advertisements which ZNBC considered inappropriate.

Former United States President Jimmy Carter criticized ZNBC for censorship at a press conference in Lusaka six weeks before the elections, stating: "I can understand why [ZNBC] will not want to publish advertisements that [are] scurrilous in nature or might encompass a slander or would have immoral or filthy words in them But they are also maintaining to have the right to decide what is truth and what is not truth in a heated political campaign." The Zambian Voting Observation Team (Z-Vote), an international election observer delegation of which Jimmy Carter was a member, reviewed transcripts of the advertisements and deletions provided by ZNBC. The team argued in a letter to the ZNBC that its deletion of the claim that the ruling party had engaged in "27 years of mismanagement" appeared indefensible and that such claims clearly were legitimate campaign issues.

Censorship by Government Agencies

The 1991 Taiwan election provides an example of government censorship of political broadcast advertising. Taiwan's Central Election Commission officials reviewed television campaign advertisements in advance and prohibited references to the independence issue. In the 1986 Philippine election, broadcast advertising was censored, and the opposition was forced to petition the Movie and Television Review and Classification Board before their unpaid advertisements were allowed.

Banning Access for Certain Political Parties

During the 1991 election campaign in Bangladesh, the Jatiya Party, and other parties that took part in the 1988 election, were excluded from coverage by television and radio. They also were not allowed to present a half-hour political broadcast, an opportunity which was granted to other parties.

Media Closures

Censorship, including closure of media outlets, was part of the context of the 1989 Panamanian elections. All three daily opposition newspapers (*La Prensa*, *El Extra* and *El Siglo*), were closed by the government in 1988 and remained closed during the election campaign. Three radio stations (Radio KW Continente, Radio Noticias and Radio Mundial), which had been shut down by the government, remained closed during the campaign. Television Channel 5, which was owned by President Delvalle, was closed when he was ousted from office in 1988, although it later reopened under pro-government leadership. One month before the vote, Channel 4, the most independent television station, received a notice that it faced prosecution for US\$2 million in back taxes. The station interpreted this as an attempt to pressure it to reduce the access it provided to opposition parties.

Government Confiscations and Sedition Charges

In the period leading up to the December 1992 elections in Kenya, the government seized publications that were particularly critical of its activities and imprisoned journalists. The government also used the law of sedition to harass media critics. On 5 January 1992, for example, police officers impounded over 30,000 copies of *Society* magazine and obtained a permanent injunction against its distribution on grounds that statements alleging government complicity in the murder of Foreign Minister Robert Ouko were seditious. In April five *Society* journalists were detained for nine days on sedition charges and in August the editor of *Finance* magazine was held for 13 days on sedition charges related to allegations of government involvement in tribal violence. These actions helped to create an atmosphere of self-censorship affecting all media.

Threats of Censorship

During the 1989 election campaign in El Salvador, officials at the Ministry of Culture and Communications reportedly made threatening telephone calls to journalists who ran stories that were not to the government's liking. These actions reinforced the climate of self-censorship. A state of siege existed in El Salvador for most of 1980 to early 1987. During that period freedom of expression was curtailed, and journalists feared violent reprisals from political extremists, including death squads. Although the situation for the press had improved by the 1989 election campaign, a high degree of repression remained.

Government political pressure on the broadcast media in an election period is often more subtle than direct censorship. The Republic of Korea's 1988 elections illustrate these circumstances. Television and radio outlets were all controlled or restricted by the government. A week before the elections, the General Federation of Korean Broadcasters

Organizations (GFKBO) was formed with members from the government-owned Korean Broadcasting System (KBS), the government-controlled Munhwa Broadcasting Corporation (MBC), and the Christian Broadcasting System (CBS). The GFKBO called for an end to outside pressure and intervention during the election period. In addition, six days before the election, more than 20 reporters at the Pusan KBS outlet initiated a boycott of news operations, charging that their reports on the election campaign had been distorted when broadcast. Without such actions, it could have been difficult to detect government pressure on the broadcast media.

Martial Law and States of Siege

Governments may make use of, or threaten to make use of, extraordinary powers to censor the media during election campaigns. A blatant example of censorship was demonstrated by the 1990 elections in Burma (Myanmar), where martial law imposed by the government permitted it to censor or forbid communications by political parties and candidates simply by labelling criticism of the government or defence forces as divisive.

The political parties were only allowed one 10-minute television slot and one 15-minute radio slot. Even then, their statements required the government's prior approval. Applications to the Election Commission were required, together with a copy of the script of the speech at least seven days in advance. Both the script and the tape of the speech were reviewed before a permit was granted.

The shadow of the military loomed over the 1983 Argentinian elections because a nine-year state of emergency continued throughout the campaign. While the state of emergency was suspended the day before the vote, the government gave no assurance that it would not be reimposed following the elections. Further, the absence of a specific commitment to the transfer of power added to the uncertainty surrounding the elections.

2.2 Intimidation, Attacks, and Failure of the Government to Protect the Media

[Return to contents](#)

Attacks on journalists or media offices are a powerful form of censorship. Such attacks may be committed by government agents or by non-governmental entities which may even include other competing political parties. In all cases, the government is obliged to thoroughly investigate the crimes, prosecute the perpetrators and punish those found to be guilty — the same obligation that it owes to all people within its jurisdiction. In addition, the government arguably has a particular duty to condemn, prosecute and punish such crimes because of the injury they inflict on media freedom. While direct methods of censorship violate Article 19 of the International Covenant on Civil and Political Rights and other provisions of human rights treaties which protect freedom of expression, a

government's support for, or failure to prosecute, attacks on journalists in addition violates the rights to security of the person and to an effective remedy guaranteed by all of the general human rights treaties.

Government Attacks on Journalists

Domestic and foreign journalists were intimidated and attacked by security forces during Haiti's 1987 election campaign. The incidents included an army attack on a radio station; the confiscation of cameras, film and tape recorders; and the detention, beating and shooting of journalists. According to foreign observers, in a period of two months 14 journalists fell victim to such incidents.

Detention of Journalists

Intimidation sometimes takes the form of the arrest of journalists. During the 1984 Uruguayan election campaign, for example, two journalists and the publisher of a newspaper were detained by police approximately eight weeks before the election and questioned about a story they published on torture of political prisoners, which cast the government in a negative light.

During the election campaign period in Kenya, police seized thousands of copies of *Finance* magazine from its printers in November and again in December 1992. Police detained the magazine's editor on charges of sedition in December, less than three weeks prior to the elections. Earlier that month, the police detained the editor of another opposition magazine on sedition charges.

Prosecution of Journalists

Threats, violence and the effect of government prosecutions and economic pressures on the media all contributed to the climate of intimidation in the campaign leading to Chile's 1988 national plebiscite. During 1987 and 1988, at least 30 journalists faced prosecution on charges such as "insulting the armed forces". Some charges resulted in imprisonment. The heads of independent and opposition media, including radio and the press, were among those subjected to such intimidation. Threats, including death threats, from unidentified groups believed to be linked to the military were common.

In the 15 months between the October 1988 national plebiscite and the December 1989 general elections in Chile, international observers reported a decrease in censorship and harassment of the media but that a continued atmosphere of intimidation prevailed. Cases against journalists abounded in the military courts, as did violent acts and death threats by unknown groups. In the month before the general elections, for example, a journalist who had received death threats and an editor of an opposition weekly were the target of arson attacks.

Failure to Protect Journalists from Attack

During Pakistan's 1990 election campaign, political parties attempted to intimidate the press through threats and disruption of distribution. The police often failed to protect the press. Attacks on the press usually occurred after negative stories appeared concerning particular parties or party leaders. In Korea's 1987 election campaign, the offices of *Don-A Ilbo*, an independent daily newspaper, were attacked by supporters of the ruling party a week before the vote. Romania's 1990 election campaign was marred in both January and February by organized groups of coal miners and other government supporters attacking opposition political parties and their press. No prosecutions resulted from these attacks.

Such actions undoubtedly hinder broadcast coverage of election campaigns. At a minimum they contribute to a chilling of the media's freedom to investigate government abuses as well as to criticize the actions and omissions of the political forces at play in the country.

During the 1985 elections in Guatemala, intimidation over the preceding years created by numerous death threats and murders of journalists — 47 journalists were killed between 1978 and 1985 — constituted the most powerful form of censorship. Not only did the government fail to investigate or prosecute these attacks, but it was widely believed that government forces had encouraged or supported them.

In the face of such conditions, it is imperative to counter invidious actions against the media in order to ensure and promote internationally-recognized standards protective of freedom of expression as well as the security of the person. Election campaign broadcasting standards must address such serious human rights abuses as part of an effort to secure the broadcast media's role in promoting transitions to democracy. The government's failure to protect the media or to hold accountable those responsible for such abuses undermines the potential for free and fair elections.

CHAPTER 3

[Return to contents](#)

ELECTION CAMPAIGN ACCESS TO THE BROADCAST MEDIA

Introduction

The role of election campaign broadcasting may be divided into three broad categories. The first encompasses political party and candidate access to the people through direct

communications, sometimes referred to as political advertising. The second category includes the manner in which the broadcast media cover candidates, parties, and issues of importance to the election in news and special information programming. The third category concerns voter-education information regarding the voting process, voter participation and related civic issues.

Direct access communications may take the form of candidates or party representatives presenting their political programmes to the voters. Such communications may be aired either as free public service programmes or as advertisements.

3.1 Types of Access

[Return to contents](#)

One of the first issues presented in election campaign broadcasting is the type of direct access time to provide. Broadcast access may take the form of allowing political party representatives or candidates to appear live or in taped programmes. Such programmes usually cover the candidate's or party's manifesto and allow potential voters to compare the views of the political contestants. Direct access programmes also allow the potential voters to form an opinion of the character of the presenting candidate.

Direct access programming may provide a number of relatively short time slots or may provide larger blocks of time for the parties or candidates. The format may be uniform (for example, to cover the manifestos of the contenders) or may allow the candidates and parties broad latitude in what they present and how they present it. What is common to each format is that the parties and candidates are able to communicate directly with the public.

There were many examples of straightforward direct access programming in Namibia's 1989 election. Television air time was reserved for two political parties to present their campaign statements each night for the last six weeks of the campaign. In Bulgaria's 1990 election campaign, the contesting forces were allotted television slots three times per week. In Bangladesh's 1991 campaign, a 30 minute slot was aired simultaneously on radio and television for each qualified party. In Malaysia's 1990 campaign, party manifestos were presented on radio following regularly scheduled news programmes.

3.2 Amounts of Time Allotted to Direct Access Programming

[Return to contents](#)

A second major issue in providing political parties and potential voters with direct access programming is the amounts of time to allow. This issue concerns both the total amount of time and the types of time slots provided. The problem here is to provide adequate time for each of the contesting forces to present their messages effectively. This problem may be complicated by the number of electoral contenders, the number of issues central to the election, the number of other effective communication vehicles, and the public's relative voting experience.

Only one 10-minute television slot and one 15-minute radio statement were permitted in the 1990 elections in Burma (Myanmar). In Malaysia's 1990 elections, parties were not given free access to television, and political advertising was denied on both radio and television. In the week before the Malaysian vote, manifestos of the 40 contending parties were aired free of charge in brief radio broadcasts. In the circumstances, as in Burma, the opposition political parties did not receive adequate amounts of time to impart their messages. Similarly, in Chile's 1989 elections, the 20 minutes of legally-mandated time divided by the number of legislative candidates resulted in each candidate receiving only a few seconds to communicate his or her message.

In Chile's 1989 elections, presidential candidates each received six-and-a-half minute television slots daily. Presidential candidates in Korea's 1987 election were allowed up to five slots, not to exceed 20 minutes each, during the course of the campaign. In Paraguay's 1989 elections, for two months preceding the vote, the three main parties received 15 minutes per day on state radio, a grouping of three other parties received 15 minutes shared among them, while other parties did not receive any time. In each of these circumstances the amounts of time allotted to qualified parties and candidates were generally perceived to be adequate for the effective communication of political messages.

Czechoslovakia's 1990 elections provided a positive example of both the total amount of time allotted and the types of slots provided for direct access programming. Each party participating in the elections received four hours of free television time to communicate campaign messages. This time was divided into one 30-minute block, eight 10-minute slots, 12 five-minute slots, and 70 one-minute slots. The times for the contending parties were amalgamated into two-hour viewing blocks aired during the campaign. Such a combination of time slots allowed the potential voters to receive a significant amount of information about each party's manifesto and allowed the parties a variety of presentation formats. Both the amount and diversity of potential formats undoubtedly benefited the free flow of political information, although the two-hour blocks eventually resulted in reduced viewer levels.

3.3 The Timing of Direct Access Programmes

[Return to contents](#)

In addition to deciding the amounts of time to be allocated for direct access programming, determining when the programmes are to be broadcast is a significant issue. It is important to air the programmes at times when voters are receptive. Two elements are crucial: (a) when in the campaign the programmes are broadcast, and (b) at what time of day the programmes are aired. The length of the campaign period and the amount of advance notice of the election are important factors. A related matter is the degree of organization of the parties immediately prior to the campaign.

In transitional democracies, where the political parties are well-established and where the issues of national importance are clear, direct access programming may not be needed over long periods of time. Where parties and/or candidates are relatively unknown to the people, larger amounts of programming may be needed over longer periods in order to provide a fair opportunity for the parties to communicate their messages. This may be the case in countries where unexpected democratic breakthroughs occur, such as in Romania's 1990 elections.

The effect of direct access programmes may be diminished if they are shown at hours that are inconvenient for potential voters. In the period leading up to Chile's 1988 national plebiscite, the two sides were provided free television access. The programme was aired at 10.45 p.m., well beyond prime time for most viewers. Due to the high interest in the plebiscite, however, a large number of people watched the programme despite its late hour. Opposition parties complained during Romania's 1990 elections that their television access slots appeared in the early hours of the morning and at other inconvenient times. Contrary to such cases, there are numerous examples of governments in democratic transition providing prime-time slots for access broadcasts.

3.4 Financing Political Party Broadcast Access

[Return to contents](#)

Broadcast time, whether on radio or television, costs money. Direct access for political parties must be paid for either by the government, the broadcast outlets themselves, or the political parties. The issue then becomes the fair and proper allocation of campaign resources, which may be complicated by lack of national resources.

Purchase of air time has been permitted by governments in a number of democratic transitions. While this may be a desirable addition to time provided to the parties free of charge, it cannot by itself offer an adequate opportunity for parties to present their messages to the people in transitional settings. Opposition parties rarely have sufficient financial resources to purchase adequate amounts of broadcast time. In addition, the opposition may have been prevented from participating in political life and from communicating their messages, thus increasing the importance of free broadcast access. Often the broadcast media are state-owned or state-controlled, which places opposition parties at a distinct disadvantage in an election campaign. Even where broadcast media are privately owned, the owners may favour the ruling powers and may be averse to providing access to the opposition.

Direct access programmes for the political parties afford the public their right to receive information necessary to exercise their electoral franchise. Such access also allows those who have formed the parties to exercise their free expression rights in the election context. It is proper, therefore, for a transitional government to expend national resources to pay for air time on the broadcast media.

Political Advertising

Not all transitional democracies have allowed political parties to purchase time on radio and television. Among the countries that did not allow such time were Bangladesh in 1991, Malaysia in 1990, the former Yugoslav Republic of Slovenia in 1990 and Namibia in 1989. Others have allowed political parties to purchase air time during election campaigns. Such time has taken the form of short slots of a few minutes each as well as blocks of longer duration. In some instances live broadcasts were permitted; in others, broadcasts were taped.

Several problems have emerged in transitional democracies when political parties were allowed to purchase air time. One problem is that the advertisements are sometimes censored. In the 1991 Zambian elections, for example, the Zambian National Broadcasting Company (ZNBC) refused to run the opposition's advertisements. In Taiwan's 1989 election, opposition advertisements were rejected by television authorities as not being sufficiently factual.

The Cost Factor

A more pervasive problem in allowing purchase of air time is that some parties, particularly the ruling party, may have distinct financial advantages over their opponents and, thus, the ability to purchase disproportionate amounts of time. Campaign finance controls could be used to lessen this discrepancy, but they often are not in place during a country's transitional process.

In Zimbabwe's 1985 elections, parties were permitted to place paid advertisements on Zimbabwe Broadcasting Corporation (ZBC), but only three parties, including the ruling party, could afford to buy air time. Opposition parties all faced significant financial constraints. In Mongolia's 1990 elections, the opposition parties protested that although advertising time was available, only the ruling party could afford it. Another example is provided in Paraguay's 1989 elections, where political advertising time was available, but the cost was prohibitive to the opposition parties (many of which had only recently formed). Again, only the ruling party had the financial resources to purchase the time.

The prohibitive cost of advertising may be addressed by direct subsidies to the parties through campaign financing arrangements, as was done in Paraguay's 1991 elections, or through government-mandated discounts for purchasing time on government and privately-owned broadcast media, as was the case in Panama's 1989 elections. In Korea's 1987 election, the government paid for the first of five allotted broadcast presentations by presidential candidates.

Political Favouritism

Another significant problem faced in allowing parties and candidates to purchase air time is that broadcasters sometimes give discounts to the party or parties they favour. This problem can be addressed by strict regulations that require advertising access on the same terms for all contending parties and candidates. The legal principle of non-discrimination requires such regulations.

In the 1984 Uruguay elections, opposition parties claimed that government-controlled television and radio provided advertising air time to the party identified with the military government on more favourable terms than to other parties. In Guatemala's 1985 election, a presidential candidate who owned a daily newspaper arranged advertising trades that allowed him to appear frequently on radio and television. In that country's 1990 elections, the owner of two television channels allegedly gave large amounts of free advertising time to his political favourites, while not providing the same opportunity to other contenders. In the 1989 Panamanian elections, the two television stations not explicitly identified with the government allegedly provided advertising access to opposition parties at a discount of up to 60 per cent, while regulations provided for a discount of only 25 per cent.

Political Advertising in Several Established Democracies

A study of advertising in 19 countries published in 1991 by an Australian Senate Committee showed that paid political advertisements are permitted on the electronic media during election campaigns in only five of the 19 countries: Australia, Canada, New Zealand, Germany and the United States. Paid political advertising is not permitted at all in the Netherlands, Norway, Sweden and the United Kingdom, and is not permitted during election campaigns in Austria, France, Israel and Japan. A separate study adds that paid political advertising is also prohibited in Ireland and Spain, but is permitted in Bulgaria, Hungary and Poland. Paid political advertising recently was authorized in Italy.

One expert on European election broadcast law recommends that "[i]f paid advertising by political parties is ever allowed in a particular country, it should be suspended at the time of elections."

In the US, where campaign broadcasts are subject to less regulation than in virtually any other liberal democracy, all candidates for federal office are entitled to reasonable access to air time free of charge or else to purchase it from broadcasting stations at a non-discriminatory and reasonable rate. This has been ruled to be compatible with the First Amendment.

A number of the issues raised by paid political advertising were discussed in the course of debate concerning a 1991 amendment to Australia's broadcasting law that prohibited all paid political advertising on the electronic media. The High Court (Australia's highest

court) invalidated the amendment on the ground that various provisions violated the constitution's implicit protection of freedom of political communication, in particular, by providing for the allocation of free air time to parties in such a way as to give unfair advantage to incumbent candidates and parties with representation in the preceding legislature. No provision was made for organizations and associations to have access to air time (whether paid or unpaid). The amendment thus impermissibly favoured the status quo. The Court indicated that a prohibition on paid political advertising would probably be found constitutional if alternative measures to ensure fair access for all political players were available.

France's Constitutional Court recognized that limits could be placed on paid political advertising that would both respect the right to freedom of expression as well as the principle of equality of opportunity for media access. It did so by upholding the constitutionality of a provision of the 1986 law permitting advertising by political parties outside election campaigns on the ground that the Conseil supérieur de l'audiovisuel could adopt rules that would prevent richer parties from taking advantage of the opportunity for air time.

3.5 Criteria for Allocating Air Time

[Return to contents](#)

There are two important requirements concerning the fair allocation of time for direct access programming: the establishment of clear and impartial criteria for parties to qualify for direct access air time, and the creation of a fair and impartial method for allocating air time. The principal dilemma is in finding a way to allow broadcast access to all of the genuine political contenders, while recognizing that flooding the air waves or dividing limited time between too many contenders may adversely affect the electorate's ability to make an informed choice.

Flooding the air waves with messages from contenders with little or no chance of winning seats, or in a parliamentary election parties with little or no chance of playing a significant role in forming a government, dilutes the effect of the messages from the main contenders. A proliferation of messages may also serve to confuse rather than assist potential voters.

Dividing limited direct access air time between too many contenders may result in time slots that are not adequate for any of them to effectively present their messages. This generally places the opposition at a disadvantage, because the ruling powers have been able to use the media to communicate their messages over a longer period of time.

If a relatively small number of parties or candidates are contesting the election, allowing all registered contenders to qualify for time and then dividing the allotted time equally between them may be an effective approach. In Chile's 1989 presidential election, for example, broadcast access time was shared equally between the three candidates. In Namibia's 1989 election, air time was shared equally between 14 political parties.

There is, however, an upper limit to the number of parties or candidates that may be accommodated effectively by dividing access time equally. In Romania's 1990 elections, for example, more than 80 parties registered, due to Romania's extremely liberal threshold of 251 signatures to qualify as a party. The proliferation of messages was seen by international observers as working to the advantage of the incumbent political party.

Qualification Thresholds and Allocation Methods

In a country's first multi-party elections, allocation of air time on anything other than an equal basis poses great difficulty because the two most objective indicators of support — the political party's performance in past elections and the number of seats held in parliament — are unavailable.

In circumstances where there are many contending parties, some type of qualification threshold and/or allocation method is usually employed to provide broadcast access to the political parties. In national elections, qualification thresholds may take into account the parties' geographic strength in a sufficient number of districts or regions to show that the party is more than a local phenomenon. Qualification thresholds may also be based on past electoral performances, including the number of seats held in the legislature or percentages of the popular vote received. In some instances parties are allocated air time based on a political agreement among the contending forces.

Political agreements among parties to allocate broadcast time in transitional settings are often the result of round-table negotiations. In Bulgaria's 1990 elections, for example, round-table negotiations led to an agreement to allocate 20 minutes of free television broadcast time three days a week for the last two months of the campaign period to the ruling party and the main opposition coalition; 15 minutes to the next largest party; and smaller amounts to other parties. Such a system may be subject to criticism as favouring parties involved in the round-table negotiations, although it enhances the opportunity of the main contenders to present their message.

In Nicaragua's 1990 election, the contending parties reached a political agreement to change the allocation formula from one based on performance at previous elections to one which provided equal access to all registered parties and alliances.

The 1991 elections in Bangladesh provide an example of using a geographically-based method for allocation. There were 70 registered political parties in the contest. Broadcast access, however, was limited to those parties with candidates standing for office in more than 30 constituencies.

Even such seemingly objective criteria, however, can be slanted to the benefit of one or more political parties, rather than serving to limit the access of insignificant contenders. In Chile's 1989 election, for example, broadcast access time was allocated according to the number of regions in which the largest party in an electoral coalition was registered, rather than by the sum of each of the parties. This resulted in rightist parties, which were registered in fewer regions, receiving significantly more time than the opposition.

A third method is to base the qualification and allocation of time on performance in prior elections. Such a method generally favours well-established parties and may not be appropriate where a democratic breakthrough necessitates the formation of mostly new parties or where there are few known and respected individual candidates. An electoral performance method may be appropriate after the first election in a transitional democracy, if the first election was considered to be free and fair and if the political forces are relatively established. In Bulgaria's 1991 election, the national legislature established a formula recognizing the parliamentary parties automatically, while other parties and coalitions with lists of candidates in at least 11 of the country's 13 regions were granted broadcast access. In Israel, the Broadcasting Authority is required to allocate a basic time slot of 10 minutes to each party, and parties that are represented in the national parliament are entitled to three additional minutes for every member of parliament.

Survey of Campaign Broadcast Policies

A 1991 survey of campaign broadcasting in European and other democracies disclosed that in Czechoslovakia, Hungary and Romania an equal amount of time was allocated to all registered political parties. By contrast, in Poland's first multi-party election, air time was allocated based upon the support received by parties as evidenced by the number of signatures on forms required for registering candidates.

In nearly all Western countries surveyed, time was allocated to parties on a proportional basis. In Belgium, Greece, Luxembourg and Switzerland the time allocated was proportional to the number of seats held by parties in parliament. In the UK (where there are three main parties nationally) and Australia (where there are two main parties), most of the time was allocated to the main parties with small amounts given to minor parties.

In France and Germany, where several parties hold a significant number of seats in parliament, parties that form the ruling coalition together receive approximately the same amount of time as those that form the opposition; parties without parliamentary representation may receive a small amount of time. In Spain, parties contesting at least 75 per cent of the constituencies are allocated time proportional to their success in the previous election. In Denmark, Ireland and the Netherlands, time was allocated on an equal basis, although in Ireland and the Netherlands time was allocated only to parliamentary parties.

New Parties and Independent Candidates

New parties and independent candidates may not be able to meet geographic qualifications, may not be represented in political negotiations between the main forces in the country, or may not have seats in the legislature. Nevertheless, such contenders may be significant to the electoral process. Public confidence in the elections may be affected by the treatment of such contenders, which may be viewed as a sign of the relative openness of the democratic transition. In addition, such parties and candidates, as well as

small parties that have a longer history, all have recognizable political rights to be considered.

A useful approach to accommodating new parties, independent candidates and small parties, may be to establish a qualification and allocation method that divides direct access time into categories. One category would then be divided equally between all registered contenders, giving each a minimum amount of time to present a message. The other category would then be allocated upon a formula that considers the relative strength of the parties, thus allowing the major contenders to sharpen the electoral debate.

Method of Assigning Specific Times

In addition to establishing a method for qualifying and allocating amounts of access time, it is necessary to select a method for assigning specific time slots. In Romania's 1990 elections, for example, opposition parties complained that their messages appeared at non-peak viewing time which have low audience levels. To avoid such charges, some governments have employed an alphabetical rotating system or a computer-generated random assignment method. Whatever method is used, effort should be made to ensure the equitable and impartial assignment of broadcast time slots.

3.6 Implementation Concerns

[Return to contents](#)

No matter which methods of qualification and broadcast time allocation are formally adopted, implementation problems may emerge. The most obvious concern is to ensure that the formulas devised to qualify parties for access time, allocate time, and assign slots are applied in practice. There have been numerous examples, some noted above, where opposition parties complained that these methods were not implemented properly.

Another inequity that may occur concerns access to production facilities. In Taiwan's 1991 elections, for example, the opposition complained that the ruling party had more expert assistance from broadcast technicians, which resulted in that party's ability to air more effective messages. In Romania's 1990 elections, the opposition noted that the incumbent party had access to state-owned production facilities to produce its messages, while the opposition did not. Facilities available to the opposition were not professionally equipped.

Such a situation can be ameliorated by ensuring that the same facilities are available to all contenders. The order in which broadcast productions are made should be assigned by an impartial method similar to that used to assign time slots. The assignment method should ensure that certain parties do not enjoy preferential treatment in the timely production of their messages or in the technical quality of their production.

Direct access time cannot be completely separated from broadcast media coverage of the government, political parties and issues of significance in the election campaign. Direct

access programming can help to level the playing field in order to create a fair electoral contest. Biased broadcast campaign coverage, however, can shift the balance of political forces even where direct access programming has been relatively fair. In the assessment of international observers, such circumstances were presented, for example, in the 1986 election in the Philippines.

CHAPTER 4

[Return to contents](#)

PROBLEMS WITH NEWS COVERAGE OF ELECTION CAMPAIGNS

Introduction

Free and fair elections depend to a significant degree upon the ability of the news media to function in an impartial and professional manner. Adherence to the standards of accuracy, objectivity and balance in news and other information programming is essential. Departure from these standards can deprive the public of a balanced picture of the contending parties as well as of important issues raised in the election campaign.

Upholding the standards of professional journalism is difficult in the election campaign context under any conditions. Objectivity may require reporting facts that are detrimental to one contender or another. Accuracy may demand reporting a story differently from the political contestant's perception of the circumstances. Balance is difficult to achieve in any one report but must be strived for over a range of broadcasts.

While some transitional democracies may have the advantage of an experienced media steeped in the traditions of independent journalism, this often is not the case. Even where government interference or pressures on the media are slight, news media inexperienced in independent journalism are bound to have difficulty in fulfilling their roles in election campaign coverage. Even more striking are cases where the government and the media endeavour to present a biased picture to the people in order to perpetuate the control of the ruling powers.

While election campaign coverage problems are varied, most revolve around the central issue of whether the incumbent powers approach the electoral process in good faith.

4.1 Imbalanced Coverage

[Return to contents](#)

The most prevalent problem concerning broadcast coverage in transitional settings is imbalanced coverage of the political parties and candidates both quantitatively and qualitatively. Most often, the governing party receives considerably more coverage than the opposition. At the same time, the governing party may be presented in a disproportionately favourable light, while the opposition is presented negatively.

A positive example of taking steps to prevent unfair coverage or manipulation is provided by the 1991 election in Bangladesh. A formula was drawn up for television evening news, which provided that when one of the two major political alliances was featured in the lead story, the next broadcast would feature the other. Both radio and television received instructions from the government to be impartial in covering the parties and candidates.

In Czechoslovakia's 1990 elections, the state-controlled broadcast media were charged with bias favouring the political groupings that had come to power a few months previously as a result of the "Velvet Revolution". This criticism became particularly sharp after the media aired live broadcasts of two campaign appearances by President Havel. In response to formal complaints lodged by several parties, all of the parties that did not benefit from such coverage were awarded additional free advertising time.

During Kenya's 1992 election campaign, the ruling party sometimes received more coverage than all other parties combined on the state-owned Kenya Broadcasting Corporation (KBC) radio and television outlets. While the ruling party was usually covered in a positive manner, the opposition was usually presented in a negative light. The privately-owned Kenya Television Network (KTN) reportedly covered the opposition more often than KBC, but also covered the ruling party disproportionately more than the opposition.

During the 1991 election campaign in Zambia, coverage was so one-sided in favour of the ruling party that the Press Association of Zambia temporarily obtained a court injunction banning the director of Zambia National Broadcasting Company (ZNBC) from supervising news reporting until after the elections. In issuing the injunction, the court noted the public's interest in receiving balanced reporting of the news but, despite this, the injunction was reversed two days before the vote.

During the 1988 elections in Pakistan, government officials from the ruling party were the subject of wide and uncritical coverage on the government-owned national television

and radio. In the 1990 elections, when that party was the challenger, its campaign events were extensively and positively covered by the government-owned television and radio, while the political alliance led by Benazir Bhutto's party received extremely limited coverage.

4.2 Failure to Distinguish Between Government Activities and Campaigning

[Return to contents](#)

A second major issue in the broadcast coverage area is the need for the media to distinguish between activities of government officials executing newsworthy government functions and those same persons conducting election campaign activities. Government officials carry out any number of newsworthy actions in their administrative or legislative capacities during the course of the election period. Indeed, officials often attempt to time such actions to gain coverage during an election campaign.

Government officials also appear at campaign rallies and give campaign speeches at meetings of civic organizations and on other occasions during the campaign period. It is important for the broadcast media to distinguish between these types of activities. The line between them is not always clear, and the media may find that an official's categorization of an activity as a government function is not accurate. The problem in this instance is to give the public important information about its government, while avoiding the incumbent party's attempts to obtain additional campaign exposure.

Broadcast media should also thwart subtle attempts to gain campaign advantages through what officials may characterize as governmental functions. In Guatemala's 1990 elections, for example, the symbol of the President's political party, rather than the national seal, was displayed following his television addresses.

4.3 Manipulation of Coverage

[Return to contents](#)

In some instances the degree of imbalance in broadcast coverage implies conscious attempts by the media to influence the outcome of the election campaign. This is most evident when standards of accurate reporting are violated to a degree that news and information programming appear to be aimed at manipulating the impressions of potential voters.

During Albania's 1991 elections, television camera angles were manipulated to portray the ruling party's campaign rallies as larger than they actually were. There was extensive coverage of these rallies, including segments of the speeches, while opposition rallies received little coverage. When opposition rallies were reported, newsreaders delivered summaries of the speeches, rather than broadcasting the speakers themselves. Coverage of Kenya's 1992 election campaign also included footage of ruling party speeches wherever the speeches were delivered in the country, while reports of opposition speeches were aired with little or no footage. Such discriminatory coverage portrays the favoured party as a much stronger force. Repeated use of this tactic may cause viewers or listeners to favour the party speaking with an actual voice.

In Namibia's 1989 elections, the broadcast media aired unsubstantiated reports of armed incursions into the country by SWAPO's military forces, but failed to cover hostile actions by the South West African Police Counter Insurgency Unit (Koevoet). Broadcasts lacked footage of SWAPO speeches, and coverage of SWAPO was overwhelmingly negative.

Broadcast coverage of Korea's 1987 election campaign depicted Mr Roh, the former president, surrounded by large crowds, even on days when he did not make campaign appearances. He was always covered first in campaign stories, and his campaign activities received more detailed coverage. At the same time, opposition candidates were depicted with sparse crowds, often with only the backs of the candidates' heads being shown.

Broadcast manipulation may also involve non-news programming. In Taiwan's 1991 election, for example, television stations invited ruling party candidates to host talk shows, to appear as guests on panel discussions, and to be guests on game shows. Some variety shows used the ruling party's slogans in their programmes.

4.4 Special Information Programmes

[Return to contents](#)

Special information programmes may take the form of interviews with candidates or party representatives, panel discussion programmes with several candidates or representatives from different parties, or debates between various election contestants. Such programming can be valuable in election campaign broadcasting both for informing the public about the positions of parties and candidates on issues of significance to the country and for allowing the contestants to speak directly to the public.

Individual and Panel Interviews

Interviews with candidates or party representatives allow the candidates to communicate their messages directly to the people. Interviews may be conducted by one interviewer or

by a panel of journalists (or others). The audience might participate by asking questions from the studio or electronically from other locations.

Such programmes should avoid interviewer bias favouring one party or parties over others. A panel of interviewers may comprise impartial news professionals or journalists identified with various political tendencies so that the panel as a whole is even-handed towards each party.

In Zimbabwe's 1985 election, for example, a new television programme ("Face the Nation") conducted 40-minute interviews with the leaders of each of the political parties. Candidates for national office in Pakistan's 1990 elections gained access to voters during televised panel interviews. However, Benazir Bhutto of the Pakistan People's Party rejected the invitation to be interviewed because her demands that the interview be broadcast live and that she be given some choice of interviewers in order to ensure an accurate and balanced broadcast were not met.

Candidate Forums and Debates

The broadcast media may bring together various candidates or party representatives in the same programme to exchange views. The advantage of such programmes is that they allow the listeners or viewers to compare the contestants' views and to form an impression of them "in action" with their rivals. Such programmes may be conducted by a single moderator or a panel of moderators. As with interviews, it is also possible to include audience participation.

Candidate forums usually allow the candidates or party representatives to speak, but not necessarily to debate with each other; debates usually are conducted in a more structured format. Either type of programme may deal with pre-agreed issues or may require the contenders to respond to the same questions. Moderator and questioner bias may occur in such programmes, and the number of contenders appearing on any one programme may also complicate the format. In any candidate forum or debate, the contenders should each receive exposure adequate to fairly convey a message to the audience.

In Guatemala's 1985 elections, broadcast forums and debates involved presidential candidates as well as candidates for mayor of the capital. Four-way debates between 12 contending political parties were televised before Hungary's 1990 elections. In the former Yugoslav Republic of Croatia, a three-hour debate between leaders of the four chief contending political organizations was televised two nights before the 1990 vote.

Mixed Programming

Ideally a combination of special information programming would be broadcast during the campaign period. Each type of programme has its own advantages for the political parties to convey their messages and for the potential voters to receive information and form impressions necessary for making an informed choice between the parties and candidates.

Nicaragua's election law provided free access to television during the 1990 campaign. It also provided for political advertising. The political parties participating in the elections received 30 minutes free of charge each weekday on the nation's less popular television channel. The broadcast time was divided equally among the parties, giving each party a 10-minute slot to present its platform.

Later in the campaign, in response to opposition pressure, the government initiated a programme (*Elections 1990*) on the more popular television channel, which ran weekdays from 6.00 to 7.00 p.m. The programme was divided into two equal segments; each featured a different political party facing a panel of journalists, with questions posed after an opening statement. The journalists were from both the pro-government and pro-opposition media, with a pro-government moderator. Later, the format was expanded to include questions telephoned in from viewers, and three times a week mobile units presented questions from individuals on the street. Eventually, the format included debates between two participating parties on two nights of the week, with journalists asking questions on subjects chosen by the parties.

The Nicaraguan formula provided adequate amounts of time for parties to present their messages, a variety of settings for potential voters to observe the contenders interact, and addressed a range of issues of national concern. While no set formula is necessary, striking such a balance favours freedom of expression in the election campaign context.

4.5 Opinion Polls and Election Projections

[Return to contents](#)

Coverage of opinion polls concerning the relative chances for victory of the parties or candidates is a specialised issue in election broadcasting. These polls may be conducted throughout the course of an election campaign and include exit polls of voters on election day. In addition, projections concerning the likely outcome of the elections may be made on the basis of exit polls and/or on reports of partial vote tabulations. Opinion polls and projections may be conducted by independent non-governmental organizations, academic institutes, the political parties or the news media.

Broadcast coverage of such information can, at times, be controversial. This is particularly true of polls and projections commissioned or conducted by a source that is not impartial. Polls and projections may have an effect on the vote itself, rather than simply reflecting public sentiments. For these reasons, broadcast coverage of opinion polls and projections warrants special attention to ensure balance, fairness and objectivity.

The source of the opinion poll or projection should be included in the broadcast as well as its statistical margin of error, the time it was conducted, the number of people surveyed and other contextual information. If gaps between political parties or candidates fall

within the statistical margin of error, this fact should be noted in the broadcast. Other reputable polls conducted around the same time should be reported together in order not to overemphasize the results of a single survey. Also, polling trends should be reported to make clear that the results of one survey do not give a definitive picture. The BBC, for example, generally will not give individual opinion polls great prominence because such results are not sufficiently reliable.

Transitional democracies have paid particular attention to this type of coverage in the period immediately preceding the vote. Some countries have imposed blackouts on campaigning and news coverage related to the election in the 24 or 48 hours before voting begins and throughout the voting period.

4.6 Foreign Media and Cable Television

[Return to contents](#)

Foreign broadcasts, received on short wave and other radio frequencies, satellite television transmissions, and broadcasts on national media, can influence the opinions of voters. There are two elements to consider in this regard. One is the internationally-recognized right "to seek, receive and impart information and ideas through any media and regardless of frontiers". It is difficult to conceive of circumstances that would justify government interference with this right in the election context, whether through direct censorship or indirectly by encouraging self-censorship.

The second element is government action to limit political contestants from using foreign media to broadcast messages outside the national regulatory framework. While in many circumstances governments may choose not to regulate such activity, a few countries have restricted political parties and candidates from using foreign broadcasts to advertise their messages. In Albania's 1991 elections, for example, candidates were prohibited from appearing on foreign media during the election campaign.

Foreign news media played a significant role in the Philippines' 1986 elections. President Marcos' decision to hold elections at very short notice, for example, was first carried on United States television transmissions.

CHAPTER 5

[Return to contents](#)

VOTER EDUCATION AND SPECIAL ISSUES

Introduction

An analysis of election broadcasting is not complete without considering the role of radio and television in voter education. Such issues concern the government media's role in promoting civic values, the use of the broadcast media to reach groups with traditionally lower voting patterns in order to encourage them to vote, and the special considerations for broadcast coverage of local elections and national plebiscites.

5.1 Voter Education

[Return to contents](#)

The broadcast media can be effective tools in advancing voter education by providing information to voters about how, when and where to vote, the secrecy of the ballot and the role and importance of voting. This function is often referred to as civic voter education. Another way to assist voter education is to provide the information needed for voters to understand the nature of the issues, the platforms and programmes of the parties as well as the character of the candidates. The latter function takes place through political party advertising, special information programmes, and news coverage.

The relative importance of civic education through the broadcast media depends upon the degree of democratic traditions and experience with multi-party elections in any particular transitional democracy. A country with long democratic traditions and a brief interruption by authoritarian rule may need less voter education programming than a country with a long interruption from democracy or one with little experience in pluralist electoral contests.

Educational programmes covering where, when and how to vote, as well as registration procedures, are important in every country. Programme spots encouraging voter participation can also be effective. Explanations about the secrecy of the ballot or equivalent voting procedures may be critical to establishing public confidence in the upcoming election. In some circumstances broadcasts may be useful to reassure the public that the personal safety of voters will be protected on election day. Education about electoral crimes and avenues for seeking redress could be broadcast to reduce the incidence of, or attempts at, voter intimidation.

Effective voter education broadcasts may be relatively short, from 60 seconds to several minutes. They may be produced by the government body responsible for supervising the elections or by non-governmental civic organizations and aired either independently or

on government media. In Romania's February 1992 elections, for example, the Pro-Democracy Association, a non-governmental citizens' organization, produced a one-minute voter education spot encouraging voter participation, entitled "Romania Needs You", which was broadcast on national television.

During Bulgaria's 1990 campaign, the Central Election Commission (CEC) assumed responsibility for government-sponsored voter education, while civic groups broadcast their own programmes. State-controlled television and radio broadcast 10-minute public service announcements that both explained and demonstrated the rather complicated voting procedures. The time slots also were used to address perceived voter concerns about potential ballot manipulation. The CEC was criticized by opposition parties for not emphasizing sufficiently the secret nature of the ballot. This omission was seen as working to the advantage of the ruling party, given Bulgaria's 43 years of one-party rule.

Namibia's 1989 election campaign included voter education broadcasts produced by the United Nations Transition Assistance Group (UNTAG) as well as government-produced programmes. UNTAG received five minutes on radio each day and ten minutes on television each week. The slots encouraged voter participation, provided general information on casting ballots in an informed manner, and addressed ballot secrecy. The Administrator-General's office conducted a voter education campaign, which included broadcast slots in numerous languages, with themes such as "vote without fear" and "your vote is your secret".

During Guatemala's 1985 election campaign, the Supreme Electoral Tribunal, in conjunction with an independent political studies institute (CEDEP), carried out a campaign in the broadcast and print media encouraging people to vote.

5.2 Special Importance of Election Broadcasting to Minority Groups, Indigenous Peoples and Women Voters

[Return to contents](#)

The broadcast media can play a critical role in civic education and in increasing voter participation by groups that have not been well integrated into the electoral process. Women may have traditionally lower voting rates in certain countries. Some minority groups and indigenous peoples may have a higher illiteracy rate or speak languages that differ from the dominant demographic grouping in the country. They may also be geographically isolated. All of these factors heighten the importance of employing the government media to encourage such groups to exercise their electoral franchise.

While the November 1985 elections in Guatemala were seen by international observers as an important first step in the transition towards democracy, the country's indigenous

groups (estimated to make up over half of the population), were not well integrated into the electoral process and voter participation among indigenous women was particularly low.

There is a high rate of illiteracy among these peoples, who also are rural, poor and many of whom do not speak Spanish. There are four main indigenous language groups in Guatemala, 22 languages and over 100 dialects. Some radio stations broadcast in indigenous languages, and several political parties ran advertisements on these broadcasts. International observers noted the need to bring the indigenous groups into the democratic process. The broadcast media, particularly radio, could play a special role in such an effort.

Radio is particularly important in communicating political messages effectively to diverse populations. In Namibia's 1989 election, eight FM radio stations broadcast programmes in 13 languages, thus reaching most of the population, while television broadcasts were only in Afrikaans. Malaysia's 1990 elections provide another example of the importance of the broadcast media for reaching a country's diverse population. Radio Television Malaysia (RTM) broadcast mainly in Malay, but news and other programmes were also broadcast in English, Mandarin Chinese and Tamil. Radio Malaysia also aired regional broadcasts in the native languages of Sabah and Sarawak.

5.3 Local Elections

[Return to contents](#)

Special considerations for each of the problems presented in election broadcasting is required when approaching local elections. Qualification thresholds and time allocation methods may require modification for municipal and regional elections. Indeed, except in a very small country, the appearance of local candidates on the national broadcast media may be extremely time-consuming and confusing to the voters. Local television and radio outlets may be better suited to providing broadcast access and news coverage concerning local campaigns.

When local elections are held simultaneously across the country, appearances by national political parties addressing their general programmes for local development and related issues are appropriate. This is particularly true where mayors and municipal council members are selected by voting for party lists. Direct election of mayors presents a slightly different circumstance, which could be addressed with the candidates for the principal cities appearing on the same date or time block. The schedule of times for the cities could then be publicized to maximize audience levels from these areas.

In Paraguay's 1991 municipal elections, candidates for Mayor of Asunción, where television is a more important medium than in the rest of the country, appeared on television. The government authorized free access time on radio and also in the

newspapers. In Bulgaria's 1991 legislative and municipal elections, all parties represented in parliament received equal access time on the broadcast media. Two local radio stations apparently did not follow the free access rule, highlighting the need for a speedy mechanism to address local implementation problems. Romania provided free access to parties and candidates for mayor in that country's nationwide municipal elections held in February 1992.

5.4 National Plebiscites and Referendums

[Return to contents](#)

Plebiscites present a special circumstance in at least two respects. The vote is either yes or no and, therefore, broadcast time can easily be divided into two blocks. In addition, at least superficially, there is no personal candidacy at stake. Often, however, the future of the political personality or party presenting the issue for a vote depends on the outcome of the election.

The question of who will receive broadcast time to argue in favour or against the issue may be complicated. More than one party may be lined up on each side. Each may claim a right to speak on the broadcast media. Qualification thresholds and time allocation within the time blocks devoted to each side then come into play. The full range of broadcast coverage issues applies to the activities of the parties campaigning for each side. The need for voter education also arises, as does the need for reliable broadcast policy and regulatory mechanisms.

Chile's 1988 national plebiscite on a more speedy return to democracy provides a closely-monitored example of this type of electoral contest. The issues, though, can assert themselves in any referendum on a matter of national importance, such as whether to ratify a new constitution.

CHAPTER 6

[Return to contents](#)

MECHANISMS FOR DEVELOPING BROADCAST POLICY CONCERNING ELECTION CAMPAIGNS

Introduction

Crucial to fair broadcasting coverage of election campaigns is the establishment of impartial mechanisms for setting broadcasting policy, monitoring fairness and dealing with complaints from political party representatives, candidates, journalists and the public. Without such mechanisms, public confidence in the electoral process is likely to suffer.

Responsibility for overseeing election broadcasting may be assigned to a special legislative body, an administrative entity, or the judiciary. In some countries the responsible body formally consults with the political parties and candidates. The political contestants may play a major role in forming broadcast policy. Such policy may even be based upon agreements reached by the parties. The media sometimes play self-regulatory roles in election campaign broadcasting. In addition, citizens' groups may actively seek to influence broadcast policy and may conduct independent media monitoring.

6.1 Government Mechanisms

[Return to contents](#)

Prior to Bulgaria's 1991 elections, the Grand National Assembly (GNA) established the Parliamentary Committee on Radio and Television to oversee government-controlled television and radio. Each of these media has separate boards of directors appointed by the GNA. Upon adoption of the 1991 election law, the GNA promulgated regulations concerning allocation of broadcast time during the election campaign. In addition, the Central Election Commission (CEC), which is part of the executive, had power to interpret provisions of the regulations and the election law. CEC rulings were reviewable by the courts. The CEC took a limited view of its mandate in the 1991 elections, holding that it was to ensure implementation of measures set forth in the law and regulations. Bulgaria's 1991 mechanism was greeted as an improvement over broadcast regulation of the 1990 elections, and was seen as producing equitable access for the major political parties.

In Uruguay's 1984 campaign, the Electoral Court, originally established in 1925, was reinstated and given responsibility for organizing the elections. The Court, an independent and autonomous body, was charged with administering the elections and interpreting the election laws. The Court had the power to hear and rule on electoral disputes concerning the political parties. It also had the power to carry out investigations concerning challenges to election results. In addition, the Court had the power to invalidate election results in whole or in part. Uruguay's tradition of fair elections is based in significant part upon the role of the Electoral Court. Such an independent body is in a strong position to consider complaints regarding election campaign broadcasting,

including complaints about media abuses as well as complaints about attempts to pressure the media into providing slanted campaign coverage.

In Nicaragua, the 1987 Constitution provided for the Supreme Electoral Council as a fourth branch of government, separate from the legislature, executive and judiciary. The Council held authority over most electoral matters in Nicaragua's 1990 elections, including the application of the mass media law concerning the election campaign and the administration of a rapid complaints procedure. The Council set up a Mass Media Department to negotiate changes in broadcasting practices that were the subject of complaints. The Department issued private admonitions in some instances and made its criticism public when the press organ refused to cooperate. The Council ordered the airing of one opposition programme when technicians from the state television channel refused to show it. It also sought court action against a newspaper that refused to cease using an acronym that linked the opposition coalition to the former government's National Guard.

These examples illustrate the advantage of establishing an independent body to impartially oversee media policy and to administer an impartial and speedy complaint mechanism concerning election campaign broadcasting. Speedy recourse to judicial review and enforcement of the decisions of such a body are central to ensure the credibility of its actions.

6.2 Self-Regulation

[Return to contents](#)

In Namibia's 1989 elections, the state-controlled South West Africa Broadcast Corporation (SWABC) invited 14 political parties to join a standing committee for consultations on election coverage policy. A schedule of televised campaign messages was established as a result of the consultations. It provided five-minute slots for two parties per night during the six weeks preceding the vote. The parties themselves agreed that the broadcast time would be allocated on a rotating alphabetical basis. While there were problems of slanted broadcast news coverage in the campaign, this mechanism proved valuable in addressing direct access issues.

Hungary's 1990 elections provide an example of media and political party self-regulation in collaboration with a civic organization. The Independent Lawyers Forum assisted representatives of 12 political parties, the Hungarian News Agency and Hungarian Television in drafting a voluntary Electoral Code of Ethics. Adherence to the code included a pledge not to conduct negative campaigning. Thirty-three political parties, including all of the major parties, as well as most of the major news organizations, adopted the Code. While the Code's provisions were not complied with uniformly, its creation illustrated an advanced approach to self-regulation.

6.3 Media Monitoring and Citizen Action

[Return to contents](#)

The establishment of a neutral body to monitor fairness of campaign coverage of news and information programming can be important in ensuring that a policy of fair and balanced broadcast coverage is implemented. Regular reports of a systematic nature provide an objective basis upon which broadcast media abuses can be identified. Such reports may also be a useful tool when attempting to rectify bias or in demonstrating that claims of bias are not well founded.

Media monitoring can be performed most effectively by impartial, non-governmental organizations, such as citizens' groups, professional associations or international monitoring organizations working closely with local groups. Media monitoring has also been effectively carried out by inter-governmental organizations. For example, the United Nations Observer Mission to verify the electoral process in Nicaragua (ONUVEN) analyzed election-related broadcasts.

Zambia's 1991 election provided an example of media monitoring by an international observer delegation. The Zambia Voting Observation Project (Z-Vote) initiated an independent review of mid-day radio news and nightly television news programmes on the government-controlled Zambian National Broadcasting Company (ZNBC). Z-Vote conducted four weeks of news analysis, considering (1) the amount of time given to each party's campaign, (2) the position the item occupied in the news, (3) whether television reports included footage or still photos of events and whether radio reports included interviews and speeches, and (4) whether the tone of the coverage was positive or negative towards each party.

In Kenya's 1992 elections, the Professionals' Committee for Democratic Change (PCDC, a committee of The Association of Professional Societies of East Africa), established a unit to monitor, record and analyze the news and information broadcasts of the Kenya Broadcasting Corporation (KBC). The project considered whether KBC was providing independent and impartial broadcasting, as required under the Kenya Broadcasting Corporation Act.

In Romania's September 1992 elections, Pro-Democracy Association, a non-partisan citizens' organization, conducted a media monitoring project. The project analyzed approximately four weeks of news coverage on the government-controlled central television. The analysis considered (1) the subject covered by news items, (2) the duration of items, and (3) the amount of time allotted to political parties and to the presidential candidates.

Such efforts by intergovernmental and non-governmental organizations can produce reliable information for use by regulatory bodies. Journalists benefit from such efforts

because the information generated can provide an impartial basis upon which to appeal for adjustments in election broadcast policy.

CHAPTER 7

[Return to contents](#)

INTERNATIONAL AND COMPARATIVE LAW AND STANDARDS

Introduction

The right of citizens to participate in government through genuine and periodic elections has long been recognized under international human rights law. Several leading international and regional treaties and other instruments articulate four elements that constitute the core of the right: universal and equal suffrage; voting by secret ballot; elections at reasonable, periodic intervals; and no discrimination among voters, candidates or parties.(1) However, despite its codification in numerous human rights treaties, the right to political participation only recently has been widely accepted as a fundamental right, and only in the past few years have issues regarding access to the media been discussed as an important element of the right.

The rapid evolution of participation rights is the result of twin developments: first, the convergence of state views concerning the importance of democratic rights that accompanied the end of the Cold War and was reflected in documents adopted through the process of the Conference on Security and Cooperation in Europe (CSCE); and second, the elaboration of standards, especially since 1989, by the United Nations (UN) and the Organization of American States (OAS) coupled with states' willingness to accept those standards. (2)

The UN has monitored a number of elections, initially as part of its role in decolonization; then, beginning with its presence in Nicaragua in 1989, under its peace-keeping authority; and, most recently, as part of its advisory and technical assistance programmes.(3) In the process, it has applied standards for free and fair elections that reinforce and better define the right to political participation as set forth in the international treaties and instruments.

The OAS first observed elections in 1962, and the Inter-American Commission on Human Rights has issued a number of statements of normative importance, including its insistence, first stated in its review of the 1990 elections in Mexico, that violations of participatory rights are a matter of international concern.⁽⁴⁾ With the growing acceptance of the obligatory status of participatory rights, the UN and OAS standards may now be looked to as part of the normative process of further articulating these rights.

The first section of this chapter discusses the international and comparative standards and jurisprudence that underpin the right to freedom of political communication, including the right of candidates to express their views freely through the media, and the right of the public to receive these views. The first subsection summarizes the right to political participation as articulated in the leading human rights treaties and instruments. Subsequent subsections discuss aspects of the right to freedom of expression and non-discrimination that provide firm support for the right of equitable access to government media for political parties and candidates during election campaigns. These subsections draw upon international and comparative law as well as standards developed by UN election monitoring teams. The second section offers a brief review of the technical assistance and election-monitoring initiatives undertaken by intergovernmental and non-governmental organizations.

7.1 International and Comparative Law

[Return to contents](#)

7.1.1 The Right to Political Participation

Article 21 of the Universal Declaration of Human Rights marks the first statement of the human right to political participation in the post-World War II era. Adopted unanimously by the General Assembly in 1948, the Universal Declaration is the pre-eminent elaboration of the human rights obligations set forth in the United Nations Charter. While at the time of adoption it was viewed as a statement of principles, it is now widely accepted as imposing obligations upon all "members of the international community."⁽⁵⁾

The civil and political rights set forth in the Universal Declaration were codified and elaborated in the International Covenant on Civil and Political Rights, which entered into force in 1976. As of July 1994 127 states were party to the International Covenant, making it the most widely subscribed treaty guaranteeing the right to free elections. Article 25 of the Covenant provides, in relevant part:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 [including political opinion] and without unreasonable restrictions: ... (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;... .

Article 3 of the First Protocol to the European Convention on Human Rights (to which 28 countries are party) and Article 23 of the American Convention on Human Rights (25 state parties) guarantee the right to political participation in similar terms.(6) Article 13 of the African Charter on Human and Peoples' Rights also sets forth the right, although in a more limited fashion. (7)

The most detailed statements of participatory rights are to be found in three documents adopted by the CSCE, which now embraces 53 participating states. While the CSCE documents are not treaties and as such are not legally binding on participating states, they have come to be widely accepted as imposing obligatory rather than merely hortatory standards.

Of the instruments discussed above, only the CSCE documents expressly recognize the right of access to the media for all political groupings and individuals as an aspect of the right to political participation. In the Copenhagen Document of June 1990, the participating states committed themselves 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 the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.
(8)

Even though the human rights treaties do not expressly include the right of political candidates to disseminate their opinions through the media or the right of the public to have access to the opinions of political candidates, these rights are firmly anchored in the treaty-based rights to freedom of expression and non-discrimination. Whether the source of these rights — indisputably crucial to any genuine election — is the right to political participation *per se* or the rights to freedom of expression and non-discrimination is of no practical consequence. Since the right to political participation has for decades been considered controversial, most law on the matter has evolved under the rubric of freedom of expression.

The following sections highlight statements of international tribunals and national courts that support the right of political parties to have access to government media, particularly government broadcasting media, on a non-discriminatory basis. Many of the statements are from the European Court or Commission of Human Rights (which interpret and apply the European Convention on Human Rights) due to the fact that the European tribunals have been the most active of the international tribunals in deciding cases involving freedom of expression. In light of the fact that the various international tribunals tend to rely on each other's jurisprudence, especially when interpreting similar provisions,(9) the decisions of the European bodies may be assumed to have more global significance. A number of references are also made to the decisions of national courts. Increasingly,

international tribunals as well as national bodies look to trends in case-law, especially cases that interpret fundamental rights provisions, to inform their own jurisprudence.(10)

7.1.2 Freedom of Political Debate as a Fundamental Right

Freedom of political debate has been recognized as an essential foundation of a democratic society by institutions and governments around the world. The European Court of Human Rights noted in a 1978 landmark decision, for example, that "freedom of political debate is at the very core of the concept of a democratic society".(11)

The fundamental importance of freedom of political expression rests in large part on the importance of an informed electorate to the functioning of a genuine democracy. The UN Technical Team in its report on the Malawi referendum stated: "If voters are to make an informed choice at the polling station, then an active exercise of the freedom [of expression] is essential." (12)

The Enugu High Court of Nigeria similarly observed:

Freedom of speech is, no doubt, the very foundation of every democratic society, for without free discussion, particularly on political issues, no public education or enlightenment, so essential for the proper functioning and execution of the processes of responsible government, is possible. (13)

The Israeli Supreme Court declared:

Real democracy and freedom of speech are one. Freedom of speech enables each individual to crystalize his or her autonomous opinion in the decision-making process vital in a democratic state. The essence of democratic elections is premised on being able to reach informed opinions, evaluating them and exposing them to open debate ... (14)

James Madison, a leading drafter of the US Constitution, was equally emphatic:

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own Governors must arm themselves with the power which knowledge gives.(15)

7.1.3 The Role of the Press in Informing the Public and Acting as Watchdog of Government

Media freedom is essential if the public is to enjoy its right to freedom of expression and information. As the Inter-American Court of Human Rights has stated: "It is the mass media that make the exercise of freedom of expression a reality."(16)

The European Court has recognized that media freedom is one of the most important mechanisms for developing an informed citizenry:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.(17)

The press is also recognized as playing a crucial role in informing the public about matters of public interest and acting as a "public watchdog":

it is ... incumbent on [the press] to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'.(18)

In sum, the press and, by extension, the broadcast media are recognized as having two public functions: to inform the public and to act as watchdog of government. These public functions do not impose duties on the media in the way that governments have duties to respect and ensure respect for fundamental rights. In particular, individual media organs are not obliged to serve either or both of the public functions. Rather, the recognition in international law that the mass media serve public functions imposes duties on the government to ensure that the media as a whole are able to fulfil their functions.

In particular, governments are obliged not to interfere with editorial independence. Penalties against the press for publishing information and opinions concerning matters of public interest are intolerable except in the narrowest of circumstances, owing to the likelihood that they will "deter journalists from contributing to public discussion of issues affecting the life of the community."(19)

Governments are also obliged to ensure media pluralism and to encourage a diversity of sources of information.(20) Except in extraordinary circumstances, this requires governments to allow private television and radio stations to operate freely.(21) The European Court has emphasized that "the State is the ultimate guarantor ... of the principle of pluralism", and that pluralism is necessary if the media is successfully to accomplish its public functions: "This observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely."(22)

Moreover, while governments may regulate the technical aspects of broadcasting, frequencies must be allocated by a fair and non-discriminatory system and governments may not impose restrictions on the content of broadcasts beyond the narrow restrictions permissible on press freedom.(23)

However, private stations are not a substitute for public service broadcasting and governments should establish public service broadcast channels which are adequately resourced and free from government interference in editorial decisions.(24) If the government controls or supports a broadcast station, the station is obliged to serve both of the media's public functions.

7.1.4 Freedom of Expression: The Rights of Political Parties and Individuals to Have Access to Government Broadcast Media During Election Campaigns

The international standards and case-law make clear that governments have a negative obligation not to interfere with the imparting of information by the media or by willing speakers. While none of the international tribunals has directly examined the positive obligation of a government during a campaign period to broadcast views of political candidates on government-controlled channels, international norms discernible from a range of state practice confirm that this obligation is indeed widely-recognized.

Several national courts have concluded that political parties are entitled to have access to broadcasting time as an essential aspect of the right to freedom of political communication, in light of the tremendous impact of radio and television on public opinion and the public service nature of government-owned media.

For instance, the High Court of Trinidad and Tobago ruled that "the fundamental right of free speech demands opening up of the television media to political broadcasts" subject only to reasonable limitations.(25) An opposition Member of Parliament had complained about the refusal of state-owned Trinidad and Tobago Television (TTT) to broadcast his pre-recorded political speech. In ruling that the station's action violated the right to free speech, the High Court observed:

[W]ith television being the most powerful medium of communication in the modern world, it is in my view idle to postulate that freedom to express political views means what the constitution intends it to mean without the correlative adjunct to express such views on television. The days of soap-box oratory are over, as are the days of political pamphleteering

The Court concluded that the government could be compelled to enact broadcasting regulations allocating time for political broadcasts during campaign periods and even

during periods between general elections. Both TTT and the Attorney-General appealed, and the appeal was settled by a consent order affirming the High Court's ruling.(26)

The principal High Court of Zambia examined a directive issued by President Kaunda during the lead-up to the 1991 multi-party elections which instructed the three government-controlled newspapers not to give coverage to statements made by members of the leading opposition party, the Movement for Multi-Party Democracy (MMD), or to accept MMD advertisements. (27) The Court held that the directive was unconstitutional because it violated the constitutional protection of freedom of expression and was not reasonably justifiable in a democratic society. The Court stated:

[S]ince the petitioners were not allowed to publish their views on political matters through the government newspapers, and by necessary implication even through the radio and TV, they were denied the enjoyment of their freedom of expression

The Court commented on the proper role of publicly-owned media:

[I]n the case of newspapers they are supposed to be run on the basis of journalistic principles and ethics free from any outside interference. These principles dictate the coverage of all newsworthy events regardless of the source of such news. Anything less than this, and it is very easy for the general public to assess whether or not a given newspaper is working according to sound journalistic principles and ethics, is not acceptable from a publicly owned medium - print or other.

UN election observer missions, at least in recent years, have regularly called for "fair" access to the media for all registered parties.(28) Thus, for instance, the UN's observer mission at the 1989 Nicaraguan election stated that it was an important component of a fair election for "all political parties [to] have equitable access to State television and radio in terms of both the timing and the length of broadcasts."(29)

Similarly, the UN Technical Team on the Malawi Referendum affirmed the importance of respect for freedom of expression to the fairness of the election. While not going so far as to state that equal access to government-controlled media was *compelled* by binding international law, the Team did declare that such access was customary. The implicit suggestion was that any deviation from the customary norm carries a presumption of non-compliance with the international norms:

In the case of government-owned media, it is customary that equal access, both in terms of timing and length of broadcast, should be given to the competing sides to put forward their arguments.(30)

The most detailed UN media guidelines were issued by the UN Transitional Authority in Cambodia (UNTAC), which aimed to "promote the development of a free and democratic media" during the run-up to the May 1993 elections and thereafter.(31) The principle of

fair access to media outlets for all parties contesting the election was a central concern.(32)

7.1.5 Non-Discrimination and the Duty of Balance: The Obligation of Government-Controlled Media to Publish Opposition Views

The right of political parties and candidates to have access to government media receives powerful support from the strong prohibition of discrimination, including on grounds of political opinion, under international law. Paragraph 1 of Article 2 of the International Covenant declares that governments are obliged both to refrain from discrimination and to ensure that private parties do not engage in discrimination concerning matters that would affect the enjoyment of fundamental rights:

Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Other human rights treaties impose similar obligations.(33) Thus, if a government-controlled media outlet provides air time to the ruling party, either by way of time for direct statements or by way of news coverage, then it is obliged to devote equitable amounts of time to competing political parties on a non-discriminatory basis.

The most relevant statement by an international tribunal on this matter was made by the European Commission of Human Rights in rejecting an application by an association that had been denied air time during an election campaign by the British Broadcasting Corporation (BBC), pursuant to its policy of offering air time only to political parties. The Commission stated its opinion that, although Article 10 of the European Convention (guaranteeing freedom of expression) does not grant a general right of access to the broadcast media, at the least a political party or other entity is entitled to broadcasting time if other parties or entities are given such time:

It is evident that the freedom to 'impart information and ideas' included in the right to freedom of expression under Article 10 of the Convention, cannot be taken to include a general and unfettered right for any private citizen or organization to have access to broadcasting time on radio or television in order to forward its opinion. On the other hand, the Commission considers that the denial of broadcasting time to one or more specific groups or persons may, in particular circumstances, raise an issue under Article 10 alone or in conjunction with Article 14 of the Convention [prohibiting discrimination]. Such an issue would, in principle, arise for instance if one political party was excluded from broadcasting facilities at election time while other parties were given broadcasting time.(34)

The European Commission was not asked to decide, and thus did not address, the larger question of whether political parties have a right of access to the broadcast media during election campaigns as an aspect of the right to freedom of expression, independent of the question of equal access once access is granted to any party.

The Israeli Supreme Court ruled that the election statute had to be construed in light of the fundamental principles of both freedom of speech and equality. Although the election statute prohibited the broadcast of election "propaganda" (other than during times allotted for party statements), the Court ruled that this term had to be interpreted narrowly to apply only to "speech whose dominant effect is to influence the voter". Speech whose dominant effect, for example, was to impart newsworthy information (based on an objective viewer's standard) could not be excluded as propaganda; if such information was broadcast, the principle of equality required the broadcast of competing views.(35)

The Report of the UN Technical Team on the Malawi referendum, addressing the duty of non-discrimination, urged that "the information provided by the government-owned media should not be biased in favor of one or the other side".

7.1.6 The Right of Reply, Correction or Retraction in Government Media

Several national courts have ruled that their constitutional guarantees of freedom of expression and non-discrimination require government-controlled media to publish replies by government critics to government statements on controversial issues. This obligation is all the stronger during election campaign periods when the right of the electorate to be well-informed requires that parties or candidates whose views have been misrepresented or attacked be given the opportunity to reply. Several courts have elaborated the particular duties of a government-controlled publication or broadcasting station to provide accurate, balanced information and an opportunity for opposing views to be aired.

For example, in Belize, a leader of the opposition party (which had been part of the previous government) and the director of a television station in Belize City requested permission from the Belize Broadcasting Authority (BBA) to broadcast a series of monthly half-hour programmes.(36) The programmes would reply to the current government's statements about the economy, many of which were critical of the former government's policies. The BBA denied consent on the ground that the proposed programmes were party political broadcasts. In ruling that the BBA had acted arbitrarily, the Chief Justice of the High Court stated: "[T]oday television is the most powerful medium for communications, ideas and disseminating information. The enjoyment of freedom of expression therefore includes freedom to use such a medium."(37)

The Court of Appeal, affirming the Chief Justice's statement, held that the BBA's refusal to broadcast the programmes was arbitrary and discriminatory and violated the applicants'

constitutional rights both to freedom of expression and protection from discrimination. The Court made clear that political parties must be given the opportunity to reply on television to statements made by the government which "provide information or explanation of events of prime national or international importance or ... seek the co-operation of the public in connection with such events."(38) Only where there was a "general consensus of opinion" would the opposition not have a right of reply. The Court concluded that the BBA was obliged to ensure that equal time was granted to broadcasts by opposition politicians.

The Supreme Court of India also recognized the right of reply to political statements in the columns of a government-owned publication. A public sector agency republished in its house journal an article favourable to itself but refused to republish a rejoinder that had accompanied the article in the original periodical. The Court held that the agency's refusal was unlawful on the ground that, owing to the agency's status as an instrument of government, it had a duty of fairness to its readers. Moreover, "fairness demanded that both viewpoints were placed before its readers, however limited be their number, to enable them to draw their own conclusions."(39)

The media guidelines issued by the UN Transitional Authority in Cambodia (UNTAC) stated the duty of balance and impartiality in greater detail. Guideline 8 provides:

Media outlets should give parties, groups or individuals whose views have been misrepresented or maligned by a publication or broadcast the "right of response" in the same media outlet.(40)

In Guideline 9, UNTAC "strongly encourages" the media to "present a balance of views, to solicit a wide spectrum of opinion from the Cambodian community and to publish as much information as possible about the history, finances and platform of a political party or candidate." It also encourages the media "to publish views and counterinterviews at the same time" and notes that, when "opposing ideas are contained in the same broadcast or article, a 'response' may not be necessary".(41)

7.1.7 Limitations on Media Liability for Republishing Unlawful Statements

No international tribunal has yet issued a decision on the merits of holding a media outlet liable for disseminating, without endorsement, unlawful statements (such as slander or incitement to hatred) made by a political party or candidate. International standards undeniably prohibit such statements, but leave open the question as to whether the media outlet should be held liable in addition to the speaker.

UNTAC's guidelines follow a conservative approach by assuming that media outlets may be held liable for the broadcast (or publication) of statements which are defamatory, or

which "incite discrimination, hostility or violence by means of national, religious, racial or ethnic hatred."(42)

Holding media outlets liable for speech, even speech that violates international standards, requires editors to pre-screen all broadcasts and, owing to the vagueness of standards, to act as censors. During election periods when it is crucial that political parties be able to publicize their platforms, especially where the major broadcast media are controlled by the government, the various competing rights may be better balanced by holding liable only the political party or individual responsible for the broadcast.

A growing number of governments and courts which respect freedom of expression are choosing not to hold the media liable for unlawful statements published by the media (other than statements made or endorsed by media personnel). The European Commission of Human Rights, for example, ruled admissible an application filed by a Danish journalist who had been convicted and fined for broadcasting a television interview with members of a white supremacist gang.(43) As a result the Danish Parliament passed a bill that would exempt from liability journalists (and their editors and employers) who publicize statements that incite racial or national hatred but who do not themselves intend to promote hatred.

The Constitutional Court of Spain ruled that a newspaper could not be held liable merely for publishing a communiqué from ETA, a radical Basque separatist group, which defended its terrorist activities. The Constitutional Court invalidated the conviction of the newspaper's publisher on the ground that mere reproduction of a communiqué written by someone not associated with the newspaper was a form of expression protected by the right to freedom of information. The Court stated:

[B]oth the right of the journalist to inform and the rights of his readers to receive full and accurate information constitute, in the last resort, an objective institutional guarantee, which effectively prevents the imputation of any criminal will on the part of those who only transmit information.(44)

Similarly, in another case from Spain, a politician who represented Herri Batasuna (a Basque separatist coalition) was convicted for writing an article that attacked the government. The magazine that published the article was not prosecuted even though the government alleged that the article could provoke violence.(45)

The reasons for not holding the media liable are all the stronger during election periods when timely dissemination is crucial given that concern over liability often delays or prevents the airing of political party programmes. Insistence on holding the media liable for campaign statements clearly promotes self-censorship by privately-owned media and *de facto* government censorship of government-controlled media.

International law strongly disfavours prior restraint, especially where the information's value depends on timely dissemination. The American Convention on Human Rights (in

Article 13(2)) expressly prohibits all "prior censorship". The International Covenant and the European Convention have been interpreted to prohibit administrative censorship except in extraordinary circumstances, and to require that any administrative order restraining publication be subject to speedy review by a court.

The European Court, in the *Spycatcher* case, made clear that courts should authorize prior restraints only in exceptional cases. It emphasized that "the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court" and that this is especially so as far as the press is concerned, for "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."⁽⁴⁶⁾ News and opinions in the context of election campaigns are extremely "perishable" commodities; there are few other contexts where it is more urgent to publish matters promptly so that they may be debated and responded to before the voters decide how they will cast their votes.

The above case-law and standards provide solid grounds for concluding that a policy of releasing the media from liability for election broadcasts which are beyond their editorial control promotes the free political debate necessary for a free and fair election.

7.1.8 Political Expression May be Restricted only for Extraordinary Reasons

All of the major human rights treaties and other instruments either require by their terms or else have been interpreted to require that restrictions on freedom of expression meet a three-part test. First, any restriction must be provided by law. Second, in order to provide a legitimate basis for limitation, the restriction must serve one of the purposes stated in the treaty. The International Covenant permits restrictions only to protect "the rights or reputations of others", "national security", "*ordre public*" (which in addition to public order includes the general welfare), "public health or morals", "propaganda for war" or "incitement to discrimination, hostility or violence" on grounds of nationality, race or religion.⁽⁴⁷⁾ Third, any restriction must be necessary "in a democratic society".⁽⁴⁸⁾ To be necessary, a restriction does not have to be "indispensable", but it must be more than merely "reasonable" or "desirable". A "pressing social need" must be demonstrated, the restriction must be proportionate to the legitimate aim pursued, and the reasons given to justify the restriction must be relevant and sufficient.⁽⁴⁹⁾

Where the information subject to restriction involves a matter of "undisputed public concern" (which would include 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 by the state. ⁽⁵⁰⁾

In addition to endorsing these standards, the UN Technical Team on the Malawi Referendum noted that any restrictions on freedom of expression during an election campaign "should not be so vague or broadly defined as to leave an overly wide margin

of discretion to the authorities responsible for enforcing the law, since uncertainty over legal boundaries has a dampening effect on the exercise of this right [to freedom of expression] and may encourage discrimination in ... [the restrictions'] application."(51)

Accordingly, governments may prevent the dissemination of election broadcasts only where such dissemination would be certain to lead to a disruption of public order or a violation of some other interest that the government is legitimately entitled to protect. A strong argument can be made that government-controlled media, especially where they control the only or main channels in a region, may not refuse to broadcast political debate save in limited circumstances (elaborated in the following sections).

7.1.9 Enhanced Protection for Criticism of Politicians and Government

International law makes clear that politicians and governments are required to sustain a higher degree of insult than are private individuals, and that elected officials and candidates are to be accorded a particularly wide latitude in voicing criticisms.

The European Court ruled unanimously that because "freedom of political debate is at the very core of the concept of a democratic society ... the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards private individuals."(52) In addition, "[t]he limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician."(53) The state authorities may adopt, "*in their capacity as guarantors of public order*" penalties for defamation that are proportionate to the injury but only where the accusations are "devoid of foundation or formulated in bad faith."(54) The reference to public order suggests that government discretion to restrict potentially defamatory statements against the government should be limited to situations in which public order is threatened.

In addition:

While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition Member of Parliament, like the applicant, call for the closest scrutiny on the part of the Court.(55)

The above reasoning — concerning the government's heightened obligation to refrain from interfering with the free expression rights of opposition Members of Parliament — also holds true for candidates for elected office.

7.1.10 Enhanced Protection for Political Opinions

Under international law, opinions (as opposed to factual allegations) concerning matters of political debate may be restricted only in extraordinary circumstances. In particular, they may not be restricted on the ground that they are untrue. To require a speaker accused of defamation to prove the truth of an opinion "infringes freedom of opinion itself".(56)

Thus, for instance, the European Court ruled improper a journalist's conviction for defamation for accusing an Austrian party leader of making statements "consistent with the philosophy and aims of the National Socialist Party" (a criminal offence in Austria). The accusation was based on the party leader's statement that family allowances for Austrian women should be increased by 50 per cent in order to discourage them from seeking abortions, while allowances paid to immigrant mothers should be reduced by 50 per cent. The Austrian court concluded that the journalist had not proved the truth of his accusation because the party leader's statement did not necessarily reflect a National Socialist attitude, and that the journalist had "disregarded the standards of fair journalism by ... insinuating motives which [the politician] had not himself expressed."(57) The European Court rejected the Austrian court's arguments, stating that the journalist could not be asked to prove the truth of his value judgment.

7.1.11 Right to an Effective Remedy

International law provides that everyone is entitled to an effective remedy by a competent national tribunal for a violation of a fundamental right. For instance, each state party to the International Covenant undertakes, pursuant to Article 2(3):

- a. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- c. To ensure that the competent authorities shall enforce such remedies when granted.(58)

There is good authority for the proposition that, where an administrative (as opposed to a judicial) remedy is the only remedy available, the agency that decides the complaint must be independent of the agency that is the subject of the complaint. The European Court has

ruled that, because individuals are entitled under the European Convention to have access to information of vital interest to their private or family life, they furthermore are entitled to have any denial of a request for such information reviewed by an authority independent of the agency that refused the original request for information.(59)

Similarly, the UN Technical Team on the Malawi Referendum urged that "a recourse mechanism should be present providing for independent review of cases where restrictions on this right [to freedom of expression] have been applied."(60)

The above precedents provide sound support for the contention that international law, bolstered by UN guidelines, requires establishment of a body to regulate election broadcasts that is independent of government as well as the media, and which is subject to judicial review.

7.1.12 Government Obligation to Protect the Safety of Media Personnel and Premises

Governments have a general obligation to safeguard the physical security of all people within their jurisdiction.(61) In addition, various statements in UN documents support a heightened obligation of governments to protect journalists and media offices from physical attack.

The members of the UN, at the 1993 World Conference on Human Rights in Vienna (convened to mark the 45th anniversary of the Universal Declaration of Human Rights), among other matters, reaffirmed and strengthened their commitment to give effect to many of the fundamental rights set forth in the Universal Declaration. Paragraph 26 of the Vienna Declaration is particularly relevant:

[T]he World Conference encourages the increased involvement of the media, for whom freedom and *protection* should be guaranteed within the framework of national law. [emphasis added]

At its 1993 session, the UN Commission on Human Rights (comprising 53 government representatives) took the exceptional step of requesting the appointment of a UN Special Rapporteur on freedom of expression to promote this right and to protect "professionals in the field of information" (including "journalists, editors, writers and authors, publishers and printers").(62) The Commission, expressing "concern at the excessive occurrence", *inter alia*, of "violence or threats of violence and ... harassment" against such people, appealed to states to "take the appropriate steps to ensure the immediate cessation of these acts and to create the conditions under which these acts may be less liable to occur".(63) The appointment of a Special Rapporteur was justified, stated the Commission, because "the effective promotion of human rights of persons who exercise the right to freedom of opinion and expression is of fundamental importance to the

safeguarding of human dignity" and because "the right to freedom of opinion and expression is interrelated with and enhances the exercise of all other human rights".(64)

For the above reasons and owing to the particular importance during election campaigns of protecting the security of the mass media, including those that publish controversial views, governments must be especially vigilant during election campaigns to condemn, investigate and punish attacks against media personnel and property.

7.1.13 Special Measures Where Freedom of Expression Has Been Unduly Restricted Previously

Governments are under an obligation to bring national legislation which affects the right to freedom of expression and information into compliance with the international standards which set forth this right. In countries where freedom of expression has previously been restricted, it may be necessary to introduce special measures to ensure this right during election periods. However, such special measures in no way exempt the government from its obligation to guarantee the right to freedom of expression to all people within its jurisdiction at all times.

As stressed by the UN Technical Team on the Malawi Referendum, special measures are required to ensure respect for freedom of expression during a campaign period "where the exercise of the freedom of opinion and expression has been subject to undue restriction in the past". The preferred approach, stated the Team, is to eliminate the restrictions outright; short of this, it is customary to incorporate special legislation that clearly takes legal precedence over previous restrictive laws and practice. Moreover, "it is most often necessary for a clear statement to be issued from the highest level of Government to the implementing agencies concerned, drawing attention to the new standards in force for the election or referendum."(65)

7.2 The Practice of Intergovernmental and Non-governmental Organizations

[Return to contents](#)

The United Nations has devoted considerable attention to the principle of periodic and genuine elections. Several General Assembly resolutions have addressed the importance of the principle.(66) The Secretary-General has reported on the efforts of the organization to enhance the effectiveness of this principle.(67) At the request of the General Assembly, the Secretary-General appointed a senior UN officer to act as the focal point for electoral matters and set up the Electoral Assistance Unit (EAU), a taskforce on these issues.(68) The UN Centre for Human Rights, the Department of Technical Cooperation

for Development, and the United Nations Development Programme all provide assistance to member states concerning electoral matters.

The OAS also has devoted attention and resources to the promotion of electoral rights. The OAS has observed elections since 1962, and its Permanent Council and its Ministers of Foreign Affairs have issued resolutions on representative democracy, the most significant of which was issued in June 1991.(69) The OAS set up a Unit for Democratic Development to address, among other matters, election monitoring.(70) The Inter-American Commission on Human Rights, in the course of reviewing the "authenticity" of a number of elections, has issued statements of a normative character.(71)

The Conference on Security and Cooperation in Europe, in its Charter of Paris for a New Europe of 21 November 1990, created the Office for Free Elections, which was established in Warsaw. The purpose of the office is to facilitate contacts and the exchange of information among participating states regarding elections. The Prague Document on Further Development of CSCE Institutions of 30 January 1992 assigned additional functions to this office and renamed it the Office for Democratic Institutions and Human Rights.(72) Member states of these organizations participate in the organizations' activities and help form the basis for articulating principles for achieving genuine elections. Further, states often invite intergovernmental organizations and non-governmental organizations to observe and comment upon election campaign practices in their countries.

The UN, OAS, and CSCE observe elections at the request of states as does the Organization of African Unity, the Council of Europe, the European Union and the Commonwealth Secretariat. A number of non-governmental organizations, both national and international, also have developed special expertise in election observing; one of them, the International Human Rights Law Group, drafted election observation guidelines in 1984 that continue to be used by IGOs, NGOs and governments. Increasingly, organizations are also monitoring media coverage. (74) The observations of IGOs and NGOs are welcomed by the requesting states as useful in their efforts to improve the fairness, and the appearance of fairness, of their elections and to gain recognition from the international community for successful advances towards democracy.(75) Election observer delegations thus help to define the normative character of electoral rights.

ENDNOTES

1. See Appendix I for the relevant texts. For a comprehensive discussion of the contours of the right to political participation under international law, see G H Fox, "The Right to Political Participation in International Law", 17 Yale J of Int'l L 539 (1992).

2. See Fox, note 1 above, esp. at 607. This evolution can also be traced in the writings of legal theorists. For example, in 1988, Prof. Henry Steiner observed that the right to political participation functioned less as a model of conduct than as a "weapon of rhetorical battle" through which "each of the world's ideological blocs, infusing the right with its own understandings, attacks the others for violating those understandings." H

Steiner, "Political Participation as a Human Right", 1 Harv Human Rights Yearbook (1988), at 77. In 1990, Prof. Thomas Franck opined that the legitimacy of the right suffered from its lack of determinacy. Franck, *The Power of Legitimacy Among Nations* (1990), at 50-66. By 1992, however, Gregory Fox was able to make a compelling argument that such indeterminacy no longer existed.

3. See L Garber, "A New Era of Peace-Making: United Nations and Election Monitoring", in *Stiftung Wissenschaft und Politik* (1993). For a discussion of international monitoring of elections in the decolonization context, see M Evans and D T Oridge, "What Can the Past Teach the Future? Lessons from Internationally-Supervised Elections, 1920-1990", 24 *Int'l Law & Politics* (1992), at 1711-56. For a discussion of electoral rights as extensions of the right to self-determination, see D Padilla & E Houppert, "International Election Observing: Enforcing the Principle of Free and Fair Elections", 7 *Emory Int'l Law Review* (1993) 73, 79-85.

4. Mexico Election Decision, Cases 9768, 9780, 9828, Annual Report of the Inter-American Commission on Human Rights: 1989-1990, OEA/Ser. L/V/II.77, rev. 1, Doc. 7 (7 May 1990), at 98-123, esp. at 118, para. 88 (the cases alleged electoral fraud; the Commission confirmed its competence to consider such issues concerning national elections of states parties to the American Convention). For a discussion of these cases see D Shelton, "Representative Democracy and Human Rights in the Western Hemisphere," 12 *Human Rights Law Journal* (1991), 353-359. See also "Human Rights, Political Rights and Representative Democracy in the Inter-American System", in Annual Report of the Inter-American Commission on Human Rights: 1990-1991, OEA/Ser.L/V/II.79, rev. 1, Doc.12 (22 Feb 1991), at 525.

5. See The Proclamation of Teheran, Final Act of the International Conference on Human Rights at 4 para. 2, UN Doc. A/CONF 32/41, endorsed by the General Assembly in GA Res. 2442 (XXIII), 19 Dec. 1968; 23 GAOR, Supp. No. 18 (A/7218), at 49. In 1971, the UN Secretary-General observed: "During the years since its adoption the Declaration has come, through its influence in a variety of contexts, to have a marked impact on the pattern and content of international law and to acquire a status extending beyond that originally intended for it. In general, two elements may be distinguished in this process: first, the use of the Declaration as a yardstick by which to measure the content and standard of observance of human rights; and, second, the reaffirmation of the Declaration and its provisions in a series of other instruments. These two elements, often to be found combined, have caused the Declaration to gain a cumulative and pervasive effect.

6. The Inter-American Commission on Human Rights has made clear that, pursuant to Art. 23, all candidates are entitled to conduct their election campaigns under the same basic conditions, and that elections should take place within the framework of "necessary guarantees so that the results represent the popular will." "Human Rights, Political Rights, and Representative Democracy in the Inter-American System," note 4 above at 525.

7. The African Charter does not mention such concepts as "genuine periodic elections", "universal and equal suffrage", "secret ballot" or even the objective of "guaranteeing the free expression of the will of the electors". The relevant text of Article 13 is included in Appendix I. For an examination of the current and potential role of the Organization of African Unity (OAU) in promoting fair elections, see L Garber, "The OAU and Elections", 4 *Journal of Democracy* (1993), 55-60.
8. Para. 7.8 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, reprinted in Appendix I and in 29 *Int'l Legal Materials* 1305, 1308. See also The Charter of Paris, signed on 21 Nov. 1990 by the CSCE heads of state, endorsing democracy and reaffirming the principles set forth in the Copenhagen Document and the Document of the Moscow Meeting on the Human Dimension (3 Oct. 1991).
9. See The ARTICLE 19 Freedom of Expression Handbook: International and Comparative Law, Standards and Procedures (London: 1993), 45-46 citing, inter alia, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Inter-American Court of Human Rights, Adv. Opn. OC-5/83 of 13 Nov. 1985, Series A no. 5, reprinted in 7 *Human Rights Law Journal* (1986), 74 and in 8 *EHRR* 165.
10. *Ibid.* at 28-44.
11. *Lingens v. Austria*, Judgment of 8 July 1986, Series A no. 103, at para. 42. See also, for example, UN General Assembly Resolution 59(I), 14 Dec 1946: "Freedom of information is a fundamental human right and ... the touchstone of all of the freedoms to which the United Nations is consecrated."
12. Report of the UN Technical Team on the Conduct of a Free and Fair Referendum on the Issue of a One Party/Multiparty System in Malawi (15-21 Nov. 1992), para. 26.
13. *The State v. The Ivory Trumpet Publishing Co.* [1984] 5 *NCLR* 736, High Court, Enugu, 31 Jan 1983, discussed in The ARTICLE 19 Freedom of Expression Handbook, note 9 above at 56 and 129-30.
14. *Zeveli v. Central Committee for the Elections to the 13th Knesset, and Association for Civil Rights in Israel v. the Israeli Broadcasting Authority*, HC 869/92 and 931/92; 46(2) *Piskei Din*, 692.
15. G Hunt (ed.), *The Writings of James Madison* (1910), 103.
16. Compulsory Membership in a Journalists' Association, note 9 above.
17. *Castells v. Spain*, Judgment of 23 April 1992, Series A no. 236, para. 43.

18. *Thorgeirson v. Iceland*, Judgment of 25 June 1992, Series A no. 239, para. 63; *Castells v. Spain*, *ibid.* at para. 43; *The Observer and Guardian v. UK (Spycatcher case)*, Judgment of 26 Nov. 1991, Series A no. 216, para. 59(b); *The Sunday Times v. UK(II)* (companion *Spycatcher case*), Judgment of 26 Nov. 1991, Series A no. 217, para. 65.

19. *Lingens v. Austria*, note 11 above at para. 44.

20. See Declaration on the Freedom of Expression and Information, 29 April 1982, in which the Committee of Ministers of the Council of Europe declared that: "states have the duty to guard against infringements of the freedom of expression and information and should adopt policies designed to foster as much as possible a variety of media and a plurality of information sources, thereby allowing a plurality of ideas and opinions". Reprinted in Council of Europe DH-MM (91) 1. See also *Geillustreerde Pers v. Netherlands*, Commission Report adopted 6 July 1976, 8 D&R 5 (1976); G Malinverni, "Freedom of Information in the European Convention on Human Rights and in the International Covenant on Civil and Political Rights", 4 HRLJ (1983), 443, 451. See also Art. 13 of the American Convention; and the UN Human Rights Committee, General Comment on Article 19, adopted by the Committee at its 461st meeting on 27 July 1983, UN Doc. A/38/40, 109.

21. See *Informationsverein Lentia and Others v. Austria*, Judgment of 24 Nov. 1993, Series A no. 276. In extraordinary circumstances, for instance where public broadcasting could not survive financially unless allowed to operate as a monopoly, a government monopoly may be permissible so long as the government offers a multiplicity of views on the government channels. However, of all the means of ensuring that pluralism is respected, "a public monopoly is the one which imposes the greatest restrictions on the freedom of expression The far-reaching character of such restrictions means that they can only be justified where they correspond to a pressing need" (para. 39).

22. *Ibid.* at para. 38.

23. See, for example, the decision of the European Court of Human Rights in *Groppera Radio AG and Others v. Switzerland*, Judgment of 28 March 1990, Series A no. 173, para. 61. Restrictions on freedom of expression are permissible, for instance under the International Covenant, "only ... as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals."

24. The government is held more directly responsible for ensuring that the broadcast media serve their public function. This distinction in government responsibility between broadcasting and the press is generally attributed to the traditional scarcity of broadcasting and the large costs associated with television stations in particular. With the increase in availability of cable and satellite channels, as well as growing numbers of private broadcasters, many commentators feel that increasingly broadcasting should be treated no differently from the press. This, however, is not an issue that needs to be

addressed in this study because most transitional democracies have only one or two national television stations.

25. *Rambachan v. Trinidad and Tobago Television Co. Ltd and Attorney-General of Trinidad and Tobago*, decision of 17 July 1985 (unreported), excerpted and discussed in *The ARTICLE 19 Freedom of Expression Handbook*, note 9 above at 58-59.

26. A Lester, "Freedom of Expression: Relevant International Principles", in *Developing Human Rights Jurisprudence* (London: Commonwealth Secretariat, 1988), 30.

27. *Arthur Wina & Others v. the Attorney-General* (1990) HP/1878 (High Court: Lusaka), summarized, with excerpts, in *The ARTICLE 19 Freedom of Expression Handbook*, note 9 above at 59-60.

28. Some UN guidelines were understood to endorse equal access to the media under the broader command of respect for freedom of expression, association and peaceful assembly, especially of political parties. For instance, the Haiti mission scrutinized, among other matters, respect for "freedom of expression and freedom of political parties to mobilize", and noted with approval that the government permitted journalists to engage "in the most violent diatribes" without interference (G H Fox, note 1 above at notes 246 and 256).

29. Establishment and Terms of Reference of the UN Observer Mission to Verify the Electoral Process in Nicaragua (ONUVEN), *The Situation in Central America*, UN GAOR, 44th Sess., "Threats to International Peace and Security and Peace Initiatives," UN Doc. A/44/375 (1989), Annexe 1, at 3.

30. Report of the UN Technical Team on the Malawi Referendum, note 12 above at para. 27.

31. UN Transitional Authority in Cambodia (UNTAC), *Media Guidelines for Cambodia* (1992), pream. para. 4. See Appendix 1 for the relevant text of these guidelines.

32. See especially Guidelines 2, 4, 7-10. The other major concern was the protection of the physical security of all persons involved in publishing information or opinions, discussed in section 7.1.12 below.

33. See Appendix I for relevant texts, esp. Art. 1 of the American Convention, Art. 14 of the European Convention and Art. 2 of the African Charter.

34. *X and the Association of Z v. the United Kingdom*, European Commission on Human Rights, Admissibility Decision of 12 July 1971, App. No. 4515/70, 38 *Collected Decisions* 86 (1971).

35. HC 869/92 and 931/92, note 14 above.

36. Belize Broadcasting Authority v. Courtenay and Hoare, Court of Appeal, 20 June 1986; (1988) LRC (Const.) 276; 13 Common L Bull (1987), 1238, excerpted and discussed in The ARTICLE 19 Freedom of Expression Handbook, note 9 above at 57-58.
37. Ibid., LRC at 284.
38. Ibid., citing Halsbury's Laws of England (4th edn, Vol. 8, para. 1134).
39. Manubhai Shah v. Life Insurance Corp. of India [1992] 3 SCC 637.
40. UNTAC Media Guidelines, note 31 above, reproduced in Appendix I.
41. Ibid.
42. Ibid. at Guidelines 17 and 19.
43. Jersild v. Denmark, App. No. 15890/89, decision on admissibility issued 8 Sept. 1992. The European Commission thereafter ruled on the merits that the journalist could not be held liable, but did so on narrow grounds, namely, that the journalist had intended to counter racism through its exposure and that the broadcast was indeed likely to create contempt for the racists. Report of the Commission, adopted 8 July 1993. The European Court has agreed to hear the case and it is hoped that it will address directly the larger issue of media liability for neutral reporting.
44. Egin case, STC 159/86, Boletín de Jurisprudencia Constitucional 68, at 1447 para. 8, summarized, with excerpts, in The ARTICLE 19 Freedom of Expression Handbook, note 9 above at 120.
45. The facts and rulings in Spain's criminal prosecution of Miguel Castells are summarized in the report of the European Court of Human Rights in Castells v. Spain, note 17 above at paras. 6-18.
46. The Observer and Guardian v. UK (Spycatcher case), note 18 above at para. 60.
47. Arts. 19 and 20 of the International Covenant. The American Convention includes a similar list of restrictions but it adopted the term "public order" rather than the broader "ordre public". The European Convention uses the phrase, "the prevention of disorder or crime". In addition to the other restrictions stated in the International Covenant and American Convention, the European Convention includes restrictions necessary to protect "territorial integrity or public safety", the confidentiality "of information received in confidence", and "the authority or impartiality of the judiciary".
48. Art. 19 of the International Covenant; Art. 10 of the European Convention; and Art. 13 of the African Charter. See Compulsory Membership in a Journalists' Association, note 9 above at para. 46.

49. European Court of Human Rights, *Handyside v. United Kingdom*, Judgment of 7 Dec. 1976, Series A no. 24, paras. 48-50; *Sunday Times v UK*, Judgment of 26 April 1979, Series A no. 30, para. 62.
50. *Sunday Times v. UK*, *ibid.* at paras. 65-66.
51. Report of the UN Technical Team on the Malawi Referendum, note 12 above at para. 29.
52. *Lingens v. Austria*, note 11 above at para. 42.
53. *Castells v. Spain*, note 17 above at para. 46.
54. *Ibid.* at para. 46 (emphasis added).
55. *Ibid.* at para. 42.
56. *Lingens v. Austria*, note 11 above at para. 46.
57. *Oberschlick v. Austria*, Judgment of 23 May 1991, Series A no. 204, para. 13.
58. Art. 13 of the European Convention and Art. 25 of the American Convention set forth the right to an effective remedy by a competent court or tribunal in similar terms. Art. 8 of the Universal Declaration of Human Rights declares a "right to an effective remedy by the competent national tribunals" for violations of "fundamental" rights.
59. *Gaskin v. UK*, Judgment of 7 July 1989, Series A no. 160.
60. Report of the UN Technical Team on the Malawi Referendum, note 12 above at para. 29.
61. For instance, Art. 9 of the International Covenant states that: "Everyone has the right to liberty and security of person." Art. 2, quoted above, requires each state party "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant".
62. Commission of Human Rights res. 1993/45 adopted 5 March 1993, UN Doc. E/CN.4/1993/122, Chap.II.A., at preambular para. 11 and operative para. 13. See also Report of the Special Rapporteur, UN Doc. E/CN.4/1994/33, of 26 Jan. 1994, para. 1.
63. *Ibid.* at para. 7.
64. *Ibid.* at preamb. paras. 9 and 10.
65. Report of the UN Technical Team on the Malawi Referendum, note 12 above at para. 248.

66. See, for example, Resolution Adopted by the General Assembly on Enhancing the effectiveness of the principle of periodic and genuine elections, UN Doc. A/RES/46/137 (9 March 1992).

67. See, for example, Report of the Secretary-General on Enhancing the effectiveness of the principle of periodic and genuine elections, UN Docs. A/46/609 and Add. 1 and 2 (Nov. 1991).

68. Mr James O C Jonah, Under Secretary-General of the Department of Political Affairs was designated the United Nations official to act as the focal point, and Mr Horacio Boneo was appointed director of the EAU.

69. The Santiago Commitment to Democracy and the Renewal of the Inter-American System, OEA/Ser.P, AG/doc. 2734/91 (4 June 1991); Representative Democracy, OEA/Ser.P/AG/doc. 2739/91, RES. 1080 (XXXI-0/91) (4 June 1991).

70. See Unit for Democratic Development, AG/RES 1063 (XX-0/90)(8 June 1990).

71. See G H Fox, note 1 above at 566.

72. The mandate of the office was further defined at the CSCE's Moscow Meeting in the Helsinki Decisions of 10 July 1992, Section VI, The Human Dimension, at paras. 5 et seq.

73. International Human Rights Law Group (prepared by L Garber), Guidelines for International Election Observing (Washington, DC: 1984).

74. The European Institute for the Media based in Dusseldorf has monitored media coverage in a number of elections. ARTICLE 19, in cooperation with local partners, monitored the 1994 Malawi elections. See, for example, ARTICLE 19, Media Monitoring in Malawi, (weekly monitoring reports on broadcasting and intimidation in the May 1994 election campaign), and Freedom of Expression in Malawi: The Elections and the Need for Media Reform (July, 1994).

75. For a discussion of the importance of international election observer delegation standards in the interpretation of treaty norms see G H Fox, note 1 above at 571-596.

CHAPTER 8

[Return to contents](#)

GUIDELINES FOR BROADCAST COVERAGE OF ELECTION CAMPAIGNS IN TRANSITIONAL DEMOCRACIES

Introduction

The following Guidelines concern broadcast coverage of election campaigns in transitional democracies. These are countries which have recently emerged from a period of non-democratic governance, characterized by, among other features, the absence of free and fair elections.⁽¹⁾ The Guidelines are intended to be directly applicable only to the period of the election campaign itself and only to the government broadcast media; they may, however, also be relevant to government-controlled press during election periods, and to government media coverage of political matters during non-campaign periods.

The term "government media" is used in these Guidelines to refer to broadcasting channels that are owned, operated or controlled by the government, as well as to channels that are managed by government appointees or that are governed by boards, a majority of whose members are selected by the government or ruling party. The Guidelines also apply to public service broadcasting channels, namely, media which are supported entirely or in part by government funds but are governed by boards that are independent of government and all political interests.

Three kinds of election broadcast are discussed: (a) direct access programmes including advertising, over which the political party or candidate has complete editorial control; (b) interviews, debates, candidate forums, radio "talk-back" shows, voter education programmes and similar formats, referred to in these Guidelines as "special information programmes", over which the broadcaster has editorial control; and (c) news coverage, over which the broadcaster also has editorial control.

The degree of government control of broadcasting varies between transitional democracies: in many countries, broadcast media operate under heavy government influence, while in a few, state-owned television and particularly radio have a substantial degree of editorial independence and a commitment to balance, fairness and even investigative reporting. The status of private media also varies: in some transitional democracies, especially during the first years, the government has a complete monopoly on the television media; in others, private stations may be licensed to broadcast regionally, and in a few (especially after several years), one or more national private television stations may be operating. Similarly, in some countries, the government controls all radio stations; in others, a number of private stations are authorized. Where private media do operate, they are often in the hands of strong supporters of the government and only rarely present views which differ from government media.

Conditions vary among transitional democracies and even among different regions within the same country. The predominant vehicle for communicating political messages in some countries or regions is television; in others, radio, the press or other methods (such as leaflets, meetings, loudhailer messages) may be the predominant vehicle; and in some, two or more of these media are of approximately equal influence. These varying conditions do not affect the need for governments to implement these Guidelines; they may, however, require governments to undertake additional information initiatives to ensure that all citizens are fully informed and able to participate in the election process.

In countries where radio and/or television are the predominant media for communicating political party and candidate messages, the obligation of the government media to provide the public with accurate, balanced information and to grant access to parties or candidates on a non-discriminatory basis is all the stronger.(2) First multi-party elections, both where the prior government remains in power and where some form of interim government has been installed prior to elections, present particular challenges and warrant special vigilance.

To comply with international law, government media must fulfil the duties of impartiality and non-discrimination. As part of the transition to democracy, ARTICLE 19 strongly recommends that governments transform government broadcast media into public service media. As a first step and as a matter of urgency, editorial independence should be safeguarded.

Several of the Guidelines are phrased in mandatory terms. These are based on principles of international human rights law derived from international treaties, case-law and evolving state practice.(3) Non-compliance with these Guidelines, regardless of various country-specific conditions, raises a presumption of unfair media practice which could taint the fairness of the election process.

Other Guidelines are phrased as highly recommended or recommended based upon the experiences of both transitional and well-established democracies.(4) Non-compliance with these Guidelines calls into question the fairness, impartiality, balance and informative content of media coverage.

Most of the Guidelines indicate required and recommended practice for government media during the election campaign period. These Guidelines are 1, 2, 5, 7, 8, 9, 10, 11, 12, 15 and 16. Other Guidelines concern the government itself and indicate what is required and what is recommended to ensure full enjoyment of freedom of expression for all media — government and private, broadcast and print — and for political parties and candidates, during the election campaign. These Guidelines are 3, 4, 5, 6, 13 and 14.

Private media do not carry the same responsibilities under international law as do government media. Nevertheless, ARTICLE 19 encourages private broadcasters as a matter of professional responsibility to comply with the Guidelines which apply to government media. Such voluntary implementation of the Guidelines, including for example, the requirements of balanced and impartial news coverage and the granting of

direct-access air time on a non-discriminatory basis would enhance the fairness of an election. ARTICLE 19 also encourages professional associations of journalists and broadcasters to adopt relevant Guidelines and to encourage their members to adhere to them.

THE GUIDELINES IN SUMMARY

[Return to contents](#)

The Guidelines address the duty of government media:

- * to inform the public about matters relevant to the elections, including to provide voter education (Guidelines 1 and 11)
- * to be balanced and impartial in their election reporting (Guideline 2)
- * not to refuse to transmit an election broadcast unless it constitutes a clear and direct incitement to violence or hatred (Guideline 5)
- * to be accurate, balanced and impartial in their news and current affairs programmes (Guideline 8)
- * to grant parties and candidates air time for direct access programmes on a fair and non-discriminatory basis (Guideline 9)
- * to grant equal time to both sides of a referendum vote (Guideline 15), and
- * to comply with the above Guidelines also in local and regional elections (Guideline 16).

They further address the obligation of governments:

- * to abolish any laws that restrict freedom of expression in breach of international law and standards (Guideline 3)
- * to make special efforts to investigate threats and physical attacks on media personnel or offices and to bring those responsible to justice (Guideline 4);
- * not to censor election programmes in any way (Guideline 5)

* to establish or designate an independent, impartial body to monitor and regulate election broadcasts (Guideline 13), and

* to ensure that decisions of this body are subject to judicial review on an expedited basis (Guideline 14).

The Guidelines strongly recommend:

* that the media be exempted from legal liability for unlawful statements made during election broadcasts by candidates or party spokespersons (Guideline 6)

* that parties and candidates be granted the opportunity to reply to or correct injurious statements or criticisms directed against them (Guideline 7)

* that government media should broadcast candidate forums and interview programmes (Guideline 10), and

* that any media outlet that publicizes the results of an opinion poll or election projection should also include any relevant information about the circumstances and significance of the poll or projection (Guideline 12).

GUIDELINE 1:

DUTY OF GOVERNMENT MEDIA TO INFORM THE PUBLIC ABOUT ALL MATTERS RELEVANT TO ELECTIONS

GUIDELINE 1

During the period preceding an election, government media have a duty to inform the public about the political parties, candidates, campaign issues, voting processes, and other matters relevant to the election.

Commentary: The government's obligation to ensure that "*Every* citizen shall have the right and opportunity, without ... distinction [of any kind] ... to vote ... at genuine ...

elections" obliges the government to ensure that electors have the necessary information to register and vote, and to make informed choices regarding matters that are the subject of elections. This obligation is particularly heavy where the electorate have not had substantial prior experience of voting in free and fair elections. The right to vote "without distinction of any kind" encompasses the right of people who are illiterate or only minimally educated to have access to the necessary information. The government is obliged to broadcast election programmes unless it undertakes other information initiatives that would reach as many people as would broadcasting.

The media are charged with the dual public functions of "impart[ing] information and ideas on matters of public interest" and acting as watchdog of government.(6) No individual media organ is obliged to fulfil these twin functions; the obligation, instead, rests with the government to ensure that the press, radio and television collectively are able to do so. However, if the government controls or substantially supports a broadcast station, that station is obliged to fulfil these public functions.

[Return to contents](#)

GUIDELINE 2:

DUTY OF BALANCE AND IMPARTIALITY

GUIDELINE 2

Government media have a duty to be balanced and impartial in their election reporting and not to discriminate against any political party or candidate in granting access to air time.

Guideline 2.1

This duty requires that news, interview and information programmes must not be biased in favour of, or against, any party or candidate.

Commentary: The government's obligation of balance and impartiality derives directly from the fundamental rights of voters and candidates to freedom of expression and information, and non-discrimination,(7) in addition to the duty of government broadcasters to disseminate accurate information about matters of public interest (discussed in Guideline 1, above).

Consistent with the international standards, guidelines of UN election missions provide that "[i]n the case of government-owned media, it is customary that equal access, both in terms of timing and length of broadcast, should be given to the competing sides" and that "the information provided by the government-owned media should not be biased in favour of one or the other side".(8)

The recent experience of transitional democracies shows that the duty of balance is most often, and most seriously, breached in the coverage of news.(9) Criteria for determining appropriate news coverage are set forth in Guideline 8.

[Return to contents](#)

GUIDELINE 3:

SPECIAL OBLIGATIONS WHERE LAWS RESTRICTING FREEDOM OF EXPRESSION ARE IN FORCE

GUIDELINE 3

Any laws that restrict freedom of expression in breach of international law and standards must be abolished.

Commentary: The existence of laws which restrict freedom of expression will limit political debate and hamper the media's ability to give full and free coverage to the election, thereby interfering with the fairness of the election process. It is recommended that such laws be abolished in good time before the election campaign begins.

The UN Technical Team on the Malawi Referendum noted in 1992 that special measures are required to ensure respect for freedom of expression during the campaign period "where the exercise of the freedom of opinion and expression has been subject to undue restriction in the past".

The preferred approach, stated the Team, is to eliminate the restrictions outright; short of this, it is customary to incorporate special legislation to protect freedom of expression that clearly takes legal precedence over previous restrictive laws and practice. Moreover, "it is most often necessary for a clear statement to be issued from the highest level of Government to the implementing agencies concerned, drawing attention to the new standards in force for the election or referendum."(10)

[Return to contents](#)

GUIDELINE 4:

GOVERNMENT OBLIGATION TO PUNISH ATTACKS AGAINST MEDIA PERSONNEL AND PROPERTY

GUIDELINE 4

The Government must make special efforts to investigate all acts, or threatened acts, of violence, intimidation or harassment directed against media personnel, or any act of destruction of the property or premises of a media outlet, particularly where there is any reason to believe that the act was motivated by an intent to interfere with media freedom, and to bring those responsible to justice.

Commentary: Recent UN declarations have stressed the obligation of governments to *protect* the media, and the UN's appointment in 1993 of a Special Rapporteur to receive and act upon complaints of attacks against media personnel underscores the special importance attached by the international community to their physical protection. This special emphasis is based upon the recognition that effective protection of media personnel, and the premises of media outlets, is a prerequisite to the ability of the media to serve its public function of informing the public about matters of public interest.(11)

[Return to contents](#)

GUIDELINE 5:

LIMITS ON PRIOR RESTRAINT

GUIDELINE 5

There must be no government censorship of any election programme.

Guideline 5.1

The government should issue a clear statement to the public and all broadcast stations that the media are encouraged to broadcast election-related programmes, and that the media will not be penalized in any way for broadcasting programmes merely because they are critical of the government, its policies or the ruling party.

Guideline 5.2

The government or government media must not interfere with the broadcast of an election programme, unless it is absolutely certain that a restraint is necessary to prevent a substantial harm to a legitimate interest, such as an act of violence. Any decision to restrain a programme must be promptly reviewed by an independent body in order to determine whether the restraint was necessary or whether it constituted an act of censorship.

Commentary: Pre-publication censorship, especially concerning matters of political importance, is prohibited under international law except in narrowly-defined circumstances.(12) Any restraint must be proportionate to a legitimate aim. Given the fundamental importance to a democratic society of free political debate during election campaigns, an election broadcast may be subject to prior restraint only where it is "absolutely certain" that the broadcast would cause an immediate, irreparable and substantial harm.(13)

The experience of transitional democracies is that governments and government media have improperly refused to broadcast programmes of opposition parties.(14) The risk to free speech posed by government prior censorship outweighs the risk that programmes will incite violence or irreparably damage interests that the government is entitled to protect.

Broadcast channels are entitled to pre-screen programmes in order to ensure that they do not violate any law but this process should not be used as a pretext to delay transmission of any programme. In the case of government-controlled media, however, the internal review process often is tantamount to governmental pre-screening. This reality, coupled with the duty of balance and impartiality, imposes a strong obligation on government media not to refuse to broadcast election programmes.

Guideline 5.3

The standards used by the government, or by government media, in determining whether or not to broadcast an election programme must not be vague or broadly defined.

Commentary: Standards for prohibiting broadcasts must be narrowly drawn and clearly defined. The UN Technical Team on the Malawi Referendum urged that any limitations on freedom of expression

should not be so vague or broadly defined as to leave an overly wide margin of discretion to the authorities responsible for enforcing the law, since uncertainty over legal boundaries has a dampening effect on the exercise of this right [to freedom of expression] and may encourage discrimination in ... [the restrictions'] application.(15)

A number of courts have held that refusal to broadcast an election programme pursuant to vague standards was illegal. For instance, Germany's Federal Constitutional Court (FCC) ruled that, while a station manager may refuse to broadcast an election programme that is a "clear" violation of the criminal law, he or she may not refuse to broadcast a programme on the ground that its tone is hostile to the spirit of the Constitution; such a vague and speculative concern does not constitute a "clear" violation.(16) Guideline 13 deals with the need for a speedy review by an independent body of any decision not to broadcast an election programme.

Guideline 5.4

Any post-broadcast penalty must be proportionate to the harm inflicted. In particular, unless a broadcast actually and intentionally incites violence or hatred, a penalty must not include imprisonment or such an onerous fine as to force the political party out of operation; nor may it restrain all future broadcasts by the party or candidate.

Commentary: The right of political parties to function is one of the most fundamental rights since it is based on the rights to freedom of expression, association and political participation. It is impermissible to force a party out of operation by imposition of excessive fines or other indirect means.

[Return to contents](#)

GUIDELINE 6:

LIMITS ON MEDIA LIABILITY

GUIDELINE 6

It is strongly recommended that the media be exempted from legal liability for unlawful statements made by candidates or party representatives and broadcast during the course of election campaigns, other than those which constitute clear and direct incitement to violence. The parties and speakers should be held solely responsible for any unlawful statements they make.

Commentary: This departure from the normal rules of liability is justified by the short duration of campaign periods and the fundamental importance to free and fair elections of unfettered political debate.(17) It is recommended that the media be exempted for all speech that does not directly incite violence on the ground that all other speech can be redressed reasonably (though not necessarily entirely) by a post-broadcast remedy.

Neither defamation nor incitement to "discrimination, hostility or violence by means of national, religious, racial or ethnic hatred" are included in this Guideline's list of kinds of speech for which the media should be held liable even though it is recognized that these forms of speech may be unlawful and indeed that various UN guidelines state that the media should be held liable for broadcasting such speech.(18)

The recommendation that the media be exempted from liability for defamation is based upon considerable national case-law and experience supporting the conclusion that defamation in the political context is adequately, and perhaps even most effectively, redressed after publication, by a prompt reply, retraction or correction.(19) Publication of a reply, retraction or correction should preclude a lawsuit for all except the publication of knowingly false information.

Incitement to hatred presents a highly complex problem. It is recommended that it be exempt from media liability during campaign periods based on the fact that, in practice, the ban on incitement to hatred is widely used by governments to suppress legitimate political expression including, in particular, calls for national, religious or ethnic autonomy or other rights. A study undertaken by ARTICLE 19 of the law and practice concerning "hate speech" in 14 countries reveals that governments have often used the justification of banning hate speech to suppress the speech of only one side to a national, religious or ethnic conflict or else simply to silence government critics.(20) For these reasons it is recommended that, in the context of an election campaign, the media should not be held liable for broadcasting statements that constitute incitement to hatred or discrimination short of violence (so long as the media do not condone the incitement in any accompanying editorial content). Without an exemption, experience shows that the risk that legitimate debate may be discouraged or suppressed is unacceptably high.

This Guideline does not relieve political parties and other speakers of liability for their statements. The often heated nature of political debate should be considered, however, when assessing liability for comments by political contenders about their electoral opponents.

[Return to contents](#)

GUIDELINE 7:

REPLIES, CORRECTIONS AND RETRACTIONS

GUIDELINE 7

Any candidate or party that makes a reasonable claim of having been defamed or otherwise injured by a broadcast should either be granted the opportunity to reply or be entitled to a correction or retraction by the broadcaster or by the person who made the allegedly defamatory statement. The reply or correction should be broadcast as soon as possible.

Guideline 7.1

The reply, correction or retraction should be approximately the same length, and should be broadcast in approximately the same time period, as the allegedly defamatory statement. This duty may be discharged by the allocation of direct access time pursuant to the normal allocation process.

Guideline 7.2

It is recommended that an impartial body be entrusted with deciding complaints that a programme violated the general laws, including laws against defamation and incitement to hatred or violence. This body should be empowered to order a right of reply, correction or retraction, and its decisions should be subject to review by the courts. (See Guidelines 13 and 14 below.)

Commentary: During election campaigns in democracies around the world, candidates and parties are afforded the right to reply to statements that misrepresent their views or activities.(21) The right of reply has also been endorsed by UN guidelines; in particular, the UN Transitional Authority in Cambodia (UNTAC) recommended that "[m]edia outlets should give parties, groups or individuals whose views have been misrepresented or maligned by a publication or broadcast the `right of response' in the same media outlet."(22)

[Return to contents](#)

GUIDELINE 8:

NEWS COVERAGE

GUIDELINE 8

Government media must be particularly scrupulous in complying with their obligation to provide accurate, balanced and impartial information in their reporting of news and current affairs.

Commentary: Of the various forms of election broadcasts, news coverage is generally accepted as the most influential. Accordingly, the duties to inform the electorate and to report with balance and impartiality are particularly strong concerning news programmes.(23)

Guideline 8.1

The duty of balance requires that parties or candidates receive news coverage commensurate with their importance in the election and the extent of their electoral support.

Commentary: It is recommended that a fair and equitable mechanism be established to determine the proportion of election news coverage to be allocated to the competing parties (which may correspond to the percentages assigned for direct access programmes) and that the broadcaster adhere scrupulously to the targets. If possible, agreement on the proportions to be allocated should be reached between the broadcaster and the political

parties. If agreement is not possible, the proportions may be decided by an independent body.(24)

During the three weeks preceding polling day in the United Kingdom (UK), for example, the BBC keeps careful count of the amount of news coverage it devotes to the competing parties and takes measures to ensure mathematical parity among the parties. Moreover, detailed rules narrowly restrict the amount of coverage of political figures that may be counted as non-election broadcasts.

In Romania's 1992 presidential and parliamentary elections, a parliamentary commission determined the percentage of total election news time to which each party was entitled, and with which Romanian Radio (if not Romanian Television) generally complied.(25)

At a minimum, comparable events should be given comparable coverage. If a station covers a speech or election rally of one party's candidate, for example, it must give comparable coverage to other parties' speeches or rallies. Comparable coverage includes comparable length and comparable kind of coverage and, for television coverage, involves comparable footage of events or speakers. (Broadcasting unimportant statements or summarizing statements is not comparable to broadcasting the highlights of a candidate's speech that received the most applause or broadcasting the speaker's actual voice).

Guideline 8.2

Owing to the potential for editorial opinions to be confused with news, government media are urged not to broadcast editorial opinions at all. If a government channel broadcasts an editorial opinion, it is obliged also to broadcast the opinions of the major opposition parties. If a broadcaster presents his or her own views, these must be clearly identified as such, and it is recommended that they not be aired during news programmes.

Guideline 8.3

News coverage of press conferences and public statements concerning matters of political controversy (as opposed to functions of state) called or made by the head of government, government ministers, or members of parliament should be subject to a right of reply or equal time rules. This obligation acquires even greater force when the person making the statement is also standing for office.

Commentary: Undeniably, broadcasters have greater editorial discretion in deciding what events to cover in news programmes and how to cover them than over allocation of time for direct access programmes. Nevertheless, they remain subject to overall obligations of balance and impartiality. The experience of transitional democracies, and indeed of some established democracies, demonstrates that principles of balance and fairness are most often violated in the context of news programmes.

This is by no means always motivated by malicious intent. Various factors enter into legitimate decisions regarding news coverage. The reality is that the ruling party, by using the apparatus of state power, are more likely, and can more easily manoeuvre, to be part of newsworthy events than can non-incumbents. Despite the difficulties, broadcast policies requiring fairness and balance must be diligently implemented owing to the high credibility a large portion of the public attaches to information broadcast on radio and television.

Precedent for regulation is strongest concerning news coverage of ministerial announcements and press conferences. In the UK, for example, an *aide-mémoire* representing an agreement among the parties and the BBC provides for an automatic right of reply by the opposition party to ministerial broadcasts on matters of prime national or international importance.(26) In practice, the BBC carries its duty of balance one step further by directly following any controversial ministerial broadcast with a response by the opposition, and then by a discussion among all major parties.(27) In France, a law introduced in 1986 grants the opposition a right of reply to declarations of government.

Press conferences called by incumbents who are running for office often closely resemble government announcements in significant ways and thus it is important to adopt some form of a right of reply or correction to statements made at press conferences as well as to government announcements.

The 1990 election in the Czech and Slovak Federal Republic, conducted during the Civic Forum-led interim government of President Havel, offers an impressive example of a new democracy's efforts to redress imbalance in news coverage by granting reply time. When the government television station devoted news coverage to President Havel (who was standing for election) during a campaign trip and at a party rally, several parties lodged formal complaints. The station compensated the parties with additional direct access time.

The existence of a large number of political parties or of shifting coalitions, more common in transitional than in established democracies, poses clear difficulties for the implementation of right of reply or equal time rules. Nevertheless, in many, if not most, transitional democracies, a few parties or coalitions clearly are the leading contenders and in such cases replies to governmental statements and press conferences should be granted to them as a matter of right.

[Return to contents](#)

GUIDELINE 9:

DIRECT ACCESS PROGRAMMES

GUIDELINE 9

Government media must grant political parties or candidates air time for direct access programmes on a fair and non-discriminatory basis. For the first multi-party election, it is strongly recommended that all major parties or candidates receive equal time.

Commentary: International norms discernible from a wide range of state law and practice confirm that governments have an obligation to ensure that parties and candidates have access to government media to broadcast their views during election campaign periods. Such access is an essential aspect of the right to freedom of political communication in light of the tremendous impact of radio and television on public opinion and the public service nature of government-owned media.

Direct access programmes have a number of features which justify requiring government channels in transitional democracies to broadcast them in the discharge of their duty to inform the public about the candidates and parties.⁽²⁸⁾ They provide an opportunity for political parties and candidates to express their positions in their own words; for small parties and independent candidates to broadcast their views; and for parties to respond to negative statements or comments made about them. Because of the candidates' or parties' control, direct access programmes convey the style and other intangible information about the candidates and parties as well as the flavour of unfettered political communication.

Direct access programmes are particularly important where the media are in reality, or are widely perceived to be, under some measure of government control. In such circumstances, denying political parties the opportunity to present their own programmes runs an unacceptable risk of interfering with their right to communicate their messages and of undermining public confidence in the fairness of the election process.

In virtually all Western democracies, public broadcasting channels are required to make time available for direct access programmes. Sweden is the major exception.⁽²⁹⁾ It may be argued that special information programmes are able to incorporate all the benefits of direct access programmes, or even that broadcaster-directed programmes, such as interviews and debates, are generally more informative than programmes produced by the political parties or candidates themselves, and that it is therefore legitimate to deny direct

access programmes. However, this would only be possible if the channel is both in fact and perceived to be wholly independent of government and the ruling party, which is unlikely in a transitional democracy.

Direct access must be granted on a fair and non-discriminatory basis to all parties registered for an election or to all candidates in the case of presidential elections.

Allocation of more than 50 per cent of campaign broadcast time to the government or any other party constitutes a prima facie violation of the duty of balanced coverage.

a) Allocation of Time to the Parties

Guideline 9.1

All parties or candidates that are formally registered must be granted access to some amount of air time for a country's first multi-party election.

Commentary: In the first election of a transitional democracy, it is particularly important that election broadcasts be perceived to be fair and inclusive, as well as to be so in reality.

In a transitional democracy, particularly in the first multi-party election, allocation of air time to political parties on anything other than an equal basis poses great difficulty because the two most objective indicators of support — the party's performance in past elections and the number of seats held in parliament — clearly are unavailable. For that reason, equal air time for all major parties is strongly recommended.

Romania's 1990 elections illustrate both the need for inclusiveness and its disadvantages. In those elections, several dozen political parties were registered, and all were given equal time. While the blocks of time for direct access programmes were announced in advance, the times for particular parties were not. Because the broadcasts of the major parties were buried among those of the smaller parties, many voters paid little attention to the broadcasts. Nevertheless, there was general agreement that equal time had the virtue of providing the opportunity for all parties to communicate their messages and promoted confidence in the fairness of the election process. Moreover, it was recognized that it would have been virtually impossible to have established a process and set of criteria for allocating different amounts of time to different parties that would have been widely viewed as fair.(30)

Guideline 9.2

Following the first election in a transitional democracy, and if there are objective criteria for establishing the levels of support for the different parties, air time may be allocated on a proportional basis. All parties should receive some air time, unless the parties are so numerous that allocation of time to all parties would seriously dilute the broadcasts' effectiveness in informing the electorate about the parties that are likely to form the government.

Guideline 9.2.1

It is recommended that the allocation of air time be carried out by an independent body in consultation with, and with the agreement of, all the parties.

Guideline 9.2.2

Where air time is allocated on the basis of rough proportionality, some amount of time must be allocated to small parties, parties with strong support in only a few regions, parties without parliamentary seats, new parties and independent candidates.

Guideline 9.2.3

If time is allocated on a proportional basis and the government media broadcast regional programmes, parties that have strong support in only a few regions should be given air time on regional programmes proportional to their strength in those regions.

Commentary: In subsequent elections where a small number of parties compete, the continued allocation of air time to the major parties on an equal basis poses little problem and is recommended. However, where a large number of parties compete, granting equal time to all may dilute the messages of the parties that are most likely to form a government. For this reason, allocation of an equal amount of time to each of the leading parties and of a lesser amount of time to each of the smaller parties may improve the informative value of the broadcasts while maintaining the public's confidence in the fairness of the allocation process.⁽³¹⁾ Allocation of time on a proportional basis may be appropriate in transitional democracies where the first election was held to be fair and therefore give a good approximation of the relative strengths of the parties or where there is general agreement as to which are the leading parties (even if there is dispute about their relative strengths).

It is important that, if possible, allocation on a proportional basis is achieved with the agreement of all parties as such agreement lends considerable legitimacy to the system of election broadcasts. It is recommended that an independent body be responsible for this allocation.

If agreement cannot be reached, at least among the major parties, or if the first multi-party elections were not regarded as giving a good indicator of levels of support, continued allocation of air time to the major parties on an equal basis is recommended. Whichever approach is taken, all parties and independent candidates should receive air time which is adequate to communicate their central policies to the electorate.(32)

The proportional approach was taken during Bulgaria's first multi-party elections held in 1990, whereby the parties which were generally conceded to command the greatest support reached agreement about the amount of time to be allocated to them.(33) In Germany, the Parties Law requires that small parties with representation in the *Bundestag* (Federal Parliament) be given the opportunity to use 50 per cent of the broadcast time allotted to the larger parliamentary parties.

In nearly all Western countries surveyed in a 1991 study of election broadcast policy, time was allocated to parties on a roughly proportional basis.(34) While most allotted some time to non-parliamentary parties, they applied varying criteria for determining which parties qualified for air time. The German Constitutional Court has devoted more attention to the question than any other;(35) it concluded that even small parties participating in elections for the first time are entitled to some broadcast access.(36) Factors to be considered include the length and continuity of the party's existence, the size of its membership, the extent and strength of its organization, and its representation in government at both the state and federal levels.(37) The Court gave its view that the number of candidates fielded by a party is irrelevant since it is relatively easy for a party to nominate candidates.(38)

As one expert observed, "the approach of the German courts strikes a nice balance between the demands of fairness and equality of opportunity on the one hand, and a sensible appreciation of the functions of elections on the other. ... [D]isparate treatment ... [may be] explained in terms of the interests of the electorate in greater exposure to the arguments of the groups which might form a government."(39)

In the UK, by contrast, parties may be entirely excluded from direct access and debate programmes if they have not fielded candidates in a certain number of constituencies or polled a certain percentage of the vote in a preceding election.(40)

The Swedish experience directly confirms the importance of air time for non-parliamentary parties. Although party direct access programmes have not been allowed for several years, parliamentary parties previously were entitled to air time. When parties without parliamentary representation but with significant support over the years were also granted air time, several of them won seats in parliament.

b) Decisions Regarding Amount of Time to be Allocated

Guideline 9.3

The amount of time allocated to the parties or candidates must be sufficient for them to communicate their messages, and for the voters to inform themselves about the issues, party positions, and qualifications and character of the candidates.

Commentary: The amount of time required for effective communication is influenced by a variety of factors, including the number and importance of the offices at issue; the number of candidates; the familiarity of the population with the parties, the candidates, and elective politics generally; the length of the campaign period; the amount of time devoted to special information programmes; and the number and complexity of pressing issues.

c) Scheduling of Direct Access Broadcasts

Guideline 9.4

Direct access programmes should be aired throughout the campaign period and at times when the broadcasts are likely to reach the largest audiences. The government media violate their duty of balance if they air the programmes of some parties or candidates at hours (such as past midnight or during the working day) when it is inconvenient for large segments of the population to view or hear them.

Commentary: The primary purpose of direct access programmes is to allow political parties to communicate their messages to the electorate. Thus, in furtherance of the government's obligation to inform the population about election matters, the government media are obliged to take reasonable measures to ensure that the largest audiences are reached.(41)

d) Process for Assigning Time Slots

Guideline 9.5

Time slots for direct access programmes must be assigned to each of the registered political parties or candidates pursuant to an equitable process.

Commentary: Once the amount of time to be allotted to each party for direct access programmes has been determined, there remains the question of how to assign specific time slots to the various parties. Clearly, slots during prime viewing or listening time are preferable. Where there are a small number of parties, it may be possible to assign prime-time slots to all of them but this may not be feasible where a large number of parties compete. It then becomes crucial to have a fair process by which slots are allocated. The preferred method is to incorporate some form of rotation (so that every party has the same number of prime-time slots). A random element may also be incorporated in allocating the first slots.(42) Random assignment may play a larger role where there is no agreement as to which slots fall within prime time and which fall outside it.(43)

:

e) Financing of Direct Access Programmes

Guideline 9.6

Whatever air time is available to a political party or candidate, it must be made available on financial terms equal to those granted to other parties or candidates. At least for the first several elections of a transitional democracy, the government media must provide an amount of time adequate for effective political communication to registered parties or candidates free of charge or else for a nominal sum.

Guideline 9.6.1 If parties or candidates are to be allowed to purchase additional air time, they must be allowed to do so on equal terms. Rates for such time and the amount of time that may be sold to any one purchaser may be regulated in order to limit the advantage that richer parties clearly have in this area. Stricter regulation may be warranted during the first several elections of a transitional democracy, especially where opposition parties had previously been proscribed and thus did not have the opportunity to raise party funds.

Commentary: In most established democracies, public broadcast channels make some amount of time available to registered political parties free of charge for direct access programmes.(44) In most of these countries, paid political advertising is prohibited throughout the campaign period and, in a few, it is entirely prohibited.

The prohibition, or strict regulation, of paid political advertisements during campaign periods is generally justified on several grounds, including that it is necessary: (1) to safeguard the integrity of the political system in light of escalating costs of buying air time and the concomitant increase in the susceptibility of candidates and political parties to corruption and undue influence by major contributors; (2) to help create a 'level playing field' for parties regardless of resources;(45) and (3) to end the trivialization of political debate resulting from the transmission of very brief political advertisements.

Those who support paid political advertising during campaign periods urge that its prohibition violates freedom of expression and that less onerous means are available to promote interests such as those listed above.

The imposition of limits on charges that may be levied for air time and the amount of time that may be sold to any one party or candidate should strike a reasonable balance between freedom of expression on the one hand and equality of opportunity for media access on the other.(46)

[Return to contents](#)

GUIDELINE 10:

SPECIAL INFORMATION PROGRAMMES

GUIDELINE 10

The media should broadcast programmes that provide an effective opportunity for journalists, current affairs experts and/or the general public to put questions to party leaders and other candidates, and for candidates to debate with each other.

Commentary: Special information programmes include candidate forums and debates, interview programmes, and programmes that provide an opportunity for audience members to pose questions.

Guideline 10.1

While broadcasters have greater editorial discretion in deciding which parties, candidates and commentators should appear on such programmes than on news broadcasts, their discretion is subject to the general obligations of fairness and impartiality. At the least, representatives of all major parties should be invited to participate in such programmes.

Commentary: The German Constitutional Court, for example, upheld an order in 1990 that restrained a public channel from broadcasting an election debate which excluded the Green Party.(47) While the Green Party was not viewed as one of the three major parties, nevertheless it exercised influence in Parliament. The Court also considered the fact that the debate was to take place three days before the election.

Guideline 10.2

Journalists, experts and other questioners should be selected so as to ensure balance among the questions.

Guideline 10.3

Special information programmes should be aired during prime viewing or listening hours.

Commentary: These Guidelines are based on the duty of the media to inform the electorate and to provide information in a balanced fashion.(48) At least several hours of national television time should be devoted to debates among presidential candidates or other party leaders. It is generally most effective to invite experts on various campaign issues (especially independent experts commanding respect among the public) to formulate some of the initial questions and ask follow-up questions.

[Return to contents](#)

GUIDELINE 11:

VOTER EDUCATION

GUIDELINE 11

Government media are obliged to broadcast voter education programmes unless the government has undertaken other information initiatives which are likely to reach as many voters as would the broadcast programmes.

Guideline 11.1

The programmes must be accurate and impartial and must effectively inform voters about the voting process, including how, when and where to vote, to register to vote and to verify proper registration; the secrecy of the ballot (and thus safety from retaliation); the importance of voting; the functions of the offices that are under contention; and similar matters.

Guideline 11.2 The government media are obliged to broadcast programmes that will reach the greatest number of voters feasible. Broadcasts should include programmes in minority languages and programmes targeted for groups that traditionally may have been excluded from the political process, such as ethnic or religious minorities, women and indigenous groups.

Commentary: The government's duty to inform voters about the process as well as the substance of elections is noted in the commentary to Guideline 1. Governments may discharge this obligation by distributing leaflets and posters with voting information, or by other methods (such as model voting stations and simulation techniques), if these other methods can reach as many voters, and can be as readily understood, as programmes broadcast on radio and television. However, it is not reasonable to assume that people with low literacy can be adequately informed about the voting process solely through printed materials. Thus, if other feasible methods would not be as effective in educating the public, the government media are obliged to broadcast voter education programmes. The government is free to pursue additional methods of education, and in fact would be obliged to do so if the broadcasts would not be expected to reach all potential voters.(49)

GUIDELINE 12:

OPINION POLLS AND ELECTION PROJECTIONS

GUIDELINE 12

If a broadcaster publishes the result of an opinion poll or election projection, it should strive to report the results fairly and, in particular, to publish all readily available information that would assist the listeners in understanding the poll's significance.

Guideline 12.1

A broadcaster which publishes the results of an opinion poll should identify the organization that conducted the poll, the organization or party that commissioned and paid for the poll, the methodology employed, the sample size, the margin of error, and the fieldwork dates. In addition, the broadcaster should state that the poll reflects public opinion only at the time that the poll was taken.

Commentary: Opinion polls can have a significant impact on voting patterns, especially where their significance is not adequately understood. Thus, as part of the duty to inform voters, media channels that broadcast the results of opinion polls are obliged to furnish sufficient information for their significance to be understood. In the UK, for instance, BBC staff are instructed to remind viewers and listeners that polls are a snapshot of opinion on the day the fieldwork was carried out, and that they are not a reliable predictor of future opinion or voting.(50)

There is debate about whether opinion polls should be published right up to election day. Some observers have expressed concern that the impact of polls is greatest in the days immediately preceding election day and that, for instance, a prediction that one candidate will win by a large margin may incline voters who are primarily concerned about that one candidate to stay home and not participate in other votes on the same ballot. Similarly, voters may decide to vote for the apparent favourite, on the theory that it is better to side with a winner, especially if voters are not convinced about the integrity of the ballot's secrecy. For these and other reasons, several Western and Central European countries

prohibit publication of the results of opinion polls during the last several days before an election including: Bulgaria (1990 election - eight days), Czechoslovakia (1990 election - seven days), France (seven days), Hungary (eight days), Italy (one day), Poland (seven days), Spain (five days), Sweden (one day), UK (voluntary abstention on election day).(51)

In other countries, however, it is believed that such restrictions would constitute an unacceptable interference with the free flow of information about the election campaign. In the US, for example, there are no guiding policies with regard to publishing polls and only in recent years have the broadcast media agreed not to publish early election returns from the East Coast before polling stations close (three hours later) in the West.

[Return to contents](#)

GUIDELINE 13:

MECHANISMS FOR REGULATING BROADCASTS AND TAKING ACTION ON COMPLAINTS

GUIDELINE 13

Election broadcasts must be monitored and regulated by an independent, impartial body.

Guideline 13.1

This body should be responsible for allocating time to political parties or candidates. It should also hear and take action promptly on complaints concerning broadcast-related violations by the media, and by political parties and candidates. The body should receive complaints from parties, candidates and citizens. It should be empowered to order prompt rectification, retraction or a right of reply and to seek enforcement of its orders, including through the courts.

Guideline 13.2

The body must make all of its decisions promptly. In particular, any claimed violation that has the result of preventing or delaying the airing of a direct access programme must be reviewed with due speed.

Guideline 13.3

If there is a regularly constituted broadcast-monitoring body that is independent of government, it may carry out these functions; otherwise, a body should be established especially to handle election-related matters.

Guideline 13.4

This body may include representatives or appointees of government and political parties, but it should not be able to take decisions only upon the strength of the votes of the appointees of the government or of one party. If any parties are represented, it is recommended that the body include representatives of at least all major parties. It is recommended that the body include independent media professionals.

Commentary: Central to the integrity of the election process is the existence of a body to monitor and regulate broadcasts that is both perceived to be and is, in fact, impartial.(52) It must act promptly and fairly, and its decisions must be subject to prompt review by the courts. Recognizing this obligation, the UN Technical Team on the Malawi Referendum noted the importance of "a recourse mechanism ... providing for independent review of cases where restrictions on this right [to freedom of expression] have been applied."(53)

A practical model is provided by the Party Political Broadcasting Committee of Great Britain which comprises representatives of the three major political parties, the two Nationalist parties (of Scotland and Wales), and the two (independent) broadcasting authorities. It regulates election broadcasts and allocates air time based on criteria it has established. Where the parties cannot agree, as happened concerning allocation of air time for the 1987 general election, the broadcasting authorities make the decisions themselves.(54) The Federal Republic of Germany has followed a similar approach whereby broadcasters make decisions in agreement with the political parties.

In Australia, Sweden and Switzerland, the broadcasting authorities, which are independent of government, make decisions regarding election broadcasts.(55) Several countries (including Italy and Luxembourg) have entrusted regulation to parliamentary commissions, although in Italy this system has not worked well.(56)

Guideline 13.5

It is recommended that the election broadcast regulatory body monitor all campaign-related broadcasts to assess their compliance with laws and regulations.

Guideline 13.6

Government media should facilitate media monitoring by non-governmental, non-partisan organisations, including by making tapes of election broadcasts available free of charge or at minimal cost.

Commentary: Non-governmental organizations (NGOs) can play a crucial role in promoting the fairness of election broadcasts by monitoring the amount of air time devoted to, and the nature of coverage of, election programmes. Monitoring broadcasts systematically and documenting perceived violations is, however, often prohibitively expensive for NGOs, because of the high cost of recording and other necessary equipment. The broadcast media, which have such equipment, should make available tapes of election programmes on request either for free or at cost.(57)

Guideline 13.7

The election broadcast regulatory body should be empowered to recommend, subject to judicial review, that an election be postponed, suspended or annulled if it can be established that there have been breaches of international or national law which might significantly affect or have affected the outcome of the election.

[Return to contents](#)

GUIDELINE 14:

JUDICIAL REVIEW

GUIDELINE 14

Actions and decisions of a body charged with regulating election broadcasts must be subject to judicial review, which must be carried out on an expedited basis.

Guideline 14.1

Any decision that has the effect of prohibiting the transmission of a direct access programme must be reviewed in a particularly speedy fashion.

Commentary: Judicial review of the decisions of election broadcast bodies is important to the reality as well as the appearance of fairness. In Italy, for example, where decisions of the Parliamentary Commission are not reviewable by the courts, this absence of accountability has enabled the Commission to exclude minor parties and independent candidates from air time and has been the subject of considerable criticism.(58)

[Return to contents](#)

GUIDELINE 15:

PLEBISCITES AND REFERENDUMS

GUIDELINE 15

In plebiscites and referendums, where the voters have the choice only of voting "yes" or "no" to a particular proposition, equal air time must be allocated to each side. This formula stands even if more parties support one side of the issue than the other. Guidelines 1-14, to the extent relevant, are also applicable.

Commentary: Equal allocation of air time is required in order to meet the duties of balance and fairness. Sound reasoning in support of this proposition was provided by a Scottish court of first instance in a case concerning a referendum on devolution. The

court ruled that time was to be allotted equally between the two sides, even though three of the four parties supported devolution.(59)

[Return to contents](#)

GUIDELINE 16: LOCAL ELECTIONS

GUIDELINE 16

The preceding Guidelines should be appropriately modified and applied by local and regional government media in local, municipal and regional elections.

Commentary: Local elections are important elements of democratic transitions. True democracy may be experienced most directly at the local level. Political parties should be provided with broadcast time to present their programmes for local development and other important issues affecting localities throughout the country. Local broadcast media should make time available for direct access programmes, and should broadcast news and special information programmes. Their coverage should be monitored to ensure implementation of election regulations and policies.(60)

[Return to contents](#)

ENDNOTES

1. See Chapter 1 above for elaboration of the varied circumstances of transitional democracies. It should be noted that the transitional phase can last for a number of years, even decades.
2. The Guidelines refer to "parties or candidates" to take account of the type of election (parliamentary or presidential, for example) and the electoral system.
3. For sources of international law, see Art. 38(1) of the Statute of the International Court of Justice and Section 7.1.1 above. For an examination of relevant international and comparative law and practice, see Chapter 7 generally.

4. Most of the examples in this chapter of the practice of well-established democracies are drawn from European countries. This is due to the availability of information and not to a devaluation of the democratic experience in other parts of the world.
5. Art. 25 of the International Covenant, and language (in brackets) from Art. 2, reproduced in Appendix I. See discussion of the pertinent international standards in Section 7.1.1-.2 above.
6. European Court of Human Rights in several judgments, quoted in Section 7.1.3 above.
7. See Section 7.1.5 above.
8. Report of the UN Technical Team on the Conduct of a Free and Fair Referendum on the issue of a One Party/Multiparty System in Malawi (15-21 Nov 1992), para. 27, quoted at greater length in Section 7.2 above. See also UN Transitional Authority in Cambodia, Media Guidelines for Cambodia (1992) also discussed in Section 7.2, and reproduced in Appendix I.
9. See Chapter 4 above for a survey of problems encountered in news coverage of election campaigns.
10. UN Technical Team on the Malawi Referendum, note 8 above at para. 28. See Sections 2.1 and 7.1.13 above for relevant discussion.
11. See Sections 2.2 and 7.1.12 above for further discussion of these points.
12. See Section 7.1.7 above.
13. See Section 7.1.8 above.
14. See Section 2.1 above.
15. UN Technical Team on the Malawi Referendum, note 8 above at para. 29.
16. 47 FCC 198 (1978).
17. See Section 7.1.4 above for a discussion of relevant international law principles.
18. See Section 7.1.7 above.

19. See Sections 7.1.6 and 7.1.9 above and Guideline 7.
20. ARTICLE 19, ed., *Striking a Balance: Hate Speech, Freedom of Expression and Non-discrimination* (London: 1992).
21. See Section 7.1.6 above for a discussion of international law and national cases that support this point.
22. Media Guidelines for Cambodia, note 8 above at Guideline 8. See Appendix I for relevant text.
23. See Guidelines 2 and 9. See Section 7.1.4-.5 above for a discussion of the duty of balance under international and comparative law and Chapter 4 above for a discussion of the problems encountered in news coverage of election campaigns in transitional democracies.
24. For factors that may be relevant in assessing electoral support, see commentary to Guideline 9.2.
25. European Institute for the Media, *The 1992 National Elections in Romania: Coverage by Radio and Television* (Manchester/Dusseldorf: 1992); interview with Dragos Seuleanu, Programs Department, Radio Romania, regarding radio coverage.
26. E Barendt, *Broadcasting Law: A Study of Regulation in Europe and the United States* (Oxford University Press, 1993) at note 63.
27. *Ibid.* at note 68.
28. See Guideline 1 and Sections 7.1.1-.4 above.
29. In Sweden, where public broadcasting is controlled by a body independent of government, no direct access broadcasts are allowed and the only exposure of candidates is on interview and debate programmes. K Jakubowicz, "Electoral Campaigns on Radio and Television: General Principles", in A Pragnell and I Gergely, eds, *The Political Content of Broadcasting* (Dusseldorf: European Institute for the Media, 1992), 54. A substantial amount of the country information provided in the commentaries to these guidelines is based upon the results of this highly informative study.
30. The proliferation of parties stemmed from the very low qualification threshold of 251 signatures to register a party.

31. See Sections 3.5 and 3.6 above for relevant discussion. Factors relevant in assessing a party's support may include the party's performance in past elections; the number of seats held in the parliament; length and continuity of the party's existence; size of its membership; extent and strength of its organization; and its representation in government at federal, regional and/or local levels. The number of regions or constituencies in which the party is contesting the election may also be a relevant factor; however, it should not be given significant weight in countries where it is easy for a party to put up candidates in regions even where the party has little support.

32. See Guideline 9.3 below.

33. See Section 3.5 above.

34. See Pragnell and Gergely, note 29 above.

35. See Barendt, note 26 above.

36. 48 FCC 271 (1978).

37. 14 FCC 121 (1962).

38. Ibid.

39. Barendt, note 26 above at 176-7.

40. Lynch v. BBC [1983] 6 NIJB 1. See also Barendt, note 26 above at 177.

41. See Section 3.3 above for relevant discussion.

42. As noted by the UN Technical Team on the Malawi Referendum: "Once the spots allocated for [direct access programmes] are identified, most legislation prescribes a random choice for the allocation to each side." Note 8 above at para. 42.

43. See Section 3.5 above for relevant discussion.

44. See, for example, Jakubowicz, note 29 above at 54, regarding Western democracies.

45. As stated by the UN Technical Team on the Malawi Referendum: "In the case of commercial, privately-owned media, it is ... customary to prescribe that

there should be no discrimination in the case of paid advertising." Note 8 above at para. 27.

46. See Section 3.4 above for further discussion.

47. 82 FCC 54 (1990), discussed in Barendt, note 26 above at 173.

48. See Guideline 1 and Sections 7.1.4-.5 for a discussion of the relevant international law principles. See also Section 4.4 above for further relevant discussion.

49. See Chapter 5 above for further relevant discussion.

50. Letter from Alan H Protheroe, CBE, former Assistant Director General of the BBC, dated 31 Aug. 1993. See Section 4.5 above for further relevant discussion.

51. Jakubowicz, note 29 above at 50.

52. See Section 7.1.11 above for further discussion.

53. See Report of the UN Technical Team on the Malawi Referendum, note 8 above at para. 29.

54. Barendt, note 26 above at note 12.

55. Jakubowicz, note 29 above.

56. *Ibid.* at 52-53.

57. See Section 6.3 for further relevant discussion.

58. Barendt, note 26 above at note 13.

59. *Wilson v. Independent Broadcasting Authority*, 1979 SLT 279.

60. See Section 5.3 above for relevant discussion.

[Return to contents](#)

APPENDIX I

Following are relevant texts from selected international human rights instruments regarding electoral rights and freedom of expression.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

....

3. The State Parties to the present Covenant ... shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 19

1. Everyone shall have the right to hold opinions without interference.
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.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 [distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and 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;

(c) To have access, on general terms of equality, to public service in his country.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article 7

State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies....

CONVENTION ON THE POLITICAL RIGHTS OF WOMEN

Article I

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

Article II

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Article 5

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

....

(c) Political rights, in particular the rights to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

....

(viii) The right to freedom of opinion and expression

DECLARATION ON FUNDAMENTAL PRINCIPLES CONCERNING THE CONTRIBUTION OF THE MASS MEDIA TO STRENGTHENING PEACE AND INTERNATIONAL UNDERSTANDING, TO THE PROMOTION OF HUMAN

RIGHTS AND TO COUNTERING RACISM, APARTHEID AND INCITEMENT TO WAR

(Proclaimed by the General Conference of UNESCO at its Twentieth Session in Paris, 28 November 1978)

Article 1

The exercise of freedom of opinion, expression and information recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.

Article 2

2. Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end journalists must have the freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to concerns of the peoples and individuals, thus promoting the participation of the public in the elaboration of information.

....

4. If the mass media are to be in a position to promote the principles of this Declaration in their activities, it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.

Article 11

For this Declaration to be fully effective it is necessary, with due respect for the legislative and administrative provisions and the other obligations of Member States, to guarantee the existence of favourable conditions for the operation of the mass media, in conformity with the provisions of the Universal Declaration of Human Rights and with the corresponding principles proclaimed in the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations in 1966.

AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Article 9

1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

2. Every citizen shall have the right of equal access to the public service of his country.

....

Article 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen. ...

AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

Article 4

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

Article 20

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

Article 32

It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

AMERICAN CONVENTION ON HUMAN RIGHTS

Article 13 Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a) respect for the rights or reputations of others; or
 - b) the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. ...

Article 23 Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:
 - a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c) to have access, under general conditions of equality, to the public service of his country.

EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are proscribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

PROTOCOL (No. 1) TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Article 3

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

CONFERENCE ON SECURITY AND COOPERATION IN EUROPE (CSCE) DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION

....

The[] [participating States] recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law

The participating States express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe....

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.1) - free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

....

(6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) - hold free elections at reasonable intervals, as established by law;

....

(7.8) - provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

....

(9) The participating States reaffirm that

(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright

MEDIA GUIDELINES FOR CAMBODIA, DRAFTED BY THE INFORMATION/EDUCATION DIVISION OF THE UNITED NATIONS TRANSITIONAL AUTHORITY IN CAMBODIA (UNTAC) [UNDER THE UNTAC MANDATE, SECTION D "ELECTIONS," PARAGRAPH 3(f): "ENSURING FAIR ACCESS TO THE MEDIA, INCLUDING PRESS, TELEVISION AND RADIO, FOR ALL POLITICAL PARTIES CONTESTING IN THE ELECTION," UN Doc. A/46/608 [ANNEX 1]; S/23177 [ANNEX 1] (30 October 1991)]

....

2. Cambodians should enjoy the benefits of freedom of expression and opinion through all media administered by existing administrative structures as well as other media.

4. An independent and free media should have a diversity of ownership, and it should promote and safeguard democracy, while opening opportunities and avenues for economic, social and cultural development.

7. In the exercise of its responsibilities under the Agreement, UNTAC will ensure "fair access to the media, including press, television and radio, for all parties contesting the election". That means UNTAC will assure all registered and/or provisionally registered political parties the freedom and security to publish, print and broadcast their views.

8. Media outlets should give parties, groups or individuals whose views have been misrepresented or maligned by a publication or broadcast the "right of response" in the same outlet.

9. UNTAC strongly encourages the various media to present a balance of views, to solicit a wide spectrum of opinion from the Cambodian community and to publish as much information as possible about the history, finances and platform of a political party or candidate. A democratic media seeks to publish views and counterinterviews at the same time, in order to address all aspects of an issue. When opposing ideas are contained in the same broadcast or article, a "response" may not be necessary.

....

11. The UNTAC Division of Information/Education will determine the specific implementation of fair access of political parties to radio and television.

12. UNTAC will encourage the development of a free and open media through a diversity of ownership of media outlets in Cambodia.

13. Existing administrative structures should facilitate the profusion of publications and broadcast stations by, for example, the processing without undue delay of any necessary applications for registration or assignment of broadcast frequencies. If an application has not received an answer within one month, UNTAC encourages the automatic approval of that application.

14. Existing administrative structures should not restrict distribution, sale or importation of broadcast or printed material, whether produced within or outside Cambodia, except material that incites hatred or offends public morals.

15. Recognizing that not all limits on free expression are purely political, UNTAC will assist the Cambodian media in identifying specific economic or technical barriers to free expression. UNTAC will assist in coordinating with the international community and a Cambodia Media Association to remove those obstacles where feasible.

16. In bona fide pursuit of their professional duties, journalists should have free access to records and documents of existing administrative structures. UNTAC will, however, restrict access to materials it deems essential to the security of Cambodia or to prevent the unwarranted invasion of personal privacy.

17. Media outlets may not harm the reputation or rights of individuals by publishing or broadcasting false material or allegations. In democracies, public figures, however, enjoy less stringent protection. Media outlets may not knowingly disregard the truth in publishing material about public figures.

18. Journalists should protect confidential sources of information.

SELECTED BIBLIOGRAPHY

BOOKS AND BOOKLETS

ARTICLE 19, *Press Law and Practice: A Comparative Study of Press Freedom in European and Other Democracies* (London: 1993).

----- *The ARTICLE 19 Freedom of Expression Handbook: International and Comparative Law, Standards and Procedures* (London: 1993).

----- *Media Monitoring in Malawi - Weekly Reports* (weekly monitoring reports on broadcasting and intimidation in the April/May 1994 election campaign)

----- *Freedom of Expression in Malawi: The Elections and the Need for Media Reform* (July, 1994).

Australian Senate Select Committee on Political Broadcasts and Disclosures, "Who Pays the Piper Calls the Tune" [a report of political advertising regulation in 19 countries], *Report on The Political Broadcasts and Political Disclosures Bill 1991*, Appendix 5 (Canberra: Nov. 1991).

E Barendt, *Broadcasting Law: A Study of Regulation in Europe and the United States* (Oxford University Press, 1993).

Council of Europe, *Handbook for Observers of Elections* (Strasbourg: 1992).

Euromedia Research Group, *The Media in Western Europe: The Euromedia Handbook*, (London: Sage Publications, 1992).

European Institute for the Media, *The Political Content of Broadcasting*, (Manchester: 1991).

----- (A Pragnell and I Gergely, eds), *Freedom and Control: The Elements of Democratic Broadcasting Services*, European Institute for the Media (Manchester: 1990).

----- (G K Roberts), *Access to Political Broadcasting in the EEC*, (Manchester: 1984).

International Human Rights Law Group (L Garber), *Guidelines for International Election Observing* (Washington, DC: 1984).

National Democratic Institute for International Affairs (L Garber and E Bjornlund, eds), *The New Democratic Frontier: A Country by Country Report on Elections in Central and Eastern Europe* (Washington, DC: National Democratic Institute for International Affairs, 1992).

----- *Nation-Building: The UN and Namibia* (Washington, DC: 1990).

ARTICLES, ESSAYS AND MONOGRAPHS

British Broadcasting Corporation, "Opinion Polls During a General Election," BBC Editorial Policy Advice, Mar. 92(1) (BBC 1992).

A E Boyle, "Political Broadcasting, Fairness and Administrative Law," *Public Law* 562 (1986).

Commonwealth Secretariat, "Guidelines for the Establishment of Commonwealth Groups to Observe Elections in Member Countries" (1992).

G H Fox, "The Right to Political Participation in International Law," 17 *Yale Journal of International Law* 539 (1992).

T M Franck, "The Emerging Right to Democratic Governance," 86 *The American Journal of International Law* 46 (1992).

L Garber, "A New Era of Peacemaking: United Nations and Election Monitoring," (National Democratic Institute for International Affairs, 1993).

N Gorelick, "The Media: Building Confidence in the Electoral Process (January 1992)", in *Evolving Role of Intergovernmental Organizations in Election Monitoring: A Training Seminar for the Organization of African Unity* (African American Institute and National Democratic Institute for International Affairs, 1992).

OAS Secretary General, "Observers' Guide: Observation of Electoral Process, Nicaragua, 1989-1990" (OAS, 1990).

D Padilla & E Houppert, "International Election Observing: Enhancing the Principle of Free and Fair Elections," 7 *Emory International Law Review* 73 (1993).

D Shelton, "Representative Democracy and Human Rights in the Western Hemisphere," 12 *Human Rights Law Journal* 353 (1991).

H J Steiner, "Political Participation as a Human Right", 1 *Harvard Human Rights Yearbook* 77 (1988).

D Webster & B Wenham, "Broadcasting and Election Coverage: Some Observations", Paper for Evolving Role of Intergovernmental Organizations in Election Monitoring: A Training Seminar for the Organization of African Unity (The African American Institute and the National Democratic Institute for International Affairs, 1992).

