

Guidelines for Election Broadcasting

Introduction

The following Guidelines govern the rules and practice relating to broadcast coverage of election campaigns. They are based on international standards and best comparative practice, and thus represent a goal to which all countries hosting elections should aspire. They set out standards which should be observed during election periods, although they may also be relevant during non-campaign periods.

Most of the Guidelines refer to obligations which, strictly speaking, bind the State. It can be argued that publicly owned or funded broadcasters are directly bound by some of these obligations. Regardless, the governing authorities are obliged to put in place a framework of laws and other rules that ensures that public broadcasters satisfy the relevant obligations. ARTICLE 19 strongly recommends that government or State broadcasters be transformed into public service broadcasters, with independent governing boards. At the same time, we are of the view that, in most cases, private broadcasters also have a professional obligation to meet the standards outlined.

The Guidelines are drawn from a more detailed set of Guidelines and commentary published by ARTICLE 19, Global Campaign for Free Expression, *Guidelines for Election Broadcasting in Transitional Democracies*,¹ and the present version has been adapted slightly to focus on issues facing the media during first democratic elections.

The Guidelines can be grouped into four main categories: the duty to inform; rules regarding election coverage; protection for freedom of expression during elections; and implementation/applicability of the guidelines. These issues are addressed below both in specific Guidelines and in the commentary which accompanies them.

It may be noted that, throughout, the Guidelines refer to “parties or candidates”. This is both to ensure their relevance to elections focusing on individuals (as in presidential elections) and to cover situations involving independent candidates.

¹ (London: 1994). Available at: <http://www.article19.org/docimages/837.htm>.

Summary of the Guidelines

The Guidelines address a number of different issues. This summary breaks these down into four categories: the duty to inform; rules regarding election coverage; protection for freedom of expression during elections; and implementation/applicability of the guidelines. The Guidelines are summarised below according to these categories.

The Duty to Inform:

- public media have a general duty to inform the public about matters relevant to the elections (Guideline 1)
- parties or candidates have a right to airtime for direct access programmes on a fair and non-discriminatory basis (Guideline 9)
- the media have an obligation to provide special information programmes (Guideline 10)
- the media have an obligation to ensure voters understand how to exercise their vote (Guideline 11)

Rules Regarding Election Coverage:

- the media have a duty of balance and impartiality (Guideline 2)
- the duty of balance and impartiality is particularly important in relation to news programmes (Guideline 8)
- the media have a duty to provide necessary information to understand the significance of any opinion polls broadcast (Guideline 12)
- both sides in a referendum vote should be granted equal time in the media (Guideline 15)

Protection for Freedom of Expression During Elections:

- laws that illegitimately restrict freedom of expression should be repealed (Guideline 3)
- the authorities should investigate threats and attacks on the media (Guideline 4)
- neither the authorities nor the media should censor election programmes in any way (Guideline 5)
- the media have a right to be exempted from legal liability for unlawful statements by candidates made during election broadcasts (Guideline 6)

Implementation/applicability of the Guidelines:

- a right of correction or reply should be available in response to illegal statements (Guideline 7)
- an independent, impartial body should be established/appointed to monitor election broadcasts and hear complaints (Guideline 13)
- decisions of this body should be subject to judicial review (Guideline 14)
- the Guidelines also apply to local and regional elections (Guideline 16)

Guidelines for Election Broadcasting

Guideline 1: Duty to Inform the Public

Guideline 1

During the period preceding an election, publicly owned or funded media have a duty to ensure that the public are informed about relevant electoral matters such as the political parties, candidates, campaign issues and voting processes.

Commentary: States' obligation to ensure that "Every citizen shall have the right and opportunity, without [distinction of any kind] ... to vote and to be elected at genuine periodic elections" (see Article 25 of the *International Covenant on Civil and Political Rights*) obliges the authorities to ensure that electors have the necessary information to register and vote, and to make informed choices regarding the elections. This obligation is particularly onerous where the electorate have not had prior experience of voting in free and fair elections. Although it is open to the State to determine how to satisfy this obligation, publicly owned or funded media, and particularly broadcasters, are an ideal means.

Guideline 2: Duty of Balance and Impartiality

Guideline 2

Publicly owned or funded media have a duty to be balanced and impartial in their election reporting and not to discriminate against any political party or candidate. Other broadcasters may also be placed under a duty of balance and impartiality.

Guideline 2.1

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

Commentary: States' obligation of balance and impartiality derives directly from the fundamental rights of voters and candidates to freedom of expression and information, and non-discrimination in the enjoyment of their rights (see Articles 2 and 19 of the *International Covenant on Civil and Political Rights*). It is also implicit in the very idea of free and fair elections which rule out the party in power using the resources of the State, including those allocated to public broadcasters, to assist it in promoting its electoral chances.

Guideline 3: Laws Restricting Freedom of Expression

Guideline 3

Any laws that restrict freedom of expression in breach of international law should be abolished.

Commentary: The existence of laws which breach international guarantees of freedom of expression is at any time a serious problem. Such laws are problematical during elections as they may limit political debate and the ability of the media to cover the election, thereby interfering with the fairness of the election. Such laws should be abolished well in advance of the election campaign.

Guideline 4: Duty to Punish Attacks Against Media Personnel and Property

Guideline 4

The authorities should make special efforts to investigate all acts of violence, intimidation or harassment directed against media personnel or the property or premises of a media outlet, and to bring those responsible to justice, particularly where the act was motivated by an intent to interfere with media freedom.

Commentary: Attacks or threats against journalists, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public. It is of particular importance that the media be protected against such acts during election periods.

Guideline 5: Limits on Prior Restraint

Guideline 5

There should be no prior censorship of any election programme.

Guideline 5.1

The government should issue a clear statement that the media will not be penalised for broadcasting programmes merely because they are critical of the government, its policies or the ruling party.

Guideline 5.2

Neither the authorities nor media outlets should interfere with the broadcast of an election programme unless they are certain that this is necessary to prevent substantial harm, such as an act of violence. Any decision to restrain a programme should be subject to prompt review by an independent body in order to determine whether it was in conformity with these standards.

Guideline 5.3

The standards used in determining whether or not to broadcast an election programme must

not be vague or broadly defined.

Guideline 5.4

Any post-broadcast penalty must be proportionate to the harm inflicted and should not be so large as to constitute an effective ban on a political party.

Commentary: Prior censorship, especially concerning matters of political importance, is prohibited under international law except in extremely narrowly-defined circumstances. Any restriction on freedom of expression must be necessary and, given the fundamental importance to a democratic society of free political debate during election campaigns, this implies that an election broadcast may be subject to prior censorship only where it is virtually certain that the broadcast would cause immediate, irreparable and substantial harm.

Broadcast channels are *allowed* to pre-screen programmes in order to ensure that they do not violate the standards set out above but this should not be used as a pretext to delay or prevent transmission of legitimate programmes. However, they cannot be *required* to pre-screen, as this would put them in the situation of being a censor.

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

Guideline 6: Limits on Media Liability

Guideline 6

The media should be exempted from legal liability for unlawful statements made by candidates or party representatives and broadcast during the course of election campaigns, unless the media outlet concerned has either taken specific steps to adopt the statements or where the statements constitute clear and direct incitement to violence and the media outlet had an adequate opportunity to prevent their dissemination

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. Furthermore, post-broadcast remedies normally suffice to redress harm caused by speech that does not directly incite violence. It is of particular importance that the media be exempted from liability for defamation, based upon considerable national case-law and experience supporting the conclusion that defamation in the political context is adequately redressed by a prompt reply, retraction or correction (see Guideline 7). Primary speakers – such as political parties and candidates – are not hereby relieved of liability for their statements.

Guideline 7: Corrections and Replies

Guideline 7

Any candidate or party which has been defamed or otherwise suffered illegal injury by a broadcast should be entitled to a correction or, where this would be an insufficient remedy, be granted an opportunity to reply. The correction or reply should be broadcast as soon as possible.

Commentary: Many established democracies provide for corrections or replies during election campaigns and more generally. These provide a rapid and effective means for redressing harm from illegal statements which, if the rules meet certain conditions, does not unduly restrict the right to freedom of expression.

Guideline 8: News Coverage**Guideline 8**

Publicly owned or funded media should be particularly scrupulous in complying with their obligations of balance and impartiality in their news and current affairs reporting. Other broadcasters should also be careful to comply with any obligations of balance and impartiality national law may place on them.

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.

Guideline 8.2

Publicly owned or funded media are urged not to broadcast editorial opinions at all, due to the potential for them to be confused with news. All broadcasters should endeavour to clearly identify editorial opinion and to avoid airing it during news programmes.

Guideline 8.3

Obligations of balance and impartiality imply that news coverage of press conferences and public statements concerning matters of political controversy (as opposed to functions of State) by the governing authorities should be subject to a right of reply or other equitable response from other competing parties. This obligation acquires even greater force when the person making the statement is also standing for office.

Commentary: Of the various forms of election broadcasts, news coverage is generally accepted to be the most influential. Furthermore, recent experience shows that the duty of balance is most often, and most seriously, breached in the coverage of news. Accordingly, the duty to report in a balanced and impartial manner is particularly strong concerning news programmes. The ruling party, due to its governing role, will normally attract more news coverage than other competing parties. Careful measures, such as those outlined above, need to be taken to prevent this from happening.

Where possible, it is recommended that a mechanism be established to determine the proportion of election news coverage to be allocated to the competing parties and that broadcasters adhere scrupulously to these standards. This approach may be difficult to implement in the context of a first democratic election, where the relative strengths of the parties cannot objectively be determined. Furthermore, the existence of a large number of political parties, or of shifting coalitions, renders such solutions difficult to implement. Nevertheless, efforts should be made to ensure that government appearances in the news are balanced with coverage of other parties. 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 should give comparable coverage to other parties' speeches or rallies.

Guideline 9: Direct Access Programmes

Guideline 9

Publicly owned or funded media should grant all political parties or candidates airtime for direct access programmes on a fair and non-discriminatory basis. Other broadcasters may also be required to provide such airtime.

Guideline 9.1

All parties or candidates that are formally registered should be granted access to some airtime for a country's first multi-party election.

Guideline 9.2

For the second or subsequent democratic election, airtime may be allocated on a proportional basis, according to objective criteria indicating general levels of support for the different parties. All parties should still normally receive some airtime. It is recommended that the allocation of airtime be carried out by an independent body in consultation with all the parties.

Guideline 9.3

The amount of time allocated should be sufficient for parties/candidates to communicate their messages.

Guideline 9.4

Direct access programmes should be aired at times when the broadcasts are likely to reach the largest audiences. The duty of balance would be breached if the programmes of some parties/candidates were aired at less favourable times than those of others.

Guideline 9.5

Time slots for direct access programmes should be assigned in an equitable manner.

Guideline 9.6

Direct access slots should be made available on equal financial terms for all parties/candidates. For first-time democratic elections, publicly owned or funded media should provide a reasonable amount of time free of charge or for a nominal sum.

Guideline 9.6.1

If parties/candidates are to be allowed to purchase airtime for political advertisements, they should have access to such time on equal terms. In such cases, rates and overall limits may be set by regulation in order to limit the advantage of richer parties. This is particularly appropriate during a first democratic election, especially where opposition parties had previously been proscribed and thus did not have the opportunity to raise funds.

Commentary: The right of parties and candidates to present their views and platforms to the electorate through the media is essential to democratic elections. Direct access programmes are a key means of achieving this goal. Direct access programmes 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. Direct access programmes convey stylistic and other intangible information that is missing in other programmes. Public broadcasters in most Western democracies are required to make time available for these programmes.

For the first democratic, multi-party election, allocation of airtime 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 — are unavailable. In subsequent elections, particularly where a large number of parties compete, granting equal time to all parties may dilute the messages of the parties that are most likely to form the next government. For this reason, proportional allocation of airtime may improve the informative value of the broadcasts while maintaining the public's confidence in the fairness of the allocation process. In nearly all Western countries, time is allocated to parties on a roughly proportional basis. All parties should normally continue to receive some direct access airtime.

The primary purpose of direct access programmes is to allow political parties to communicate their messages to the electorate and, as a result, they should be aired at those times when the largest audiences are reached. Where there are a large number of parties, assigning time slots for direct access programmes is complicated and it is crucial that it take place pursuant to a fair process.

In most established democracies, public broadcasters make some amount of time available for direct access programmes free of charge. In most of these countries, paid political advertising is prohibited throughout the campaign period and, in a few, it is prohibited altogether (i.e. even outside of campaign periods). The prohibition, or strict regulation, of paid political advertisements during campaign periods is justified on several grounds, including that it is necessary: (1) to prevent corruption and undue influence by major contributors; and (2) to help create a 'level playing field' for parties with different levels of wealth.

Guideline 10: Special Information Programmes

Guideline 10

During elections, the media should broadcast special information programmes that provide an opportunity for members of the public to put questions directly to party leaders and candidates, and for candidates to debate with each other.

Guideline 10.1

Broadcasters have greater editorial discretion in relation to these programmes than the news but such discretion is subject to the general obligations of balance and impartiality.

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 obligations flow from the duties to inform the electorate and to provide balanced information. Special information programmes include candidate forums and debates, interview programmes, and programmes that provide an opportunity for audience members to pose questions.

Guideline 11: Voter Education

Guideline 11

Publicly owned or funded media are obliged to broadcast voter education programmes, at least to the extent that this is not already sufficiently covered by other information initiatives.

Guideline 11.1

Voter education 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

These programmes should reach the greatest number of voters feasible including, where relevant, through programmes in minority languages and targeting groups traditionally excluded from the political process, such as women and indigenous groups.

Commentary: The right to participate in elections depends on knowing how to exercise one's vote. Broadcasting voter education programmes is a key way for the authorities to

discharge their obligation to inform the public. Other methods – such as distributing leaflets and posters – may also be used but these will rarely reach as many people as broadcasting and they may not be as effective, for example in relation to people with low literacy.

Guideline 12: Opinion Polls and Election Projections

Guideline 12

If a broadcaster publishes the results of an opinion poll or election projection, it should strive to report the results fairly.

Guideline 12.1

Opinion polls should be accompanied by information to assist viewers/listeners to understand the poll's significance, such as who conducted, commissioned and paid for the poll, the methodology used, the sample size, the margin of error, and the fieldwork dates.

Commentary: Opinion polls can have a significant impact on voting patterns, especially where their significance is not adequately understood. Broadcasters that report on opinion polls should furnish such additional information as is required for viewers/listeners to understand them properly. There is some debate about whether opinion polls should be allowed to be published close to or right up to polling day. Some observers are concerned about the disproportionate impact this may have close to the actual poll. Most Western and Central European countries prohibit publication of the results of opinion polls during the last several days before an election.

Guideline 13: Regulatory and Complaints Mechanisms

Guideline 13

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

Guideline 13.1

The body should allocate time for direct access programmes and should have the power to hear and take binding action on complaints concerning broadcast-related violations by the media, political parties or candidates, including by ordering a correction or reply.

Guideline 13.2

The body should render complaints decisions promptly.

Guideline 13.3

If there is a regularly constituted, independent broadcast-monitoring body, it may carry out these functions; otherwise, a special body should be established for this purpose.

Guideline 13.4

The body should not be able to take decisions only upon the strength of the votes of the appointees of the government or of one party.

Commentary: The proper implementation of the rules discussed in these Guidelines depends upon the existence of a body to monitor broadcasts and to decide on complaints that is independent and impartial. It should act promptly and fairly, and its decisions must be subject to prompt review by the courts. In a number of countries, independent broadcasting authorities make decisions regarding election broadcasts.

Guideline 14: Judicial Review**Guideline 14**

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

Commentary: Judicial review of the decisions of election broadcast bodies is important to the reality as well as the appearance of fairness.

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 airtime should 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 airtime is required in order to meet the duties of balance and impartiality.

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 and the same principles apply to these elections as to national elections.