

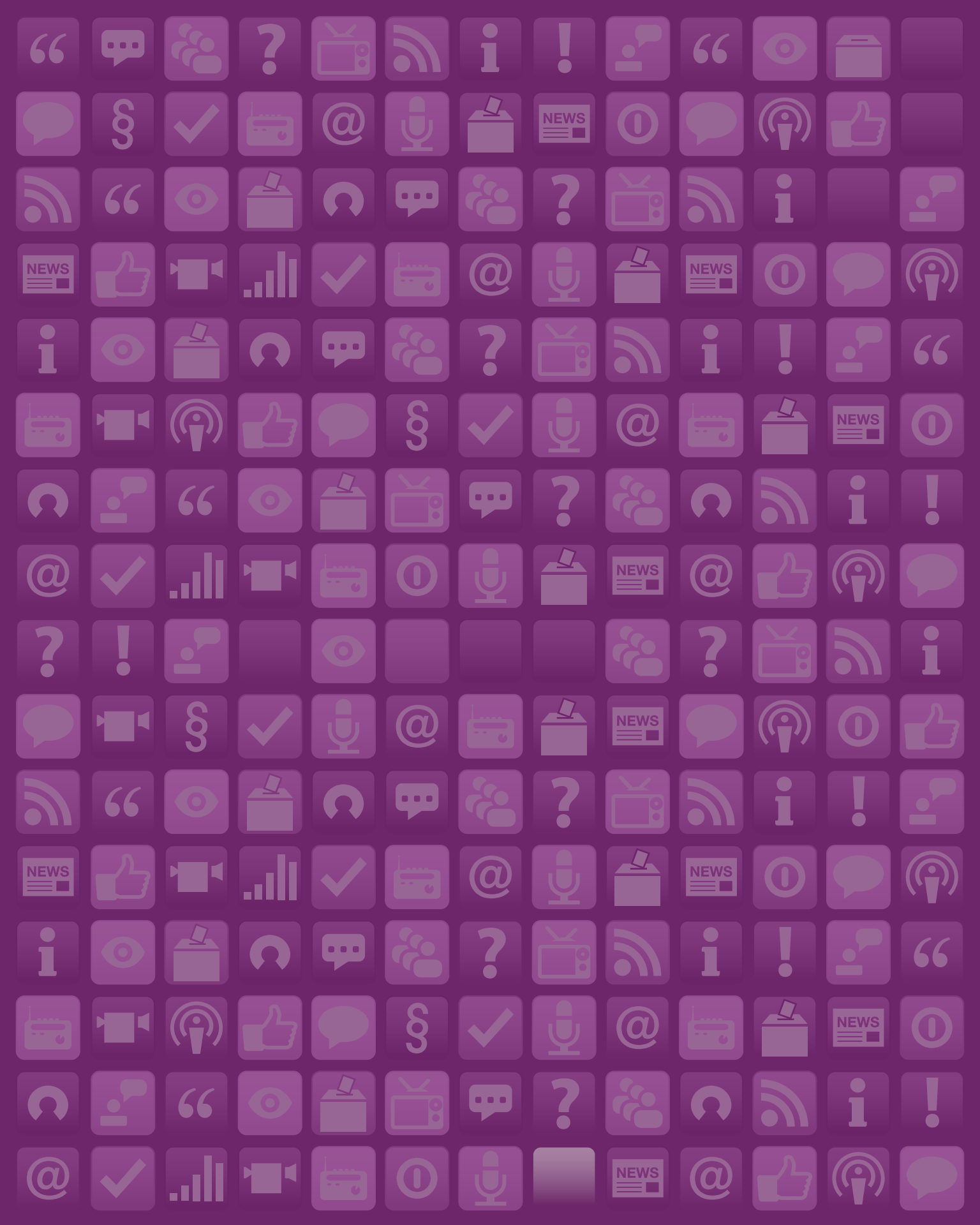


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# MEDIA and ELECTIONS

A Guide for  
Electoral Practitioners

United Nations Development Programme



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# List of acronyms

ACHPR	African Commission on Human and People's Rights	IRN	Independent Radio Network (Sierra Leone)
APC	All People's Congress party (Sierra Leone)	JEMB	Joint Electoral Management Body
CPA	Comprehensive Peace Accord (Nepal)	MMU	Media Monitoring Unit (Guyana)
CSO	Civil Society Organisation	NEC	National Elections Commission (Sierra Leone)
CTN	Cotton Tree News (Sierra Leone)	NGO	Non-Governmental Organisation
DFID	Department for International Development	OAS	Organization of American States
DPKO	Department of Peacekeeping Operations (UN)	OSCE	Organization for Security and Co-operation in Europe
EAO	Electoral Assistance Office	PIVOT	Promoting Information and Voice for Transparency on Elections Project (Sierra Leone)
ECI	Election Commission of India	SFCG	Search for Common Ground
ELECT	Enhancing Legal and Electoral Capacity for Tomorrow Project (Afghanistan)	SLAJ	Sierra Leone Association of Journalists
EMB	Electoral Management Body	SLBC	Sierra Leone Broadcasting Corporation
EMC	Electoral Media Commission (Afghanistan)	SLPP	Sierra Leone People's Party
EU	European Union	SMS	Short Message Service
GECOM	Guyana Elections Commission	TV	Television
ICCPR	International Covenant on Civil and Political Rights	UDHR	Universal Declaration of Human Rights
ICMEA	Inter-agency Coordination Mechanism for UN Electoral Assistance	UN	United Nations
IDP	Internally Displaced Person	UNAMSIL	United Nations Mission in Sierra Leone
IEC	Independent Electoral Commission (Afghanistan)	UNDP	United Nations Development Programme
IMMRP	Independent Media Monitoring and Refereeing Panel (Sierra Leone)	UNESCO	United Nations Educational, Scientific and Cultural Organization
		UNIOSIL	United Nations Integrated Office in Sierra Leone
		UNMIN	United Nations Mission in Nepal
		UNTAC	United Nations Transitional Authority in Cambodia

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## ■ PURPOSE OF THE GUIDE

This Guide, published by the United Nations Development Programme (UNDP), is designed to be a key reference tool for electoral practitioners including electoral management bodies (EMBs), independent broadcasting authorities and international assistance providers. It aims at improving an understanding of some of the key issues related to media and elections.

The Guide is comprised of ten chapters that deal with the issues of media and communications during the electoral process. Each chapter can be read independently so that electoral practitioners only concerned with one facet of media and elections can turn directly to that section as a resource.

Many of the approaches contained in the guide are suggested possible approaches for electoral practitioners to undertake based on good practice but their applicability will depend on the particular country context. They should therefore be read with the understanding that UN electoral assistance is guided by various principles including on 'national sovereignty and ownership' and 'norm-based but not prescriptive to respect the local context'. This implies that while assistance providers can propose options to government and election authorities, they should first consider the local context and national decisions must in the end be respected. Furthermore, while the UN would advise on the implementation of international norms and commitments with respect to elections, the advice provided should generally not be prescriptive but should provide options, lessons and comparative experiences.

✓ **Chapter 1** outlines international and regional human rights standards for freedom of speech and expression. It also explains the permissible limits for free speech, in particular in cases of hate speech, invasion of privacy and national security. These principles are crucial to understanding the role and responsibilities of the media, and the rights of parties, candidates and voters in regards to the media in the electoral process.

✓ **Chapter 2** covers the best practices, ethical principles and programmatic standards for

election coverage and media access. It also discusses some of the common problems and their solutions in election-related reporting.

✓ **Chapter 3** explains the key principles of media oversight and the importance of appropriate forms of regulation for the different types of media such as broadcast, print and new media (Internet, mobile phones).

✓ **Chapter 4** describes the process of media monitoring during an election and the establishment of oversight bodies to serve that function.

✓ **Chapter 5** outlines the complaint process for issues identified in the media, and the principles, processes and structures involved in the efficient and transparent handling of those complaints.

✓ **Chapter 6** deals with the issue of administrative penalties and sanctions for violations of media codes of conduct and regulations.

✓ **Chapter 7** raises the issues posed by the new media including the Internet and content distributed through mobile telephone networks.

✓ **Chapter 8** covers the issue of trans-frontier television and satellite broadcasting and national issues related to election coverage.

✓ **Chapter 9** focuses on EMB communications and how to develop an integrated and strategic approach to communications throughout the electoral cycle.

✓ **Chapter 10** covers access to information requirements and how EMBs may handle freedom of information requests.

The Guide concludes with five brief case-studies on election and media-related projects supported by UNDP to illustrate more clearly how some of the concepts addressed in the main text work on the ground. These are: supporting media coverage in *Afghanistan*; supporting media coverage of elections in *Sierra Leone*; supporting Equity News in *Cambodia*; supporting media monitoring and enhancing media responsibilities in *Guyana*; and supporting professionalized communications in *Nepal*.



# Introduction

Credible and inclusive elections are based on a number of basic democratic principles. These are affirmed in the United Nations Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Key among these are the rights to freedom of speech, access to information and equality before the law. These principles mean that the electorate and political actors have the right to freely discuss political issues and public policies and to express opinions. Voters and candidates rely heavily on access to the media to both impart and receive information. This requires an open and diverse media that can provide balanced and impartial coverage and equitable access for competing candidates and parties.



The media has a unique position as both a conveyor and a recipient of information. It has an essential watchdog function that increases the transparency and accountability of the process. Its messages can shape public opinion and set agendas. This makes the media a very influential actor and a powerful communications tool. A media that is responsible and appropriately used will help strengthen the democratic process and contribute to a more credible and inclusive election.

This position though can make the media a target. The media can be captured or co-opted by a particular interest or party and be used to sway public opinion for or against issues, groups or candidates. In some contexts this has fuelled election-related conflict and violence. In these circumstances independent journalists and media houses can suffer from intimidation and harm. Certain parts of the process can be particularly susceptible to these problems, including the electoral campaign and election result reporting, but biased or partisan reporting can affect the entire electoral process starting with the conception of the electoral system and elaboration of its legal framework.

EMBs can have an important role to play with the media both in terms of safeguarding the role of an independent press in the electoral processes, but also in using it effectively to communicate with the public to get its own messages out. The EMB itself, and how it works and administers the process, is also a news item which the media will want to cover. How the EMB manages these responsibilities will be profoundly reflected in the way the electoral process is conducted and perceived by the electoral competitors and public. A successful election is the result of a long process of preparation and planning, much of which takes place during the intervals between elections. Communications and working with the media are

activities that an EMB will undertake throughout the cycle of an election as noted in Figure 1.

These are all issues that electoral practitioners need to be not only aware of, but able to manage in conjunction with the other actors in the democratic process. In addition, new social media is rapidly expanding

the way the information is shared and public opinion is shaped. These factors will increasingly be a part of electoral practitioners work, both in terms of communications with the public on electoral-related processes and issues and in terms of the relationship with the media's election-related coverage and use.

**FIGURE 1: THE ELECTORAL CYCLE AND THE MEDIA<sup>1</sup>**



# 01

## Basic principles for media and elections

Chapter 1 outlines international and regional human rights standards for freedom of speech and expression. It also explains the permissible limits for free speech, in particular in cases of hate speech, invasion of privacy and national security. These principles are crucial to understanding the role and responsibilities of the media, and the rights of parties, candidates and voters in regards to the media in the electoral process.



Freedom of speech and, by extension, freedom of the media, is a cornerstone of democracy.

This complex right consists of the right to impart and receive information freely. Freedom of speech is also an ‘enabling right’ that supports a wide range of other rights, such as those of assembly and association. These are central components of a free and fair electoral environment and pluralistic democratic process. Chapter 1 discusses these basic principles as related to elections and the media. It also outlines the nature of the restrictions that may be applied in certain cases to ensure that these rights are not abused to mislead the voters or to promote conflict.

### ■ FREEDOM OF SPEECH

Freedom of speech and expression are protected by the Universal Declaration of Human Rights, 1948 (UDHR), the International Covenant on Civil and Political Rights, 1976 (ICCPR, which is also referred to in this Guide as the “Covenant”) and other international and regional conventions. The ICCPR is interpreted by the UN Human Rights Committee through its general comments. Special Rapporteurs are also responsible for reporting on freedom of opinion and speech.

Article 19 of the ICCPR is explicit in its commitment to upholding the principle that the right to freedom of speech is guaranteed for all individuals regardless of ethnicity, religion, creed, gender or nationality. It also guarantees that individuals are able to freely express their viewpoints without prior censorship in the public domain and includes the right to impart, receive and seek information.

**BOX 1: UN HUMAN RIGHTS COUNCIL  
RESOLUTION 12/16, 2009**

“The exercise of freedom of opinion and expression is one of the essential foundations for a democratic society, is enabled by a democratic environment, which offers, inter alia, guarantees for its protection, is essential to full and effective participation in a free and democratic society, and is instrumental to the development and strengthening of effective democratic systems.”

In its entirety, Article 19 states:

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 the 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.”<sup>2</sup>

Under international law, all states have specific obligations to respect, protect and fulfil these rights (Box 2). Although the UDHR is not directly binding on states, the provisions of the Covenant are for ratifying states. This can include legislative, administrative or other measures and extends to all branches of a state including the executive, judiciary and legislative. The obligations also extend to the protection of individuals from “any act of a private entity or person that restricts freedom of speech” inimical to the provisions of the ICCPR.<sup>3</sup>

**BOX 2: STATE RESPONSIBILITIES  
UN Special Rapporteur on Freedom  
of Opinion and Expression, 2010**

- To respect that right, or to refrain from interfering with the enjoyment of that right.
- To protect that right or to exercise due diligence in order to prevent, punish, investigate and provide redress for harm caused by private persons or entities; and
- To give effect to that right or to take positive or proactive measures to permit the realisation of that right.



These principles are also laid down in regional conventions as noted for three of these in Table 1.

**TABLE 1: REGIONAL CONVENTIONS AND FREE SPEECH**

African Charter on Human and Peoples’ Rights	European Convention on Human Rights	American Convention on Human Rights
<p><b>Article 19:</b> Every individual shall have the right to receive information.  Every individual shall have the right to express and disseminate his opinions within the law.</p>	<p><b>Article 10:</b> 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.</p>	<p><b>Article 13:</b> 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.</p>

## ■ ELECTIONS, MEDIA AND FREE SPEECH

The range of content protected by the concept of freedom of speech is extensive. According to the UN Human Rights Committee, which takes a broad interpretation of Article 19, it protects all forms of “spoken, written and sign language and such non-verbal expression as images and objects of art.”<sup>4</sup> It also covers political discussion, public affairs, satire, cultural and artistic expression. This includes any speech perceived to be offensive in nature or having little value to society. With respect to political speech, courts have in many jurisdictions recognized the importance it plays in a democratic society and have therefore afforded it a particularly important position.

Discussing state institutions and their policies is a legitimate activity and these should not enjoy any special protection. Similarly, although public figures have rights related to their reputation and privacy, criticism of public figures such as members of government, is equally legitimate even if it is perceived as offensive.

While reaffirming the importance of the media as a platform for elections, the UN Human Rights Committee highlights the need for a free and unrestrained press and media with open access to candidates and voters. “A free uncensored and

*unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other covenant rights.”<sup>5</sup> This is required to ensure that “citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives [...] supported by ensuring freedom of expression, assembly and association”.<sup>6</sup>*

Distortions that derive from unequal access to resources for candidates may undermine the right of a voter to freely select a candidate if, for example, access to the media is disproportionate for candidates. Measures that attempt to redress such inequalities are justifiable within the human rights framework since they seek to enhance rather than restrict freedom of speech.

Mechanisms to promote pluralism in the media associated with an election campaign, such as requirements for balanced media coverage, are therefore considered acceptable grounds for public policy intervention, as Article 2 of the ICCPR places an obligation on states to respect and to guarantee all rights enshrined in the Covenant to all individuals whilst upholding the human rights principles of equality and non-discrimination.

Many of the principles related to election-specific media coverage and the rights and responsibilities of the media are noted in a 2009 joint statement by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, (referred to as the Special Rapporteurs in this Guide).

The joint statement stresses that:

- The media should be free to report on election-related matters. They should also be [generally] exempted from liability for disseminating unlawful statements made directly by parties of candidates.

### BOX 3: FREEDOM OF COMMUNICATION

“Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected [...] the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.”

UN Human Rights Committee, 1996, General comment 25, paragraphs 12 and 25

- The obligation of political figures, including candidates, to tolerate a greater degree of criticism than ordinary persons should be clearly reaffirmed during elections.
- Oversight of any rules relating to the media and elections should be vested in an independent administrative body, which should address any complaints promptly. The decisions of this body should be subject to judicial review.

It also places emphasis on the role of publicly owned media, in particular public service broadcasters during an election period to:

- Ensure that the electorate is informed about electoral matters, including the role of elections in a democracy, how to exercise one's right to vote, the key electoral issues and the policy positions of the various parties and candidates contesting the election.
- Respect rules of impartiality and balance, particularly when reporting on the governing party(ies) and on government decisions and actions during an election period.
- Grant all parties and candidates equitable access to the media to communicate their messages directly to the public, either for free or at subsidized rates.
- Ensure that any reporting of opinion polls and election projections is accompanied by sufficient information to enable the electorate to properly understand their significance.

These are not exclusive and under licensing obligations in many cases are extended to commercial radio and television channels.

## ■ LIMITATIONS ON FREE SPEECH

There are two main types of restrictions on freedom of speech in the media-- before the speech is made (prior restraint) and after the speech is made. **Prior restraint** censors content before it is published based on an assumption that the content to be published will be harmful and that it is in the overriding public

interest for the content not to be published. This type of censorship is considered to be a violation of the right to free speech.

The limits set on certain types or categories of speech are based on the overriding presumption that harm is caused by the nature of the content that is published, whether on television, the radio, in newspapers or on the Internet. As outlined by the ICCPR: *The exercise of the rights ... 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.*<sup>7</sup>

There are three major areas where restrictions or limits may be envisaged. These include hate speech (Article 20 (2) ICCPR), protection of personality and privacy (Article 17 ICCPR), and state security and public order (Article 19 (3b) ICCPR).

The indicators developed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) for restrictions on freedom of speech reflect the norms for how restrictions should be clearly and narrowly defined by states so they do not limit legitimate forms of speech. These are:

- National security and other restrictive laws do not inhibit public debate about issues of public concern.
- Any restrictions are narrowly defined in law, rather than subject to executive discretion.
- Such laws should be subject to a public interest override where appropriate.

The UN Human Rights Committee has outlined a **cumulative three-part test** for restricting speech. This test must: be provided clearly by law; pursue a legitimate aim; and be necessary to protect the listed interest. Table 2 provides a summary of the constituent parts of this test.

A central characteristic of certain rights, such as freedom of speech, is that they can affect other rights and at times may also compete. Rights are generally perceived to be equal in weight in respect of the



#### BOX 4: FREEDOM OF EXPRESSION AND HARMFUL SPEECH

States should not impose any restrictions on freedom of speech that are not in accordance with the standards set out in Principle 2.2 [the scope of permissible restrictions] and, in particular, restrictions should be provided by law, serve to protect the rights or reputations of others, national security or public order, or public health or morals, and be necessary in a democratic society to protect these interests. This implies among other things, that restrictions:

- i. Are clearly and narrowly defined and respond to a pressing social need.
- ii. Are the least intrusive measure available, in the sense that there is no other measure which would be effective and yet less restrictive of freedom of expression.
- iii. Are not overbroad, in the sense that they do not restrict speech in a wide or untargeted way, or go beyond the scope of harmful speech and rule out legitimate speech.
- iv. Are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to sanctions they authorise.

NGO Article 19, *The Camden Principles on Freedom of Expression and Equality*, 2009. Section IV Freedom of Expression and Harmful Speech  
Principle 11: Restrictions

Covenant since they are not hierarchical. In decisions regarding competing rights, therefore, a starting point is the assumption that no single right can automatically take precedence over another right. In such cases, a balancing of the different rights may be required, and, in turn, limits may be imposed on one or both of the competing rights under a proportionality principle.<sup>8</sup>

#### Hate speech

Speech that intentionally incites hatred is prohibited by the ICCPR and is known as hate speech. During the electoral process, hate speech can target parties, candidates, voters, EMBs and others, inciting violence and undermining a credible process.

TABLE 2: MINIMUM REQUIREMENTS FOR LEGITIMATE RESTRICTIONS ON SPEECH<sup>9</sup>

Principle	Summary
Provided for by law	Laws prohibiting freedom of speech should be accessible, clear and unambiguous. This includes “administrative, civil and criminal laws [and] legal norms developed through common law.” Powers to issue restrictive laws or rules should be narrowly defined with appropriate constraints placed on these powers.
Serves a legitimate purpose	Restriction based on a “legitimate and overriding public interest.” The areas where this is envisaged are listed in Article 19(3) and are exclusive.
Minimum restrictions necessary	Limits placed on freedom of speech must be the “least intrusive” to serve the needs of protecting the legitimate aim. It should be narrowly defined so as not to restrict ‘legitimate speech.’  A proportionality test is also required to assess whether the proscription on freedom of speech outweighs the benefit of publication with respect to the public interest.

General principles for dealing with hate speech are outlined in the non-governmental organization (NGO) Article 19's Camden Principles (Box 5).

An important constituent part of Article 20(2) stresses 'advocacy' of hate speech, which requires intent on behalf of the speaker to incite hatred.<sup>10</sup> Hate speech is restricted on the basis of a number of grounds. From one point of view, the obligations outlined in Article 20 to prohibit hate speech are, in themselves, obligations on states to prohibit such speech in the media. Another view is that restrictions pursue a legitimate aim to protect public order, and yet another suggests that such speech infringes the rights of individuals to live with dignity and non-discrimination and equality.

#### BOX 5: PRINCIPLES FOR INCITEMENT TO HATRED

All states should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement of discrimination, hostility or violence (hate speech). National legal systems should make it clear, either explicitly or through authoritative interpretation that:

- i. The term 'hatred' and 'hostility' refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.
- ii. The term 'advocacy' is to be understood as requiring an intention to promote hatred publicly towards the target group.
- iii. The term 'incitement' refers to statements about national, racial or religious groups, which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.
- iv. The promotion by different communities, of a positive sense of group identity does not constitute hate speech.

NGO Article 19: *Camden Principles on Freedom of Expression and Equality* 2009, Principle 12: Incitement to Hatred

#### BOX 6: GENERAL PRINCIPLES OF DEFAMATION

Joint declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2000

At a minimum, defamation laws should comply with the following standards:

- The repeal of criminal defamation laws in favour of civil laws should be considered, in accordance with relevant international standards.
- The state, objects such as flags or symbols, government bodies, and public authorities of all kinds should be prevented from bringing defamation actions.
- Defamation laws should reflect the importance of open debate about matters of public concern and the principle that public figures are required to accept a greater degree of criticism than private citizens; in particular, laws which provide special protection to public figures, such as *desacato* laws, should be repealed.
- The plaintiff should bear the burden of proving the falsity of any statements of fact on matters of public concern.
- No one should be liable under defamation law for the expression of an opinion.
- In relation to a statement on a matter of public concern, it should be a defence to show that publication was reasonable in the given circumstances; and
- Civil sanctions for defamation should not be so large as to exert a chilling effect on freedom of expression and should be designed to restore the reputation harmed, not to compensate the plaintiff or to punish the defendant; in particular, pecuniary awards should be strictly proportionate to the actual harm caused and the law should prioritise the use of a range of non-pecuniary remedies.



There are some significant differences in how hate speech is constructed, within international human rights instruments in themselves, and different national jurisdictions. However, generally it is treated as a public order offence rather than a civil matter. There is also common ground built on fundamental principles. These are outlined in a 2001 joint statement by the UN, ACHPR, OAS and OSCE Special Rapporteurs. It recommends, with respect to hate speech, the following rules:

- No one should be penalized for statements that are true;
- No one should be penalized for dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence;
- The right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;
- No one should be subject to prior censorship;
- Any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.

A threshold test for Article 10 has been proposed by the NGO Article 19 which is provided in Annex 7.

## Defamation

There has been growing international recognition over the past decade of the standard principles required for defamation and an increasing move to decriminalize defamation to reduce the threats to free speech posed by abusive use of defamation laws and criminal sentencing.

At its most basic, defamation consists of actual damage to a reputation due to publication. It should be demonstrated in defamation cases that harm has been caused to a reputation, in other people's eyes, by inaccurate information. Solely hurting someone's feelings through publication does not constitute defamation of character.

The parameters of defamation according to international best practice are outlined in the NGO Article 19's ABC to defamation:

- Public bodies including government ministries should not be allowed to bring a defamation suit.
- The tolerance level for criticism of public officials including politicians should be accepted as higher than that of the general public.
- Defamation should not apply in statements of truth. In issues pertaining to public interest the burden of proof should be on the complainant to prove falsehood.
- Defamation laws should only apply to statements and allegations of fact not opinions.
- Defence of 'reasonable publication'. This relates to a defence based on whether it was reasonable at the time of distribution of the content for the author to publish the statement even if it is incorrect.
- 'Innocent publication', whereby the person who distributed or published defamatory material did so unknowingly.

The balance between the right of freedom of speech and the right to reputation therefore follows the same principles as set out in the other permitted areas of restrictions. It must meet the conditions set by the three-part test and the question of necessity. There are also a number of defences established to protect authors from claims of defamation outlined above which are important for balancing the right of freedom of speech and the right to reputation.

## Privacy

The right to a private life and reputation are protected in the ICCPR (Article 17) and in statutory and self-regulatory frameworks that protect the private lives of individuals and their reputation. Specifically:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

The UN Human Rights Committee has reiterated that it is the responsibility of the state to protect individuals against all such interference from both the state and any other legal persons.<sup>11</sup>

Laws that protect the privacy of an individual prohibit unwarranted intrusion into their private lives. Even in the public domain some degree of protection is supposed to last as long as there is a reasonable expectation of privacy. All persons have a right to privacy (Article 17, ICCPR) as they do to a reputation and in a similar manner as to defamation.

While all individuals are afforded this right, there is increasing recognition that public figures such as politicians should be subject to a higher degree of scrutiny and therefore enjoy less protection of the courts in the area of privacy rights related to media due to their position of public interest. Such figures still have privacy rights, though the right of the media to report on their private lives is broader than with individuals who do not hold public office, because there is greater public interest in knowing more about them.

## Protection of national security and public order

Another major area of permitted restrictions is in the area of national security and public order. This must also follow the three-part test for assessing the legitimacy of the restriction on free speech. Any restriction on grounds of national security should demonstrate that it is necessary and justifiable to protect a legitimate area of national security. This does not

include protecting the reputation of a government or public institutions, as it relates to serious national security issues that, by being made public, seriously jeopardize the security of a nation either by internal or external threat.

Restrictions are also permitted with respect to public order, but only when the *“life of the nation is threatened.”*<sup>12</sup> The UN Special Rapporteur on Freedom of Opinion and Expression stresses: *“A state of emergency may not under any circumstances be used for the sole aim of restricting freedom of expression and preventing criticism of those who hold power.”*<sup>13</sup> Any limits should therefore represent a proportionate response to a real and genuine threat to a nation.

## ■ ACCESS TO INFORMATION

Access to information is also covered by the ICCPR Article 19 which guarantees the right of individuals to access information held by public bodies. This includes state-owned companies, all branches of the state and all public and governmental agencies.

To guarantee this right, states should ensure structures are in place for receiving and responding to access to information requests. This includes the introduction of legislative measures required for access such as freedom of information laws which should extend to all state institutions, including an EMB.

States may restrict access to information under a few very specific circumstances that meet established criteria.

# 02

## Media standards during elections

Chapter 2 deals with some of the specific issues related to the media that arise during the electoral process. It explains basic journalistic standards and expectations for balanced, accurate reporting. It also discusses some of the issues involved with the media's coverage of the process, especially in particularly sensitive areas such as media access and equal time, reporting of the results and releasing polling information.



The media has a very influential role in the conduct of elections and its outcome. In addition to providing information to the voters needed for them to make an informed choice and providing a platform for candidates to reach the public, the media can set the agenda for the process through the topics it covers, questions it asks and tone of its coverage. In addition, many electoral campaigns are often won or lost in the media through the way the candidate or issue is portrayed and the volume of increasingly expensive political advertisements. Because of its power to influence and inform, the media is expected to play an informed, watchdog role and keep citizens up to date on electoral issues, on the positions of candidates and the how and whys of voting. It should serve as an impartial and open forum for public debate and discussion and provide candidates and parties with an equitable podium for their campaigns.<sup>14</sup>

Achieving this requires a balanced, open and independent media sector with well-trained journalists and adherence to a clearly defined code of ethics.

Elections however are political events with high-stakes outcomes that take place in many different contexts. Some of these are marred by non-level playing fields, political and social instability, violence and/or intimidation.<sup>15</sup> These problems can be exacerbated by an irresponsible, partisan or badly informed media. Some parts of the electoral cycle are particularly vulnerable to these problems, in particular the electoral campaign period and the post-polling period when the votes are counted and the results are being released.

## ■ MEDIA STANDARDS

Regardless of content or context, there are basic standards for journalistic integrity. These include:

**Accuracy.** This requires well-researched and rigorous journalism supported by fact checking, balance and well-sourced material and an appropriate set of records to support the story. Accurate reporting clearly separates fact and opinion and is produced according to due impartiality principles. Unsubstantiated claims are clearly marked as such.

**Fairness.** This treats participants and subjects honestly and in a transparent manner. It does not aim to mislead either those people participating in a programme or the audience. Contributors to a report are fairly treated, and in the absence of an overriding public interest, are made fully aware of the nature of the programme or news feature and the context of their own role within that story.

**Balance and due impartiality.** Balanced reporting provides news clearly and impartially so that the public is able to draw its own conclusions. Due impartiality relates to the treatment of a subject so that it is not handled in a biased manner, and allows viewers and listeners to access a balanced range of views and opinions. As a general rule, balance can be achieved over a series of programmes rather than an individual feature story. The principle should be achieved within an individual channel, not across different channels where a broadcaster operates more than one radio and television channel. The due impartiality principle is limited to broadcasters and does not exist as

a standard in other sections of the media industry, though issues such as accuracy and fairness contain elements of this principle.

**Respects privacy rights.** This takes care to ensure that any infringement on an individual's privacy is based on an overriding public interest. All individuals, regardless of who they are, should expect greater protection of their privacy in their own homes than in general in a public location where different parameters may be established.

**Right of reply and correction.** This principle allows aggrieved persons to reply to a published story and correct errors. The right of correction is the less intrusive of the two options and is generally satisfactory in rectifying any inaccuracies or factual errors. In such circumstances, the publication is obliged to write and publish corrections to factual mistakes. The right of reply consists of a media outlet publishing or broadcasting a response, written by the aggrieved party, to clarify or correct the facts of a story that has been published. These are generally granted due prominence in a suitable position in the publication, so as to be effective in highlighting the errors, or in a similar position as the original story or feature.

**Protection of journalistic sources.** This allows reporters to protect their sources of information which is seen as an important part of the right to seek information. Although it is always preferable to cite journalistic sources, journalists also have a right to protect the identity of sources. Restrictions to this right should be narrowly defined and only permitted if there is an overriding public interest in such disclosure.

There is a wide range of content issues likely to emerge during the electoral process which usually falls within two main categories:

- **balance, impartiality and accuracy** of broadcasters in their coverage of electoral issues, the organisation of elections, voter information and electoral campaigns by candidates and parties and the results. This can include the news, factual and other programme strands. It is concerned with editorial

choice and ensuring voters receive a range of balanced and objective information.

- **access to the media** by candidates, political parties and others to express their political opinion. This is often related to advertisements and messaging produced by the parties or candidates themselves, and has no editorial input of broadcasters other than providing a vehicle for their airing.

There are different standards for broadcasters and the print media. In general, broadcasters are required by legislation to respect the principle of due impartiality in programming and reflect different views and opinions in society, and refrain from taking an opinion on issues. This includes presenting opposing views in programming to ensure that the audience receives a balanced portrayal of an event. The print media, such as newspapers and magazines, is only required to make a clear separation between fact and opinion in their news stories. This principle is closely related to the treatment of candidates and parties during these periods as well as coverage of the electoral process itself.

As a general rule, if a candidate takes part in a programme about their constituency, then the channel is required to make every effort to invite each of the major political parties to participate in that programme or subsequent programmes of the same series during a campaign period. Similar opportunities to explore policy matters should be granted to all major political parties and candidates on radio and television.

This does not mean that programming or news clips cannot critically engage and scrutinize the policies and campaigns of the candidates and political parties. Independent experts on particular subjects and stakeholders are legitimate voices in the media that are often used to analyse performance and manifestos of political parties.

Such engagement should, however, seek to balance views and give due weight to them to provide a fair representation of the range of views related to an issue in a single programme or across a number of programmes within a limited period of time.

#### **BOX 7: 'EQUITY NEWS' IN CAMBODIA**

A unique partnership with the UNDP, the Ministry of Information and the public radio and television broadcasters resulted in the creation of an independent production unit, 'Equity News', which produced a series of daily television and radio programmes for the elections starting in 2002.

Equity News established its own editorial values outlined in a code of conduct, and trained its staff in basic journalist standards working alongside a small team of international media professionals. It also provided free airtime for political parties according to a formula devised for each election based on international standards for allocating time within programmes and the Cambodian context.

Equity News provided the first opportunity for candidates and parties to equitably access television and radio with a nationwide reach. It set the standards for impartial, balanced and professional journalism on political and electoral issues.

It later expanded to cover current affairs which, according to Ministry of Information officials, successfully addressed Ministry *"concerns of improving transparency of the political process, encouraging participation in the development of laws and policies, and better back-stop the activities of government officials through discussions."*

Ministry of Information Deputy Director speaking on *"Equity Weekly- A Good Governance Media Initiative,"* 2013

The length of official campaign periods varies considerably between countries. Incumbent governments and those that hold public office, as well as opposition parties, often start campaigning months before candidates are registered and an official campaign commences. This period should be covered in regulations and be included as part of the reporting on overall campaign expenditures. Due impartiality rules should apply at all times and broadcasters are obliged to balance these events with alternative voices or parties.

A clearly established campaign period will mark the start of any special provisions for media coverage of elections and preparations for these initiatives should be in place by the time the EMB has confirmed the candidate nominations.

## ■ MEDIA ACCESS

To promote a level playing field, legislation usually provides political parties and candidates with some form of direct access to radio, television and at times, newspapers. These are for materials produced by the candidates and parties. Direct access content should comply with the standards set out in legislation and regulations, including the guidelines on incitement to hatred, libel and copyright. In these cases, the media publishing the content should not be held legally

liable for it. These schemes can be particularly important in ensuring access for marginalized communities and groups such as women which historically have had limited access to campaign resources and funds.

There are several types of direct access as outlined below.

### Party election broadcasts

Legislation or licensing usually requires some form of direct access for party-generated election broadcasts either on the national public service broadcaster's channels, or on all public and private terrestrial radio and television channels. In some schemes the obligations are applicable to all broadcasters and in others it is exclusively applied to those that are publicly owned. EMBs are often required to design and oversee these systems to ensure that airtime is allocated according to those provisions. EMBs also help to ensure that advertising spots are distributed on a non-discriminatory basis and at similar times in the schedule.

There are different formulas for the allocation of airtime including:

1. Equal access for all parties and candidates;
2. Allocation according to the number of existing seats in parliament held by individual parties;

#### BOX 8: DIRECT ACCESS FOR CANDIDATES IN AFGHANISTAN 2005

To increase access to the media for candidates, the Media Commission organized candidate debates on radio and television for all recent elections and developed a direct access scheme for candidates that were financed by the international community through UNDP. This represented a huge undertaking for the 2005 parliamentary and provincial council elections due to the large number of independent candidates.

The direct access program gave candidates a chance to develop short clips from different formats of 2-5 minutes in length. These advertising spots were produced with the assistance of the local radio and TV stations that aired these, and candidates were given a choice of which media outlets the clips were aired on.

More than 3,200 candidates appeared in their own advertisements on one of 40 radio or TV stations in Afghanistan. Roughly half of the total airtime dedicated to the campaign by the media consisted of programming generated from this scheme with 77 percent of the women candidates using this resource.

3. Number of seats contested nationally by a political party during an election- some countries also require a minimum threshold to qualify for the scheme;
4. A combination of number of parliamentary seats and seats being contested.

The question as to whether the principles of equality or equity in allocating airtime are selected will in many cases be determined by context. **Equal access** requires all political parties to receive the same allocation of airtime on a channel. **Equitable access** is more nuanced to the context of the political environment and will require some form of allocation of airtime that is based on the standing and position of political parties in the country.

In a post-conflict environment, where the state may be holding its first elections to parliament in a long time, there may be a preference for equal treatment. Whereas in environments with established parliaments and political parties, with many political parties that are both large and small, the principle of equity may be more suitable.

A decision should be based on a sense of what is reasonable in the particular electoral context. This can depend on the varying sizes of the political parties and the overall number contesting an election, the kind of election that is being contested as well as the overall presence of individual political parties in terms of parliamentary or council seats held or public support indicators. Independent candidates who contest elections outside political party structures will require some provision based on context to guarantee appropriate access.

The length and format of the party election broadcasts can vary considerably. In some countries it consists of a small advertising-type slot of between 90-240 seconds in length, running over the course of the campaign period. In others it can be in the form of a documentary length spot allowing for a longer discussion of

electoral platforms. Often it can be a mixture of both formats. The amount of airtime allocated to each party may differ to reflect a distribution policy based on equal or equitable allocation.

Party election broadcasts may be clearly labelled as a campaign programme produced by the party. Typically political parties are responsible for the costs of production, although in certain exceptional cases there may be support for the use of production facilities from the publicly owned broadcaster on an equal basis. Political parties and producers should retain copyright. Liability for the content should not rest with the broadcaster airing the party election broadcast and it has to be clear that the broadcaster does not support or endorse the views in any such broadcast.

### Commercial political advertising

The final kind of direct access is related to commercial advertising. This kind of political advertising is banned in some countries but is an important part of the election campaign in others. In such schemes, regulations should require broadcasters to guarantee candidate and political party access to purchase airtime under equal conditions in order to avoid discrimination.

A market-based advertising rate is usually charged to political parties that produce campaign advertisements. Generally, there are no limits placed on how many campaign spots can be purchased, as it is perceived to be regulated by campaign funding and spending provisions. Broadcasting law will, however, usually set limits on the number of commercial advertisements a television or radio broadcaster can air during a particular hour, so it is important to ensure transparency in how these spots are allocated.

Some models set the parameters for this rate to be calculated so that broadcasters do not exploit the increased demand for advertising time during electoral periods at the expense of smaller parties with less financial means. An example would be to stipulate the

rate should be an average of the last three months' cost of such advertising slots. It is also common in many countries to publish these rates in the public domain for transparency and accountability purposes. This direct advertising format resembles more closely that of a commercial advertisement.

In some jurisdictions there can also be related third-party advertising, not paid for directly by any political party or candidate. As a rule these are financed from an entirely separate source. In some countries, these kinds of advertisements are not permitted as part of a general ban on advertisements on radio and television of a political nature, but where they are permitted there is generally a ceiling placed on expenditures to maintain a level playing field so policies are not unduly affected by monetization and special interest groups.

### ■ DISTINGUISHING BETWEEN CAMPAIGNING AND OFFICIAL ACTIVITIES

One of the key challenges to ensuring equitable media coverage during a campaign period is the imbalance in coverage between incumbent government officials and other candidates and parties. The media needs to report on the official work of the government and sitting ministers during the electoral process, but this advantage can often be exploited by incumbents as means to increase their campaign exposure.

Among other events, ceremonial openings of hospitals, public works and landmark infrastructural projects are frequently used to generate increased media coverage in these periods, and particularly in the state owned media. There will be important ministerial events that are a legitimate part of the news agenda and need to be reported but these will also increase the visibility of these candidates and their parties.

It is the responsibility of journalists, editors and news editors to decide the newsworthiness of such events, and to apply the principle of due impartiality to ensure a balanced coverage and that alternative views and opinions are also heard. As examples, if a serving minister is shown fulfilling an official duty or stating an opinion on a policy, opposing candidates and parties should have the opportunity to comment, either on the topic itself or on another topic. If a candidate refuses to participate in a media event or programme, a party representative could suffice as a proxy, however, ideally it should be the candidate. If the party also refuses to participate, it should be noted in the coverage that it was given the opportunity to do so but declined the offer. Another option is to interview senior civil servants rather than the political appointees or elected officials when reporting on the activities of the government during the campaign period. This can help to level the playing field for the other parties.

### ■ SILENCE PERIODS

Immediately prior to an election day, campaign moratoriums, or silence periods, are used to give the public a reflection or cooling off time before voting. This is considered compatible with the restrictions permitted under ICCPR Article 19 as long as they are proportionate and non-discriminatory.

In many cases however, the media provisions for this silence period are unclear because they lack specificity on their scope or content. Campaign moratoriums should not be interpreted as a blanket ban for all media coverage. It is also questionable whether restrictions placed on media campaigning for more than 24 hours before polls open are consistent with Article 19, and in some jurisdictions this has been ruled incompatible with constitutional provisions for free speech and expression.



Sectors such as the Internet and mobile telephone content largely fall outside the scope of these regulations, and some continue to report and air political advertisements during the silence period.

## ■ PUBLIC OPINION POLLING

Public opinion polls have become an integral part of an election and political campaigns. These polls help gauge public opinion on policy issues and level of support for political parties and different candidates. They are perceived as having an influence on voters and thus reporting on polling results needs to be done in a responsible manner, with enough detail provided so that the public is able to fully contextualize the findings. This includes providing the full details of any such survey:

- the source of funding for the opinion poll;
- name of the organization conducting the opinion poll;
- methodology and details of the sample;
- the date when the opinion poll was conducted;
- margin of error.

Some countries have introduced legislation to ban the publication of public opinion polls immediately prior to the day of voting. This restriction is based on the logic that voters should not be influenced right before voting by the findings of public surveys and that these surveys may be misleading since they could be incomplete or outdated from the time the survey was conducted.

Legal traditions in different countries have ruled in different ways on whether such bans are constitutional. Any restrictions on publishing or reporting on opinion polls should take into account the length and proportionality of this measure. The norm appears to be a maximum of 24 hours before polls open.<sup>16</sup>

## ■ RESULTS REPORTING

The period following the closing of the polls and the announcement of the official results can be one of the most contested times in the electoral process. Rumours can flourish in an information void and a best practice is to design a process that releases provisional results as they are available. The adoption of new technology has helped to speed up this process which can help to mitigate rumours and keep the process transparent and open. Although the media is supposed to refrain from reporting on results before all polling stations are closed, particularly in countries that span different time zones, it should be free to cover the results process as a news item.

When provisional results are released they are unlikely to reflect the final results as initial results are usually from urban centres. This can reflect a lead for one party that may not be sustained as results come in from other areas. The changing results can often heighten suspicions as to the integrity of process and lead to allegations of irregularities. In addition, some candidates and political parties can declare victory before the final results are in.

The EMBs and media play a crucial role in managing this process. As the official source of information for results, the EMB should ensure that it continuously updates its provisional results and be available to the media to answer questions and explain the result compilation process. It should also be made clear to the public that partial results are not necessarily a reflection of the final certified results.

## ■ CONFLICT OF INTEREST IN THE MEDIA

Most journalists, editors and media owners have political views, are members of political parties, and can stand for election. These are their political rights.

Even so, during the electoral period it is important that broadcasters and journalists be perceived as objective by the audiences in their news reporting. Towards this end, there are some simple principles that could be followed by the media itself as illustrated in Table 3.

**TABLE 3: PRINCIPLES TO AVOID MEDIA CONFLICT OF INTEREST**

Conflict of interest	Possible actions
Owner of a broadcaster stands for election	Make a clear division between ownership and editorial independence. Owners should not undermine due impartiality and fairness provisions by interfering in content of reporting.
On-air presenters are active in political and campaign activities in off-air time	Journalists should not indicate party/policy preferences or voting intention on air. If they engage in other activities outside of the broadcaster such as writing newspaper articles, these may not undermine their perceived objectivity on radio and television.
Editor, news presenter or reporter registering/ seeking nomination as a candidate	Assess the extent to which their nomination affects their position at the broadcaster. If the position has high visibility or a high degree of editorial decision-making responsibilities, it should be considered assigning them other less visible activities.
Editor, news presenter or reporter confirmed as a candidate	Allow for a leave of unpaid absence for the period of the campaign, or assign tasks within the broadcaster that do not involve editorial decisions or public appearances on radio and television.
Journalists are members of parties	It is a right for any staff or journalist to be a member of a party. However, if a journalist or staff member with editorial responsibility during an election campaign is actively involved in a political party, the degree of that involvement may need to be assessed so it does not impact on the perceived or real objectivity of the broadcaster.
If a member of staff has been elected	If a member of staff is elected they should be required to resign their post at the broadcaster. If they fail to be elected they should be free to return to their post as long as their actions during the campaign period do not undermine the perceived objectivity of the broadcaster.

# 03

## Principles of media regulation

Chapter 3 provides an overview of the regulations required of broadcasters for election-specific content and access for parties and candidates during an electoral process, and the different oversight mechanisms used to ensure compliance.

### ■ BASIC REGULATORY FRAMEWORKS

Regulatory oversight of the media, in particular the broadcasting sector, is recognized in the international freedom of speech principles. However, this is “*legitimate only if it is undertaken by a body which is protected against political and other forms of unwarranted interference*”<sup>17</sup> and “*there are safeguards against abuse, including the possibility of challenge and remedy against abusive application.*”<sup>18</sup>

Different types of regulatory architecture have evolved for the different media sectors. These are based on the distinction between statutory regulation and self-regulation. There is also a major distinction made between broadcasters and other media in terms of regulation (Box 9, see page 20).

The broadcasting industry is regulated because it uses public frequencies allocated by the state through licensing, ideally by an independent regulatory body. Licensing and the allocation of scarce frequencies are based on criteria set in legislation and regulation. These usually include requirements to ensure programming diversity and universal access. The other sectors, such as the print media and new media platforms may rely on self-regulation since there is no scarcity or other public policy grounds to legitimize licensing.

**Self-regulation** is a process whereby a sector is largely free of any intervention from the state. An industry develops its own framework and instruments to ensure any standards set by the industry are upheld. Different sections of a sector come together

## BOX 9: STANDARDS FOR MEDIA REGULATION

Joint declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2003

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.

Regulatory systems should take into account the fundamental differences between the print and broadcast sectors, as well as the Internet. Broadcasters should not be required to register in addition to obtaining a broadcasting license. The allocation of broadcast frequencies should be based on democratic criteria and should ensure equitable opportunity of access. Any regulation of the Internet should take into account the very special features of this communications medium.

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.

to agree to these rules and these are articulated in a code of conduct. In some sectors, such as the newspaper industry, the code has some form of oversight body representing the industry as a whole. UNESCO characterises self-regulation as *“the best guarantee for ensuring high ethical standards in journalism, particularly when it reaches all stakeholders in the media industry.”*<sup>19</sup>



**Statutory regulation** is defined as a process whereby the law establishes the rules applicable to a sector and a state body, or more commonly these days, an independent public body oversees compliance to these provisions.

**Co-regulation** is a system that combines elements of these two forms. It employs the resources of statutory bodies to provide a framework for self-regulation. If an element of self-regulation fails, there is an option to assist/correct any undesirable effects in order to return to socially optimum conditions. Regulators may be actively involved in setting objectives for a sector or providing support for sanctions while the industry still retains its own self-regulatory model. In a few cases, it has also been employed as a statutory mechanism to establish an effective framework for self-regulatory press councils. The use of co-regulation is growing as a policy solution, either where it is believed statutory regulation needs to be scaled down, or where self-regulation is perceived to require greater support from overall regulatory frameworks.

Engagement with the media and its coverage of elections in an oversight capacity can require elements of all three of these approaches to create an adequate framework to account for the different layers of regulatory requirements. Applying these models to the different sections of the media sector is not an exact science and national legal frameworks will ultimately define the approach. However, as a general rule, the appropriate oversight categories for the different media sectors are shown in Table 4.

The type of regulation determines the remit and mandate of the oversight bodies in the media field. A key point is that statutory regulators might assist in supporting self-regulatory models for other sections of the media industry but should not regulate these sections where self-regulation is effective. Content requirements including access obligations are placed on broadcasters and are not generally extended to other forms of media. This is not to say they do not have any, but these are contained in self-regulatory and voluntary instruments.

**TABLE 4: MEDIA TYPES AND REGULATORY APPROACH**

Type of model generally applied	Type of media
Self-regulation	<ul style="list-style-type: none"> <li>▪ Newspapers</li> <li>▪ Magazines and periodicals</li> <li>▪ Internet</li> <li>▪ Mobile telephone content</li> <li>▪ Publishing and book industry</li> </ul>
Statutory regulation with independent regulatory bodies	<ul style="list-style-type: none"> <li>▪ Commercial terrestrial radio and television</li> <li>▪ Public service broadcasting and publicly owned broadcasters</li> <li>▪ Satellite and cable broadcasters (only within jurisdictions)</li> <li>▪ Community broadcasters</li> </ul>

Laws prohibiting reporting of campaigning such as moratoriums will also generally apply to all media within a jurisdiction, and individual laws can affect media such as those protecting human rights that also remain applicable across all media. In some of these cases statutory oversight bodies may therefore have a legitimate role to play, even though it will be narrowly defined, in others it will be the responsibility of self-regulatory bodies or the courts.

Any form of regulation or oversight should be in the public interest as it is responding to public needs rather than the needs of any particular interest group. Table 5 illustrates the principles of good regulatory practice that should be taken into consideration by EMBs in fulfilling their oversight role.

**TABLE 5: PRINCIPLES OF GOOD REGULATORY PRACTICE**

Clear mandate and decision-making structures	The oversight body should outline its objectives, mandate and activities. A concise set of principles, institutional structures and indicators, including roles, voting rights and tools such as codes, as well as limitations to scope of mandate, should be clearly established.
Independence	<p>Media oversight requires independent and impartial decision-making and complaints process. This applies equally to independent regulatory authorities and to self-regulatory institutions even if it includes industry members. This would include:</p> <ul style="list-style-type: none"> <li>▪ Merit based appointments, independent from political patronage and interference.</li> <li>▪ Allocation of sufficient resources to ensure operational independence.</li> <li>▪ Budgetary arrangements that guarantee institutions are not exposed to political or other external pressures.</li> <li>▪ Management of the body by an independent executive with the authority to organize day-to-day activities.</li> <li>▪ Active participation of independent members on a complaints body representing the public which can assist in increasing public accountability</li> </ul>

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Public awareness

The public and stakeholders need to be fully aware of the regulatory scheme and complaints process. It is unlikely to have public support if they are unaware of the initiative, its mechanisms or objectives.

- The public needs to be made aware of what they expect from the scheme and its purpose.
  - Information about how a member of the public can submit a complaint to the relevant body and how this complaint will be processed should be made widely available.
- 

Accountability and transparency

Regulatory schemes demonstrate accountability and transparency in their activities to retain public/stakeholder confidence. This takes confidence-building measures for the industry being regulated as well as the public. In this process:

- The processes and decisions are clearly explained.
  - Regular public reports are issued and use performance indicators to demonstrate value.
  - Annual audits and reviews are carried out to ensure desired outcomes are being achieved.
- 

Sector confidence and commitment

Commitment to a set of principles by the sector being regulated is crucial to maintaining the legitimacy of a scheme. The sector needs to be fully consulted about any code of conduct and should be central to its drafting. Furthermore, any drafting should include journalists, industry federations and bodies, and editors to support wide ownership.

It is important that a high proportion of the industry should subscribe to the scheme if this is applicable to make it effective. In self-regulatory schemes some industry representation should be present in the composition of the governance board; this can be balanced with lay members of the public.

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Proportionate and effective system of redress

A transparent and proportionate complaints and redress system responds to breaches of code or standards set for the industry. This independent process has the necessary tools to be able to fairly resolve disputes. It includes an appeals mechanism and judicial review.

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Budget and resources

The scheme has financial independence and adequate human and material resources that cover the costs of fulfilling the mandate. Staffing costs cover a skilled workforce capable of carrying out functions within the regulatory body.

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## REGULATING MEDIA COVERAGE OF THE ELECTORAL PERIOD

Provisions related to media coverage of elections are almost always contained in statutory legislation. The distinctions between broadcasters and newspapers and other media are reflected in the type of instrument used.

### Broadcasting sector

It is common practice for broadcasting laws to establish the legal basis and broader obligations for radio and television. These are usually complemented with separate elections-specific legislation which provides the specific requirements for the electoral context. This may typically include:

- Requirements for equitable and balanced coverage of candidates and political parties during the campaign period;
- A system for direct access to broadcasters for candidates and political parties;
- Provisions for an independent oversight body to design, prepare and implement the measures outlined in legislation;
- A timeframe for the start and end of a campaign period, including in some countries a silent period that restricts media coverage of campaigns before the opening of polling; and,
- Enforcement mechanisms and sanctions for non compliance.

Table 6 highlights some of the most common obligations for the broadcast media during an electoral process.

### Print and other media

Other kinds of media will not come under the legislative framework that is applied to the broadcast sector. Self-regulation has become a global

benchmark for the media and an important type of regulation that remains distanced from both the government and other state bodies.

Self-regulatory tools including **codes of conduct** are widely employed to uphold standards and prescribed good practices in journalism. In past decades, EMBs developed codes to outline standards for the

**TABLE 6: CONTENT OBLIGATIONS FOR BROADCASTERS**

Type of media	Typical Legal Requirements for Content		Oversight body
	General obligations	Election specific	
Public service broadcasters (on all platforms including non-linear)	Provide high quality, impartial and diverse programming that reflects society	Balanced and impartial coverage granting fair access to all candidates and political parties  Direct access for candidates and political parties  Campaign moratorium coverage if applicable	Independent body
Terrestrial commercial radio and TV broadcasters	Impartial and balanced range of programming with obligations for news and current affairs	Balanced and impartial coverage granting fair access to all candidates and political parties  Sometimes direct access for candidates and political parties  Campaign coverage moratorium if applicable	Independent body
Community broadcasting	Diverse range of social programming serving the immediate community	Campaign coverage moratorium if applicable	Independent body
Satellite and cable broadcasting (domestic carriage)	Minimum obligations including impartiality (even targeted to an uplinked foreign territory)	Campaign coverage moratorium if applicable	Independent body
Foreign satellite broadcasting (spill-over or downlink)	No jurisdiction unless there are specific downlink registration requirements	No jurisdiction unless there are specific downlink registration requirements	Independent body in the uplink territory

reporting of the elections under a process that takes on co-regulatory characteristics in consultation with media stakeholders. However, self-regulatory codes of conduct should typically be developed by the media sector itself to ensure full ownership of its principles. It is common practice for either individual newspapers or the newspaper industry on the whole to have codes of conduct. Such tools have been extended to include self-regulatory codes of conduct for mobile telephone operators, Internet service providers, as well as other related sectors such as advertising.

Industry codes of conduct have a number of advantages over statutory provisions. Codes make an industry responsible for its own internal matters without external interference by the state. They are drafted by an industry itself and therefore are generally perceived to have greater ownership and support from within the media. These codes of conduct:

- provide a mechanism that allows journalists and editors to set ethical standards for the media that they commit to uphold;
- promote these internal journalistic and editorial standards in media reporting;
- preserve the media's independence from national authorities;
- provide for an accountable, simple and effective mechanism for complaints and, where required, correction.

Codes should minimally outline the commitments of journalists and editors based on established standards such as accuracy, fairness and balance. It should also leave room to allow newspapers the freedom to take a political line and, at the same time, provide a clear separation between news reporting and comment (opinion) so that it is clearly distinguishable to readers.

## ■ ACCREDITATION OF JOURNALISTS

The media will want to cover an electoral process, including its preparations and events such as

voter registration, polling and the count. To ensure journalists have access to all parts of the process, EMBs may establish temporary accreditation measures so the reporters can access restricted areas such as EMB counting centres or polling stations. This helps to increase the transparency of the processes, and the accuracy of the information collected by journalists on the status of the electoral process, its issues and results. This accreditation process should be open and non-discriminatory and include both private and public media and broadcast as well as print mediums. EMBs should also make provisions to accredit foreign journalists.

### BOX 10: SELF-REGULATION AND THE MEDIA IN SIERRA LEONE

An Independent Media Monitoring and Refereeing Panel (IMMRP) for the 2007 elections was established following extensive discussions on the development of a media code of conduct. This code was developed by the Sierra Leone Association of Journalists with support from UNDP and the international community.

To provide some form of self-regulatory oversight, the IMMRP formed an independent media monitoring panel in an effort to monitor the media's activities during the campaign and to ensure compliance with the standards in the code of conduct. The IMMRP visited radio stations around the country to make editors and journalists aware of their responsibilities and to encourage more accurate reporting on the electoral campaigns. The IMMRP also made public statements and provided mentoring for younger journalists.

These institutions played an important role in reducing potential areas of conflict between the media and political parties, acting in a mediatory capacity on a number of key occasions. This helped to promote a more peaceful process which is especially important in a post-conflict context such as Sierra Leone's.



# 04

## Media monitoring and oversight

Chapter 4 covers issues related to the monitoring of the media to ensure their compliance with election related legislation and other media requirements. It discusses the role of the monitoring body, outlines tools for media monitoring, and highlights best practices.

### ■ OVERSIGHT STRUCTURES

Oversight may be done by the independent body that regulates the media, however, in some countries, the EMB will fulfil this purpose in regards to the electoral process, or an independent media monitoring body will be established for this purpose. In all cases, basic oversight principles and standards should be respected. As noted in Box 11, these include principles of non-discrimination, impartiality, independence and accountability. In particular, decisions should be made without political or commercial pressure. Oversight bodies should be accountable and transparent to the public and provide timely and comprehensive public reporting on their work. Their decisions should also be fair and in proportion to the infraction.

#### ” **BOX 11: KEY PRINCIPLES FOR BROADCAST REGULATORS (UNESCO)**

1. Explicit legal guarantees of autonomy and independence
2. Powers and responsibilities clearly set out in law
3. Members chosen transparently and democratically
4. Adequate and consistent funding to safeguard independence
5. Accountable to the public
6. Empowered to promote fairness, freedom of expression

The model for media oversight will vary depending on the state's legal traditions and type of media, but in general oversight follows the regulatory, self-regulatory and co-regulatory models outlined in Chapter 3.

### Model 1: Statutory regulation

In a regulatory environment, such as the one used for the broadcasting sector, oversight is carried out using traditional structures of independent regulation. These bodies are headed by a board of commissioners that give direction and oversight to a secretariat and adjudicate complaints related to the broadcast media. The secretariat is responsible for the management and day-to-day affairs of the commission.

An illustrative division of responsibilities between the commission and the secretariat are provided in Table 7.

### Model 2: Self-regulation

Industries are responsible for establishing standards and ensuring they are set out in a code of conduct, and the industry complies with these provisions. These codes can be particularly effective if provisions are developed in broad based consultation within an industry.

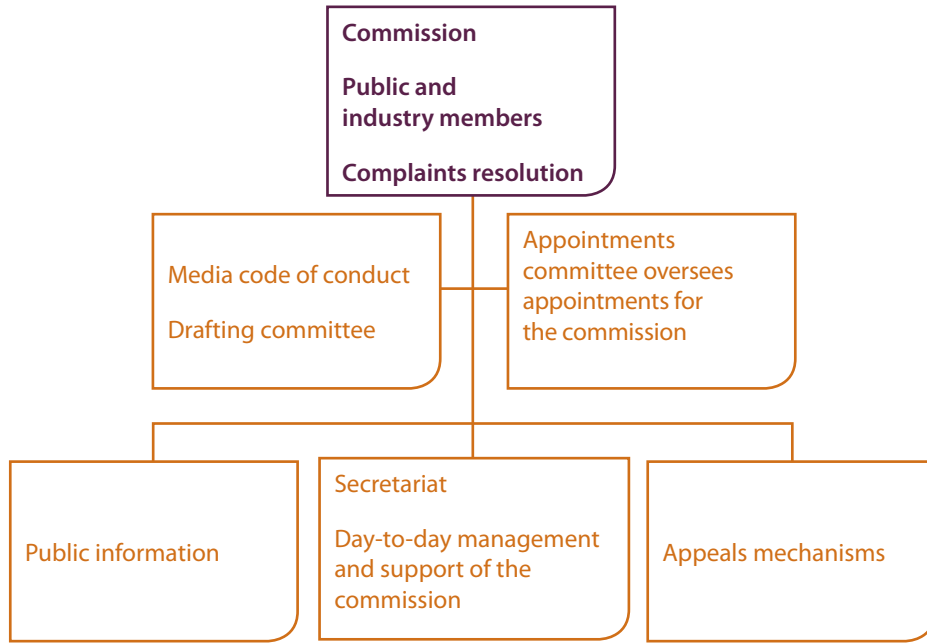
A wide range of designs have evolved for self-regulation. These can be sector-wide bodies, industry federation models, journalist union models and even media outlet specific ombudsman models. An example for the newspaper industry, along with UNESCO's key principles for self-regulatory bodies, is provided in Figure 2.

Clearly defining the roles between the committee and executive branches of a self-regulatory body is equally as important as in any other organization. Typically, in a self-regulatory body an executive supports a committee of appointed individuals. The different roles of the two sections are provided in Table 8.

**TABLE 7: BOARD AND EXECUTIVE FUNCTIONS WITHIN A STATUTORY REGULATORY STRUCTURE**

Functions of a board	Functions of an executive
Provides strategic direction to the executive and oversight over the fulfilment of the media oversight body's remit and obligations.	Manages the departments responsible for media oversight and has financial and administrative decision-making powers. Establishes management direction for the organization and ensures operational efficiency and coherence amongst its staff.
Ensures effective implementation of laws and regulations.	Provides operational framework for the efficient functioning of the media oversight body and ensures operational independence.  Drafts guidelines and consultation papers and designs measures for the implementation of any direct access schemes. Prepares agenda, maintains meeting minutes and other institutional files. Designs and delivers public outreach programme.
Meets on a regular basis to make decisions on complaints regarding media coverage of elections.	Receives complaints and prepares case files and organizational arrangements for case hearings with regards to complaints. Assists in drafting opinions and judgements in support of the board.

**FIGURE 2: EXAMPLE OF A SELF-REGULATORY STRUCTURE FOR NEWSPAPER INDUSTRY OVERSIGHT**



**UNESCO KEY PRINCIPLES**

1. Media organizations have clear codes of ethics
2. Codes are actively disseminated and updated
3. At industry level, systems exist for hearing public complaints
4. Self-regulatory bodies and news ombudsmen are independent

**TABLE 8: DIFFERENT FUNCTIONS OF BOARDS AND EXECUTIVES WITHIN A SELF-REGULATORY STRUCTURE**

Functions of a commission board	Functions of an executive
Responsible for the direction and oversight of the secretariat.	Responsibilities include financial and administrative matters and managing day-to-day business of the self-regulatory body.
Meets on a regular basis to make decisions on complaints regarding media coverage of elections.	Supports the committee and prepares agendas, maintains meeting minutes and other institutional files. Designs and delivers public outreach programmes.
	Receives complaints and prepares case files and organizational arrangements for case hearings with regards to complaints. Assists in drafting opinions and judgements in support of the committee board.

Experience has shown that conflicts of interest may arise if members of the media community dominate such a commission. For this reason there has been a move to appoint a mixture of individuals from the media community as well as lay members of the public. As is the case with statutory bodies, diverse representation including gender balance is an important benchmark.

A voting structure needs to be in place that provides clear and transparent adjudication of complaints and decision-making.

### Model 3: Co-regulation


Co-regulation, to some extent, also reflects a cooperative approach oversight bodies can apply to the media industry to assist in supporting self-regulatory structures if these are fragile or poorly resourced, without interfering with the

freedom of the media and self-regulatory approach. The structures would remain the same, and since co-regulation is a mechanism based on the relationship between two systems of regulation, these do not change fundamentally.

### OVERSIGHT TIMELINE

There are a number of key tasks that a media oversight body will need to factor into its planning. As outlined in Table 10, these start with the establishment of the media monitoring body. As planning and preparations are part of the oversight tasks, EMBs and policy makers may provide for a lead in time of at least six months so that the oversight body and its procedures are in place, with the monitors and journalists trained, before key parts of the process start, such as party and candidate registration.

**TABLE 9: CO-REGULATION AND ITS RELATIONSHIP WITH OTHER FORMS OF REGULATION**

Self-regulation	Co-regulation	Statutory regulation
Self-regulatory code and oversight by self-regulatory body	 <p>Interaction and dialogue support self-regulatory structures</p> <p>Assist in awareness of self-regulatory models</p>	Statutory law and rules with implementation by independent body

**TABLE 10: ILLUSTRATIVE MEDIA OVERSIGHT TIMELINE**

Timeline	Activity
6 months before campaign period	<ul style="list-style-type: none"> <li>▪ Assess needs for the media oversight body including human, material and financial requirements</li> <li>▪ Establish mandate, organizational structure, and decide on decision-making procedures</li> <li>▪ Determine the composition of the board and their selection requirements</li> <li>▪ Publish terms of reference for the oversight body and its organizational chart. Draft terms of reference for board and all staff positions and advertise openings publically</li> <li>▪ Obtain funding and agreement of budget</li> </ul>

Timeline	Activity
5 months before campaign period	<ul style="list-style-type: none"> <li>■ Select and appoint commissioners based on published criteria</li> <li>■ Appoint staff to secretariat through competitive, merit-based process</li> <li>■ Establish and equip office</li> <li>■ Conduct induction course for new staff and commissioners</li> <li>■ Publish tender for outsourcing media monitoring if required</li> <li>■ Design complaints procedures and self-monitoring mechanisms</li> <li>■ Establish internal regulations and procedures for public consultation</li> <li>■ Sign off on remaining procurement plans and workplan for oversight during the electoral period</li> <li>■ Publish vision and mission statement and design organisational information</li> <li>■ Consult with media community and industry bodies on priorities and needs</li> </ul>
4 months before campaign period	<ul style="list-style-type: none"> <li>■ Establish liaison groups and consult with media community and media industry bodies on code of conduct</li> <li>■ Draft codes and guidelines for broadcasters</li> <li>■ Assist self-regulatory media community in facilitating the drafting of a code of conduct if required</li> <li>■ Establish liaison group with civil service on best practice guidelines for campaign periods</li> <li>■ Design public outreach according to corporate strategy, including information on the role of the media oversight body, how and why to complain, and important background information</li> <li>■ Establish channels to receive public complaints</li> <li>■ Provide training for media on keeping records of political content in newsrooms if required for the self-regulatory monitoring system</li> <li>■ Provide training for investigators on best practice in handling complaints</li> <li>■ Select media monitoring organization/vendor if outsourced</li> <li>■ Provide advisory services to media community, if required, on best practices and technology standards for programming such as live feeds</li> </ul>
3 months before campaign period	<ul style="list-style-type: none"> <li>■ Publish code of conduct for broadcast media and promote its provisions in the public domain</li> <li>■ Start public outreach on key media platforms promoting the complaints process</li> <li>■ Design clear programme labelling systems for content in cooperation with the broadcasting community</li> <li>■ Publish, for public consultation, draft guidelines for direct access and the system of party election broadcasts including calculation of airtime methods</li> <li>■ Arrive at agreement with broadcasters on system for providing access and on commercial political advertising costs</li> </ul>
2 months before campaign period	<ul style="list-style-type: none"> <li>■ Publish knowledge products to support code of conduct including guidelines and clarifications for broadcasters</li> <li>■ Finalize details of the guidelines for the system of party election broadcasts and commercial political advertising including calculation of airtime methods</li> </ul>

**TABLE 10 (CONTINUED)**

Timeline	Activity
1 month before campaign period	<ul style="list-style-type: none"> <li>Scale up public outreach programme and establish complaints contact line</li> <li>Provide regular briefings for editors, journalists and liaison groups</li> <li>Commence independent media monitoring and self-regulatory record keeping prior to campaign period</li> </ul>
Campaign, polling and results period	<ul style="list-style-type: none"> <li>Upon publication of certified candidate list, distribute final calculation of airtime for party election broadcasts</li> <li>Handle and process complaints received</li> <li>Continue ongoing public outreach programme highlighting expected media standards and the complaints process</li> <li>Promote best practices in campaign and results reporting</li> <li>Conduct regular press interaction releasing information on complaints handled</li> <li>Hold regular meetings with media and media industry bodies</li> <li>Continue media monitoring and reporting and, if relevant, conduct spot checks on self-monitoring record keeping by broadcasters</li> <li>Continue ongoing complaints process with regular sittings of commissioners</li> <li>Complete processing of all complaints before final results are announced</li> </ul>
Post-election period (2 months)	<ul style="list-style-type: none"> <li>Organize feedback and consultations with the media and industry bodies</li> <li>Publish consolidated report on complaints received and adjudicated</li> <li>Publish performance report with recommendations</li> </ul>

## MEDIA MONITORING

Monitoring for compliance purposes is a common activity of regulators. Used professionally, monitoring can provide a valuable evidence-based approach to assessing media coverage in terms of balance and impartiality and compliance with regulations. It can both detect and deter problems through its quantitative and qualitative analysis.

The quantitative analysis measures the total amount of time devoted to coverage of selected actors or topics by the media. The qualitative analysis evaluates whether the coverage or programme is positive, negative, or neutral in its tone. This type of monitoring can also assist the media in reflecting on their own coverage and editorial decisions in order for them to redress any imbalances identified in their overall coverage.

There are two main options for monitoring media. The first is **content analysis** (known commonly as “media monitoring”). This has become a common election-related activity conducted by a range of different stakeholders, including EMBs, election observers and civil society organizations. It consists of analysing the programming of broadcasters to quantitatively assess the coverage each of the candidates and political parties receives during a fixed period of time. This provides EMBs and oversight bodies with empirical information to use in their review. An outline of the methodological steps to establish a media monitoring programme is provided in Annex 2.

The second option for monitoring is to review the records and logbooks of the individual broadcasters of their coverage of the different candidates and political parties. An overview of the recordkeeping needs by the media is outlined in Annex 3.

# media

Media monitoring is a content analysis technique that provides an objective and consistent set of tools to measure the output of the media. This aims to draw out trends related to coverage of candidates and political parties and compliance to obligations of the media. It can also be used as an early warning system to identify any incidents of language in the media that are perceived to go beyond acceptable limits.

Monitoring is an important tool for EMBs and others interested in a credible and equitable process. In addition to tracking compliance and access, it can help identify trends in agenda setting and measure such things as gender balance in coverage of candidates, which is an important element as women candidates are often afforded less media coverage than their male counterparts. It also covers such things as the difference in media coverage of government parties/candidates compared with that of the opposition or minority parties/candidates.

Monitoring the media is also a very important part of an early warning system for potential problems in the process itself— both in terms of reflecting the level of stakeholder satisfaction with the management of the process as well as with the quality of the process for its different elements, such as participation, inclusion, trust and eventual acceptance of the results. Importantly, it can also identify incidents of inflammatory speech that could generate conflict or fuel violence during the process. Knowing what the media is covering and how it is covering these issues is an important part of electoral management even if the media oversight role is played by another body than the EMB itself.

## ■ PROMOTING BEST PRACTICES WITH THE MEDIA

Oversight bodies, and in particular, the EMB, should work with the media to prevent problems before they occur. This can be to encourage greater compliance and understanding of rules and election-related standards, and greater use of self-regulatory tools that

are outside the regulatory scope of an independent oversight body. Co-regulation can assist industries directly in solving common problems in order to increase the capacity of the media to meet standards or legal requirements.

Such a form of cooperative prevention can play a crucial role in assisting the media support editors and journalists maintain high journalistic standards, encourage consistent technical standards as well as support the development of self-regulatory tools. This can be particularly beneficial when the media community lacks robust industry structures or where professional standards are underdeveloped and can act to strengthen capacity in 1) skill sets for journalistic training and technical standards; and 2) backstopping for support in developing codes, dialogue platforms and mechanisms of self regulation.

It would also include such assistance as training and focusing public information campaigns around democratic principles such as political pluralism, tolerance and freedom of expression.

### Training

Primary responsibility for training on election-related issues for journalists should remain with the media industry and specialized training institutions. Many media will already have internal staff development schemes which can be adapted to include electoral issues and procedures. On a training level EMBs and media monitoring bodies can act to:

- support media consultation on related training needs in the pre-electoral period;

- bring different sectors of the media sector together, including freelance journalists, to develop training schemes and content for training material that reflects good practices in the different parts of the electoral process, and especially in areas such as results reporting and reporting on public opinion polls;
- facilitate lessons learnt and the exchange of best practices from across the media industry for election-related coverage and equitable access to media arrangements;
- ensure a code of conduct for media is developed and incorporated into media training programmes;
- provide trainers and/or resource persons to the media on the electoral process and its procedures and share its public information and voter education materials early with the press to ensure it is used in training as well as is widely disseminated;
- support a better understanding of technology standards in studios such as live transmission and call-in technology to assist producers monitor the tone and nature of live caller feeds, and recording and programme library cataloguing equipment;
- help develop a common system for self-monitoring of content in the newsroom to assist editorial decision makers in maintaining balance in the programme schedules;
- Encourage the media to share election-related training programmes and finance these based on media company size and revenues;
- Ensure training covers editors as well as journalists and has an equitable balance of participants (gender, public/private media, print/broadcast, etc).

### **Facilitating media efforts to self-regulate during the electoral process**

EMBs and media oversight bodies can play an effective role in assisting the media sector to develop its own tools to help it regulate and monitor its own conduct during the process. In developing tools an oversight body can:

- Assist the media industry in designing requirements for clear labelling of content related to the election campaign and electoral process. This could include clear labelling on the editorial content of programming, party election broadcasts and commercial advertisement formats as well as disclaimers;
- Provide a platform for the media sector to develop self-regulatory codes of conduct for election-related media coverage and establish editorial standards and principles to be upheld as well as monitoring measures that may assist the media to monitor compliance with these benchmarks;
- Offer greater clarity about legal provisions that affect media coverage of the elections and guarantee clear and precise regulations enabling the media to easily meet requirements such as balance in coverage;
- Liaise between the media and political parties and candidates if needed for the smooth running of direct access schemes of both a commercial and non-commercial nature;
- Provide a platform for consultation and liaison groups amongst the media industry to deliberate on issues related to programme standards related to the elections.



# 05

## Complaints processes related to the media

Chapter 5 outlines the complaint process for issues identified in the media, and the principles, processes and structures involved in the efficient and transparent handling of those complaints.



Nearly half of the EMBs across the world act as first level electoral dispute and complaints bodies. As a result, a significant number of these are equally likely to be responsible for complaints related to the mass media.<sup>20</sup> How the EMB, or other media oversight body, handles these complaints is a critical part of ensuring a credible, inclusive process.

There is no single model for media complaints as these processes are shaped by the national contexts and legal framework. However, there are core values for effective and accountable complaints mechanisms as noted in Table 11 (see page 34). This includes ensuring public accountability and independence in the complaints processes as these are generally handled as an administrative or self-regulatory form of redress.

As a general rule, a complaint should be submitted within a limited period of time following the publication against which the complaint is made. It is also important to be precise as to whether a complainant must be directly involved in the issue of the complaint or whether third party submissions are accepted. It should go directly to the EMB or media oversight organization. A good transmission system may be developed to ensure that the complaint, regardless of where it is initially lodged, finds its way to the right location. The complaint process should not become politicized. A clear distinction should be made between the decision makers (usually a board) and the

**TABLE 11: CENTRAL VALUES OF A COMPLAINTS BODY**

Key Value	Actions Required
Impartial	Make decisions in an impartial and objective manner free of political or commercial interests.
Transparent	Ensure transparency and public accountability through timely publication and explanation of decisions.
Timely	Take and conclude any complaints in a timely manner, taking into account the limited timeframe of an election campaign period.
Inclusive	Allow all parties in a dispute to be represented before any hearing on the basis of non-discrimination and make decisions on clear and transparent grounds.
Accessible	Provide accessible complaints procedures open to the public and members of the media that are clearly understandable.
Aware public	Promote public awareness of the complaints process and the rights of the public through public campaigns and promotions.
Effective remedies	Offer prompt and effective remedies in appropriate cases of complaints, proportionate to the offence committed.
Right of appeal	Guarantee the right of appeal, to a higher authority (such as the courts) for all verdicts.

technical secretariat that will handle the complaints as detailed previously in Table 7. The complaint processes have to be well-defined, transparent and accountable with the right of appeal always available to the parties involved in the dispute or complaint.

The secretariat staff should be merit-based professionals employed for the duration of the process. Their role is to receive the complaints, prepare the case files and make recommendations on the cases for deliberation by the board. They would also undertake the public outreach campaigns to explain the purpose of the body and how and why to make complaints. The board's role is to make the complaint process policy and to hear and adjudicate the complaints. It also oversees the work of the secretariat and represents itself with the press.

### ■ KEY STEPS IN THE REGULATORY MEDIA COMPLAINTS PROCESS

In the design of a complaints mechanism, the key steps are outlined below:

**Step 1:** Receipt and acknowledge of receipt of complaints. Typically the complainant will write to the oversight body with the details of the complaint. The complaint may also contain a copy of the publication that is the subject of the complaint or this may be requested from the media outlet. This can be a copy of an article or, if it concerns radio or television, a recording of the broadcast in question or the literal transcription, along with a clear description of the complaint and why the complainant feels they have a direct interest in a decision from the oversight body.

Following this submission, the oversight body acknowledges receipts and provides all essential background information and documentation regarding how the complaint will be processed to the complainant. At this stage a file is opened outlining the nature and details of any such complaint. At the same time, the subject of that complaint should be informed that there has been a complaint lodged and a short summary of the nature of that complaint forwarded to them.

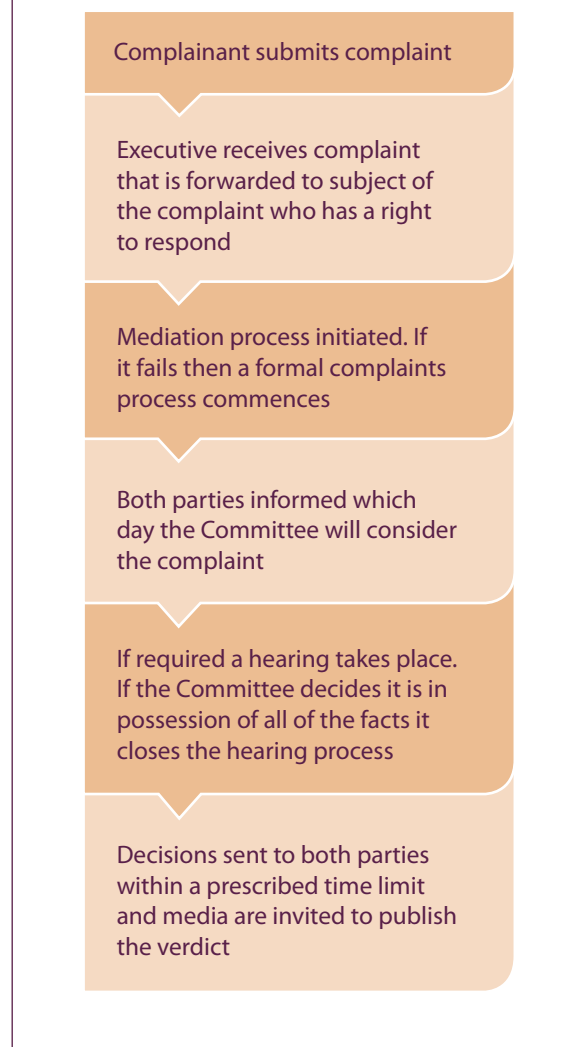
**Step 2:** Assessment of the complaint by a complaints unit/investigator who decides if the complaint justifies an investigation. If so, an official investigation is conducted to see if the complaint was warranted and to collect any information and evidence available.

**Step 3:** Mediation to resolve the issue is normally sought between the two parties as an initial solution. Failing this, the formal complaints process will continue. The oversight body may assist in facilitating the mediation process and encourage resolution of disputes at this level through a mediator.

**Step 4:** Response by the subject of the complaint who is requested to respond to the allegations within a limited period of time. Once this response is received, a copy is sent to the complainant. At the same time, if a hearing is deemed to be required, a date for this can be set and the parties notified. In principle, complaints are dealt with in the order they are received and assigned the first available slot at a subsequent hearing, though prioritization after an initial assessment based on gravity and the availability of the parties can also be considered.

**Step 5:** Preparing the files for a review by the board by the investigators and legal advisor with all the material required for the commissioners to be able to assess the merits of the case, including their recommendations and a summary of interpretation of the applicable legal provisions or code. A hearing can be held, if required, in a place accessible to both parties of the complaint.

**FIGURE 3: TYPICAL STATUTORY COMPLAINTS PROCESS**



At its sessions the commissioners should also form a quorum. This may be one specific for hearing complaints and the parties to the complaint should have the right to attend and be heard during proceedings. If the commissioners conclude on the basis of the documents alone (including notice of complaint and statement of defence), then proceedings may not be necessary and the complaint could be closed and judgement issued.

**Step 6:** Consideration of the evidence and making a decision following the hearing. This is usually done by a majority of votes. The parties are then informed of the decision, which should promptly be published in the public domain. The parties should also at this time be informed of their right to appeal the decision and the way this should be done. Recommendations for any measures to provide redress and any other measures that may be applicable should also be outlined in the decision.

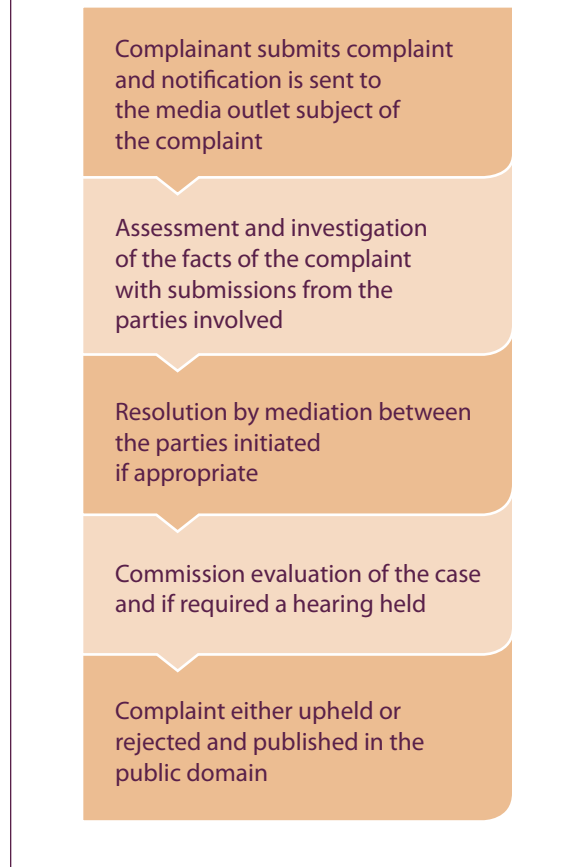
### ■ SELF REGULATORY COMPLAINT SYSTEMS

Self-regulatory complaint systems have evolved with far less powers than those that are related to statutory oversight and broadcasters. This means that there are many more variants, even within countries, of self-regulatory designs and even more importantly that the range of sanctioning powers are fewer and less intrusive on freedom of speech overall.

As Figure 4 outlines, the complaints process in a self-regulatory model requires fewer steps and levels of formal process, but it also includes public accountability mechanisms to guarantee transparency.

While the design of the process in both cases is extremely important, without the public being aware that they have the opportunity to make a complaint, the value of both systems will remain marginal. Demand-side mechanisms are an important part of ensuring a fair playing field. Before the electoral campaign, the oversight body should undertake a good public outreach programme to raise awareness on the existence of the oversight body and to promote the use of its complaints process. This will help to deter abuse of the media as well as to enforce election related standards.

■ **FIGURE 4: TYPICAL SELF-REGULATORY COMPLAINTS PROCESS**



# 06

## Administrative penalties and sanctions

Chapter 6 deals with the issue of administrative penalties and sanctions for violations of media codes of conduct and regulations. The purpose of a framework to provide balanced coverage and equitable access to the media during a campaign period is undermined if its provisions are consistently ignored. To ensure compliance with set standards, media oversight bodies have some form of sanctioning powers. Whether this refers to self-regulatory powers to issue a statement acknowledging a violation or to the more punitive powers related to the broadcasting industry, these can serve as appropriate form of redress and deterrence mechanisms.

Basic principles regarding sanctions include:

- Sanctions should only be applied by an independent body or the courts following an open and transparent investigation, respecting the rights of all parties to be represented. There should always be an appeals mechanism;
- It should be clearly established that legal or contractual requirements have been breached;
- The sanction should be proportionate to the offence or level of harm, set out clearly and administered by an independent body free of political influence.

### ■ SANCTIONING PROCEDURES

#### **Broadcast media**

The sanctioning process for broadcasters usually follows the below steps:

- Deliver a summary of the decision that the broadcaster is found to have made breaches to the broadcaster;
- Provide the broadcaster with full details of the violations;
- Inform the broadcaster of its rights to make representations on the case before the penalty is decided;
- Review the evidence and recommendations of the investigator for the type of sanction to be applied;

- Convey a hearing if required to allow the broadcaster to explain its position on the violations;
- Decide if and what type of sanction is appropriate;
- Deliver the decision to the broadcaster, clearly setting out the reasons for the sanction and including information on the broadcaster's right to appeal;
- Publish the decision and sanctions in the public domain to guarantee transparency.

### Self-regulatory model

In this model, mediation is nearly always the best mechanism to find resolution between the parties involved. A simple correction to the offending content, published in an appropriate place, is often enough to close an issue that generated a complaint. At the same time, there will inevitably be cases where the parties cannot agree on a resolution and a formal complaints process will be initiated. There will also be other cases where there have been repeated, persistent and even deliberate infringements to legal requirements, and this may require sanctions to be issued by oversight bodies responsible for the media sector.

In these cases, the self-regulatory oversight body would follow the procedures outlined in its codes and issue sanctions accordingly. It is recommended to foresee the right to appeal against any decision within the regulatory body. The conclusion of this case would be published in the public domain.

## SANCTIONS

There is a range of sanctions commonly available to administrative oversight bodies. Before reverting to these sanctions, it is essential to balance the right to freedom of speech and the right of the public to receive information with the need to maintain standards in broadcasting. The sanction selected should be the least intrusive in its effect on freedom of speech, provide adequate remedy and be proportionate to the offence put in context. Possible sanctions include:

### Publication of a correction and adjudication

Ensure that the right to a correction for incidents involving television and radio broadcasters is always guaranteed as the most appropriate mechanism to provide redress. This right does not exclude the possibility to pursue other forms of redress.

It is also a widely held convention in self-regulatory systems that corrections in the event of errors should be the major, and in many cases the only, form of sanction. Codes of conduct should clearly establish the grounds for a correction by newspapers and Internet publishers. Statements of the decision of the oversight body on violations of codes or regulations should also be published as well as warnings to journalists or media outlets.

### Levying a financial penalty

Financial penalties can be an effective incentive for compliance. The penalty amounts should be clearly set out in the law or regulations and the amount levied should be commensurate with the offence. A number of factors to be considered in determining the amount include:

- the level of harm caused by the airing of the programme that has breached the guidelines or legal provisions;
- the frequency of the airing of the content;

- intent of the broadcaster and attempts by the broadcaster to remedy the situation once made aware that an infringement or breach had occurred;
- the proportionality of the penalty taking into account the financial revenues of the broadcaster that has breached the guidelines or legal provisions.

### **Ban on repeating a programme**

An oversight body may be able to request that an offending programme or programme clip not be rebroadcast. In such a case the content that is in breach of the standards can be prohibited. This requirement should be narrowly defined and not applicable to the whole programme in the case of a clip or a series of programmes.

### **Reducing license term limit and licensing suspension**

Temporary media oversight bodies are highly unlikely to have powers to suspend or terminate a license of a broadcaster. Consideration would only be given to this option in cases of the most serious and persistent breaches to legal provisions or contractual requirements. The same would apply to suspending operations of a broadcaster.

## **SANCTIONING RELATED TO HATE/DEFAMATORY SPEECH AND PRIVACY VIOLATIONS**

These types of problems are dealt with by the media oversight body or judiciary according to the legal statutes and principles of legitimacy, necessity and proportionality. The type and extent of sanctions are also usually specified within the legal framework. There would always be the right to a timely appeal with decisions published in the public domain.

Material that has been judged as defamatory or unacceptably infringing on rights in the other areas where restrictions may apply may be banned from re-publication or rebroadcasting depending on the case. These bans should be narrowly defined and not restrict any legitimate forms of speech.

In cases of defamation the damages should be calculated based on the damage to the reputation of the complainant rather than punitive measures against the author, unless there is a case of bad faith when additional measures may be considered appropriate. The same applies for infringements of privacy where damages should be proportionate and only seek to address the harm caused by the intrusion.

# 07

## Online media, the Internet and mobile content

Chapter 7 raises the issues posed by the new media including the Internet and content distributed through mobile telephone networks. The growth of the Internet, satellite and mobile telephone platforms in the past two decades has opened up increased opportunities across the world for the exchange of information and freedom of expression. Access to these technologies remains highly uneven, especially for rural communities, the poor and women. However, mobile telephone networks now span the globe with wide coverage levels and an increasing number of subscribers. Internet diffusion is also growing and satellite broadcasters span continents creating unique, and at times innovative, communication tools.



These technologies are increasingly employed during the electoral process, alongside the traditional media. This includes candidate and third-party websites, blogs, campaign short message service (SMS), bulk text messaging and the social media. The use of novel and innovative platforms by political and civil actors and others, such as electoral observers, raises a large range of oversight issues.

International principles for freedom of speech are applied to the introduction of new media technologies. This often requires different parameters and new and appropriate tools to be developed.

In a highly innovative information and technology sector, oversight principles will have to evolve with technology and trends to meet new challenges. Chapter 7 deals with the issues related to regulation and oversight of the new media in relation to the electoral process.

### ■ OVERSIGHT CHALLENGES

New media of the Internet and mobile telephony pose new and fundamental oversight challenges to EMBs and media monitors. They are technologies with unique capabilities to move information and opinions across territorial borders instantaneously and they subsequently raise unique opportunities for electoral coverage, media access and voter information. Online



## BOX 12: INNOVATION AND USE OF THE USHAHIDI OPEN SOURCE SOFTWARE FOR REAL-TIME REPORTING

Following disputed elections in 2007 that ignited widespread post-election violence in Kenya, a group of volunteer software designers developed the Ushahidi platform, an innovative online platform that utilizes new technologies to help citizens distribute and share news and information.

The original intention of the Ushahidi was to provide an online platform where members of the public could send information and report on incidents of violence around the country, primarily using SMS texting, but also using email or the Internet.

Data received was verified by local CSOs and published as a data map, using Google maps accessible to the public. This service was especially important, as the Kenyan government had issued a controversial live broadcasting ban affecting television and radio coverage of these incidents.

Since its inception the Ushahidi platform has been used in different initiatives in Kenya and beyond. In Kenya, CSOs and partners, including the UNDP, have used variants of this tool to promote electoral accountability. It has been used to identify hotspots and provide early warning systems for incidents allowing confidence and trust building measures to be targeted at the communities where tensions are highest.

Globally the software has been employed to support observation efforts in Lebanon, Mexico and Nigeria and others. This has enabled observers to report in real time any incidents of anomalies found during key stages of the process which enables the EMBs to react to problems before they escalate as well as to strengthen the transparency and accountability of the process.

The platform's potential to collect information from the public using SMS text messages and its ability to map incidents in real time on an accessible online platform are only beginning to be explored and demonstrates the positive role that new media platforms can play in supporting a peaceful and credible electoral process.

and mobile content is growing at an exponential rate. This growth offers unprecedented opportunities for political parties to canvass voters in a more targeted and nuanced manner. New media platforms offer voters unique opportunities to access information about candidates, policies and voting. The new media also challenge existing concepts of media oversight and require a redrawing of some of the boundaries between how the media are regulated with a convergence of traditional media platforms.

Mediums such as the Internet and mobile platforms cannot be classified in the same terms as a broadcaster, newspaper or a one-to-one medium such as a telephone landline. In some ways they take on characteristics of all of these more traditional media forms, yet they are, importantly, unique in other ways.

In a fluid area such as the Internet, tools that have developed today may quickly become redundant and as these are evolving all of the time, EMBs and oversight bodies will need to adjust their approaches in line with their developments.

freedom

“ The same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice. ”

UN Human Rights Council, Resolution 20/13, 2012

Furthermore, the UN Special Rapporteur on Freedom of Opinion and Expression has stressed that the boundaries for the Internet are fundamentally different from those for traditional media, and even when measures are in place for restrictions applicable to traditional media, they may not be equally so online and, as a result, could be disproportionate<sup>21</sup>.

Article 19 of the ICCPR protects all kinds of speech across Internet platforms, including those done on websites, chat rooms, blogs and in emails as well as any other form of communication as is standard for offline media. This also applies to speech downloaded to mobile telephone devices. Mobile content covered by Article 19 includes content provided by the mobile telephone operator or under contract with this provider a third party content supplier, including bulk SMS messaging, messaging and SMS texting via a mobile telephone handset and Internet-based online content downloaded from the Internet by the end user to a mobile handset.

Tools are still evolving to meet the unique nature of new media. At its foundations, however, remain the fundamental features associated with freedom of speech and the standard principles outlined for the Internet by the Special Rapporteurs (Box 6, see page 8).<sup>22</sup>

The limited range of restrictions to freedom of speech outlined in Article 19 of the ICCPR are only legitimate if they meet the three-part test as discussed in Chapter 1. Specifically, are provided for in law; are for the purposes of protecting one of the legitimate aims listed in the ICCPR; and are necessary and proportionate so that they have the least intrusive impact on freedom of speech.

In the event that a webpage or online content is removed, following such a procedure, the rest of the legitimate content on that website should remain. Entire websites or domain names should not be taken down. The same principles apply equally to content accessed through mobile telephones. More specific information on this is provided in Annex 4.

### BOX 13: GENERAL PRINCIPLES: FREEDOM OF EXPRESSION ON THE INTERNET

- a. Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by the law, and that they are necessary to protect an interest which is recognised under international law (the three-part test).
- b. When assessing the proportionality of the restriction on freedom of expression on the Internet, the impact of that restriction on the ability of the Internet to deliver positive freedom of expression outcomes must be weighted against its benefits in terms of protecting other interests.
- c. Approaches to regulation developed for other means of communication, such as telephony or broadcasting, cannot simply be transferred to the Internet, but, rather need to be specifically designed for it.
- d. Greater attention should be given to developing alternative, tailored approaches, which are adapted to the unique characteristics of the Internet, for responding to illegal content, while recognising that no special content restrictions should be established for material disseminated over the Internet.
- e. Self-regulation can be an effective tool in redressing harmful speech, and should be promoted.
- f. Awareness raising and educational efforts to promote the ability of everyone to engage in autonomous, self-driven and responsible use of the Internet should be fostered.

The framework prohibits actions such as prior restraint and any interventions should only take place following publication, and only in exceptional circumstances as recognized in the ICCPR. Equally, statutory regulation other than laws on harmful speech, such as hate speech, are perceived to be unsuitable for mediums such as the Internet that have a high degree of access points, and individual liberty and choice in content. The self-regulation system is perceived as the most appropriate oversight mechanism, though as the Internet and content via mobile is evolving, so are the parameters of approaches.

## ■ SELF-REGULATION OF THE INTERNET AND MOBILE CONTENT

Oversight of the Internet and mobile telephone content is of a self-regulatory or industry-level nature that focuses on the areas of harmful content such as hate speech and the protection of minors from unsuitable content.

Blocking of websites is particularly frowned upon in the international human rights framework as it fails to meet the standards outlined in the three-part test on a number of points. Such practices, even where forms of prescribed justifications are met can limit legitimate forms of speech. The broad nature of this measure makes it incompatible with freedom of speech principles and can “render a wide range of content inaccessible beyond that which has been deemed illegal.”<sup>23</sup> Similar measures blocking text messaging services would also represent an equally broad application in contravention to freedom of speech principles and Article 19.

Websites are not subject to specific statutory regulations that set out principles of impartiality or balance. Major obligations placed on states related to new media content are related to non-interference with freedom of speech on the Internet or other similar platforms, though there is also a right related to universal access to the Internet set out by the UN Special Rapporteur on Freedom of Opinion and Expression.

Some of the tentative principles connected to

election-related content and the various communication forms that use the Internet or mobile telephony include:

- No ex ante (before the event) rules or regulations related to elections.
- Statutory regulation or binding obligations related to elections are not justifiable.
- Self-regulatory regime can be appropriate.
- Campaign finance rules can be employed on issues such as level playing field. Protections related to privacy, reputation, hate speech and security are applicable based on the three-part test and judicial rule. Online advertising rate negotiations could be a co-regulatory initiative. For news websites, campaign moratoriums and bans on public opinion polls immediately prior to the election day may be applicable.

According to the Special Rapporteurs, there are no justifications for obligations placed on the Internet or mobile telephone operators other than when offline media such as public service broadcasters open up online services to supplement their radio or television ones. This also extends to any election-related programming requirements including direct access schemes and fairness and balance requirements.

Applying provisions such as campaign moratoriums or bans on public opinion polls immediately prior to an election day online is more complex. They are likely to become more difficult to justify or enforce at the publication stage given the nature and trans-frontier reach of the Internet.

## ■ APPLICABILITY OF PROVISIONS ON ELECTION COVERAGE

### Campaign rules: Balance and fairness

The Internet is similar to newspapers in that it is deemed inappropriate for obligations such as balance and fairness to be applied. Journalistic standards will apply to websites of media organizations that have opened a news portal online, although these will be governed by self-regulatory tools such as a code

of conduct and user-generated content should be exempt from these in general. Citizen journalists, bloggers and anyone else who contributes to a website are not bound by industry wide content standards or codes other than ones developed by individual websites, and therefore have no obligation to adhere to wider standards or their provisions.

### **Campaign advertising and party election broadcasts**

Obligations such as party election broadcasts or those placed on campaign advertisements do not apply to online media as there is no justification for either restricting the right of political parties to impart information or the right of the end user to seek and receive information. Rather than seek to curb the freedom of speech online that might be in breach of international standards, a more suitable mechanism for regulating public policy objectives, such as creating a level playing field between parties and candidates, would be campaign finance regulations that can be extended to online spending where already in place or introduced as part of any new measures.

### **Public opinion polls and campaign moratorium obligations**

There is little formal and meaningful action an oversight body can take if a website is located in an overseas territory and publishes a public opinion poll or campaign article, or audiovisual content, during campaign moratorium periods. Unless a website is based in the country of jurisdiction, there are very limited tools at an oversight body's disposal. Bans on speech become increasingly outdated in the age of the Internet and mobile telephone content, particularly since content posted during the campaign period will still be easily accessible for end users to download during a campaign moratorium period.

If such bans apply from legislation, the most appropriate mechanisms to deal with any infringements are likely to be self-regulatory in nature, and any content that is deemed harmful should be dealt with either through

complaints to the Internet service provider or a self-regulatory body established for the Internet.

### **LIABILITY**

The general principles that have evolved are that there should be no liability for transmission or hosting by Internet service providers, although liability can be argued for failure to remove the illegal content intermediaries store once they become aware of that content's illegality.

In some jurisdictions, service providers have immunity from prosecution and the author is liable for any harmful content posted online on similar grounds as in the offline world, although this can pose a problem with the anonymity of the online world and identifying the author. Freedom of speech scholars have also suggested that any claims against harmful speech on the Internet should be made in the jurisdiction of the country that the content was targeted, rather than any territory where that content has been downloaded, to guarantee appropriate mechanisms of intervention.<sup>24</sup>

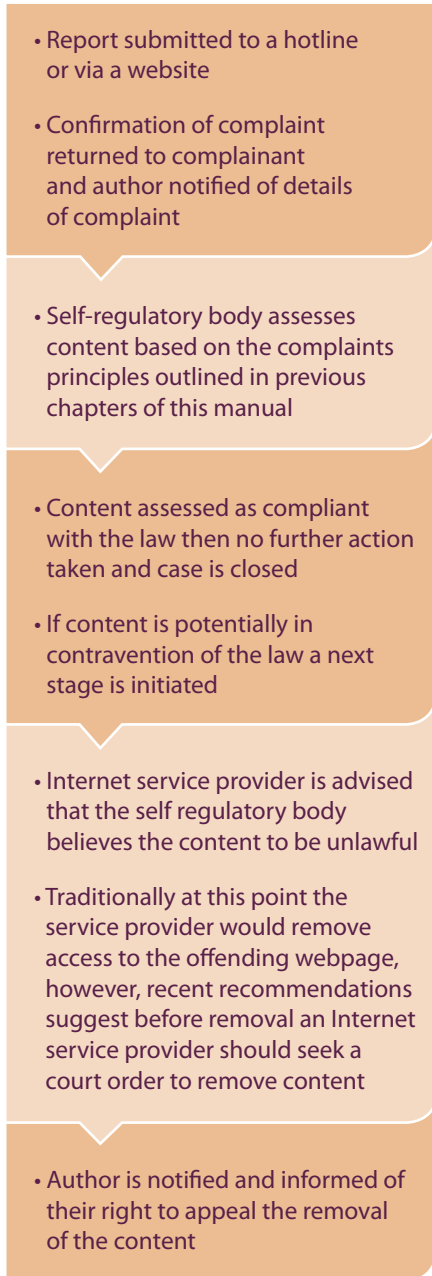
### **COMPLAINT PROCESS FOR NEW MEDIA**

Complaints against the new media are usually handled by the self-regulatory body, established by the service provider, in a process similar to what is outlined in Figure 5.

### **NOTICE AND TAKEDOWN**

Notice and takedown has become the most common method for removing harmful content posted on the Internet. Similar mechanisms have developed to deal with harmful content distributed via mobile telephones. It is seen as the least intrusive option for dealing with content perceived to be harmful online. It works on the basis of self-regulation at Internet service provider and mobile telephone operator level. Once the service provider is notified of harmful content, either directly or by a self-regulatory body acting as a result of a complaint from the public, it makes a decision on whether to remove that content.

■ **FIGURE 5: TYPICAL NOTICE AND TAKEDOWN PROCEDURE OF AN INTERNET SELF-REGULATORY BODY**



While this is an efficient system for identifying and removing content, this has service providers acting in an administrative or indeed judicial role, and legitimate forms of speech may be excluded in this process without the appropriate levels of protection. Complaints from the public are often not justified and given the clear interest for service providers not to become liable for the content posted, there has been an assumption that this has led to increased incidents of service providers automatically siding with the complainant and removing content without appropriate levels for the protection of freedom of speech.

It is in this sense the UN Special Rapporteur on Freedom of Opinion and Expression recommends further layers of accountability when intermediaries limit freedom of speech on the Internet.<sup>25</sup> These include only implement restrictions after judicial intervention, forewarn users where possible before implementing restrictive measures, minimize the impact of restrictions to the content involved and provide an effective remedy for effected users, including the possibility of appeal through the intermediary's system and by a competent judicial authority.

Evolving within the developing self-regulatory system is a 'notice and notice' system whereby the intermediaries, on notification of content deemed to be harmful, would be required to notify the author or those responsible for publication and distribution of it. This would give the author an option of defending the claim or agreeing to remove the content from the website. In cases where the author fails to contest the takedown request, the takedown could be granted.<sup>26</sup> Other measures such as flagging up inappropriate material online to highlight content and tools such as user disapproval functions can also assist users in moderating their own content without affecting freedom of speech.

# 08

## Satellite and trans-frontier broadcasting

Chapter 8 covers the issue of trans-frontier television and satellite broadcasting and national issues related to election coverage. Historically, television and radio have developed as a national sector, with broadcasters airing programmes using terrestrial frequencies that are national or subnational in reach.



The International Telecommunications Union Convention (1982) recognizes the right of nations to regulate telecommunications and radio spectrum and, until the introduction of new forms of television delivery, the issue of trans-frontier broadcasting was relatively straightforward. There has always been some spill-over effect of spectrum, with national television or radio crossing national borders into neighbouring territories, although this was mostly contained within localized border issues.

The advent of satellite broadcasting in the 1960s and its growing popularity as a delivery system in the 1980s fundamentally changed the issues that arose regarding trans-frontier broadcasting. Television and radio broadcasters were able to produce programming in their country of origin, uplink to a satellite, and transmit into the territory of another country. A common variation of this included a television broadcaster in one country producing programming for that country and then in order to circumvent that country's regulatory licensing regime uplinking from another country to downlink back in their home market.

This posed particular problems for media oversight authorities since, technically, a broadcaster could be registered in one jurisdiction and be broadcasting mainly to audiences located in another one. Three kinds of scenario arise with respect to trans-frontier broadcasting or foreign broadcasting services.

- Spill-over services that cross national borders and can be received by viewers and listeners in other countries other than the one the broadcaster is registered and located based on spectrum frequencies issued and owned by the country it is registered in, crossing national borders.
- A satellite broadcaster that is uplinked in one country and available for downlink in another territory.
- A foreign programme service that is slotted into an existing domestic television or radio service. For example, if 30 minutes of news from a broadcaster in one country was inserted into the programming schedule in the country of another, by agreement, between two television channels.

## ■ FREEDOM OF SPEECH AND TRANS-FRONTIER BROADCASTING

The right to receive information extends beyond individual speech and includes programmes and services, such as satellite radio and television and terrestrial services that are either directed towards a territory or incidentally spill-over national territorial borders. Any interference with such services is required to undergo the same narrow three-part test related to restrictions to Article 19. This is applicable to the country of uplink (the right to impart) and the downlink territory (the right to receive).

The obligations on states not to interfere with the content or services of satellite broadcasters applies in the same manner as any other broadcasters including national radio and television channels. Restrictions or any limit on the services of satellite broadcasters in any way other than for the narrow objectives set out in Article 19 violate freedom of speech principles since states parties should guarantee the *“right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers”*<sup>27</sup>

A key principle to oversight of satellite broadcasting is that content standards including measures such as impartiality are usually regulated in the location and country of uplink, and it is those broadcasting standards that will apply. This is commonly referred to as the state of origin principle. Limitations would only be tolerated if based on one of the permitted restrictions under Article 19(3) of the ICCPR.

## ■ OVERSIGHT MECHANISMS AND REGIONAL COOPERATION

The central approach to satellite and trans-frontier television and radio oversight is the promotion of cooperation between states and stakeholders. National legislative tools are limited in dealing with foreign satellite television and radio services in many cases due to the nature of transmission and reception.

The aim of cooperation is to promote standards on both sides of the uplink and downlink so that freedom of speech is not undermined at the reception location, and to guarantee the freedom to transmit within the duties and obligations of freedom of speech in the recipient territory.

To this end, in an attempt to create greater coordination of trans-frontier television, some regional intergovernmental organizations have also introduced conventions that require basic standards in content to be maintained. These shared principles are recognition of the state of origin, definitions of origin of a broadcasting service, basic programming standards on hate speech and the protection of minors and impartiality in news programming.

In the case of spill-over where a terrestrial broadcaster from one country can be received in another country, if there is a problem with content, the only mechanism of redress is to complain to the home country’s oversight body, courts or refer to any regional or global agreements. In turn, that oversight body could look into the complaint and, if required, seek remedial measures if breaches are found to have taken place.

In the case of a foreign satellite broadcaster, finding a solution to an access or content problem will depend on the licensing regime and whether it has a downlink license. If there is a downlink license then it may be possible to apply standards that are in line with Article 19. If there is no downlink license, then the broadcaster is technically outside of the jurisdiction of the oversight body and regional cooperation and self-regulatory tools should be encouraged.

In the case of a local terrestrial broadcaster with a carriage agreement with an international broadcaster, the domestic broadcaster should ensure compliance with guidelines and domestic broadcasting standards.

Cooperation between oversight bodies of all kinds has increased dramatically over the past 20 years. Engagement prior to an election campaign can assist in building a consensus both within the satellite industry and amongst stakeholders to ensure that satellite television and radio contribute to the holding of a credible and successful electoral process, rather than being perceived as a threat to it.

## ■ APPLICABILITY OF PROVISIONS ON ELECTION COVERAGE

### Campaign rules: Balance and fairness

While the principle of origin negates any specific forms of programme obligations applied in the receiving state, the following general rules have developed for satellite services:

- An uplinking country may apply regulations to content and has an obligation to encourage diversity: "*Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters*".<sup>28</sup> A downlinking country has obligations not to interfere with a satellite service.

- If there are obligations included in downlink operating contracts, programme obligations to increase diversity or those in the public interest may be appropriate depending on context. The non-interference principle in the obligation, however, still applies.

Balance and fairness provisions and other programme obligations related to election and campaign coverage in national laws therefore, generally do not cover foreign satellite broadcasters unless the equivalent set of standards apply, either through a convention or similar legal provisions in both countries, or they are applied in a downlink license that effectively means they may be treated as a national content provider for the purposes of promoting diversity in the media.

### Campaign advertising and party election broadcasts

Provisions such as party election broadcasts and campaign advertisements should not be applied to foreign satellite broadcasters that operate on an uplink license from another country, as they are outside the jurisdiction of the country, unless the relevant satellite broadcaster agrees to do this on the basis of self-regulation.

These provisions can apply to domestic satellite channels and may be legitimate as long as non-discriminatory requirements are met. Similar requirements may be legitimate if contained in an operating downlink license issued for a foreign satellite station as long as it does not conflict with the principle of the state of origin.

Foreign satellite broadcasters will not be covered by advertising standards in the receiving country unless regulated by a downlink license or regional agreements. It may not be feasible for an oversight body to regulate the access political parties have to commercial advertising spots on foreign satellite services at the point of access. The most practicable approach to regulate this is likely to include these types of transmissions in the national campaign finance regulations.



## Campaign moratoriums and opinion polls

Moratoriums on reporting of campaigns and publishing opinion polls may not be applied to foreign satellite broadcasters that operate on an uplink license from another country, as they are outside the jurisdiction of the country, unless the satellite broadcasters agree to do this on the basis of self-regulation.

These provisions can apply to satellite channels uplinked in the country of origin and may be legitimate as long as non-discriminatory requirements are met. The same principle may also apply to an operating downlink license issued for a foreign satellite station.

## ■ RESTRICTIONS AND SANCTIONS ON SATELLITE SERVICES

The possibility of sanctioning foreign broadcasters that breach national rules on election coverage is limited, since their licenses are issued in a separate territory, and are likely to have a different set of obligations than national broadcasters.

If they are registered to downlink, then measures similar to those applied to terrestrial broadcasters may be appropriate. This will be contingent upon the physical location of the broadcaster. This issue has been tied closely to regional conventions that have broadened the idea of origin to decide the location

of the broadcaster's physical activities (headquarters, main contingent of staff, management and editorial decisions) as the place where jurisdiction resides rather than the transmission facility (uplink).

Independent oversight bodies and the courts can be used to provide remedy as in all other cases involving television and radio, though much will depend on the location of the assets of a satellite broadcaster as to whether it falls under the jurisdiction of the court. The national court may apply to a foreign court to enforce judgement but it is the decision of the court that receives the request whether to enforce this or not.

Sanctions should also be proportionate and the least intrusive to achieve a remedy for violations. A similar range of sanctions applied to terrestrial broadcasters are available in the country of uplink. In an electoral context these are likely to be publication of a correction, a warning, or in cases of intentional and repeated violations, financial penalties.

The United Nations General Assembly, resolution 424(1950), commenting on such practices as jamming of signals from satellite broadcasters, stresses *"measures of this nature are a denial of all persons to be fully informed concerning news, opinions and ideas regardless of frontiers [...] invites governments of all Member States to refrain from such interference with their right of their peoples to freedom of information."* Jamming and blocking satellite services are incompatible with international and regional standards.

# 09

## EMB communications

Chapter 9 focuses on EMB communications and the need to develop an integrated and strategic approach to communications throughout the electoral cycle. As part of its obligations towards the public and as a key measure in sustaining confidence in an electoral process, EMBs need to develop a communication capacity that gives them the ability to communicate effectively to a wide range of stakeholders and to provide information on the electoral process. This includes communicating internally among the different EMB departments and locations, and externally with the media and the other stakeholders on the electoral process.



EMBs are responsible for providing its electorate with voter information (how to vote), voter education (why to vote) and civic education (on the broader concepts underlying the electoral process). A significant part of this is developing good media relations so that the media covers the process and the EMB messages as part of its regular reporting.<sup>29</sup>

### ■ COMMUNICATION STRATEGY

Communications are at the heart of modern institutional culture and the ability to communicate strategically is an indispensable part of organizing credible and trusted elections. Good communications and outreach by an EMB will promote confidence and public ownership of the electoral processes and is required in every electoral context. It is also a full-time activity that needs to be done throughout the entire electoral cycle. An open communications policy based on the public's right to know and the media's right to report will help voters make an informed choice on election day. This will also help to dispel rumours and misinformation that often circulate in an electoral context. This is especially important in post-conflict and transitional situations that are often marked by increased levels of tensions and political conflict.

Building strategic communication capacity within an EMB for both internal and external communications requires strategic as well as creative planning. The initial set up of an institutional communications capacity will require time for planning and set up, but does not necessarily require a large financial

investment. EMBs should ensure that their investment in information and communications technology is commensurate with the country context and is something that the EMB can afford to maintain. As noted in the thematic evaluation of UNDP's contribution to strengthening electoral systems and processes, *"The introduction of electoral technologies is complex, involving not only the need for training, but also changes to legislation and recruitment, logistical and voter education approaches."* It also noted that even when appropriate information and communication technologies are identified, sufficient time to plan for their introduction and implementation needs to be given.<sup>30</sup>

**External communications** focus on relations with stakeholders outside the EMB. These communications should be delivered around an institutional image of the EMB and what it wants to accomplish in the electoral process. This will also include the voter information/education aspects of the EMB's work. An external communication strategy is important as it not only allows the EMB as an organization to manage its image portrayed to the outside, but will also help ensure consistency and continuity in its messages and communications with its different stakeholders. These external messages, as well as its messages to its staff, should reflect the EMB's institutional values and its standards for a credible inclusive electoral process.

Components of an external communications strategy include:

- The key messages that will form the foundation for the communications strategy. Message content will depend to a great degree on the context of the elections and the various relationships that the EMB has with its different stakeholders;
- Identification of key stakeholders and the appropriate channels to convey and package their messages;
- A performance monitoring plan for the communications strategy that includes targets, indicators and expected results to measure its impact;
- Identification of responsibilities for communicating the different messages and reaching the different target groups;

- Accountability and sign off procedures for the release of information.

**Internal communications** aim to improve institutional performance and build an organizational culture that reflects the EMB's mission statement and a better understanding of it by its staff (both temporary and permanent). This should be a reciprocal process, where communications go up from staff as well as down from the commissioners and secretariat.

At its simplest, a communications strategy refers to three main processes outlined in Table 12 (see page 52), targeting, message development and transmission of the message.

All forms of strategic communications require planning and preparation. In this process, it is important to widely consult with internal and external stakeholders so that the plan directly addresses the needs of the different groups, that the messages reaches them in a format that they can understand and appreciate, and that will make a difference in their understanding of the process and work of the EMB. As noted in Table 13 (see page 53), these different groups can include the media, national and subnational government, parliament, ruling and opposition parties, candidates, minority language groups, the electorate, women voters and candidates, and disabled persons. In a post-conflict and transitional context, it is particularly important to be as inclusive as possible. There may also be overseas voters to take into consideration, which could be done in consulates, refugee camps or other locations. All of these factors need to be taken into consideration in developing an effective and inclusive communications strategy.

## ■ STEPS IN DEVELOPING A COMMUNICATIONS STRATEGY

There are a number of steps in developing a strategic approach to communications. Planning should focus on the strategic outcomes desired by the EMB with its communication activities planned around those desired results. As an example, all EMBs will want

**TABLE 12: KEY CONSIDERATIONS IN DESIGNING A COMMUNICATION PLAN**

Who are the targets for the communications plan?	What needs to be accomplished with communications?	What are the best platforms for communications?
<p>Who are the key stakeholders in the electoral process and what are their interests and level of knowledge in the process?</p> <p>Are there any special need groups in the process, and, if so, what are their special needs?</p>	<p>What are the informational and motivational needs of the different stakeholders and how can these be addressed in the communications plan?</p> <p>What are the most critical issues in the electoral process?</p> <p>How is the EMB perceived by its different stakeholders?</p> <p>What are the key messages that need to be delivered, internally and externally?</p>	<p>What is the role of the media in this electoral context and who are the key opinion leaders?</p> <p>What are the options for delivering the messages and most appropriate tools to reach the different groups?</p> <p>How best can these platforms be utilized to ensure the most effective communications are delivered and make an impact?</p> <p>What are the costs for utilizing these platforms? Which ones are the most cost-effective as well as effective?</p>

to promote a credible electoral process and build stakeholder trust in its ability to effectively manage that process and deliver timely, accurate results. But it will have other important goals as well depending on its context. These could include promoting a more peaceful process or encouraging more participation by women, youth or minority groups. Its communications plan should then be directly targeted to deliver those results. These should be identified within the plan along with the key messages and target groups.

The following illustrate the main steps in developing a communications plan.

**Step 1: Identify stakeholders**

The first step is to clearly identify the different stakeholders in the electoral process and assess what role and stake they have in the process and in their relationship with the EMB. The main purpose for a good communications plan is to connect the organization to its stakeholders and to give it the tools and messages needed to effectively engage with them.

EMBs have an unusually large constituency of stakeholders. These include voters, members of civil society, the media, candidates and political parties as well as EMB employees. They also work closely with government offices and officials on policies and issues related to the electoral process, and with members of legislative bodies on its legal framework and budget allocations for the elections and functioning of the EMB.

Each of these groups can have different needs and expectations from the EMB and will almost certainly require different channels of communication and messaging developed to respond to these needs. These needs should be prioritized so that this can be factored into planning. Prioritization will depend on the context, and will vary significantly between an election held in a peacekeeping context, where stability and building trust in the process will be an important factor, from a third or fourth generation election where elections have become routine and voter apathy may be the main issue.

**TABLE 13: STAKEHOLDERS IN AN ELECTORAL PROCESS<sup>31</sup>**

Internal stakeholders	External stakeholders
<p>Secretariat (all full- and part-time officials and staff).</p> <p>Temporary election workers including, registration workers, returning officers, presiding officers, polling officials, security guards.</p>	<p>General public and voters including any special needs groups such as IDPs or overseas voters. Government including parliament, ministries, judiciary, attorney general and others. Political parties – government and opposition, including those not represented in parliament. The media including editors, media owners, media council/journalist unions, and media houses. Civil society including NGOs, women’s organizations, faith-based organizations, disabled people’s organizations, civic education NGOs, domestic observation groups. Public/security forces. International community, including bilateral, regional and multilateral organizations. Academics and think tanks.</p>

**Step 2: Research**

At the inception stage, the EMB needs to define its vision for the electoral process and develop its organizational mission statement. These should be supported by consultations and research so that they are relevant and responsive to the needs of the process as well as its stakeholders. The starting point for an EMB is the electoral framework and its legal mandate. This will help to identify and develop the main messages that the EMB will need to project. Messages may be tested internally with commissioners and staff, before expanding this to a wider audience of stakeholders.

Research is a helpful tool that can provide support to:

- Identify the key messages that internal/external stakeholders believe the EMB will need to project;
- Ascertain internal/external perceptions of the EMB and the process, including its strengths and weaknesses;
- Establish priorities among communication needs;
- Develop indicators to measure the impact of the communication’s plan on the process and on the stakeholders’ perception of the EMB;
- Identify the most appropriate communication channels to reach the different target groups.

Research will help the EMB to develop an evidence base for its communications plan that will ensure a greater degree of consistency and success in communicating messages, as well as for use in managing the electoral process. Different tools are outlined in this Chapter but all will require the EMB to:

- define the problem;
- elect a sample and determine the necessary number of groups or sample population;
- Prepare the study mechanics and the focus group material or the survey questions and pilot test;
- conduct the session or survey; and
- analyse the data and prepare the summary report.<sup>32</sup> In many cases, EMBs will contract this out to a survey research firm, but its communications department should be aware of the procedures involved.

**Focus groups**

A focus group brings together small numbers of selected participants for a discussion led by a moderator. This can be a useful tool to gather preliminary information. It can also be an important source of information to assess how a particular group perceives the EMB and the electoral process and to identify some of the reasons for those perceptions.

Focus groups are designed to generate qualitative information. This type of group work is also inexpensive and therefore accessible to most organizations, regardless of size. This means that it is an option for EMBs with a decentralized structure, as well as for those with a high degree of centralization, to use as a way to engage staff and external stakeholders at different levels. This is particularly helpful when there are regional differences among stakeholders in terms of trust, participation and inclusion, and when the elections are part of a larger political process, such as a negotiated peace process, where holding an election is just one of the benchmarks on the path towards achieving national unity, peace and reconciliation.

### **Surveys and public perception studies**

Surveys are one of the most effective ways to gauge trends, perceptions and preferences in a community. Well-designed surveys will produce accurate and detailed information that can provide a baseline for EMBs on stakeholder perceptions towards the electoral process and the work of the EMB as well as insights into why these different groups hold those perceptions.

There are cost benefit considerations to opinion polling as some surveys can be expensive and time consuming. This can be managed to some degree through the use of samples. Surveys are quantitative in nature as they produce a large volume of comparable information that can be analysed across a number of demographic and geographic variables. This is extremely helpful in determining the needs for a communication plan as well as in measuring its results. Surveys can help to identify the groups that need to hear particular messages, as well as to fine-tune messages so that they make more of an impact on the recipients.

### **Content analysis**

As outlined in Chapter 4, content analysis can be a valuable tool to monitor existing communications and to collect information on the needs for, or results of, a communication plan or its messages.

A simple and effective way of using content analysis is to analyze the amount of coverage the EMB has had over a period of weeks, assessing the extent to which the reporting reflects its work and the coverage of the electoral process, its accuracy, and the tone of coverage. Content analysis will enable the EMB to adjust its communication plan and messages to the unfolding context and problems as reported in the media. Comparing content over time is also a method used to measure performance.

### **Communication audits**

A communication audit is a review of an organization's communication and its impact. It measures the perceptions of the different external and internal stakeholders and can include measurements such as approval ratings and satisfaction levels. It also assesses the depth of knowledge and awareness of an organization. Ratings and ranking systems can be employed to give these audits nuance and, as is the case with surveys and focus groups, detailed sampling can provide for wider generalization of trends.

## **Step 3: Defining organizational identity and values**

Once stakeholders are clearly identified, the next stage is to decide the nature of the messages. For an EMB, this will include factual updates on the administration of the process and key events, as well as information on the EMB's vision.

Every EMB should have a vision statement that describes its long-term goals. This would include its vision for the electoral process, the levels of participation it wants to see by voters and parties/candidates, and the type of coverage it expects from the media. It is as important to portray this vision to EMB staff as well as to external stakeholders, so that their work reflects this vision and builds towards its achievement.

EMBs should also have a mission statement which describes how they will achieve their vision and meet their mandate as provided for in electoral legislation. The vision and mandate build an EMB's institutional persona and reputation.

## Step 4: Selecting message channels

There is a wide range of channels available for communications as noted in Table 14. They are not mutually exclusive and the EMB can complement and coordinate its communication activities across platforms, or depending on context, select the one most appropriate for the message objectives and target group.

Not all of these will be suitable or provide cost benefit for the EMB depending on the context. Each EMB will need to ascertain the most appropriate platforms that they will use to communicate best with its different target groups.

**TABLE 14: RANGE OF COMMUNICATION PLATFORMS**

Platforms	Advantages	Disadvantages
Television	Wide exposure in countries with a high penetration of television sets Power of visual presentation	Limited coverage across a country with low penetration of TV sets Advertising spots can be expensive Production costs can be high
Radio	Wide distribution and high numbers of listeners in many countries. More affordable advertising spots Low production costs	FM radio stations can have a small footprint. Reach can be extended through networks and working with different radio stations.
Online media (social media platforms, news sites)	Possible entry point to reach younger voters and other early adopters of technology if important content and information is created on a regular basis	Limited audience in some cases due to a lack of access to the Internet, especially for the poor and most vulnerable Requires moderators and can be difficult to manage without forms of internal content supervision
Newspapers	Readers belong to elite groups in many countries Can be read and passed around by more than one reader	Circulation can be limited to urban areas Declining number of readers in some countries
EMB information products: booklets/posters/brochures/press releases	Simple and effective for local level outreach In high volumes printing can be affordable and products can last for a long duration	Reach may be limited and requires target group interest to consume Requires a distribution network Needs to include graphics in areas with low literacy rates
Advertising (television, radio, newspapers, billboards etc.)	Can target large numbers of viewers and listeners in a small space of time	Advertisements can be expensive, particularly on television

**TABLE 14 (CONTINUED)**

Platforms	Advantages	Disadvantages
Internal EMB identity products	Good quality and well-designed corporate products for staff increase sense of professionalism and belonging  Effective and affordable depending on products selected	Products need to be appropriate for the context
Forums including rounds/conferences/briefings	Provides opportunity for feedback from stakeholders and builds ownership of a process  Affordable depending on venue	Can be logistically difficult to reach nationwide audiences and time consuming to organize

### Step 5: Defining stakeholder engagement strategies

The form of engagement needs to be matched with the right type of platform for strategic communications. Table 15 illustrates the benefits of linking strategic communication stages to the needs of particular stakeholder groups that can both act in isolation of one another as well as overlap.

### Step 6: Monitoring and evaluating communication

Communications are done to serve a purpose. All communication activities should contribute directly towards the achievement of the EMB’s purpose as stated in the communications plan. To track and measure achievement of its objectives, the EMB will need to develop a monitoring and evaluation (M&E) component within its communications plan. This will include indicators and targets to measure its progress and results.

A baseline should be established at the start of the plan that reflects the situation at that time, against which future progress is measured. Having good baseline information will help the EMB to set realistic and relevant targets for the plan’s intended outcomes. Tracking these indicators over times tells an EMB if it is achieving its objectives and where it needs to focus additional effort and resources to improve its performance.

To be useful, M&E plans should be SMART, as defined in Figure 6.

**FIGURE 6: SMART RESULTS AND INDICATORS<sup>33</sup>**

**SPECIFIC:**

Results should describe a specific future condition.

**MEASURABLE:**

Results, whether quantitative and qualitative, must have measurable indicators, making it possible to assess whether they were achieved or not.

**ACHIEVABLE:**

Results must be framed realistically and be achievable.

**RELEVANT:**

Results must make a contribution to the priorities of the organization.

**TIME -BOUND:**

Results are never open-ended. Dates should be established for the achievement of goals.



**TABLE 15: A STAKEHOLDER MODEL OF COMMUNICATION<sup>34</sup>**

Stakeholder effect	Awareness	Understanding	Involvement	Stakeholder commitment
Tactics	<ul style="list-style-type: none"> <li>▪ Newsletters</li> <li>▪ Reports</li> <li>▪ Press releases</li> <li>▪ Information packs</li> <li>▪ Free publicity</li> </ul>	<ul style="list-style-type: none"> <li>▪ Discussions</li> <li>▪ Meetings</li> <li>▪ Advertising</li> <li>▪ Education campaigns</li> </ul>	<ul style="list-style-type: none"> <li>▪ Consultation and debate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Trust and ownership</li> </ul>
Strategy	Informational strategy	Informational/persuasive strategy	Dialogue strategy	
Summary	<p>Caters to the standard information needs of an organization related to the basic communication requirements of stakeholders.</p> <p>Includes information on the activities of the organization and its intentions that should be proactively seeking to inform stakeholders of election-related planning and update activities.</p>	<p>Designed to influence the attitude or change preconceived attitudes towards an organization so that it favours the organization and its activities.</p> <p>Advertising and education are strategies that organizations use to promote their image but these objectives can also be reached by dealing directly with the media and managing media relations transparently to ensure consistent messages are being delivered to the public and other stakeholders.</p>	<p>Reciprocal engagement between an organization and stakeholders.</p> <p>Differs from the other two approaches in that it is designed to offer inputs and outputs of both parties in the communication.</p> <p>Interparty dialogue and stakeholder meetings are classic examples of a dialogue strategy.</p>	

**■ ENTRY POINTS FOR COMMUNICATIONS IN THE ELECTORAL CYCLE**

Holding a successful election is the result of a long process of planning and preparation. Each stage of this process requires attention and problems in any one part of the process can affect its quality and damage its integrity. EMB communications should

be designed around the key events in the electoral calendar, taking note of the informational needs for each part of the process. Good planning and preparation in the pre-election period, including the development of contingency plans to manage potential risks, will help the EMB to manage its public relations, ensure an informed public and build good relations with electoral actors, even if the process does not go as planned.

**TABLE 16: ILLUSTRATIVE COMMUNICATION THROUGH THE ELECTORAL CYCLE**

Timeframe	External communications	Internal communications
Pre-election period	<p>Consult with stakeholders on any needed electoral reforms.</p> <p>Gather information and consult with stakeholders on perceptions and issues on the electoral process and EMB (surveys, focus groups, round tables, etc).</p> <p>Identify key groups in the process and assess their informational needs and most effective channels to reach them.</p> <p>Design/refine EMB organisational identity products.</p> <p>Develop an EMB external communications strategy that covers the electoral process through the assumption of office by the newly elected officials.</p> <p>Adopt performance indicators and develop a baseline for external communications. Set targets and develop key institutional messages.</p>	<p>Consult with permanent staff (focus groups, internal surveys, suggestion boxes) to assess communication needs and EMB strengths and weaknesses in terms of its identity and key informational needs of the staff.</p> <p>Develop/refine institutional systems for communicating with staff using appropriate channels and technology (intranet, news updates, SMS, email etc).</p> <p>Develop an internal communications strategy and plan to promote EMB policies and values with staff.</p> <p>Develop indicators and undertake a baseline for internal communications. Set targets and develop key institutional messages.</p> <p>Develop EMB identity products for staff.</p>
Lead into the electoral period	<p>Develop EMB branding for the upcoming elections.</p> <p>Develop a promotional campaign in the media to promote recruitment of temporary staff for registration and polling and other expertise needs.</p> <p>Develop a calendar of communications activities in line with the needs and events in the electoral calendar.</p> <p>Budget for election-related communications needs such as facilities and product costs (media centres, stakeholder engagement costs, etc.).</p> <p>Design and test branded civic and voter education material and distribution strategies for the candidate and voter registration process. Develop a baseline for the voter information programme.</p> <p>Develop the civic and voter education campaign strategy for the upcoming elections and voter registration, including selecting indicators and developing branded educator kits.</p> <p>Design an accreditation process for national and international journalists.</p> <p>Do contingency planning for crisis management and rumour control in case required by events.</p>	<p>Ensure updates for staff on electoral planning and operational issues.</p> <p>Design and budget for facilities and product costs required to implement the internal communication plan. This should include EMB identity products and costs for establishing and maintaining the internal communications infrastructure.</p> <p>Design organizational products such as T-shirts and signage for electoral sites.</p> <p>Promote staff training and best practices; provide updates of the electoral process and EMB activities (central and decentralized levels).</p> <p>Organize familiarization and training with voter and civic education material for local civic and voter educators.</p> <p>Design a communication strategy to extend reach to temporary election staff.</p> <p>Update the EMB database with contact details of all staff, permanent as well as temporary.</p>

<p>◀ Voter and candidate registration</p>	<p>Develop briefing materials and platforms to engage civil society, political parties, candidates, media and other stakeholders.</p> <p>Deliver the voter registration information campaign and track indicators.</p> <p>Test communication strategy for the election campaign period.</p> <p>Develop, test and deliver branded voter and civic education material and distribution strategies for the polling/count period.</p> <p>Update the calendar for communication.</p> <p>Start holding regular and frequent press briefings by the EMB spokesperson and accrediting journalists for election-related coverage.</p>	<p>Develop an internal communications plan for voter registration teams and other staff and means to measure their progress and performance.</p> <p>Solicit feedback from staff on voter registration and lessons learnt.</p> <p>Update the communications strategy based on staff (and other stakeholder) feedback.</p>
<p>Electoral campaign period</p>	<p>Deliver branded communications events and branded civic and voter education throughout the period.</p> <p>Hold frequent press briefings with the EMB spokesperson and continue the accreditation of journalists.</p> <p>Organize regular briefing and stakeholder platforms to engage and keep civil society, political parties and other actors informed on key issues arising during the process.</p> <p>Promote specific messages in the media on the how and why of voting, on quality issues (peaceful elections, tolerance for diverse viewpoints, acceptance results, get out and vote). Track progress of communication plans through updating indicator measurements.</p>	<p>Provide frequent updates for permanent and temporary staff.</p> <p>Ensure mechanism for feedback from staff at the different institutional levels and locations are in place and functioning.</p> <p>Establish a hotline for the EMB operations and communications departments to link them with their offices in the field as well as with the head of the secretariat and commissioners.</p> <p>Update indicator measurements and compare against baseline. Make any corrective measures needed in the internal communications strategy and processes.</p>
<p>Voting and results period</p>	<p>Hold frequent press briefings throughout the period by the EMB spokesperson or other authorized persons.</p> <p>Provide regular updates to the media centre before, during and after election day.</p> <p>Establish an information hotline to answer questions, provide rumour control and channel serious problems to a crisis management centre in case required.</p> <p>Update the results centre and website information on a continuous basis until the final results are certified.</p>	<p>Develop and implement a frequent check in system for all polling and count locations that provide their status, and relates any issues or problems encountered and channels this information to the appropriate departments within the EMB (communications/operations).</p> <p>Allow interested staff to document election preparations, polling and the count through photo journalism and publish the best photos on the EMB website.</p>
<p>Post-election period</p>	<p>Evaluate the communications process and products through feedback from external stakeholder groups and M&amp;E indicators compared against their baseline.</p> <p>Publish the lessons learnt report in the public domain.</p> <p>Start communication planning for the next cycle of elections.</p>	<p>Evaluate the internal communications strategy by comparing indicators against their baseline and undertaking lessons learnt with a representative sample of permanent and temporary staff. Publish the results and distribute to all levels of staff.</p> <p>Solicit staff feedback on EMB procedures and process issues to make improvements for the next electoral cycle. Distribute the report to all staff.</p>

## ■ HUMAN RESOURCES AND INSTITUTIONAL ISSUES

There is increased recognition of the importance of communications in the management of the electoral process, and in the need to prioritize it within EMB operations and management. A communications department should be afforded a significant position within the EMB, with its directors employed at a senior enough level for them to be able to interact on a daily basis with the EMB commissioners, senior politicians and government officials, and to handle the sensitive tasks involved in communicating with political party leaders, candidates for office, civil society and the national and international media in a highly politicized and time bound process such as elections.

This requires excellent communication and diplomacy skills as well as the ability to think strategically by communication directors and staff. It also requires the communications department to have regular access to all EMB departments, including operations, and to be included in senior-level deliberations. Although the head of communications will have limited decision-making powers outside of his or her department, the director will need to be well informed on the workings of the institution and any issues in the electoral process so that he or she can deal with it with the media.

Typically, the **director of communications** is responsible for all of the work of the communications department. The director may serve as the **spokesperson** for the EMB and represent it in public events and in the media for everyday affairs. The director should also be a senior officer in the EMB. The director's responsibilities also include leading the strategic development, implementation and management of the organization's internal and external communication strategies.

Some of the typical tasks that fall within the communications department include:

- Serving as the focal point for all EMB communications including serving as spokesperson;

- Designing and implementing all media and informational campaigns to promote EMB work and the smooth organization of the electoral process;
- Designing EMB's brand and image and ensuring that this image is applied internally and externally in a consistent manner;
- Organizing conferences, stakeholder workshops and other forums;
- Designing, editing and disseminating strategy for all public information;
- Designing and showcasing material for the different stakeholders including parties, electorate, CSOs, media and observers;
- Cataloguing media coverage and publicity material;
- Maintaining the content for the EMB's public website;
- Managing internal communications systems and ensuring information is promptly communicated to all staff members;
- Training national staff, as appropriate, in how to deal with the media. Producing and implementing a media training package for key staff at sub-national levels to advise on and improve interaction with the local media;
- Maintaining contact with the media (local, national and international);
- Organizing press conferences and media briefings;
- Speech writing for EMB commissioners and senior secretariat members;
- Arranging for site visits for national and international stakeholders to showcase EMB work;
- Establishing and maintaining a high quality information centre for stakeholders and the public; and,
- Working with the operations department on the media aspects of the results centre.

# 10

## Access to information

Chapter 10 covers access to information requirements and provides recommendations on how EMBs can handle freedom of information requests. Article 19 of the ICCPR and regional conventions recognize the right to seek and receive information alongside the right to impart information. These rights guarantee individuals access to information in all forms held by public and governmental bodies.



As a part of this, it is incumbent on states to ensure that a freedom of information law and framework is in place and that it obliges public bodies to make information they hold available on request.

According to the Global Right to Information Ratings (2012) some 90 countries have access to information laws that guarantee members of the public the right to receive information from a wide range of governmental and public bodies. This reflects the increasing importance placed on the transparency of public bodies and the right of individuals to have access to the information held by public bodies. This is based on the premise that public bodies are custodians of such information in the interests of the public. This right places two obligations on public bodies:

- To publish information of public interest in the public domain on a regular basis.
- To provide information upon request of a member of public on any subject matter contained in records.

### BOX 14: RIGHT TO ACCESS INFORMATION

UN Special Rapporteur on Freedom of Opinion and Expression, 2010

“In a democracy, the right to public information is fundamental in ensuring transparency. In order for democratic procedures to be effective, people must have access to public information, defined as related to all state activity.”

EMBs fall within the scope of the meaning of public body in countries with access to information laws, and in those countries EMBs have the legal obligation to disclose, publish and, on request, make available information stored or held to a member of the public.

## ■ DEFINITIONS

Information is defined broadly and includes information stored in any form or format held by public bodies. As part of the obligations of access to information there is also a requirement for public bodies to store information held securely and in an appropriate manner.

Included in the definition of information is all recorded information covering printed matter, computer files and correspondence, including emails and sound and video recordings. It can also include telephone recordings, notes and drafts. It only includes information held on file or in records and does not cover requests for new information that has not been created.

Public bodies are defined as “*All branches of the state (executive, legislative and judicial) and other public or governmental authorities, at whatever level- national, regional or local- are in a position to engage the responsibility of the state party.*”<sup>35</sup>

Typical bodies that fall under access to information provisions include:

- Government departments;
- Legislative and executive bodies;
- Local authorities;
- Government services (such as health, education and police services);
- Independent institutions that are funded with public money (such as national human rights commissions, freedom of information commissions, EMBs);
- Regulatory authorities.

**TABLE 17: ACCESS TO INFORMATION PRINCIPLES**

Maximum disclosure	Presumes all information held by public bodies should be included in disclosure requirements except in a very limited range of instances.
Obligation to publish	Access to information principles also include an obligation to publish information held by public bodies.
Promotion of open government	The right of access to information needs to be promoted to be fully appreciated.
Limited scope of expectations	Limitations on access to information requests must meet the requirements of a three-part test.
Processes to facilitate access	A three-tiered process for dealing with freedom of information requests, including one within the public body, administrative appeal body and a judicial body.
Costs	Costs should be reasonable and not be so high as to discourage freedom of information requests.
Open meetings	Formal meetings of public bodies should be open.

Source: The NGO Article 19, 1999.



### **BOX 15: THE ELECTION COMMISSION OF INDIA AND ACCESS TO INFORMATION**

The Right to Information law introduced in India in 2005 promotes a culture of greater transparency and accountability in public institutions. Introduced following campaigning by members of civil society, the law obliges public bodies to make available information to the public. A comprehensive legal framework was established including deadlines for responses to access to information requests and an independent appeals mechanism. The duty to publish in the law also obliges those bodies that fall under the law to actively publish information of public interest on a continuing basis.

As a permanent constitutional body the Election Commission of India (ECI) falls under the range of bodies that are legally required to respond to freedom of information requests from any member of the public. The ECI selected public information officers in the offices of chief election officers and established a designated person to handle appeals to the decisions made by the public information officers on access to information requests.

An extensive and proactive publication scheme was set up by the ECI in line with the legal provisions and published on its website. This includes a wide range of information about registered political parties, their donations and spending accounts, draft and final voter registers and data pertaining to all general elections to the Lok Sabha (the lower house of parliament) and state legislative elections.

Moreover, the ECI proactively publishes its rules and regulations, and the manuals and records that it maintains. It also publishes policy formulation documents and responses and detailed budgets related to administrative expenditures.

Any member of the public can make an access to information request to one of the public information officers whose details are available in the public domain. Importantly the ECI publishes quarterly reports on access to information requests outlining responses to these requests.

The ECI's proactive stance on access to information has increased the transparency and accountability of the electoral process across the country. By establishing structures to respond to requests for information and clearly putting in place a publications policy, the ECI has taken advantage of the access to information requirements for the benefit of the electoral process and its management.

### **■ KEY PRINCIPLES**

The fundamental principles for access to information are provided in Table 17.<sup>36</sup> One of these is that it is incumbent on public bodies to publish and distribute information that has a public interest element. Public bodies should therefore have a proactive approach to publishing information in the public domain. This should include a minimum range of information to assist the public in understanding the agency's functions and structure as well as notice for any public consultations and minutes of formal meetings and contact points.

As is the case in other areas related to the ICCPR's Article 19, there are limited grounds to deny access to information held by public bodies. These should pass a test similar to the three-part test required for restrictions on freedom of speech. This means that: (1) if any restrictions are provided for by law, they should be narrowly defined; (2) non-disclosure of information should only occur in the event that it can be demonstrated that publication would harm the listed aim; and, (3) there is no overriding public interest to publish the information. If a decision not to disclose information is arrived at, a right of appeal should be in place to an independent administrative body and/or the courts.

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**TABLE 18: PRINCIPLES FOR EXEMPTIONS (NGO ARTICLE 19)<sup>37</sup>**

### Legitimate aims and justifying exceptions

A complete list of the legitimate aims which may justify non-disclosure should be provided by law. This list should only include interests which constitute legitimate grounds for refusing to disclose documents and should be limited to matters such as law enforcement, privacy, national security, commercial and other confidentiality issues, public or individual safety, and the effectiveness and integrity of government decision-making processes.

Exceptions should be narrowly drawn so as to avoid including material, which does not harm the legitimate public interest.

### Refusals must meet a substantial harm test

It is not sufficient that information simply falls within the scope of a legitimate aim listed in the law. The public body must also show that the disclosure of the information would cause substantial harm to that legitimate aim. In some cases, disclosure may benefit as well as harm the aim [...] For non-disclosure to be legitimate in such cases, the net effect of disclosure must be to cause substantial harm to the aim.

### Overriding public interest

Even if it can be shown that disclosure of the information would cause substantial harm to a legitimate aim, the information should still be disclosed if the benefits of the disclosure outweigh the harm [...] The harm to the legitimate aim must be weighed against the public interest in having the information made public. Where the latter is greater, the law should provide for disclosure of information.

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## ■ ACCESS TO INFORMATION PROCESS

Everyone has the right to request and be granted access to information held by public bodies. Organizations can also submit access to information requests and the media and journalists have the same right to access information as a member of the public, as do employees of a public body. The purpose for a request does not have to be stated or justified since it is incumbent on the public body to provide the information it has recorded. All submissions should be treated as equal from any member of the public. A request in most access to information frameworks can be in the name of an individual member of the public or an organization and, generally, receiving bodies do not need to confirm the identities of those making a request.

As part of the obligations on public bodies, public information informing the general public of their right to access information from the organization is required.

This is frequently in the form of a small booklet explaining the role of access to information, the mandate of the relevant body and the procedures that have been put in place for responding to an access to information request. Certain groups such as women, disabled persons or minority language communities may have specific challenges in accessing information and particular measures in EMB outreach may be required to ensure that all groups are aware that they have equitable access to public information.

### Handling requests

When a request for information is received, it should be handled according to the principles laid out by law. As anyone within a public body can receive a request, it is particularly important that the EMB has clear procedures for dealing with information requests. A standard process would be for the EMB to nominate a team or person to deal with these requests so that they can be efficiently transferred upon



receipt to the relevant office. An illustration of how this process works for the Elections Commission of India is provided in Box 15 (see page 63). Basic details for making a valid request may be printed on the application form including the contact information for these requests.

### **Costs and timeline**

Legislation usually requires the fees charged to process a freedom of information request be reasonable and not an obstacle for individuals or others to make these requests. As a general rule, fees should cover photocopying or delivery costs and not the cost of the staff time to handle the requests. On receipt of a request, confirmation would normally be sent to the applicant notifying them of the response time. The length of this period is usually stipulated in relevant legislation.

### **Refusal notification**

In cases where the EMB decides the information should not be disclosed because it meets the three-part test the applicant should be informed that the request has been denied. The EMB needs to document this refusal, keeping records as to why the request was turned down and who authorized it.

The appeal process for denied applications is supposed to start with an internal review of the application and the rationale for the refusal. If this review upholds the lower level decision, the applicant should have the right to appeal to an independent administrative appeals mechanism or to the courts, depending on the national legislation.

# Annex 1:

## Case studies on UNDP supported efforts on media and elections



### **CASE STUDY 1:** SUPPORTING MEDIA COVERAGE IN AFGHANISTAN (2004–2010)

#### ■ **Context**

Afghanistan has undergone a major democratic transition since 2001. Its 2004 constitution provides for the holding of direct elections for public office elections held regularly since 2004 and 2009, parliamentary elections in 2005 and 2010, and provincial council elections in 2005 and 2009.

The UN and international community supported the Afghan efforts to set up an Independent Electoral Commission (IEC) in 2005. Prior to this, the elections were administered by a Joint Electoral Management Body (JEMB) comprised of UN and Afghan members with the UN playing an executive role.

Afghanistan had limited experience with democratic practices, a lack of national infrastructure, extreme climate conditions, security issues, and low levels of human development.<sup>38</sup> These challenges added to the difficulties of the EMBs and parties/candidates to communicate with their constituents and raised the importance of reaching the public with this information.

In 2004 the media sector was emerging from a period of censorship and tight control. Even though media laws were liberalized in 2002 and 2003 and allowed for the creation of commercial and community radio stations, after such a long period of repression and without an independent journalist tradition, it was unlikely that the media could cover the electoral campaigns in a balanced and impartial manner and allow equal access for all candidates and parties.

A small number of political parties were contesting the elections but with a relatively high number of independent candidates. The media were faced with the immense challenge of reporting on the election campaigns of all of these candidates as the 2004 electoral law required all media outlets to ensure fair coverage of the candidates.<sup>39</sup> It also established an Electoral Media Commission (EMC) to “*monitor fair reporting and coverage of the electoral campaign [and] deal with complaints about violations of fair reporting or coverage of political campaigns, or other violations according to procedures.*”<sup>40</sup>

UNDP supported the development of the MC and its activities through the ELECT (Enhancing Legal and Electoral Capacity for Tomorrow) project (2006-2011).

## **Media Commission**

The EMC was located initially within the JEMB and then within the IEC once it was established. The Media Commission followed a typical board structure, headed by an independent group of commissioners and assisted by a secretariat. The board is composed of five members including a chairperson appointed by its members. Its mandate covered: (1) monitoring media coverage of the campaign; (2) managing the complaints process for problems with media coverage; and (3) designing and implementing a candidate election broadcast scheme to provide free airtime and production facilities to candidates.

The EMC also developed its own processes for how complaints should be received and handled with clear deadlines and procedures to be followed together with a right of appeal.

This model of regulation was built upon a co-regulatory process with the media commission working in close cooperation with the media sector. As many of the self-regulatory structures required for the media industry to set its own standards were not yet developed, the EMC issued codes of conduct prior to each election that elaborated on the principles established in the law.

However, ensuring adequate outreach and understanding of its mandate proved to be difficult, especially in the first cycle of elections when the concept of independent monitoring and the provision for free air time was new.

## **Sponsored advertisement programme and candidate debates**

The EMC organized candidate debates on radio and TV and other forums to increase candidate access to the media. However, its flagship access initiative was the direct access scheme for candidates that started in 2005, and funded through the UNDP project and other donor assistance. This enabled candidates to produce and air their campaign messages. For parliamentary and provincial council elections this represented a huge undertaking due to the large number of candidates.

Candidate election broadcasts consisted of short clips with candidates having a choice between different formats of two to five minutes in length. They were produced with the assistance of the local radio and TV stations that aired them and candidates were given a choice of which media outlets to air their clips. Roughly half of the total airtime dedicated to the campaign by the media consisted of programming generated from this scheme.

Each broadcaster participating in the scheme was required to verify the identity of the applicant for the spots against the candidate lists and filled in an authorization slip that was sent to the media commission secretariat for verification. Following approval, production commenced.

General guidelines for production were published to assist broadcasters with administration and production issues. Training was delivered before the initiative commenced to ensure procedures and standards were clearly observed by participants in the scheme.

Although this process allowed for more than 3,000 candidates to appear in their own TV or radio campaign spots on one of 40 radio or TV stations in Afghanistan in 2005, this was only about 53 percent of the candidates. One of the problems noted by observers was that each candidate had very little broadcasting time due to the number of candidates.<sup>41</sup> For 2010, this was three minutes on TV and six minutes on radio. The participation rates in 2010 were also only 18.4 percent in the capital Kabul, and 48 percent for the rest of the country.<sup>42</sup>

A bright spot was participation by women candidates where 77 percent of them used this resource as part of their campaign in 2005. This higher percentage could also reflect some of the other assistance efforts to strengthen the participation of women voters and candidates.

### **Media monitoring**

The EMC also established media monitoring units in major urban centres to monitor compliance to the free airtime programme and with codes of conduct. This was outsourced to a local NGO and covered more than 57 media outlets in 17 provinces in 2005, and 48 outlets in 2010.

This monitoring provided regular reports to the EMC which enabled it to closely follow media coverage and implementation of the airtime scheme. Media monitors also analysed news coverage and provided an assessment of overall programming compliance with codes of conduct. This further strengthened the evidence base needed by the EMC to make decisions regarding complaints.

### **■ Key achievements and challenges**

The EMC represents the first time that an independent body was established to provide oversight of the media in Afghanistan on the principle of independent oversight that respected freedom of speech in the media and that sought to promote positive programming obligations and diversity.

However, the short time frame set out in the electoral law limited the EMC's reach to the candidates and media outlets to ensure that they were aware of the scheme. This was compounded by the limited communications infrastructure at the time, climatic conditions and rugged terrain, all of which made it difficult for the EMC to reach all parts of the country.

Despite the challenges, the EMC demonstrated that it was able to implement the airtime scheme and to make independent and impartial decisions, and to serve as a model for independent media regulation for the future.

### **■ The role of partnerships**

The EMC worked with the established media industry to secure their support for the ambitious initiatives in its mandate. This was a critical first step as participation of the media was essential for a successful implementation of the campaign broadcast scheme.

One of its first activities was to undertake a survey on the extent of the media in the country and to assess the feasibility of working together. The EMC also consulted with the

media on developing the code of conduct. It later provided training to the media on the code and administrative issues related to the free airtime programme. These all helped to build the relationships required for an independent oversight body to successfully.

The EMC also held special candidate briefings throughout the country to promote greater awareness of its role and programmes and use.

## ■ Conclusion

Accountable politics in many ways stems from people being able to choose their representatives in public office from a range of options. Media coverage is a key part in this process and the EMC's work has helped the Afghan media to be better positioned to react to the requirements needed for fair and balanced coverage of candidates.

The EMC was a novel concept in Afghanistan when it was established in 2004 and it retained a key presence in the 2009/2010 elections. It is widely perceived to have carried out a professional job and, with the support of UNDP and donors, was able to play its regulatory role to oversee the media and adjudicate complaints in the campaign periods.

The sponsored access for political advertisements increased candidate access to the media, and broadened the information provided to the electorate. The independent nature of the commission and its procedures provided the public and candidates with an accessible mechanism of redress that worked within the regulatory parameters established to protect it.

The EMC demonstrated that it is possible to undertake oversight of the media even in the most challenging of environments and without infringing on freedom of speech.

Failing the development of a permanent, independent audio visual regulator to take on this role, the temporary commission will remain an important part of the media regulatory structure for elections for the foreseeable future.

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## CASE STUDY 2:

### SUPPORTING MEDIA COVERAGE OF ELECTIONS IN SIERRA LEONE IN 2007

#### ■ Context

The 2007 national elections in Sierra Leone were the second general elections following the Lomé Peace Agreement in 1999 and the subsequent deployment of a UN peacekeeping mission (UNAMSIL). They were seen as a vital test of the development of democracy as the first elections organized under full national ownership since the return to peace and the establishment of the National Electoral Commission (NEC). Although not without incident, these elections were credited by international observers as marking a “*significant and positive development in Sierra Leone’s progress towards the consolidation of democracy and peace.*”<sup>43</sup>

Despite constitutional and legal provisions granting access to all candidates and political parties to radio and TV broadcasters, the lack of an independent public broadcaster and media capacity meant that achieving the main principles of these provisions, such as balanced coverage and equal access for candidates, was unrealistic without international assistance for a media support programme.

Media coverage of the election in 2007 was also sensitive, and with the two main political parties particularly aware of the importance of the media. Each had established its own radio station-- We Yone (APC) and Unity Radio (SLPP) which broadcasted partisan campaign material and news.

Supporting independent and objective voices in the media was needed to ensure that voters received the scope of information needed to vote in an informed manner and for candidates to have the opportunity to canvass voters through the mass media.

UNDP, through the Support to Electoral Reform and the National Electoral Commission project helped provide technical assistance, capacity development and support for the 2007 elections. The United Nations established a radio station in Sierra Leone on deployment of UNAMSIL. Although initially set up to explain the mandate of the UN mission and to promote reconciliation and tolerance, it had become a leading radio broadcaster with a diverse range of programming attracting growing national audiences by the time of the elections in 2007.<sup>44</sup>

The UN Radio was widely perceived as the most trusted radio station in public opinion surveys and was the only national broadcaster in the country. This made it an important platform for candidates and political parties for the 2007 elections.

Staffed largely by local journalists with a small contingent of experienced international media professionals, the UN Radio delivered a diverse range of information on the electoral process and campaigns throughout the election period.

On election day, it employed 40 extra journalists to increase its coverage of this national event. It relayed live coverage to listeners throughout the day.

### **Media monitoring panel**

Sierra Leone has an Independent Media Council established in 2000 as a statutory regulatory body. In the 2007 electoral period, an Independent Media Monitoring and Refereeing Panel (IMMRP) was established on a temporary basis to provide a self-regulatory mechanism to monitor media coverage of the campaign period. The IMMRP was the result of extensive discussions that led to the drafting and signing of a media code of conduct done before the start of the campaign period. The code of conduct was developed by the Sierra Leone Association of Journalists (SLAJ) with support from the United Nations Integrated Office in Sierra Leone (UNIOSIL) and the UNDP.

The IMMRP formed an Independent Media Monitoring (IMC) panel in an effort to monitor the media's activities during the campaign and help maintain standards. The IMC, IMMRP and SLAJ acted as key reference points for the media, but according to observers, their work was constrained by financial and capacity constraints, including capacity to enforce some of the provisions of the code of conduct.<sup>45</sup>

### **Innovative content production support**

With the aim of strengthening the quality and volume of content production, UNDP and other donors supported organisations such as the Fondation Hirondelle (Cotton Tree News) and Search for Common Ground (Talking Drum Studios). One of the key challenges in Sierra Leone for media assistance was to create a pool of talent to produce content for the broadcasting industry. With the support to these organizations a network of 20 affiliated community radio stations was established throughout Sierra Leone.

The SFCG had been working in Sierra Leone since 2000 on initiatives to increase tolerance and understanding between divided communities, and in 2002 established the Independent Radio Network (IRN) to support the elections.

A simple and ingenious method of distribution was designed to disseminate election programming by recording programmes on audiotapes and delivering them through the public transport system, ensuring content reached down to local level.

The radio station members of the IRN, in conjunction with CSOs, were particularly engaged in the 2007 elections and extended their coverage to include party election broadcasts and other innovative programming such as fictional drama series. On election day, the IRN network played a key role in informing the public on polling and the count.

Following training, IRN deployed 420 radio journalists throughout the country, particularly in isolated locations, places where tensions were high or where members of the public had no access to local radio and news sources.

Reports were relayed to the capital, Freetown, where live coverage of the elections continued throughout the day and night, providing listeners with crucial access to the events of the day including the counting process.

### ■ Key achievements and challenges

By employing the resources of UN Radio and the content production facilities of CTN and SFCG, voters had access to a larger range of voices during the election campaign as well as to accurate and more balanced information. This responded to two main problems: content production and distribution limitations.

UN Radio in particular managed to provide balanced and proportionate coverage in compliance with the electoral laws of Sierra Leone, demonstrating that participating local journalists were able to provide coverage that met international standards in election reporting.

The support to CTN and IRN also paid similar dividends as media monitoring showed that community and private radio broadcasters across the country provided the public with diverse coverage of the elections in accordance with legal provisions.<sup>46</sup>

Throughout the campaign period, the IMMRP and SLAJ consistently engaged with peer editors and journalists across the country, highlighting issues to the industry. They also made public statements and played a mentoring role to a younger generation of journalists.

These institutions also played an important role in dealing with potential areas of conflict between the media and political parties and acted in a mediatory capacity on a number of important occasions.



## ■ The role of partnerships

Close coordination between partners was key to the success of the 2007 programme. A study done by the OSCE found that the harmonisation of electoral assistance in Sierra Leone was a good practice example that illustrated the benefits of donor coordination, which paid clear dividends in terms of achieving its intended goals.

Members of the IMMRP and SLAJ cooperated closely with the IMC on developing a regulatory framework for the media for the campaign period, helping to build a consensus amongst stakeholders on the IMC framework.

An agreement between CTN and UN Radio to air CTN production on the UN Radio provided mutual benefits that maximized the reach and impact of the content produced with the support of the assistance programmes.

## ■ Legacy and follow up

The long-term vision for UNDP support of the media sector was to develop the foundations for creating a public service broadcasting system in Sierra Leone by the restructuring of the publicly owned broadcaster. It is in this context that in 2010 there was a formal merger of UN Radio with the publicly owned broadcaster. It was then rebranded as the Sierra Leone Broadcasting Corporation (SLBC).

Prior to the handover of UN Radio to national ownership, a reform programme was introduced to reorganize the management structures and working practices of the newly launched SLBC.

In this respect, it is too early to assess how this merger will play out in the long-term. The positive role played by UN Radio over its nearly 10-year existence was reflected in its diverse election coverage as well as its legacy in raising standards across the nascent broadcasting industry that has mushroomed in recent years. It is however, premature to determine what its longer term legacy will be in the media sector.

## ■ Conclusion

Support for the media during the election period in Sierra Leone was successful because it built on consensus both in national stakeholder groups and the international community and it managed to react to real problems and offer key solutions together with the media community.

The donor support helped national journalists overcome technical problems in the broadcasting supply chain, both in the content production and distribution spheres, because of this cooperation. This allowed obstacles to be circumvented and permitted journalists, many of them relatively new to the media industry, to cover elections in a diverse and impartial manner.

As a result, voters could access candidate debates and party election broadcasts, as well as impartial news on candidate campaigns. They were able to go to the polling stations well informed because they had access to a range of viewpoints.

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## CASE STUDY 3: SUPPORTING 'EQUITY NEWS' IN CAMBODIA (2003–2012)

### ■ Context

Since the elections in 1993 organized by the United Nations Transitional Authority in Cambodia (UNTAC), regular National Assembly elections have been held in Cambodia every five years.

Despite the consolidation of parliamentary structures and periodic elections, democratic structures and culture remained fragile. The Cambodian People's Party (CPP) has dominated the political space since 1993 in a fragile alliance with the royalist-leaning National United Front for Independent, Neutral, Peaceful and Co-operative Cambodia (FUNCINPEC). The lead up to the 2003 elections was marked by political violence and intimidation, and the election results led to a stalemate lasting more than 10 months.<sup>47</sup>

The media sector was decimated under the Khmer Rouge and information was tightly controlled. Radio UNTAC reintroduced the concept of a free media and information in

Cambodia. Since then, the media sector has grown, but in the lead up to the 2004 elections it was still dominated by the state media, and partisan reporting.<sup>48</sup> The programming of the publicly owned broadcasters, National Television Kampuchea (TVK) and National Radio Kampuchea (RNK), was widely perceived to be imbalanced, lacking independence from the government and rarely covered opposition figures.

This environment limited the ability of voters to receive information and news on candidates and parties contesting elections.

In light of this, UNDP developed the Strengthening Democracy and Electoral Processes Programme (SDEP) in partnership with international development partners and the government. A key component of this programme was to respond to the lack of information on political party platforms and the important issues affecting Cambodia, and was intended to inform the electorate and promote debate and diversity in the media. Some of this support was built around a concept known as Equity News which was done in collaboration with the Ministry of Information.

The original concept for Equity News was devised in advance of elections in 2003 and was outlined in an agreement between UNDP and the TVK, referred to as the 'equity agreement'. This agreement provided the basis for a unique partnership between UNDP and TVK that formed a production unit assigned solely to work on the creation of a series of daily television and radio programmes, which were to air throughout the campaign period.

A second agreement was signed in 2007 to relaunch the Equity concept to cover the 2007 and 2008 elections. During this second period, Equity News extended its repertoire of programming to include broader governance news and current affairs bulletins.

Equity News had a 'window programme' arrangement with TVK and RNK. This guaranteed national airtime on these channels for the programming produced in addition to the support to a production unit inside TVK to produce the Equity News shows.

At the start of its support, UNDP supplied equipment, financial assistance and technical experts who worked alongside national experts, including journalists and editors from the Institute for Media Policy and Civil Society that assisted in designing the initiative.

### ■ Equity News

Equity News was a concept that produced election-related programming for TV and radio to cover candidates and their political parties in an equitable manner and in a context whereby national broadcasters lacked the capacity to cover the elections according to professional standards.

The Equity News team comprised a group of 17 journalists and technical staff from TVK working alongside a small group of international media professionals who provided mentoring and training for the team.

As an independent production unit, Equity News established its own editorial values outlined in a code of conduct, and its staff received some training in basic journalistic standards. However, most of the learning process was on the job, working on the actual production of content for the episodes.

The format and high standards of this model of journalism were applied to its coverage of the elections in 2003, 2007 and 2008, with modifications based on the context of each election.

Small journalistic teams travelled the country following the political party campaigns, and compiled footage and reports to file back to studio editors.

Programmes would then be edited and packaged according to a formula devised to allocate airtime to the political parties. A different formula was used to suit the differing contexts of each election, although all used international standards for allocating time to the programme.

Other innovations included commentary by members of the public (vox pop) and civil society, as well as experts on particular issues surrounding the elections. Vulnerable and disadvantaged groups were included in programmes for the first time, working to break down traditional barriers and expand access of these groups to the media.

Completed programmes were aired on TVK and RNK to the audience across Cambodia.

As it developed, Equity News also established a weekly news and current affairs magazine programme, *Equity Weekly*, which was launched to discuss public policy issues. Areas such as health, education and poverty were all the subject of reports, extending the brand to include regular weekly news and current affairs programmes.

### ■ Key achievements and challenges

In the Cambodian context, the results of the Equity News initiative were groundbreaking. For the first time in Cambodian elections, there was a programme that provided equitable access to candidates and political parties based on international journalistic best practice principles.

Equity built on its successes by extending its brand of high quality current affairs journalism into new areas of reporting. In all, Equity News has produced:

- Fifteen daily news programmes of 10-minute duration that were aired on the national TV channel during the 2003 campaign period.
- Three hundred and forty minutes of original TV on the campaigns of the 2007 commune council elections. This included 12 episodes of 15–23 minutes duration.
- Similar levels of original productions for the national elections in 2008 (25 programmes of 20 minutes duration).
- Coverage of 31 candidate debates for the commune council elections across 10 provinces and 22 debates that were organized for national elections in 2008 by the National Democratic Institute.

- Two hundred and twenty eight episodes of *Equity Weekly* that were aired on TVK to a national audience between May 2007 and March 2012. These covered social and political issues ranging from human rights and poverty to the economy and sports.

All of the Equity programmes were aired during primetime viewing on national TV with a repeat of the evening programme rebroadcast the following morning. Radio broadcasts of a similar format were also produced and the candidate debates were aired across the country by public and private broadcasters.

There were two central activities employed to assist Equity News in maintaining high editorial standards in the team's work.

The first was to design a system that allocated time for the different political parties based on standard practices. This evolved to suit the context of each election.

This allowed professional newsroom practices to be introduced around questions of fairness in allotting time to candidates and political parties.

Although usually reserved for formats such as party election broadcasts, time quotas established clear boundaries for editorial decisions and provided transparent parameters for candidates and political parties prior to production.

The second activity was to introduce professional production methods. This meant the editorial team would work to a production schedule and according to international newsroom values.

Rigorous editorial standards outlined in the code of conduct were maintained, and high quality news collection, journalism, editing and programme production were all achieved through the mix of national and international professionals working together.

As the programme has developed it included long-term planning issues, sponsorship, branding and marketing which are all essential skills for the television industry.

It has also involved moving Equity News on to new media platforms on the Internet to target younger generations of viewers.

Numerous challenges were overcome in the development of Equity. In 2003, the publicly owned broadcaster TVK was widely seen to be dominated by a culture of formal and self-censorship, and many journalists had never been exposed to independent journalism. This resulted in deep mistrust between politicians and journalists.

Many of these obstacles were overcome gradually as stakeholders became more comfortable with the concept and programming of Equity.

Trust was a crucial factor in maintaining support throughout the programme and stakeholder relationships played an important role, at all levels, in ensuring continued commitment to the philosophy of the brand and the concept of Equity.

## ■ The role of partnerships

A key to the partnership between UNDP and TVK were agreements that clearly set out the roles and responsibilities of both partners before each cycle of the Equity programme.

This provided clarity of purpose and ensured that when inevitable problems arose, they could refer to a document outlining their agreements.

Equally, it was important to have senior management and ministries on board with the project. In a polarized environment, a novel programme such as Equity was bound to face some initial resistance. But the fact that senior decision makers in the Ministry of Information supported the programme helped to overcome obstacles.

The partnership that developed in the newsroom between media professionals was also a crucial factor in the success of Equity and the long-term outlook of its design, and a mix of media professionals working alongside one another provided a balance that was central to maintaining standards.

## ■ Legacy and follow up

Building on its success, Equity News began to develop new formats to explore the opportunities of the new media and Internet.

It started to think about how to reach the important youth markets over the Internet using social media tools as well as mobile telephone networks.

This has opened up a whole new dimension in Cambodian television and radio as the audience becomes empowered to participate in discussions on social and political issues that impact on their lives.

From its experience with Equity News, UNDP has also broadened its civic education and public outreach activities and has increasingly recognized the role new media can play in promoting concepts such as civic virtue and social capital. These tools are being employed to encourage demand-side pressures for good governance and accountability that are essential for the future development of Cambodia.

UNDP together with development partners have launched a tailored multimedia and outreach programme to target youth participation. This is to encourage civic engagement of youth groups by utilizing innovative multimedia campaign tools and platforms, and a combination of entertainment and educational content.

## ■ Conclusion

Equity News responded to a real need for impartial and diverse coverage of election campaigns. It also understood early on that the challenge was to professionalize the working structures within a newsroom environment, and to do this it was essential to look beyond less effective models of training for journalists based on classroom formats.

The mentoring and partnering strategy with national and international media professionals working alongside one another provided an environment where standards of journalism were developed and upheld.

The programme was made possible by a consensus between government officials and UNDP. This opened a window in state TV and radio for impartial programming and ensured nationwide reach for the Equity content. The media professionals who worked on producing the programmes and the commitment to air these without editorial interference made the real difference.

However, on March 15 2013, Equity News, which was created in 2003 with the aim of promoting good governance through issues-based news programs and offering a voice to the political opposition on state-run TVK, was permanently halted by the Government of Cambodia and UNDP and will not air ahead of national elections in July 2013. This followed reports of Government and general public criticism to the investigation of politically sensitive issues in Cambodia.

In conclusion, while it was running Equity News provided viewers and listeners with a distinct brand of quality reporting, both during election campaign periods and, news and current affairs. Through it the culture of journalism at Equity News became a landmark in the Cambodian broadcast landscape.

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#### **CASE STUDY 4:**

### **SUPPORTING MEDIA MONITORING AND ENHANCING MEDIA RESPONSIBILITY IN THE GUYANA ELECTIONS (2001–2011)**

#### **Context**

The general elections in 1992, 1997 and 2001 in Guyana were marked by violent incidents between supporters of the two main political parties, which also fell along ethnic lines. The violence would start in the campaign period and peak with the announcement of the results when allegations of fraud and malpractice further heightened societal tensions.

The media was widely considered to have been one of the main contributing factors to the violence and climate of mistrust. According to observers, its use of inflammatory language, rumour and speculations undermined the credibility of the electoral process and, in turn, increased partisan suspicions, fuelling unrest.

In the period leading up to the 2006 elections, similar indications and patterns started to emerge despite the introduction by the independent Guyana Electoral Commission (GECOM) of a range of transparency measures designed to encourage greater confidence of the electorate and parties. However, these measures would be largely ineffective if the media continued its destructive pattern of inflammatory reporting.

It was, therefore, important to address the media's conduct as well as the underlying causes that contributed to the violence that emerged during the electoral periods.

UNDP first supported the creation of a media monitoring unit (MMU) in GECOM which undertook a content analysis of media coverage and monitored candidate access to the media, made a significant impact on the process, shaping the way GECOM would do media monitoring in subsequent elections and encouraging the media to provide more balanced and objective reporting because of its close scrutiny.<sup>49</sup>

The MMU model used was a co-regulatory approach based on standards developed in a code of conduct and engaging with the media as a stakeholder. Given the level of mistrust among participants in the ability of a national monitoring effort to report objectively, the international community also supported an external board of monitors comprised of international journalists. These two monitoring groups worked closely and provided synergies to each other's efforts that increased stakeholder confidence in the impartiality of the overall monitoring effort.



## Code of conduct

A code of conduct was developed for the media for the 2001 elections. Although the media houses that signed the code agreed not to publish or broadcast any reports which would incite ethnic hatred or political disorder without first checking the facts, and to provide equal space and time to political parties, observers found that the balance of media coverage fell short of the code's standards, and was *"unhelpful to the development of democracy in Guyana"*. They felt the nonbinding nature of the code and lack of sanctions for infractions contributed to it not being more widely respected.<sup>50</sup>

Updated codes of conduct were developed for the 2006 and 2011 elections. All codes were drafted according to international standards with provisions to protect freedom of speech and the right of the media to report on the elections without prior restraint. All highlighted the obligations of journalists to refrain from incitement and inaccurate reporting, and to grant minimum space and time to candidates and political parties on an equitable basis. Although the codes still had no enforcement mechanisms other than naming and shaming, observers felt they were better respected in 2006 and 2011 which helped to contribute to the reduction in violence.

## Media monitoring

The three MMUs followed similar structures. They were established within GECOM and had a staff of more than ten. The staff were provided with a training course on media monitoring methodology and the code of conduct principles. International technical experts assisted in developing the methodological guidelines for monitoring, ensuring international standards were employed for the content analysis.

The methodology consisted of measuring the time and space given to political parties and candidates and an assessment of the tone of content to aggregate coverage at regular intervals during the campaign period, measuring balance and impartiality. It also assessed compliance with the code of conduct. Regular reports were published in the public domain to enhance public accountability.

## Independent refereeing panel

The codes of conduct included an Independent Refereeing Panel to assess the media-related complaints. In 2006, Panel members were selected by the local media community and comprised veteran journalists from neighbouring countries. This provided a distance from the local journalist community and at the same time, respected peers oversaw media coverage. The regional connections also promoted a sense of shared regional values in the media community which helped build reciprocal relationships.

## ■ Key achievements and challenges

The MMU was accepted by stakeholders and was generally perceived to be impartial and objective and an important part of holding a credible, inclusive and peaceful election.

The monitoring process, which included the code of conduct and complaint process, brought stakeholders in the media sector together around a common purpose aimed at

contributing to a more fair and peaceful electoral process. By supporting monitoring over several electoral cycles, UNDP and GECOM were able to improve the quality of journalistic reporting and over time reduce the levels of *“wild rumours, inflammatory statements and accusations which in the past only served to fuel flames of fear, doubt, tensions and confusion during election campaigns in the past.”*<sup>51</sup>

The Commonwealth Observer Group concluded that the 2006 election *“was markedly devoid of violence or even threats of disruption and can be rated as one of the calmest, cleanest and most credible in Guyana in recent history [...] the news media played a significant role in fostering the atmosphere for a peaceful campaign, notwithstanding some breaches to the media code of conduct.”*<sup>52</sup>

The self-regulatory approach allowed for a framework of public accountability for the media by enhancing the transparency of its actions without infringing on the sector’s freedom of speech rights. This was especially needed given the absence of legislation to regulate these issues in the broadcast media.

The MMU reports provided GECOM and others with the evidence based data needed to more accurately assess media behaviour, its coverage and the validity of complaints. This in turn helped to increase public confidence in GECOM and the electoral process in general.

Given the high levels of polarisation and distrust, the splitting of the responsibilities for monitoring and the handling of complaints between the two different bodies, and between national and international monitors, increased stakeholder confidence in the monitoring process.

### ■ Legacy and follow up

The MMU was not without controversy. The functioning of the MMU was covered by the international community and was not part of the GECOM budget. The Government of Guyana asked UNDP to end its MMU support in 2010 as it felt it was not needed. As the MMU is dependent on international support, it closed when UNDP assistance ended.

The MMU was reconstituted three months before the 2011 elections with international support. It was seen by observers as an important tool that was still needed, as *“a lack of independence and impartiality in the media remains a problem...”* which contributed to an uneven playing field for the electoral campaign. Observers also noted that *“it is not enough for them (codes of conduct) to be signed by stakeholders. They must also be adhered to.”*<sup>53</sup>

### ■ Conclusion

The MMU experience provides a model for future initiatives in this field with its consensus-driven approach as an important example to wider interventions in conflict resolution.

Monitoring adherence to the code of conduct helped reduce inflammatory language in the media and encouraged a more responsible reporting style, but it had less of an effect on ensuring equitable coverage of candidates and political parties by the major radio and TV broadcasters.

The lack of enforcement powers and legal remedies available to the MMU and GECOM were seen as the key factor for noncompliance. This was particularly noted in the publicly owned media where state-sponsored events tended to dominate the schedule. Similarly, many of the private television and radio operators also failed to provide balance in coverage.

A permanent independent regulatory framework to improve the overall environment for the media sector is, most likely, part of a lasting solution. However, in the absence of such agencies, a structure such as the MMU and refereeing panel, coupled with cooperation between the media industry and the EMB, can help to fill that gap during election periods.

The experience of Guyana shows that self-regulation by the media, based on a code of conduct and enforced through monitoring, can help to improve the media's coverage of elections and lead to a reduction in inflammatory reporting. Although the decrease in election-related violence in 2006 and 2011 cannot be attributed to the improvement in the media's language alone, combined with programmes that address the root causes for political instability and ethnic divisions, it can become a major factor in improving the quality of the electoral process.

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## CASE STUDY 5:

### SUPPORTING PROFESSIONALIZED COMMUNICATIONS WITH THE NEPAL ELECTION COMMISSION (2008)

#### Context

Following the signing of the Comprehensive Peace Accord (CPA) on 21 November 2006, and many years of internal conflict, in 2008 Nepalese voters went to the polls to vote for members of a constituent assembly.

The lack of trust in public institutions was a major challenge to the Election Commission of Nepal and holding elections in such a highly polarized political environment compounded this problem.

Engaging with the media sector was a crucial part of supporting this consensus for the Election Commission. In developing a professional and open approach to the media, viewing them as partners in the electoral process, the EMB added a high degree of transparency to its activities.

The support activities related to the public information unit of the Electoral Assistance Office of the United Nations Mission in Nepal (UNMIN) and UNDP focused on professionalizing the communications of the Election Commission and assisting the media to develop a code of conduct so reporting standards were adhered to according to the laws of Nepal. This entailed two dimensions of intervention.

First, the Election Commission's communication capacity was supported to enhance its ability to deliver effective communications through the mass media.

Second, codes of conduct and other measures such as designing and overseeing a direct access scheme for political parties to access radio and television spots were supported with technical expertise.

## ■ Key achievements and challenges

The Election Commission held frequent press conferences during the campaign period to update stakeholders and the public on preparations. The facilities installed with the support of the programme were widely welcomed by the local media community and this helped to build a professional relationship between the Election Commission and the journalists who were covering the elections.

Communication via press statements and press briefings was clear and open and this helped the media to report more accurately on preparations and communicate events to the wider public as they developed.

To assist the Election Commission in regulating the flow of journalists into sensitive areas, a system of accreditation was introduced, ensuring important access areas remained open to all in the profession so as not to exclude any of the journalistic community from key events.

The system of party election broadcasts, providing direct access for candidates and parties, was designed during three phases of the campaign period calculated on the number of candidates each party had standing for seats based on proportionality.

These slots offered five to twenty minutes radio time in the first phase; two to five minutes television airtime in the second phase; and finally, one minute of radio and television airtime for each party immediately prior to the campaign moratorium, which was established by the code of conduct as 48 hours prior to election day.

The code of conduct was also used as the basis for the media to cover the elections as well as the media monitors of the Press Council of Nepal to assess media coverage, providing accountable and public mechanisms of oversight without interfering with the freedom of the media to cover the elections.

## ■ The role of partnerships

Partnerships are not always natural in highly divided societies such as Nepal. This being the case, the support to the Election Commission to manage its communications sets an example as to the importance that communications can play in a stakeholder model approach to managing elections.

Open and transparent relations were built on a strategy to engage the media in Nepal and to provide them with facilities so that they could file stories from Kathmandu and the headquarters of the Election Commission. This initiative reacted to a real need to engage the media in an electoral process and provided a successful model of how this can be achieved.

## ■ Legacy and follow up

Since 2008, the Election Commission, with support from UNDP and development partners, has built on the concept of stakeholder models and supported the design and construction of a new electoral education and information centre in Kathmandu.

This centre will provide information and learning environments for a broad range of stakeholders including staff, visiting school children, members of the public and researchers. A collection of resources, including voter education and specialized election-related literature, is being made available in a library for people to access.

A further result of the follow up has been a continuation of public outreach activities that attempt to provide a permanent culture of outreach and engagement within the Election Commission. Corporate and learning material has been prepared to build on the stakeholder model which has its roots in Nepal in the 2008 constituent assembly elections.

## ■ Conclusion

Professional communications is a key activity of EMBs that, at times, is neglected as an add-on activity rather than a central deliverable. An important lesson to be learnt from the Nepal experience is that good, well-designed and open media relations can contribute to outcome objectives.

In a highly polarized environment, the Election Commission managed to successfully deliver elections that were accepted by all of the major stakeholders and, more importantly perhaps, the voters. Its active, open and embracing engagement with the media must be seen as a key contributing factor in this success.

The outcome of Nepal's largely peaceful election was welcomed by stakeholders as well as the international community and was widely seen as an important step towards fulfilling one of the major objectives of the CPA and peace process.

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# Annex 2:

## Media monitoring methodology outline

Media monitoring consists of a number of major phases:

- *Project design* will include making key choices that will define the parameters of media monitoring. This stage will include selecting the media and time schedules to be monitored and establishing the overall aims and objectives for the monitoring and the tools for its execution. It will establish what social sciences call the ‘universe’, the boundaries for the monitoring: what will be monitored and for how long. It is during this period that equipment and staffing requirements should also be assessed.
- *Execution* refers to the period when the monitoring is conducted. As a general rule, media monitoring is undertaken during the entire campaign period, the immediate pre-election period and a short period of time following elections and announcement of the results.
- *Reporting periods* should take account of the need to be able to extrapolate trends in the media’s output from a large enough database. The concept of due impartiality may not be revealed within one programme or one day’s content, and therefore a long enough time period is needed to draw consistent trends.

### ■ Unit of analysis

Before operationalizing the content analysis it is essential to develop the categories and definitions for codifying. There are a number of key categories with which monitors will need to be familiar. The first one is the unit of analysis, or actors.

**TABLE 19: UNIT OF ANALYSIS**

Actors (unit of analysis*) * The unit of analysis is the phenomenon to be measured by the content analysis	Examples
<p>If the aim of the monitoring is to assess access to political parties, the unit of analysis should be limited to the actors within this area.</p> <p>The actor is an abstract concept used as a coding tool. As an example, an actor can include any of the adjacent categories of individuals or groups that are related to one of the political parties or independent candidates standing for election.</p>	<p>Actors: A candidate, party member, member of government or parliament and political party.</p> <p>Non-actors: electoral management body, civil service, security agencies.</p>

When an actor either appears or is mentioned on radio or television, then the time allocated to that particular actor is measured and codified. Every clip that is aired on radio and television that mentions a political actor is measured and entered into a coding sheet and subsequently a database, to enable the total time over a particular period to be calculated. It is essential that all coders have an identical understanding of the actors to ensure consistency in the application of the monitoring.

Not all clips will contain coverage of an actor all the time. Some clips will contain two or more actors and it is important for coders to understand that they will need to break down the clip into its constituent parts. Below is a script with a number of fictional actors to illustrate this point.

Once the actors are defined it is also important to be concise about the purpose of the content analysis before drawing up further parameters. At its most basic, an analysis should aim to:

- measure content over a period to assess whether candidates and parties have had reasonable coverage during this period;
- measure the tone of that coverage to assess how impartially the media have covered political actors during this period.

■ **FIGURE 7: IDENTIFYING AN ACTOR IN A CONTENT ANALYSIS**

NEWS SCRIPT	DESCRIPTION	ANALYSIS
	The total length of the news clip is 30 seconds and the script has been read by a newsreader. Each paragraph takes 10 seconds of time.	There are two actors in the script in the left hand column. The first is the people's party that is in government and the second the democratic party. The script refers to the actors in different paragraphs. There is therefore a need for the coder to separate parts of the clip from one another based on the actors.
The government of the people's party has earmarked a considerable sum of the budget for equipment in the emergency care centres.	←	The first entry would be the first paragraph where the actor is the people's party.
Reacting to the announcement the democratic party argued that the allocation of extra funding was welcome, though it did not go far enough in supporting health care in the country.	←	The second entry would be the second paragraph where the actor is the democratic party.
A spokesperson for the hospital board has suggested that there is a strong demand for medical services.	→	There is no political actor in this last paragraph so it is not timed.



## ■ Defining the universe

The second stage in designing the monitoring is to select a sample and to define the universe. With respect to the mandates of EMBs this is most likely to follow the distinctions made between broadcasting and other sections of the media industry based on their different obligations. For broadcasters, quantitative analysis as well as an analysis of any incidents of hate speech to assess output for legal compliance will be required. For newspapers and other forms of media, only an analysis of incidents of any hate speech would be needed to make a comprehensive assessment of compliance to legal obligations as the content of these media is outside the purview of the content analysis required to assess compliance with laws.

A good sample objectively reflects the scope of the broadcasting industry and viewing and listening patterns. Peak time viewing and listening periods are an obvious choice for selection of a sample period. Also, depending on resources, the planning of media monitoring may include selecting a wider time slot for recording, to support a library and archive system that may assist in the adjudication of any complaints that are received regarding media coverage.

As a rule, content will be recorded and all clips involving political actors timed and measured by coders within the sample to assess the access that each candidate and political party receives on each of the channels.

The sample should include clearly defined boundaries for the monitors and recording that have included some of the considerations discussed in Table 20.

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**TABLE 20: KEY FACTORS FOR SELECTION OF SAMPLES**

	Selection of media outlets to be monitored	Range of programmes to be monitored	Time periods to be monitored
Key factors	Legal and non-legal obligations placed on different sections of the media.	All programming should be covered by the monitoring within the sample time periods.  Even in entertainment programming candidates can appear or be discussed and, therefore, all programming should be covered if possible.	Peak time listening and viewing periods.  Sample must be wide enough to extrapolate reliable trends.

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## ■ Execution and coding framework

Once the universe and sample are developed, a further set of parameters can be built into the codification system. Variables such as gender of the actor, his or her political party and the topic associated with the coverage of the actor can all be included in the coding framework, as well as the tone of the presentation of the clip. It is also possible to include

a distinction between the kinds of activity the actor is involved in during this coverage. For example, if the parliament is not dissolved and monitoring is taking place in advance of an election campaign, then actors who are also parliamentarians may be covered in their official capacity as a member of parliament or minister rather than as a campaigner, and this may be codified to give more substance to the data codification. Included below in Table 21 is an example of a simple coding sheet that could be used by coders.

The definitions for the variables used on the monitoring form are provided in Table 21(a) (see page 91).

For each clip of an actor, a monitor would fill in the coding sheet horizontally with the details required and the relevant timings of the coverage. By working horizontally across the coding form and selecting from the vertical choices from the guide above, a monitor can fill in the sheet for each and every individual clip that contains coverage of an actor. Once the sheets have been completed the data can be entered into a database to generate detailed calculations related to the codification of programming and content.

**TABLE 21: EXAMPLE OF RADIO AND TELEVISION COVERAGE CODING FORM**

Date broadcast:			Channel name:				Name of person monitoring:					
Programme name	Programme strand	Start time of clip	Name of actor	Political party	Candidate	Gender of actor	Time of coverage	Topic	Kind of event	Tone	News selection	Notes

**TABLE 21(A): VARIABLE DEFINITIONS FOR COVERAGE FORM**

Variable	Definition and labels
Name of the programme	Title of the television or radio programme monitored. If, for example, the programme is called 'The World Today', the monitor would input 'The World Today'
Programme strand	<ul style="list-style-type: none"> <li>▪ Children</li> <li>▪ Entertainment</li> <li>▪ Factual</li> <li>▪ News bulletin</li> <li>▪ Candidate debate</li> <li>▪ Current affairs</li> <li>▪ Religion</li> <li>▪ Sport</li> <li>▪ Talk show (call in)</li> <li>▪ Commercial advertisement</li> <li>▪ Party election broadcast</li> <li>▪ Other</li> </ul>
Start time	Start time of the clip using 24-hour clock: 00:00-24:00 hours
Actor	Name of the actor
Political party	Name of the political party or the political party the actor is a member of
Candidate	Whether the actor is a candidate directly running for election to public office
Gender	The gender of the actor
Time	The amount of time in exact minutes and seconds of the length of the clip covering the actor
Topic	The topic of the report the actor is associated with during the clip
Kind of event	The kind of event the actor is covered in relation to. This is in respect of actors who may have official functions during a campaign period. If it is an official activity such as meeting of heads of state then this should be included as an official activity.
Tone	Assessment of the tone of content as to whether the reporting or comment is neutral, positive or negative towards the political actor
News selection	Assessment whether the news clip that has been selected is positive, neutral or negative, a reflection of the actor covered. This option is not mandatory and will depend on context.

## ■ Reliability

A key challenge in content analysis is to provide consistency in codification. Careful training of coders will nearly always lead to more consistent and rigorous content analysis results. It is crucial to a good monitoring exercise that the key investigator or team leader trains monitors sufficiently so they codify in identical frameworks. Standardized sheets such as the one above should be employed as well as clear and concise instructions. During a pilot phase that follows the training, any outstanding issues should be fine tuned and adjustments made to the codifying framework.

As part of quality control it is also crucial to build in reliability tests to ensure the monitoring is being carried out according to the framework that has been developed. If content analysis is going to be objective, its boundaries are required to be explained thoroughly to the coders to guarantee that inconsistent understanding is expunged. Consistency checks on data can also be employed to increase reliability during the monitoring. A simple test for inter-coder reliability can be devised by coders cross checking one another's work periodically. It is recommended that once coding is completed, a sample of the data ranging from 10 to 25 percent be verified. This can also be undertaken on a daily basis.

The following is a simple method for calculating reliability devised by Holsti and outlined by Wimmer and Dominick (2003):

$$\text{Reliability} = \frac{2M}{N1+N2}$$

M represents the coding decisions that are agreed upon by two different coders and N1 and N2 the total number of coding decisions by both coders. To assess reliability, 2M (the coding decisions that the two coders have agreed upon) is simply divided by the sum total of all coding decisions of the two coders.

## ■ Monitoring results reporting

For the monitoring to be of value it is essential that it produces reliable results and that they are an accurate reflection of the content of broadcasters. The results of the monitoring can be released at key stages of the electoral process: the immediate pre-campaign period, at junctures within the campaign period and at the end of the campaign period, and these should be consolidated. Reporting must take into account the size of the sample.

## ■ Monitoring for language that goes beyond acceptable limits

A simple form such as the one illustrated in Table 22 (see page 93) can be filled in identifying any incident in the media of speech, including hate speech, which goes beyond acceptable boundaries. This will allow an appropriate assessment of such speech by experts in this field.

The definitions for these variables are provided in Table 22(a) (see page 94).

**TABLE 22: EXAMPLE OF RADIO AND TELEVISION SPEECH CODING FORM**

Date broadcast:			Channel name:				Name of person monitoring:	
Programme name	Programme strand	Start time of clip	Speaker	Organization or political party	Location of speech	Classification of speech	Communities targeted	Notes

**TABLE 22(A): VARIABLE DEFINITIONS FOR SPEECH CODING FORM**

Variable	Definition and labels
Name of the programme	Title of the television or radio programme monitored. If, for example, the programme is called 'The World Today' write in 'The World Today'.
Programme strand	<ul style="list-style-type: none"> <li>▪ Children</li> <li>▪ Entertainment</li> <li>▪ Factual</li> <li>▪ News bulletin</li> <li>▪ Candidate debate</li> <li>▪ Current affairs</li> <li>▪ Religion</li> <li>▪ Sport</li> <li>▪ Talk show (call in)</li> <li>▪ Commercial advertisement</li> <li>▪ Party election broadcast</li> <li>▪ Other</li> </ul>
Start time	Start time of the clip using 24-hour clock: 00:00-24:00 hours
Speaker	The person or group attributed with the statement
Organization or political party	If applicable, the name of the organization or political party that the speaker is a member
Location of speech	Where the offensive speech was recorded
Classification of speech	<ul style="list-style-type: none"> <li>▪ Racial hatred aimed to insult specific groups based on ethnicity, religion or creed</li> <li>▪ Instigating violence against groups</li> <li>▪ Speech aimed to offend an individual or damage reputation</li> <li>▪ Other (describe)</li> </ul>
Target	The individual or groups against whom the offensive speech is directed

Detailed records of any such incident should be recorded by the coders in a format similar to the one included above, and a copy of the offending content maintained in a library. Coders are not responsible for making a final assessment of content, which should be left to experts in the field as to whether it complies or not with the law. Also, while the emphasis on media monitoring in a quantitative sense is on television and radio broadcasters, issues such as hate speech laws apply across all media.

For speech monitoring, a similar process can be applied to newspapers and content delivered over the Internet, though this should be limited and work within the self-regulatory frameworks developed for these separate sections of the media sector. Monitoring can produce a chilling effect on freedom of speech and must always be used sensitively and proportionately. This being said, it can be an important tool to identify hate speech and other forms of offensive speech on television, radio and the Internet, as well as newspapers, and to deal with them in an appropriate and timely manner.

### ■ Self-administered record maintenance by broadcasters

A simple filing system or log book can be devised to be used in the newsroom and should be filled in every time a candidate or a political party is covered in a clip. Editorial teams measure the time afforded a candidate and enter the details into the log book. Table 23 illustrates a simple example of how a log book may be designed.

Once the log book is completed, the entries are signed off by the senior editor in the newsroom and filed away for the duration of the campaign period. There is no need to enter them into a database unless the broadcaster so wishes. This offers an easy and inexpensive method for broadcasters to monitor their own content to ascertain, on a daily basis, the balance in their coverage. It can also be used over longer periods of time to keep records of all coverage of the candidates and political parties.

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**TABLE 23: EXAMPLE OF CANDIDATE AIRTIME FORM**

Date	Name of programme	Name of candidate or party member	Time of clip	Length of clip 00:00	Topic of clip	Type of programme	Request from other candidate

# Annex 3:

## Self-administered record maintenance by broadcasters

An alternative to the kind of quantitative monitoring discussed in this Guide is a less frequently used system that, with the right kind of incentives, can create accountable records of media coverage of candidates and parties. This model relies upon the media to monitor their own coverage and maintain records and logbooks of every clip or piece of content that includes a candidate or political party. Maintaining records of political content by broadcasters can provide a simple and effective transparency mechanism to encourage greater compliance with balance and impartiality rules. It can also enhance newsroom values by highlighting to editors and journalists any imbalance in their coverage.

At its most basic level, every time a candidate or a political party is mentioned or appears on a radio or television channel, the details of the appearance, topic, programme title, time and length are recorded in a simple filing system or log book in the production studio (as illustrated in Table 23, see page 95).

A crucial complementary measure is that candidates and members of the public be allowed access to these logs in order to review them. This allows them to act upon the information and either request greater access to airtime, depending on the amounts of airtime allocated to other candidates, or submit a complaint based on the recorded information to the media oversight body. A common obligation placed on broadcasters is to keep recordings of aired content for a limited period of time following an election campaign period so that the oversight body can request copies if required in support of a complaint.

The advantages and disadvantages to this approach are that it relies on the media institutionalizing this practice in the newsroom and maintaining records. This means that the complications establishing media monitoring and recording units are overcome. However, experience shows that in at least one of the countries where this system has been introduced, the media have largely ignored the practice, which has become ineffective without a commitment to enforcement by the managerial and supervisory structures of broadcasters themselves.



# Annex 4:

## Summary of approaches to restrict freedom of expression online

Restriction on freedom of speech	Summary of approach
Defamation and privacy	<p>The right to protect reputation and privacy apply online and this includes a range of platforms ranging from emails, viral messages, chat rooms to bulletin boards. However, legal academics suggest there is a need to modify traditional patterns of thinking about defamation and privacy online. For instance, the question of context needs to be taken into account. The higher threshold for public figures such as politicians remains appropriate in line with standard principles established for protection of reputation and privacy and a greater degree of exposure should be accepted in these cases.</p> <p>Generally, defamation and privacy will be dealt with by civil actions in the courts. Criminal defamation is widely criticized in the international freedom of speech framework as an inappropriate form of remedy.</p> <p>Self-regulatory structures may also be used for dealing with such incidents with the notice and takedown approach supported with a court order.</p> <p>Restrictions should comply with the three-part test.</p>
National security and public order	<p>The right to protect national security and public order extends to all forms of media including the Internet. This covers content that is a genuine threat to national security either from external parties related to the threat of force or related to internal threats that undermine the state.</p> <p>Judicial structures are generally the appropriate form of intervention in serious matters of national security or public order.</p> <p>Self-regulatory structures may also be used for dealing with such incidents with the notice and takedown approach supported with a court order.</p> <p>Restrictions should comply with the three-part test.</p>
Hate speech	<p>The provisions of Article 20 ICCPR are applicable to online content and hate speech and propaganda. Hate speech, together with protection of minors from harmful content, has been a major driving force behind interventions in Internet content. Although there is different freedom of speech traditions in this regard, there is broad consensus that restricting freedom of speech based on hate speech on the Internet is a legitimate intervention.</p> <p>Self-regulatory structures are the most appropriate mechanisms for dealing with such incidents with the notice and takedown approach supported with a court order. Public order laws are generally used to prosecute hate speech.</p> <p>Restrictions should comply with the three-part test.</p>

# Annex 5:

## Glossary of key terms

Access to information	A part of the rights set out in Article 19 of the ICCPR that acknowledges information held by public and government bodies should be made accessible to the public
Campaign moratorium	The period immediately prior to election day that stipulates a suspension of election campaigning of political parties. Also known as the silence period.
Commercial political advertising	System of access for political parties and candidates to the media based on commercial transactions rates. Generally these are in the form of short advertising spots or formats and are editorially independent of the publisher.
Communications strategy	Strategically planned approach to how and what is communicated by an institution, taking into account core factors to maximize the benefits of communication with stakeholders
Co-regulation	A type of regulation whereby resources of statutory bodies or legislative tools can be employed to either promote satisfactory self-regulation of an industry or support certain areas in that industry in a backstopping role
Corporate reputation	Encapsulates the main attributes associated with an organization by stakeholders and clients
Defamation	An act of publication that damages the reputation of an individual based on false claims
Due impartiality	Journalistic and editorial principle that news stories and programming should represent a diverse range of views to ensure all sides of a story are represented in an even handed manner
Electoral cycle approach	An approach that recognizes the importance of the different elements that constitute a democratic electoral process, relating to activities both during and between elections
Equitable and equal coverage	Equitable coverage requires broadcasters to provide coverage of candidates and political parties according to their significance in society. Equal coverage requires broadcasters to afford similar amounts of time to candidates and political parties.
Footprint	The area of coverage of a television or radio broadcaster
General comment	The general comments of the United Nations Human Rights Committee are authoritative interpretations of the ICCPR articles. General comment 34 deals specifically with freedom of speech.
Hate speech	There is no standard definition for hate speech. Generally, the term refers to speech that disparages and incites hatred or violence against groups based on race or ethnicity.

◀ Internet service provider	A company that provides access to the Internet through hosting services
Media monitoring	Content analysis of media that can be employed to assess media coverage of an event
Notice and takedown	System of self-regulation employed on the Internet and mobile content platforms to report and remove harmful or illegal content
One-to-many communications	Communication medium that facilitates communications from one source to many different recipients simultaneously, including broadcasting
One-to-one communications	Communication medium that delivers communications from one person directly to another, such as a private telephone conversation
Party election broadcast	System of access for political parties and candidates to the media that provides free airtime for them to air campaign messages. Generally, a scheme will be based on a set formula and these can take on a number of formats including short advertising slots and longer discussions of manifestos. The content of these programmes should be editorially independent from the publisher.
Right of reply	The principle that an individual or organization has the right to be able to defend themselves or correct factual errors in a story
Satellite downlink/uplink	A downlink is the location where a satellite signal is received. An uplink is the location from which a satellite signal is sent or generated.
Self-regulation	Model of regulation where an industry provides its own oversight mechanisms based on self-regulatory standards and structures, with no intervention from the authorities
Statutory regulation	Model of regulation based on statutory and regulatory instruments. This can include a statutory independent regulatory authority established to oversee compliance of an industry to statutory provisions.

# Annex 6:

## Mandates of the Special Rapporteurs

Organization	Brief description of mandate
United Nations, Special Rapporteur on Freedom of Opinion and Expression	<p>Mandated under Human Rights Council resolution 7/36 to seek information on any violations to freedom of speech and Article 19. This includes reviews of legal frameworks and any incidents of discrimination and intimidation against any individual seeking to “<i>exercise the right to freedom of opinion and expression.</i>” The Special Rapporteur’s mandate also includes making recommendations on promoting and protecting freedom of speech, conducting fact finding missions and issuing appeals and correspondence to member states. The office provides annual reports to the UN Human Rights Council.</p> <p><b>Freedom of speech instrument:</b> International Covenant on Civil and Political Rights Article 19</p>
African Commission on Human and Peoples’ Rights, Special Rapporteur on Freedom of Expression in Africa	<p>Monitoring compliance to freedom of speech standards outlined in the regional freedom of speech and access to information human rights instruments. Conducts fact finding missions following any reports of violations to these instruments and makes recommendations. The Special Rapporteur also promotes freedom of speech and when required makes public statements, maintains records and submits reports to the African Commission on the status of freedom of speech in Africa.</p> <p><b>Freedom of speech instrument:</b> African Charter on Human and Peoples’ Rights Article 9</p>
Organization of American States, Special Rapporteur on Freedom of Expression	<p>Analyzes complaints related to violations of freedom of speech in the member states referred to it by the Inter-American Commission on Human Rights. The office has powers to make recommendations and publish opinions on cases and works in cooperation with parties to resolve disputes. The office of the Special Rapporteur can request ‘precautionary measures’ from the Commission to protect freedom of speech in situations when it is threatened including in the media. It also assists in making recommendations on draft legislation affecting freedom of speech and publishes regular reports evaluating the quality of freedom of speech in member states.</p> <p><b>Freedom of speech instrument:</b> American Convention on Human Rights Article 13</p>
Organization for Security and Co-operation in Europe Representative on Freedom of the Media	<p>Observes media developments in the 56 participating states and advocates for compliance to freedom of speech commitments as well as reports back to the permanent council of the OSCE on developments in this field. The office also has an early warning function to highlight serious violations to freedom of speech in the participating states and seek resolution. The Special Rapporteur provides regular reports on the quality of freedom of speech in a number of regions and assistance in drafting legislation.</p> <p><b>Freedom of speech instrument:</b> Copenhagen document Article 19(1)</p>

# Annex 7:

## Key international non-governmental organizations working on issues of media freedom

Organization	Brief summary
<b>Non-governmental organizations working in the areas of freedom of speech and international law</b>	
Article 19	<p>Provides global advice and assistance on the development of legislation that is compliant with international freedom of speech human rights standards, highlights violations to freedom of speech and provides training to media professionals and monitoring bodies.</p> <p>Website: <a href="http://www.article19.org">http://www.article19.org</a></p>
Centre for Law and Democracy	<p>Promotes areas in the human rights field related to democracy including freedom of speech, access to information and the rights to freedom of assembly and association. Provides legal assistance in the drafting of laws, research and public outreach to increase awareness of human rights and democracy as well as support to governments to promote better understanding and compliance to human rights standards.</p> <p>Website: <a href="http://www.law-democracy.org">www.law-democracy.org</a></p>
<b>Non-governmental organizations working more broadly in the area of freedom of speech</b>	
Committee to Protect Journalists	<p>The Committee to Protect Journalists (CPJ) is an independent organization that advocates and campaigns for press freedom worldwide. It reports any violations to freedom of speech and by monitoring the freedom of speech situation across the world it is able to highlight violations and organize campaigns to improve these situations. It also provides an early warning system for journalists regarding freedom of speech situations in countries and publishes regular updates and reports.</p> <p>Website: <a href="http://www.cpj.org">http://www.cpj.org</a></p>
Freedom House	<p>Freedom House globally monitors and advocates human rights and democratic change. It is an advocacy and campaign-based organization that works to support democratic change. This organization has developed its own set of tools to assess the quality of human rights in countries including those related to freedom of speech. It publishes analytical reports on freedom of speech in the media throughout the world.</p> <p>Website: <a href="http://www.freedomhouse.org">http://www.freedomhouse.org</a></p>

## ANNEX 7 (CONTINUED)

Organization	Brief summary
Index on Censorship	<p>Index on Censorship is an advocacy and campaign-based organization that challenges threats to freedom of speech and works to ensure a voice for writers, artists and activists. It works to raise awareness of threats and restrictions to freedom of speech around the world, set agendas in the digital media world and campaign for change to ensure freedom of speech is respected.</p> <p>Website: <a href="http://www.indexoncensorship.org">http://www.indexoncensorship.org</a></p>
IFEX Network for Freedom of Expression	<p>IFEX is an independent collection of 90 freedom of expression organizations globally that have created a coordinated mechanism to highlight freedom of expression violations around the world. Activities include information sharing and advocacy for freedom of expression. The IFEX network has a daily alert service reporting any violations of freedom of speech, works to build the capacity of regional and local member organizations to defend freedom of speech and assists with advocacy and campaigns.</p> <p>Website: <a href="http://www.ifex.org">http://www.ifex.org</a></p>
International Federation of Journalists	<p>The International Federation of Journalists (IFJ) has members in over 100 countries worldwide that collectively aim to defend press freedom and social justice through free and independent trade unions of journalists. It is an independent organization that campaigns to promote human rights, democracy and pluralism. The IFJ also has a code of conduct that establishes standards in journalism and a safety fund for journalists and advocates on behalf of journalists in international forums.</p> <p>Website: <a href="http://www.ifj.org">http://www.ifj.org</a></p>
Reporters without Borders	<p>Reporters without Borders highlight issues of media and press freedom violations. It works to defend any journalists who have had their freedom of speech rights violated, gives financial support, if required, to these journalists, campaigns against censorship and laws that undermine freedom of the media, and works to improve the safety of journalists, particularly those in war zones.</p> <p>Website: <a href="http://en.rsf.org">http://en.rsf.org</a></p>

Note: This list is not exhaustive and there are many more organizations working in the field of media freedom that have been omitted due to limitations of space. Inclusion in this list is not in any way an endorsement and is for information purposes only.

# Annex 8:

## The NGO Article 19 proposal for the threshold tests for Article 20 of the ICCPR, 2010

Severity	Most severe and deeply felt form of opprobrium assessed in terms of form, magnitude and means of communications used
Intent	Specific intent
Content	Direct and/or explicit call to commit discrimination, hostility or violence
Extent, in particular the public nature of the speech	Directed at a non-specific audience (general public) or to a number of individuals in a public space
Likelihood or probability of action	Speech very likely to result in criminal action and harm. Must be considered on a case-by-case basis and in light of local culture and specific circumstances
Imminence	How immediate is the harm to occur? Length of time passed between speech and intended acts should not be so long that speaker could not be held responsible for eventual result.
Context	How does it relate to key issues and elements previously highlighted within the social and political context prevalent at the time the speech was made and disseminated?

Source: Article 19, 2010.

These guidelines are perhaps a reflection of the complexity of restrictions to freedom of speech based on interventions related to hate speech and an attempt at consistency in setting the bar between legitimate and illegitimate forms of speech. It stresses intent to incite, though this does not mean that the act incited by hate speech has to be performed.

According to these guidelines, it is enough that potential harm is demonstrated and the mere act of hate speech is committed. The length of time elapsed between the speech and any act of incitement should be such that there is a reasonable link between the two, and the context of the speech incident needs to be taken into consideration in determining the severity of the speech and therefore the appropriate action to be taken.

The test in this framework also relates to the severity of the speech and any harm, frequency and reach of the speech in question. The intention to 'advocate' hatred should be demonstrated and the form of speech taken into consideration in respect of artistic and other works that may not intend to provoke hatred, and actually aim to provoke reaction and thought.

# Annex 9:

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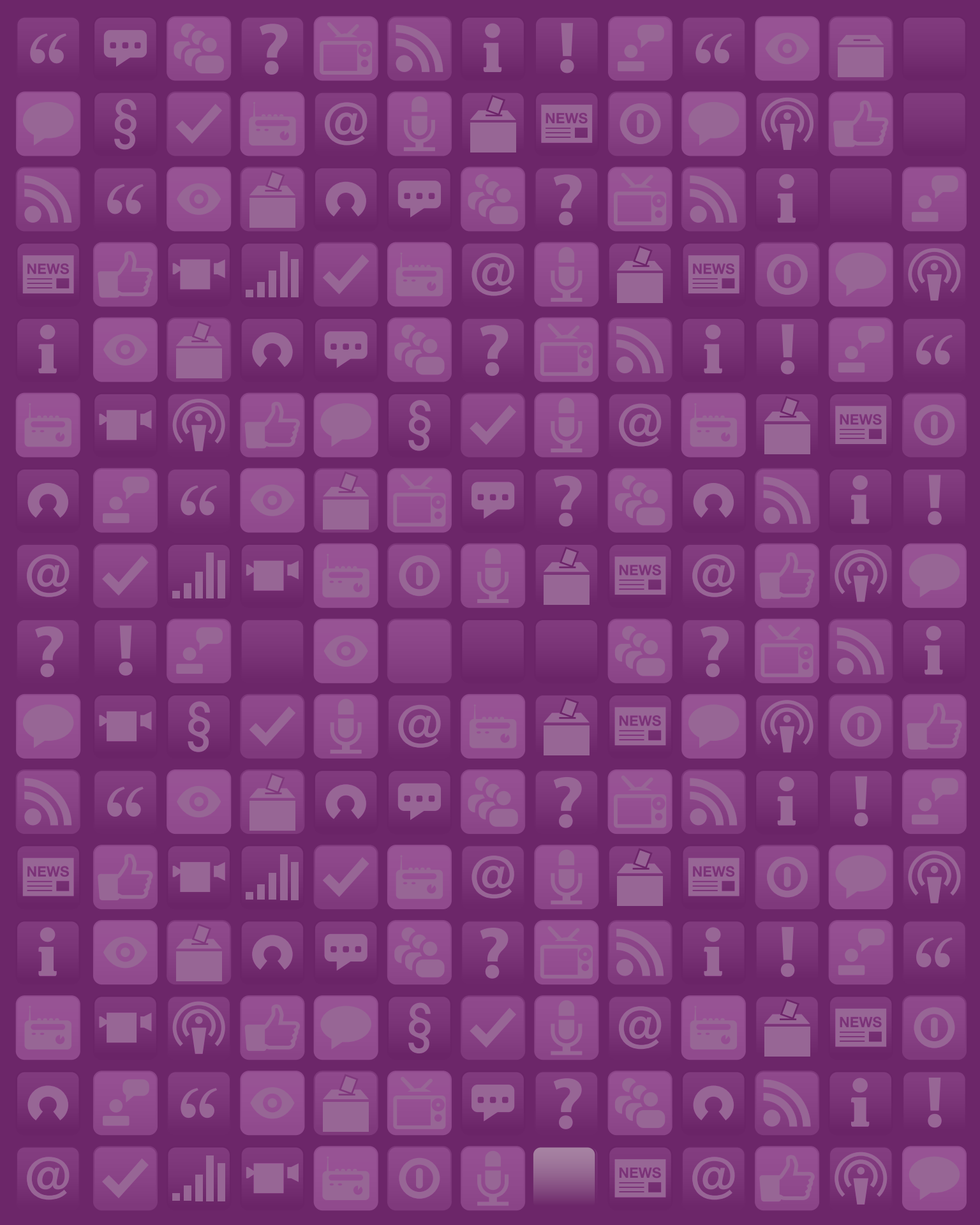
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# Endnotes

- <sup>1</sup> BBC Trust and International IDEA, *Support to Media in Electoral Processes, Workshop Report and Conclusions*, p 8
- <sup>2</sup> United Nations, *ICCPR, Article 19*
- <sup>3</sup> UN Human Rights Committee, *General Comment 34*, paragraph 7, 2011
- <sup>4</sup> UN Human Rights Committee, *General Comment 34*, paragraph 12, 2011
- <sup>5</sup> UN Human Rights Committee, *General Comment 34*, paragraph 13, 2011
- <sup>6</sup> UN Human Rights Committee, *General Comment 25*, paragraph 8, 1996
- <sup>7</sup> United Nations, *ICCPR, Article 19*, Paragraph 3
- <sup>8</sup> This includes the following articles in the ICCPR: Article 9 and right to liberty and security, Article 17 and the right to privacy and reputation, and Article 20, prohibition on incitement to racial or religious hatred.
- <sup>9</sup> The Centre for Law and Democracy, based on existing standards and case law, provided in Mendel, 2010
- <sup>10</sup> Mendel (2006) notes that other instruments in the international human rights framework such as the International Convention on the Elimination of all Forms of Discrimination do not require advocacy, since the simple act of hate speech is enough to be captured under the category of punishable offences in some of these other conventions.
- <sup>11</sup> UN Human Rights Committee, 1988, *General Comment 16*
- <sup>12</sup> United Nations, *ICCPR*, Article 4
- <sup>13</sup> UN Special Rapporteur on Freedom of Opinion and Expression, 2010
- <sup>14</sup> ACE, *Media and Elections*, Section 1.1
- <sup>15</sup> UNDP *Electoral Assistance Implementation Guide*, p 1
- <sup>16</sup> The NGO Article 19, 2003
- <sup>17</sup> UN, ACHPR, OAS and OSCE *Joint Statement, 2007*, paragraph 1
- <sup>18</sup> UN Special Rapporteur on Freedom of Opinion and Expression, 2011
- <sup>19</sup> UNESCO, 2008
- <sup>20</sup> ACE Electoral Knowledge Network
- <sup>21</sup> UN Special Rapporteur on Freedom of Opinion and Expression, paragraph 27, 2011
- <sup>22</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 2011
- <sup>23</sup> UN Special Rapporteur on Freedom of Opinion and Expression, Paragraph 31, 2011
- <sup>24</sup> Barendt, *Freedom of Speech*, 2009
- <sup>25</sup> UN Special Rapporteur on Freedom of Opinion and Expression, 2011
- <sup>26</sup> Mendell, *Mapping Digital Media: Online Media and Defamation*
- <sup>27</sup> United Nations Human Rights Committee, 2011 *General Comment 34*, paragraph 11
- <sup>28</sup> United Nations Human Rights Committee, 2011 *General Comment 34*, paragraph 39
- <sup>29</sup> ACE Electoral Knowledge Network, *Media and Elections, EMB Media Relations topic area*, 2013
- <sup>30</sup> UNDP, *Evaluation of UNDP Contribution to Strengthening Electoral Processes, Systems and Institutions*, p 45
- <sup>31</sup> UNDP, *Electoral Assistance Implementation Guide*, p 15
- <sup>32</sup> Based on Wimmer and Dominick (2003)
- <sup>33</sup> UNDP, *Handbook on Planning, Monitoring and evaluating for Development Results*, 2.4, Finalizing the results framework, Chapter 2, Section 2.4, adapted.
- <sup>34</sup> Cornelissen 2009, p 54
- <sup>35</sup> General comment 34, paragraph 7, 2011, UN Human Rights Committee
- <sup>36</sup> Article 19. 1999. *The Public's Right to Know: Principles on Freedom of Information Legislation*. Accessed 21 March 2012
- <sup>37</sup> Article 19, 1999
- <sup>38</sup> UNDP *Mid-Term Evaluation of the Project Enhancing Legal and Electoral Capacity for Tomorrow (ELECT)*, p 1
- <sup>39</sup> Electoral Law 2004, Article 50, 1 and 2; and Article 51 respectively
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- <sup>51</sup> Commonwealth, , *Report of the Commonwealth Observer Group, Guyana General and Regional Elections 28 August 2006*, p 26
- <sup>52</sup> Ibid.
- <sup>53</sup> Commonwealth Observer Group, *Guyana National and Regional Elections, 2011*, p 30







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