



International standards for the Media

Briefing notes on basic principles of journalism

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ARTICLE 19

6-8 Amwell Street

London EC1R 1UQ

United Kingdom

Tel: +44 20 7278 9292

Fax: +44 20 7278 7660

www.article19.org

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2005 Elections in Iraq: Briefing Notes

Contents

Part I: General Standards

1. International Guarantees of Freedom of Expression
2. Restrictions on Freedom of Expression

Part II: The Media

3. Freedom of Expression and the Media
4. Regulation and Pluralism
5. Guaranteeing Journalists' Safety
6. Regulation of Broadcasting
7. Regulation of the Print Media
8. Regulation of Journalists

Part III: Elections

9. Right to Political Participation and to Vote
10. The Importance of Freedom of Expression during Elections
11. Different Types of Coverage in the Broadcast Media
12. Balance and Impartiality in News and Current Affairs Programming
13. Direct Access to the Media
14. Opinion Polls and the Pre-election Period of Silence
15. The Role of Public Media during Elections
16. Bodies Regulating the Media during Elections
17. Self-regulatory and Professional Approaches
18. Complaints and Redress
19. Role of Media Monitoring





A Palestinian father and son attend a Hamas rally in Gaza during local elections in January 2005. (Reuters/Ahmed Jadallah)



2005 Elections in Iraq: Briefing Note 1

International Guarantees of Freedom of Expression

Internal references:

- ARTICLE 19 Guidelines 1 and 3
- Briefing Notes 2, 3, 4, 6, 7 and 8

The right to freedom of expression is a fundamental human right; fundamental both in the sense of its central importance to human life and dignity but also because it is an essential underpinning of all human rights – including the right to participate in political life – due to its crosscutting nature as well as its role in ensuring effective protection of rights.

The right to freedom of expression is recognised in all of the main international and regional human rights treaties. It was universally declared to be a right of the highest importance in the Universal Declaration of Human Rights, adopted unanimously by the United Nations General Assembly in 1948, just three years after the United Nations was first created. Article 19 of the Universal Declaration states:

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

This right has also been enshrined in the International Covenant on Civil and Political Rights, which Iraq committed itself to respect through ratification more than thirty years ago. All three regional human rights treaties – in Africa, Europe and Latin America – also protect this basic human right. Guarantees of freedom of expression are found in the vast majority of national constitutions, including Iraq's provisional constitution, the Transitional Administrative Law of Iraq.

The right to freedom of expression, as guaranteed under international law, including the right to seek, receive and impart information and ideas, is broad in scope. In terms of imparting information and ideas, it includes the right to express oneself verbally, by word of mouth, by writing, by electronic means or through any other means of communication. It includes the right to express controversial opinions in public; the mere fact that an idea is unpopular cannot justify preventing a person from expressing it.

Freedom of expression is not, however, limited to the right to express oneself. It also includes the right to seek and to receive information from others, including the right to obtain and read newspapers, to listen to broadcasts, to surf the Internet, and, of course, to participate in discussions in public and private as a listener. It is increasingly being recognised that the right also includes the right to access information held by public authorities. As such, it places a duty on these bodies to both disseminate information of key public importance and to respond to request for access to publicly held information.



Freedom of expression is not based on citizenship; for example, one has a right to express oneself in Iraq even if one is not a citizen of Iraq and, on the other hand, Iraqi citizens have the right to express themselves and to receive information when they are abroad. The right is also fully guaranteed regardless of a person's level of education, or his or her race, colour, sex, language, religion, political or other opinion, national or social origin, property, or birth or other status.

Importantly, the right to freedom of expression involves not only negative obligations on the State not to interfere with the flow of information but also positive obligations, for example to create an environment in which a free and independent media can flourish (see Briefing Note 4). During elections, these positive obligations mean that the State is under a duty to ensure that electors are properly informed about how to vote and election issues.

The right to freedom of expression, unlike the right to hold opinions, is, however, not absolute. It is universally recognised that a limited number of key public and private interests may justify restrictions on this key right. These include, among other things, the right to one's reputation and privacy, and the need to maintain public order and national security. International law, however, sets out a strict test which any restrictions on freedom of expression must meet in order to be valid (see Briefing Note 2).

Although the recognition of the right to freedom of expression has been nearly universal, such recognition has not always been accompanied by governmental support and respect. Regimes throughout the world have resorted to illegal

editorial censorship, repressive restrictions on what may be published or broadcast, often accompanied by the threat of imprisonment for breach, and direct State control over the media. Even in established democracies, there is usually some tension between the right to freedom of expression, and the media in particular, and the authorities, who often dislike being criticised. For this reason, the right must be vigilantly protected and defended, not the least, by journalists and others working in the media.

In transitional democracies, laws from previous repressive regimes, which breach the right to freedom of expression, are often still in force. An important and urgent task facing the transitional leaders is reform of these laws. This should be a key priority as part of the move towards a democratic form of government.



2005 Elections in Iraq: Briefing Note 2

Restrictions on Freedom of Expression

Internal references:

- ARTICLE 19 Guidelines 3, 5 and 6
- Briefing Notes 14, 17 and 18

While the right to freedom of expression is universally recognised as one of fundamental importance, it is also accepted that the right is not absolute. Certain overriding public and private interests may justify restricting or interfering with the right. A key question here is when and under what circumstances freedom of expression may be interfered with.

International law, as reflected in international treaties and their authoritative interpretation by international courts and others, recognises that interference with freedom of expression is an extremely serious matter, and that, therefore, such interference is permissible only in certain very narrow circumstances. Article 19(3) of the International Covenant on Civil and Political Rights, which Iraq has ratified, sets out the test for assessing the legitimacy of restrictions on freedom of expression:

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

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

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

This test includes three parts: first, the interference must be in accordance with a law or regulation; second, the legally sanctioned restriction must protect or promote an aim deemed legitimate in international law; and third, the restriction must be necessary for the protection or promotion of the legitimate aim.

The first condition means, first and foremost, that the interference cannot be merely the result of the whim of an official. There must actually be an enacted law or regulation which the official is applying. In other words, only restrictions which have been officially and formally recognised by those entrusted with law-making capacity may be legitimate. In addition, not all “laws” or “regulations” meet the standard of ‘provided by law’. The law must meet certain standards of clarity and precision so that it is clear in advance exactly what expressions are prohibited. Vaguely worded edicts with potentially very broad application will not meet this standard and are thus illegitimate restrictions on freedom of expression. For example, a prohibition on “displeasing the government” would fail the test on account of vagueness.

The second condition, that a restriction must serve a legitimate aim, is not open-ended. The list of legitimate aims provided in Article 19(3) of the International Covenant on Civil and Political Rights is exclusive and governments may not add to these. This includes only the



following legitimate aims: respect for the rights and reputations of others, and protection of national security, public order (*ordre public*), public health or morals.

Finally, even if a restriction is in accordance with an acceptably clear law and if it is in the service of a legitimate aim, it will breach the right to freedom of expression unless it is necessary for the protection of that legitimate aim. This has a number of implications. First, if another measure which is less intrusive to a person's right to free expression would accomplish the same goal, the restriction is not in fact necessary. For example, shutting down a newspaper for defamation is excessive; a retraction, or perhaps a combination of a retraction and a warning or a modest fine, would adequately protect the defamed person's reputation.

Second, the restriction must impair the right as little as possible and, in particular, not restrict legitimate speech (known as overbreadth). In protecting national security, for example, it is not acceptable to ban all discussion about a country's military forces. In applying this, courts have recognised that there may be practical limits on how finely honed and precise a legal measure can be. But subject only to such practical limits, restrictions must not be overbroad.

Third, the impact of restrictions must be proportionate in the sense that the harm to freedom of expression must not outweigh the benefits in terms of the interest protected. A restriction which provided limited protection to reputation but which seriously undermined freedom of expression would not pass muster. This again is uncontroversial. A democratic society depends on the free flow of information

and ideas and it is only when the overall public interest is served by limiting that flow that such a limitation can be justified. This implies that the benefits of any restriction must outweigh the costs for it to be justified.

In applying this test and, in particular, the third part on necessity, courts and others should take into account all of the circumstances at the time the restriction is applied. A restriction in favour of national security, for example, which is justifiable in times of war, may not be legitimate in peacetime.



2005 Elections in Iraq: Briefing Note 3

Freedom of Expression and the Media

Internal references:

- ARTICLE 19 Guideline 1
- Briefing Notes 1, 10, 17

It is recognised everywhere that the media play a vital role in protecting democracy and its institutions. The media are in the best position to investigate and report on issues of public importance and interest, particularly relating to the political process, the conduct of public officials, the positions taken by government with respect to international issues, corruption, mismanagement or dishonesty in government, and human rights issues, among other things. Indeed, it is fair to say that the vast majority of individuals gain almost all of their knowledge about matters outside of their own day-to-day lives from the media.

This role of the media is just important during elections as at other times. Citizens rely heavily on information imparted by the media to learn about the competing candidates, the leading issues being contested and the platforms of the various parties. Without the media, making the most basic decisions relating to the democratic process – deciding which candidate to vote for is an obvious example – would be immeasurably more difficult.

It is, therefore, of paramount importance that the freedom of expression of the media be ensured and protected. Media actors, such as journalists and editors, should be able to exercise their own right to freedom of expression. Even more important, however, is the right of others to seek and to receive information, a vital component of freedom of expression, which depends upon respect for the freedom of expression of the media.

The importance of freedom of the media has been stressed by international courts. The UN Human Rights Committee, the official body responsible for overseeing compliance by States with their obligations under the International Covenant on Civil and Political Rights, a legally binding treaty ratified by Iraq, has stressed the importance of a free media to the political process:

[T]he 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. (General Comment 25, issued 12 July 1996)

The Inter-American Court of Human Rights has stated: “*It is the mass media that make the exercise of freedom of expression a reality.*” (Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.)

And, as the European Court of Human Rights has noted, the media as a whole



merit special protection, in part because of their role in making public “*information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog.’*” (*Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63)

It follows from these general principles that the government and public figures must tolerate a great degree of criticism from the media. The media’s role as watchdog in a democratic society implies that it has a duty to scrutinise the actions of those in power, as well as those up for election, and, where the media themselves consider this appropriate, to criticise them. It is illegitimate for governments to clamp down on media because they criticise or because the government does not like the particular form in which the media choose to express their criticism (for example, through satirical cartoons). Governments must also expect and accept the use of strong language and a degree of exaggeration, particularly in relation to topics of acute public interest.

In a strong democracy, the media should themselves play a key role in protecting freedom of expression. Indeed, if the media are not active in this regard, freedom of expression will be very much at risk. The media can do this in a number of ways. These include a strong commitment to publishing material of public interest, highlighting instances where freedom of expression has been restricted, and challenging laws restricting freedom of expression in solidarity with others.



2005 Elections in Iraq: Briefing Note 4

Regulation and Pluralism

Internal references:

- **ARTICLE 19** Guideline 1, 9 and 10
- Briefing Notes 6 and 7

The concept of pluralism is fundamental to both democracy and to the protection of the right to freedom of expression. A society where only a privileged few can exercise their right to freedom of expression effectively is not a free society. Such a situation would breach not only the rights of those who are denied the ability to exercise their right to freedom of expression through the media but also the right of society as a whole to be well-informed and to receive information from a variety of sources. Indeed, the right of the public to receive a diversity of information and ideas is central to the right of freedom of expression.

For these reasons, international human rights law strongly not only promotes the idea of pluralism in relation to the right to freedom of expression but also requires States to take positive steps to safeguard it. In an often-repeated statement, the European Court of Human Rights has stated:

The Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive. Such an undertak-

ing cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor. (*Informationsverein Lentia and others v. Austria*, 28 October 1993, Application No. 13914/88, para. 38)

The protection of pluralism provides one of the main justifications for media regulation, particularly in relationship to the broadcast media. It is internationally accepted that States should regulate the airwaves to provide for a plurality of voices. State monopolies are incompatible with the right of the public to receive information from a variety of sources. Simply allowing private broadcasters, however, is not enough. States should take steps to avoid excessive concentration of media ownership and to ensure that licensing systems for broadcasters promote a diversity of content on the airwaves. Indeed, contribution to diversity should be an explicit licensing criterion.

With regard to the print media, it is internationally accepted that the best way to encourage pluralism is by abolishing legal and administrative measures that inhibit the establishment of newspapers and magazines. In particular, there should be no licensing systems and, where a registration scheme exists, it should not impose onerous obligations on applicants (see Briefing Note 7: Print Media Regulation). These differences from broadcast regulation are justified by a number of considerations including public ownership of the airwaves, the dominant and intrusive nature of broadcasting and the relatively low cost of setting up print media outlets.



Regulatory measures may not be sufficient to ensure pluralism in the media and, where this is the case, States should also consider providing support measures. These may include general measures aimed at the media sector as a whole, such as the abolition of taxes on print paper and other materials necessary for operating media outlets, as well as direct support for certain types of media outlets, for example those that serve small or minority sections of the audience. If direct support measures are provided, States should take care to ensure that this takes place on the basis of objective and non-partisan criteria, within a framework of transparent procedures and subject to independent control.



2005 Elections in Iraq: Briefing Note 5

Guaranteeing Journalists' Safety

Internal references:

- ARTICLE 19 Guideline 4
- Briefing Note 1

The guarantee of freedom of expression places a strong obligation on States to protect the safety of all media workers within their jurisdiction, as well as equipment necessary for their work. States are under a general duty to protect all of their citizens but the special duty in relation to journalists is due to the fact that violence is sometimes used as a tactic to silence critical voices.

In 2000, the special mandates for protecting freedom of expression of the United Nations, the Organisation of American States and the Organisation on Security and Cooperation in Europe adopted a Joint Declaration stating:

Censorship by killing

Attacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public.

States are under an obligation to take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, investigating such attacks when they do occur, bringing those responsible to justice and compensating victims.

States are under three distinct duties:

- 1) Never to take part in, or to sanction or condone attacks against the media or media facilities.
- 2) To take effective action to prevent violent attacks from taking place.
- 3) Where violations have taken place, to investigate the attack, to bring the guilty parties to justice and to provide an effective remedy to the victim.

The first duty not only means that States have to refrain from taking part in attacks; it also means that they should never condone attacks, even indirectly. Indirect support may, for example, be provided where senior political figures make excessively critical statements about the media or make serious and unfounded allegations against the media. Indeed, in certain circumstances, the authorities might even have an obligation to speak out publicly in response, for example, to particularly egregious attacks on the media.

The second duty requires States to take all reasonable steps possible to prevent violent attacks, particularly when these are foreseeable. Adequate security measures should be taken to protect the media and States may have to deploy extra police or security forces, and implement protective measures, when they become aware of



a real and immediate risk. During demonstrations or riots, for example, both events which the media are under a professional duty to report on, police and other security forces should see it as part of their role to protect media workers. On the other hand, because of their role in reporting events to the public, the State should never curtail journalists' access to a specific area "for their own safety". Such measures are often abused to close troubled areas off from the outside world.

The third duty, to investigate any occurrences of violence, is clear-cut under international law. Failure by the State to take any steps in the face of attacks is a serious matter. The Inter-American Commission on Human Rights, in the context of frequent and serious attacks against journalists in the Americas, has stated:

A State's refusal to conduct a full investigation of the murder of a journalist is particularly serious because of its impact on society ... the impunity of any of the parties responsible for an act of aggression against a reporter – the most serious of which is assuredly deprivation of the right to life – or against any person engaged in the activity of public expression of information or ideas, constitutes an incentive for all violators of human rights. At the same time, the murder of a journalist clearly has a 'chilling effect', most notably on other journalists but also on ordinary citizens, as it instils the fear of denouncing any and all kinds of offences, abuses or illegal acts. (Miranda v. Mexico, 13 April 1999, Report No. 5/99, Case No. 11.739, para. 52)

Finally, where journalists go missing, States are under an obligation to take steps to trace them, ascertain their fate, provide appropriate

assistance and, where possible, facilitate their return to their families.



2005 Elections in Iraq: Briefing Note 6

Regulation of Broadcasting

Internal references:

- ARTICLE 19 Guidelines 3, 5 and 6
- Briefing Notes 1, 2 and 4

It is almost universally accepted that some regulation of broadcasters is necessary. Such regulation is justified on a number of grounds, including the need to ensure order as well as pluralism in the airwaves, the fact that the airwaves are a limited public resource, the dominant and intrusive nature of broadcasting and the prohibitive costs of establishing a major broadcast outlet. At the same time, it is essential that regulation not be able to be abused to silence those critical of the government or who otherwise attract official censure. This would seriously undermine freedom of expression, as well as free and fair elections.

The primary means used to balance these competing demands is to allocate regulatory powers in relation to broadcasting to an administrative body which is independent of government. Further protection for freedom of expression is achieved by circumscribing the powers of this body very carefully, so that it may not abuse those powers, and by subjecting its decisions to judicial review.

Perfect independence is difficult to achieve but a number of measures can help prevent

political or other interference in the work of the regulatory body. At the very minimum, it is essential that it is not part of a ministry or government department but that it is a separately constituted body, answerable to the public through an independent governing board. Appointments to the governing board of the regulatory body should be made in a manner that promotes its independence. The process for appointments should be transparent and fair, and allow for participation by civil society and the general public. Appointments should not be made by a single person or party but rather in a manner which ensures a broad range of input. Once appointed, members should be protected against removal outside of certain extreme circumstances.

In most democratic countries, broadcast regulators undertake two key functions. First, broadcasters are required to obtain a license to operate and the regulator is responsible for overseeing the licensing process. Second, regulators are normally responsible for taking the lead in developing, and for applying, codes of broadcasting conduct which normally deal with a range of content and broadcast practice issues.

Licensing is a complex matter and regulators may need to take a variety of factors into consideration as part of licensing processes. In many countries, broadcast regulators work with those responsible for general telecommunications to develop an overall plan for the use of the radio spectrum. Such a plan should include an allocation of frequencies to broadcasting and, within that allocation, sub-allocation of frequencies to different broadcasting uses (radio, television, national and local stations, public,



commercial and community broadcasting). The idea is to ensure that frequency allocation takes place on a planned basis, not just to the highest bidder.

A key goal of licensing should be to ensure diversity in the airwaves, in terms of both ownership and content. This should, therefore, be an explicit licensing criterion. The licensing process should be fair and transparent. In most countries, calls for licence applications are issued from time-to-time and interested parties can compete for the licences being offered. Anyone who has been refused a licence should be able to apply to the courts for judicial review of this decision.

Broadcasters should not be subject to special criminal or civil restrictions relating to programme content, over and above rules of general application. At the same time, it is common for regulators to develop administrative codes of conduct governing broadcast content and practice. Such codes should be developed in close consultation with broadcasters and other interested stakeholders and should be clear and detailed.

Broadcasting codes normally deal with a wide range of issues programming issues such as accuracy, privacy, treatment of sensitive themes such as bereavement, sex and violence, and the like. They may also address practice issues such as using subterfuge to obtain information, the conduct of interviews and payment for information. Such codes may well set out rules of some relevance to elections, including the requirement of balance and impartiality, and perhaps also the rules relating to direct access programming.

Finally, such codes may deal with issues relating to advertisements.

The primary goal of the system should be to set standards rather than to punish broadcasters for breach. In line with this, sanctions, at least in the first instance, should normally aim at reforming behaviour, and so consist of a warning or requirement to broadcast a message recognising the breach. More serious sanctions, such as fines or suspensions, should be applied only in the context of repeated and serious breaches, where other sanctions have failed to redress the problem.

In Iraq, the National Communications and Media Commission has been established by the Coalition Provisional Authority as the regulatory body for broadcasting. It has as its main task the fostering of plurality and competition among Iraq's communications and media services.



2005 Elections in Iraq: Briefing Note 7

Regulation of the Print Media

Internal references:

- ARTICLE 19 Guidelines 3 and 6
- Briefing Notes 1 and 2

It is generally recognised that it is not necessary to set up specific regulatory regimes which govern the print media. This is based on the idea that, unlike broadcasters, who make use of a limited and public resource, there are no natural constraints on the number of print media outlets in operation and so no need for particular regulation. However, media are subject to same laws that apply to everyone – for example, defamation laws – and, if they have been set up as corporations, or as non-profit bodies, then they are subject to the same rules that apply to other corporations or non-profit bodies.

Under international law, a licensing system for the print media, which involves the possibility of being refused a licence and thereby being prohibited from publishing, is not legitimate. The right to freedom of expression includes the right to establish a print media outlet and, as noted, natural constraints cannot justify limiting this right.

On the other hand, technical registration requirements for the print media, properly defined as mass circulation, periodical publications, do

not, per se, breach the guarantee of freedom of expression as long as they meet the following conditions:

- 1) there is no discretion to refuse registration, once the requisite information has been provided;
- 2) the system does not impose substantive conditions upon the media;
- 3) the system is not excessively onerous; and
- 4) the system is administered by a body which is independent of government.

However, registration of the print media is unnecessary and may be abused, and, as a result, many countries do not require it. In 2003, the special mandates on protecting freedom of expression at the United Nations, the Organisation for Security and Cooperation in Europe and the Organisation of American States adopted a Joint Declaration in which they warn against the abuse of these systems:

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. (Adopted 18 December 2003)

In many democratic countries, the print media has instituted its own self-regulatory systems for promoting better professional standards (see Briefing Note 17: Self-regulatory and Professional Approaches). Such systems can help promote better standards and staff off attempts to regulate these matters by law.





2005 Elections in Iraq: Briefing Note 8

Regulation of Journalists

Internal references:

- > **ARTICLE 19** Guideline 3
- > Briefing Notes 1 and 2

The right to freedom of expression applies to everyone and through any media. As such, it clearly protects the right of everyone to engage in journalism. As regards regulation of journalists, a main issue is that of licensing of journalists, addressed below. Accreditation, which raises rather different issues, is also addressed below.

Licensing systems for journalists, whereby individuals are prohibited from practising journalism unless they are licensed, are, therefore, illegitimate. In this respect journalism is unlike other professions, such as the medical profession, for which licensing is accepted.

The Inter-American Court of Human Rights dealt extensively with these issues in a reference to it regarding a law from Costa Rica that required journalists to meet certain professional standards and be a member of a professional association ('colegio'). In a judgment that has since been recognised as standard-setting, the Court made it clear everyone has a right to practise journalism:

...[J]ournalism is the primary and principal manifestation of freedom of expression and thought. For that reason, because it is

linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional "colegio." (Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No.5, para. 71)

International law also establishes that general conditions on who may practise journalism, such as the requirement of a university degree or a certain age, are not legitimate. Such conditions place unjustifiable restrictions on the right of everyone to express themselves through the print media, regardless of age or any other status. Furthermore, experience in many countries demonstrates that such conditions do not promote any useful social goal; in particular, they are not effective in promoting more professional journalism.

It is similarly illegitimate to require journalists to be members of a certain professional body. In many cases, this is simply an indirect way of limiting access to the profession, and is hence just as illegitimate as more direct forms of this prohibition. In other cases, this is a way of seeking to control journalists and to censure those who have in some way annoyed the authorities. All journalists enjoy the right to freedom of association which means that they have the right to join associations of their own choosing, or not to join associations if they do not wish to.



The Inter-American Court addressed both of these points in the Costa Rica reference:

It follows from what has been said that a law licensing journalists, which does not allow those who are not members of the "colegio" to practice journalism and limits access to the "colegio" to university graduates who have specialized in certain fields, is not compatible with the Convention. Such a law would ... be in violation not only the right of each individual to seek and impart information and ideas through any means of his choice, but also the right of the public at large to receive information without any interference. (Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No.5, para. 81)

It may be noted that accreditation of journalists raises very different issues from licensing, although the two are sometimes confused. Accreditation refers to a system whereby certain journalists are given privileged access to certain functions or locations which are not otherwise fully open to the public, normally due to space limitations but sometimes also for security or other reasons. A classical example is accreditation to Parliament, whereby journalists are often guaranteed access and sometimes even granted special privileges or even offices. The rationale for such privileged treatment is that the media are the eyes and ears of the public, ensuring that everyone hears about matters of public interest.

Accreditation schemes should not be able to be used as a means to interfere with or influence the work of journalists, or to exclude journalists

known to be critical. Therefore, they should be overseen by an independent body and accreditation decisions should be based on objective criteria. The overall aim of any accreditation scheme should be to accredit as broad a range of journalists as possible, subject only to space constraints. Where space is an issue, considerations such as the number of journalists from a particular media that already have been granted accreditation may be a consideration. Accreditation schemes should never impose substantive restrictions on journalists.



2005 Elections in Iraq: Briefing Note 9

The Right to Political Participation and to Vote

Internal references:

- > ARTICLE 19 Guidelines 1, 2
- > Briefing Note 1

In a democracy, the will of the people is the basis of the government's authority. But in a modern State, with millions of inhabitants, it is not practicable to consult citizens on an individual basis about each and every decision. The solution is for the people to appoint, through elections, a government to take decisions on their behalf, in accordance with its election promises. Elections must be regular, so that the people can replace representatives who are not performing as expected. It is the responsibility of the State to organise the elections and to ensure that every citizen has a chance to cast a ballot. It is also the responsibility of the State to ensure that the elections are free and fair, in the sense that citizens are free and able to make informed electoral choices.

The Right to Vote

The right of every citizen to vote in elections is guaranteed under the International Covenant on Civil and Political Rights (ICCPR), a United Nations treaty to which Iraq is a party. The ICCPR establishes a number of standards to

which States must conform in the conduct of their elections.

The main requirement imposed by the ICCPR is that the elections must in principle be open to all citizens, including those born or living outside the country. The government may impose limitations on the right to vote, but such limitations should be provided by law and based on objective and reasonable grounds. For example, prohibiting those below a certain age from voting is considered to be objective and reasonable, and thus permissible. Certain limitations, namely those based on national origin, language, race, religion, sex, education, property, political opinion or other states, are not permissible under any circumstances.

Under the ICCPR, the authorities are not only bound to recognise the right of all citizens to vote; they must also to take active steps to ensure that all persons entitled to vote are in practice able to exercise that right. This means, for example, that the authorities should take effective measures to ensure that all prospective voters are aware of the procedures governing voter registration and the elections themselves. Furthermore, procedures should not be so complicated as effectively to disenfranchise potential voters. Information and materials about voting should be available in the various minority languages, and there should be assistance for people with specific difficulties, such as the disabled, illiterates and the homeless.

Effective exercise of the right to vote also depends on the electorate being sufficiently knowledgeable about the competing candidates and issues to be able to make an informed choice. The authorities are, to this end, obliged to take



measures to ensure that a free and adequate flow of information is available to voters.

As required, the Iraqi Electoral Law (Coalition Provisional Authority Order No. 96) permits all Iraqi citizens to vote, provided they were born on or before 31 December 1986. Furthermore, anyone entitled to reclaim Iraqi citizenship or otherwise eligible for Iraqi citizenship may also vote. This includes, in particular, those persons whose Iraqi citizenship was withdrawn in the past for political, religious, racial, or sectarian reasons, and those persons whose citizenship was withdrawn because they acquired another citizenship. All voters are required to register in advance, according to procedures issued by the Independent Electoral Commission of Iraq.

A particular concern for the upcoming elections in Iraq is the security situation. Although the authorities may never be able to guarantee complete safety, the government is obliged under the ICCPR to do all that it can to provide security around polling stations, and to prevent intimidation or coercion of voters.

The Right to Political Participation

In order for a democracy to be effective, the electorate must have a free and broad choice of candidates to vote for at elections. Therefore, the ICCPR prohibits all unreasonable restrictions on the right to stand for election. The permissible restrictions on the right to stand for election are similar, though not identical, to those on the right to vote. The law may, for example, set a minimum age for candidates in

the election. No candidates may be excluded by reason of their education, residence, descent or political affiliation. However, individuals holding certain positions may be prohibited from running for offices, if their election would raise a conflict of interest. For example, a judge may be prevented from running for an office, if part of his or her task as a judge is to decide disputes involving the holder of the office to which he or she aspires to be elected.

International law permits the State to require registration of candidates in the elections; however, the registration procedure should not entail conditions, deadlines or fees which are unduly difficult to meet, or which give some candidates an unfair advantage over others. Moreover, individuals who decide to stand for office should not suffer any disadvantage or discrimination as a result.

In Iraq, pursuant to the Political Parties and Entities Law (Coalition Provisional Authority Order No. 97) only individuals eligible to vote, that is, those born after 31 December 1986, may run for office. The same Law requires any individual, group of individuals or organisation wishing to stand for election to be certified as a political entity by the Independent Electoral Commission of Iraq.



2005: Elections in Iraq: Briefing Note 10

The Importance of Freedom of Expression during Elections

Internal references:

- ARTICLE 19 Guideline 1
- Briefing Notes 1, 3 and 9

In a democracy, citizens appoint the government of their choice by voting for their preferred suitable candidates at periodic elections. In order to exercise this power freely and wisely, the electorate needs accurate information about the various candidates, their programs and backgrounds, as well as about the key issues being debated during the election. As the UN Human Rights Committee has emphasised:

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 ... This implies that citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members. (*Gauthier v. Canada*, 7 April 1999, Communication No. 633/1995)

The provision of such information in the run-up to elections involves rights and duties for three

groups: the political parties and candidates competing for elected positions, the news media and, of course, the electorate.

Political Parties and the Right to Freedom of Expression

The right to freedom of expression, as guaranteed, among others, in the International Covenant on Civil and Political Rights (ICCPR), a treaty to which Iraq is a party, protects the right of all political parties to convey their messages to the public through any media of their choosing.

The ability of political parties to communicate with potential voters is paramount for the proper functioning of a democracy. Voters will be reluctant to vote for a party if they are not sure what it stands for. Although voters may formally be able to vote for the party of their choice, such choice is illusory in the absence of adequate information about the competing parties and candidates. If only one or two parties have been able to communicate their views, they will inevitably dominate the election.

Some political parties will inevitably be in a better position to spread their message than others; a party founded by a well-known person or bankrolled by rich backers will more easily attract attention than a party which lacks funds or fame. Such natural advantages are simply part of politics. However, under the ICCPR, the State is under an obligation to ensure that all parties have at least some access to means of communicating with the public. Any obstacles other than the natural disadvantages which flow from being a small party should be removed. For example, conditions such as having a certain number of



members should not be required before parties may spread leaflets or hold public meetings. In addition, the State must take certain positive steps to ensure that these parties have some access to the means of mass communication. Typically, a publicly owned or funded broadcaster is under an obligation to provide a measure of free airtime to all competing parties.

The News Media and the Right to Freedom of Expression

As the principal means through which the public gathers information, the news media play a central role in the electoral process. News media afford potential voters the opportunity to learn about the various parties and their programmes and they influence the outcome of elections by exposing hidden flaws and strengths of the candidates.

Given their tremendous importance, there is always a risk that news journalists will be subjected to pressure to report in a certain way. In order to assist them in the task of reporting as objectively and honestly as possible, journalists enjoy rights protected under the ICCPR (see Briefing Note 1). In particular, journalists have a right freely to seek, receive and impart information in any way they see fit, without interference from the government, subject only to legitimate restrictions, for example appropriate defamation laws. The authorities may not harass, intimidate or otherwise obstruct journalists in their work, or impose censorship, or, conversely, offer rewards for reporting in a certain way. Journalists should be permitted to cover all political parties, including those most

hostile to the government and they should not suffer any adverse consequences for publishing material which places the government in a negative light.

The Voters' Right to Freedom of Information

The ICCPR confers on the general public the right to receive information. Combined with the right to participate in public affairs, also guaranteed under the ICCPR, this means that the public has a right to receive complete and unbiased information about the contending parties. The main responsibility to ensure that this right is respected lies with the State, which has an obligation to create an environment within which the media – who are the primary source of information – are able freely to go about their job of informing the public. Publicly owned or funded media also have an important role to play in informing the public, and are under an obligation to do so, and without political bias.

At the same time, the media are under a professional obligation to inform the public fully and truthfully about all matters relevant to the elections. This leaves journalists with the occasionally difficult task of reporting on all the parties in a neutral way, however laudable or repugnant a particular candidate may seem to the journalist in question. However, in a democracy, the power belongs to the whole population, not just the educated or informed elite. It is imperative that journalists do not substitute their own judgment for that of the electorate by reporting more extensively and favourably on one party than another.



2005 Elections in Iraq: Briefing Note II

Different Types of Coverage in the Broadcast Media

Internal references:

- ARTICLE 19 Guidelines 8, 9, 10 and 11
- Briefing Notes 2, 6, 7, 12 and 13

As part of their duty to inform the public, broadcasters normally offer different types of programming during elections. Broadly speaking, these may be classified into three different categories:

- 1) news and current affairs programming;
- 2) interviews, debates and other 'special information' programming; and
- 3) direct access programming.

These three types of programming each serve a different purpose and require a distinct approach. The key aim for broadcasters should be to ensure that the public receive sufficient information, from a variety of sources and perspectives, to enable them to cast an informed vote.

1. News and Current Affairs

News and current affairs programmes are an essential means by which the general public receives political information, during, as well as

outside of, election periods. During elections, this form of programming assumes a particular importance. Broadcasters in many established democracies are under a strict obligation to be balanced and impartial in their coverage of election events, and may not express a particular preference for one candidate or party, or discriminate against a particular party or candidate.

Although the principle of balance is a simple one, its implementation in the context of news reporting during elections can be problematic, given that the governing party normally receives considerable attention by virtue of its role in running the country. The ARTICLE 19 Guidelines suggest that measures should be taken to counterbalance this, for example by granting a right of reply to opposing parties or implementing an 'equal time' rule to ensure that coverage is also provided to parties outside of government.

Furthermore, given the potential for editorial opinions to be confused with news, the ARTICLE 19 Guidelines recommend that publicly owned or funded media should not broadcast any editorial opinions at all in relation to the elections. Indeed, where a private broadcaster presents his or her own views, these should be clearly identified as such and should not be aired during news programmes.

2. Special Information Programmes

News and current affairs programmes are rarely enough, by themselves, to inform the



public sufficiently about electoral issues. The media should, therefore, broadcast additional programming, which focuses specifically on the policies and programmes under discussion during the election. Such programming should provide an opportunity for party leaders and other candidates to be questioned directly, and for candidates to debate with each other. A number of formats – including candidate debates, panels of candidates and interviews – may be used for this purpose.

Taking into account general obligations of balance and impartiality, broadcasters have a degree of editorial discretion in deciding how to structure such programmes. A fair and transparent formula must be used in deciding whom to invite and non-candidate participants should be carefully selected so as to ensure balance. Special information programmes should be aired, among other times, during prime viewing or listening hours.

3. Direct Access Programmes

So-called 'direct access' programming includes the allocation of airtime to political parties and candidates to broadcast short clips produced by themselves, as well as paid advertising. Direct access programming is important as it is one of the very few ways political parties and candidates can present themselves directly to the public (see Briefing Note 13). Public service broadcasters are often required to provide free airtime and production support (see Briefing Note 15) to facilitate these programmes.

Given that broadcasters have no editorial control over the content of direct access slots, their liability for such programmes should be limited. A number of other rules govern the allocation and timing of these programmes (see Briefing Note 13).



2005 Elections in Iraq: Briefing Note 12

Balance and Impartiality in News and Current Affairs Programming

Internal references:

- ARTICLE 19 Guidelines 2 and 8
- Briefing Notes 6, 11 and 15

News and current affairs programming has been identified by a range of actors, including international courts and tribunals, as one of the most important forms of broadcast programming. Even outside of election periods, news and current affairs programmes are the key way in which most people receive political, as well as other, information.

During elections, this form of programming assumes particular importance. Publicly owned or funded media are under a strict obligation to be neutral and impartial in their coverage of election events, and should never express a particular preference for one candidate or party, discriminate against a particular party or candidate, or in any other way be biased. In many countries, private broadcasters are also placed under an obligation to be politically neutral and such obligations may be a legitimate restriction on freedom of expression. It may be noted, however, that a similar restriction on the print media would be very hard to justify given the different nature of this medium.

While the principle is a simple one, its implementation can be problematic. The experience of broadcasting in transitional democracies, and indeed of certain established democracies, shows that news programmes are the broadcast category where the principles of balance and fairness are most often breached. The reality is that politicians belonging to a ruling party or coalition often receive considerable attention by virtue of their role in running the country. This role not only naturally generates news stories but also allows them more scope to manoeuvre themselves into situations where they are likely to receive news coverage.

Given this, and because of the importance of the broadcast media during elections, and because of the high credibility the public attaches to news and current affairs programmes, broadcasters should make every effort to ensure that they meet their obligations of balance and impartiality. In particular, an effort should be made to counterbalance disproportionate coverage of incumbent candidates. The ARTICLE 19 Guidelines suggest that measures that could be taken include granting a right of reply to other candidates where an incumbent has received news coverage, or implementing an 'equal time' rule, whereby the main competing parties get equal news and current affairs coverage during the election period.

Given the potential for editorial opinions to be confused with news, the ARTICLE 19 Guidelines recommend that publicly owned or funded media should not broadcast any editorial opinions at all in relation to the elections. Private broadcasters should make a commitment to clearly identify any editorial opinions and not to broadcast them during news programmes.



The Code for Media during Elections issued by the Iraq National Communications and Media Commission is broadly in line with these requirements. It places four specific obligations on all broadcasters:

- 1) to ensure that their reports are balanced and unbiased;
- 2) to treat all political entities and coalitions and their candidates fairly and impartially;
- 3) to make an effort to hear and represent all sides of a political question or controversy;
- 4) to distinguish opinion from fact so as not to ensure that the former is not confused with news coverage or current affairs programming



2005 Elections in Iraq: Briefing Note 13

Direct Access to the Media

Internal references:

- > ARTICLE 19 Guidelines 6 and 9
- > Briefing Notes 6, 7, 11, 15 and 18

Some form of direct access to the media is essential for parties and candidates in elections to get their message across. While news and other programming should provide voters with information about parties' policies and platforms, direct access to the media allows them to speak in their own voices. Providing direct access to the media thus makes an invaluable contribution to the ability of parties and candidates to communicate their messages to the public. In practice, direct access of some sort is available to parties and candidates in all established democracies.

Direct access refers broadly to two distinct types of media content:

- 1) a system of entitlement to short slots in the broadcast media, allocated among the various competing political parties and candidates; and
- 2) paid advertising, in both print and broadcast media.

I. Direct Access Slots

The vast majority of the established democracies have instituted systems whereby a set amount of direct access slots are allocated among the various competing parties and candidates. The idea is to allow parties to speak directly to the electorate. Publicly owned or funded broadcasters are normally the main means for disseminating these slots but, in some countries, private broadcasters are also required to provide them.

The exact allocation of airtime among the parties and candidates may be calculated in different ways. In most countries with an established track record of elections, airtime is allocated in proportion to the previous performance of the party in question, as determined, for example, by the number of votes obtained in the last election. In other countries, free airtime is distributed evenly among all political parties and candidates. This approach is probably more appropriate for Iraq, where no track record exists. Whichever formula is adopted, the rules for allocation should be precise, fair and transparent.

Broadcasters have no editorial control over the content of direct access slots and, as a result, should not normally be held liable for their content. They may, however, be held liable where the media outlet concerned has taken specific steps to adopt or endorse the statements. Furthermore, this waiver of liability may not extend to extreme cases where the statements constitute clear and direct incitement to violence and the media outlet had an adequate opportunity to prevent their dissemination (see Briefing Note 18). This departure from the normal rules of liability is justified by the short



duration of campaign periods and the fundamental importance to free and fair elections of unfettered political debate. This limitation of liability does not, however, relieve political parties and other speakers themselves from liability for their statements.

Provision of these slots for free is recommended as it helps promote a level playing field during elections (paid political advertising, discussed below, is available only in the measure that parties and candidates can afford it). In many countries, public service, or publicly owned or funded, broadcasters are required not only to provide airtime free of charge but also to make available production facilities to assist political parties and candidates to prepare their clips (see Briefing Note 15).

It is important that the amount of time allocated for direct access slots is sufficient for parties and candidates to communicate their messages, and for the public to be informed about the issues, party positions, and the qualifications and characters of the candidates. The timing of the slots should be designed to maximise the number of viewers/listeners; wherever possible slots should be broadcast during prime time and they should never be broadcast at times when it is inconvenient for large segments of the population to view or hear them, for example past midnight.

In Iraq, the Code for Media during Elections issued by the National Communications and Media Commission requires the Iraq Media Network to provide direct access slots. The IMN may set rules and regulations with regard to these slots, so long as these are fairly applied to all.

2. Advertising

Paid political advertising is another way parties and candidates can gain direct access to the electorate. Political advertising in the broadcast media is controversial. Many European countries ban political advertising in the broadcast media – while others place stringent fetters on it – on the grounds that it advantages richer parties and candidates. A Recommendation calls on European States to consider introducing limitations on political advertising.¹ In the United States, on the other hand, a ban, or even restrictions, on political advertising would be deemed contrary to the right of freedom of expression.

Under international law, a ban on advertising in the broadcast media is considered to be legitimate. A complete ban in the print media would probably breach the right to freedom of expression, although some restrictions may be acceptable.

Where paid political advertising is allowed, it should be available on equal conditions and rates of payment to all contending parties.

In Iraq, the Code for Media during Elections issued by the National Communications and Media Commission allows paid political advertisements in any media, except for those that are part of the Iraq Media Network. It requires all political advertisements to be clearly identified as such, to be distinguishable from other programming, and to identify their sponsors.



2005 Elections in Iraq: Briefing Note 14

Opinion Polls and the pre-Election Period of Silence

Internal references:

- ARTICLE 19 Guidelines 12
- Briefing Notes 6, 7 and 8

Both the contenders for election and the general public are inevitably curious to know in advance what the outcome of the elections is likely to be. Various organisations and individuals may conduct opinion polls, where they question a substantial number of people in order to assess the popularity of the competing candidates. The results of such opinion polls are of interest to journalists, who may wish to publish them for the benefit of their audience. However, opinion polls can have a distorting impact on voting patterns, especially if they are not properly understood by the public. As part of their duty to inform voters, journalists should make sure that reporting on poll results is accompanied by an explanation of their significance.

How Opinion Polls are Conducted

Opinion polls may be conducted and/or commissioned by all sorts of different actors including academic institutes, commercial businesses, political parties, non-governmental organisations, government agencies and the news media.

Polls may be conducted either during an election campaign or at the end of the campaign, in the form of exit polls of voters on election day. The main methods used for conducting polls are face-to-face interviews (in the street or in people's homes), or interviews by mail, telephone or over the Internet.

Interpreting Opinion Polls

Not all opinion polls results are equally reliable. An opinion poll conducted by an impartial organisation will in many cases be more trustworthy than, for example, a poll conducted by the government or a political party. But even a poll conducted by a disinterested organisation should be treated with caution and can be substantially wrong or misleading. There are three main factors affecting the reliability of opinion poll results.

The first factor is the wording of the question posed to the public. For example, the question: "who do you plan to vote for?" may not be answered by all people in the same way as "who do you think should win the elections?" The former question would probably lead to a more reliable prediction of the election outcome.

The second factor affecting the reliability of polls is what is known as the 'margin of error'. If you ask only three people about their voting intentions, it is fairly obvious that the result will be extremely unreliable. Asking a hundred people will generate a better result and asking a thousand an even better one. There is, in other words, a positive relationship between the number of people interviewed and the reliability of the opinion poll. This can be calculated



mathematically and expressed as a percentage called the margin of error. The lower the margin of error, the better, as it is a measurement of the unreliability of the poll.

The third source of error in opinion polls is the selection of respondents. Although questioning more people reduces the margin of error, it does not always guarantee an accurate result because there may be skews in the sample of people interviewed. For example, an opinion poll conducted by Internet may be distorted because poor people are less likely to have Internet access than rich people. If poor people tend to vote for different parties than rich people, an Internet poll will overstate the popularity of the parties favoured by rich people.

Explaining the Significance of Polls

The publication of opinion poll results can have a significant impact on voting patterns. For example, voters may conclude that their favoured party is going to lose the elections anyway and decide not to bother to vote. Or voters may assume that a favoured party is already doing well in the polls and decide instead to vote for another party, which they would also like to see represented. To avoid a situation where people change their voting intentions on the basis of potentially wrong information, journalists who publish opinion poll results should explain their significance, and the risk of error, to the public.

The Code for Media during Elections, issued by the National Communications and Media

Commission, lists which information should accompany any published opinion poll result. The publisher should identify: 1) the organisation that conducted the poll; 2) the organisation or party that commissioned the poll and paid for it; 3) the methodology used; 4) the sample size (i.e. the number of people interviewed); 5) the margin of error; and 6) the dates on which the poll was conducted. In addition, it should be explained that the poll reflects public opinion only at the time it was taken.

Media Silence Period

Out of concern for the impact that they have on voter behaviour, several countries prohibit the publication of opinion polls during the last few days preceding elections. As is further discussed in Briefing Note 3, such limitations on the freedom of information may be permissible under international law.

The Iraqi authorities have not imposed any restriction on the publication of poll results. However, for a period commencing 48 hours before the opening of polling stations and lasting until the end of the voting, the media are not permitted to cover the political campaigns of any parties or candidates. This prohibition does not cover matters unrelated to the promotion of any particular contender in the election, such as party-neutral information about political issues or information aimed at educating voters.



2005 Elections in Iraq: Briefing Note 15

The Role of Public Media during Elections

Internal references:

- ARTICLE 19 Guidelines 1, 2, 8, 9, 10, 11 and 12
- Briefing Notes 12 and 13

It is internationally recognised that publicly owned or funded media have a special role to play during elections and have certain obligations over and above those that can be imposed on other media. This is particularly the case for public broadcasters.

Public broadcasters

As publicly-funded entities, public broadcasters should observe strict requirements of neutrality and should never endorse any particular candidate, party or programme (see Briefing Note 12: Balance and Impartiality). If they do carry political advertisements, these should be offered to all parties/candidates on a strictly equal basis.

Furthermore, because of their legal obligation to inform and educate the public, public broadcasters have a duty to ensure that the public is informed about the election. This includes practical matters, such as where and how to vote, to register to vote and to verify proper registration, the secrecy of the ballot (and thus safety from retaliation), the importance of voting,

and the functions of the offices that are under contention. It also includes important political issues and the political programmes and viewpoints of the various parties and candidates up for election. In broadcasting this material, it is crucial that public broadcasters not voice any opinions of their own, or endorse the ideas of any particular candidate.

The extent of this duty depends on a number of factors, including the level of awareness of the electorate as well as the availability of this information through other sources, such as private media and other public initiatives (for example posters, pamphlets or public newspapers (see below)). The duty flows from the need to inform the public; where other sources of information do not adequately inform or reach the public, public broadcasters will need to step in and provide this information.

One way to discharge this duty is to provide airtime for direct access programming to enable those up for election to present short 'clips' on themselves and their political views to the public. Public broadcasters are often required to provide this airtime free of charge and at an hour when a large audience will be reached, and to allocate studio time and technical resources, within the limits of their capacity, to facilitate the production of these clips (see Briefing Note 13: Direct Access to the Media). The rules relating to this programming, for example concerning the length and timing of clips, should apply fairly to all candidates.

A second way to discharge this duty is through news and current affairs programmes, as well as special information programmes, such as political debates and political discussion pro-



grammes. These are of particular importance where sufficient information on election issues is not forthcoming from other sources. Such programmes should involve all political parties or candidates up for election in the station's geographic area of coverage. The rules and regulations governing this programming, for example regarding the length of the contribution of each participant, should be applied fairly and equally so as to avoid granting privileged treatment to any one participant. The host of a discussion programme or debate should ensure that the questions asked are balanced and should not extend privileged treatment to anyone.

Finally, also pursuant to the duty to inform, public broadcasters have a particular obligation ensure that their programming reaches all groups in society, including ethnic, religious or linguistic minorities. This is of particular relevance to those public broadcasters stations whose geographic coverage includes such groups. For some stations, it may be necessary to broadcast information in a minority language.

In Iraq, the Iraq Media Network (IMN) has been designated as the national public broadcaster. The IMN consists of a network of radio and television stations which together reach the entire population of the country. The Code for Media during Elections issued by the National Communications and Media Commission (NCCMC) imposes a number of particular obligations on all broadcasters that form part of the Iraq Media Network. These generally reflect the international law and best practice obligations outlined above.

Public newspapers

Publicly owned or funded newspapers are, like their broadcasting counterparts, also covered by a strict obligation of neutrality. Like public broadcasters, they should never endorse any particular candidate, party or programme, and they should provide access to advertising on a strictly equal basis.

These newspapers also have an important role to play in voter education. While they are not normally required to provide free space in their columns for political parties and candidates, they should provide relevant information to ensure that the public is informed about practical matters and all political issues of relevance to the election.

In Iraq, Al Sabaah newspaper is part of the Iraq Media Network. The Code for Media during Elections, issued by the NCCMC, imposes a strict obligation of neutrality upon Al Sabaah and prohibits it from carrying political advertisements. It does not impose specific voter education obligations on Al Sabaah.



2005 Elections in Iraq: Briefing Note 16

Bodies Regulating the Media During Elections

Internal references:

- **ARTICLE 19** Guidelines 13 and 14
- Briefing Notes 6, 7, 17 and 18

The existence of an oversight body to monitor and regulate the media during elections is crucial to the integrity of the elections process and to respect in practice the rules relating to election media coverage. The jurisdiction and powers of such a body should be clearly delineated and, where a self-regulatory mechanism exists, efforts should be made to ensure that the two mechanisms play a supportive, as opposed to conflicting, role. In particular, an official oversight body should not seek to duplicate or replace functions already being provided in an effective manner by a self-regulatory body.

Both the guarantee of freedom of expression and the need to safeguard the integrity of the elections process dictate that any oversight body with powers over the media be independent. The independence of the body should be formally guaranteed and, at least as importantly, should be protected through the manner in which members are appointed. The appointments process should be fair and transparent, should allow for input and participation by civil society, and should not be dominated by any particular political party. Once appointed, the tenure of members should be protected and

any reimbursement should be according to set schedules and criteria.

In different countries, different bodies perform the role of ensuring implementation of the rules relating to media election coverage. In many countries, it is the general broadcast regulator which performs this function; this is the case in Iraq, where it is the National Communication and Media Commission which is responsible for ensuring adherence to the election rules. Otherwise, a properly constituted election commission or specially created body may carry out these supervisory functions.

An official oversight body is particularly important in relation to the broadcast media, given the detailed rules that govern election coverage by broadcasters. The body should undertake a range of monitoring and regulatory functions in relation to broadcasters, including by playing a general role in monitoring broadcasts to assess their compliance with laws and regulations. These should include allocating time for direct access programmes, making sure broadcast election coverage respects obligations of balance and impartiality and ensuring that publicly owned or funded broadcasters adequately satisfy the public's right to be informed about election-related matters.

The official oversight body should also have the power to hear and decide on complaints from media outlets, the public, and political parties and candidates regarding breach of election-related rules. In particular, it should have the power to order a right of reply if it finds that rights have been harmed by the publication of inaccurate or misleading information. Given the relatively brief duration of an election campaign,

