

10. Media access and freedom of expression

The legal framework should ensure that all political parties and candidates have access to the media and are treated equitably by media owned or controlled by the state, and that no unreasonable limitations are placed on the right of political parties and candidates to free expression during election campaigns.

Some political parties own newspapers and even television channels, which are used as party mouthpieces to communicate the campaign issues of the party to the electorate. Where there are private rather than government-owned media the question of equitable access for parties and candidates arises and may need to be regulated. The acceptable international standard in this respect is that of non-discrimination. If political advertising is allowed, private media should charge the same rates to all parties and candidates without any discrimination. Some jurisdictions ban political advertising altogether; in other jurisdictions such a ban has been interpreted as an unjustified breach of the right of free speech and expression. Nevertheless, paid political advertising should always be identified as such and should not be disguised as news or editorial coverage.

Equitable treatment and access

The legislative framework for elections should ensure that all political parties and candidates have access to the media and *equitable* treatment in media owned or controlled by the state, so that the general public can be informed of the political platforms, views and goals of all parties and candidates in a fair and unbiased manner. This includes all forms of print and electronic media.

A country's legal framework should contain the following guarantees:

- That the political parties and candidates are given the necessary legal guarantees to enable them to compete with each other on a basis of equitable treatment before the law and by the state authorities; and
- That no legal or administrative obstacle stands in the way of access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.

There should be clear legal provision for the timely implementation of these guarantees before and during elections. The process for establishing a formula or schedule for access and equitable treatment in the media for a given election should be unambiguous and capable of objective application.

The legal framework should ensure equitable access for political parties and candidates on state-owned radio and television during the election campaign period by providing that all parties are guaranteed a certain amount of broadcasting time according to a defined formula. For example, 50 percent of the time could be allocated equally among all parties with the remaining 50 percent differentially allocated on the basis of the number of votes obtained by a party in the last election or in proportion to its seats in the previous legislature.

Access to the media by parties and candidates may be regulated in a country's law covering the media or public information rather than in the election law. Media law may only provide general statements on access and delegate authority for promulgating the specifics of implementation to an administrative body such as a specialized media commission.

The standard of equitable treatment and access to the media are undermi-

ned if state-owned or controlled media are able to favour a political party or candidate in supposed news coverage, political coverage, forums or editorials. Biased coverage or preferential treatment in State media should be prohibited by law, with penalties or corrective mechanisms defined.

Limitations on free expression

A democratic election is not possible where the legal framework for elections inhibits or dampens campaign speeches and free expression. Too often, the legal framework in a country in transition to democracy censors campaign speeches by imposing sanctions against public speaking that "defames" or "insults" another person or political rival, which could include criticism of the government, a government official or a candidate in the electoral campaign. Such provisions may not only be found in the electoral code or media (public information) law but may also be included in general constitutional, civil, criminal and administrative laws. Any law regulating defamation of character or reputation should be limited to the civil law. Any provision, regardless of the legal source, that imposes disqualification or imprisonment or monetary fines for criticizing or "defaming" the government, another candidate or a political party may be subject to abuse.

Limitations on free expression violate international human rights law. Additionally, such provisions may violate free speech guarantees found in a country's constitution. These freedoms need consideration when reviewing provisions that permit censorship of candidates, supporters or the media, and are contrary both to international standards and often to the domestic law of the country. The only exception may be the specific prohibition of inflammatory speech calculated to incite violence or hatred against another person or group.

The conduct of opinion polls and exit polls -- especially when their findings can influence the judgement of a part of the electorate which has not yet gone to the polls -- is another area for consideration. Some jurisdictions consider any limitation on opinion polls or exit polls as an infringement of freedom of speech and expression, and hence unacceptable. On the other

hand, some jurisdictions permit publication of such findings only after the polling is completed.

Any legal provisions placing unreasonable or disproportionate limitations on free speech and expression during election campaigns should be amended or deleted from the legal framework.

Checklist

- Does the legal framework for elections ensure that all political parties and candidates are provided access to the media and equitable treatment in media owned or controlled by the state?
- Does the legal framework establish a formula for media access and equitable treatment that is fair, understandable and capable of objective application?
- Does the legal framework provide for free expression during election campaigns?
- Does the legal framework provide that no party or candidate shall be discriminated against in terms of access to the media or, where paid advertising is permitted, in being overcharged for political advertising?
- Does the legal framework ensure that the ruling party does not get disproportionately large media coverage in the guise of news or editorial coverage?