



**GUIDELINES
FOR
MEDIA COVERAGE
OF THE
PALESTINIAN
ELECTIONS**

January 1996

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INTRODUCTION TO THE GUIDELINES

Free and fair elections are conditional upon full enjoyment of the fundamental right to freedom of expression and information during the election campaign period. These Guidelines, prepared by AL-HAQ and ARTICLE 19 for the first Palestinian elections to be held on 20 January 1996, derive from the standards set by international law and practice for fair coverage by government media of an election campaign period.¹

The Guidelines address the obligations of the Palestinian Authority and the media it runs or controls, particularly the Palestinian Broadcasting Corporation. They are also applicable to the Israeli public service media which broadcast for a Palestinian audience (the Arabic language programmes of *Kol Israel* and the first TV Channel). These media, and the authorities under whose auspices they operate, have a particular duty under international law to ensure that media practice during the election campaign is impartial and non-discriminatory.

The Guidelines are directly applicable to the government broadcast media during this and subsequent elections. They are, however, also relevant to government-controlled printed media during election periods, and to government media coverage of political matters during non-campaign periods.

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

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

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

¹ See ARTICLE 19's 1994 publication *Guidelines for Election Broadcasting in Transitional Democracies*.

Private media do not carry the same responsibilities under international law as do government media. Nevertheless, private media are encouraged to comply with these Guidelines as a matter of professional responsibility. Such voluntary implementation of the Guidelines, including for example, the requirement of balanced and impartial news coverage and the granting of access to candidates on a non-discriminatory basis, would certainly enhance the fairness of an election and of the democratic process during non-election periods.

AL-HAQ and ARTICLE 19 are making these Guidelines available, *inter alia*, to the Palestinian Authority, the Israeli authorities, the media (governmental and non-governmental), and national and international observers. We call on the principles contained in these guidelines to be upheld and respected during this election campaign. We also urge the newly elected Palestinian Council to be guided by these standards and to ensure respect for freedom of expression in the future.

We gratefully acknowledge the support of CEBEMO, the Netherlands in the production of this publication.

AL-HAQ
ARTICLE 19

8 January 1996

THE GUIDELINES IN SUMMARY

The Guidelines address the duty of government media:

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

They further address the obligation of governments:

- to abolish any laws that restrict freedom of expression in breach of international law and standards (Guideline 3)
- to make special efforts to investigate threats and physical attacks on media personnel or offices and to bring those responsible to justice (Guideline 4);
- not to censor election programmes in any way (Guideline 5)
- to establish or designate an independent, impartial body to monitor and regulate election broadcasts (Guideline 13), and
- to ensure that decisions of this body are subject to judicial review on an expedited basis (Guideline 14).

The Guidelines strongly recommend:

- that the media be exempted from legal liability for unlawful statements made during election broadcasts by candidates or party spokespersons (Guideline 6)
- that parties and candidates be granted the opportunity to reply to or correct injurious statements or criticisms directed against them (Guideline 7)
- that government media should broadcast candidate forums and interview programmes (Guideline 19), and

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

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

Guideline 1: During the period preceding an election, government media have a duty to inform the public about the political parties, candidates, campaign issues, voting processes, and other matters relevant to the election.

Commentary: The government's obligation to ensure that "Every citizen shall have the right and opportunity, without ... distinction [of any kind] ... to vote ... at genuine ... elections" obliges the government to ensure that electors have the necessary information to register and vote, and to make informed choices regarding matters that are the subject of election.² This obligation is particularly heavy where the electorate have not had substantial prior experience of voting in free and fair elections. The right to vote "without distinction of any kind" encompasses the right of people who are illiterate or only minimally educated to have access to the necessary information. The government is obliged to broadcast election programmes unless it undertakes other information initiatives that would reach as many people as would broadcasting.

The media are charged with the dual public functions of "impart[ing] information and ideas on matters of public interest" and acting as watchdog of government.³ No individual media organ is obliged to fulfill these twin functions; the obligation, instead, rests with the government to ensure that the press, radio and television collectively are able to do so. However, if the government controls or substantially supports a broadcast station, that station is obliged to fulfill these public functions.

² Art. 25 of the International Covenant, and language (in brackets) from Art. 2.

³ European Court of Human Rights in several judgments.

DUTY OF BALANCE AND IMPARTIALITY

Guideline 2: Government media have a duty to be balanced and impartial in their election reporting and not to discriminate against any political party or candidate in granting access to air time.

Guideline 2.1: This duty requires that news, interview and information programmes must not be biased in favour of, or against, any party or candidate.

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

Consistent with the international standards, guidelines of UN election missions provide that "[i]n the case of government-owned media, it is customary that equal access, both in terms of timing and length of broadcast, should be given to the competing sides" and that "the information provided by the government-owned media should not be biased."⁴ Where there are no distinct parties, independent candidates, or groupings of candidates, should be provided with access and unbiased coverage.

⁴ *Report of the UN Technical Team on the Conduct of a Free and Fair Referendum on the issue of a One Party Multiparty System in Malawi* (15-21 Nov. 1992), para. 27. See also UN Transitional Authority in Cambodia, *Media Guidelines for Cambodia* (1992).

SPECIAL OBLIGATIONS WHERE LAWS RESTRICTING FREEDOM OF EXPRESSION ARE IN FORCE

Guideline 3: Any laws that restrict freedom of expression in breach of international law and standards must be abolished.

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

At the very least such legislation should be suspended and, as the UN has noted, "it is most often necessary for a clear statement to be issued from the highest level of Government to the implementing agencies concerned, drawing attention to the new standards in force for the election."⁵

⁵ UN Technical Team on the Malawi Referendum, *ibid.* at para. 28.

GOVERNMENT OBLIGATION TO PUNISH ATTACKS AGAINST MEDIA PERSONNEL AND PROPERTY

Guideline 4: The Government must make special efforts to investigate all acts, or threatened acts, of violence, intimidation or harassment directed against media personnel, or any act of destruction of the property or premises of a media outlet, particularly where there is any reason to believe that the act was motivated by an intent to interfere with media freedom, and to bring those responsible to justice.

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

LIMITS ON PRIOR RESTRAINT

Guideline 5: *There must be no government censorship of any election programme.*

Guideline 5.1: *The government should issue a clear statement to the public and all broadcast stations that the media are encouraged to broadcast election-related programmes, and that the media will not be penalized in any way for broadcasting programmes merely because they are critical of the government, its policies or the ruling party.*

Guideline 5.2: *The government or government media must interfere with the broadcast of an election programme, unless it is absolutely certain that a restraint is necessary to prevent a substantial harm to a legitimate interest, such as an act of violence. Any decision to restrain a programme must be promptly reviewed by an independent body in order to determine whether the restraint was necessary or whether it constituted an act of censorship.*

Commentary: Pre-publication censorship, especially concerning matters of political importance, is prohibited under international law except in narrowly-defined circumstances. Any restraint must be proportionate to a legitimate aim.

An election broadcast may be subject to prior restraint only where it is "absolutely certain" that the broadcast would cause an immediate, irreparable and substantial harm. The risk to free speech posed by government prior censorship outweighs the risk that programmes will incite violence or irreparably damage interests that the governments is entitled to protect.

Guideline 5.3: *The standards used by the government, or by government media, in determining whether or not to broadcast an election programmes must not be vague or broadly defined.*

Commentary: Standards for prohibiting broadcasts must be narrowly drawn and clearly defined. Germany's Federal Constitutional Court (FCC) has ruled that, while a station manager may refuse to broadcast an election programme that is a "clear" violation of the criminal law ... a vague and speculative concern does not constitute a "clear" violation.⁶ Guideline 13 deals with the need for a speedy review by an independent body of any decision not to broadcast an election programme.

Guideline 5.4: *Any post-broadcast penalty must be proportionate to the harm inflicted. In particular, unless a broadcast actually and intentionally incites*

⁶ 47 FCC 198 (1978).

violence or hatred, a penalty must not include imprisonment or such an onerous fine as to force the political party out of operation; nor may it restrain all future broadcasts by the party candidate.

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

LIMITS ON MEDIA LIABILITY

Guideline 6: It is strongly recommended that the media be exempted from legal liability for unlawful statements made by candidates or party representatives and broadcast during the course of election campaigns, other than those which constitute clear and direct incitement to violence. The parties and speakers should be held solely responsible for any unlawful statements they make.

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

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

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

Incitement to hatred presents a highly complex problem. It is recommended that it be exempt from media liability during campaign periods based on the fact that, in practice, the ban on incitement to hatred is widely used by governments to suppress legitimate political expression including, in particular, calls for national, religious or ethnic autonomy or other rights. A study undertaken by ARTICLE 19 of the law and practice concerning "hate speech" in 14 countries reveals that governments have often used the justification of banning hate speech to suppress the speech of only one side to a national, religious or ethnic conflict or else simply to silence government critics.⁷ For these reasons it is recommended that, in the context of an election campaign, the media should not be held liable for broadcasting statements that constitute incitement to hatred or discrimination short of violence (so long as the media do not condone the incitement in any accompanying editorial content).

⁷ ARTICLE 19, ed., *Striking a Balance: Hate Speech, Freedom of Expression and Non-discrimination* (London: 1992).

Without an exemption, experience shows that the risk that legitimate debate may be discouraged or suppressed is unacceptably high.

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

REPLIES, CORRECTIONS AND RETRACTIONS

Guideline 7: Any candidate or party that makes a reasonable claim of having been defamed or otherwise injured by a broadcast should either be granted the opportunity to reply or be entitled to a correction or retraction by the broadcaster or by the person who made the allegedly defamatory statement. The reply or correction should be broadcast as soon as possible.

Guideline 7.1: The reply, correction or retraction should be approximately the same length, and should be broadcast in approximately the same time period, as the allegedly defamatory statement. This duty may be discharged by the allocation of direct access time pursuant to the normal allocation process.

Guideline 7.2: It is recommended that an impartial body be entrusted with deciding complaints that a programme violated general laws, including laws against defamation and incitement to hatred or violence. This body should be empowered to order a right of reply, correction or retraction, and its decisions should be subject to review by the courts. (See Guidelines 13 and 14 below.)

Commentary: During election campaigns in democracies around the world, candidates and parties are afforded the right to reply to statements that misrepresent their views or activities. The right of reply has also been endorsed by UN guidelines; in particular, the UN Transitional Authority in Cambodia (UNTAC) recommended that "[m]edia outlets should give parties, groups or individuals whose views have been misrepresented or maligned by a publication or broadcast the 'right of response' in the same media outlet."⁸

⁸ *Media Guidelines for Cambodia*, note 4 above at Guideline 8.

NEWS COVERAGE

Guideline 8: Government media must be particularly scrupulous in complying with their obligation to provide accurate, balanced and impartial information in their reporting of news and current affairs.

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

Guideline 8.1: The duty of balance requires that parties or candidates receive news coverage commensurate with their importance in the election and the extent of their electoral support.

Commentary: It is recommended that a fair and equitable mechanism be established to determine the proportion of election news coverage to be allocated to the competing parties (which may correspond to the percentages assigned for direct access programmes) and that the broadcaster adhere scrupulously to the targets. If possible, agreement on the proportions to be allocated should be reached between the broadcaster and the political parties. If agreement is not possible, the proportions may be decided by an independent body.⁹

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

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

Guideline 8.2: Owing to the potential for editorial opinions to be confused with news, government media are urged not to broadcast editorial opinions at all. If a government channel broadcasts an editorial opinion, it is obliged also to

⁹ For factors that may be relevant in assessing electoral support, see commentary to Guideline 9.2.

broadcast the opinions of the major opposition parties. If a broadcaster presents his or her own views, these must be clearly identified as such, and it is recommended that they not be aired during news programmes.

Guideline 8.3: *News coverage of press conferences and public statements concerning matters of political controversy (as opposed to functions of state) called or made by the head of government, government ministers, or members of parliament should be subject to a right of reply or equal time rules. This obligation acquires even greater force when the person making the statement is also standing for office.*

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

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

Precedent for regulation is strongest concerning news coverage of ministerial announcements and press conferences. In the UK, for example, an *aide-mémoire* representing an agreement among the parties and the BBC provides for an automatic right of reply by the opposition party to ministerial broadcasts on matters of prime national or international importance.¹⁰ In practice, the BBC carries its duty of balance one step further by directly following any controversial ministerial broadcast with a response by the opposition, and then by a discussion among all major parties.¹¹ In France, a law introduced in 1986 grants the opposition a right of reply to declarations of government.

Press conferences called by incumbents who are running for office often closely resemble government announcements in significant ways and thus it is important to

¹⁰ E. Barendt, *Broadcasting Law: A Study of Regulation in Europe and the United States* (Oxford University Press, 1993) at note 63.

¹¹ *Ibid.*, at note 68.

adopt some form of a right of reply or correction to statements made at press conferences as well as to government announcements.

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

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

DIRECT ACCESS PROGRAMMES

Guideline 9: Government media must grant political parties or candidates air time for direct access programmes on a fair and non-discriminatory basis. For the first multi-party election, it is strongly recommended that all major parties or candidates receive equal time.

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

Direct access programmes provide an opportunity for political parties and candidates to express their positions in their own words; for small parties and independent candidates to broadcast their views; and for parties to respond to negative statements or comments made about them.

Direct access programmes are particularly important where the media are in reality, or are widely perceived to be, under some measure of government control. In such circumstances, denying political parties the opportunity to present their own programmes runs an unacceptable risk of interfering with their right to communicate their messages and of undermining public confidence in the fairness of the election process. Furthermore, in virtually all Western democracies, public broadcasting channels are required to make time available for direct access programmes.

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

a) Allocation of Time to the Parties

Guideline 9.1: All parties or candidates that are formally registered must be granted access to some amount of air time for a country's first multi-party election.

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

In a transitional democracy, particularly in the first multi-party election, allocation of air time to political parties on anything other than an equal basis poses great difficulty because the two most objective indicators of support - the party's performance in past elections and the number of seats held in parliament - clearly

are unavailable. For that reason, equal air time for all major parties is strongly recommended. Where there are no major parties or a large number of independent candidates, equal air time for all candidates is the least discriminatory option.

Guideline 9.2: Following the first election in a transitional democracy, and if there are objective criteria for establishing the levels of support for the different parties, air time may be allocated on a proportional basis. All parties should receive some air time, unless the parties are so numerous that allocation of time to all parties would seriously dilute the broadcasts' effectiveness in informing the electorate about the parties that are likely to form the government.

Guideline 9.2.1: It is recommended that the allocation of air time be carried out by an independent body in consultation with, and with the agreement of, all the parties.

Guideline 9.2.2: Where air time is allocated on the basis of rough proportionality, some amount of time must be allocated to small parties, parties with strong support in only a few regions, parties without parliamentary seats, new parties and independent candidates.

Guideline 9.2.3: If time is allocated on a proportional basis and the government media broadcast regional programmes, parties that have strong support in only a few regions should be given air time on regional programmes proportional to their strength in those regions.

Commentary: In subsequent elections where a small number of parties compete, the continued allocation of air time to the major parties on an equal basis poses little problem and is recommended. However, where a large number of parties compete, granting equal time to all may dilute these messages of the parties that are most likely to form a government. For this reason, allocation of an equal amount of time to each of the leading parties and of a lesser amount of time to each of the smaller parties may improve the informative value of the broadcasts while maintaining the public's confidence in the fairness of the allocation process.¹² Allocation of time on a proportional basis may be appropriate in transitional democracies where the first election was held to be fair and therefore give a good approximation of the relative

¹² Factors relevant in assessing a party's support may include the party's performance in past elections; the number of seats held in the parliament; length and continuity of the party's existence; size of its membership; extent and strength of its organization; and its representation in government at federal, regional and/or local levels. The number of regions or constituencies in which the party is contesting the election may also be a relevant factor; however, it should not be given significant weight in countries where it is easy for a party to put up candidates in regions even where the party has little support.

strengths of the parties or where there is general agreement as to which are the leading parties (even if there is dispute about their relative strengths).

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

If agreement cannot be reached, at least among the major parties, or if the first multi-party elections were not regarded as giving a good indicator of levels of support, continued allocation of air time to the major parties on an equal basis is recommended. Whichever approach is taken, all parties and independent candidates should receive air time which is adequate to communicate their central policies to the electorate.¹³

In Germany, the Parties Law requires that small parties with representation in the *Bundestag* (Federal Parliament) be given the opportunity to use 50 per cent of the broadcast time allotted to the larger parliamentary parties. In nearly all Western countries surveyed in a 1991 study of election broadcast policy, time was allocated to parties on a roughly proportional basis, and most allotted some time to non-parliamentary parties. The importance of this is demonstrated by experience from Sweden: when Swedish law was changed to grant non-parliamentary parties direct access, a number of them won seats in parliament.

b) Decisions Regarding Amount of Time to be Allocated

Guideline 9.3: The amount of time allocated to the parties or candidates must be sufficient for them to communicate their messages, and for the voters to inform themselves about the issues, party positions, and qualifications and character of the candidates.

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

c) Scheduling of Direct Access Broadcasts

Guideline 9.4: Direct access programmes should be aired throughout the campaign period and at times when the broadcasts are likely to reach the largest

¹³ See Guideline 9.3 below.

audiences. The government media violate their duty of balance if they air the programmes of some parties or candidates at hours (such as past midnight or during the working day) when it is inconvenient for large segments of the population to view or hear them.

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

d) Process for Assigning Time Slots

Guideline 9.5: Time slots for direct access programmes must be assigned to each of the registered political parties or candidates pursuant to an equitable process.

Commentary: Once the amount of time to be allotted to each party for direct access programmes has been determined, there remains the question of how to assign specific time slots to the various parties. Clearly, slots during prime viewing or listening time are preferable. Where there are a small number of parties, it may be possible to assign prime-time slots to all of them but this may not be feasible where a large number of parties compete. It then becomes crucial to have a fair process by which slots are allocated. The preferred method is to incorporate some form of rotation (so that every party has the same number of prime-time slots). A random element may also be incorporated in allocating the first slots.¹⁴ Random assignment may play a larger role where there is no agreement as to which slots fall within prime time and which fall outside it.

e) Financing of Direct Access Programmes

Guideline 9.6: Whatever air time is made available to a political party or candidate, it must be made available on financial terms equal to those granted to other parties or candidates. At least for the first several elections of a transitional democracy, the government media must provide an amount of time adequate for effective political communication to registered parties or candidates free of charge or else for a nominal sum.

¹⁴ As noted by the UN Technical Team on the Malawi Referendum: "Once the spots allocated for [direct access programmes] are identified, most legislation prescribes a random choice for the allocation to each side." Note 4 above at para. 42.

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

Commentary: In most established democracies, public broadcast channels make some amount of time available to registered political parties free of charge for direct access programmes.¹⁵ In most of these countries, paid political advertising is prohibited throughout the campaign period and, in a few, it is entirely prohibited.

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

¹⁵ See, for example, K. Jakubowicz, "Electoral Campaigns on Radio and Television: General Principles", in A Pragnell and I Gergely, eds., *The Political Content of Broadcasting* (Dusseldorf: European Institute for the Media, 1992).

SPECIAL INFORMATION PROGRAMMES

Guideline 10: The media should broadcast programmes that provide an effective opportunity for journalists, current affairs experts and/or the general public to put questions to party leaders and other candidates, and for candidates to debate with each other.

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

Guideline 10.1: While broadcasters have greater editorial discretion in deciding which parties, candidates and commentators should appear on such programmes than on news broadcasts, their discretion is subject to the general obligations of fairness and impartiality. At the least, representatives of all major parties should be invited to participate in such programmes.

Commentary: The German Constitutional Court, for example, upheld an order in 1990 that restrained a public channel from broadcasting an election debate which excluded the Green Party.¹⁶ While the Green Party was not viewed as one of the three major parties, nevertheless it exercised influence in Parliament. The Court also considered the fact that the debate was to take place three days before the election.

Guideline 10.2: Journalists, experts and other questioners should be selected so as to ensure balance among the questions.

Guideline 10.3: Special information programmes should be aired during prime viewing or listening hours.

Commentary: These Guidelines are based on the duty of the media to inform the electorate and to provide information in a balanced fashion.¹⁷ At least several hours of national television time should be devoted to debates among presidential candidates or other party leaders. It is generally most effective to invite experts on various campaign issues (especially independent experts commanding respect among the public) to formulate some of the initial questions and ask follow-up questions.

¹⁶ 82 FCC 54 (1990), discussed in Barendt, note 10 above at 173.

¹⁷ See Guideline 1.

VOTER EDUCATION

Guideline 11: *Government media are obliged to broadcast voter education programmes unless the government has undertaken other information initiatives which are likely to reach as many voters as would the broadcast programmes.*

Guideline 11.1: *The programmes must be accurate and impartial and must effectively inform voters about the voting process, including how, when and where to vote, to register to vote and to verify proper registration; the secrecy of the ballot (and thus safety from retaliation); the importance of voting; the functions of the offices that are under contention; and similar matters.*

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

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

OPINION POLLS AND ELECTION PROJECTIONS

Guideline 12: If a broadcaster publishes the results of an opinion poll or election projection, it should strive to report the results fairly and, in particular, to publish all readily available information that would assist the listeners in understanding the poll's significance.

Guideline 12.1: A broadcaster which publishes the results of an opinion poll should identify the organization that conducted the poll, the organization or party that commissioned and paid for the poll, the methodology employed, the sample size, the margin of error, and the fieldwork dates. In addition, the broadcaster should state that the poll reflects public opinion only at the time that the poll was taken.

Commentary: Opinion polls can have a significant impact on voting patterns, especially where their significance is not adequately understood. Thus, as part of the duty to inform voters, media channels that broadcast the results of opinion polls are obliged to furnish sufficient information for their significance to be understood. For example, the BBC reminds viewers that polls are a snapshot of opinion and not a reliable predictor of future voting. Furthermore, in several established democracies, there is voluntary or mandatory abstention from publishing polls for between one and seven days before the ballot.¹⁸

¹⁸ For example, France (seven days), Italy (one day), Spain (five days), Sweden (one day), UK (voluntary abstention on election day). In the US there is no guiding policy except that in recent years the broadcast media have agreed not to publish early election returns from the East Coast before polling stations close (three hours later) in the West.

MECHANISMS FOR REGULATING BROADCASTS AND TAKING ACTION ON COMPLAINTS

Guideline 13: Election broadcasts must be monitored and regulated by an independent, impartial body.

Guideline 13.1: This body should be responsible for allocating time to political parties or candidates. It should also hear and take action promptly on complaints concerning broadcast-related violations by the media, and by political parties and candidates. The body should receive complaints from parties, candidates and citizens. It should be empowered to order prompt rectification, retraction or a right of reply and to seek enforcement of its orders, including through the courts.

Guideline 13.2: The body must make all of its decisions promptly. In particular, any claimed violation that has the result of preventing or delaying the airing of a direct access programme must be reviewed with due speed.

Guideline 13.3: If there is a regularly constituted broadcast-monitoring body that is independent of government, it may carry out these functions; otherwise, a body should be established especially to handle election-related matters.

Guideline 13.4: This body may include representatives or appointees of government and political parties, but it should not be able to take decisions only upon the strength of the votes of the appointees of the government or of one party. If any parties are represented, it is recommended that the body include representatives of at least all major parties. It is recommended that the body include independent media professionals.

Commentary: Central to the integrity of the election process is the existence of a body to monitor and regulate broadcasts that is both perceived to be and is, in fact, impartial. It must act promptly and fairly, and its decisions must be subject to prompt review by the courts.

In the UK the Party Political Broadcasting Committee comprises representatives of major and regional parties and the broadcasting authorities; in case of dispute the final decision rests with the broadcasting authorities. In Germany broadcasters make decisions in agreement with political parties. In several other Western democracies, the broadcasting authorities, which are independent of government, make decisions. In Italy, responsibility lies with a parliamentary commission which has been criticized as ineffective and discriminatory.

Guideline 13.5: *It is recommended that the election broadcast regulatory body monitor all campaign-related broadcasts to assess their compliance with laws and regulations.*

Guideline 13.6: *Government media should facilitate media monitoring by non-governmental, non-partisan organisations, including by making tapes of election broadcasts available free of charge or at minimal cost.*

Guideline 13.7: *The election broadcast regulatory body should be empowered to recommend, subject to judicial review, that an election be postponed, suspended or annulled if it can be established that there have been breaches of international or national law which might significantly affect or have affected the outcome of the election.*

JUDICIAL REVIEW

Guideline 14: Actions and decisions of a body charged with regulating election broadcasts must be subject to judicial review, which must be carried out on an expedited basis.

Guideline 14.1: Any decision that has the effect of prohibiting the transmission of a direct access programmes must be reviewed in a particularly speedy fashion.

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