

Comments on the Media Regulations for the 2010 Elections for the Iraqi Council of Representatives

On Behalf of UNDP

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Introduction

Elections for the Iraqi Council of Representatives (the main national legislative body) are due to take place on 7 March 2010. The first Council of Representatives elections took place on 15 December 2005, shortly after the adoption of the Constitution on 15 October 2005. The main legislative framework for these elections consists of the Elections Law, No. 16 of 2005, as amended by the Council of Representatives on 6 December 2009. The elections will be overseen by the Independent High Electoral Commission (IHEC), established by Law No. 11 of 2007, adopted on 23 January 2007, as the sole electoral authority in Iraq.

IHEC's governing body, the Board of Commission, has prepared two sets of regulations specifically governing the media during the election period, namely the Amended Media Regulations for CoR Elections 2010 (Election Regulations) and the Regulation on Media Outlets: VRU Period (VRU (voter registration update) Regulations). These Regulations provide a framework of rules governing coverage of the elections by Iraqi media outlets, addressing such matters as accreditation, obligations of balance, advertising, reporting on election procedures, and the role of the Iraqi Media Network (IMN), the public media network.

These Comments are based on an analysis of these Regulations in light of international standards and good comparative practice in this area by other States. There is a wealth of material on general international standards regarding freedom of expression and the proper regulation of the media in accordance with this fundamental right. International standards focusing specifically on regulation of the media during elections are, in contrast, far less developed. As a result, much of the analysis in these Comments is based on an extrapolation of general principles to the specific context of elections.

The Regulations contain a number of progressive provisions relating to media and elections. These include, among other things, the following:

- Placing an obligation on the media, and particularly the public media (i.e. IMN) to provide voter education and direct access for political parties and candidates.

- Provision for balanced and impartial coverage of the elections by the media.
- Accreditation of the media for election purposes.

At the same time, there are a number of areas where they diverge from established international standards and good practice. Some of the more serious include:

- It is not clear why two Regulations, with very similar but sometimes different rules, are necessary.
- The Regulations address a number of content issues which overlap with the Code adopted by the Communications and Media Commission, giving rise to duplication and potential conflict.
- The Regulations fail to distinguish between print and broadcast media, including in relation to key obligations such as that of balance and impartiality.
- The obligations on IMN to inform voters and to give access to parties and candidates are too limited.
- Unduly intrusive rules govern media reporting on election rules, particularly in relation to IHEC information.
- The accreditation criteria and procedures are unclear and it appears that media representatives would need to be separately accredited for both election processes (VRU and the actual election).

These Comments are based on an English translation of the relevant provisions, provided by UNDP. At certain places, the translation provided leaves scope for interpretation and so it is possible that some of these Comments are based on a misinterpretation of the text. Where doubt exists as to the precise meaning of the text, the manner in which the text has been interpreted is indicated. No responsibility is taken for errors based on poor translation.

I. International Standards

I.1 Key Relevant Guarantees

A number of international guarantees are relevant to an assessment of any regulation governing the media during elections. Perhaps foremost among these, since it is the key underpinning for elections themselves, is the right of citizens freely to choose political representatives through genuine periodic elections, as well as the right to participate in public affairs and stand for election. These rights are guaranteed in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR),¹ a treaty ratified by over 165 States as of December 2009, including Iraq,² as follows:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

¹ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

² Iraq ratified the ICCPR on 25 January 1971.

- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

Unlike many of the rights protected under international law, this right extends only to citizens. Indeed, this right is one of the key attributes of citizenship. For elections to reflect the free will of the electors, it is not enough simply to ensure that all citizens are able to cast their votes. Citizens must also understand the democratic implications of voting, and have enough information about candidates and parties to be able to make informed choices.

As a result, the right to freedom of expression is also central to any assessment of rules governing the media during elections. This right is also guaranteed in the ICCPR, in Article 19, as follows:

- (1) Everyone shall have the right to freedom of opinion.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Article 38 of the Iraqi Constitution guarantees the right to freedom of expression “in a way that does not violate public order and morality”, while freedom of correspondence is guaranteed by Article 40.

The importance and implications of the right to freedom of expression, as well as the scope of restrictions that are permitted on this right, are discussed in more detail below.

Finally, the right to be free of discrimination is also important to a full consideration of the regulation of media during elections. This foundational right is also found in the ICCPR, at Article 2(1), as follows:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

It may be noted that this right provides, among others, protection against political discrimination in the enjoyment of the other rights recognised in the ICCPR. This means that there should be no discrimination either as to the participation of political parties in elections generally, or as to their right to freedom of expression during elections.

The rights freely to choose political representatives, to freedom of expression and to freedom from discrimination are also guaranteed in the *Universal Declaration on Human Rights* (UDHR),³ respectively at Articles 21, 19 and 2. The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including

³ United Nations General Assembly Resolution 217A (III), 10 December 1948.

these articles, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.⁴

I.2 Freedom of Expression: Importance and Restrictions

Freedom of expression is often characterised as a cornerstone right both because of its centrality to democracy and because of its contribution to securing other human rights. At its very first session, in 1946, the United Nations General Assembly adopted Resolution 59(I), which stated:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.⁵

This has been widely recognised by international courts and other authoritative bodies. For example, the UN Human Rights Committee, the body established to oversee implementation of the ICCPR, has held:

The right to freedom of expression is of paramount importance in any democratic society.⁶

Freedom of expression is also protected in all three regional human rights instruments, at Article 9 of the *African Charter on Human and Peoples' Rights* (ACHPR),⁷ Article 10 of the *European Convention on Human Rights* (ECHR)⁸ and Article 13 of the *American Convention on Human Rights* (ACHR).⁹ The right to freedom of expression enjoys a prominent status in each of these regional conventions and, although they are not directly binding on Iraq, judgments and decisions issued by courts under these regional mechanisms, as well as those of senior national courts, offer an authoritative interpretation of freedom of expression principles in various different contexts.

The African Commission on Human and Peoples' Rights, which oversees implementation of the ACHPR, has emphasised "the fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms".¹⁰ And the European Court of Human Rights has stated:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man

⁴ See, for example, *Barcelona Traction, Light and Power Company Limited Case (Belgium v. Spain) (Second Phase)*, ICJ Rep. 1970 3 (International Court of Justice) and *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice).

⁵ 14 December 1946. The term 'freedom of information' is used here in its wide sense, to refer to the free circulation of information and ideas.

⁶ *Tae-Hoon Park v Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

⁷ Adopted 26 June 1981, in force 21 October 1986.

⁸ Adopted 4 November 1950, in force 3 September 1953.

⁹ Adopted 22 November 1969, in force 18 July 1978.

¹⁰ Preamble of the Resolution on the adoption of the *Declaration of Principles on Freedom of Expression in Africa*, adopted by the African Commission at its 32nd Session, 17-23 October 2002.

... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.¹¹

The right to freedom of expression has a dual aspect; it protects not only the right to impart, but also the right to seek and receive information and ideas. This aspect of the right to freedom of expression has been elaborated upon clearly and forcefully by international courts. The Inter-American Court of Human Rights recognised early on the important implications of the dual nature of the right to freedom of expression:

[W]hen an individual's freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to "receive" information and ideas. The right protected by Article 13 consequently has a special scope and character, which are evidenced by the dual aspect of freedom of expression. It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.... In its social dimension, freedom of expression is a means for the interchange of ideas and information among human beings and for mass communication.¹²

It is this aspect of the right, rather than the right to express oneself, which underpins special accreditation privileges for the media during elections. The basis for this is that if the media have access to electoral processes, they will be able to inform the public as a whole, most of whom cannot themselves directly observe these processes, about what is going and has gone on. Accreditation thus primarily serves the right of everyone to seek and receive information and ideas, rather than the right of the media to express themselves.

Every system of international and domestic rights recognizes that freedom of expression is not absolute. Some carefully drawn and limited restrictions on freedom of expression may be necessary to take into account the values of individual dignity and democracy. However, under international human rights law, national laws that restrict freedom of expression must comply with the provisions of Article 19(3) of the ICCPR, which states:

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 and reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

¹¹ *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, 1 EHRR 737, Para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

¹² *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. 30-2.

Restrictions must meet a strict three-part test.¹³ First, the restriction must be provided by law. This implies not only that the restriction is based on a legal provision, but also that the law meets certain standards of clarity and accessibility, sometimes referred to as the “void for vagueness” doctrine. The European Court of Human Rights has elaborated on the requirement of “prescribed by law” under the ECHR:

[A] norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.¹⁴

Vague provisions are susceptible of wide interpretation, by both authorities and those subject to the law. As a result, they are an invitation to abuse and authorities may seek to apply them in situations which bear no relation to the original purpose of the law or to the legitimate aim sought to be protected. Vague provisions also fail to provide sufficient notice of exactly what conduct is prohibited. As a result, they exert an unacceptable chilling effect on freedom of expression as citizens steer well clear of the potential zone of application to avoid censure.

Second, the restriction must pursue one of the legitimate aims listed in Article 19(3). It is quite clear from both the wording of Article 19 of the ICCPR and the views of the UN Human Rights Committee that this list is exclusive and that restrictions which do not serve one of the legitimate aims listed in paragraph 19(3) are not valid.¹⁵ It is not sufficient, to satisfy this part of the test, for restrictions on freedom of expression to have a merely incidentally effect on one of the legitimate aims listed. The measure in question must be primarily directed at that aim. As the Indian Supreme Court has noted:

So long as the possibility [of a restriction] being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void.¹⁶

In assessing whether a restriction on freedom of expression addresses a legitimate aim, regard must be had to both the purpose and the effect of the restriction. Where the original purpose was to achieve an aim other than one of those listed in the ICCPR, the restriction cannot be upheld. As the Canadian Supreme Court has noted:

[B]oth purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation.¹⁷

Third, the restriction must be necessary to secure the aim. International jurisprudence makes it clear that this is a strict test, presenting a high standard that any restriction must

¹³ This test has been affirmed by the UN Human Rights Committee. See *Mukong v. Cameroon*, 21 July 1994, Communication No.458/1991, para.9.7. The same test is applied by the European Court of Human Rights. See *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 45.

¹⁴ *The Sunday Times*, note 13, para. 49.

¹⁵ See *Mukong*, note 13, para. 9.7.

¹⁶ *Thappan v. State of Madras*, [1950] SCR 594, p. 603.

¹⁷ *R. v. Big M Drug Mart Ltd*, [1985] 1 SCR 295, p. 331.

overcome.¹⁸ The European Court has noted that necessity involves an analysis of whether:

[There is a] “pressing social need” [whether] the inference at issue was “proportionate to the legitimate aim pursued” and whether the reasons adduced...to justify it are “relevant and sufficient.”¹⁹

Courts have identified three aspects of this part of the test. First, restrictions must be rationally connected to the objective they seek to promote, in the sense that they are carefully designed to achieve that objective and that they are not arbitrary or unfair. This is based on the need for relevant reasons for a restriction. Second, the restriction must impair the right as little as possible (breach of this condition is sometimes referred to as ‘overbreadth’). This flows from the need for sufficient reasons for a restriction. Third, the restriction must be proportionate to the legitimate aim. The proportionality part of the test involves comparing two considerations, namely the likely effect of the restriction on freedom of expression and its impact on the legitimate aim which is sought to be protected.

The necessity element of the test presents a high standard to be overcome by the State seeking to justify the interference, apparent from the following quotation, cited repeatedly by the European Court:

Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.²⁰

I.3 The Role of the Media

In most countries, the mass media is the main conduit for public discussion on any and all matters and, as a result, the right to freedom of expression is of particular importance to the media. The media play a particularly important role in underpinning democracy, including during elections. The UN Human Rights Committee has stressed the importance of 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.²¹

The African Commission has similarly stressed “the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions

¹⁸ See, for example, *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para.63.

¹⁹ See *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40.

²⁰ See, for example, *Thorgeirson v. Iceland*, note 18, para.63.

²¹ UN Human Rights Committee General Comment 25, issued 12 July 1996.

and in facilitating and strengthening democracy.”²² In a similar vein, the European Court has emphasised:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.²³

Article 2 of the ICCPR places an obligation on States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” This means that States are required not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. An important aspect of this is that States are under a positive obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the right of all to equitable access to the media and the public’s right to know.

As the European Court of Human Rights stated: “[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism.”²⁴ The Inter-American Court has held that freedom of expression requires that “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media.”²⁵ The Inter-American Court has linked pluralism in the media to the right to seek and receive information:

It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, inter alia, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists.²⁶

I.4 Special Election Rules

The leading authoritative statement on media and elections is Recommendation (2007)15 of the Committee of Ministers (of the Council of Europe) to member states on measures concerning media coverage of election campaigns (CoE Recommendation).²⁷ The international human rights NGO, ARTICLE 19, has also published a set of Guidelines for Election Broadcasting which set out relevant rules in this area (A19 Guidelines).

²² *Declaration of Principles on Freedom of Expression in Africa*, note 10.

²³ *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

²⁴ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.

²⁵ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 12, para. 34.

²⁶ *Ibid.*, para. 34.

²⁷ Adopted by the Committee of Ministers on 7 November 2007.

Both documents refer to the need to ensure protection for freedom of expression during election campaigns. This includes a special obligation on the authorities to avoid interfering in the media for purposes of influencing the elections, to respect editorial independence and to protect the media against attacks (CoE Recommendation Principles I(1)-(3), A19 Guidelines 4 and 5).

Both documents devote some attention to the issue of fairness, impartiality and balance in relation to election coverage. All public media, and all private broadcasters, should respect these values in their news and current affairs programming (including special election programmes), in any direct access they give to parties and candidates, and in relation to advertising (CoE Recommendation Principles I(4) and II(1)-(5), ARTICLE 19 Guidelines 2, 8, 9 and 15).

Both documents also address the need for a prompt right of reply during election campaign periods, and the need for sufficient information to be provided on opinion polls to enable voters to understand properly their relevance (CoE Recommendation Principles I(7) and (8), A19 Guidelines 7 and 12). The CoE Recommendation also calls for consideration of a 'day of reflection', during which there is no campaigning (Principle I(9)), while the A19 Guidelines refer to the duty of public media and other media to provide voter education and special election programmes (Guidelines 1, 10 and 11).

Both documents also address structural implementation issues. The CoE Recommendation encourages the development of self-regulatory frameworks to promote appropriate and professional election coverage (Principle 5), while the A19 Guidelines call for an independent, impartial body with the power to monitor election broadcasts and to decide upon complaints, subject to judicial review (Guidelines 13 and 14). Finally, the CoE Recommendation calls for transparency regarding any ownership of media outlets by political parties or politicians (Principle 6).

II. Detailed Comments on the IHEC Regulations

IHEC's governing body, the Board of Commission (BoC), has, as noted above, prepared two Regulations to supplement the Elections Law, namely the Amended Media Regulations for Parliamentarian Elections 2010 (Election Regulation) and the Regulation on Media Outlets: VRU Period (VRU Regulation). The former covers the actual election period and the latter the period during which the Voter Registry Update will take place.

These two documents are very similar in nature, albeit adapted to the specific election periods they cover. Where relevant, differences are noted below; otherwise, these Comments apply to both documents.

II.1 The Need for Two Regulations

The provisions in the Election and VRU Regulations are, as noted above, very similar. The need for different documents governing these two election periods may be questioned. The basic principles and rules governing the media are the same. There are a

few technical differences based on the different periods that they cover (for example, the former defines the period it covers differently and defines political entities which is not necessary for the latter), but it would be easy enough to accommodate this in one regulation. Otherwise, having two different regulations is confusing and makes it more complicated for the media to understand and respect the rules.

At least as importantly, there are some substantive issues which appear to result from cutting and pasting without properly considering the implications. For example, Section 2(1) of the Election Regulation calls on the media to deal with political parties in a neutral and impartial manner, while Section 2(1) of the VRU Regulation calls on the media to be neutral and impartial “when covering the VRU period and what goes on at registration centers”. These are very different ideas. While it is arguably appropriate to impose some sort of balance obligation on the media in respect of parties, this is very different from calling for impartiality in respect of reporting on the whole VRU period. A similar point applies to Section 4(3), regarding the provision by the Iraqi Media Network (IMN) of free broadcasting time and studios to, respectively, political parties (Election Regulation) and to inform voters about the VRU process (VRU Regulation). The former is common practice while the latter does not really make sense.

Finally, the two Regulations both include accreditation procedures and it would seem that the idea is that media representatives would have to apply separately for accreditation to the two different election processes. This is clearly cumbersome for both journalists and IHEC, as well as simply being unnecessary.

II.2 Relationship between the IHEC Regulations and the CMC Code

A number of provisions in the Regulations address issues relating to the content of media coverage of the elections (Sections 2-5 of the Election Regulation and Sections 2-4 of the VRU Regulation). Several provisions also refer to the “Code of Conduct”, defined in the VRU Regulation as the “regulations of the media representatives code of conduct, issued by IHEC” (Section 1(6)) but referred to in the Election Regulation as being issued by the “Communication and Media Commission” (or CMC) (Section 1(8)). The CMC has issued a Code for Media during Elections and it is assumed for purposes of these Comments that this is the Code which is being referred to in both Regulations.²⁸ In addition to defining the Code, the Regulations state that the BoC of IHEC will withdraw accreditation from any media representative or outlet that violates either the Regulation or the Code, and that it will request the CMC to impose the “proper penalty” on media outlets which violate the Regulation or the Code (Sections 7(1) and (2)).

In terms of content issues, the CMC’s Code for Media during Elections overlaps significantly with the Regulations. Indeed, media content issues are addressed more comprehensively in the Code than in the Regulations, and the former covers a number of issues not addressed in the Regulations, such as a right of reply during elections (Article 11), opinion polls (Article 7) and limitation of liability (Article 12). This divided jurisdiction over media content during elections is problematical for two reasons.

²⁸ It may be noted that the CMC has also adopted an Interim Broadcasting Programme Code of Practice.

First, there is potential for inconsistency and even contradiction in the substantive rules. There are a number of significant differences between the two sets of rules. Perhaps most important among these are that the Regulations seek to impose obligations of balance and impartiality on all media outlets, while the Code restricts such obligations to the broadcast and public media. An important aspect of the right to freedom of expression is that restrictive rules should be clear and unequivocal. Different sets of rules on the same matter which are not consistent breach this requirement.

Second, the two sets of rules could create confusion and misunderstanding among media representatives as to which body has primary responsibility for regulating media content during election periods. Section 7(2) of the Regulations, as noted, provides for the IHEC BoC to refer breaches of both the Regulation and the Code to the CMC, suggesting that the CMC has sole responsibility for enforcing these rules (apart from in relation to accreditation), although this is not entirely clear. On the other hand, Section 7(1) of the Regulations suggests that IHEC will monitor breaches of the Code and withdraw accreditation in cases of breach. Media outlets thus appear to be subject to two different bodies monitoring and applying sanctions for two different sets of rules, the Regulations and the Code. It is important to have just one implementing body for any set of rules to ensure consistency and proportionality in their application.

Recommendations:

- Consideration should be given to integrating the two Regulations so that media representatives and outlets only have to respond to one set of consistent rules. Otherwise, greater effort should be given to ensuring that the two Regulations are consistent and adapted properly to the election processes they cover. At a minimum, media representatives should not have to go through two accreditation procedures for the two different election processes.
- It should be clarified in the VRU Regulation that the Code of Conduct referred to in Section 1(6) is the Election Code adopted by the CMC.
- Consideration should be given to removing all of the content rules from the Regulations and leaving the Code to address these through one set of rules, thereby avoiding any potential for confusion and inconsistency in this area.
- At a minimum, if two sets of rules relating to media election-related content are retained, strenuous efforts should be made to remove any inconsistency between them, where possible by precisely aligning their language.
- Media representatives should not have to report to two different bodies regarding these standards. IHEC should alone enforce the Regulations and the CMC should be the only body to enforce the Code.

II.3 Definitions

Section 1 of the Regulations includes a number of definitions (the Election Regulation includes more definitions, given its subject matter), including of the 'Iraqi Media Network', the 'Campaign period', 'Media' and a 'Political entity'.

For the most part, these definitions are uncontroversial. The Iraqi Media Network (IMN), which is made up of television, radio and print components, is defined as an independent media institution established by Order No. 66 of 2004. Political entities are defined by reference to Order No. 97 of 2004, and the campaign period is defined as the period from IHEC's registration of candidates to 24 hours before the opening of polling centres, during which campaigning takes place, while the VRU period is defined rather vaguely as the "period during which VRU centers are opened to update the voters' register". Section 5(3) of the Election Regulation makes it clear that campaigning starts from the point a candidate is approved and ends 24 hours before voting centres open.

It is common practice in many countries for there to be a 'day of reflection' before actual voting takes place and, as noted, the CoE Recommendation suggests that States consider this (see Principle I(9)). However, the CMC Code provides for a 48-hour period for media silence (see Article 8). It seems strange for there to be a difference between the general campaigning 'day of reflection' and the analogous period of silence in the media, and this is presumably confusing for media representatives. Furthermore, although a 24-hour period of reflection is common, it is difficult to justify a 48-hour period of silence.

Media is defined as "specialized outlets providing news, information or recreational material for the public by audio/visual and print media means" (VRU Regulation). The Election Regulation specifically refers to "online media" in its definition. The definition of media representative in the Media Accreditation Procedures also refers to journalists working for online media. There are two potential concerns with this definition. First, it is, by its terms, extremely broad. It would presumably capture a wide range of Internet-based platforms, including blogs but also private websites and perhaps also discussion lists and so on. It might also be interpreted to include a number of other forms of dissemination of information that are not traditionally considered media, such as advertising brochures, occasional publications produced by NGOs and others, limited circulation private newsletters and the like.

Traditionally, the definition of media has, for purposes of special regulations like these, been restricted to information dissemination platforms which are periodic and intended for mass distribution to the general public. To capture traditional media which are also disseminated online, but not forms of online dissemination of information which cannot properly be described as media, the notion of an editorial process has been introduced. The CoE Recommendation, for example, defines media as follows:

The term "media" refers to those responsible for the periodic creation of information and content and its dissemination *over which there is editorial responsibility*, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public.
[emphasis added]

The Recommendation goes on to note that this might refer to newspapers and periodicals, and radio and television, as well as online editions of newspapers and radio and television. This ensures that traditional-style media operating on new platforms, whether

or not they also operate on traditional platforms, are covered, while not being over-inclusive in relation to other Internet-based forms of dissemination of information.

The second potential problem with the definition is that it fails to distinguish between different types of media. The public media – in the form of the IMN – is separately defined and receives specialised treatment in the body of the Regulations at various places (see, for example, Section 4, setting out specific obligations for IMN and Section 2(2) of the Election Regulation, referring to ‘official’ media). In contrast, the definitions do not distinguish between print and broadcast media, and this distinction is also largely absent in the body of the Regulations (with the partial exception of Section 6(3) and to a lesser extent Section 6(2)).

It is widely recognised under international law and in the practice of States that there are very significant differences between the print and the broadcast media, which justify very different regulatory approaches. The CoE Recommendation, for example, recognises “the significant differences which still exist between the print and the broadcast media”.

There are a number of justifications for this. At a purely technical level, licensing is necessary where broadcasters disseminate their signals over the airwaves, whether terrestrially or via satellite, to avoid interference and chaos in the airwaves, whereas this is not necessary for the print media. There are, however, also a number of other justifications for regulatory differences. Although modern technologies are starting to change this, broadcasters have traditionally relied on a limited public resource, the airwaves, to disseminate their programmes, while newspapers rely on an essentially unlimited and privately sold resource, newsprint.

There are also important differences based on the nature of the two mediums. Broadcasting is far more intrusive, projecting powerful sound and visual images right into one’s living room at the flick of a switch. Newspapers, in contrast, need to be bought and read, generating a very different impact. Closely related is the way in which many people react to the different mediums. Generally, consumers are far more critical and active in the way they absorb information from newspapers, as opposed to the more ‘couch potato’ approach to broadcasting, particularly television.

These differences have led to important differences in the way States regulate these different media. It is, for example, universally accepted that it is legitimate to license broadcast media, whereas licensing is considered illegitimate for the print media, and even registration of the latter is often viewed with suspicion. Three special mandates on freedom of expression – the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression – stated in a Joint Declaration adopted on 18 December 2003:

Regulatory systems should take into account the fundamental differences between the print and broadcast sectors, as well as the Internet. Broadcasters should not be required to register in addition to obtaining a broadcasting licence. ... Imposing special registration

requirements on the print media is unnecessary and may be abused and should be avoided.

In many countries, newspapers are not subject to any form of regulation or, at most, are required to submit a limited amount of technical information to obtain a registration certificate. Often, in terms of content, newspapers are self-regulating or are subject to statutory regimes which provide only for very light sanctions, such as a mandatory right of reply or requirement to carry a message recognising their error.

Broadcasters, on the other hand, are normally subject to far more intrusive regulation. They must compete for a licence to be able to operate in the first place. Normally, the licence will impose clear technical standards on the broadcaster, including as to the power of its transmitters and technical quality of its signal. In most countries, as in Iraq, broadcasters are also subject to a formal code of conduct dealing with matters ranging from protection of children to subconscious messages to violence and decency. Violation of the code may, in cases of gross and repeated breaches, lead to fines or even licence suspension. Broadcasters may also be required to meet certain positive public interest obligations, such as carrying a minimum percentage of local content, educational programming and/or news content. Finally, given limited frequencies, the licensing process is often used to promote diversity, by allocating licences to different types of broadcasters serving different needs.

Ultimately, what is important is not definitions but the formal obligations placed on the different types of media. However, for the most part the Regulations do not distinguish between the obligations imposed on different media.

Recommendations:

- Consideration should be given to aligning the period of reflection during which all campaigning ceases (24 hours according to the Regulations) and the period of media silence (48 hours according to the CMC Code), preferably in favour of the shorter 24-hour period.
- Consideration should be given to honing the definition of media so that it is clear that it applies only to the periodic dissemination of edited material via mass distribution platforms.
- Print and broadcast media should be defined separately, and different obligations should be imposed on these two different media sectors.

II.4 Obligations on the Public Media

Section 4 of the Regulations places a number of obligations on IMN as a public broadcaster supported by public funds. Specifically, it requires IMN to:

- Educate and inform Iraqi citizens and voters about VRU procedures through “newscasts as well as radio and television”.
- Provide practical information for all citizens “during their visit to registration centers to cast their votes”.
- Provide free television broadcasts and allocate studios and technical resources to educate voters about the importance of VRU (or allocate these to candidates to

- “enable them to appear at least once in talk shows, programs or political debates” in the Election Regulation).
- Broadcast IHEC information and programmes for free (and, for the elections, as provided for in the Election Regulation, request the assistance of other media to broadcast IHEC materials without amending them).

This is supplemented by Section 2(2) of the Election Regulation, which requires all “official Iraqi media” to “cover the activities of all political entities and coalitions equally”. Sections 3(1) and (2) of the Election Regulation also call on official media to provide “low-cost broadcasting times” to IHEC, to support its educational efforts, and to “political entities and coalitions equally”, to help them publicise their electoral policies. It is assumed that use of the term ‘official’ media is intended to refer to the IMN.

As noted above, public media have special public interest obligations, particularly during elections, to ensure that the public are informed about how to vote, the democratic implications of voting, and the platforms and policies of different parties and candidates. The obligations outlined above serve all of these interests. At the same time, they could be both more extensive and more detailed.

Voter education efforts should cover both the technical aspects of how to vote and more profound voter education goals, such as the relationship between citizenship and democracy, the right of citizens to select the government of their choice, the obligation of governments to respect that choice, among other things by respecting the political and policy promises they make during election campaigns, and wider issues regarding the functioning of a democratically elected government. It is important that voters understand all of these issues if elections are to guarantee “the free expression of the will of the electors”, as required by international law. It is assumed that the first two bullet points above encompass all of the above. However, it would be preferable if that were made more explicit in the text of the Regulations.

There appears to be some confusion in the VRU Regulation which talks about visiting registration centers to vote (as opposed to register to vote) (Section 4(2)) and which refers to making studios available (Section 4(3)) without it being clear who will use the studios or what the need for this is. It would seem that these provisions have been imported from the Election Regulation without sufficient adaptation. It would be sufficient for purposes of the VRU Regulation to require IMN to inform and educate voters about the VRU process and its importance, without referring to free television broadcasting and provision of studios and technical assistance.

A second key role of public media during elections is to ensure that candidates and parties are able to explain their platforms and policies to voters and, conversely, that voters understand enough about those platforms to make informed electoral choices. This should be done through direct access programmes (i.e. programming produced by the party or candidate as a sort of election advertisement), special election programming (including debates and dialogues with the party representatives but also with expert

observers), and news and current affairs programming. It may also be done through advertising.

The provisions on this in Section 4 of the Regulations, while useful, are limited. It would be preferable, for example, if IMN were under an overall obligation to carry sufficient informative election programming to ensure that voters understand the key electoral issues and the stance of the different parties and candidates on key issues. The provisions, as presently worded, are too general to achieve this.

Section 4(3) of the Election Regulation also appears to refer to special election programmes. As it currently reads, this section could be understood as limiting this obligation to providing one opportunity for each candidate to appear in a programme (such as a talk show or political debate). This is not enough to ensure voters understand election issues. Furthermore, rather than focus on individual candidates, the reference should be to parties (and independent candidates). A candidate-by-candidate approach can be confusing for voters, given the very large number of candidates contesting the election. One programme per candidate could be replaced with a more general obligation to ensure that voters understand the different party platforms. It should also be clear that special programmes may involve experts instead of political representatives. Indeed, experts can play an invaluable role in ensuring that voters understand issues – which might include such matters as the failure of parties to deliver on promises or assessing how realistic certain election promises are – from a critical perspective.

Section 4(3) of the Election Regulation appears to refer to direct access programming, inasmuch as it refers to free broadcasting time on television. This should be separated out from special election programmes. It is not clear from the current wording whether what is being provided is one slot in a talk show, one direct access programme, or some combination of these.

A basic framework for direct access programming should be included. The rules should establish minimum quotas for direct access programming (for example, a minimum of 4 hours over the course of the campaign, divided equitably among parties). Furthermore, it might be preferable to allocate this time to parties, rather than individual candidates, although independent candidates should also be ensured access. This is a common approach in both first-past-the-post and proportional representation election systems. Other rules that could be included in the regulation, in addition to minimum allocations, are the need to carry these slots in prime time and to ensure that individual slots are long enough to enable parties to communicate a clear message to voters.

Section 4(4) calls for the free broadcasting of IHEC material, while Section 3(1) of the Election Regulation calls for low-cost access for IHEC programming. This is somehow contradictory. Section 4(4) of the Election Regulation goes on to call on IMN to request the assistance of other media to broadcast these items. The imposition of an automatic obligation on a public broadcaster to carry material from an official body threatens respect for editorial independence. In many countries, the public broadcaster is trusted to fulfil its mandate to ensure that the public are informed about matters of public interest,

including by carrying information from official bodies like the election commission, without adopting a specific rule requiring them to do so. Where such a rule exists, it might be abused by the election commission, to the detriment of the public's right to know.

It is also not clear why IMN should be under an obligation to encourage other media to carry this sort of material. It may be noted that IMN is in competition with these other media, which are, as a result, unlikely to be influenced by it. In any case, as with IMN itself, it should be hoped that these media, or at least the more professional among them, do their job of informing the public properly, by carrying important IHEC messages.

Finally, Section 2(2) calls for respect for the principle of 'equal' access for parties. Although superficially appealing, equality in this context can actually be very distortive. Parties do not command equal political support among the electorate and to give very small parties the same coverage as the main parties can give voters the wrong impression. Instead, the appropriate principle to apply is that of equitable coverage (or of fair, balanced, impartial and/or non-discriminatory coverage). The CMC Code uses the term equitable (see, for example, Articles 4 and 9) and, indeed, incorporates a detailed set of Guidelines on Equitable Access as Required by the Code for Media during Elections, to explain what the term means.

Recommendations:

- The Regulations should make it quite clear that IMN has an obligation to ensure that voters understand both how to cast their ballots and the wider implications of democratic elections.
- The VRU Regulation should be amended so that it addresses the specific needs of the VRU period and Section 4(3) should be removed from this Regulation.
- The rules on direct access and special election programming should be separated out.
- IMN should be required to provide sufficient special election programming, along with its news and current affairs programming, to ensure that voters understand the issues at play in the election, including by involving independent experts in their programmes. This programming should focus on parties, rather than on candidates.
- Consideration should be given to allocating direct access programming to parties (and independent candidates) rather than to candidates. The Election Regulation should establish a framework for direct access programming, including minimum quotas for direct access programming, based on what is considered necessary to ensure that parties have an adequate opportunity to inform voters about their positions.
- Section 4(4), requiring IMN to carry IHEC programmes, and to encourage other media to do so as well, should be removed.
- Party coverage should not be required to be equal; instead, notions of equity, fairness, balance, impartiality and/or non-discrimination should be employed.

II.5 Content Rules

The Regulations place a number of content obligations, both positive and negative, on media outlets during elections. Section 2(1) calls on media outlets to provide accurate, complete and impartial information. It is not clear whether this refers to election-related material or all content disseminated during the election period. The section also specifically calls on all media to be unbiased and impartial when covering the VRU period (VRU Regulation) or when dealing with political entities (Election Regulation). Clause 3 of the Accreditation Procedures also calls on accredited media representatives to be neutral and impartial, and to avoid doing anything which might affect voters while visiting VRU/election centres.

Obligations of balance and impartiality are often imposed on the broadcast media, as well as on all public media, during elections (as well as at other times), at least in relation to matters of public controversy. However, few countries impose such an obligation on the (private) print media. The CoE Recommendation, for example, calls on both public media and private broadcasters to be “fair, balanced and impartial in their news and current affairs programmes” during the election period. But it does not call for a similar obligation to be imposed on the print media. Significantly, the CMC Code for Media During Elections only imposes obligations of balance and impartiality on the broadcast media and IMN (see Article 3).

The rationales for different regulatory approaches to the broadcast and print media are described above. Although the matter has not yet been considered by an international court, it is unlikely that the imposition of a requirement of balance and impartiality for the print media would pass muster as a restriction on freedom of expression, although this might depend on the diversity of print media available. Among other things, the public may wish to access newspapers or magazines which take strong political positions in favour or one or another party. This would contribute to diversity and yet be unlikely to create a noticeable imbalance in the elections. The concern with over broad application of the rule of impartiality becomes even more serious in light of the potentially very wide definition of media in the Regulations, noted above.

The Regulations also fail to take into account the situation of media outlets, particularly newspapers, which are explicitly linked to one party or another. The CoE Recommendation, for example, provides for States to exempt from the obligation of balance any media which are explicitly and openly linked to a party.

It may be noted that the call in the Accreditation Procedures for media representatives not to do anything that might affect voters while in VRU or election centers is different. This is an obligation that is imposed on everyone who has access to these centers, and it is based on the right of everyone to make free election choices.

The Regulations are also not very clear as to what is covered by the obligation of balance and impartiality. In most countries, consistently with the CoE Recommendation, the obligation of balance and impartiality applies to any direct access programming, to special election programming (whether or not this involves political representatives), and

to news and current affairs programming. The reasoning behind this is that all three forms of programming may affect the way the electorate exercises its electoral choices and that the rationale for balance and impartiality therefore applies equally to all three. The CMC Code is relatively clear on the scope of its obligations of balance and impartiality (see Article 3).

Section 5(1) of the Election Regulation also states that all media have a responsibility to inform “readers, listeners, and viewers of the election process in an accurate timely manner”. Similarly, Section 2(1) calls on all media to provide accurate and complete information. Certainly the public media have this obligation, and it is a professional responsibility for the main news media. It is, however, excessive to suggest that this is an obligation for all media. Different media serve different social needs. Local newspapers, for example, may wish to restrict their coverage to local events, while specialised publications, for example focusing on housekeeping or cars, may not wish to cover election news at all. Some media outlets, like music radio, aim primarily at providing entertainment. There is no reason why these media should be required to provide complete information during election periods. The public may rely on traditional news services for this purpose.

Furthermore, there is a problem with the excessive focus on ‘accurate’ information. It is a professional obligation of all journalists to strive to be as accurate as possible. At the same time, it is problematical to impose this as a legal obligation. Perfect accuracy is not possible, even for the very best journalists, and in any case this should be left as a professional standard.

Section 3(4) makes special reference to “online media”, calling on them to “ensure the principle of equality, by not allowing any discrimination or alienation of any political entity or candidate” in their election programming. It also calls for online media to “guarantee the inviting policy”, as well as to provide equal opportunities for women and men.

The concern with the lack of definition of “online media”, and its potentially very broad application, has already been noted, as has the problem with using the term “equality” in this context. Furthermore, the rules should take into account the issue of explicitly politically-linked online media, as with newspapers.

Recommendations:

- Consideration should be given to imposing obligations of balance and impartiality only on broadcast and public media. At a minimum, party newspapers should be exempted from this obligation.
- The Order should make it clear that the obligation of balance and impartiality applies to direct access, special election, and news and current affairs programming.
- The obligation on all media to provide complete information and to cover the latest election news should be removed from the Election Regulation, or narrowed in scope to the public media.

- Media should not be under an obligation to provide ‘accurate’ information; this should, instead, be left as a professional obligation.
- Section 3(4) should be amended to take into account concerns with a potentially overbroad definition of online media, problems with the use of the term equality, and the need to accommodate politically-linked media.

II.6 Political Advertising

Section 2(2) (Section 2(3) in the Election Regulation) calls on (or invites) all media, explicitly mentioning both broadcast and print media, to reduce advertisement costs during election campaigns, given the national (or patriotic), as opposed to commercial, nature of such advertising. Section 3(5) of the Election Regulation also notes that political entities have the right to use paid advertisements during the campaign and that print media outlets must publish such advertisements.

The call on media outlets to reduce advertising costs is characterised as a ‘call’ or as an invitation rather than as an obligation. At the same time, notwithstanding the public interest rationale for this, it is not very appropriate for an official body to issue such a call. Media outlets are, for the most part, commercial entities which must make a profit to survive. Advertising is, for most media, the primary source of funding. There is no particular reason why the financial burden of supporting a free flow of information during elections should fall exclusively on the media, just because they are formally involved in distributing that information. A more appropriate approach would be to provide public funding support to parties and candidates so as to assist them in disseminating their messages. Furthermore, the vague nature inherent in the idea of reducing costs, as well as the very different ability of different media to put them into effect, could lead to abuse. On the other hand, it is appropriate to require all media which do offer advertising to do so on a non-discriminatory basis to all parties and candidates.

Practice regarding paid political advertising varies in democracies but most do allow it. At the same time, it is not appropriate to require print media to carry such advertising. Some print media may not carry any advertising, for example, or they may wish to avoid political advertising, for whatever reason. While this may be rare, it should be a matter of editorial decision-making, not the law. What would be appropriate, however, is to prohibit all media from discriminating against parties in the sale of advertising.

Consideration should be given to the idea of introducing overall limits on the amount of advertising that parties and candidates can purchase. Such limits help promote a level playing field by preventing those with greater resources from dominating the election. The CoE Recommendation, for example, states: “Member states may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space and time which a given party or candidate can purchase.” In some countries, this is achieved through limits on donations to parties rather than directly through advertising limits.

Recommendations:

- The call on media outlets to offer reduced cost advertising should be removed from the Regulations.
- Where media do accept political advertising, they should be required to do so on a non-discriminatory basis.
- Print media should not be required to carry political advertising but, if they do, they should be required to provide it on a non-discriminatory basis.
- Consideration should be given to imposing overall limits on the amount of advertising that parties and candidates may purchase.

II.7 Official Election Information

Section 2(3) of the VRU Regulation (Section 2(4) of the Election Regulation) calls on media outlets to indicate that IHEC issues all official election information and to refrain from disseminating any such information without checking its accuracy. It also calls on media outlets not to distort IHEC electoral information, whether through paid advertisements, news or other forms. Section 3 of the Regulations require information on “procedures, regulations, and electoral policy” to be based on official information provided by IHEC, while Section 5(2) of the Election Regulation adds that these should be based on “transparent, clear, factual and official data” from IHEC. Section 5(3) of the VRU Regulation provides that media should cover IHEC operations in an impartial and accurate manner. Finally, clause 3 of the Accreditation Procedures (as appended to the VRU Regulation) states that media representatives will be provided with information to disseminate about the VRU period.

While it is important that the electorate receive clear and accurate information about election procedures, these provisions reflect an over controlling approach and they are not commonly found in election rules in other countries. Section 5(3) is potentially problematical inasmuch as it may be understood as imposing an obligation on all media to undertake the task of informing the public about the election. As noted above, different media have different mandates and not all will necessarily wish to do this. This is a task that should fall primarily on the shoulders of the larger news media.

Sections 2(3), 3 and 5(2), read together, might be understood as suggesting that the media may only issue formal election information coming from IHEC. This is not legitimate. There is no reason why media outlets, as long as they act in conformity with professional standards, should not provide their own information about election processes and the like. Indeed, to attempt to grant IHEC an exclusive mandate over this could make it difficult for media to play their watchdog role in relation to IHEC, a public body whose performance should be monitored and discussed in the media. This risk is exacerbated by Section 5(3), which calls for coverage of IHEC to be balanced and impartial. While broadcasters may generally be required to be balanced in their coverage, a specific impartiality rule such as this may be seen as a special warning to media not to criticise IHEC, which is not legitimate.

The purpose of Section 2(3) is not clear. As noted, if it suggests that only IHEC election information should be disseminated, it is not legitimate. Otherwise, it seems unnecessary

to require the media to remind voters that IHEC is the official source of information about the election; IHEC can do this itself.

Recommendations:

- The Regulations should make it clear that not all media outlets are required to provide information about the election.
- Sections 2(3), 3 and 5(2) should be amended to make it clear that media are free both to report independently of IHEC on election procedures and related matters, and to engage freely, within professional boundaries, in criticism of IHEC.
- Consideration should be given to removing Section 2(3) from the Regulations.

II.8 Accreditation

Section 6(1) of the Regulations requires media representatives to obtain approval from the designated IHEC media representative before they may enter the Commission's offices and centers, and voting centers. Section 6(2) prohibits media representatives from photographing or videotaping any individual in these locations unless that individual clearly consents and, in any case, this should not expose the electoral intention of a voter. Section 6(3) of the Election Regulation provides that print media representatives may enter offices and centers but that filming and photography is not allowed except in centers designated for this purpose by IHEC. Presumably broadcasters are also allowed to enter these venues, although this is not clear from the text.

Both Regulations contain annexes with Media Accreditation Procedures. Clause 2 of the Procedures in the VRU Regulation stipulates that freedom of movement of the media should not be restricted "except for security reasons" while the language in the Election Regulation is "except for overriding reasons such as security". While respect for freedom of movement is indeed very important, it may be restricted on grounds other than just security. Other interests, such as the ability of voters to cast their ballots in peace and in private, might also justify limiting access of media to voting centres.

Clause 4 of the Procedures (it may be noted that this clause is missing from the Election Regulation) stipulates that badges may only be provided to media representatives in person. While there may be security reasons for this, at the same time it may not be very practical for all media representatives to obtain their badges in this way. For example, the rules could accommodate cases where a media representative can demonstrate that it will be difficult for him or her to collect the badge in person.

More generally, Clause 4 refers very generally to accreditation only being provided to individuals who "meet the requirements" and to the possibility of accreditation being withdrawn for failing to "respect the rules and responsibilities of media representatives". The definitions refer to the code of conduct as the instructions and principles adopted by the CMC, but this is not specifically linked to the power to refuse or withdraw accreditation.

This effectively leaves decision-making regarding accreditation in the hands of the media official or the relevant Commission official. Covering the elections is an important public interest role for the media and it should not be, or appear to be, left to the discretion of individual officials. The precise requirements should be set out clearly in either the main Regulations or the Procedures. The CMC has adopted various codes and rules for the media, including an Interim Broadcasting Programme Code of Practice. Instead of vague references to CMC ‘instructions and principles’, the rules should make it very clear which precise documents and standards media representatives are expected to abide by.

The rules also fail to establish clear and specific procedures for obtaining accreditation, including where to apply, timelines, and so on. It would be preferable for a framework of rules to be established regarding accreditation.

It may be noted that national practice regarding access to polling stations and centres varies. In some countries, media are not allowed into polling stations, in others they are given only limited access, while in others they have full access. Access can help ensure that the elections are conducted openly and in the full glare of publicity but, at the same time, it is important that media not disrupt the electoral process or intimidate voters. It should be clear that the station or centre chief retains the ultimate power to control activities within that venue, including by restricting media activities or expelling media representatives where this is necessary to preserve the integrity and fairness of the election process. The restrictions on photographs and videotaping in Section 6(2) are important safeguards in this regard. No media representative should enter the voting booths (except to cast his or her own ballot).

Recommendations:

- A single accreditation procedure should be put in place for both the VRU and main election processes.
- The rules should make it clear that broadcast journalists have the same right to enter election venues, although they may not be allowed to film or take photographs in them.
- Journalists working for online media should be allowed to be accredited, as long as their media reach a significant audience.
- The rules should envisage freedom of movement being restricted not only to protect security but as necessary to ensure that voting can take place freely and in private.
- Consideration should be given to relaxing the rule about accreditation badges only being provided directly to media representatives.
- The criteria for being granted accreditation, including the specific CMC rules which must be respected, should be set out clearly in the rules.
- Clear procedures for obtaining accreditation should be provided for. These should make it clear that the polling station or centre chief has final say over how his or her station operates.

II.9 Violations

Clause 7(1) of the Regulations provides that the BoC of IHEC will withdraw “accreditation” from any media representative that violates the regulations and the Code. The Board will also request the CMC to impose appropriate sanctions on any media outlet which violates the rules (Section 7(2)). Finally, IHEC will refer criminal issues to the appropriate authorities (Section 7(3)).

For the most part, these rules are uncontroversial, apart from the issue of dual responsibility for enforcement of the rules. As noted above, it would appear from Sections 7(1) and (2) that both IHEC and the CMC are responsible for enforcing the rules in both the Regulations and the Code. As also noted above, it is essential that only one body apply each set of rules.

At least in translation, Section 7(1) seems to suggest that accreditation will be withdrawn for breach of the rules. In practice, however, this should depend on the severity of the breach, as well as whether it is a first or repeat offence.

Recommendations:

- It should be made quite clear that only one body, presumably IHEC for the Regulations and the CMC for the Code, has the power to enforce election-related media rules.
- It should be made clear that the Board may, but not must, withdraw accreditation for breach of the Order or Code.