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Media and Elections in the SADC Region

Protocols and Policies

By Libby Lloyd

FRIEDRICH EBERT STIFTUNG

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As a consultant she has been involved in a range of projects, including:

- Piloting of a course for SADC parliamentarians on media and broadcasting policy and regulation
- Strategic planning for the Digital Dzonga in South Africa – established to coordinate the migration to digital terrestrial television broadcasting.
- South African researcher for an African wide research project into public broadcasting.
- Developing templates for integrating gender into ICT laws for the regulators across SADC .
- Facilitating needs assessment for Discovery CSI programme on developing sustainability and capacity building for rural health projects
- Assisting applicants for commercial subscription television and radio licences

- As first CEO, established the Media Development and Diversity Agency – a legislative public private organisation established to provide financial and other support to media in South Africa. In this position she assisted in developing the strategic vision for the Agency.
- Developed editorial policies for the public broadcaster (the SABC), including a language policy, education policy and policies on universal service.
- Was appointed by Parliament as a Councillor on the broadcasting and telecommunications regulator (IBA and ICASA). Responsible for amongst other things the development of a code of conduct for broadcasters (including codes on equitable treatment of political parties during elections), development of South African content policies for television and radio, and finalisation of advertising and sponsorship regulations.
- As head of radio training at the Institute for the Advancement of Journalism, developed a range of radio management courses for radio producers and journalists in both public and community radio stations.
- Has edited and contributed to a range of books on gender issues and media development and worked as a journalist and editor for SPEAK Women's Media Project – focusing on providing media (including print and radio) for working class women.
- Chosen as South African Media Woman of the Year in 2005.
- Served and continues to serve on a range of Boards, including currently the board of Agenda Feminist Media Project, the Institute for the Advancement of Journalism, The SABC Interim Board and as a member of the Audit Committees of the GCIS and International Media Council

Section One: *Introduction*

In 2007, the Electoral Commissions Forum organised a workshop for representatives of the media and members of SADC Electoral Commissions on elections and freedom of expression and access to information.

At this workshop it was agreed that the relationship between Electoral Commissions and the media should be strengthened. It was recognised that the media has a critical role to play during elections in facilitating participation by citizens and in enabling voters to make informed choices.

A key recommendation identified the need to establish a task team to further investigate suggestions on development of a SADC protocol/declaration on freedom of expression and elections:

> *"A task team consisting of ECF, media stakeholders and media regulators, SADC Parliamentary Forum, NGOs and other groups and individuals involved in the electoral process, be established to ascertain what instruments exist in the SADC region on elections and freedom of expression and information and whether what already exists is adequate or not. This task team should make proposals in the event that they find inadequacies and gaps. This process should feed into the process of the development of an election protocol in the SADC region."*

A further recommendation linked to this identified the need for the print media to explore the development of a code/codes of ethics binding members to providing fair coverage during elections:

> *"Journalists unions and organisations of editors and publishers, including private commercial broadcasting stations, should agree on a voluntary code of professional conduct for media during elections;"*

A range of other proposals were adopted relating to promoting freedom of expression and access to information in SADC countries in line with such a protocol/declaration. These included:

- The MISA/SABA 'Guidelines and Principles for broadcast coverage of elections in the SADC Region' should be formally adopted and adapted by countries in the region.
- SADC countries should review their media laws and practices in order to facilitate equal and free access by all parties and candidates to the media during elections.
- Access to information laws should be introduced in those countries that have not as

yet adopted such frameworks.

- Anti-defamation and anti-insult laws that exist should be revised and/or repealed to ensure they cannot be used to muzzle or threaten either journalists or candidates during elections.
- Inter-party liaison committees to interact with the media should be established. Such committees should commit to a code of practice relating to freedom of the media and endorse fair practices relating to political advertising in public/state media.
- Elections codes/regulations/laws should stipulate that all political parties and candidates should have equal access to state/public media.
- There should be institutionalised multi-stakeholder media monitoring groups established to evaluate the performance of the media in deepening electoral democracy.

This report is the first step in the process of developing guidelines for the region relating to media and elections. It outlines what international, African and regional (SADC) instruments already exist that promote freedom of the media and equitable access to the media during election periods. The aim is to identify what, if any, gaps exist in current instruments in order to enable a Task Team to develop a plan of action to strengthen these.

Methodology

This report is a preliminary assessment of the instruments that are in place relevant to countries in the SADC region that relate to freedom of expression and elections. As a preliminary report aimed at assisting a task team to plan its programme of action, it is predominantly based on desktop research. A limited number of telephonic interviews were conducted, primarily to cross check information available on the Internet. Such interviews were however confined to interviewees located in South Africa (where the researcher is based). As such, and given the dearth of information on some countries in the SADC region readily available on the web, there are inevitably gaps and/or information may not all be up to date. Given the research objectives, however, these do not significantly affect the findings, as the aim is not to provide a detailed assessment of the provisions in each country, but rather indicate what, if any, shortcomings exist in instruments relevant to the region relating to freedom of the media and elections.

Overview

This report identifies first what international, African and regional instruments are currently in place relating to media freedom and elections. The next section (Section 3) outlines examples of best practice from around the world. Section 4 looks at some of the legislative frameworks and media self-regulatory mechanisms in place in countries in the region. Each section includes a summary/recommendations analysing the information presented. Finally, the conclusion summarises suggestions.

The basic premise of this research is that the objective of any instrument/s relating to elections and/or freedom of expression is to enhance voters' access to information in order to enable them to make an informed choice about who to vote for rather than (as is sometimes postulate[1]) to ensure all political parties are treated fairly by the media. While the distinction may seem

trivial, in reality it is essential to understanding why freedom of expression and concomitant media freedom are inextricably linked (alongside freedom of association and movement) to free and fair elections. The emphasis on voters rather than only on political parties or the media provides a useful indicator of what principles/measures are critical to include in any guidelines/rules relating to the media during elections. This perspective furthermore is a useful tool to use in assessing the relevance of specific requirements or rules that might be imposed during an election period (such as, for example, regulations on allocation of time to political parties and candidates on broadcasters or codes of conduct for political parties relating to treatment of media). Several countries internationally, for example, use the need to prioritise the rights of voters over those of political parties or the media as the justification for barring exit polls by the media or imposing reflection periods just before an election when there is a black out on electioneering on all platforms (including the media).

Generally, around the world, there is a recognition that freedom of expression and political debate is fundamental to free, fair and genuine elections. The UN Special Rapporteur for Freedom of Expression has, for example, noted that an election can be declared free but not deemed fair when there is differential access by political parties to public media in particular[2]. At the same time it is often also emphasised that media have a particular responsibility to the public during elections – for example, it is mooted that there is a specific need to establish speedy procedures to allow a right of reply to accusations made by opposing candidates (which increases as the election date approaches). There is further recognition generally that the roles and responsibilities of different sorts of media (public vs private media and print vs broadcasting) inevitably differ – with greater responsibilities being placed, for example, on public media to provide air-time/space to political parties (via free party election broadcasts). Broadcasters too in many countries in the world are often more tightly regulated than the print media (which generally is bound primarily by self regulatory codes) – in recognition of their influence and the fact that radio and television use public resources.

Finally, it is important to note that real freedom of information cannot be assessed by laws (or the lack thereof) alone. It is also dependent on the richness of the diversity of media available and the environment in which they operate.

[1] South African broadcasting legislation for example suggests that the purpose of regulation of broadcasting in an election period is to ensure political parties are treated fairly.

[2] 'Promotion and protection of the right to freedom of opinion and expression Report of the Special Rapporteur, Mr. Abid Hussain, submitted pursuant to Commission on Human Rights resolution 1997/26', COMMISSION ON HUMAN RIGHTS, Fifty-fourth session, accessed from http://www.unhchr.ch/Huridocda/Huridoca.nsf/fb00da486703f751c12565a90059a227/7599319f02ece82dc12566080045b296?OpenDocument#III.B

Section Two: *International, continental and regional standards*

A number of international, continental and regional standards relate to freedom of expression and/or elections. This Section also includes a summary of election monitoring guidelines used by international and regional organisations to assess whether or not elections are free, fair and genuine.

2.1 International standards: The United Nations

The following standards set by the United Nations or associated organisations are relevant to freedom of expression and/or detail rights to free and fair elections:

- **The United Nations Universal Declaration of Human Rights (adopted in 1948)**

As a set of principles, members do not ratify the Universal Declaration of Human Rights, but it sets the standard for human rights internationally. Thus, although the Declaration is not formally binding, many of its clauses, including that on freedom of expression, have become part of international customary law. Article 19 of the Declaration deals with the right to freedom of expression:

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

Article 21 deals with elections and participation in government:

- *"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
- *"Everyone has the right to equal access to public service in his country.*
- *"The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."*

- **International Covenant of Civil and Political Rights (enacted by the United Nations in 1976)**

The International Covenant of Civil and Political Rights (CCPR) codifies many of the rights outlined in the Declaration thus making them binding on those nations which have ratified the Covenant. All SADC members have either ratified or acceded to the CCPR. The Covenant's Article 19 declares:

- "Everyone shall have the right to hold opinions without interference;
- 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.
- The exercise of the rights … in paragraph 2 ….. may … be subject to certain restrictions, but these shall only such as are provided by law and are necessary:
  a. For respect of the rights or reputations of others;
  b. For the protection of national security or of public order, or of public health or morals"

Article 1 states:

> *"All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."*

Article 25 repeats the rights relating to participation in government and elections articulated in the UN Declaration of Human Rights as stipulated above.

- **Declaration on fundamental principles concerning the contribution of the Mass Media to Strengthening Peace and International Understanding, the the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War (adopted by the General Assembly of the UN Educational, Scientic and Cultural Organisation – UNESCO – in 1978)**

Declarations, whilst not legally binding as they have not been formally ratified, represent "a broad consensus of the international community and, therefore, have a strong moral force on the practice of States in their international relations".

Article 1 of this Declaration states:

> *"The exercise of freedom of opinion, expression and information recognised as an integral part of human rights and fundamental freedoms, is a vital factor in strengthening peace and international understanding."*[3]

Article 2 declares:

> *"Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end journalists*

[3] United Nations Office of the High Commissioner for Human Rights, 'Leaflet No 2:Indigenous Peoples, the UN and Human Rights' accessed from http://www.unhchr.ch/html/racism/indileaflet2.doc, 25 July 2008

must have the freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to the concerns of the peoples and individuals, thus promoting the participation of the public in the elaboration of information …"

Article 4 states:

"If the mass media are to be in a position to promote the principles of this Declaration … it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession."

Article 11 requires member states to guarantee favourable conditions for the mass media.

- **The Windhoek Declaration on Promoting an Independent and Pluralistic African Press (adopted by the general assembly of the UN Educational, Scientific and Cultural Organisation - UNESCO - in 1991)**

As previously, this is a Declaration rather than a Covenant, Convention or Treaty.

Article 9 of the Windhoek Declaration states:

"(We) declare that:
- *Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.*
- *By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.*
- *By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community."*

There is no specific reference in the declaration to media and elections.

2.2 African Union Protocols

Standards relating to freedom of expression and/or elections include:

- **The African Charter on Human and Peoples' Rights (adopted 27 June 1981)**[4]

[9] Organisation of African Unity, The African Charter on Human and Peoples' Rights, adopted 27 June 27 1981, Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

All SADC countries have ratified or acceded to the African Charter on Human and People's Rights. [5]

Its Article 9 on freedom of expression states:

- *"Every individual shall have the right to receive information.*
- *"Every individual shall have the right to express and disseminate his opinions within the law."*

Article 13 deals with elections:

- *"Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.*
- *"Every citizen shall have the right of equal access to the public service of his country.*
- *"Every individual shall have the right of access to public property and services in strict equality of all persons before the law.*

- **African Charter on Democracy, Elections and Governance (2007)**

Very few members of the AU have signed this Charter – and even fewer have ratified it. In the SADC region, only five countries have signed the Charter (DRC, Madagascar, Mauritius, Namibia and Swaziland) but none of these have formally ratified the protocol. [6]

Given the lack of progress in formal ratification of the Charter, the African Commission on Human and Peoples' Rights (established by the AU to facilitate compliance with the Charter of rights) passed a resolution calling on all members to urgently ratify the Charter in Abuja, Nigeria in November 2008. [7]

This Charter highlights the importance of access to information in a democracy. It states:

> *"(State parties shall) (p)romote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs." (Article 2(10))*
>
> *"State parties shall ... ensure fair and equitable access by contesting parties to state controlled media during elections." (Article 17 (3))* [8]

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[5] http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf
[6] See http://www.africa-union.org/root/au/Documents/Treaties/list/Charter_on_Democracy_and_Governance.pdf
[7] African Commission on Human and People's Rights: Res.133 (XXXXIIII) 08: RESOLUTION ON ELECTIONS IN AFRICA, adopted in Abuja, Nigeria on 24 November 2008 see http://www.achpr.org/english/resolutions/resolution133_en.htm
[8] http://www.africa-union.org/root/au/Documents/Treaties/text/Charter%20on%20Democracy.pdf

- **Declaration of Principles on Freedom of Expression in Africa (adopted by formal resolution by the ACPHR in 2002)**

The Declaration expands on the rights to freedom of expression outlined in the African Charter, and outlines a number of Principles critical to realising the rights outlined in the Charter. It opens with the following Principle:

> *"Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.*
>
> *"Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination."*

It goes on to say in Section II:

- *"No one shall be subject to arbitrary interference with his or her freedom of expression; and*
- *"Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society."*

The Declaration details how such freedom of expression should be realised. Whilst a full copy of the Declaration is attached to this report as it is generally very relevant to the subject of how to facilitate freedom of expression, the following stipulations should be highlighted:

- Whilst no specific clause relates to media during an election period, the Declaration does stipulate that state broadcasters should be transformed into public services accountable to the public and that *"the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods".* (Principle VI)
- The document also states that freedom of expression *"places an obligation on the authorities to take positive measures to promote diversity".* (Principle II)
- A number of clauses relate to broadcasting and the need for a three tier system including public, private and community services. The Declaration further notes that broadcasting and telecommunications regulatory authorities should be independent and *"adequately protected against interference, particularly of a political or economic nature"* (VII).
- The Declaration states that effective self-regulation is ideal for promoting high standards in the media (IX)
- The Declaration furthermore provides for freedom of access to information and states that *"the right to information shall be guaranteed by law"* (IV).
- Finally, a range of clauses relate to either abolishing or amending laws or putting in place legislation to further media freedom For example, the Declaration suggests

ways to ensure that laws relating to defamation do not inhibit freedom of information (Clause XII). It also stipulates that laws that place criminal restrictions on freedom of expression should be reviewed (Clause XIII) and that mechanisms should be put in place for the protection of journalistic sources (XVI).

2.3 Southern African Development Community (SADC) Standards

The Southern African Development Community (SADC) has adopted several protocols related to media and/or communications.

- **SADC Protocol on Culture, Information and Sport (adopted in 2000)**

This Protocol focuses on harmonising policies on culture, information and sport by SADC member states. Article 17 outlines the following key objectives, amongst others:

- *"Co-operation and collaboration in the promotion, establishment and growth of independent media, as well as free flow of information*
- *"Taking positive measures to narrow the information gap between the rural and urban areas by increasing the coverage of the mass media*
- *"Encouragement of the use of indigenous languages in the mass media as vehicles of promoting local, national and regional inter-communication*
- *"Ensuring the media are adequately sensitised on gender issues so as to promote gender equality and equity in information dissemination".*

Article 18 focuses on information policies, including committing member states to "*create (a) political and economic environment conducive to the growth of pluralistic media".*

Article 20 enjoins member states to take "*necessary measures to ensure the freedom and independence of the media", with "independence of the media" being defined as "editorial independence, whereby editorial Policy and decisions are made by the media without interference".*

- **SADC Declaration on Information and Communication Technology (2001)**

This Declaration focuses on telecommunications structures and promotes the creation of a three-tier system in each country with:

- Government responsible for a conducive national policy framework,
- Independent regulators responsible for licensing, and
- A multiplicity of providers in a competitive environment responsible for providing services. (Article 2(a)(i))[9]

[9] http://www.sadc.int/key_documents/declarations/ict.php

Although the Declaration does not have the same legal force as a protocol, all countries that are party to it (including South Africa) have made a commitment in adopting it to abide by its provisions.

- **SADC Parliamentary Forum: 'Norms and Standards for elections in the SADC region' (adopted in March 2001 at the SADC PF Plenary in Windhoek, Namibia**[10]

The document outlines a number of recommendations from SADC Parliamentary Forum (PF) to governments and parliaments in the SADC region. The recommendations are based on findings from election observation missions conducted by SADC PF.

The report, amongst other things, notes breaches of freedom of expression and association in some SADC countries which it is noted have resulted in members and/or supporters of opposition parties being *"intimidated, beaten up, tortured and even murdered"*. In response to this, SADC PF recommends:

- *"The sanctity of the freedom of association and expression should be protected and strictly adhered to;*
- *"Relevant election laws and codes of conduct should provide for this sanctity;*
- *"Governments should establish by law ad hoc Election Tribunals to enforce electoral laws and codes of conduct during elections"*[11]

The recommendations also encompass inequitable access to state owned media, noting that in many SADC countries 'public' media continues to be controlled by Government. SADC PF notes that *"this contributes to lack of transparency through selective reporting. Where the opposition parties are given airtime it is too short and the timing may be inappropriate".*

Recommendations made in this regard are:

- *"Governments… should … refrain from taking actions that thwart the development of a strong private media….*
- *"…Opposition parties should …. be given equal opportunity and agreed upon time and space on the state owned media to put their announcements and broadcasts and advertisements. This is a true test of the Government's commitment to …a democratic political process.* [12]

[10] Accessed from http://www.eisa.org.za/PDF/sadcpf.pdf
[11] SADC PF Norms and Standards, Section C: Recommendations, Part 1: Elections and Individual Rights, Sub-section 3
[12] SADC PF Norms and Standards, Section C: Recommendations, Part 2: elections and the government, Sub-section 4

2.4 Other relevant documents

Both UN bodies and SADC have developed guidelines focusing either on interpretation of the relevant international treaties (UN) or on the monitoring of elections in member states. As can be seen below, however, whilst the UN documents provide extensive detail on freedom of expression and media freedom as an essential component of free and fair elections, the continental and regional guidelines are more limited in this regard.

- **'Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections', Professional Training Series No 2, United Nations, Centre for Human Rights, Geneva 1994**[13]

Chapter III of the Handbook outlines "fundamental criteria for free and fair elections" extracted from the international human rights standards. The manual states that whilst all rights articulated in the Universal Declaration are important, freedom of expression, opinion and information are amongst those that are particularly important in an election period.[14]

Section III D of the above chapter deals with criteria for 'genuine elections'. Sub-section D5 identifies an informed choice as one of the prerequisites for this and states "*(w)ell organised, non-partisan voter information programmes and unhindered distribution of political propaganda are therefore critical elements of genuine elections".*

Paragraphs 91-92 of this sub-section deals specifically with the mass media:

> *"Access to the mass media should also be guaranteed to political parties and candidates, and such access should be fairly distributed. Fair media access implies not only allocation of broadcast time or print space to all parties and candidates, but also fairness in the placing or timing of such access (i.e. prime-time versus late-night broadcasts, or front-page versus back-page publication).*
>
> *"In addition, use of the media for campaign purposes should be responsible in terms of content, such that no party makes statements which are false, slanderous or racist, or which constitute incitement to violence. Nor should …false expectations be fostered by partisan use of the mass media."*

Chapter IV of the Handbook deals with 'Common Elements of Electoral Laws and Procedures'. Section I of this chapter is dedicated to media access and regulation. It states:

> *"Arrangements for fair media access by candidates and parties are an important focus of electoral law. This is especially evident where the major information media are government controlled. Media regulations should provide for safeguards against*

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[13] Hereinafter referred to as 'UN Handbook: Elections and Human rights', accessed from http://www.ohchr.org/Documents/Publications/training2en.pdf

[14] UN Handbook: Elections and Human rights', Section III, Sub-section A 3: Free Elections: Prerequisite Rights, Page 6

political censorship, unfair government advantage and unequal access during the campaign period. (Par 120)
"… A valuable mechanism for assuring fair and responsible broadcasting during election periods is an independent body charged with monitoring political broadcasts, broadcast civic education programmes and allocation of times to various political parties, as well as receiving and acting upon complaints regarding media access, fairness and responsibility. This function may be discharged by representative transitional bodies, by the electoral administration, or by a separately constituted media commission. (Par 122)
"Securing responsible electoral broadcasting and publication in the media can, in part, be served by agreement on a code of conduct for the media. Such codes may be preferable as a method of media regulation (i.e. self-regulation) to legislative or governmental action, which might raise the issue of impermissible censorship and interference with the human rights of freedom of information and expression." (Par 123)

Section III L deals with legal authority and states in regards to freedom of expression that *'… the rights of free expression, opinion, information, assembly and association should … rest in the highest law of the land. Statutory language should be clear, concise and adequately specific, in order to forestall potential abuse discretion, discriminatory application or impingement upon the rights of free expression …"* (Par 130)

- **African Union Election Monitoring Guidelines** [15]

The African Union in 2002 established an Election Monitoring Unit.[16] The Guidelines outline the "criteria for elections observation" for the organisation. The guidelines do not provide detailed criteria for assessing freedom of expression in any country but do refer to freedom of expression and/or access to the media in several sections. The manual, for example, states that the AU Observers should, amongst other things, *"ascertain that ….. all competing political parties have equal access to both the print and the electronic media".* [17]

- **SADC Principles and Guidelines Governing Democratic Elections**[18]

The document states that the Principles are aimed at *"enhancing the transparency and credibility of elections and democratic governance as well as ensuring the acceptance of election results by all contesting parties".*

[15] http://www.africa-union.org/News_Events/Calendar_of_%20Events/Election%20Democratie/ELECTION%20OBSERVATION%20%20MONITORING%20GUIDELINES.pdf
[16] 'Decision on the Establishment of an Election Monitoring Unit', Decisions of the seventy Sixth Ordinary Session of the OAU Council of Ministers, 28 June – 6 July 2002, Durban, South Africa accessed from http://www.africa-union.org/Structure_of_the_Commission/Political%20Affairs/x/ELECTION%20MONITORING%20UNIT%20IN%20AFRICA.pdf
[17] Par 22 (b) page 7
[18] http://www.sadc.int/#

Section Two outlines the principles that SADC members should follow in conducting elections. Again (as with the AU document), the need for freedom of expression and freedom of the media is not emphasised. Clause 2.1.5 does however state that members must ensure *"(e)qual opportunity for all political parties to access the state media".*

Section 4 outlines 'Guidelines for the Observation of Elections'. As can be seen below, they do not refer specifically to freedom of expression (or freedom of association) but rather more generically to freedoms and rights:

> *"SADC Member States shall be guided by the following guidelines to determine the nature and scope of election observation:*
> - *"Constitutional and legal guarantees of freedom and rights of the citizens; (4.1.1)*
> - *"Conducive environment for free, fair and peaceful elections;(4.1.2)…".*

The document however also outlines (in section 7) the responsibilities of the member state holding elections. It states that member states must:

- *"Take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of the country;*
- *"Safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes as provided for under 2.1.5 above".*

- **Southern African Broadcasting Association: 'Guidelines and Principles for Broadcast Coverage of Elections in the SADC Region' 2005**

SABA is an organisation representing publicly funded broadcasters across Southern Africa. At its AGM in Arusha, Tanzania in 2005 CEOs of public broadcasting services adopted a set of principles for broadcast coverage of elections in the SADC Region (see Appendix B). The document emphasises the *"duty of all broadcasters … to ensure free, fair and transparent elections".*

The Principles commit broadcasters to:

- Ensuring that coverage of the elections will be fair and impartial and that all parties and contestants are treated equitably (Articles 1 and 4)
- Focusing on issues of relevance and interest to citizens and not just events of political parties. This includes an acknowledgement of the need to "proactively seek out information". (Articles 2 and 4)
- *"(R)egard with caution any statement or action by an … incumbent party"* in view of the risk that a party in power may abuse their position to advance their election prospects. (Article 5)
- Barring staff members who either hold political office or are office bearers with a political party from broadcasting during the election period or participating in editorial decision making. (Article 6)

- Giving candidates and parties the right of reply if a report is inaccurate or includes unfair criticism *"based on a distortion of facts".* The guidelines state that such right of reply must be given within 24 hours of the original broadcast and be aired in a programme *"of similar weight and audience".* (Article 7)
- Guidelines on the reporting on opinion polls (similar to those identified previously). (Article 9)

The document also covers the airing of party election broadcasts (free time slots) and political advertisements in order to ensure that all parties are treated equitably in terms of allocation of slots and that the formulae for calculating air time are transparent and fair.

Finally the Guidelines stipulate that broadcasters must be allowed to operate in an environment free of violence and intimidation. The Guidelines urge electoral institutions to ensure all stakeholders respect the rights of broadcasters and journalists. The document also emphasises the need for governments to recognise the need to provide broadcasters with additional funding to ensure they can comprehensively fulfil their duties as regards election coverage.

Summary/Recommendations Section 2

As can be seen from the above, there are already in place a number of international, continental and regional standards relating to freedom of expression and/or election issues. Whilst not negating that there may be gaps in such regional and continental treaties and declarations, the major challenges seem to relate more to ensuring implementation of existing requirements/ agreements. Given this, any task team could explore the following actions:

- Supporting the African Commission on Human and Peoples' Rights (ACHPR) resolution calling on states to ratify the African Charter on Democracy, Elections and Governance and developing strategies to ensure endorsement by SADC members.
- Exploring ways to support and strengthen the institutions established by the African Union to promote freedom of expression and free, fair and genuine elections such as the (ACHPR) and the work of its Special Rapporteur on Freedom of Expression.
- Encouraging the ACHPR to develop a specific declaration/guidelines on freedom of expression and information during an election period. The Task Team could explore further whether or not such document should be developed as an addendum to the existing Declaration of Principles of Freedom of Expression in Africa, as a separate guideline or as part of a Declaration relating to elections broadly (Such as the UN Handbook referred to above).
- Developing guidelines for electoral commissions in the region on how to build partnerships with the media to promote information about the election and voter education.
- Exploring mechanisms to ensure implementation of the SADC Parliamentary Forum recommendations outlined above.
- Exploring ways to strengthen continental and regional guidelines for monitoring of

elections by proposing specific criteria relating to freedom of expression which could be monitored as part of ensuring free and fair elections. Examples of other such regional guidelines are detailed in the next Section of this report which could be considered in strengthening these frameworks.

Section Three:
Best Practice models and other documents

This Section considers a range of best practice models and highlights other interesting documents/policies of relevance to freedom of expression. What is clear from many of the guidelines or standards from different countries and contexts is that they emphasise the need to protect the media and freedom of expression during elections, rather than impose limitations. Where rules are imposed, these are justified in terms of them reinforcing the right of voters to an informed choice and to ensuring elections are free, fair and genuine.

3.1 Protocols/Recommendations from Regional Bodies

- **Council of Europe: Recommendations on Measures Concerning Media Coverage, 1999**

The Committee of Ministers of the Council of Europe in 1999 adopted specific recommendations for member states on media coverage of election campaigns (Recommendation No R(99)15).

The full text of this recommendation is attached as Appendix C. This section therefore only gives an overview of the recommendation. This overview is fairly comprehensive in order to show the level of detail in the Recommendations.

Generally the Recommendations stress the importance of media during elections and emphasises the "special importance" of the principle of editorial independence during such periods and the differences between print and broadcast media. The particular responsibility of public service broadcasters to provide fair and thorough coverage of elections (including giving free airtime to different parties/candidates) is also noted.

The document highlights that particular attention should be paid to *"certain specific features of the coverage of election campaigns, such as the dissemination of opinion polls, paid political advertising, the right of reply, days of reflection and provision for pre-electoral time".*

Unlike some of the documents described in the previous Section which suggest that media self-regulation might be a preferred option, rather than reinforcing this approach as essential to freedom of expression, the Recommendations specifically recognise *"the important role of self-regulatory measures by media professionals themselves - for example, in the form of codes of conduct - which set out guidelines of good practice for responsible, accurate and fair coverage of electoral campaign".*

The Recommendations in an Appendix outline specific approaches which should ideally be adopted by governments of Member States and suggests that such governments *"consider*

the adoption of measures to implement these principles in their domestic law or practice". The Appendix details suggested requirements for all media, rules specific to print or broadcasting as well as measures to protect media during an election.

The following recommendations are made for **both print and broadcast media:**

- Reflection days: *"Member States may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting".*

- Opinion Polls: "*Regulatory or self-regulatory frameworks should ensure that the media when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls".* The document suggests that such rules should only put in place the following requirements:
  - Media should name the organisation/person that commissioned and paid for the poll.
  - The organisation conducting the poll and the methodology employed should be detailed.
  - Any reports should indicate the sample and margin of error of the poll, and
  - The period when the poll was conducted should be identified.

- Exit Polls: The document states that members may consider prohibiting reporting on the results of exit polls until all polling stations have closed.

- Right of reply: It is suggested that rules specify that a political party/candidate entitled to a right of reply under either law or regulation should be *"able to exercise this right during the campaign period".*

For **print media**, the following suggestions are made:

- *"Regulatory frameworks….should not interfere with the editorial independence of newspapers or magazines nor with their right to express any political preference";*
- Print media outlets owned by public authorities should be governed by specific rules stipulating that they must cover electoral campaigns in *"a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate. If (they) accept paid political advertising….they should ensure that all political contenders … are treated in an equal and non-discriminatory manner".*

The following specific recommendations are made regarding **broadcast media:**

- *"…(R)egulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media*
- *"With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover electoral campaigns in a fair, balanced and impartial manner in the overall programme services…*
- *"No privileged treatment should be given by broadcasters to public authorities during …*

programmes. This matter should primarily be addressed via appropriate self-regulatory measures. As appropriate ….the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings…

- The document suggests that member states examine the "advisability" of including free airtime for parties/candidates on public broadcasting services and if agreed to should set rules to ensure that such time is awarded *"in a fair and non-discriminatory manner, on the basis of transparent and objective criteria".*
- If political parties are allowed to advertise (paid advertisements), regulatory frameworks must ensure that *"the possibility of buying … space should be available to all … and on equal conditions and rates of payment"* and that *"the public is aware that the message is (an) … advertisement".* The document further suggests that members *"consider introducing a provision … to limit the amount of political advertising space which a given party or candidate can purchase".*

As indicated earlier, the Recommendations also provide for **measures to protect the media** during elections. These include:

- Introducing limitations on public authorities to stop them interfering with the media or journalists with *"a view to influencing the elections".*
- The need to take *"appropriate steps for the effective protection of journalists … and their premises"* whilst not obstructing them in carrying out their work

3.2 Election Observation Guidelines

- **OSCE Election Observation Handbook, 2005**[19]

The Organ for Security and Co-operation in Europe (OSCE) is a transatlantic inter-governmental organisation of 56 participating states including the broader European region, the US and Canada. Its Office for Democratic Institutions and Human Rights (ODIHR), amongst other things, organises the observation of elections by international observers and has produced this very comprehensive handbook outlining issues for consideration by election observers.

The Handbook defines respect for fundamental human rights as critical to free, fair and genuine elections – breaking down what each of these principles means individually:

- As regards genuine elections, the Handbook states that *"…the concept of a genuine election can be called into question if fundamental rights and freedoms are not respected".*
- Freedom of expression is listed as a critical precondition for free elections and the document states that *"(f)ree elections requires that all citizens enjoy their fundamental rights of freedom of expression, association, assembly and movement… No obstacle should stand in the way of candidates freely presenting their views or prevent voters from … learning about or discussing these views. The media should be able to cover*

[19] Election Observation Handbook, published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Warsaw Poland, 2005 (updated 2007), ISBN83-60190-00-3 accessed from http://www.osce.org/publications/odihr/2005/04/14004_240_en.pdf

the campaign freely, without interference or unreasonable restrictions imposed by the authorities."

- Fair elections, the Handbook states *"should ensure equal conditions for all participants in the election process … Candidates and political parties should have unimpeded access to the media on a non-discriminatory basis, and the state media should meet its special responsibility for providing sufficient, balanced information to enable the electorate to make a well-informed choice"*. [20]

The Handbook outlines the requirements for setting up a credible Election Observation Mission – including what should be take into account during a Needs Assessment Mission (NAM).

The purpose of a NAM is to *" identify the prospects for the conduct of an election process in line with … commitments"* and the Handbook stipulates that members of the assessment team must visit representatives of the media as part of this assessment. The document further requires that members of the assessment team must assess , amongst other things, *"the status of the media and their expected role in the elections"*.[21]

As regards the actual EOM, the Handbook requires that a media analyst responsible for preparing a *"qualitative and quantitative analysis of the performance and content of the major electronic and print media"* must be part of the core members of the Mission. The media analyst's core responsibility is to *"assess whether the media provide sufficient, balanced and diverse information to enable voters to make an informed choice"*.[22] This, it says, is to be accomplished through qualitative and quantitative monitoring of both the time and/or space allocated to different parties and assessment of whether the content is negative, positive or neutral. At the same time the EOM is tasked not only with ensuring that media laws facilitate media freedom, but also evaluating *"how well this freedom is upheld, how and whether … media regulatory bodies are fulfilling their responsibilities, and whether complaints are handled in a fair and efficient manner and any consequent sanctions implemented"*.[23]

The framework for monitoring particular aspects of the election (from pre-election period to during the campaign period and afterwards) is very detailed. The Handbook details the ideal media circumstances for a free and fair election. The scope of this report does not enable an extensive review of all these requirements, however particular highlights are outlined below:

- The special responsibility of publicly funded media to include voter education programmes in their broadcasts/publications is stressed. This includes ensuring voters have sufficient on the candidates and issues pertinent to the election.[24] The Handbook emphasises that state/public media should be neutral and that *"all contesting points of view should be fairly … communicated"*.[25]

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[20] Page 18
[21] Page 24
[22] Page 28
[23] Page 48
[24] Page 45
[25] Page 48

- The Handbook also notes that public media must be particularly careful during an election period to balance the coverage of incumbents fulfilling official functions in order to ensure that such coverage of official duties is *"not misused as a means to give them an unfair advantage and campaign events should not be confused with issues of state".* [26]
- The section notes that private media (depending on the laws of the country) do not have the same responsibility for neutrality and states that *"it is not unreasonable for a private newspaper to endorse a candidate in its editorial policy".* But it is noted that the EOM must ensure that after considering all media and all sources the electorate receives sufficient information to make an informed vote. [27]
- The Handbook states that *"it is good practice*" for at least public media to provide free airtime or print space to contestants in the election. If paid political advertising is allowed in public or privately owned media then *"the costs and conditions should be reasonable and should be equally applied to all candidates".* [28]
- The Handbook emphasises the importance of creating a secure environment for voters – but further stresses that "*security concerns should not be misused as a reason to abridge fundamental freedoms".* [29]
- The document states that *"authorities should ensure that the media have the right to gather and report information freely, without intimidation or obstruction".* [30]
- It stipulates that all parties and candidates should have *"unimpeded access"* to the media "on a non-discriminatory basis". [31]
- At the same time the Handbook recognises the media's concomitant responsibility to *"as a whole … provide sufficient and balanced information".* [32]

The following "possible problems to be aware of" are highlighted in the Handbook[33]:

- Defamation of candidates by the media or distortion of their messages;
- Unequal treatment by public media;
- Closure of publications or radio or television services;
- Intimidation or harassment of the media;
- Detention or harassment of journalists;
- Large libel judgements against media;
- Manipulation of ink or print supplies;
- Interference with distribution networks for print media;
- Unreasonably high charges for advertising;
- Free airtime designated at times of low viewership;
- Ineffective media regulatory bodies that do not take appropriate remedial action.

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[26] Page 48
[27] Page 48
[28] Page 48
[29] Page 48
[30] Page 48
[31] Page 48
[32] Page 48
[33] Page 48 and 49

3.3 Codes of Conduct for Political Parties

- **The Institute for Democracy and Electoral Assistance (IDEA), 'Code of Conduct: Political Parties Contesting Democratic Elections'** [34]

Codes of Conduct for political parties should also cover respect for freedom of expression and opinion and political parties should also be urged to promote access to information by voters. After considering and drawing on Codes of Conduct for political parties in a number of emerging democracies, International IDEA has developed a model Code. Although it is fairly limited with respect to proposed clauses on freedom of expression, it is a useful guideline to consider.

It proposes all contestants should ideally voluntarily agree on any Code and then if necessary could be into a law or regulation. IDEA also notes that the sanctions to be imposed for violation of such a Code must also be clear.

Some of the articles relevant to media and freedom of expression are:

- All parties that subscribe to the Code must respect freedom of the media.
- Parties must not harass or obstruct journalists engaged in their political activities
- Parties must ensure all their supporters adhere to the Code

3.4 Codes for Media

As highlighted previously, effective self-regulation by the media itself is internationally promoted as the ideal for ensuring that editorial codes of ethics are adhered to. In order to be effective, such Codes need to be both endorsed by the relevant media/media sectors, and must be overseen and adjudicated on in the public interest.

A number of recommendations/guidelines around Codes of Conduct for the media are outlined below.

- **IDEA, 'Draft Code of Conduct on Media and Elections'**[35]

This Draft Code is not a template for a self regulatory Code of Ethics but does outline the different roles of journalists, media owners, governments and election management bodies. The sections relevant to journalists and media owners draws on Codes of Ethics that journalists have subscribed to – including the Code adopted by the International Federation of Journalists (see below).

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[34] The Institute for Democracy and Electoral Assistance (IDEA), Code of Conduct: Political Parties Contesting Democratic Elections, 1999, Stockholm, Sweden ISBN 91-8909-7-7, accessed from http://aceproject.org/ero-en/topics/parties-and-candidates/polparties_code%20of%20conduct.pdf/view

[35] IDEA, 'Draft Code of Conduct on Media and Elections', accessed from http://aceproject.org/ero-en/topics/media-and-elections/IDEA%20draft%20code%20of%20conduct%20on%20media%20and%20elections.pdf/view

Journalists

This Section outlines standard professional ethical codes of truth, honesty, and accuracy that apply generally to the profession (not only during election times). Amongst other things the Draft Code:

- Recognises the need for journalists to protect sources when information is obtained in confidence.
- Specifies, *"if a candidate makes an allegation against another …the journalist should seek comment from both sides wherever possible".*
- States that *"(a)s far as possible, a journalist shall reflect the the views of candidates and political parties directly and in their own words, rather than as they are described by others".*
- Emphasises that journalists shall *"not accept any inducement from politicians".*
- Notes that journalists should also not make any promises to political parties, candidates or other stakeholders about the content of a report; and
- Highlights (as above) that particular care must be given in reporting on opinion polls to make sure that all the relevant information about the poll is provided in any reports.

Media owners

The Draft Code stipulates that publicly owned media should not reflect opinions in favour of any candidate or party, though it infers that private media may do so (dependent on relevant country laws). Where private media do support a political party or candidate, the Code emphasises that there must be a clear separation that is obvious to the reader/audience between fact and opinion/comment.

The Draft Code states that publicly owned media should have a duty to imposed on them to publish voter education material.

Political parties

As regards the responsibilities of political parties the Draft Code state that candidates:

- *"Shall not harass or intimidate"* journalists or media owners.
- Must uphold freedom of expression; and
- Must not *"offer bribes or inducements to gain support from any media".*

This Section also stipulates that *"(i)ncumbents must not abuse their position to gain unfair advantage in accessing media".*

Electoral management bodies

The proposed Code also deals with responsibilities of electoral management bodies. It states that such institutions must:

- Respect freedom of the media and their editorial independence and right to express political preferences.
- Conduct elections in an open and transparent manner.
- Endeavour to make sure their activities and policies are open to scrutiny by the media *"to the fullest extent possible"*; and
- Impose only restrictions on reporting (say at polling stations or counting stations) that are *"strictly necessary to ensure the integrity of the electoral process".*

- **International Federation of Journalists 'Code of Principles on the Conduct of Journalism'** [36]

Although this Code of Principles does not specifically deal with elections, it is recognised as the standard for journalists who are members of the IFJ (through their unions or representative bodies) and is thus important to include. As the Code is relatively short, the text of it is included here in its entirety.

"This Declaration is proclaimed as a standard of professional conduct for journalists engaged in gathering, transmitting, disseminating and commenting on news and information in describing events.

"***One***: *Respect for truth and for the right of the public to truth is the first duty of the journalist.*

"***Two:*** *In pursuance of this duty, the journalist shall at all times defend the principles of freedom in the honest collection and publication of news, and of the right of fair comment and criticism.*

"***Three:*** *The journalist shall report only in accordance with facts of which he/she knows the origin. The journalist shall not suppress essential information or falsify documents.*

"***Four:*** *The journalist shall use only fair methods to obtain news, photographs and documents.*

"***Five:*** *The journalist shall do the utmost to rectify any published information which is found to be harmfully inaccurate.*

"***Six:*** *The journalist shall observe professional secrecy regarding the source of information obtained in confidence.*

"***Seven:*** *The journalist shall be aware of the danger of discrimination being furthered by the media, and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins.*

"***Eight:*** *The journalist shall regard as grave professional offences the following: plagiarism; malicious misrepresentation; calumny, slander, libel, and unfounded accusations; acceptance of a bribe in any form in consideration of publication or suppression.*

"***Nine:*** *Journalists worthy of the name shall deem it their duty to observe faithfully the principles stated above. Within the general law of each country the journalist shall recognise in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others."*

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[36] International Federation of Journalists 'Code of Principles on the Conduct of Journalism', adopted by 1954 World Congress of the International Federation of Journalists, accessed from http://ethicaljournalisminitiative.org/en/contents/ifj-code-of-principles-on-the-conduct-of-journalism

- **Article 19, 'Guidelines for Election Broadcasting**[37]

Article 19 is an international organisation focused on protecting and enhancing freedom of expression as articulated in Article 19 of the UN Declaration of Human Rights. The organisation has developed the following guidelines for election broadcasting. Although the document is focused on broadcasting, many of its clauses are relevant to all media as they include details of specific issues that have arisen in elections in transitional democracies and for example deal with the exemption of media for legal liability for statements by political parties.

Key clauses in the Guidelines are outlined below:

- *"Publicly owned or funded media:*
  - *"(H)ave a duty to ensure that the public are informed about relevant election matters such as the political parties, candidates, campaign issues and voting processes"* and
  - Must be *"balanced and impartial in their election reporting and not discriminate against any political party or candidate … This duty requires that news, current affairs, interview and information programmes must not be biased in favour of, or against, any party or candidate".*
  - Must be *"particularly scrupulous in complying with their obligations of balance … (Such) media are encouraged not to broadcast editorial opinions at all "*.
  - Should *"grant all political parties … airtime for direct access programmes on a fair and non-discriminatory basis".*

- Any laws that restrict freedom of expression in breach of international law must be abolished.

- The authorities should *"make special efforts to investigate all acts of violence, intimidation or harassment directed against media personnel or the property or premises of a media outlet, and to bring those responsible to justice".*

- There should be *"no prior censorship of any election programme … The government should issue a clear statement that the media will not be penalised … merely because they are critical of government, its policies or the ruling party … Any post broadcast penalty must be proportionate to the harm inflicted".*

- *"The media should be exempted from legal liability for unlawful statements made by candidates or party representatives and broadcast during the course of election campaigns, unless the media concerned has either taken specific steps to adopt the statements or where the statements constitute clear and direct incitement to violence and the media outlet had an adequate opportunity to prevent their dissemination.*
  Note in this regard that this suggestion recognises that *"there is a growing body of*

[37] Article 19, Guidelines for Election Broadcasting, accessed from http://portal.unesco.org/ci/en/files/18543/11126915321guidelines_election_broadcasting_en.pdf/guidelines_election_broadcasting_en.pdf

support for the concept that defamation in the political sphere is adequately redressed by a prompt reply, retraction or correction" (see next clause). It also notes that political parties and/or politicians should not be relieved of their liability and could still be charged under relevant country laws.

- *"(T)he right of reply or right to a retraction or correction is also critical. Any candidate or party which has been defamed or otherwise suffered illegal injury … should be entitled to a correction or, where this would be an insufficient remedy, be granted the opportunity to reply. The correction or reply should be broadcast as soon as possible".*

- All media must distinguish between editorial opinion and news or factual content.

- If parties are to allowed to purchase adverts in the media access must be equal. *"In such cases rates and overall limits may be set by regulation to limit the advantage of richer parties".*

- *"Election broadcasts should be monitored and regulated by an independent body … this body must render complaints decisions promptly … Decisions should be subject to judicial review which must be carried out on an expedited basis".*

As with other Codes and Guidelines, the Article 19 document also stipulates that reports on opinion polls should include comprehensive information about the poll.

Summary/Recommendations Section 3

As stated in the introduction of this section, it is clear from the examples outlined that any rules about media and elections need to focus on enhancing media diversity and encouraging debate, opinion and discussion rather than containing or limiting it. Given this, such rules or guidelines ideally focus on the responsibilities of government, electoral management bodies and political parties and reinforce editorial independence. Any laws or regulations limiting the role or function of the media or of journalists have to be justifiable in terms of international law and only introduced if their absence could threaten the integrity of the electoral process and/or limit citizens' rights to information.

As stated in the conclusion in the previous section, any Task Team established to take forward the recommendations from the ECF workshop should consider strengthening the guidelines that exist in the region for observation and monitoring of elections to emphasise the importance of freedom of expression. The criteria relating to this contained in the OSCE Election Observation Handbook provide a useful framework to assist in this.

If, as also suggested in the recommendations on the previous section, a Task Team also decides to draft guidelines specific to elections and the media, it is critical that the following principles that emerge from this analysis of key documents are included in such document:

- There is a need to require that all laws and practices inhibiting media freedom and freedom of opinion and information are abolished;
- Effective self-regulation of the media in terms of agreed upon editorial codes should be promoted. Editorial codes should be based on the principles outlined in the IFJ Code and have effective and efficient mechanisms for monitoring and adjudication of complaints.
- The distinction between public and private media as well as print and broadcasting should be recognised and responsibilities determined in accordance with this.
- If broadcasting content is regulated, an independent body must manage this.
- Issues around the speedy right of reply, as well as requirements to correct mistakes are particularly important during an election period.
- Publicly owned/funded media should have specific rules that apply to them – aimed at ensuring they do not use public funds to advantage incumbents or particular political parties and that they provide voters with educational information about parties and voting procedures. Rules relating to providing free airtime for political parties on a fair basis, as well as equitable opportunities for purchasing advertising are all linked to this.
- Electoral Codes should include specific injunctions compelling political parties to promote freedom of expression and protect media freedom. This includes rules barring intimidation or harassment of journalists and media outlets and on offering bribes for positive coverage or endorsement.
- Electoral laws/rules should limit the liability of the media for statements made by politicians or political parties.
- Areas that are regarded as legitimate to regulate include limitations on conducting exit polls, imposition of a reflection/black out period shortly before an election and rules for publishing/broadcasting of opinion polls.
- Guidelines for electoral management bodies should require that they promote transparency and work closely with the media in order to reinforce the legitimacy of the electoral process.

Appendix A
African Commission on Human and Peoples' Rights

RESOLUTION ON THE ADOPTION OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17th to 23rd October 2002;
Reaffirming 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;
Concerned at violations of these rights by States Party to the Charter;
Taking into consideration the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press, the Final Report of the African Conference of "The Journalist and Human Rights in Africa" held in Tunis, Tunisia from 31st October to 1st November 1992, the Resolution on Freedom of Expression adopted by the African Commission on Human and Peoples' Rights in Tripoli on 7th May 2001, the Statement of the Seminar on "Freedom of Expression and the African Charter" held from 23rd to 25th November 2000 in Johannesburg, South Africa and the first and second meetings of the Commission's Working Group on Freedom of Expression held in Cape town, South Africa from 10th to 11th February 2002 and in Pretoria, South Africa on 1st May 2002 respectively;
Decides to adopt and to recommend to African States the Declaration of Principles on Freedom of Expression in Africa annexed hereto;
Decides to follow up on the implementation of this Declaration.

Declaration of Principles on Freedom of Expression in Africa

Preamble
Reaffirming the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;
Reaffirming Article 9 of the African Charter on Human and Peoples Rights;
Desiring to promote the free flow of information and ideas and greater respect for freedom of expression;
Convinced that respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy;
Convinced that laws and customs that repress freedom of expression are a disservice to society;
Recalling that freedom of expression is a fundamental human right guaranteed by the African

Charter on Human and Peoples Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as other international documents and national constitutions;

Considering 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 and in facilitating and strengthening democracy;

Aware of the particular importance of the broadcast media in Africa, given its capacity to reach a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy;

Noting that oral traditions, which are rooted in African cultures, lend themselves particularly well to radio broadcasting;

Noting the important contribution that can be made to the realisation of the right to freedom of expression by new information and communication technologies;

Mindful of the evolving human rights and human development environment in Africa, especially in light of the adoption of the Protocol to the African Charter on Human and Peoples Rights on the establishment of an African Court on Human and Peoples Rights, the principles of the Constitutive Act of the African Union, 2000, as well as the significance of the human rights and good governance provisions in the New Partnership for Africa Development (NEPAD); and

Recognising the need to ensure the right to freedom of expression in Africa, the African Commission on Human and Peoples Rights declares that:

I. The Guarantee of Freedom of Expression

1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
2. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

II Interference with Freedom of Expression

1. No one shall be subject to arbitrary interference with his or her freedom of expression.
2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

III Diversity

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things-:

- availability and promotion of a range of information and ideas to the public;
- pluralistic access to the media and other means of communication, including by vulnerable or marginalized groups, such as women, children and refugees, as well as linguistic and cultural groups;
- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts.

IV Freedom of Information

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:

    - everyone has the right to access information held by public bodies;
    - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
    - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
    - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
    - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
    - secrecy laws shall be amended as necessary to comply with freedom of information principles.

3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

V Private Broadcasting

1. 1. States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.
2. 2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:

    - there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
    - an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
    - licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and
    - community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.

VI Public Broadcasting

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:,

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;

- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

VII Regulatory Bodies for Broadcast and Telecommunications

1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
2. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.
3. Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

VIII Print Media

1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.
2. Any print media published by a public authority should be protected adequately against undue political interference.
3. Efforts should be made to increase the scope of circulation of the print media, particularly to rural communities.
4. Media owners and media professionals shall be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content.

IX Complaints

1. A public complaints system for print or broadcasting should be available in accordance with the following principles:

    - complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
    - the complaints system shall be widely accessible.

2. Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.
3. Effective self-regulation is the best system for promoting high standards in the media.

X Promoting Professionalism

1. Media practitioners shall be free to organise themselves into unions and associations.
2. The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.

XI Attacks on Media Practitioners

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.
2. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.
3. In times of conflict, States shall respect the status of media practitioners as non-combatants.

XII Protecting Reputations

1. States should ensure that their laws relating to defamation conform to the following standards:

    - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
    - public figures shall be required to tolerate a greater degree of criticism; and
    - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.

2. Privacy laws shall not inhibit the dissemination of information of public interest.

XIII Criminal Measures

1. States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.
2. Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

XIV Economic Measures

1. States shall promote a general economic environment in which the media can flourish.
2. States shall not use their power over the placement of public advertising as a means to interfere with media content.
3. States should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

XV Protection of Sources and other journalistic material

Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:

- the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression; and
- disclosure has been ordered by a court, after a full hearing.

XVI Implementation

States Parties to the African Charter on Human and Peoples' Rights should make every effort to give practical effect to these principles.

Done in Banjul, 23rd October 2002

Appendix B
SABA Guidelines and Principles for Broadcast Coverage of Elections in the SADC Region

Preamble

We, the Chief Executives of public broadcasting services in the Southern African Development Community (SADC),

Guided by the laws of our individual countries and the protocols, conventions, guidelines and treaties endorsed, signed, and/or ratified by our governments in the region in their desire to ensure the success of democratic processes, and in particular: the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa (2002), the SADC Principles and Guidelines Governing Democratic Elections (2004), the SADC Protocol on Culture, Information and Sport (2001) and the SADC Declaration on Gender and Development (1997)

Determined to create regional principles to guide coverage of elections,

Dedicated to highlighting the duty of all broadcasters, large or small, rich or poor, to contribute to and ensure free, fair and transparent elections in any way they can,

Hereby agree on and adopt the Guidelines and Principles for broadcast coverage of elections in the SADC Region as follows

A. Editorial Guidelines and Principles

Article 1
The aim of election coverage is to ensure that the electorate is empowered to make an informed choice.

In light of this, the public is entitled to accurate, fair, impartial and balanced information about the election procedures, and the positions of political parties/independents and/or candidates on issues. Broadcasters are therefore committed to make every effort to present all available and relevant information to the public.

Broadcasters will further ensure that coverage of the elections will be designed to emphasise the relevance of elections and encourage participation by all citizens in the election process.

Article 2
Broadcasters will ensure that they focus on issues of relevance and interest to citizens and not purely cover events of political parties/contestants.

Article 3
Broadcasters will provide opportunities for the public to take part in political debates on election issues. Participants of such broadcasts must be as representative as possible of different views and sectors of society.

Article 4
Broadcasters have the responsibility to treat all political parties/contestants equitably. They shall to this end facilitate fair play.

Equitable treatment does not mean equal treatment nor does it mean that broadcasters will abandon their news values and/or processes. Equitable treatment means fair treatment in both news, current affairs and discussion programmes. Fairness is achieved over time. It is unlikely to be achieved in a single programme. Broadcasters will be consistent in their treatment of political parties/contestants.

Broadcasters will not only rely on political parties/contestants to bring information but will proactively seek out information and participation in discussions.

Article 5
In an election campaign there is a risk of incumbents trying to use their position to advance their election prospect. Broadcasters should regard with caution any statement or action by an official of an incumbent party and need to check thoroughly whether for example public appearances of government officials are strictly on government business or part of their election campaign.

Article 6
Broadcasters will make sure that any impression of one-sidedness is avoided in all programming. They must act and be seen to be acting in a fair and independent manner and not be influenced by political or other interests.

Staff members who hold political office, and/or are office bearers with a political party, and/or active in political campaigning and/or standing for parliament, will not be allowed to broadcast and/or participate in editorial decision making during the election period.

Staff members, in the execution of their duties, will not wear or exhibit symbols or colours or appear with clothes or insignia associated with any political party or contestant during the election period.

Broadcasters and their staff members will not accept gifts, favours or special treatment by political parties or other interests that compromise their professional integrity.

Article 7
Broadcasters will afford political parties and/or candidates the right of reply where a report aired under the editorial responsibility of the broadcaster contains inaccurate information or unfair criticism based on a distortion of facts. The opportunity to reply must be given within at least 24 hours in a programme of similar weight and audience. Broadcasters should in this regard take special care immediately prior to the election date in order to ensure timely correction of such distortions.

In instances of conflict about this right of reply, broadcasters shall ensure timeous independent arbitration.

Article 8
Broadcasters shall not broadcast views that could incite violence or advocate hatred that is based on race, ethnicity, gender, religion or political conviction, and that constitute incitement to cause harm.

Article 9
Public opinion polls should be treated with caution and in reporting the findings of such polls broadcasters shall inform the public on the source of the poll, the commissioning agency, the period of time over which it was conducted, the sample size and the likely margin of error. Similar care must be applied when dealing with exit polls.

Article 10
Broadcasters have an obligation to inform the public of the election results, as they become available. Special care should be taken to ensure the accuracy of all results broadcast.

B. Guidelines on party election broadcasts and political advertisements

1. Definitions
1.1 Party election broadcasts are free time slots allocated to political parties/contestants to inform the electorate of their policies.

1.2. Political advertisements are paid for advertisements intended to advance the interests of any political party.

2. Guidelines
2.1 Broadcasters shall where applicable in terms of country laws afford political parties/contestants equitable and fair access to party election broadcasts and political advertisements.

2.2 Broadcasters shall ensure in such instances that they develop transparent formulae for calculating the allocation of air time, including the amount of time and the time of broadcast, to be provided to individual political parties/ contestants.

2.3 Broadcasters shall timeously develop guidelines on submission of such party election broadcasts and political advertisements including details of the required formats and technical standards. Broadcasters shall publish them widely.

2.4 Broadcasters shall develop transparent mechanisms and procedures to ensure that political advertisements and party election broadcasts are not unilaterally edited or amended without consent of political parties and contestants. Such alterations are only possible if such advertisements or broadcasts do not comply with reasonable technical standards, laws of the country or any electoral codes.

2.5 Should a political party or contestant in such instances refuse to edit or amend such advertisement or broadcast, the broadcaster has the right to refuse to air it. Broadcasters should be indemnified by political parties/contestants against any cost, damage or loss incurred or sustained as a result of any claim arising from such broadcasts or advertisements.

C. Implementation of these Guidelines and Principles

In order to effect implementation of these guidelines and principles, broadcasters will:

1. Develop editorial codes and policies or review existing codes using these guidelines as minimum standards, and ensure awareness of such codes.

2. Publish these guidelines and any other internal codes to enable the public to monitor the performance of the broadcaster and hold it accountable.

3. Establish internal complaints procedures to channel and resolve complaints from the public. Broadcasters will encourage aggrieved parties to use existing independent arbitration mechanisms.

4. Ensure proper planning and resource allocation for election coverage.

5. Ensure that staff members are adequately trained in order to fulfil obligations as required by these guidelines and principles.

D. Requirements for the implementation of these Guidelines and Principles

In order to adhere to and implement these guidelines and principles, broadcasters require:

1. To be allowed to operate in an environment free of violence and intimidation. All electoral stakeholders must respect the rights of broadcasters to cover the elections. Any electoral institutions shall make all stakeholders aware of the role of broadcasters.

2. Adequate, additional state funding for coverage of the election period through government, parliament, and or any electoral commission.

Appendix C
Recommendations of the Committee of Ministers, Council of Europe

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

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RECOMMENDATION No. R (99) 15

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON MEASURES CONCERNING

MEDIA COVERAGE OF ELECTION CAMPAIGNS

(Adopted by the Committee of Ministers on 9 September 1999 at the 678th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Noting the important role of the media in modern societies, especially at the time of elections;

Stressing that the fundamental principle of editorial independence of the media assumes a special importance in election periods;

Aware of the need to take account of the significant differences which exist between the print and the broadcast media;

Underlining that the coverage of elections by the broadcast media should be fair, balanced and impartial;

Considering that public service broadcasters have a particular responsibility in ensuring in their programmes a fair and thorough coverage of elections which may include the granting of free airtime to political parties and candidates;

Noting that particular attention should be paid to certain specific features of the coverage of election campaigns, such as the dissemination of opinion polls, paid political advertising, the right of reply, days of reflection and provision for pre-electoral time;

Stressing the important role of self-regulatory measures by media professionals themselves - for example, in the form of codes of conduct - which set out guidelines of good practice for

responsible, accurate and fair coverage of electoral campaigns;

Recognising the complementary nature of regulatory and self-regulatory measures in this area;

Convinced of the usefulness of appropriate frameworks for media coverage of elections to contribute to free and democratic elections, bearing in mind the different legal and practical approaches of member States in this area and the fact that it can be subject to different branches of law;

Acknowledging that any regulatory framework on the coverage of elections should respect the fundamental principle of freedom of expression protected under Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;

Recalling the basic principles contained in Resolution No. 2 adopted at the 4th Ministerial Conference on Mass Media Policy (Prague, December 1994) and Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting,

Recommends that the governments of the member States examine ways of ensuring respect for the principles of fairness, balance and impartiality in the coverage of election campaigns by the media, and consider the adoption of measures to implement these principles in their domestic law or practice where appropriate and in accordance with constitutional law.

http://aceproject.org/ero-en/topics/media-and-elections/document.2006-01-10.3844141706/view

Appendix to Recommendation No. R (99) 15

Scope of the Recommendation

The principles of fairness, balance and impartiality in the coverage of election campaigns by the media should apply to all types of political elections taking place in member States, that is, presidential, legislative, regional and, where practicable, local elections and political referenda.
These principles should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address citizens of the country where the election is taking place.

I. Measures concerning the print media

1. Freedom of the press
Regulatory frameworks on media coverage of elections should not interfere with the editorial

independence of newspapers or magazines nor with their right to express any political preference.

2. Print media outlets owned by public authorities
Member States should adopt measures whereby print media outlets which are owned by public authorities, when covering electoral campaigns, should do so in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate.

If such media outlets accept paid political advertising in their publications, they should ensure that all political contenders and parties that request the purchase of advertising space are treated in an equal and non-discriminatory manner.

II. Measures concerning the broadcast media

1. General framework
During electoral campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media.

With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover electoral campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service broadcasters as well as private broadcasters in their relevant transmission areas.

In member States where the notion of "pre-electoral time" is defined under domestic legislation, the rules on fair, balanced, and impartial coverage of electoral campaigns by the broadcast media should also apply to this period.

2. News and current affairs programmes
Where self-regulation does not provide for this, member States should adopt measures whereby public and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates.

No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures. As appropriate, member States might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.

3. Other programmes
Special care should be taken with programmes other than news or current affairs which are not directly linked to the campaign but which may also have an influence on the attitude of voters.

4. Free airtime for political parties/candidates on public broadcast media
Member States may examine the advisability of including in their regulatory frameworks provisions whereby free airtime is made available to political parties/candidates on public broadcasting services in electoral time.

Wherever such airtime is granted, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.

5. Paid political advertising
In member States where political parties and candidates are permitted to buy advertising space for electoral purposes, regulatory frameworks should ensure that:

- the possibility of buying advertising space should be available to all contending parties, and on equal conditions and rates of payment;
- the public is aware that the message is a paid political advertisement.

Member States may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space which a given party or candidate can purchase.

III. Measures concerning both the print and broadcast media

1. "Day of reflection"
Member States may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting.

2. Opinion polls
Regulatory or self-regulatory frameworks should ensure that the media, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular :

- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member States forbidding the publication/broadcasting of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights.

Similarly, in respect of exit polls, member States may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

3. The right of reply
Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply under national law or systems should be able to exercise this right during the campaign period.

IV. Measures to protect the media at election time

1. Non-interference by public authorities
Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections.

2. Protection against attacks, intimidation or other unlawful pressures on the media
Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises, as this assumes a greater significance during elections. At the same time, this protection should not obstruct them in carrying out their work

NOTES

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