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MEDIA MONITORING DURING ELECTION OBSERVATION MISSIONS

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Authors	MASTERS, Owen
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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**MEDIA MONITORING DURING
ELECTION OBSERVATION MISSIONS**

Comments by Mr Owen MASTERS (Expert, United Kingdom)

Introduction

1. The content and structure of this report provides an overview of the main issues in respect of media monitoring and analysis. It has been compiled taking into account the recommendation of the Committee of Ministers of the Council of Europe (Recommendation No. R (99) 15 of the Committee of Ministers to Member States on measures concerning media coverage of election campaigns) and the experience of media monitoring and analysis, as implemented by ODIHR, and Council of Europe Election Observation Missions.

2. There is increasing recognition of the important role of the media in modern society, especially at elections. The influence of the media is particularly noticeable on the conduct of elections, in communications with the public, and often the outcome of an election. Therefore it is clear that there is a need to develop tools or mechanisms with which to observe the media, ensuring that the principle of free and democratic elections has been upheld.

3. This report will contain information on the problems and choices of media monitoring, including the quality of the coverage, information gathering, and analysis including the interpretation of the data. In addition reference will be made to specific features of the coverage of elections, which may include the granting of free airtime to political parties and candidates, dissemination of opinion polls, paid political advertising, days of reflection, and right of reply.

4. Possible Guidelines on Media Monitoring during Election Observation Missions as proposed by OSCE/ODIHR deserve support. However, there is a need to strengthen some areas in the proposed guidelines. It is therefore recommended that the following points should be included in any future guidelines on media monitoring during elections. These points are **highlighted in bold** in the next paragraphs.

1. Freedom of the media constitutes a fundamental principle of freedom of expression, which is given protection under Article 10 of the European Convention on Human Rights.
2. Media should develop codes of conduct and other self-regulatory measures, which will set out guidelines of good practice, for responsible, accurate and fair reporting coverage of electoral campaigns.
3. Respect for the fundamental principle of editorial independence of the media, which assumes a special importance during election periods.
4. Recognition of the significant differences which exist between the print and electronic media and the requirement of separate regulations.
5. Regulations on media coverage during an election should apply to private, as well as public media.
6. Requirement to ensure that any regulations on media coverage of elections, should not interfere with the editorial independence of newspapers and magazines, or their right to express a preference.

7. When free airtime is granted to political parties and candidates, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.
8. Regulatory frameworks should be established where political parties and candidates are permitted to purchase advertising space from the media.
9. When restrictions are imposed forbidding the publication/broadcasting of opinion polls, or voting intentions, on or a certain number of days before the election, they should comply with Article 10 of the European Convention on Human Rights.
10. Any candidate or political party should be entitled by all media to a right of reply under the law, and must be able to exercise this right during the campaign period.

Protection of Freedom of Expression

5. Over the years both the Council of Europe and OSCE have developed a number of commitments which support Freedom of Expression, and Freedom of the Media.

These commitments are many, and examples include:

- Free media are one of the conditions for pluralistic and democratic societies
- Freedom of expression is a basic human right and a central element within a democratic system
- Independent and free media are of particular importance in safeguarding human rights and fundamental freedoms
- Individuals and groups should have the right to participatory access to the media
- There should be no legal or administrative obstacle to obstruct access to the media within the electoral process
- The promotion of diversity as a primary goal of broadcast regulation, including equality of opportunity, gender equity, and equal opportunity for all sections of society to have access to the airwaves

The right to freedom of expression is enshrined in a number of declarations, treaties and conventions. States that are signatories to these documents, or members of organisations which produced such declarations, have the moral duty, and sometimes legal obligation to comply with such provisions. It is necessary to ensure that the behaviour of governments is regulated in respect of the media, rather than the regulation of media.

International Standards

6. Freedom of the media constitutes a fundamental principle of freedom of expression, which is protected under Article 10 of the European Convention on Human Rights. The press and the electronic media are required to impart information, and ideas on matters of public interest. The media must also ensure that such information and ideas can be accessed by the public. Media commissions or any other form of regulatory mechanism, both for print and electronic media, should be independent from political parties, and have an arms-length relationship with the government. Freedom of communication in respect of political discussion, and public affairs are indispensable to the accountability of political representatives and officials.

7. The media should develop codes of conduct and other self regulatory measures, which will set out guidelines of good practice, for responsible, accurate and fair coverage of electoral campaigns.

8. States and governments in order to guarantee freedom of expression in the media, must refrain from interfering in media functions, and when necessary impose positive measures to protect the media from attacks or undue pressures.

Media Politics and Elections

9. In respect of politics the media are a fundamental element in the democratic system, providing candidates, and parties with coverage and at the same time providing an arena for dissemination of information, and public debate. It has long been recognised that the media are tools of power and influence. However, the media has many responsibilities including the covering of political facts and events in the most objective, impartial, and open way. There is also the responsibility of promoting a variety of views, opinions, in addition to interpreting news. This will enable the public to better understand the information they are receiving.

10. Voters have the right to be informed on political alternatives in order to make an informed choice. The behaviour of media coverage on the electorate is a controversial issue. There are many opinions, but there is no definite answer to the question related to the power of the media, to influence voters in their choice. The right of voters to make an informed choice in an election implies that the media should inform them in a professional and correct manner. Information should be provided on the platforms, views of the different candidates, the events of the political campaign, and the electoral process, including the counting of votes, and election results.

11. Candidates should have the right of access to the media, to communicate their platforms and views, and inform the voters of their proposals and matters of public interest. Alongside such rights of access to the media and benefits from the coverage of the media, come responsibilities, not to abuse such rights.

Guidelines for Media Analysis

12. There are two main benchmarks for the overall evaluation of media performance in an election campaign, these are:

- **The compliance with international standards.** That is: Were the fundamental standards upheld, of the right to freedom of expression of voters, candidates, and was the freedom of the press respected during the electoral process?
- **The comparison with previous elections in the same country.** In this the question is: Compared to previous elections, is the freedom of expression and media coverage improving, or deteriorating?

13. Within the electoral process, the state and particularly the ruling government should refrain from interfering in the activities of journalists, and other media personnel with a view to influencing the elections. Political parties and candidates should also respect the freedom of expression of the media. **In addition, the fundamental principle of editorial independence of the media, assumes a special importance during election periods.**

14. Guidelines to be followed in order to promote a mature media system include:

- Diversity of the media system, which should be supported by the state.

- **To be aware of the significant differences which exist between the print and electronic media**
- Autonomy of the media system from political and economic power should be protected.
- Journalist's right to carry out their functions should be guaranteed by states. There should be no repression against journalists (attacks, harassment, or intimidation).
- Professional Standards should be maintained through journalistic training in ensuring that voters and candidates rights are protected.
- No Censorship in any form is acceptable.

Regulation of Media Coverage during an Election

15. Obligations and regulations for the public media are necessary, as the public media is financed with taxpayer's money, and should be considered a public resource.

Obligations and consequent regulation to which private broadcasting media are subjected are more variable, and problematic to define. During an electoral campaign, the degree of editorial freedom that should be accorded to private broadcasters is related to the degree of diversity observed in the media landscape. All of this can best be summarised by:

- The public **and private** media shall provide equal access, with fair, balanced, and impartial coverage for all parties and candidates running for election.
- The private electronic media must comply with the provisions for electronic coverage as set by national legislation, and they must also adhere to journalistic ethics, and professional standards.
- Private print media should be permitted a wider degree of opinion than the public electronic media. **Any regulations on media coverage of elections should not interfere with the editorial independence of newspapers and magazines or their right to express any political preference.**

Direct Access - (Free or paid)

16. Parties and candidates should be provided with direct access to the public media free of charge. No registered parties or candidates should be excluded from receiving free airtime in order to effectively communicate with the public. **Whenever such airtime is granted, this should be done on a fair and non-discriminatory manner, on the basis of transparent and objective criteria.** The allocation of airtime can be on an equal or proportionate basis. The compliance with provisions regulating the allocation of free airtime should be monitored by an independent body able to remedy any violations promptly. The practice of imposing free airtime on the private electronic media is not widespread. However, when they do decide to offer airtime, or they are obliged by law to do so, they must comply with the same regulations as the public broadcast system.

17. In states where political parties and candidates are permitted to buy advertising space for electoral purposes, there is a requirement for some regulatory frameworks to be in place. The possibility of buying advertising space should be available to all contending parties and candidates, and on equal conditions and rates of payment. There may also be a limit for the amount of paid advertising, which a given party or candidates can purchase. It is also important that the public is made aware that the message is a political advertisement.

There are not the same problems for political advertising in the private print media, although equality of opportunity must be offered to all parties and candidates, and as with the electronic

media, there should be a limit on the amount of advertising that any one party or candidate can purchase.

Political Information Programmes

18. Public and private broadcasters during an election period have an obligation to provide voters with sufficient and effective information, and should organise panel discussions and talk shows in which:

- Candidates and parties can present their alternative platforms, and engage in debate.
- Journalists, the public, experts and analysts can ask questions on specific issues.

19. While the journalists hosting the programme have the duty to be impartial, non-political guests, such as other journalists, political analysts, experts and other people, can express their own personal opinions.

The participation of contestants in these programmes should not be conditional upon payment of any fees.

Voter Education and Information

20. Public broadcasters should undertake voter education and information during the time they are likely to reach the widest audience. These programmes should provide voters with clear, unbiased and understandable information on:

- Voters lists – How and where to register, how to check the list, and where to complain.
- Nature of the election – Local, parliamentary, presidential, referenda.
- Information on the electoral system, and the attribution of votes
- Voting procedures: where and how to vote
- Basic rights and duties: secrecy of the vote, provisions related to proxy and family voting

The private electronic media may be required to transmit voter education programmes by the electoral legislation, or by their broadcasting licence. They must at all times ensure unbiased, clear and understandable information.

The private print media although not obliged by law, should provide voters with accurate information in respect of voting procedures.

21. The publishing or broadcasting of opinion polls should provide the public with the name of organisation or political party who paid for, or commissioned the poll, the margin of error, and the dates the poll was conducted. Some countries prohibit the publication of opinion polls for a certain period before election day. **However, any restriction forbidding the publication/broadcasting of opinion polls (or 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.** Similarly, in respect of exit polls, consideration could be given to prohibiting the reporting of such polls, until all polling stations in the country have closed.

22. A provision in the law prohibiting political campaigning, or the publication of partisan electoral messages on the day/days preceding voting could be considered, and be beneficial to the democratic process. In addition, the electoral administration may specify rules and instructions to journalists, on how to report political facts during the ‘silence period’.

23. Rules defining hate speech are clearly stated in international treaties and conventions. The concept of hate speech should be related to the effect of the message on the receivers, a direct incitement to acts of violence which could have credible potential effects on the public, may be censored. This is particularly important in post-conflict areas, in order to avoid new tensions and conflicts in the populations.

24. During the election campaign any candidate or political party should be entitled to a right of reply under the law, and must be able to exercise this right during the campaign period.

Media Analysis

25. The media analysis should be able to produce findings on the level of autonomy of the media system from the political system, and the level of diversity among the different media outlets. Any assessment of media behaviour during an election campaign should consider the media system as a whole. The basic rights of the three actors should be taken into account when producing an evaluation of the media during the electoral process:

- The voters rights to receive information on political alternatives, and the electoral process,
- The candidates and political parties right to impart information on their platforms and views.
- The media's freedom to spread information and express their views on issues of public interest.

26. The analysis of the media landscape of a country, as well as the observation of the political environment is necessary. This will enable an assessment to be made of the relationship between the media, and the political parties during an election campaign. In assessing the media landscape of a country it is necessary to consider many factors including:

- How many electronic and print media are operating in the country
- Variety of public /state-owned media, either electronic or print
- Number of licenses issued by the state at national or local level
- Number of pirate stations operating, if any
- The geographical coverage of the existing media
- Hours of broadcasting, or frequencies of publication for every media outlet

27. The analysis will need to develop techniques with which to measure the amount of time and space, a media outlet devotes to political contestants. There will also be a requirement to analyse the quality of the content of coverage, whether it is positive, negative, or neutral.

Reporting

28. Following analysis, the information should be included in reports which are easy to understand, and to read, but based on well grounded verifiable analysis.

29. Media monitoring should produce reliable and objective results and conclusions. It is vital that the findings of media monitoring are not only credible in themselves, but also that they are perceived as such. Monitors should be aware that their activity is the basis for reports, which may affect not only judgements on the election campaign, but also the credibility of the monitored media, and the public trust in them.