

The Iraqi National Communications and Media Commission

Code for Media during Elections

Preamble

This Code for Media during Elections (the “Code”) regulates specific activities by the Media during the Campaign Period, as such terms are defined herein. It supplements the Iraqi National Communications and Media Commission (NMC) Interim Broadcasting Programme Code, which applies only to Broadcast Media, as that term is defined below, and which entered into force on 27 July 2004. This Code should be read in conjunction with NMC guidelines, some of which are specifically identified in this Code.

This Code is intended to endorse and respect the right to freedom of expression as envisaged in Articles 13 and 23 of the Transitional Administrative Law, Article 19 of the International Covenant on Civil and Political Rights, and Article 19 of the Universal Declaration of Human Rights. The NMC recognises that freedom of expression is a prerequisite for free and fair elections. The NMC also recognises the importance of the principle of editorial independence and will honour that principle in enforcing this Code.

This Code is not a complete guide to good practice with respect to elections, nor does it say everything that can be said on the topics it covers. The Media should therefore aim to operate within the spirit of this Code as well as the strict letter of it. This Code is subject to interpretation in the light of changing circumstances in Iraq, and it may be necessary to introduce new requirements or other amendments from time to time.

Article 1

Definitions

“Broadcast Media” means any Media engaged in point-to-multipoint transmission or emission of signals, text, images, audio or video content, or data by wire, optical fibre, radio, or any other electromagnetic means, intended for general reception by all or a portion of the public, but shall not include Information Services or Telecommunications, as those terms are defined in CPA Order number 65. For avoidance of doubt, Broadcast Media shall include Media transmitted by satellite.

“Campaign Period” means the period prior to an election, defined by the IEI, during which Political Entities may conduct their election campaigns.

“Coalition” means a group of Political Entities that has submitted a joint list of candidates for an election.

“Code” means this Code for Media during Elections, as amended from time to time.

“IECI” means the Independent Electoral Commission for Iraq, as established by CPA Order number 92, dated 31 May 2004.

“Media” means entities that provide news, information or entertainment to the general public, or on a subscription basis, using means including, but not limited to, Broadcast Media, printed material, film, video, audio, recordings or communications services.

“NCMC” means the National Communications and Media Commission, as established by CPA Order number 65, dated 20 March 2004.

“Political Entity” means any organization, as defined under CPA Order number 97, section 2 and IECI Regulation 03/2004.

“Transitional Administrative Law” shall mean the Law of Administration for the State of Iraq for the Transitional Period, dated 8 March 2004.

Article 2

Application of the Code

This Code shall apply to and is binding upon all Media transmitted, published, received or available in Iraq in connection with any election at the municipal, regional or state level during any and all Campaign Periods. For avoidance of doubt, for any given election, references in this Code to Political Entities or Coalitions, or their candidates, include only those officially registered with the IECI for such election.

Article 3

Fair Reporting

In covering any Political Entity or Coalition, or any of their candidates, no Media shall engage in intentional distortion, suppression, falsification, misrepresentation or censorship of information. All Media shall ensure due accuracy and fairness.

In providing news coverage and current affairs programming (including political discussion programmes, interviews and debates concerning or involving any Political Entity or Coalition, or any of their candidates), all Broadcast Media and all Media that are part of the IMN shall (i) ensure that the information they report is balanced and unbiased; (ii) treat all Political Entities and Coalitions, and their candidates, fairly and impartially, showing no favour or partiality toward, or prejudice against, any of them; and (iii) make an effort to hear and represent all sides of the question, noting where one side of a controversy has refused to make itself available.

No Broadcast Media and no Media that are part of the IMN shall endorse any Political Entity or Coalition, or any of their candidates. In all such media, opinion shall be clearly distinguished from fact so as not to be confused with news coverage or current affairs programming.

The requirements set forth in this Article 3 are not meant to infringe upon the principle of editorial independence.

The NCMC’s Guidelines to Broadcasters on Accuracy and Balance provide guidance as to how the NCMC will apply this Article 3 to all Media during the Campaign Period.

Article 4

Political Advertisements

Paid political advertisements shall be allowed in or on Media other than Media that is part of the IMN, so long as such advertisements are published on terms fairly and equitably applied to all Political Entities and Coalitions, and their candidates. All political advertisements must be clearly identified as such, must be clearly distinguishable from other programming, and must clearly identify their sponsors.

Article 5

Special Obligations of the IMN to Educate the Public

The IMN, as a publicly-funded public service broadcaster with a legal obligation to educate and inform the people of Iraq, has special obligations regarding elections during Campaign Periods as set forth herein.

First, the IMN must use its news and current affairs programmes on television and radio for voter education. It shall inform listeners and viewers about the policies of those up for election, as well as all political issues that require critical examination and discussion. The IMN shall also educate the public by providing practical information relevant to voting and shall take reasonable measures to ensure that such voter education information reaches minority groups.

Second, the IMN shall provide free television air time, as well as such studio space and technical resources as it has available, so that those up for election may directly address the public. Any rules, conditions, allowances or assistance in connection therewith shall be fairly applied.

Third, the IMN shall provide free television airtime, as well as such studio space and technical resources as it has available, for political debates and political discussion programmes. Any rules, conditions, allowances or assistance in connections with any such programme shall be fairly applied to all participants.

Article 6

Obligation Regarding IECI Information

All Broadcast Media shall broadcast such voter education information, including practical information about the voting process and presentations of those up for election, as the IECI requests them to broadcast. The IECI may pay Broadcast Media for broadcasting such voter education information.

Any information about electoral procedures, regulations and policy disseminated by Media shall reflect official information issued by the IECI where such information has been made publicly available.

Article 7

Opinion Polls

Media publishing the results of an opinion poll or election projections should strive to report such results and projections fairly and to publish all readily available information that would assist the audience in understanding the significance of such

information. Media publishing the results of an opinion poll should identify the organisation that conducted the poll, the organisation or party that commissioned and paid for the poll, the methodology employed the sample size, the margin of error, and the fieldwork dates. In addition, Media should state that the poll reflects public opinion only at the time that the poll was taken.

For a period commencing seventy-two (72) hours prior to the opening of polling stations on the first day of voting in an election and continuing until closing of the polling stations on the final day of voting in such election, no Media shall publish public opinion polls or election projections about any Political Entity or Coalition, or any of their candidates, relevant to such election.

Article 8

Media Silence Period

For a period commencing forty-eight (48) hours prior to the opening of polling stations on the first day of voting in an election and continuing until closing of the polling stations on the final day of voting in such election, there shall be no Media coverage of any political campaigns of any Political Entity or Coalition, or any of their candidates. This Article 8 shall not, however, prevent Media from (i) disseminating voter education information or (ii) disseminating information about political issues that does not promote the political campaign of any particular Political Entity or Coalition, or any of their candidates.

Article 9

Equitable Access

All Broadcast Media shall provide equitable access, equitable presentation, and equitable coverage of Political Entities and Coalitions, and any of their candidates, including with respect to newsworthy events and election activities in which they are involved. Political advertisements aired by Broadcast Media other than the IMN in compliance with Article 4 shall not be subject to such equitable access requirements.

The NCMC's Guidelines on Equitable Access provide guidance as to how the NCMC will apply this Article 9.

Article 10

Incitement to Violence or Public Disorder

Media shall not disseminate any material that by its content or tone carries a clear and immediate risk of disrupting the campaign or election process and:

- (1) Carries the clear and immediate risk of inciting imminent violence, acts of ethnic or religious hatred, civil disorder or rioting among the people of Iraq or advocates terrorism (particular care is required where a programme carries the views or transmits the messages of people or organisations who use or advocate terrorism or violence in Iraq); or

- (2) Carries a clear and immediate risk of causing public harm, such harm being defined as death, injury, serious damage to property or other violence.

The NCMC's Guidelines for Broadcasters on Incitement and its Guidelines for Broadcasters on Reporting Sensational Statements and Events provide guidance as to how the NCMC will apply this Article 10 to all Media during the Campaign Period.

Article 11

Right of Reply

Any Political Entity or Coalition, or any of their candidates, who can show that his, her or its political standing has been significantly and unjustly affected by inaccurate information disseminated by a Media outlet during the Campaign Period may petition the Commission for a right of reply, provided that such petition is made within the Campaign Period. If the Commission finds that such a right of reply is warranted, it may order such Media outlet to afford such person a reasonable right of reply, which shall be provided by such Media outlet as promptly as possible and within the Campaign Period.

In providing a right of reply hereunder, the Commission shall apply the following principles:

- (1) A right of reply shall be available only to respond to incorrect facts, not to comment on opinions with which the viewer or listener does not agree or that merely present the reader or viewer in a negative light.
- (2) A right of reply shall not be available where a correction or refutation suffices.
- (3) The reply should receive similar, but not necessarily identical prominence to the original article.
- (4) Media shall not be required to carry a reply unless it is proportionate in length to the original article/broadcast.
- (5) Media shall not be required to carry a reply that is abusive or illegal.
- (6) A right of reply shall not be used to introduce new issues or to comment on correct facts.

Article 12

Limitation of Media Liability

Media shall not be held liable for the dissemination of material, provided that (i) there was no adequate opportunity to prevent its dissemination, and (ii) such Media took affirmative steps to mitigate the effect of such dissemination, including, for example, by questioning the speaker or commenting on such material.

Article 13

Violations of this Code

As is set forth in the law establishing the NCMC, in case of violation of this Code, the NCMC may apply any of the following sanctions against Broadcast Media: issuing a warning, requiring publication of an apology, granting a right of reply (as discussed above in Article 11), imposing financial penalties and placing liens on relevant bank accounts if the penalties are not paid on time, and in cases of serious or repeated violations, suspending licenses, seizing equipment, suspending operations, closing operations, or terminating or withdrawing licenses. The suspension and cancellation of broadcast licenses shall be applied only in response to gross violations of the Code or where less intrusive sanctions have failed to prevent repeated violations. The sanctions of seizure of equipment and closure of operations shall be imposed only on broadcasters broadcasting without a license or where violations were repeated after the NCMC suspended or cancelled the broadcaster's license.

The NCMC may apply the following sanctions against Media other than Broadcast Media: issuing a warning, requiring publication of an apology, or imposing financial penalties and placing liens on relevant bank accounts if the penalties are not paid on time.

Any sanctions applied pursuant to this Code shall be proportionate to the violation committed. Such sanctions shall be imposed only after a violation has been committed; the NCMC will not engage in prior censorship. In prosecuting violations of this Code, the NCMC shall follow the procedure, and shall respect the due process protections, set forth in its Rules of Procedure, as amended from time to time.

Article 14

Entrance in Effect

This Code enters into force on 14 December 2004, and will be enforceable throughout Campaign Periods after such date.