



OAS » IACHR » Special Rapporteurship for Freedom of Expression » 2020

2020

JOINT DECLARATION ON FREEDOM OF EXPRESSION AND ELECTIONS IN THE DIGITAL AGE

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression,

Having discussed these issues together with the assistance of *ARTICLE 19, Global Campaign for Free Expression*, and the *Centre for Law and Democracy (CLD)*;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010, 1 June 2011, 25 June 2012, 4 May 2013, 6 May 2014, 4 May 2015, 4 May 2016, 3 March 2017, 2 May 2018 and 10 July 2019;

Highlighting the essential role that freedom of expression and information, free, independent and diverse media and a free and accessible Internet play in ensuring free and fair elections, including referenda, in particular by informing the public about parties and candidates and their platforms;

Noting, in particular, the role of public service media, where they exist, during elections including by providing candidates and parties with equitable access to the public, a platform for political debates, and impartial and accurate information on election related issues;

Recognising the importance to democracy of a vibrant media landscape, of robust public debate about matters of public interest, and of the public having access to a diverse range of information and ideas;

Aware of contemporary challenges to freedom of expression and freedom of the media, brought about in part by a significant evolution of the means of communication, the convergence of legacy and digital media, and the increasingly central role played by social media and digital technologies, as well as the need for the normative framework governing freedom of expression to reflect these changes and to promote transparent and accountable oversight of online content moderation;

Cognisant of the positive potential of digital technologies during elections, including to give voters access to information and to empower them to express their opinions and interact directly with candidates, and to give candidates and parties, including those with limited resources, the ability to disseminate their messages and mobilise support;

Expressing grave concern about the threats and violent attacks that journalists may face during elections and the fact that targeted smear campaigns against journalists, and especially female journalists, undermine their work and public trust and confidence in journalism;

Calling on governments to refrain from abusing their positions to bias media coverage, whether on the part of publicly-owned or private media, or to disseminate propaganda that may influence election outcomes;

Denouncing dis-, mis- and mal-information and "hate speech", which can exacerbate and even generate election related tensions, calling on parties and candidates to avoid intentionally using these types of statements to enhance their electoral

Quote of the day

The right to freedom of expression is not a concession by the States but a fundamental right

Preamble of the Declaration of Principles on Freedom of Expression

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[Article 13 - American Convention on Human Rights](#)

[Declaration of Principles on Freedom of Expression](#)

prospects and recognising the important role played by independent election regulators in addressing these forms of speech and promoting access to information;

Alarmed about the misuse of social media by both state and private actors to subvert election processes, including through various forms of inauthentic behaviour and the use of "computational propaganda" (employing automated tools to influence behaviour);

Concerned that many States are passing laws which, while formally justified by reference to the problems noted above, unduly limit freedom of expression, expand State control over the media, restrict Internet freedom and/or further the ability of various actors to collect personal data;

Deploring restrictions on the ability of the public to access the Internet, including complete or partial shutdowns, which seriously limit the ability of media, parties, candidates and others to communicate with the public, as well as the ability of members of the public to access information;

Stressing the need for robust rules and systems requiring transparency of parties and candidates in relation to media spending on elections;

Mindful that elections around the world are scheduled to take place in the midst of the COVID-19 pandemic, creating new barriers for reporting, sometimes imposed unjustifiably by State actors, at a moment when voters have an overriding need to access a range of information and ideas to make informed electoral decisions;

Adopt, on 30 April 2020, as part of the celebrations of World Press Freedom Day, the following Joint Declaration on Freedom of Expression and Elections in the Digital Age:

1. Recommendations to States

a. General Principles

- i. States should put in place a regulatory and institutional framework that promotes a free, independent and diverse media, in both the legacy and digital media sectors, which is able to provide voters with access to comprehensive, accurate and reliable information about parties, candidates and the wider electoral process.
- ii. States should promote effective access to the Internet and other digital technologies for all parts of population, including by closing digital gaps based on gender, race, ethnicity, disability, socio-economic status and other bases, and putting in place clear requirements and policies to ensure respect for the principle of net neutrality.
- iii. States should ensure that any restrictions on freedom of expression that apply during election periods comply with the international law three-part test requirements of legality, legitimacy of aim and necessity, which implies the following:
 - 1) There should be no prior censorship of the media, including through means such as the administrative blocking of media websites or Internet shutdowns.
 - 2) Any limits on the right to disseminate electoral statements should conform to international standards, including that public figures should be required to tolerate a higher degree of criticism and scrutiny than ordinary citizens.
 - 3) There should be no general or ambiguous laws on disinformation, such as prohibitions on spreading "falsehoods" or "non-objective information".
 - 4) Any limits imposed on media reporting on public opinion polls during elections should also be in strict conformity with the three-part test.
- iv. State actors should never use their positions or power to undertake measures with a view to unduly influencing media reporting, including on elections, whether direct measures, such as through licensing of the media or exercising control over public media or media regulators, or indirect measures, such as by limiting access to newsprint, radio frequencies or the ability of media outlets to distribute their products freely throughout the country.
- v. State actors should ensure that the media enjoys robust access to sources of official information and to candidates for public office, and does not face undue barriers to their ability to disseminate such information and ideas, including during the public health pandemic of COVID-19, and including by implementing the principles of this Joint Declaration.

b. Election Coverage by the Media

- i. The media, both legacy and digital, should be exempted from liability during election periods for disseminating statements made directly by parties or candidates unless the statements have specifically been held to be unlawful by an independent and impartial court or regulatory body, or the statements constitute incitement to violence and the media outlet had a genuine opportunity to prevent their dissemination.
- ii. Any administrative body which has the power to oversee rules relating to the media during election periods should be independent of the government and its decisions should be subject to timely judicial review.
- iii. All publicly-owned media should, during election periods, ensure that the public is informed about election matters, respect strict rules of fairness, impartiality and balance, and grant all parties and candidates equitable opportunities to communicate directly with the public, either for free or at subsidised rates.
- iv. Any rules on election spending which are designed to create a level electoral playing field should be applicable to legacy and digital media, taking into account their differences, including rules about transparency of political advertising.
- v. States should make a concerted effort to promote digital media and information literacy, including in relation to elections.

- vi. Directing targeted political advertising, based on personal data, at individuals through the media should not be allowed, especially during election periods, unless those individuals have consented to the use of their personal data for this purpose.
- c. Restrictions on Freedom of Expression/Media Freedom During Elections
 - i. States should consider supporting positive measures to address online disinformation, such as the promotion of independent fact-checking mechanisms and public education campaigns, while avoiding adopting rules criminalising disinformation.
 - ii. States should adopt appropriately clear and proportionate laws that prohibit the dissemination of statements which are specifically designed to obstruct individuals' right to vote, such as by intentionally spreading incorrect information about where or when to vote.
 - iii. States have a special obligation to take rapid and effective measures to prevent, protect, investigate, prosecute and punish attacks, threats, intimidation and harassment, offline and online, against journalists and other media workers, including against their property and families, during election periods, particularly where State actors are or may be involved. This obligation is especially pronounced in relation to female journalists and individuals belonging to marginalised groups.
 - iv. Online intermediaries should not be held liable for dis-, mis- or mal-information that has been disseminated over their platforms unless they specifically intervene in that content or fail to implement a legally binding order to remove that content.
- d. Access to Information Relating to Elections
 - i. States should require media outlets, both legacy and digital, to make public information about their ownership, in accordance with principle of non-discrimination.
 - ii. Parties and candidates should be required to be transparent in a timely fashion, including to the media, regarding their spending on elections and, in particular, spending on legacy and digital media, and other digital communications efforts.
 - iii. State actors, including those responsible for regulating elections, should be fully transparent regarding any agreements or partnerships, whether formal or informal, they have regarding elections with online intermediaries and, in particular, digital and social media companies.

2. Recommendations for Non-State Actors

- a. Digital Actors
 - i. Online intermediaries and digital media should implement the UN Guiding Principles on Business and Human Rights and conduct due diligence to ensure that their products, policies and practices, including in the areas of collection of private data and micro-targeting of messages, do not interfere with human rights.
 - ii. Digital media and platforms should make a reasonable effort to adopt measures that make it possible for users to access a diversity of political views and perspectives. In particular, they should make sure that automated tools, such as algorithmic ranking, do not, whether intentionally or unintentionally, unduly hinder access to election related content and the availability of a diversity of viewpoints to users.
 - iii. Dominant online intermediaries should consider, as part of their due diligence, undertaking an assessment of whether their products, policies or practices regarding political advertising arbitrarily limit the ability of candidates or parties to disseminate their messages.
 - iv. Digital media and online intermediaries should make a reasonable effort to address dis-, mis- and mal-information and election related spam, including through independent fact-checking and other measures, such as advertisement archives, appropriate content moderation and public alerts.
 - v. Digital actors should, as relevant, be transparent about the use and any practical impact of any automated tools they use, albeit not necessarily the specific coding by which those tools operate, including inasmuch as those tools affect data harvesting, targeted advertising, and the sharing, ranking and/or removal of content, especially election-related content.
- b. Other stakeholders
 - i. Broadcast media should not interfere with the broadcast of third party election content unless they have been ordered to do so by a court or an independent and impartial regulatory body (including of an administrative nature), or are nearly certain that this is necessary to prevent substantial harm to a legitimate interest, such as through an act of violence.
 - ii. Parties, politicians and candidates should refrain from limiting the ability of media and journalists to access any public communications they make related to elections.
 - iii. Media outlets, both legacy and digital, should be transparent about the methodologies used in any public opinion polls they conduct or report on.

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