

9. Democratic electoral campaigns

The legal framework should ensure that each political party and candidate enjoys the right to freedom of expression and freedom of association, and has access to the electorate, and that all stakeholders in the election process have an equal chance of success.

Elections are a means to translate the general will of the electorate into representative government. To achieve this objective it is necessary that all parties and candidates be able to put out their manifestos -- the political issues and their proposed solutions -- freely to the electorate during the electoral campaign. The electoral campaign period should normally be well defined and should commence after the valid nomination of parties and candidates, ending one or two days before polling. However, certain jurisdictions might not have any well defined campaign period. All contesting parties and candidates should be afforded an opportunity to reach out to the electorate at large and to put forth their views, policies and programmes. The legal framework should ensure that:

- There are no unreasonable restrictions on the right to freedom of expression and whatever restrictions there are be set out in the law.

- Every party and candidate has equitable access to the media, especially the electronic media, to undertake their campaign.
- Where state or private funding is permissible, every party and candidate has equitable access to resources to undertake a credible election campaign.
- No party or candidate (especially the ruling party) is favoured, financially or otherwise through the availability or use of state resources, over the other parties and all stakeholders in the election process have an equal chance of success.
- No party or candidate threatens or does violence to another party or candidate, or incites anyone to violence or otherwise impedes the freedom to campaign.
- All parties and candidates should normally cease active campaigning one or two days prior to polling day, allowing the electorate to weigh the options and to exercise their franchise freely and without undue pressure. However, in certain jurisdictions this may not be possible or adhered to for historical reasons.

Campaign violence

The legal framework should state in clear language what type of conduct and behaviour is prohibited during the electoral campaign. Provisions regulating the conduct of political parties and candidates or references to codes of conduct may be provided in the electoral law or the criminal law. Sometimes such informal codes of conduct are arrived at as a result of an agreement reached between various political parties, often brokered by the EMB. These provisions should be consistent with the legislation but should not be unduly restrictive and should provide the opportunity for active and open campaigning, free from interference.

Campaign mechanisms

Electoral legislation generally sets out the procedures and mechanisms for

dealing with complaints and disputes during the campaign. Some legal frameworks for elections provide for adjudication or other mechanisms, such as mediation, to deal with disputes. The legal framework should provide for a mechanism for interaction between contesting parties and candidates during the campaign period -- such as a standing committee coordinated by the EMB. This enables the stakeholders to exchange views with each other or raise complaints of violations of campaign provisions or codes of conduct with a view to finding a common approach to resolving them and containing electoral violence.

Sanctions

Merely incorporating provisions for a free electoral campaign in the legal framework is not sufficient unless it is backed by a reasonable, effective and credible sanctions regime. If a code of conduct is incorporated in the electoral law or based on the provisions of the law, criminal or civil penalties may apply. Other specific electoral penalties, such as the disqualification of candidates or parties, may also be possible. Whatever legal or other sanctions are established, a party and its members have to clearly understand their obligations. Therefore, it is important that rights, obligations and the sanctions should be spelt out unambiguously.

The legal framework should ensure that penalties are not disproportionate to offences and that the same infractions are treated equally.

Basic assumptions

The parties and candidates should agree that the legitimacy of a government coming to power through a democratic multiparty election rests on the following principles:

- That having been informed during the electoral campaign of the policies and qualities of all political parties and candidates the voters have made an informed choice which is reflected in the election results; and
- That voters have been able to vote freely, without interference, fear, undue influence, bribery or intimidation.

All parties and candidates should then recognize that the elections express the credible free choice of the voters and accept the result of the election as an expression of that choice.

Code of conduct reflecting campaign legislation provisions

The campaign period is crucial to reach out to the electorate. A code of conduct for democratic campaign management should ensure that all parties and candidates:

- Respect the right and freedom of all other parties and candidates to campaign and disseminate their political ideas and principles without fear;
- Conduct themselves in a manner that respects the rights of other parties and candidates, and respects the rights of voters and other members of the community;
- Respect the freedom of the press;
- Use their good offices to seek to ensure reasonable freedom of access by all parties and candidates to all potential voters; and
- Seek to ensure that potential voters wishing to participate in related political activities have freedom to do so.

At the same time the code of conduct should ensure that no party or candidate will:

- Harass or obstruct media representatives engaged in their professional activities;
- Disrupt, destroy or frustrate the campaign efforts of any other party and in particular will not:

I Prevent the distribution of handbills and leaflets, nor the display of posters, of other parties and candidates;

II Deface or destroy the posters of other parties and candidates;

III Deface private property or government or public buildings by writing slogans, pasting posters etc.;

IV Prevent any other party from holding rallies, meetings, marches or demonstrations;

- V Seek to prevent any person from attending the political rallies of another party;
- VI Permit their supporters to do anything prohibited by the code of conduct.

Checklist

- Does the law regulate the conduct of political parties and candidates during electoral campaigns and provide for active and open campaigning free from government and other political parties' or candidates' interference?
- Where admissible, does the legal framework define the campaign period -- the date of its commencement and date when it ends?
- Where admissible, does the legal framework provide for cessation of all active campaigning one or two days prior to polling day?
- Are there provisions and safeguards to avoid electoral violence so that the electorate and other candidates and parties are not intimidated?
- Does the legal framework for elections provide for procedures and mechanisms to deal with complaints and disputes during the campaign period in a timely manner?
- Is there a prohibition on the use of government resources during the campaign period, other than those available to all parties and candidates?