



**MEDIA REGULATION IN THE MEKONG  
AND OPPORTUNITIES FOR THE  
DEVELOPMENT OF PUBLIC SERVICE AND  
COMMUNITY BROADCASTING**

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# Preface

This report analyses current media legislation and regulation in Cambodia, Lao PDR, Myanmar, Thailand and Viet Nam and examines the opportunities for the development of public service and community broadcasting. The report also includes useful references to Singapore.

UNESCO Bangkok thanks Dr Murray Green for the preparation of this work. The aim of this report is to provide an updated reference for current initiatives in different media-related fields, as it maps current media legislation and regulation in the region and identifies the place of public service broadcasting and community media in each national media landscape. It also formulates the key challenges in this field and addresses a set of general recommendations to international and regional organizations, donors, governments, advocacy groups, NGOs, training institutions and the broadcast industry in general.

The report will be a useful tool for the implementation of UNESCO's Communication and Information Programme in the region in 2014-2017, and will be widely disseminated to media development stakeholders in the region.

# List of Abbreviations

|                  |   |
|------------------|---|
| <b>ABU</b>       | Asia Pacific Broadcasting Union   |
| <b>AECID</b>     | Spanish Agency for International Development  |
| <b>AMARC</b>     | World Association of Community Broadcasters   |
| <b>AMIC</b>      | Asia Media Information and Communication Centre,<br>Nanyang Technological University, Singapore |
| <b>BBC</b>       | British Broadcasting Corporation  |
| <b>CCIM</b>      | Cambodian Center for Independent Media  |
| <b>FM</b>        | Frequency Modulation (Radio)  |
| <b>IPDC</b>      | International Programme for the Development of Communications (UNESCO)                          |
| <b>iTV</b>       | Independent Television Thailand   |
| <b>MCOT</b>      | Mass Communication Organisation of Thailand   |
| <b>MediaCorp</b> | Media Corporation of Singapore  |
| <b>MDA</b>       | Media Development Authority of Singapore  |
| <b>MDI</b>       | Media Development Indicators (UNESCO)   |
| <b>NBT</b>       | National Broadcasting Services of Thailand  |
| <b>NBTC</b>      | National Broadcasting and Telecommunications Commission (Thailand)                              |
| <b>NFCR</b>      | National Federation of Community Radio (Thailand)   |
| <b>NGO</b>       | Non-Government Organization   |
| <b>NHK</b>       | Japan Broadcasting Corporation  |
| <b>PSB</b>       | Public Service Broadcasting   |
| <b>RNK</b>       | Radio National Kampuchea  |
| <b>TDRI</b>      | Thailand Development Research Institute   |
| <b>TVK</b>       | Television Kampuchea  |
| <b>UN</b>        | United Nations  |
| <b>UNDP</b>      | United Nations Development Programme  |
| <b>UNESCO</b>    | United Nations Educational, Scientific and Cultural Organization                                |
| <b>VOV</b>       | Voice of Viet Nam   |
| <b>VTV</b>       | Viet Nam Television   |
| <b>WMC</b>       | Women's Media Centre of Cambodia  |

# Introduction

Media development in South-East Asia has principally been a function of nation building. In contrast to the emphasis in Western traditions of individual expression and independence from government, media development in South-East Asia has often been built on a singular vision of the national interest being the public interest and the State being the framer of that interest. Notions of media independence from government and reflective of pluralist community interests are relatively new.

The appropriateness of the media reflecting community pluralism and being independent of the State are concepts that are contested. As we shall see, some Asian media scholars argue that media development ought to focus not on matters of freedom of expression but rather literacy and the alleviation of poverty. Others argue for de-Westernising the past and Asianising the present.

The development of media law and regulation, while being a reflection of a nation's cultural and constitutional heritage, is part of cross-border influences and legal exports and imports. Our environment is local, national, regional and global. The national interest and local community interest are sometimes different if not in tension. The national interest is influenced by regional and global interests. In nations such as Myanmar, country specific media law and regulation was affected by different notions of the role of the media and the State that have come from legal and regulatory regimes often outside its borders. There is evidence of trends emerging in Cambodia and Laos that affirm the role of community media alongside State media and in Thailand a new public service broadcaster has been established alongside the State broadcaster. This paper aims at exploring these trends and identifying opportunities for further development.

This preliminary study has been commissioned by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Bangkok within the following context. The framework of UNESCO's Communication and Information Programme for 2014–2017 includes:

## Main Line Action **1**

*Promoting an enabling environment for freedom of expression, press freedom and journalistic safety, facilitating pluralism and participation in media, and supporting sustainable and independent media institutions*

## Main Line Action **2**

*Enabling Universal Access and Preservation of Information and Knowledge*

The particular purpose of this research is threefold: first, to map current media legislation and regulation in the Mekong countries (Cambodia, Lao PDR, Myanmar, Thailand and Viet Nam). Second, to identify the place of community radio in each national media environment. Third, to formulate the key issues and challenges facing both the development of community radio and public service broadcasting in the Mekong region.

In assessing the present state of community radio in the Mekong, the wider media landscape is surveyed, the particular anatomy of community radio is analysed and significant national actors in the development of community radio are identified. Part of this analysis includes the role of State media in each nation and indications of a transition of this media to the form of public service broadcasting.

This work is undertaken in the context of the aspirations of the UNESCO Media Development Indicators (MDI).<sup>1</sup> The MDI include indicators that promote a diverse mix of public, private and community media (2.3) with an independent and transparent regulatory system (2.4) and the particular promotion of community media development (2.5).

This paper, while wide in aspiration, has some significant limitations in scope. First, it is a preliminary study that has relied principally on published sources and promulgated legislation and regulations. Second, those sources vary significantly in scope across jurisdictions. Analysis of the media in Thailand appears comparatively rich in contrast to evaluation of media structure and opportunity in jurisdictions such as Cambodia, Lao PDR and Myanmar. Third, a principal purpose of the paper is to ascertain current media legal and regulatory settings, in particular the opportunity for the development of community media. Finally, there has been some beginning of public service broadcasting (PSB) in the Mekong States, principally Thailand. A defining feature of public service broadcasting is its editorial independence. The potential for further PSB initiatives will be assessed.

**Murray Green**<sup>2</sup>

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<sup>1</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (2008), Paris: UNESCO.

<sup>2</sup> Dr Murray Green is a Media Development and Legal Policy Adviser with a particular interest in the Asia-Pacific. He is a Research Associate at the Communications Law Centre at the University of Technology, Sydney and Honorary Professor in Public Diplomacy at the Soft Power Advocacy and Research Centre at Macquarie University, Sydney. He has a doctorate in law from the University of Melbourne and is a lawyer. He was formerly Director International at the Australian Broadcasting Corporation.





# 1 Media Regulation: Instrument of National Sovereignty or Global Influence?

It is clear from UNESCO's Media Development Indicators that there are aspirational values across borders for media law and regulation. But this approach to regulation and communications study is not uncontested. Sundeep Muppidi says of media scholarship that it is easy to ape the West because of colonial experiences and exposure to Western learning. The way forward, he argues, is to "de-Westernise" the past and "Asianise" the present.<sup>3</sup> In contrast, Georgette Wang contends that preoccupation with such differences leads to the "dead end" of cultural essentialism. Cultures are open systems with ongoing processes of hybridization. De-Westernization, according to Wang, is both impossible and unnecessary.<sup>4</sup>

In relation to legal transplants, the adaptation of Western law to an Asian context can lead to outcomes different from the application of the law in its original context. It is argued that transplants work better when the patient requests, fully consents to, and then takes care of their transplant.<sup>5</sup>

The way in which this works in the regulatory space has been subject to some scrutiny, in particular the role of the State, non-State and supra-national actors. John Gillespie has focused on these applications in East Asia. The global space has been mapped to analyse the ways in which State and non-State actors have come to implement regulatory influences that are global. Gillespie has identified three regulatory regimes. First, constitutional mechanisms that give the State coercive powers through legislation, bureaucratic regulation and court decisions to localise global reform agendas. Second, non-State regulation such as self-regulation by non-State or hybrid State/non-State collaborations; and third, State and non-State deliberation that regulates and localises global scripts.<sup>6</sup> We shall bear in mind this categorization in our survey of Mekong media law and regulation.

3 Sundeep R Muppidi, 'Taking Stock of Media and Communication Studies: The Challenges and Opportunities of Globalisation, New Media and the Rise of Asia' in Sundeep R Muppidi (ed), *Asian Communication Handbook* (2012) Singapore: AMIC, 7.

4 Georgette Wang, 'From Asia to the World: Media Studies in the Digital Age' in Muppidi, above n 4, 13. Wang cites the analysis of R Rosaldo in the Forward in N G Calcini, *Hybrid Cultures: Strategies for Entering and Leaving Modernity* (1995), University of Minnesota Press, xiv-xxi.

5 E Ann Black and Gary R Bell (eds), *Law and Legal Institutions of Asia: Traditions, adaptations and innovations* (2011) Port Melbourne: Cambridge University Press, 2.

6 John Gillespie, 'The role of State, non-State and hybrid actors in localising global scripts in East Asia' in John Gillespie and Randall Peerenboom (eds), *Regulation in Asia: Pushing back on globalization* (2009) Abingdon: Routledge, 28.

## 2 Media Law and Regulation in the Mekong

In each of our country studies we first look at the constitutional provisions for the media, freedom of the press and freedom of expression. Second, we explain legislation that provides for the broadcast media and its regulation. Third, we examine the provision for community radio and public service broadcasting.

Across the Mekong jurisdictions there is a range of constitutional settings from the socialist to the liberal democratic State. Some jurisdictions in South-East Asia, such as Singapore, have a legal heritage in English common law that balances the legislature and the courts, whereas in Thailand, Cambodia and Viet Nam there is a civil law heritage with an emphasis on codification. We shall focus on these Mekong States and use Singapore as a comparative measure of a media and regulatory system that has had more opportunity to develop.

### Cambodia



#### *Constitution and the role of the media*

Article 41 of the 1993 Constitution of the Kingdom of Cambodia provides that Khmer citizens shall have freedom of expression, press, publication and assembly. These rights are qualified by provisions indicating that no one exercising these rights may infringe on the rights of others, or affect the good traditions of society, or violate public law and order and national security.

Article 41 also provides that “the regime of the media” is determined by law.

The Constitution also recognises and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants related to women’s and children’s rights (Article 31).

#### *Media Law*

There is no separate media regulator in Cambodia. The Ministry of Information oversees media enterprises. The 1995 Law on Press Regime provides for the independence of the press, the right of confidentiality of sources and the prohibition of pre-publication censorship (Articles 1-3).

It has been argued that Article 12 of the Press Law, which stipulates that there should be no publication of any information that may affect national security and political stability, has been used to constrain media activity.<sup>7</sup> It is also argued that the application of other legislation such as the *Transitional Penal Code for Defamation and Misinformation 1993* significantly curtails freedom of expression.<sup>8</sup>

National Television of Kampuchea (TVK) and National Radio of Kampuchea (RNK) are departments within the Ministry of Information. While government owned, they are dependent on commercial advertising for revenue.

There are some 160 radio stations registered with the Ministry of Information. Of these, there are at least two that have been identified as being independent of State influence (Sarika FM and Radio Beehive).<sup>9</sup>

## Community Radio

Community Radio has been distinguished from other media forms by three characteristics: non-profit making, community ownership and management, and community participation.<sup>10</sup> The World Association of Community Radio Broadcasters (AMARC) has added some observations about the social impact of this sector:

- Community radio is a voice for the poor and the marginalised
- Community radio is effective in poverty reduction
- Community radio is effective in ensuring proper governance
- Community radio is effective in achieving development goals
- Community radio is effective in empowering women
- Community radio is effective in ensuring inclusion of the marginalised
- Community radio is effective in conflict resolution
- Community radio has an effective impact in disaster prevention/relief<sup>11</sup>

UNESCO in 2012 conducted, together with the Cambodia Center for Independent Media (CCIM), a series of workshops to build capacity for radio citizen journalists to promote freedom of expression. The aim of the 60 people who have been trained is to produce five news reports per month to broadcast on community radio stations.<sup>12</sup>

Community radio has been established in Cambodia and supported by international donors. The Spanish Agency for International Development Cooperation (AECID), for example, worked in Kratie with the Women Media Center of Cambodia (WMC) to establish a community radio

7 Cambodian Center for Independent Media, *Challenges for Independent Media Development in Cambodia* (2013) Phnom Penh: CCIM, 12.

8 Ibid, 8.

9 Ibid, 10.

10 Esther Kar, 'Social Impact of Community Radio in India: Enhancing Participatory Development and Women Empowerment' in Kalinga Seneviratne (ed), *Peoples' Voices, Peoples' Empowerment: Community Radio in Asia and Beyond* (2012), Singapore: AMIC. 66.

11 World Association of Community Radio Broadcasters, *Community Radio Social Impact Assessment: Removing Barriers Increasing Effectiveness* (2007) Quebec: AMARC, 9-10 and cited by Kar, above n 11.

12 [http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/radio\\_citizen\\_journalists\\_to\\_promote\\_freedom\\_of\\_expression\\_in\\_cambodia/](http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/radio_citizen_journalists_to_promote_freedom_of_expression_in_cambodia/)

programme on 100 FM in August 2012.<sup>13</sup> The focus of the content includes the empowerment of local women. In the WMC licence undertaking they indicated that they would not cover any political parties and only focus on development issues for women.<sup>14</sup>

## *Public Service Broadcasting*

Public Service Broadcasting, as distinct from State broadcasting, is distinguished by its independence from government while remaining publicly owned. The UN and UNESCO have both recognized the important contribution of PSB to development and democracy. Janis Karklins, UNESCO's Assistant Director-General for Communication and Information observes that

PSB faces a few challenges to its role and its resourcing, even in countries where it exists. In some countries it has degenerated into State broadcasting with limited editorial independence and pluralism of expressed views. In other countries, PSB has never been introduced. It is, therefore, important to describe existing strategies and regulations on PSB and whenever the political opportunity arises suggest the introduction of PSB in a country.<sup>15</sup>

The key notions of public service broadcasting include editorial independence, universality, secured funding free of all pressures, distinctiveness, diversity, unbiased information, citizenship, social cohesion and public accountability.

The World Radio and Television Council, a non-government organization supported by UNESCO, published in 2000 *Public Broadcasting: Why? How?* The principles of public service broadcasting are distilled as universality, diversity, independence and distinctiveness. Public broadcasting must be accessible to every citizen throughout a country. The service offered by public broadcasting should be diversified in at least three ways: the genres of programmes offered, the audiences targeted and the subjects discussed. Public broadcasting must be an independent forum for free discussion of ideas. This independence is independence from political, personal or commercial pressures and interests. Public broadcasting must be distinguishable from other media content by the quality of its offering, its commitment to innovation and its creative leadership.<sup>16</sup>

In an Asian context public service broadcasting often marked the origins of broadcasting in the region. For example, in the Philippines the Radio Broadcasting Board met cultural and educational needs of its audiences. In Pakistan, public service broadcasting was established soon after independence to contribute to national identity.<sup>17</sup> The best example of public service broadcasting in Asia is arguably NHK in Japan which has a budget in the billions

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13 <http://www.aecid.org.kh>

14 Namrata Bansal, 'Public Service Broadcasting in Kampuchea: A Transitory Phase' in Sundeep R Muppidi and Premila Manvi (eds), *Public Service Broadcasting and Its Role in Raising Civic Consciousness: Case Studies from Asia* (2012) Singapore: AMIC, 47.

15 ABU/UNESCO/CBA, *A Road Map to Public Service Broadcasting*, (2012).

16 World Radio and Television Council, *Public Broadcasting: Why? How?* (2000) Quebec: WRTC, 6-7.

17 See Premila Manvi 'Public Service Broadcasting and Role in Civic Consciousness' in Muppidi and Manvi, above n 13, 24-25.



(US\$) and a most comprehensive service on radio, television and online.<sup>18</sup> But, as Premila Manvi has observed, fierce competition and lack of funds have hindered the growth and integrity of public service broadcasting in Asia.<sup>19</sup>

Cambodian State broadcaster TVK appears to have some interest in transitioning to a public service broadcaster and on a model that would sit between State content control and the BBC arrangements with government where public funds are raised but editorial and managerial control is vested in an independent board.<sup>20</sup> Whether these aspirations match the interests of the Cambodian Government is not clear.

Interestingly, Radio Sarika sees itself as a public service broadcaster as it operates in collaboration with NGOs to explore issues of corruption, current affairs, education and good governance. A spokesman is reported as saying “in Cambodia, the concept of PSB is not clear and not in use. There is no proper discussion and everyone must refer to State owned media.”<sup>21</sup>

## Lao PDR



### *Constitution and the Role of the Media*

Article 44 of the 2003 Constitution provides for Lao citizens to have the right of freedom of speech, press and assembly. Article 23 addresses the role of the media and the State. The role of government is to improve the public media in order to serve the protection and development of the nation. The State also prohibits cultural activities or the use of the media to cause damage to national interests or destroying the tradition or dignity of the Lao people.

### *Media Law*

A new press law was approved by the Lao National Assembly in July 2008. While there has been some delay in its implementation, the final version of the law is expected to be enacted during 2013.<sup>22</sup> The Criminal Code allows journalists to be jailed for reporting news that “weakens the State” (Article 65 of Penal Law).

Despite the constitutional provisions for freedom of the press, the State appears to have strong oversight over what is published. A senior executive of Lao National Radio explains it this way:

The Ministry of Information, Culture and Tourism conducts every week meetings with editors to discuss the news reporting and give feedback in case of critical reporting

18 See Kalinga Seneviratne, ‘Definition and History of Public Service Broadcasting’ in Banerjee and Seneviratne, above n 13, 39.

19 Manvi, above n 16, 25.

20 Bansal, above n 13, 55.

21 Ibid, 49.

22 Director General of the Media Department in the Ministry of Information, Culture and Tourism quoted in *The Nation* 27 March 2013.

or if news reporting has a negative impact on policies and the State. Journalists who are critical of the government will be either warned or restricted in their coverage. It is important to note that so far, [no] journalist has reportedly been jailed for their works; interference usually comes in the form of internal disciplinary actions by their offices.<sup>23</sup>

Lao National Television and Lao National Radio are part of the Ministry of Information, Culture and Tourism. Revenue is gained from government grants and commercial advertising. There are some 32 television stations and some 44 radio stations all of which are State owned. Since 2000 commercial investors have been permitted to engage in joint ventures with State owned media enterprises.

There is not a separate media regulatory body in Laos and licensing and regulation is undertaken by the Ministry of Information, Culture and Tourism, with the assistance in editorial codes being developed by the Lao Journalists Association, which operates under the aegis of the Ministry.

### *Community Radio*

The first community radio station in Laos was established in 2007. Khoum Radio broadcasts in three languages and is supported by residents of Houay Jaek village who are involved in the station's production, presentation and technical infrastructure. The UNDP has funded this enterprise. There has been significant community development as a result of the broadcasts. There has been a 60 per cent increase in children's vaccination as a result of

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23 Vorasack Pravongviengkham, 'Dealing with Media Ethics in Lao PDR' Asia Media Summit, Manado, Indonesia 29-31 May 2013, PowerPoint slide 14.



the community radio's health programmes. The Lao Government has plans to establish community radio stations in 47 of the nation's poorest areas.

The Nonget Ethnic Community Radio for Development was launched in May 2013 and is part of the Community Participation and Communication Support Programme of the Ministry of Information, Culture and Tourism and with funding from UNDP and Oxfam.

Community radio in Laos appears to be facilitated by government, funded by international donors and staffed by local volunteers.

### *Public Service Broadcasting*

There is no heritage of public service broadcasting in Laos and there does not appear to be immediate interest or opportunity for Lao National Television or Lao National Radio to develop in this direction.

## Myanmar



### *Constitution and Role of the Media*

The new 2008 Constitution has provisions for freedom of expression. Section 354 sets a context for these expressed rights. These can be exercised, if not contrary to the laws enacted for the unity of the nation, the prevalence of law and order, community peace and tranquillity or public order and morality. These are significant caveats. The rights in this context are enumerated as follows:

- to express and publish freely their convictions and opinions
- to assemble peacefully without arms and holding procession [processions?]
- to form associations and organizations
- to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths

There appears no explicit provision for the media apart from the right to express and publish freely.

### *Media Law*

The Second Conference on Media Development in Myanmar in May 2013 heard reports of the four draft media laws that have been in preparation: a print law, a printers and

publishers law, a broadcasting law, and a public service media law. The Executive Director of the International Media Support Group commented:

The media development conference held on 20–21 May reaffirmed that journalists in Myanmar are experiencing an unprecedented level of freedom to exercise their rights.<sup>24</sup>

There are encouraging signs that substantial media law reform is taking place in Myanmar. The abolition of pre-publication censorship in August 2012 was a first step in this process. However, there has been some disagreement about the pace and extent of this reform.<sup>25</sup> An interim Press Council has been established and daily publications are now permitted and are possible because of the ending of the requirement for pre-publication approval of content.

Radio Myanmar and Television Myanmar are run by the Myanmar Radio and Television Department of the Ministry of Information and Myawaddy TV is run by the army. Western songs or content not consistent with government policy are not broadcast.<sup>26</sup> There is a public-private joint pay television venture with MRTV 4 and the Forever Group. Independent company Skynet, a Direct to Home satellite pay television service owned by Shwe Than Lwin Media, has been operational for the last three years. They provide some 60 channels to their clients. They also produce three, free-to-air channels including the parliamentary channel. The company has a full geographical coverage of the country and considers that to be its advantage compared to its competitors (MRTV-4/Forever Group).

## *Community Radio*

Steve Buckley, former President of the World Association of Community Broadcasters (AMARC) spoke at the First Conference on Media Development in Myanmar (March 2012) about the opportunities for community radio. He first outlined a normative model for media development that included freedom of expression and the right of access to information, all in a self-regulatory environment of three tiers of broadcasting (public service, private and community). Buckley made the following recommendations to advance community media in Myanmar:

- a. Repeal out-dated censorship laws and end restrictions on reporting and the Internet
- b. Welcome and facilitate the return of exile media associations, such as Mizzima and Irrawaddy, which have courageously carried the torchlight of media freedom
- c. Implement media reforms in accordance with international standards on freedom of expression and media freedom, including the opening up of the broadcast environment
- d. Reform media along public service lines, with full editorial independence and a pluralism of content that reflects all sections of society including the weakest

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24 Jesper Hojberg, Executive Director, International Media Support, <http://www.i-m-s.dk/studying-media-law-and-defamation-in-myanmar/>

25 Southeast Asia Press Association <http://asiancorrespondent.com/109248/burma-media-reform-mystified-by-three-draft-laws/>

26 Sundeep R Muppidi (ed), *Asian Communication Handbook* (6th ed, 2012) Singapore: AMIC, 299.

- e. Enable private and community broadcasting services to access FM frequencies, under the oversight of an independent regulatory agency for radio and television
- f. Invest in training and capacity building for the establishment and sustainability of a community media sector that can contribute to social and economic development and the protection of cultural diversity and linguistic expression<sup>27</sup>

In the second phase of media reforms it is envisaged that community groups representing different ethnic identities may have access to community radio stations.<sup>28</sup> Currently there appears to be no community broadcasters in Myanmar.

The Draft Broadcasting Law has specific provisions for community radio and public service broadcasting. A community broadcaster must meet the following criteria:

- i. The organization is neither for profit nor part of any organization which is working for profit
- ii. The overall objective is to provide for the distinct information, education and entertainment needs of a specific geographic community

The proposed new regulator, the National Broadcasting Council, is required to develop a distinct simple framework for community broadcasting licensing. Myanmar is most suited to the opportunities provided by community broadcasting. There are some 135 discrete ethnic groups in the country that would be able to maintain their language and culture through community broadcasting.<sup>29</sup>

## *Public Service Broadcasting*

The Ministry of Information has already submitted the proposed Public Service Media Law to Parliament but discussions are still ongoing. The Bill intends to transform current State media such as the *New Light of Myanmar* and *The Mirror* newspapers and Myanmar Radio and Television into independent public service media. The proposal includes a funding model of 70 per cent funding from Parliament and 30 per cent from commercial advertising. The Bill intends to promote editorial independence from government but the draft law is still controversial. Some MPs wish to see greater involvement by the government while private newspapers disagree with the proposed public service daily newspaper that they perceive as unfair competition for their businesses.

A spokesman for the Myanmar President has indicated that a 15 member administrative team would be formed to oversee the transformation, with five members appointed by the President and ten members by the Parliament. Thiha Saw, of the Myanmar Journalists Association, has expressed concern about the composition of this taskforce.<sup>30</sup>

27 Steve Buckley, 'The role of media in empowering communities' *Report of Conference on Media Development in Myanmar*, 19-20 March 2012, Yangon, 14.

28 <http://www.unescobkk.org/news/article/myanmar-pursuing-the-next-phase-of-media-reform/>

29 I am most grateful to Ramon Guillermo R Tuazon, UNESCO Media Development Specialist in Myanmar, for background on the proposed Broadcasting Law.

30 <http://www.irrawaddy.org/archives/37514>



## Thailand



### *Constitution and the Role of the Media*

The constitutional history of Thailand is most distinctive as it not only has provided for freedom of expression but also assigned part of the broadcast spectrum for public and community broadcasting. While the current 2007 Constitution lacks that provision, there are most explicit protections for the media. The Thai Constitution stands out in this regard compared with other constitutions considered in this report.

Section 36 of the 2007 Constitution prescribes that a person shall enjoy the liberty of communication by lawful means. Part 7 of the Constitution addresses freedom of expression of the individual and the press. Section 45 provides that a person shall enjoy the liberty to express opinions, make speeches, write, print, publicise and make expression by other means.

There are a number of media specific protections to reflect this principle. The remaining paragraphs of Section 45 provide:

- The closure of a newspaper or other mass media business in deprivation of the liberty under this section shall not be made.
- The prevention of a newspaper or other mass media from printing news or expressing their opinions, wholly or partly, or interference in any manner whatsoever in deprivation of the liberty under this section shall not be made except by the provisions of the law enacted in accordance with the provisions of paragraph two (above).
- The censorship by a competent official of news or articles before their publication in a newspaper or other mass media shall not be made except during the time when the country is in a state of war...
- The owner of a newspaper or other mass media business shall be a Thai national.
- No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media.

Section 46 of the Constitution protects the right of private media operators to express opinions and for government officials and employees to express their opinions in the media.

The Constitution also, remarkably, outlines the role of the media regulator. Section 47 stipulates that there should be an independent regulatory body having the duty to distribute frequencies and supervise radio and television businesses according to the law.

These are very strong provisions and there are not any comparable guarantees in other constitutions considered in this report. Toby Mendel, of the Law and Democracy Centre, has suggested that the Thai Constitution includes some of the most detailed protections for freedom of expression anywhere in the world.<sup>31</sup>

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31 Toby Mendel, *Audiovisual Media Policy and Regulation and Independence in Southeast Asia* (2010) New York: Open Society, 7.

## Media Law

The *Broadcasting Act* 2008 provides for three forms of broadcasting: public service, community service and commercial service.

Public service broadcasting licences are divided again into three forms.<sup>32</sup> First, broadcasting for education, religious affairs, arts and culture, science, technology and the environment, agriculture, career promotion, health, sports and promotion of quality of life. Second, broadcasting related to national security and public safety and, third, broadcasting related to promotion of understanding of democracy, providing information for the disabled and the disadvantaged.

Community licences are for the same objectives of public service broadcasting with a local or community focus. The applicant must be an association or foundation or a local group committed to community empowerment.

Commercial service licences are issued as national, regional or local licences.

An independent converged regulator has been established (The National Broadcasting and Telecommunications Commission). The NBTC consists of 11 Commissioners to be chosen from candidates with the following backgrounds: radio and television broadcasting, telecommunications, law, economics, consumer protection, education and social development.

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32 See Muppidi, above n 25, 416 for further analysis.



The provisions for public service broadcasting services have been considerably strengthened by the *Thai Public Broadcasting Service Act 2008* (B.E. 2551). Section 7 outlines objectives including fairness and independence in news and information and upholding Thai national values. This legislation has given birth to Thai PBS television supported not by commercial advertising or government funding but by a levy on tobacco and alcohol sales.

In addition to this service, the Thai radio and television market is complex in terms of who owns a licence and who operates the services and the large number of radio services that never had a licence.

The State and defence forces own a substantial portion of television and radio licences. The Ministry of Defence owns, for example, 45 per cent of radio stations and 33 per cent of television stations, some of which are leased to private commercial operators.

Thai TV3 and Channel 9 are operated by the Mass Communications Organization of Thailand (MCOT), a government department; TV5 and BBTV Channel 7 are owned by the Royal Thai Army and Thai PBS is operated under the legislation outlined above. In addition to these free to air services, there are some 800 cable channels in Thailand.

Radio Thailand is a national network operated by National Broadcasting Services of Thailand (NBT) that is part of the government Public Relations Department. MCOT and the Army run radio networks. There are over 500 radio stations in addition to an estimated 6,000 community stations in Thailand.

## *Community Radio*

Thailand has the only specific legislative provision for community radio in the jurisdictions in this study (Myanmar pending). But the development of community radio in Thailand pre-dates legislative provision.

The first community station in Thailand went to air in 2001 in Kanchanaburi, a province on the Thai-Burmese border.<sup>33</sup> By 2002 some 140 community stations were on air while by August 2009 some 6,621 small radio stations had registered on air.<sup>34</sup>

Not all these stations could be described as community in purpose. There are seven categories that distinguish these differences in objective. The stations range across the following categories: geographical civic stations, issue based civic stations, local commercial stations, local State-owned stations, religious stations, local political stations, and national security stations.<sup>35</sup>

The number of community radio stations that are community owned and community run is more modest in number. The Thai National Federation of Community Radio (NFCR) has some 127 member stations.<sup>36</sup>

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33 Pirongrong Ramasoota, 'Community Radio in Thailand: Continuing Struggle for a Social Presence' in Seneviratne, above n 9, 95.

34 Ibid, 100.

35 Ibid, 101.

36 Ibid, 102.

The regulatory predecessor to the NBTC in July 2008 considered the licensing of community radio from applicants committed to the following objectives:

- Organised in the public interest
- Not seeking profits or revenues from advertising
- Benefitting and responding to the diverse needs of community or locality receiving the services
- Contributing to the locality by strengthening the community
- Owned and managed by the community
- Being independent and having freedom to present news and opinions that are in line with good ethics and morals
- Being free from domination or intervention of interest groups particularly political groups, political parties, or commercial profit-driven private entities<sup>37</sup>

The unregulated growth of stations under a community radio umbrella raises questions as to whether many of the 6,000 are really in fact commercial stations.<sup>38</sup>

### *Public Service Broadcasting*

The development of Thai PBS independent of government and commercial interests and working in the public interest is an impressive and solitary example in this study of how public service broadcasting can be developed in an Asian context and in a well resourced and constitutionally secure way.

It also presents a model for the development of public service broadcasting in the region. It is not a matter of attempting to transform State broadcasters into public broadcasters but rather designing a media structure where they both co-exist. There may be something intrinsically appropriate about this in that it reflects a reality that the Asian state may always want some form of media presence. This is not only evident in Thailand with the co-existence of state and public service broadcasters but also in the constraint on criticism of the monarchy (*lese majeste* in Article 112 of the Criminal Code).

<sup>37</sup> Ibid, 105.

<sup>38</sup> See Palpol Rodloytuk, 'Thailand Real v Commercial Community Radio' in Seneviratne, above n 9, 254.

## Viet Nam

### *Constitution and Role of the Media*

The 1992 *Constitution of the Socialist Republic of Viet Nam* is marked by what Article 6 describes as Democratic Centralism. Article 69 provides for freedom of opinion and speech, freedom of the press, and the right to be informed in accord with the provisions of the law. But there is a focused context in which these freedoms are exercised. Article 4 indicates that the Communist Party of Viet Nam, the “faithful representative of the rights and interests of the working class”, is the force leading the State and society. Article 30 outlines that the State exercises the unified management of cultural activities with the strict prohibition of popularising “reactionary and depraved thoughts”.

The role of the media is prescribed in Article 33:

The State shall promote information work, the press, radio, television, cinema, publishing, libraries and other means of mass communication. All activities in the fields of culture and information that are detrimental to the national interests and which undermine the fine personality, morality, and the way of life of the Vietnamese people shall be strictly banned.

These responsibilities are reinforced by the obligations of citizens and that to betray the Fatherland is the most serious crime (Article 76).

### *Media Law*

The Law on Media 1999 makes it clear that the media is the “mouth piece” of Party organizations, State bodies and a forum for the people (Article 1). The rights and responsibilities of the media include an obligation to disseminate, publicise and contribute to the protection of strategies and policies of the Party (Article 6 (2)). There are matters in which the media is prevented from reporting including information that is untruthful or distorted or harmful to the reputation of organizations (including the Party) or the reputation of citizens (Article 10 (4)).

The remainder of the Law on Media outlines the responsibilities of journalists and media editors and nominates the Ministry of Culture and Information as responsible for State management of the media.

The way in which this supervision works is cited in Nina Vennevold’s study (2011) of Viet Nam’s media environment. Controls consist of lists of topics and stories that may not be covered and are communicated to editors at meetings convened by the MIC and attended by Party and government officials. The status of the binding nature of these directives appears to vary.<sup>39</sup>

39 Nina Vennevold, *Pilot Study on Viet Nam’s media landscape based on UNESCO’s Media Development Indicators* (2011) Oslo: OIU, 3, citing Catherine McKinley, *Developing Financially Viable Media in Emerging Media Markets* (2010) WAN-IFRA.



There are no private media operators in Viet Nam. Radio is operated by the Voice of Viet Nam (VOV) across six networks and Viet Nam Television (VTV) broadcasting across five networks. Regional television services operate in some 61 cities. Both VOV and VTV are part of the Ministry of Information and Communications.

### *Community Radio*

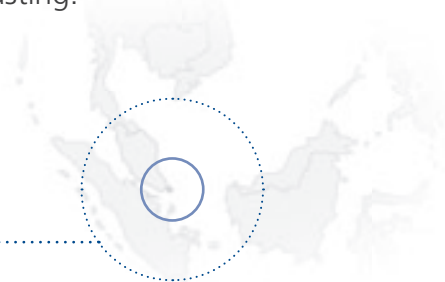
There appear to be no community radio services in Viet Nam and, although the Media Law may be able to accommodate such services, they would need to conform to Party and State direction.

### *Public Service Broadcasting*

While some of the broadcasts of VOV and VTV embrace elements of PSB objectives, particularly in promotion of culture and the arts and facilitating education, a defining characteristic of public service broadcasting is missing. The Media Law is committed to State direction and control and the notion of broadcasting being editorially independent appears to be elusive.

It is worth contrasting these more recent developments in broadcast media law and regulation in the Mekong states with the more established regulatory structure in a neighbouring jurisdiction. The Public Broadcasting Department of Singapore's Ministry of Information, Radio and Television was dissolved in 1994 and the Singapore Broadcasting Corporation was split into three privatised entities (international, television and radio) still under State control. In 2001 there was further reorganization with the establishment of the Media Corporation of Singapore. A State regulator, the Media Development Authority, oversees the sector. Public broadcasting is provided and supported as a content stream rather than as a separate broadcast platform. There appears to be no provision for community broadcasting.

## Singapore



### *Constitution and Role of the Media*

Section 14 (1) (a) of the 1999 Singapore Constitution provides for the right of free speech and expression. This provision is qualified by the following conditions. Parliament may impose such restrictions as it considers necessary or expedient in the interest of the security of Singapore, or friendly relations with other countries, public order or morality. The restrictions also include measures designed to protect the privileges of Parliament or against contempt of court, defamation or incitement to any offence (Section 14 (2) (a)).

The Constitution also grants special powers to the Parliament against subversion or in emergencies. These powers include the power to act against any deed that would cause a substantial number of citizens to fear organised violence; or to excite disaffection against the President or the Government; or to promote ill-will and hostility between different races; or is prejudicial to the security of Singapore (Section 149 (1)).

There is no particular provision for the role of the media in the Constitution.

## *Media Law*

All media publications and broadcasts must be licensed, including online news sites. The principal instruments of regulation for the broadcast and online industry are the *Broadcasting Act and the Media Development Authority Act*.

The *Broadcasting Act* (Cap.28) provides a central role for the Minister to give directions to a broadcast service in a public emergency, in the public interest or in the interests of public security, national defence or relations with the government of another country.

The power to grant licences is vested in the Media Development Authority (MDA) who is also responsible for overseeing Codes of Practice and can also determine classes of licence.

The *Media Development Authority of Singapore Act* (Cap. 172) establishes the regulatory entity with a wide brief:

- a. to exercise licensing and regulatory functions in respect to media services in Singapore, including the establishment of guidelines and standards relating to the content of media services, and of any equipment or facility used in connection with the provision of media services
- b. to encourage, promote and facilitate the development of the media industries in Singapore
- c. to advise and make recommendations to the Government on matters, measures and regulations related to or connected with the media
- d. to facilitate the provision of an adequate range of media services in Singapore
- e. to maintain fair and efficient market conduct and effective competition in the media industries in Singapore or, in the absence of a competitive market, to prevent the misuse of monopoly or market power
- f. to ensure that media services in Singapore are maintained at a high standard in all respects and in particular in respect of the quality balance and the range of subject matter of their content
- h. to encourage and regulate public service broadcast programming by broadcasting licensees under the Broadcasting Act
- i. to ensure that nothing is included in the content of any media service which is against public interest or order, or national harmony, or which offends good taste and decency<sup>40</sup>

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40 *Media Development Authority of Singapore Act* (Cap. 172), Section 11.

The scope of the regulatory reach of the MDA has recently been demonstrated by its power and responsibility to licence online news sites originating in Singapore.<sup>41</sup>

The broadcasting industry in Singapore is principally government owned through various investment vehicles. The Media Corporation of Singapore (MediaCorp) operates seven free to air television channels and runs thirteen radio stations. These services cover four languages (English, Chinese, Malay and Tamil). Advertising is a principal source of revenue.

### *Community Radio*

There are no community radio stations operating or licensed in Singapore. It would be possible for the MDA to designate a community broadcasting service but there appears no evidence of an appetite to move in this policy direction.

### *Public Service Broadcasting*

Public service broadcasting is provided for in the *Broadcasting Act* but not so much as a stand-alone network but as a strand of content. Public service broadcasting services include programmes for schools and other educational content; news and information programmes; arts and cultural content; and, drama and sports programmes produced in Singapore (Section 17 (a)-(d)). Broadcasting of this content is without charge to the MDA and a condition of licence (Section 18).

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41 <http://www.freemedia.at/home/singleview/article/change-in-singapore-media-law-could-restrict-internet-freedom.html>

### 3 Current State of Media Law in the Mekong

All constitutions in this report have some provision for freedom of expression. Some constitutions have particular provisions for the role of the media in society. Many constitutions have a qualifying constraint on personal and media expressive freedom for the security of the State and, more broadly, for the public interest. A difficulty is to distinguish public interest from political interest because, in practice, public interest is often aligned with protection of incumbency and existing power groups, who are collectively understood as the State.

This freedom of expression is sometimes limited by the application of criminal law that requires comment to be truthful and to not adversely affect a subject's reputation. For example, in both Laos and Cambodia the constitution provides for freedom of expression but this freedom in practice is constrained by the application of the *Transitional Penal Code for Defamation and Misinformation 1993 (Cambodia)* and Article 65 of the Penal Law which makes it an offence for any comment to weaken the State (Lao PDR).

The role and responsibilities of the media are specified in several constitutions. While Thailand has during periods of coups abolished its constitution,<sup>42</sup> this nation has arguably the most explicit and considered provisions for the media, and its role in society, in the Mekong. While the 1997 Constitution laid out a strategy even for broadcast frequency reform (Article 40), the current 2007 Constitution anticipates a converged regulator and public participation in broadcast services (Section 47). The enabling legislation, the Broadcasting Act 2008, specifies public, commercial and community services. In addition, the Thai Public Service Broadcasting Act 2008 established a publicly owned but editorially independent broadcaster. Conceptually, these constitutional and legislative arrangements amount to a strong exposition of the role of diverse media services in a developing South-East Asian society and economy.

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42 The 1997 Constitution was abolished in 2006 when a military coup overthrew the civilian government of PM Thaksin Shinawatra.

## 4 Achieving Media Regulatory Clarity

The *UNESCO Media Development Indicators* (2008) provide a framework for best practice in media regulation that reflects freedom of expression, pluralism and diversity as well as constituting the media as a platform for democratic discourse. In media regulation the independence of the regulatory system needs to be guaranteed by law and respected in practice (MDI Key Indicator 1.6). These guarantees need to be explicit and the powers and responsibilities of the regulator need to be stated and understood. Means of membership of the regulatory body need particular clarity in order that the regulator is not an agent of government or is captured by commercial interests.

An attempt to meet these expectations has been demonstrated in Thailand. The formation of the Thai National Broadcasting and Telecommunications Commission (NBTC) followed the passage of the *Frequency Allocation and Regulation of Broadcasting and Telecommunications Act* in December 2010. The history of media regulation has been recently characterised by regulatory vacuums, attempts at censorship, and court challenges negating the selection processes for members of former regulators. The NBTC provides a break from this pattern of both State intervention and inertia. The eleven commissioners come from one in radio and another in television; two from telecommunications services; two legal experts and two economists with credibility in regulating media businesses; and two experts in consumer protection and one expert in education and culture (Section 6). Nominations for these positions can be made by broadcast and telecommunications associations, tertiary institutions, and media relevant NGOs (Section 9). Voting for these commissioners is by a process that is reflective of these different constituencies. Before appointment, candidates are reviewed by a Scrutinising Committee made up of senior public servants, leaders of media associations and leaders in civil society (Section 14). Commissioners serve for a single term of six years. The powers and duties of the NBTC are outlined in 25 separate regulatory obligations (Section 27). While the NBTC is a converged media regulator, there are distinct commissions for broadcasting and telecommunications. There is a requirement to hold public hearings before rules, orders or notifications are put in place (Section 28).

While these regulatory provisions appear rigorous in promoting the public interest, they do not address the structural difficulty in Thailand where much of the media has links with State agencies through the ownership of licences, even though these licences may be assigned to private operators.

These arrangements in Thailand represent an attempt to work through the architecture of an independent media regulator. They also represent a model for consideration by Mekong nations yet to separate media regulation from the functions and orbit of executive government where media regulation and broadcasting are fused into the functions of departments of information and communications.



## 5 Enablers and Inhibitors in the Development of Community Radio

The most prolific development of community radio in the Mekong occurred in Thailand as a result of a movement for media reform, which was a response to the crisis of 1992 where there was military suppression of pro-democracy activists.<sup>43</sup> By August 2009 some 6,621 stations had registered their intent to operate as community radio.<sup>44</sup> A difficulty, however, is that there was no clarity as to what community radio was, its rationale and how it operated. Of the number of community stations operating it was estimated that some 5,000 were commercial media enterprises. In a regulatory vacuum where no licences were issued but stations began operations, community radio was a media sector that responded to opportunity rather than being part of a planned and coherent media development strategy. The Thai media regulator has begun a process whereby unlicensed community stations can be legitimised. Community radio in Cambodia and Laos has been enabled by international donors and developed in response to local cultural, linguistic, health and community advocacy purposes.

Where there is confusion of purpose the development of community radio is sometimes a mixed blessing. Exploiting the ethos of community based media expression for self interested commercial purposes often debases community empowerment rather than enabling and augmenting it. This is not an argument for uniformity of practice or discouraging diversity and initiative but is an argument for policy clarity.

The challenges for community radio include: clarity of purpose, governance arrangements and leadership, revenue and sustainability, training and skill development and, community engagement. How these issues are reflected in the growth area of community radio in Thailand has been identified in four principal ways. First, a poorly defined regulatory framework enabled the community radio sector to be captured by commercial and political interests. Second, a highly volatile political environment meant that community radio attracted suppression and attempts at censorship. Third, this lack of clarity and periods of oppression also meant that there was little consistent political will to nurture and protect community radio as a media sector. And finally, there appears to be a distinct contrast between stations run by NGOs, that appear strong, and stations being run by informal and less supported groups of people, that appear weaker.<sup>45</sup>

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43 Pirongrong Ramasoota, above n 32, 94.

44 Ibid, 100.

45 Ibid, 112-113.

## ■ Regulatory Clarity for Community Radio

In legislation covering the broadcast sector and the media regulator there needs to be a clear outline of each component of the sector, its purpose, means of licensing and means of accountability. In the broadcast sector this would typically include provision for public services (whether public service or State broadcasting), commercial services and community services.

For community services there needs to be regulatory clarity, particularly to avoid commercial services masquerading as community services or national public services seeking to constrain voices from the community. The elements of regulatory clarity for community services include:

- a. *Community services must be not-for-profit.* This does not mean, for example, that a community radio station cannot raise revenue or hire staff or services. What it does mean is that revenue must be used exclusively for the operations of the community radio station and cannot be distributed to shareholders or other persons or entities.
- b. *Community services must be governed and managed by the community they seek to serve.* A community service must be led and managed by the community and not from sources external to the community of interest.
- c. *The content of community services must come from the community being served and be a reflection of the interests of that community.* A distinctive element of community radio is that listeners are also broadcasters. The community of interest is equipped with the skills to communicate on air and respond to feedback from their community. In particular, they are equipped with the ability to reflect diverse perspectives and fairly mediate on topics where there are strong and differing views.

It is critical that legislation and regulation reflect these essential elements of community services. Community radio is constrained in development and growth if its reason for being is clouded or unclear.

## ■ Community Radio Governance and Leadership

Part of ensuring the integrity of community radio is to address the way in which it is constituted. It is preferable that an organization is established solely for the purposes of community broadcasting. There are too, other elements of organization and governance that should be addressed:

- a. *The community station should be registered as a not-for-profit association.* If it is possible under domestic law, in addition to obtaining a licence from the media regulator, the community radio station should be registered as an association under a jurisdiction's corporation law. In some circumstances this may not be possible or practical, particularly if the community station is small.
- b. *The community radio station association should have a membership base from which a management committee (or board) is elected.* This management committee should reflect different parts of a community (for example, being gender diverse and representing education, health and cultural interests)

- c. *The community radio station association should be the holder of the community radio station licence.* In some arrangements for community radio an NGO or other entity with a broader purpose holds a licence. A potential difficulty with this arrangement is that the operation and direction of the community station becomes part of a particular purpose and loses its focus as a broadcaster for all the community.

The scale and scope of a community radio association will depend on the size and scope of the community it seeks to serve. The point of having an association, with the sole purpose of community broadcasting and having an elected board from a station's membership, is to ensure that the station maintains focus and is reflective of and accountable to a wide range of community interests.

### ■ Revenue and Sustainability

There are at least two phases in the life of a community radio station: getting started and keeping going. Some community stations have been assisted in establishment by international donors or NGOs, with interests in human rights and community development. This assistance tends to be short term and often cannot be relied upon to sustain the ongoing operations of the station. The strategies for getting started and keeping going can often be different.

- a. *Getting started requires concerted community fundraising together with some external assistance or, in cases of low community resources, entirely funded externally.* Villagers in Thailand were able to establish stations for as little as US\$1,250<sup>46</sup> but establishment costs tend to be higher. UNESCO in 2001 costed a basic operation at US\$13,295.<sup>47</sup> The Asia-Pacific Broadcasting Union (ABU) offers a low power radio station in a suitcase for US\$5,000.
- b. *In terms of the costs of operation a community station should aim to raise the necessary resources from the community it serves.* This will ensure independence of operation and content and provide a basis for sustainability. External funding often comes and goes. Revenue can be derived from modest membership fees. However, some communities are not cash economies and this may be difficult. An alternative is limited advertising. This can include government and local business announcements as well as small payments for recognition of ceremonial events such as births, birthdays and deaths.

Typically the most expensive operational cost is power for the transmitter. In some cases this cost is assisted by support from local councils. However, in some community stations the transmitter is powered by a solar device (see Khoun Radio below).

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<sup>46</sup> Kalinga Seneviratne, 'Community Radio in Asia: Slowly Coming Out of the Shadows', in Seneviratne, above n 9, 14.

<sup>47</sup> Colin Fraser and Sonia Restrepo Estrada, *Community Radio Handbook* (2001) UNESCO, 44.

## ■ Training and Skills Development

Community broadcasting is not a specialised media craft in itself but rather is the means by which a community shares its information and stories. It is the local town or village square where the community gathers and finds out what is happening. But there are some skills that are required for sustaining an effective community radio station.

First, there are editorial skills. Information should be accurate and differing points of view represented adequately and fairly. Basic editorial training in these areas is an ongoing role for the station itself but also with assistance from external agencies and donors.

Second, there are radio presentation skills. They include how to tell stories on air; having a sense of the attention span of listeners when information is presented; and how to encourage the audience to also be part of a station's content.

Third, there are scheduling skills. A community station should be attractive to listen to and respond to community interests and needs. The content of the station should be scheduled in a way that makes the most compelling information available at the most accessible times. The scheduling of a community station should ensure that one part of the community is not unreasonably dominant and that there is a diversity of content coming from a wide representation of community interest.

Fourth, there are co-ordination and leadership skills. A community station needs leaders who can harness community volunteers, and nurture and encourage them. The life of a community station needs organization and co-ordination. The affairs of the station need to be transparent and accountable to its membership and the community it serves as well as the media regulator.

Finally, there are technical and operational skills: how to maintain the transmitter and the studio and keep the community station on air. Much contemporary broadcast equipment is now low cost and readily replaceable. For example, broadcast consoles and ancillary equipment such as microphones, sound recorders and CD players can be bought at reasonable prices. Transmitter kits can be plugged in and become immediately operational. However, some understanding of the basic principles and practice of broadcasting is needed for a community station to operate effectively.

Entities such as universities and colleges, NGOs, international agencies and other community broadcasters can assist with facilitating the development of these skills.

## ■ Community Engagement

Harnessing community interest in community radio has, like issues of revenue raising and sustainability, at least two phases. First, community interest has to be developed in order to establish the station and apply for a licence. There needs to be some vision of what community radio can do for a community and how it might be organised. Second,

community interest needs to be sustained as the station is operational. It is sometimes easier to get community support for something new but it is support of a different order to keep it going.

The single most important asset of a media operation is not its equipment but its reputation and how it is valued by its audience. In order to build and maintain that value, there needs to be information and services that are relevant and compelling.

Community engagement is therefore a fundamental element of community broadcasting. That engagement should focus on the way in which the station is run and what is heard on air. A first test is determining whether the community station is run by a representative group from the community and not a dominant person or group. A second test is whether the diversity of voices in the community is also heard on air. What we see and hear in the village or town should also be the sound of a community station. While there can be a number of distinctive voices, that group of contributors should embrace the wider interests and participation of the community.

## 6 Effective Community Media at Work

The challenges facing the development of community media that have been outlined so far can be seen in explicit form by exploring the experiences of two Mekong stations that have different beginnings, contrasting means of ongoing support and differing governing structures and contrasting relationships with the State.

### ■ Khoun Community Radio (Lao PDR)

Established in 2007, Khoun Community Radio for Development is located in the remote Khoun district of northern Xieng Khouang Province. It is one of the poorest areas of Laos with some 90 villages and some 30,000 people. The station broadcasts in the three local languages. The national language Lao Lum represents 42 per cent of the community alongside the local languages of Hmong (54 per cent) and Khamuu (5 per cent).<sup>48</sup> The station is supported by diverse elements of the Khoun society, including farmers, village chiefs, members of the Lao Women's Union, teachers, students, the disabled, and shopkeepers.<sup>49</sup> The content of the community radio includes programmes on women, agriculture, health, the environment, labour, education, peace and security as well as entertainment.<sup>50</sup>

Khoun Community Radio was established with support from State broadcaster, Lao National Radio, and the United Nations Development Project (UNDP). The station cost US\$32,600 to establish.<sup>51</sup> The principal items of cost were:

|   |            |
|---|------------|
| <b>Studio building</b> .....  | US\$14,000 |
| <b>20 watt transmitter (including solar panels and batteries)</b> ... | US\$13,000 |
| <b>Two studios and equipment</b> .....                                | US\$5,000  |

The station is sustained by income from donations of money or rice and other products. Money is received from messages broadcast or music requests (US\$0.06) as well as membership fees from households. Government departmental announcements are broadcast for a fee as well as income from broadcasting content from the Mines Action Group (this area of Laos has been heavily bombed and unexploded munitions are an issue) and the Sustainable Agriculture Project. Support from these two projects has brought US\$128 per month.<sup>52</sup>

48 Birgitte Jallo, 'Pioneering Community Run Radio In Laos: the Khoun Community Radio Station' < <http://www.communicationforsocialchange.org/photogallery.php?id=363>>.

49 Irin News and Analysis, 'Laos: First community-run radio station strikes a chord' 11 August 2008 <<http://www.irinnews.org/report/79748/laos-first-community-run-radio-station-strikes-a-chord>>.

50 Bianca Miglioretto, *Many Voices – Our Voices*, Khoun Radio Support Project (Draft, publication date not specified) < [http://www.isiswomen.org/downloads/CR\\_Guide4Laos4Web.pdf](http://www.isiswomen.org/downloads/CR_Guide4Laos4Web.pdf)>.

51 Ibid, 26.

52 Ibid, 36.



Article 4 of the Media Law also allows community stations to broadcast messages for payment on behalf of local businesses such as guest houses, beauty salons, suppliers of agricultural tools, animal feed and bicycles.

### **The governance of Khoun Community Radio is informed by its vision, mission and values:**

#### *Vision of Khoun Community Radio for Development*

A happy, prosperous and dynamic community living in unity and peace, with a rich culture and a protected environment where all citizens enjoy equality, development opportunities, education, employment and good health.

#### *Mission*

To give voice to the community, provide responsible and accurate information, and be a platform where the community can discuss all issues related to development in search of solutions and in line with party policies and State laws.

#### *Values*

1. Information is accurate, relevant and responsible
2. We are transparent and accountable in all ways
3. The KCR for Development belongs to everyone
4. We work in a spirit of unity in all ways and at all times
5. We practice openness and equality for everyone in Khoun
6. We are respectful to all and ensure access for all to be on air
7. We are honest and supportive of the objectives and plans of the radio<sup>53</sup>

The station is overseen by a Management Board who has the assistance of an Advisory Committee. The first 18 member board of Khoun Community Radio was nominated by the Lao PDR District Governor. This number proved to be unworkable so the District Governor formed a smaller board of 10 including three village volunteers. The station operations are overseen by a full time manager with all the other resources coming from volunteer participation.<sup>54</sup> The villages in the Khoun district contribute to station content on health, agriculture, education, peace and security, women, youth and children's interests and culture and welfare.

### ■ Radio Sarika in Cambodia

A different approach to establishing and sustaining community based media initiatives has been the development of community involvement in Radio Sarika in Phnom Penh with the support of UNESCO's International Programme for the Development of Communication (IPDC).

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<sup>53</sup> Ibid, 12.

<sup>54</sup> Ibid, 14.

In October 2008 the NGO the Cambodian Centre for Independent Media (CCIM) took over the management of station Star 106.5 FM and renamed it Radio Sarika.

The station broadcast content from Radio Voice of Democracy, which included independent news and information on matters of current interest, including land disputes in the northeast provinces.<sup>55</sup>

This IPDC programme, in association with the CCIM, was established to provide marginalised and ethnic communities with the opportunity for self-expression through broadcast media. The project aimed to train 60 citizen journalists from selected community members (At least 40 per cent female, 30 per cent ethnic minorities) living in 3 communes in Kratie, Mondulakiri and Ratanakiri, with limited access to either media resources or adequate means of self-expression. They would be trained in reporting community news on topics such as human rights violations. The trained community members would form a Community Information Committee as well as a Media Network with five radio stations. At least 50 news items were to be produced by the Community Information Committee for broadcast on Sarika FM and other stations in their Media Network.

The training in all three target provinces was completed between December 2012 and February 2013. The next steps in the project include further training of participants from each of the target provinces and negotiating with five network radio stations to broadcast citizen journalist news reports.<sup>56</sup>

The cost of this initiative was budgeted at US\$30,370 of which the IPDC provided US\$18,170. The CCIM has an annual budget of around US\$500,000 and is supported by self generated income and institutional grants. CCIM generates income for up to 40 per cent of this budget from radio commercials, sale of airtime, radio production fees and media training. Other income from donors includes the Open Society Foundations, UNESCO, The Asia Foundation and the European Union.

Radio Sarika represents a different model for community media from that of Khoun Radio for Development. It is independently owned and operated but has characteristics common to a commercial radio operation that has been adapted to involve significant community content contributions. Khoun Radio, by contrast, also has extensive community participation and some community control but in the end is watched over by the State that through the Provincial Governor appoints the Board.

Both enterprises have relied significantly on institutional donors. In terms of ongoing sustainability, an aspiration for community radio in the Mekong should be self-sufficiency.

55 Bansal, above n 13, 49.

56 Cambodia Centre for Independent Media, *Challenges for Independent Media Development in Cambodia*, March 2013, 18.

## 7 Thai PBS: A Model for Public Service Broadcasting in the Mekong?

Thai PBS is a remarkable achievement in that it was established only in 2008 and has one of the most independent relationships with government and commerce among public service broadcasters around the world. Not only does Thai PBS have legislated independence editorially, it is also not dependent on the State fiscally because funding comes from a levy on sales of tobacco and alcohol.<sup>57</sup> It is also fiscally independent of commerce because it is prohibited from taking on-air advertising. The other remarkable feature of Thai PBS is that it exists alongside the ongoing Thai State broadcasters.<sup>58</sup> How then did the creation of Thai PBS occur and what were the sources of its explicit powers of independence?

The ecology of Thai broadcast television reflected an increasing commitment to entertainment content and a declining interest in transmitting educational, documentary, and new analysis programmes. Important groups in the community, like children and senior citizens, were largely ignored and commentary programmes tended to be partisan.<sup>59</sup> Addressing these inadequacies was part of the discussion that led to the development of public service television in Thailand.

Attempts had been made before to establish a television service committed to news and news analysis. iTV, a private channel operated on a concession from the Prime Minister's Department, had a licence requirement that 70 per cent of its content had to be news or news analysis. Combined with a high concession fee this caused the channel difficulty in being profitable. The station changed operators and the Shin Corporation, owned by the family of Thaksin Shinawatra (Prime Minister from 2000 to 2006), became the licence holder. The concession was revoked after iTV refused to pay the full concession fees. The station was renamed TITV in 2006. It was this station that transitioned into Thai PBS. But this development did not happen as a policy initiative without significant contributions and advocacy from civil society.<sup>60</sup>

Following the "Bloody May" 1992 repression of anti-government protests and the intervention of the State in news coverage, there was much discussion about the need for

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57 This is calculated at 1.5% of the tobacco and alcohol taxes collected, with a maximum of two billion baht (US\$55 million) per year. Palphol Rodloytuk, *Thai Public Service Broadcasting: Towards Building a Civic-Minded Society* (2011) Singapore: AMIC, 20.

58 State television stations are Channel 5 run by the Army; Channel 9 of the Mass Communication Organisation of Thailand (MCOT); and Channel 11 run by the Government Public Relations Department (PRD). Even the privately run television channels have links with government. Channel 3 is a concession from MCOT; Channel 7 is operated by a concession from the Army; and iTV is run by a concession from the Prime Minister's Department. For further background see Somkiat Tangkitvanich, 'The Creation of Thai Public Broadcasting Service: Thai's First Public Television Station' (2008) *TDR/Quarterly Review* Vol 23 No 3, 3. (Tangkitvanich was one of the designers of the Thai Public Service Broadcasting Act).

59 Ibid, 4.

60 Ibid.

a news and information service independent of the government. This growing interest, and indeed pressure, built over a decade. iTV had been conceived as an independent source of accurate and fair news but its format became aligned to the entertainment genres dominant on other channels. In 2007 the concept of transforming iTV into Thai PBS was outlined by the Thailand Development Research Institute (TDRI).<sup>61</sup> Regional forums in nine areas were conducted during 2008 and an ad-hoc group of civil society and media people continued to plan for legislation.

The *Thailand Public Broadcasting Service Act* (2008) gave the new entity the following six objectives:

1. To carry out radio and television broadcasting which may strengthen the development of social quality and virtue according to Thai values through information services that are accurate, thorough, balanced and according to the code of conduct.
2. To produce variety of content, with high quality information, education and entertainment programmes in proportion without political bias or commercial benefit but adhering to the public interest.
3. To equip the public with knowledge so as to be aware of global changes for the purpose of national and local benefit through informational and other beneficial services.
4. To promote freedom of information in order to strengthen democratic society where people derive information upon an equal basis.
5. To support direct and indirect public participation in determining the direction of services of the Organization for public interest.
6. To support other public interest activities.<sup>62</sup>

A distinctive feature of Thai PBS television is the emphasis on public participation in its content formulation and contributing to its strategic direction. The role of the Audience Council and the Civic Media Networks support this extensive framework for public participation.

It is this sense of public participation and citizenship that distinguishes Thai PBS as a public service broadcaster from the State broadcasters; as well as its commitment to accuracy, independence and fairness in news and diverse content schedules in the public interest. These public contributions have been assessed as “meaningful actions” that have widened the public space to elevate local issues into national issues.<sup>63</sup>

Thai PBS is a unique media entity in the Mekong. Its clear focus and significant achievements means that it is a model for other jurisdictions in the region to consider and emulate. It has a far clearer mandate for independence compared with other strands of public service content (but not networks) elsewhere in South-East Asia, such as the experience in Singapore.

61 See Rodloytuk, above n 56, 18 and reference to TDRI, *An Establishment of the Public Broadcast TV in Thailand*, Report No 46, June 2007.

62 *Thailand Public Broadcasting Service Act B. E. 2551* (2008) Section 7 (paraphrased from the translation).

63 Rodloytuk, above n 56, 143.

## 8 Next Steps and Recommendations

This study has attempted to identify the trends in media law in the Mekong and in particular understand the provision and practice of both community radio and public service broadcasting. From these trends and case studies, the question remains what is the next step in advancing, first, clarity in media regulation for diverse broadcasting sectors and, second, identifying mechanisms for sustainability for community based media and media serving the public interest, where State support cannot be modified into State control.

The UNESCO Media Development Indicators are explicit in these areas. Category 1 provides for a system of regulation conducive to freedom of expression, pluralism and diversity of media. It is in this context that the following recommendations are made. There are some issues, however, where these UNESCO aspirations are clear but their present implementation in some jurisdictions is not going to be fully realized because of the dominant influence of the State in the operations of all media. Hence, in Cambodia and Laos community radio initiatives, for example, have focused very much on pressing development needs rather than on seeing this media as an opportunity for democratic discourse. The opportunities for discourse on issues in agriculture or health are there but not on how the State conducts its responsibilities. The recommended approach is to pursue the interest for community radio even though at present the scope of its content may be constrained. Matters of health, agriculture, cultural expression in local languages, education and enhancing civil society are enough to get community radio started.

The following recommendations are grouped according to their target enablers. International and regional donors have an ongoing critical role in bringing about policy and practice outcomes across borders and within jurisdictions. States have a duty to ensure that their media regulation is best policy and practice and reflects the aspirations of citizens and communities. Advocacy groups and NGOs need to be nurtured to underline that broadcast media is as much about civil society engagement as it is about national policy settings and current players. The broadcast industry itself has an obligation not only to reflect the interests of incumbents but also to provide achievable means of entry for new participants, augmenting the diversity of services in the public interest.

IT IS SUGGESTED ADVOCACY AND DEVELOPMENT BE TARGETED IN THE FOLLOWING AREAS:

## **A** *Recommendations for International and Regional Organizations and Donors*

### Recommendation 1

*Sensitization fora (such as workshops, seminars, conferences) be conducted or supported in the Mekong with a focus on regulating for a diverse media to serve the public interest. The purpose of these workshops is to equip participants with the policy, regulatory, drafting, compliance and enabling skills in order to encourage the development of public service and community media alongside commercial services.*

Target groups should include public servants working on public and media policy, media regulators, media industry and audience associations, media leaders, current and aspirant community broadcasters and relevant research institutes.

### Recommendation 2

*A significant training and development programme be initiated on sustainability for community radio stations. The purpose of this programme is to explore strategies for self-sufficiency rather than dependence on institutional donors.*

Target groups should include leaders in community radio stations, civic leaders and relevant public servants dealing with the community radio sector.

### Recommendation 3

*That the experience of Thai PBS be used as a catalyst for workshops, conferences and other initiatives to develop public broadcasting content and services in the Mekong. The purpose of this initiative is to accelerate thinking about the role and value of public service broadcasting in contrast to State broadcasting.*

Target groups should include Thai PBS leaders, local regulators, government policy makers and current state and emerging public broadcasters.



## **B** *Recommendations for Mekong States*

### Recommendation 4

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*That a policy forum be initiated to explore issues in media regulation with a particular focus on the role of an independent media regulator. The work to date in Thailand and Myanmar will be informative.*

Target groups should include public servants who are involved in media and social policy, present regulators, media advocacy groups and media industry leaders.

### Recommendation 5

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*That a national forum be held on license conditions for community radio. An objective of this forum would be to identify policy and regulatory initiatives that ensure community broadcasting is genuinely community controlled and not for profit, as well as to ensure regulatory clarity, simplicity and a framework that is not onerous, in order for this sector to be sustainable.*

Target groups should include public servants involved in media policy and regulation as well as community radio aspirants and practitioners together with relevant civil society groups.

### Recommendation 6

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*That a national forum be supported to map the transition from State broadcasting to public service broadcasting, and the advantages that flow from it. The experience in Myanmar and Thailand will be informative as will the comparison of the development of public service broadcasting content in Singapore.*

Target groups should include media policy public servants, existing State broadcasters, and public service broadcasters from the South, North and East Asian region.

## **C** *Recommendations for Advocacy Groups, NGOs and Training Institutions*

### Recommendation 7

*That training initiatives be initiated/pursued for equipping community radio volunteers with the capacity to facilitate diversity of views on air and in the management of their community station.* The purpose of this training is to enable community radio leaders and broadcasters to positively engage with a diversity of perspectives.

Target groups should include community radio co-ordinators, chairs and members of community radio boards, volunteer presenters and community leaders.

### Recommendation 8

*That capacity building programmes be initiated/pursued to particularly equip women and minorities for leadership positions in community radio on air and off air.* The purpose of these programmes is to ensure that people who are often marginalised are included in the management of community stations.

Target groups should include community radio volunteers, members of civil society and community radio boards.

## **D** *Recommendation for the Broadcast Industry*

### Recommendation 9

*That a training and development programme be initiated for the development of self-regulatory codes for public, commercial and community broadcasting.* The purpose of this programme is to ensure codes address accuracy and fairness in news and information. In community stations the additional objective is to foster co-operative and collaborative behaviour within a station.

Target groups should include industry participants, regulators, board members of community stations, community radio co-ordinators and volunteers.



## 9 Conclusion

This study has attempted to demonstrate the active role of the media in the Mekong. It has also shown that among the challenges for law makers, media regulators, policy developers, and public service and community broadcasters is to achieve on-air a reflection of the diversity that is in the audiences they seek to serve. Law makers and regulators have a special responsibility to ensure that this diversity is reflected in regulatory structures. Distinguishing commercial, public service and community services from each other is the beginning of recognition of this diversity. Media law and regulations need to be drafted clearly so that each of these sectors can maintain their special character and contribution to a nation's media ecology. Community broadcasters continue to demonstrate the power of community engagement in locally controlled and produced media enterprises. The value of public service broadcasting is particularly demonstrated in the provision of accurate, fair, independent and reliable news and information. These are the building blocks for democratic discourse, empowered communities and informed nations.

The nations of the Mekong are diverse in legal and cultural traditions. At the beginning of this study there was caution about the notion of legal and regulatory exports from one jurisdiction to another. But in the Mekong there is a community of interest not only bound by the great river but by differing levels of media development where nations in the region can learn from each other. The experience of successful initiatives in community and public service broadcasting can be discerningly exported across borders.

# Appendix 1

## CONSTITUTIONAL AND LEGISLATIVE INSTRUMENTS

### *Cambodia*

Constitution of the Kingdom of Cambodia 1993

Transitional Penal Code for Defamation and Misinformation 1993

Law on Press Regime 1995

### *Lao PDR*

Constitution of Lao People's Democratic Republic 2003

Penal Law 1990

### *Myanmar*

Constitution of the Republic of the Union of Myanmar 2008

### *Singapore*

Constitution of the Republic of Singapore 1999

Broadcasting Act 2002 Cap 28

Media Development Authority of Singapore Act 2003 Cap 172

### *Thailand*

Constitution of the Kingdom of Thailand 2007

Broadcasting Act 2008

Thailand Public Service Broadcasting Act 2008

Frequency Allocation and Regulation of Broadcasting and Telecommunications Act 2010

### *Viet Nam*

Constitution of the Socialist Republic of Viet Nam 1992

Law on Media 1999

# Appendix 2

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