

Integrating Ethnic Content into Public Service Broadcasting

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This Note¹ looks at how ethnic content can be integrated into public service broadcasting (PSB). The goal is to help various actors who are interested in working towards a more democratic future for Myanmar. Official estimates put the ethnic (non-Bamar) population of Myanmar at around 32%,² although everyone recognises that it is extremely difficult to come up with precise figures. Furthermore, there is likely a systematic tendency to count people of mixed ethnicity as Bamar, thereby undercounting the ethnic population. As such, some estimates of the ethnic population are much higher. Regardless of the numbers, it is clear that the overall media scene in Myanmar, both before and after the coup, does not remotely reflect the important ethnic population, and that remains equally true for the main public broadcaster, Myanma Radio and Television (MRTV).³

In democracies, the overall regulatory system for broadcasting has tools and mechanisms to help promote a broadcasting sector which is roughly representative of the population as a whole. This has not happened so far in Myanmar, in part due to the almost complete control over the system that has been exercised by government. A more democratic Broadcasting Law was adopted in 2015,⁴ but was never really put into effect, with implementing regulations having been adopted only in October 2020, just before the November elections which were then followed by the coup on 1 February 2021. The Broadcasting Law would

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² See, for example, <https://worldpopulationreview.com/countries/myanmar-population>.

³ We do not use the term “public service broadcaster” to refer to MRTV since it lacks key public service characteristics, such as independence from government.

⁴ Broadcasting Law, No. 53 of 2015, 28 August 2015. Available in Burmese at: <https://myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/union-solidarity-and-development-party-laws-2012-2016/myanmar-laws-2015/pyidaungsu-hluttaw-law-no-53-2015-broadcasting-law-burmese.html> and in English at: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/2015-08-28-Broadcasting_Law-en-red.pdf.

have created a Broadcasting Council to undertake licensing and this might have led to important changes in the broadcasting environment in the country.

Democracies also take measures to ensure that their public service broadcasters also reflect and serve the needs and interests of all members of society, regardless of their ethnic or other status, including through the languages in which they broadcast, and this is the main focus on this Note. Certain conditions are necessary for broadcasters which are owned by the State to be considered as public service broadcasters in the first place, conditions which MRTV fails to meet, including due to its lack of independence from government. These conditions are the subject of the first section of this Note. Then, certain specific measures, whether legal, policy-based or simply operating at a practical level, help to ensure that public service broadcasters serve the specific needs and interests of their ethnic populations. This is the focus of the second section of the Note. The Note ends with a final section looking at other measures to promote ethnic voices in the broadcasting sector.

In Myanmar, as in some other countries, albeit a minority overall worldwide, there are, in addition to public broadcasters, also public newspapers. At least at the level of principles and standards, where these exist they should also be representative of the entire population that they serve, whether this is national, regional or something else. Public newspapers in Myanmar, like public broadcasters, do not meet the conditions of public service, again in particular because they lack independence from government. The role of public newspapers in a future, democratic Myanmar remains very unclear and, indeed, there had been a lot of debate about this in Myanmar before the coup. As such, this Note does not delve into the issues of how ethnic content might be reflected in public service newspapers.

Fundamentals of Public Service Broadcasting

Any assessment of how to integrate ethnic content into PSB needs to start with an understanding of at least the basic fundamentals of what PSB actually is. This is because those fundamentals set the frame for how ethnic content can be integrated. For current purposes, we focus on four basic attributes of PSB: independence from government; a clear mandate to serve all of the people of the country; accountability to the people; and the provision of adequate funding to the entity to enable it to fulfil its public service mandate.⁵ The following sections of this Note address each of these issues briefly in turn.

Independence

It is a fundamental attribute of public service broadcasters that they should operate in the overall public interest and serve the people of the country (or other jurisdiction that they cover), and not simply the interests of the government of the day. For this to be possible, they need to be independent of that government. This requirement is set out clearly in

⁵ Far more detail on each of these issues may be found in Toby Mendel, *Public Service Broadcasting: A Comparative Legal Survey* (UNESCO, 2011), <https://unesdoc.unesco.org/ark:/48223/pf0000192459>.

authoritative international statements about public service broadcasters, as well as in decisions of both international and leading national courts.

Despite the obvious importance, indeed necessity, of independence, it is also one of the most challenging issues facing public service broadcasters around the world. It is especially challenging for a public broadcaster which has traditionally been subject to government control to put in place both formal and practical systems, including a change in the prevailing culture, to remove that control.

The most important practical tool for promoting the independence of public service broadcasters is through their governing boards. If these are appointed in a manner which both ensures that appropriately independent people sit on the board and then protects those people against interference (including removal), this can go a long way to promoting the independence of the broadcaster.

There is, unfortunately, no formula for this. Instead, the manner of appointment must be rooted in the prevailing legal, institutional and political culture of the country. It may, for example, be surprising to learn that the legal framework for the British Broadcasting Corporation (BBC) did not even refer to independence until 1996. At the same time, there are a number of general approaches here that can help promote independence.

First, as a general principle, the appointments process should not be controlled by one body or set of actors and certainly not one which is strongly political in nature, such as a ministry. Instead, it is important to involve as wide a range of actors in the appointments process as is possible. This should include civil society organisations, the general public, different political parties, through parliament, and possibly also other actors in society, such as the bar association or religious bodies.

There are different ways to involve these actors. They may, for example, be given a role in making nominations to the board. Best practice here is actually to have an open, competitive process for appointments, so that anyone who feels they are qualified can apply and then nominees go through a competitive process for purposes of shortlisting and then a more formal appointments process. The final step must be done by an official body or actor, often the president or head of State, given its official status. It can be useful to have parliament effectively serve as final decision-maker by recommending the exact number of people as there are vacancies on the board to fill to the formal appointing authority (such as the president).

It is also very important that the process of appointments be transparent. The CVs and other supporting documents submitted by applicants or nominees on the longlist should be published online so that everyone can see who they are and what their qualifications are. This is even more important once the nominees are narrowed down to a shortlist. Better practice is to provide for a process whereby the public can review and make comments on the individuals who make it onto the shortlist. This can be done by publishing their names and supporting documents and allowing for a period of public comment.

The rules, ideally the main law establishing the PSB, should also impose a number of supporting rules for the independence of the governing board and its members. It is essential to protect the tenure of members, once appointed. Thus, the law should set out clearly the period of tenure, such as for five or six years, and then put in place very narrow conditions, as well as a clear process, for removal before that period of time. The former could include such things as failing to participate actively in the board (such as by missing three meetings in a row without a legitimate reason), acting in ways which are manifestly incompatible with membership of the board, including conflicts of interest, and breaching the incompatibility rules (see below). In terms of process, one option is to require a super-majority (say two-thirds) of the other board members to initiate the process or possibly a similar majority of a committee of parliament. And the member should also have redress options, such as appealing any removal to the courts.

Better practice is also to prohibit certain individuals from sitting on the board, so-called rules of incompatibility. For example, individuals with strong political connections, such as elected officials, other government officials and those holding positions in political parties could be among those who are banned from being appointed. On the other hand, positive requirements, such as that individuals have appropriate types of expertise and are generally respected members of society, should also be imposed.

Finally, better practice is to put in place a layer of insulation between the board and the day-to-day operations and decision-making of the public service broadcaster, known as editorial independence. This effectively means that while the board exercises overall oversight and bears overall responsibility for the work of the body, including by approving the budget and other high-level documents, it does not intervene in editorial decision-making processes. This effectively establishes a two-tier set of protections for the independence of the organisation.

Public Service Mandate

Independence does not mean that a public service broadcaster is free to do whatever they want. Rather, the formal rules establishing the broadcaster should set out reasonably clearly what its mandate is. Ultimately, this should be to serve the public interest by complementing and enriching the content offerings of other types of broadcasters that are operating in the country. The diversity of content available to the public, alongside the commitment to satisfying the information needs and interests of all groups in society, is key here. This is, among other things, based in the right to seek and receive information and ideas that forms part of the wider guarantee of freedom of expression (alongside the right to impart information and ideas).

Better practice here is for the law to set out in a fairly detailed form the specific programming obligations of the public service broadcaster. Alongside this, there should be mechanisms to gather inputs from the public directly as to what they want to receive from the public broadcaster. Thus, many countries have established audience councils or groups of citizens who are supposed to reach out to the public to garner feedback on how the broadcaster is doing and then feed that to the broadcaster. This is a very different role from the governance

oversight role exercised by the board and audience councils normally look and feel and operate very differently from the board. Among other things, audience councils often have the power only to make recommendations whereas the board makes binding decisions. It is important for audience councils to operate openly and to publicise all of their recommendations to the broadcaster.

The exact list of types of content that the public service broadcaster is supposed to produce varies from country to country. But some of the types of content obligations that are commonly found in public service broadcasting laws include: ensuring that their broadcasts are generally available to everyone in the country; the promotion of national culture and identity while at the same time giving voice to and serving all groups in society;⁶ covering news and current affairs issues in a balanced and impartial way (thus reflecting their independence); ensuring the presence of a wide variety of programmes in their overall content offering, including programmes of interest to all different tastes and outlooks in society; maintaining high standards in their programme content; providing a strong mix of educational, social and other programmes, including programmes targeting children and youth; and offering rich news and current affairs programming covering local, national and international news.

There may be many additional obligations depending on the nature of the country. For example, many public service broadcasters, especially those operating in larger and/or more diverse countries, are required to offer a mix of both national and local services in different parts of the country. In many cases, this includes local news services but it may also include other local services, such as local language and/or cultural programmes.

Accountability

Independence does not mean that public service broadcasters are not accountable. It is essential that systems are in place which ensure their accountability for delivering on their programme mandate as well as such things as value for money, respect for the law and any professional systems and so on.

Ultimately, this accountability is owed to the people of the country, just as the government is accountable to them. And better practice is to establish some direct accountability mechanisms, although the primary systems of accountability are to the people via parliament. Thus, almost all public service broadcasters are required to prepare detailed annual reports – the specific content of which is often set out fairly clearly in law and which always includes detailed reporting on financial matters, including an overview of the audited reports – which are then published online and also formally placed before parliament. Ideally, a parliamentary committee would then review the report and call senior members of management and perhaps also the board to testify and answer questions. In some cases,

⁶ In understanding this role, it is important for the public service broadcaster not to understand national culture as being synonymous with the culture of a majority group but, instead, as being made up of all of the different cultures and traditions that are present in the country.

parliament might then make recommendations to the public service broadcaster about improving its performance in future.

The audience councils, mentioned above, are another formal, institutional accountability system. While their primary purpose is to provide feedback to the public service broadcaster on how it is serving the information needs of the public, by operating openly and publishing its advice and recommendations it also serves as an accountability mechanism.

There are a number of ways that public service broadcasters can connect directly with the public both to improve their content offerings and to offer accountability. These can involve direct public opinion surveys, townhall style meetings and a range of online feedback options.

Finally, whether or not there is a general professional system (complaints mechanism) for broadcasters in the country, the public service broadcaster should adopt its own code of conduct, as relevant setting higher standards for it than apply to all broadcasters. This should also include a system of complaints so that anyone who feels that the broadcaster has not complied with the standards in the code can obtain direct redress.

Funding

Public service broadcasters need public funding if they are going to deliver on their mandates, unless those mandates are so limited as to hardly distinguish these broadcasters from their commercial counterparts, as has happened in some countries. Funding is necessary so that public service broadcasters can maintain high levels of quality in their work, produce content that may not attract large audiences (and hence be able to attract advertising), prevent the high levels of advertising that are often prevalent on commercial broadcasters and produce content that is inherently more costly and yet of high public interest, such as investigative journalism.

There is an English expression: “He who plays the piper calls the tune”. This means, essentially, that control over funding gives control over everything else and it applies with equal force to public service broadcasting as it does to anything else. As such, it is important to try to insulate funding from political control as far as possible.

Perhaps the best way to fund public service broadcasters is through a general fee on users, whether this is imposed directly, as is the case in Britain (for the BBC) and Japan (for Nippon Hōsō Kyōkai, or NHK), or via an additional tax on electricity, as is the case in many Eastern and Central European countries. The latter is much less visible than the former (and is also much easier to collect and to enforce) and is hence to be preferred. At the same time, even this can be controversial to impose in countries where it has not traditionally been levied, especially where the public broadcaster is either not public service in nature or is going through a difficult process of transition.

In most countries, public service broadcasting is funded through a direct government grant from the budget. While this is obviously less protected against political interference, at least having it listed as a separate budget line (as opposed to just being part of a much wider ministerial budget) means that parliament can respond to any changes in its level and at least try to prevent political interference. There are also ways to protect this budget in the law, for example by stipulating that there shall be no reductions or no reductions beyond a certain level.

Most public service broadcasters also carry advertising, which is an important supplementary source of funding and also helps bolster their independence. At the same time, some conditions should be placed on this. In some countries, it is capped at a certain level, for example at 25% of the overall budget of the broadcaster in Canada or at a lower level in terms of minutes per hour than is allowed for commercial broadcasters. And it is important not to allow public service broadcasters to use their public funding to compete unfairly with commercial broadcasters in the advertising market (for example by subsidising advertising with their public funding).

A more novel approach which has been introduced recently in some countries is to support public broadcasting, as well as local television production, through taxes on companies offering online streaming services.⁷

Integrating Ethnic Content into PSB

This section of the Note looks at different options for integrating ethnic content into the operations of public service broadcasters. This section is divided into two subsections, one focusing on general diversity measures and the second looking more specifically at legal and policy measures.

The essential drivers for promoting ethnic content through public service broadcasting are twofold. The first is based on the obligation of public service broadcasters to serve the information needs and interests of all groups in society. This clearly includes ethnic groups. The second is based on the idea of public service broadcasting as promoting media diversity in society. This includes both offering ethnic content in local languages as well as covering ethnic issues in mainstream languages so that all citizens are aware of them.

Furthermore, although it is common to refer to information needs, this encompasses creating opportunities for all groups in society to be able to voice their concerns, discuss issues of interest to them and provide support for their cultures and ways of life.

⁷ See, for example, Television Business International, "Denmark introduces 6% streaming levy to support local production", 24 May 2022, <https://tbivision.com/2022/05/24/denmark-introduced-6-streaming-levy-to-support-local-production/>.

General Diversity Measures

As noted above, integrating ethnic content into their programming – in the sense of providing both content in ethnic languages and content which relates to issues of concern or interest to ethnic groups in mainstream languages – is part of the wider obligations of public service broadcasters to serve all groups in society and to promote the availability of a diversity of programming to citizens. There are many different ways to do this of which the examples below are just that, examples, rather than an attempt to define the options comprehensively.

One of the most powerful ways to integrate ethnic content into public service broadcasting, especially in ethnic languages, is through having dedicated radio and/or television channels as part of the wider public service broadcasting offerings provided in the country. For example, the Canadian Broadcasting Corporation (CBC) broadcasts radio programming in eight indigenous languages through dedicated radio stations across northern Canada through CBC North. CBC has a whole division – Radio-Canada – providing French language content, with French-speakers representing approximately 20% of the total Canadian population. This service operates both a television station and a number of radio stations.

The idea of dedicated radio stations or television channels also informs the approach outlined in the *European Charter for Regional or Minority Languages*,⁸ a European treaty which protects minority languages. Under Article 11 of this Charter, States Parties undertake, in respect of public service broadcasting, to ensure, encourage and/or facilitate the creation of at least one radio and one television channel in regional or minority languages or to “make adequate provision so that broadcasters offer programmes in the regional or minority languages”.

In order to support quality public broadcasting in different languages, it may be necessary to provide funding to ethnic media which is disproportionate to the population represented by the minority. For example, 73% of the funding for Switzerland’s public broadcaster is derived from the more populous and prosperous German-speaking regions of the country, but the public broadcasting services for these populations only receives 43% of the total public broadcasting budget.⁹ Although the minority French, Italian and Romansch-speaking populations benefit from disproportionate public service broadcasting funding under this equalisation arrangement, Switzerland’s public service broadcasting remains broadly popular and a source of national unity, with 71% of Swiss voters having rejected a 2018 referendum proposal to scrap the fee which funds public service broadcasting.¹⁰

Even where public service broadcasters operate national channels, there are various options for integrating ethnic language content into them. For example, as had been proposed by MRTV, it is possible to have a television channel which operates in different ethnic languages,

⁸ 5 November 1992, entered into force 1 March 1998, ETS No. 148, <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/text-of-the-charter>.

⁹ See <https://www.srgssr.ch/en/who-we-are/funds/revenue-sharing>.

¹⁰ The Guardian, “Switzerland votes overwhelmingly to keep its public broadcaster”, 5 April 2018, <https://www.theguardian.com/world/2018/mar/05/switzerland-votes-overwhelmingly-to-keep-its-public-broadcaster>.

perhaps allocating different time slots to the different languages so that viewers know when their own language content will be disseminated. An example of this approach is the Australian public television channel SBS WorldWatch, which broadcasts foreign and domestically produced news in several languages. This channel is owned and operated by Australia's Special Broadcasting Service, a public service broadcaster dedicated to multilingual and multicultural programming.¹¹

A legal framework can specify the minimum ethnic language requirements for public service broadcasters. For example, the Cyprus Broadcasting Corporation is legally required to provide programming in at least the English, Greek and Turkish languages,¹² and minimum time requirements for Turkish language broadcasts are guaranteed under the Cypriot Constitution.¹³ If linguistic quotas for minority languages are established by law, it can be beneficial to specify sub-quotas for primetime broadcasts to ensure that ethnic content is not relegated to times with few viewers and listeners, such as during the early morning hours.

Many legal frameworks require minorities to be consulted about national broadcasting policies. In addition, the interests of ethnic minorities can be accounted for in the governance structures of individual broadcasters. For example, the German minority in Denmark's South Jutland region have representation on programming councils of regional public service radio and television broadcasters.¹⁴ Ensuring sufficient minority representation in the media and in broadcasting councils is important not only to developing minority language broadcasts but also to supporting the mainstreaming of minority interests into broader coverage.¹⁵ It is also very common to require public service broadcasters to provide local news content alongside the national news, which covers national and international events. Where a significant part of the local population speaks an ethnic language, the news show can be partly or entirely in that language. In Spain, for example, the Spanish Radio and Television Corporation (RTVE) allows regional broadcasters to “disconnect” the broadcast signal of its national channels and replace content with broadcasts in the language of their region.

Apart from these options, it is a bit challenging to run ethnic language content on mainstream public service broadcasting channels since this is somewhat difficult to combine with mainstream language content. However, that does not mean that ethnic content should not

¹¹ See, for example, <https://www.sbs.com.au/aboutus/how-we-operate>.

¹² The Law on the Cyprus Broadcasting Corporation, 1959 with Amendments through 2010, KEF.300A, Article 19(2), https://europam.eu/data/mechanisms/PF/PF%20Laws/Cyprus/Cyprus_Law%20on%20the%20Cyprus%20broadcasting%20corporation_1959_amended2010.pdf.

¹³ Cyprus' Constitution of 1960 with Amendments through 2013, Article 171, [http://www.law.gov.cy/law/law.nsf/1D2CDD154DCF33C9C225878E0030BA5E/\\$file/The%20Constitution%20of%20the%20Republic%20of%20Cyprus%20as%20amended%20until%202013.pdf](http://www.law.gov.cy/law/law.nsf/1D2CDD154DCF33C9C225878E0030BA5E/$file/The%20Constitution%20of%20the%20Republic%20of%20Cyprus%20as%20amended%20until%202013.pdf).

¹⁴ Tarlach McGonagle, Bethany Noll Davis and Monroe Price, Minority-Language Related Broadcasting and Legislation in the OSCE, April 2003, section 14.2, https://repository.upenn.edu/cgcs_publications/3.

¹⁵ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, *Thematic Commentary no. 3: The Language Rights of Persons Belonging to National Minorities under the Framework Convention*, 24 May 2012, para. 41, <https://rm.coe.int/16800c108d>.

be present in mainstream languages. News services, for example, should provide equitable coverage of issues of interest and concern to different ethnic groups. This should apply both to the national news service and even more to local news services being offered in areas with significant ethnic populations.

Cutting across these different ethnic content options is the idea of public service broadcasters carrying independently produced content. The core idea behind this is that even if the main content production is done in-house by the public service broadcaster, that in no way means that it must produce all of the content. In some countries, carrying independent productions is part of the mandate of public service broadcasters but not a legal obligation. However, in many countries, carrying independent productions is a legal obligation. Indeed, across Europe, all broadcasters, public service or not, must carry at least 10% independent productions. And Thai PBS is required to carry an “appropriate amount” of programming by independent producers.¹⁶

The BBC is required to carry 25% from among qualifying programmes (such as non-news programming) of independent productions¹⁷ and regularly exceeds that amount. And, in addition to that, it has a separate window, known as the Window of Creative Competition, covering 25% of its non-news content, which is allocated on a competitive basis to anyone who wishes to compete for it, whether within the BBC or external to it. Historically, a large percentage of this went to external producers, including a lot of independent producers.¹⁸

Ethnic content producers can obviously compete for space in any independent production windows offered by public service broadcasters. However, it would also be possible for these windows to be allocated on a non-competitive basis to high-value diversity producers, including those producing ethnic content. While there is nothing wrong with a public service broadcaster producing ethnic content in-house, there is obvious value to supplementing this with externally produced ethnic content produced by producers based in ethnic communities.

Legal and Policy Measures

A range of legal and policy measures exist to promote the reflection of the ethnic makeup of a country in its public service broadcaster. One is the idea that an appropriate number of members of the governing board should come from ethnic communities. This is warranted by the idea that the board should reflect the makeup of the country as a whole. In the case of Myanmar, for example, this would suggest that at least one-third of the board should be comprised of ethnic representatives. Such a measure could either be formally enshrined as such, i.e. by stating the number in the legislation, or the legislation could, instead, provide

¹⁶ Thai Public Broadcasting Service Act, B.E. 2552 (2008), Article 43.

¹⁷ Paragraph 1(1) of Schedule 12 of the Communications Act 2003.

¹⁸ See Toby Mendel, *Public Service Broadcasting: A Comparative Legal Survey*, note 5, p. 78.

more generally for the board to be representative, with an understanding that this encompassed ethnic diversity.

A range of other diversity options for reflecting ethnic groups are found in different countries. For example, in Bosnia-Herzegovina, the public service broadcaster must reflect equality of the three languages present in the country in various ways, including in the languages of its services, its objectives and its policies.

In India, the public broadcaster has a legal obligation to protect the rights of its minority and tribal communities. It operates in 50 local languages across the country. Its Guidelines on commissioned content – which is analogous to independent productions – focus heavily on diversity issues. For example, 50% of this content must be allocated to relevant (i.e. minority and tribal) communities.

In some countries, the independent broadcast regulator also drives ethnic content within the public service broadcasters. An interesting example of this is South Africa, where the regulator, the Independent Communications Authority of South Africa (ICASA), requires the South African Broadcasting Corporation (SABC) to adopt policies on language, diversity and local content. These must be adopted in an open, inclusive manner and the policies are subject to review by the regulator.

There are also additional requirements for each policy. For the language policy, for example, additional requirements are that it cover nine African languages that are widely spoken in South Africa and, for each, the policy should indicate the time to be allocated to it, the scheduling of programmes in that language, the range of content produced in that language and the amount of funding spent to generate that content. SABC is also required to adopt a plan of action for implementing its language policy goals. Together, these measures create significant transparency around the extent of SABC focus on each language, which in turn can lead to upward pressure for more focus where one or another language is receiving less than equitable attention.

For local content, the policy must set out various quotas, for example on current affairs and educational content. SABC is assessed by ICASA and earns more points based on the language of this content, where it is produced and who produced it. All of this favours content produced locally in ethnic languages.

These are just a few examples of the legal, policy and practical ways that public service broadcasters can support the production and dissemination of ethnic content. In the end, as these examples show, this must be adapted to the circumstances of each country.

Other Options

Beyond integrating ethnic content into the programming disseminated by the main public service broadcasting channels, there are three other options for promoting ethnic content within the overall broadcasting environment. The first represents an expansion of the way

that public funds are allocated in the broadcasting sector, broadening this from the traditional grants to a main public service broadcaster to also cover wider allocations to public interest content. The second is support for community broadcasting, which offers an important window for ethnic broadcasters to be licensed and potentially also receive funding. And the third is using a diversity requirement within commercial licensing processes, especially for radio stations, to favour ethnic broadcasters.

Supporting Public Interest Content

As the range of ways that media content is produced and disseminated has multiplied in the digital era, a number of States have gone beyond just providing financial support to large, national public service broadcasters and started to look at ways to fund public interest content. While this does have a longer history, it has been given particular impetus with the massive diversification of types of content producers. Another driver for this has been the enormous challenges faced by private-sector legacy media, including commercial broadcasters, as advertising spend has migrated over to digital platforms and away from broadcasters.

There are a number of different models for this, and it is very much an emerging and evolving space with different ideas coming up and being tested all of the time. More recently, a more radical idea to the effect that quality media content is a public good, much like transportation (roads), education and health care, and that as commercial sources for funding dry up, they must be replaced by public funding, just like we fund other public goods.

One option here is to allocate funding to a new, dedicated fund for public interest content. As an example of this, in 2020, New Zealand launched its so-called Public Interest Journalism Fund. This was due to receive \$10,000,000 in 2020/21, \$25 million in 2021/22 and \$20 million in 2022/23. This is relatively little compared to the funding for public broadcasting, but the theory is that it will help “provide transitional support to media organisations as the sector evolves in a way that ensures the longer-term sustainability of New Zealand’s media”.¹⁹ It remains to be seen how successful this will be but it remains an innovative approach to supporting public interest media content. New Zealand also has a dedicated government agency, Te Reo Whakapuaki Irirangi (Te Māngai Pāho), the Māori Broadcast Funding Agency, established in 1994, which is responsible for funding radio and television stations which support the language and culture of the Indigenous Māori people in addition to providing “platform-agnostic” funding to Māori content creators.²⁰

At the international level, BBC Media Action, the BBC non-profit wing, has recently launched the International Fund for Public Interest Media.²¹ The goal is to raise very significant donor funding to support public interest media, channelled through a central civil society

¹⁹ See <https://mch.govt.nz/media-sector-support/journalism-fund>.

²⁰ See <https://www.tmp.govt.nz/en/funding/>.

²¹ See <https://ifpim.org/about/>.

organisation rather than being allocated on a bilateral basis from governments as is largely the case so far. This involves two elements. The first is substantially increasing the allocation of support for public interest media and the second is reducing the short-term, national-interest driven status of much of the current bilateral support for public interest media in developing countries. The effort is still at the early stages of development so it is too early to determine whether it will achieve either or both of these two ambitious objectives.

Community Media and Ethnic Content

Under international law, part of the obligation of States to support media diversity involves ensuring the co-existence of three types of broadcasters within the wider broadcasting ecosystem, namely public service, commercial and community broadcasters. In many countries, the latter also extends to community newspapers. The core idea of these media outlets is that they are non-profit in nature, they serve a particular community by producing content that is relevant to that community, and they are rooted in the community in key ways, such as through community ownership, management and staffing, often on a voluntary basis. While there are different ways to define a community, the dominant one for purposes of community broadcasting is a geographic community which, in many cases, is an ethnic or cultural community. While these media are formally private, just as other non-profit organisations are private in nature, they exist to serve strong public goals.

Under international law, States have a number of obligations in this area. First, they must ensure access to the possibility of creating community media. In the broadcasting sector, this means specifically recognising this form of broadcasting in law and ensuring a place for it via the licensing system. Second, for the previous obligation to be realised in practice, States must ensure that the licensing procedures, including the fees that must be paid, for community broadcasters are less onerous than for commercial broadcasters, reflecting the often very small, lower capacity of these broadcasters. Third, again to ensure that practical effect is given to the first point, States must reserve capacity on broadcast distribution systems for community broadcasters. In practice, this takes different forms, such as reserving broadcasting frequencies for them, or requiring cable, satellite or multiplex distribution operators to allocate space for free or at low-cost to these broadcasters.

Fourth, a number of measures should be put in place to promote the financial viability of these broadcasters (and media more generally). As noted, licensing fees for these broadcasters should be lower than for commercial broadcasters. They may also be given special access to tax breaks, for example for equipment or other inputs. They should also not be denied access to revenue streams, such as advertising, although some restrictions may be placed on this, such as that advertising should be related to the community and be subject to certain caps.

In many countries, community broadcasters/media also benefit from public funding or cross-subsidies from the commercial sector. For example, in Canada satellite and cable distributors must contribute a percentage of their revenues to a community broadcasting fund and also provide free distribution to them. Distributors in Canada are also required to

carry an indigenous television channel for free. Direct government funding is available for community broadcasters in countries such as South Africa and Thailand. In Denmark, they are allocated a portion of the public service broadcasting fee that users are required to pay. In Sweden, they receive support from local governments.

It goes without saying that ethnic communities represent a very significant part of the community broadcasting sector in many countries. This is the case, for example, in Brazil, which is home to a very rich set of indigenous communities, many of which are found in remote parts of the country. Community broadcasting is in many ways very well-suited to ethnic communities, given that they often maintain stronger traditions of collaboration and working together than majority groups, and are also often concentrated geographically in specific parts of a country.

It may be noted that the 2015 Broadcasting Act adopted in Myanmar,²² which has never come properly into force, includes strong provisions on community broadcasting which reflect many of the qualities outlined above. As such, it provides a useful starting template for considering how to regulate community broadcasting in a future, democratic context in Myanmar.

Beyond general support for community broadcasting, it is also possible to distinguish in regulatory frameworks between 'ethnic' and non-ethnic stations (whether in the context of commercial or community broadcasting), with the goal of ensuring listeners and viewers have sufficient access to ethnic content, for example by ensuring that an appropriate number of licenses are granted to stations which meet minimum thresholds for ethnic programming. Canada, for instance, has an Ethnic Broadcasting Policy, which is distinct from its separate broadcasting policy for "native stations", the programming of which is oriented towards indigenous peoples.²³ Under the Ethnic Broadcasting Policy, in order to qualify as "ethnic", television channels and radio stations must devote a minimum of 60 per cent of their schedule to ethnic programming and 50 per cent of programming must be "third-language" programming, meaning in languages other than English, French or indigenous languages.²⁴ Because of the large number of ethnic minority groups in Canada and limited radio broadcast frequencies in some areas, under this policy the regulator, the Canadian Radio-television and Telecommunications Commission, may impose licensing conditions which require stations to serve multiple ethnic groups, including through a minimum number of programming languages.²⁵

²² See note 4.

²³ Native Broadcasting Policy, 20 September 1990, Public Notice CRTC 1990-89, <https://crtc.gc.ca/eng/archive/1990/pb90-89.htm>.

²⁴ Ethnic Broadcasting Policy, 16 July 1999, Public Notice CRTC 1999-117, paras. 16 and 26, <https://crtc.gc.ca/eng/archive/1999/PB99-117.HTM>. An ethnic programme is defined in para. 9 as "...one, in any language, that is specifically directed to any culturally or racially distinct group other than one that is Aboriginal Canadian or from France or the British Isles".

²⁵ *Ibid.*, paras. 18-19.

Commercial Media and Ethnic Content

State obligations to promote media diversity extend to the commercial broadcasting sector as well as the public service and community broadcasting sectors. In many countries, making a contribution to diversity is an important criterion for deciding between competing applications for a broadcasting licence. Almost by definition, ethnic media, including media operating in ethnic languages, make a very strong contribution to diversity. This is especially true in the radio sector, where there is space for a relatively large number of local operators, potentially alongside a smaller number of national ones.

There are different ways to ensure that aspirant ethnic commercial broadcasters, again with a focus on radio stations, have access to licences. One is simply through a general requirement to take contribution to diversity into account when holding licence competitions. This is the case in Canada, where indigenous actors were granted licences for five new radio stations, one each on the major cities of Calgary, Edmonton, Ottawa, Toronto and Vancouver in 2017.²⁶

It would also be possible to provide for a more specific regulatory framework, whether set out in the primary legislation or in subordinate rules, for licensing ethnic commercial broadcasters under the general rubric of supporting media diversity. For example, in a country like Myanmar, with such a large ethnic population from such a wide variety of different ethnic communities, it might be possible to require a minimum percentage of radio licences to be allocated to those communities, at least where licence applications were forthcoming from those communities. Policies along these lines have been adopted in certain countries with sizeable indigenous populations. In 2010, the US Federal Communications Commission adopted a Tribal Radio Priority policy to prioritise licensing applications by indigenous tribes broadcasting to tribal lands.²⁷ A more ambitious approach has been adopted in New Zealand, which has long reserved broadcasting frequencies for the indigenous Māori people²⁸ and has recently agreed to reserve twenty per cent of the future allocations of the commercial spectrum for their benefit.²⁹

In several countries, legislation imposes specific content requirements on mainstream commercial audio-visual service providers to serve ethnic populations. For example, in Romania, distributors are required to provide "free reception" of programmes in the language of a national minority in areas where these populations represent more than twenty per cent of the population³⁰ and, in the Spanish region of Catalonia, private broadcasters are required

²⁶ See <https://www.cbc.ca/news/indigenous/five-new-urban-indigenous-radio-stations-crtc-1.4160784/>.

²⁷ See <https://www.fcc.gov/news-events/blog/2013/03/01/tribal-radio-priority>.

²⁸ See <https://www.rsm.govt.nz/licensing/licences-you-must-pay-for/broadcasting-licences/maori-reserved/> and <https://www.tmp.govt.nz/en/about/our-history/>.

²⁹ Memorandum of Understanding on Radio Spectrum, 2 February 2022, section 9(1), <https://www.mbie.govt.nz/dmsdocument/18702-memorandum-of-understanding-maori-spectrum-agreement>.

³⁰ The Audiovisual Law, Law no. 504, 11 July 2002 with amendments through 22 November 2009, Article 82(B)(3), <https://www.cna.ro/The-Audio-visual-Law,1655.html>.

to devote 50% of transmission time to Catalan language programming.³¹ In Ecuador, print, radio and television media are required to ensure that at least five per cent of their content expresses and reflects the worldview, culture, traditions and knowledge of indigenous, Afro-Ecuadorian or Montubio people.³² The implementing regulations for this part of the law provide guidelines as to what kinds of content qualifies for the purposes of this requirement and also require this “intercultural” content to be disseminated in its original language and also simultaneously in Spanish translation.³³

Where official language requirements exist for the media, such as quotas to carry a minimum percentage of programming in an official language or to provide subtitles in an official language, it is important to ensure that they do not unduly burden linguistic minorities. This can be done through different means, such as applying quotas more flexibly, exempting regions with high concentrations of minorities or taking into account translation or subtitling costs when allocating public funds to ethnic media.³⁴

Conclusion

Ethnic groups form a very significant percentage of the population of Myanmar and this should be reflected in the overall broadcasting environment. Even before the 1 February 2021 military coup that brought the democratic transition in Myanmar to an abrupt halt, this was signally not the case. To some extent this was a reflection of the wider failure of the government of Myanmar to democratise broadcasting. Thus, despite having a population of some 55 million people, as of 1 February 2021 the country only had a handful of radio stations rather than the 100s or even 1000s that would normally be operating in a country of that size. Thus, ethnic groups in the country, like their colleagues from the majority Bamar group, lacked access to radio stations.

However, ethnic groups were also underrepresented in content disseminated by the public broadcasters, MRTV, as well as in the small number of private radio and television licences that had been allocated.

These deficiencies will need to be addressed in a future, democratic Myanmar. The public broadcaster will need to be transformed into a public service broadcaster, operating

³¹ 1998 Linguistic Policy Act, 7 January 1998, BOE-A-1998-2989, Article 26. Available in Spanish at: <https://boe.es/buscar/pdf/1998/BOE-A-1998-2989-consolidado.pdf>.

³² Organic Law of Communication, 25 June 2013 (with amendments through 20 February 2019), Article 36. Available in Spanish at: <https://www.telecomunicaciones.gob.ec/wp-content/uploads/2020/01/Ley-Organica-de-Comunicaci%C3%B3n.pdf>; see also the implementing regulations, Resolution No. 36, Official Register 494, 6 May 2015, Article 2, on the “*Ámbito de aplicación*” (“Field of application”). Available in Spanish at: <https://www.suinba.com/website/registros%20oficiales/R.O.%20N%C2%B0%20494,%20MI%C3%89RCOL-ES%2006MAY2015.pdf>.

³³ Resolution 36, *ibid*, Articles 6-11.

³⁴ Note 15, para. 43.

independently from government and serving the information and voice needs and interests of all of the people of Myanmar. This calls for a very significant increase in the allocation of resources of all sorts within MRTV to ethnic content. Part of this should involve the creation of dedicated, ethnic-language both television and certainly radio stations, run by and for ethnic groups. It should also involve strong local news segments, where appropriate in ethnic languages and in many cases carrying content about and of interest to ethnic groups. It should also involve MRTV disseminating an important part of its overall programming sourced from independent producers, including producers from and working with ethnic groups. Other options should also be considered.

Moving beyond MRTV itself, a number of other options for promoting ethnic broadcasting should be considered. One option could be direct support for public interest media, including ethnic media and ethnic broadcasting. Myanmar should move forward in due course to implement the standards on community broadcasting which are reflected in the current, but as yet unimplemented, Broadcasting Act. And Myanmar should fundamentally reform its commercial broadcasting sector, allocating far more licences to private broadcasters and especially private radio stations. Ethnic broadcasters should be appropriately reflected in this opening up of the airwaves.

The current options for media reform in Myanmar are limited, given that the illegitimate military government remains in power. However, the possibilities for a country which is so incredibly rich in ethnic diversity are almost endless. It is, therefore, important to consider the various options for moving forward democratically in this space now, so that plans and preparations can be made for such time as reform is possible.