

# PROPOSED LEGAL, REGULATORY AND POLICY REFORMS REGARDING COMMUNITY RADIO IN SRI LANKA

## A. Establishing Community Radios

1. A conducive atmosphere for community discussion and debate around community radio should be created. A wide range of stakeholders should work together to develop broad consensus around what constitutes a “community” in the context of community radio and this should inform the establishment of community radios and their programming. This process will also increase community awareness of the practices, beliefs and interests of the different groups comprising the community.
2. Importantly, future community radio initiatives in Sri Lanka should be redesigned. They should be relatively small and should be established in cohesive communities that have articulated common goals and are thus able to successfully surmount destabilising influences, including political influences.
3. A ‘conducive atmosphere for community discussion and debate’ already exists within VSHLI and Gemi Diriya villages, which contain communities that are empowered and enlightened in participatory development approaches and activities. These are springboards for the establishment of true communities. These communities have already developed management and sustenance tools, which allow fuller participation in the decision making process. This allows women and other marginalized groups in the community an equal, perhaps wider, say in deciding and managing their own affairs. It is our belief that the VSHLI and Gemi Diriya communities provide the ideal base for community driven radio initiatives.
4. Enlightened, committed persons, development agencies and civil society should work with communities to demonstrate to them that community radio can be a valuable tool to promote change and development, as well as a practical mechanism to relay local content in local languages, to exchange views and experiences, and to support local identity and culture.
5. Greater public awareness should be created that the airwaves are a “public good” (as stated by the Supreme Court of Sri Lanka in 1996) and that all citizens of Sri Lanka – not only commercial and government groups – have the right to receive and impart information, including through community broadcasting.
6. The need for a community radio station must be articulated by the community. However, official, donor and civil society groups from outside the community may undertake consultations and/or mobilisation efforts with communities to assess the cultural and other implications of establishing a CR station, existing media access and how CR might serve

community interests. These processes should involve the whole community – including women and youth, as well as minority (ethnic and otherwise) groups.

7. External efforts to mobilise support for the establishment of a community radio should be approached with care, taking into account the extent to which the community will be able to depend on the station for information and subsequent civic engagement and development efforts, how listeners have reacted and will react to the information they receive and the impact the radio is likely to have in the community.

## **B. Governance Issues**

8. Community broadcasters should be established and managed by the community. The community should make all programming decisions, set policy and undertake other management tasks. This will encourage participatory democracy and promote basic human values, such as dignity, justice and freedom, which will promote development and also encourage community members to recognise that they are genuine partners in this development. Community broadcasters should be established independently of central and local government, political parties and commercial and religious institutions. Joint efforts with State broadcasters should be avoided, although agreements for the provision of assistance from the latter to community broadcasters may be envisaged.
9. To make decisions and formulate policies with respect to the overall operation of the community radios, consideration should be given to establishing a Community Radio Council (CRC). Members of the CRC should be elected annually (with the option of seeking re-election). Members of the CRC should:
  - work as volunteers for a period of at least six months; and
  - not be registered members of any political party or otherwise be active in politics.
10. The CRC should be responsible for formulating broad policy and for general oversight of operations. However editorial decision-making, including day-to-day operational decisions, should be the responsibility of the manager and the team of broadcasters. Both the CRC and staff should respect democratic principles in their decision-making processes. Selecting a credible and non-partisan manager is key to success.
11. Consideration should be given to adopting a Code of Conduct for the CRC, the manager and the broadcasting team with a view to promoting self-regulation, transparency, editorial independence, balanced and impartial approaches to the differing interests of various majority and minority sectors of the community, ethical programming principles, and other important community radio values.

12. Consideration should also be given to adopting broadcasting guidelines setting out professional standards for programme content and prohibiting the dissemination of programmes which are obscene, gratuitously offensive to public morals or to the religious convictions of any sector of the community, libellous or otherwise illegal. The guidelines should be developed in close consultation with the community.

### **C. Practical Issues**

13. A conducive atmosphere for community discussion and debate around community radio should be created. A wide range of stakeholders should work together to develop broad consensus around what constitutes a “community” in the context of community radio and this should inform the establishment of community radios and their programming. This process will also increase community awareness of the practices, beliefs and interests of the different groups comprising the community.
14. Rather than relying on hired or assigned broadcast professionals to conduct the affairs of the station (including programme production and management), programmes must be introduced to build the capacities of community members to carry out these functions themselves. Initially, consideration should be given to hiring one or two professionals – say a manager and a technical officer – until such time as members of the community can assume these functions. These professionals should be well versed in community media approaches and development theory and should be able to understand and to cater to the needs and aspirations of all members of the community, including the poor and marginalized.
15. Community radio should not be viewed by community members as a source of employment. Volunteering is a prerequisite to the success of community radio in Sri Lanka. Volunteers are needed to produce programmes, and to take on the functions of reporters, presenters, scriptwriters and administrative personnel.
16. Ongoing efforts are required to maintain and enhance the social sustainability of community radio. Providing programming that reflects local issues in the local language, and that is culturally relevant, are key conditions for achieving social sustainability. Ongoing monitoring and evaluation is necessary to ensure that the radio remains credible, that staff are respected by the community and that the station is seen as a credible source of information by members of the community.
17. Community radios should consider using ICT to support poverty alleviation programmes and to satisfy relevant rural information needs. ICTs offer various opportunities to rural youths and encourage them to be innovative and to become active partners in programme implementation. Consideration should be given to providing access to community multimedia centres (CMC), that offer communication and information services such as computers with educational software and library applications, email and Internet. In this regard Community

Radios can seek assistance from the e-Lanka project of Information and Communication Technology Agency (ICTA) of Sri Lanka, which is the sole government institute established to help the people to reap the benefits of ICTs. This World Bank funded project has several initiatives to propagate ICTs. Of interest here is the Partnership Assistance Program of the e-Society Development Initiative which provides both financial and technical assistance to enhance the capacities of marginalized communities. Projects could be single projects with national reach or pilot projects such as Community Radios that can be replicated across the Country. Under this program, Community Radios can seek assistance to enhance their ICT capacities by obtaining awards of financial and technical assistance to the tune of SLR 5,000,000.00 (5,000 USD).

18. "Radio browsing", whereby on-air broadcasting personnel respond to questions from the community by using websites to access the information and then relaying it in local languages to listeners, can enhance the service provided by community radio and expand the rural knowledge base.
19. The real basis of community radio is social will. People's attitudes towards the existing situations, towards the desirability and possibility of change and development, and towards the possible role of the community radio must be ascertained and hopefully confirmed by the communities themselves. It is proposed to activate a mobilization program in order to galvanize the community in order to plan, establish and sustain a medium of expression of their own. Then and then only, they can develop content and media practices, develop management structures as well as a sustainability strategy. Financial sustainability derives its viability from social sustenance.

## **D. Legal/Regulatory Reform**

### **i. An Independent Broadcasting Regulatory Authority**

At present, the regulation of broadcasting is conducted directly by the government, in conjunction with SLBC. Unlike in many countries, there is no independent administrative body to undertake this task. This leads to serious politicisation of the broadcasting sector, is clearly contrary to the international standards noted above, and poses a serious barrier to independent community broadcasting.

To address this, and to bring Sri Lanka into line with international standards and practice in this area, the Research Team recommends the adoption of legislation establishing an Independent Broadcasting Regulatory Authority (Broadcasting Authority). Such legislation should be in accordance with the following principles:

1. The appointment of members of the Broadcasting Authority should be done in a way which ensures their independence. To achieve this, the power of appointment should be vested in an

independent body, such as the Constitutional Council, rather than a politically connected individual, such as a minister.<sup>94</sup> The final power of appointment might feasibly be retained by the President. However, in this case, the legislation should include measures to prevent deadlocks between the President and the Constitutional Council, which have been observed recently in relation to other bodies, such as the Elections Commission. One approach would be to provide that, in case of such a deadlock, the President may request the Council to reconsider its nomination(s) for reasons stated. If, after reconsideration, the Council makes the same nomination(s), the President may no longer block the appointment(s).<sup>95</sup>

2. The legislation should include a number of measures to further protect the independence of the Broadcasting Authority. Membership overall should be reflective of the country as a whole, including in terms of ethnic and gender composition. Appointments should be based on stipulated criteria, such as experience/eminence in relevant fields, rather than affiliation with a particular political party. Certain individuals, in particular those with strong political or broadcasting connections, should be prohibited from sitting as members, and the security of tenure of members should be protected. The legislation should set out clearly the mandate of the Broadcasting Authority and this should serve both to protect its independence and to promote accountability. Finally, the Authority should in the first instance obtain its funding directly from the licence fees charged to broadcasters, albeit within a budget approved by Parliament or a relevant committee thereof.
3. The Broadcasting Authority should have the following powers and responsibilities:
  - i) To undertake the licensing of individual private and community broadcasters, in accordance with a plan setting out the frequencies to be allocated to broadcasting in Sri Lanka. Licensing should be required to be fair and transparent, and a key goal of

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<sup>94</sup> The Constitutional Council (CC) established in terms of the 17<sup>th</sup> Amendment to the Constitution in 2001 is a 10-member body constituted through a process of consensual decision making by the constituent political parties in parliament. Five members of high integrity and standing are nominated (taking into account minority concerns) jointly to the CC by the Prime Minister and the Leader of the Opposition. One member is nominated by the smaller parties in the House, which do not belong to either the party of the Prime Minister or the Leader of the Opposition. The President can also appoint a person of his or her own choice. The rest of the CC comprises of *ex officio* members, namely the leader of the opposition, the prime minister and the Speaker of the House as chairman. The CC exercises independent supervision over important appointments in public service and key commissions on, among others, the police, the public service, the judiciary and elections.

<sup>95</sup> The current political environment in Sri Lanka is relevant to this recommendation. Presently, the Constitutional Council itself is non-functioning in its second term due to dual reasons; on the one hand, the inability of members of the smaller political parties to agree on the remaining member to the CC and on the other, the refusal of the President to make the appointments of the nominations already sent to him until the remaining member is also nominated. Analysts see this as a combined lack of political will on the part of the executive and the legislature to give effect to the constitutional amendment which has been opposed by politicians as it has taken away some of their powers in respect of important appointments to public office. However it was precisely to prevent the politicisation of the public service and its consequent decreased ability to function effectively and impartially that the 17<sup>th</sup> Amendment was passed by Parliament unanimously in 2001. While conceding that its continued implementation remains enigmatic at this point of time, the Research Team re-iterates the need for an independent and non-political process of appointment of the members of the proposed Broadcasting Authority.

licensing should be the promotion of a diverse and independent broadcasting sector in the country.

- ii) To formulate, in close consultation with broadcasters and other interested parties, a programming code governing broadcasting practice and content, and to oversee implementation of that code. The code should promote professionalism and respect for community values in broadcasting, while respecting editorial independence. Respect for the code should be a general licence condition for all broadcasters and also an obligation for State broadcasters. The latter is in accordance with the judgment of the Supreme Court of Sri Lanka in the *Broadcasting Authority Bill Case* (discussed above), which established that both State and private media should be subject to the same rules in the area of content regulation. It may be noted, however, that this would require the repeal of sections 3(1)(a) and 3(2) of the SLBC Act, which currently vest exclusive authority over programming in the SLBC itself
  - iii) To ensure respect for licence conditions both via monitoring and a complaints system and, as necessary, inquire into alleged breaches and impose appropriate disciplinary sanctions.
4. The legislation which creates the Broadcasting Authority should provide in some detail for the licensing of broadcasters. It should, in this context, make specific provision for community broadcasting, taking into account its particular needs and nature. Specifically, the legislation should:
- (i) Provide specifically for the licensing and definition of community broadcasters. Key elements of the definition should be non-profit status and strong links to the community being served. Applicants should be required to demonstrate a strong base in the community and a commitment to community broadcasting. Holding ‘public hearings’ in the presence of a broad cross-section of the community – such as civil society groups, cultural organisations, youth organisations and so on – may be an effective way to obtain this information.
  - (ii) Ensure that an equitable proportion of broadcasting frequencies are allocated to community broadcasting. In Thailand, for example, 20% of all broadcast frequencies are allocated to not-for-profit community broadcasters.
  - (iii) Set out clearly the licensing processes for community broadcasters, which should be differentiated from the process for obtaining a commercial broadcasting licence, and be as straightforward and simple as possible. Small, locally-based broadcasters cannot be expected to deal with the complex bureaucracy that often attends commercial broadcast licensing. Rather than a competitive tender, which is common for commercial licences, the process should probably be applicant driven (i.e. anyone can apply at any time for a licence).
  - (iv) Provide for a fee structure for community broadcast licences which does not pose a barrier to the establishment of these broadcasters (i.e. fees should be nominal. As with licensing processes, these small, non-profit broadcasters cannot pay the sorts of fees often associated with commercial (profit-driven) broadcasting.
  - (v) Set out a clear structure for financing community broadcasting which ensures both independence and viability. Community broadcasters should be permitted to generate

their own income, perhaps by way of limited advertising of community products and programme sponsorship, albeit within a framework which effectively ensures their non-profit status.

5. The incorporation of the aforesaid principles in such legislation would enable an aggrieved applicant for a license who is met with a refusal to challenge the legality of the *vires* of such refusal or the imposition of any conditions attached to such license for lack of objectivity in the light of Article 126(1) of the Constitution<sup>96</sup> read with Article 12(1)<sup>97</sup> and Article 14(1)(a)<sup>98</sup> Likewise a revocation, suspension or cancellation of a license already granted would be amenable to judicial review under Article 140 of the Constitution (provision whereby petitioners can move the **Court of Appeal** to issue writs of, among others, certiorari, mandamus and prohibition) upon established grounds of illegality, irrationality, procedural impropriety and proportionality.<sup>99</sup> A number of judicial decisions both in the domestic courts and elsewhere are pertinent in this regard.<sup>100</sup>
  
6. As remarked above, the Committee Report<sup>101</sup> had advised the establishing of a independent Media Council and empowering it *inter alia*, to entertain and investigate complaints in regard to the print and electronic media. This recommendation is no longer applicable in its entirety due to the setting up of a voluntary regulatory mechanism applicable to the print media, viz; the Press Complaints Commission. However, a similar complaints mechanism in regard to the electronic media is still outstanding. We suggest that the independent Broadcasting Authority should be vested with the power of ensuring the maintenance of high broadcasting standards on the part of both the private and the state media. This would entail amendment of the SLBC Act which presently vests such powers in the Corporation. The independent Authority should be given powers to conduct investigation into complaints therein as well as suitable powers of censure when a violation is found.

## ii. Amendment of the Sri Lanka Broadcasting Corporation Act

To transform SLBC into an independent public service broadcaster and to ensure independent regulation of broadcasting, the Research Team recommends the following legislative changes to the SLBC Act:

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<sup>96</sup> provision whereby fundamental rights applications are filed in the Supreme Court

<sup>97</sup> Right to equal treatment before the law

<sup>98</sup> Right to freedom of expression and publication.

<sup>99</sup> per Lord Diplock in *CCSU v Minister of Civil Service* (1985) AC 374.

<sup>100</sup> Vide *Jayasena v Punchiappahamy*, [1980] (2) SLR,43), *Sundarkan v Bharathi*, [1989], (1) SLR, 46 as well as the Canadian case of *Roncarelli v Duplessis* [1959] 16 DLR, 689 and particularly the English Court of Appeal case in *Congreve v Home Office* [1976] QB 629) where Lord Denning M.R. having examined the provisions of the Wireless Telegraph Act, 1949, condemned the revocation of a television licence on the ground of misuse of power.

<sup>101</sup> Committee to Advise on the Reform of Laws affecting Media Freedom and Freedom of Expression, (1996), Sri Lanka, Annexure One

1. The independence of the governing board should be guaranteed by law. Clear rules should be put in place for appointments to the board, which should guarantee members' independence in an analogous fashion to the Broadcasting Authority. Section 5 of the Act should be repealed
2. Only individuals with specified qualifications/expertise, or eminence in one of a number of identified fields, should be eligible for appointment to the board. Individuals with strong political connections or with a vested interest in the broadcasting sector should be ineligible for appointment. Section 6 of the Act should be amended.
3. Clear and limited rules should govern the removal of members from the board, which should require reasons to be given and provide for a right of appeal to the courts. Section 8 of the Act should be amended.
4. The appointment and removal of the Director General should be the responsibility of the board, not the minister.
5. SLBC's editorial independence should specifically be guaranteed in law, to ensure that, once appointed, the Director General and his or her staff are free to make programming decisions. The ensuring of the requisite programming standards on its part should be vested with the independent Broadcasting Authority as recommended above.
6. The law should set out clearly the programming mandate of SLBC and the public interest goals which it is supposed to serve and to which it should be held accountable.
7. The law should also set out clearly the funding sources for SLBC. These should be sufficient to enable SLBC to fulfil its public service mandate adequately, and its sources of funding should be protected against political interference.
8. Adequate accountability mechanisms for SLBC should be put in place. These should include an obligation to provide an annual report to Parliament.
9. Section 44 of the SLBC Act should be repealed in its entirety and the powers therein relating to the regulation of private broadcasters should be allocated to the Broadcasting Authority, an independent body.

### **iii. Amendment of The Sri Lanka Telecommunications Act**

To give full effect to the idea of independent regulation of broadcasting by the Broadcasting Authority, amendments also need to be made to the Telecommunications Act, No 25 of 1991 (TRC Act). 1996 amendments to this law, (Act No 27 of 1996) set up a Telecommunications Regulatory Commission (Commission), which is empowered to control the use of the radio frequency spectrum and is vested with the authority to issue licenses to use radio frequencies in Sri Lanka, as well as to maintain all telecommunication apparatuses (equipment).

If the Broadcasting Authority is to have full regulatory power in the area of broadcasting, some of the powers presently exercised by the Commission – in particular the power to control the radio frequency spectrum and to grant licences to use frequencies – need to be transferred to the Broadcasting Authority. This is consistent with international standards in this area. As the international human rights NGO, ARTICLE 19, has noted: "All public bodies which exercise powers in the areas of broadcast and/or telecommunications regulation, including bodies which receive complaints from the public, should be

protected against interference, particularly of a political or commercial nature.”<sup>102</sup> Specifically, the TRC Act, as amended, should be further amended in accordance with the following:

1. Section 5 vests the power to ensure the conservation and proper utilisation of the radio frequency spectrum in the Commission, while Section 10(1) provides that only the Commission may manage and control use of the radio frequency spectrum. These provisions should be amended to require the TRC to consult with the Broadcasting Authority, as well as other interested stakeholders, when planning for the use of the radio frequency spectrum. The power to control and regulate that part of the spectrum which is allocated to broadcasting uses should be vested in the Broadcasting Authority.
2. Section 22 grants the TRC exclusive power to issue licences to use either a radio frequency or to operate radio transmission apparatus. In line with the above, this power should be vested in the Broadcasting Authority in respect of broadcasting licences and equipment.

These amendments are particularly relevant because as noted above in Section 5.3.2. of this Study the Commission lacks the degree of independence from the Sri Lankan government which is required of a body that exercises broadcast regulatory powers.

#### **iv. Amendment of the 17<sup>th</sup> Amendment**

Jurisprudence of the Supreme Court that state resources (including most particularly the electronic media) cannot be used for the **benefit of one political party** has only been reflected to a limited extent in the 17<sup>th</sup> Amendment where Article 104B(4) empowers the Elections Commission to prohibit the use of any movable or immovable property belonging to the State or any public corporation by any candidate, political party or independent group as well as for the purpose of promoting or preventing the election of the above.

This article accordingly does not regard the misuse of state property in its widest sense as including individuals in employment of the State nor could it be said to incorporeal interests.

The following amendments are recommended to the 17<sup>th</sup> Amendment;

##### **Amendment of Article 104 B(2)**

The reference in this article to “...shall be the duty of all authorities of the state charged with the enforcement of such laws, to co-operate with the Commission to secure such enforcement” should be amended to vest the duty of co-operation with all authorities of the state and not limited to only those specifically charged with the enforcement of such laws.

##### **Amendment of Article 104B(4)**

We assert that the 17<sup>th</sup> Amendment, in so far as elections are concerned, should incorporate the general principles relating to the free and fair conduct of elections, viz;

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<sup>102</sup> *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*, 2002.

- a) It is a violation of Articles 12(1) and 14(10(a), particularly where elections are pending, for state resources of every kind – property, personnel, media – to be used for the advantage of one political party (or to the detriment of another)
- b) It is the duty of the Commissioner to ensure a free, equal and secret ballot and the due exercise of the franchise and it is the duty of the State, its agencies and officers, to provide the resources needed by the Commissioner for those purposes.]

Accordingly, we propose that Article 104B (4) should articulate these general principles.

In so far as enforcement of these provisions are concerned, Article 104B(4) (b) only imposes a vague duty on every person or officer in whose custody or control such property lies, to comply with and give effect to such direction. This should be remedied and the Commissioner/Commission be given specific powers of enforcement.

The same reasoning would apply with regard to the powers of the Elections Commissioner vis a vis directions that he hands out to the print media, for example, regarding balanced reporting as there is no power of compulsion of these directives as opposed to his more specific powers in the case of misuse of state resources by the electronic media.

**Article 104B(4) should be amended in this regard.**

#### **Amendment of Article 104B(5)**

This article should incorporate the general principle that there is a duty of fairness vested in the private and state media irrespective of specific directions issued in this regard by the Commission.

In so far as the mandatory requirements of the allocating of broadcasting time at elections are concerned in reference to the private media, identical principles properly applicable to the State media cannot be automatically applied to the private media.

Special duties are conferred upon the state media by virtue of the fact that these are institutions run with state funds and are therefore under a particular duty to use those funds fairly for the benefit of all political parties and not merely that of the government in power. Thus, special procedures detailed under the Constitution and particular duties imposed on these state media institutions under these provisions of the Sri Lankan election laws are eminently justifiable.

This same logic cannot be applied in its imperative form to private broadcasting media. Therefore, it is our view that these duties should not be taken wholesale as applying to the private radio and television stations now proliferating throughout this country. However, we acknowledge that the private broadcast and telecast media should be put under a duty of fairness in allocating broadcasting facilities during election time.

In consequence of this acknowledgement, we recommend that the Constitution be further amended in order to include a new sub section which empowers the Elections Commission to determine fair

allocation of broadcasting time for candidates and political parties in its discretion as far as the private broadcast and telecast media is concerned.

The said new article should further, give the Commission power move the appropriate court to censure and/or impose a fine on such station and/or apply for a restraining order on such station restraining the continuance of such contravention in the event of noncompliance with its directions.