Sri Lanka Enabling Environment Study

A Paper based on a Study for the World Bank

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EXECUTIVE SUMMARY

The existing environment for community broadcasting in Sri Lanka lacks key necessary characteristics to maximise the developmental and poverty-reduction potential of community broadcasting in the country. In particular, the following are needed:

i. Greater awareness, and community involvement and planning, among target communities prior to the establishment of local or community radio, as well as significantly greater local capacity to produce programming which serves the community.

ii. Extensive reform of the legal and regulatory environment for community, as well as public service and commercial broadcasting and most particularly, the establishment of an independent broadcasting authority in which would vest both licensing powers as well as the authority to entertain, investigate and take effective action in respect of complaints relating to broadcasting.

The identification of the above target outcomes, in conjunction with some of the conclusions yielded by the Study, call for additional analytical action by local stakeholders and the World Bank (WB). A list of recommended actions include:

- Implementing recommended reform of laws and regulations relating to the electronic media which pertains particularly to the facilitation of an improved community radio environment.

- Critically acknowledging the inherent limitations of existing community radio stations in selected regions in Sri Lanka, (except Northern and Eastern provinces where access is denied and radio stations with the 'community radio' tag do not exist). In other parts of the island, radio stations with the 'community' tags (but which are owned and managed by SLBC) have been in existence since the early 80s. However, serious deficiencies are inherent in their linkages to the state broadcaster as examined in detail in this Study. Thus, the situation demands a critical review of such limitations pertaining to community radio practices in Sri Lanka.

- Critically acknowledging the need for community broadcasters to be established and managed by the community. The community should make all programming decisions, set policy and undertake other management tasks. 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. Importantly, future community radio initiatives in Sri Lanka should be redesigned. They should be relatively smaller and established in cohesive communities that have articulated common goals and are thus able to successfully surmount destabilising influences

- Compiling an inventory of programmes supporting grassroots radio development in Sri Lanka, including programmes run by government, multilateral organisations, bilateral agencies, NGOs and civil society organisations (CSOs).

- Further reviewing the experience with community radio in the context of development projects in Sri Lanka.

The findings of this Study also point to the following;

- Community radios should consider using ICT to support poverty alleviation programmes and to satisfy relevant rural information needs. Community multimedia centres (CMC), that offer communication and information services such as computers with educational software and library applications, email and Internet can be utilised for this purpose. In this regard Community Radios can seek assistance from the World bank funded 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;

- A 'conducive atmosphere for community discussion and debate' already exists within the WB initiated VSHLI and Gemi Diriya villages given that these programmes have built up a core base of empowered communities, the members of which engage in enlightened participatory development approaches and activities. These communities have already developed management and sustenance tools which allow fuller participation of their members 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. The VSHLI and Gemi Diriya communities provide the ideal base for community driven radio initiatives.

- A Community Radio Council (CRC) may be established with specific reference to the areas covered by the Gemi Diriya and VSHLI projects to make decisions and formulate policies with respect to the overall operation of the community radios. 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.

- 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.

1. Introduction

Good governance and sustainable development require the informed involvement of communities and individual citizens in public policy. Such informed involvement can be promoted in different ways, including through the media and civil society organisations. Community broadcasters have proven to be a key way of facilitating informed involvement of local and rural communities in public policy processes. They can enhance local capacity and empower the poor to be proactive in social policy, budget-making and other public affairs. They are an important foundation upon which local stakeholders and international partners may establish effective development and poverty-reducing initiatives.

This Study focuses on the role and experience of, and context for, community broadcasting in Sri Lanka. It details the potential contributions of community radio stations in specific regions in Sri Lanka. Specifically, the Study:

- Assesses the experience with community or local radio in selected communities within the Uva, North Central, Central and Southern provinces of the Island.
- Analyses the national legal and regulatory frameworks for broadcasting, paying particular attention to community radio.
- Proposes a model for reform of this legal and regulatory framework to bring it into line with international standards and to foster the development of the community broadcasting sector.
- Makes wide-ranging recommendations for community radio in Sri Lanka based on its findings.

For the purposes of this Study, community broadcasting is understood as a broadcasting model which relies on a community-based approach and which goes beyond the one-way communication which characterises most mainstream media. AMARC's working definition of community broadcasting, particularly the segment stating community media should be *'promoting the participation of this community'*, suggests that the broadcaster/community relationship is characterised by two-way communication. Indeed, it is "media in which the community participates, as planners, producers, performers…[because the media is] the means of expression *of* the community, rather than *for* the community."[1]

Community participation is viewed as a process whereby members of a community are able to influence or determine socially or culturally relevant outcomes. Community media facilitate community participation in the choice and production of programme content and are managed and overseen in a manner which promotes grassroots involvement. Prehn describes this as "participation [which] implies a wider range of activities related to involving people directly in station programming, administration and policy matters."[2]

This Study is the outcome of research commissioned by the World Bank Institute (WBI) with support from the President's Contingency Fund and the Social Development Department, which together launched an initiative to strengthen local institutions for public information and voice and community empowerment. The Report comprises a detailed Study and a list of recommendations to enhance the potential for and effectiveness of community radio in Sri Lanka.

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[1] Berrigan, 1978:8, emphasis added.
[2] Prehn 1991:259

1.3. Methodology

The Study is based on a participatory analytical approach. The following research tools were relied upon for the Study: a case study of Uva Community Radio, participatory observations, interviews (in-depth, semi-structured and unstructured), village meetings, focus group discussions and document analysis. These research tools were used to encourage group reflection on the role of community radio in Sri Lanka.

Between February and September 2005, the Research Team undertook eight field visits to collect data in the following regions in Sri Lanka:

1. Badulla and Bandarawela, 7-9 February
2. Uva Province, 9-20 June
3. Kotmale, 7-10 July
4. North Central Province, 24-28 June
5. Girandurukotte and Polonnaruwa, 28 July to 1 August
6. Southern Province, 7-11 August
7. Anuradhapura, 24-26 August
8. Girandurukotte and Polonnaruwa, 15-19 September

The Research Team also relied on a wide range of documentary information. Examples of this include the report of a committee of experts appointed by the Government of Sri Lanka in 1997 to examine legal and regulatory reform relating to the media, documents submitted to the various Parliamentary Select Committees appointed to examine the media, newspaper clippings, court decisions at both the national and provincial levels and studies on the broadcast media in Sri Lanka.

Other documents regarding the community-driven approaches of e-Lanka and Gemi Diriya such as the toolkit to implement e-Society program of the ICTA was also used in the Study. This toolkit was developed in collaboration with e-Society Focus Group and Gemidiriya (Village Self Help Learning Initiative pilot) program. It incorporates the expertise and lessons of Weerana, Nissankamallapura and Ethumalpitiya villages in Polonnaruwa District where the Village Self Help Learning Initiative was successfully implemented. The contents of e-Society training modules were taken from the presentation made by villagers and the discussions, which took place in a series of joint workshops attended by the villagers.

Sites visited by the Research Team include: Sri Lanka Broadcasting Corporation; Horana Sri Palee Campus of the Colombo University; Mahaweli Ministry; National Archives; Library Services Board; National Finance Commission; Gamidiriya office; e-Lanka project; Panos South Asia; University of Peradeniya; University of Ruhuna; and the Telecommunication Regulatory Commission.

Although the Research Team was able to access a wide range of information and documentation, its access to pertinent research was limited in some cases. In particular, the Research Team notes the reluctance of government authorities to provide access to information on broadcasting as an obstacle. This might be due to the political sensitivity of this research material.

2. An Overview of Broadcasting in Sri Lanka
2.1. The Historical Context

Radio broadcasting was introduced to Sri Lanka in the early 1920's during the colonial period. It soon became, and has remained, the major source of news, information, entertainment and education for the people. 'Radio Ceylon' under which name it was known then, operated as a part of a government

department. It was made a public corporation under the Ceylon Broadcasting Act No 37 of 1966 (subsequently named Sri Lanka Broadcasting Corporation Act) and was renamed the Sri Lanka Broadcasting Corporation, (hereafter SLBC). The SLBC enjoyed a monopoly status for over 50 years. It transmitted both public service and commercial content and, in line with common practice at the time, the administration and production was centralised, with most programmes emanating from the capital city, Colombo.

By the 1970's, technical innovations made radio far more affordable and accessible, including in developing countries. However, the distance between broadcasters and listeners – particularly people in rural areas – and the failure of broadcasters to address local needs, undermined its potential to contribute to development.

The late 1970's brought economic restructuring to Sri Lanka, encouraging significant socio-economic and cultural changes, which helped redress this problem. Radio was decentralised and three regional stations were established in quick succession at Rajarata (in Anuradhapura, North-Central province), Ruhunu (in Matara, Southern province) and Kandurata (at Kandy, Central province).

In 1977, the new government initiated several large-scale development programmes, including the gigantic Mahaweli accelerated programme, which both posed challenges and created opportunities for the public and private media. This multi-million dollar, multi-purpose irrigation project provided for the resettlement of nearly one million people from all over the country to over 126,000 hectares of new agricultural land intended mainly for food cultivation. Although Sri Lanka already had experience with broadcasting aimed at the rural areas, this population migration called for a new broadcasting approach. This setting provided the context for the development of community or local radio in Sri Lanka.

2.2.   The Current Radio Broadcast Landscape in Sri Lanka

Ever since private operators were allowed radio broadcast along side the state-controlled SLBC in early 90s, there has been profusion in the number of stations. SLBC itself now has 22 channels and services while 16 private commercial channels are in operation now.

Both the state broadcaster and the private broadcaster operate in a highly politicised environment. Political control of the SLBC is inherent in the provisions of the governing Sri Lanka Broadcasting Corporation Act, No 37 of 1966 (as amended). According to the Act, the corporation was established for the purpose of carrying on the service of broadcasting, and for developing, extending and improving that service in the public interest; and for the issue of licences by the minister to any person for the establishment of any private broadcasting station where it is necessary to do so.

The Minister in charge of the subject of media and information is vested with powers to appoint all the five members of the board of directors and its chairman. It is significant that no special qualifications are required of the board members, and as the practice shows these members are usually those who are close to the minister and sympathizers and loyalists of the ruling party at the time. In addition, the Corporation is required by section 5 of the Act to comply with the general policy of the government with respect to broadcasting and also to comply with general or special directions given by the minister. A detailed analysis of the Sri Lanka Broadcasting Corporation Act is engaged upon in **Section 3** of this Study

As researcher Sharni Jayawardena observes;

> *"one is forced to the conclusion that there is no attempt to achieve independence or impartiality in broadcasting. Government control to this extent can lead to a denial of the public interest in radio broadcasting and to grave abuses of national broadcasting to serve partisan interests. It is absolutely necessary to state that these conditions apply rigidly to all regional stations and local stations (labelled community radios) of the SLBC, as they are under tight control of the centre both in policy matters and operations".[3]*

A peculiar feature of the politically controlled state media, as evidenced in several studies engaged in by independent research bodies referred to in this Study, is its blatant utilisation by government politicians during all pre-elections periods. This pattern of abuse has continued despite deterrent judicial orders as well as specific amendment of the law to remedy such persistent abuse. Consequently, the high reputation enjoyed by the state broadcaster has deteriorated during the past decades.

Correspondingly, a substantial segment of the radio audience of state broadcaster, which enjoyed a monopoly of radio broadcasting for over six decades, has shifted loyalty to private radio. Despite considerable advantages in regard to its infrastructure and broadcast range over other stations, the SLBC is struggling to survive

Private commercial operators moved into the scene with the aim of earning advertising incomes and in majority of cases to save advertising expenditure incurred by them. All most all of these private commercial stations are owned and controlled by group of companies in the big business league. For instance the Maharaja Organization Ltd, the owner of MBC Network (Pvt) Ltd, is one of the leading private sector conglomerates in Sri Lanka. It has 30 operative companies including Information Technology Services, Travel Agency and Air Line GSA operations, Tea Exports and Consumer Commodity Trading.[4]

The political independence of the private radio broadcasters has been contested, leading to emphasis being placed on the observance of a fairer ethos of broadcasting. This need has been identified as all the more important given that these private stations capture a sizeable segment of the market, resulting in huge impact on the public through a proliferation of political chat shows, interviews and phone-in sessions.[5]

The observance of a duty of fairness on the part of the private media (particularly during elections) has been addressed in this Study. Generally, we have also drawn attention to the need for an efficacious complaints procedure to be put into place in relation to both the state and private broadcast media. This recommendation has been made within the overall recommendation regarding the creation of an independent Broadcasting Authority to regulate the establishment, maintenance and licensing of broadcasters in Sri Lanka.

We concede that special obligations are imposed upon the state media given that they are run with state funds and are therefore under a specific duty to use those funds fairly for the benefit of all political parties and not merely that of the government in power. However, it is axiomatic that private broadcast and telecast media should also observe an imperative duty of fairness in their functioning. We have been mindful of this concern.

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[3] S. Jayawardena, 2003:28, see Annexure Seven to this Study
[4] All radio channels and services in operation with frequency allocations and transmitting locations are given in a table in Annexure Seven
[5] K. Pinto-Jayawardena, 2003:159

2.3. Powers Devolved to the Provinces in Sri Lanka and its Impact on Broadcasters

The 13th Amendment to the Constitution of Sri Lanka – "To make provisions for the establishment of a Provincial Council for each Province", certified on 4 November 1987 –established the country's Provincial Councils. It also stipulated the powers which devolved to these provinces, as well as those which are shared between the provinces and the central government, and those retained exclusively by the central government.

Almost every aspect of broadcasting in Sri Lanka is governed (or, as argued in this Study, controlled) by the central government and is not one of the devolved powers. The occasional collaboration between the central government and certain Provincial Councils are not evidence of devolution but simply institutional collaboration. The Uva Community Radio (UCR) initiative is an example, having been established jointly by SLBC, representing the central government, and the Uva Provincial Council.

As noted in Section 5 of this Study, a Memorandum of Understanding (MOU) was agreed between Uva Provincial Council and the SLBC to provide a framework for this cooperation. However, the disastrous breakdown in the management of the UCR and the consequent demoralisation of its broadcasters, all young and exceptionally talented men and women who had embraced the true concept of community radio with enthusiasm and commitment, is well documented by us.

2.4. Impact of Civil and Ethnic Conflict on the Broadcasting Regime

Sri Lanka has a long record of violent conflict. The youth rebellion of the Janatha Vimukthi Peramuna (JVP) in the 1970s was methodically crushed by the then government, resulting in thousands of deaths at that time. The growing demand for a separate state in the northeast spearheaded by the Liberation Tigers of Tamil Eelam (LTTE) resulted in active conflict in those areas from the eighties onwards.

With the entirety of the country gripped by unparalleled violence, extraordinary national security laws were used to repress opponents of the state as well as democratic criticism. Paramilitary organizations set up during this period, supposedly to help the armed forces and police fight the LTTE, also expanded the government's armed sphere of influence.

The violent politics of this era culminated in the re-emergence of the JVP in the late 1980s. The JVP intended to capture state power and establish a socialist state, but was suppressed by the State in an equally violent fashion. The violence thus unleashed, only subsided in 1991 after the leader of the JVP was arrested and summarily executed by the Sri Lankan army. By that time, the ethnic conflict in the northeast had lent a constant brutal dimension to this pervasive violence, making Sri Lanka the country with the second highest number of disappeared persons (an estimated 12,000) in the world, after Iraq. These disappearances still remain unaccounted for in the absence of sustained reparation and reconciliation efforts.

At the time of writing this report, active military operations have not been resumed between the LTTE and the government. However, the culture of state violence has not abated either in the northeast or in the rest of the country. In areas affected by the ethnic conflict, a variety of actors including the LTTE,

breakaway 'militant groups' opposing the LTTE and government forces are responsible for intimidation, coercion, deaths and disappearances.

In other areas, formal entities of state power continue to be supplemented by "informal" agencies of state violence as evidenced by practices of torture and disappearances by custodial officials who are still accorded impunity apart from a few, scattered instances of successful prosecutions. At another level, (though use of the emergency laws decreased from early 2000), the ordinary law is used as an instrument of repression. Ethnic, religious and social differences among the people have been aggravated as a result of individual, social and collective insecurity.

Against this backdrop of extreme tensions, community radio has not played a significant role in highlighting the plight of communities struggling to come to terms with the trauma of decades. Though efforts to establish community broadcasting has been evidenced in areas most affected by the southern insurrection, the broadcasts have not addressed the legality, constitutionality and accountability of abusive state or non-state practices due to an ingrained fear of the consequences.

On the other hand, clandestine broadcasting has played a somewhat interesting role. The Southern based JVP operated the "Rana Handa" radio for its cadres during the times of the insurrection. It has since then joined the democratic mainstream. The LTTE operates the 'Voice of Tigers' which disseminates regular propaganda information.

Both of these were clandestine, pirate radios established by armed rebel groups waging a war with the elected government in power. These radios were not the outcome of a community effort to find a voice for the aggrieved but, as noted above, were established to disseminate propaganda information. Further, the community had no say in planning, designing, setting up and running these 'stations' which were rigidly controlled by the hierarchy of these groups.

The government did their best to stop these broadcasts. Following the 2002 ceasefire between the LTTE and the government, permission was granted to clear transmitting equipment from the harbour as there were public protests that transmitting equipment for the LTTE clandestine radio were to be removed illegally to areas controlled by them.

If one were to consider the option of pirate radios as a means of obtaining licensees to broadcast, the experiences of the pirate radios in the United Kingdom is relevant. In the 60s, the emergence of a glut of smaller pirate radios around the country in urban areas and in campuses became a catalyst for a changed environment. These stations - driven by a love of radio and a perceived need for community broadcasting – are the true ascendants of modern community radios. Their effort is well documented.

The drive towards legal recognition was led by the Community Radio Association – CRA - (now the Community Media Association), formed in 1983 to campaign for a third tier of broadcasting alongside the British Broadcasting Corporation (BBC) and commercial stations. The CRA included many veterans of unlicensed stations, plus academics, community activists and other experienced campaigners. These agitations culminated in the Communications Act 2003 and then the Community Radio Order 2004, which established the final legal frame work for full-time long-term community radio licenses in the UK.

In Sri Lanka, the phenomenon of pirate radios, linked as they were to forces inextricably linked with civil and ethnic conflict, saw no such positive progression. What they effectively did however, was to

make a "mockery" of Colombo's broadcast regulations"[6] and further emphasize the fact that despite a purported liberalisation of the broadcast sector since 1992, there had never been a "wholehearted" deregulation process.[7]

The ineffective role played by community broadcasters in regard to fostering deeply needed processes of reconciliation and healing among communities divided on ethnic, social and religious lines is framed within its essential lack of independence from the state broadcaster with inevitable content based restrictions as this Study will explore further.

As would be made clear, the lack of effective deregulation and an independent licensing environment has had extremely deleterious impact on the domestic broadcasting regime. It has virtually strangled the growth of autonomous and community inspired radio initiatives that might have played a positive role in decreasing ethnic and religious tensions.

3. Legal and Regulatory Framework

This section of the Study provides an assessment of Sri Lanka's current legal and regulatory framework relating to the broadcasting sphere.

A common theme which emerged from a number of the Research Team's interviews, was the need for reform of the legal and regulatory framework for community radio. This is significant because, in the context of Sri Lankan communities, particularly in the rural areas, questions of law and regulatory practices are not generally subjected to scrutiny. However, in the case of community radio, the Research Team discovered abnormally high awareness of the law and its limitations for the sector. This indicates significant local support for legal reform to create an enabling environment for community broadcasting in Sri Lanka.

In its field visits, the Research Team found that continuing efforts to successfully establish community broadcasting in Sri Lanka have been stymied by infrastructural and political problems. Many of these problems result from the way in which local radio is currently affiliated with SLBC. The Research Team has concluded that community radio must function independently in Sri Lanka rather than under the auspices of SLBC.

The way in which local radio is currently connected to SLBC is inefficient and undermines the independence of local radio so that it becomes a vehicle for SLBC instead of a mechanism to allow community members to express themselves on important issues and transmit culturally significant information. This undermining is exemplified by local radio's fluctuating leadership, SLBC's use of airtime for non-community purposes, such as political messages and SLBC's hiring and firing practices of staff, often for political reasons. This could be partly addressed by granting local radio stations significantly more independence from SLBC. However, in line with best international practice, it would be preferable to provide for independent licensing of community broadcasters, as defined properly in the legislation, perhaps in accordance with agreements which allows them to benefit from support from SLBC.

The Research Team's analysis of the legal and regulatory framework suggests that it is not enough simply to provide for the licensing of community broadcasters. Under the present regime, they would be subject to the same pressures that impact on private broadcasters and the SLBC. In particular,

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[6] Nalaka Gunewardene, 2003
[7] *Ibid*

broadcast licensing is not, contrary to international standards, the responsibility of an independent body but is, instead, undertaken directly by the government in conjunction with SLBC. The Research Team therefore further recommends that holistic proposals should address this structural weakness of the broadcasting regime in Sri Lanka.

Local radio is presently subject to extensive control by the SLBC and even independently licensed community radio would probably need the support and assistance of SLBC. As a result, the Research Team recommends general reform of the State broadcaster both as a prerequisite for independent and sustainable community broadcasting and as part of a more systematic reform of Sri Lanka's broadcasting environment. In particular, measures are needed to bolster the independence of SLBC to transform it into a genuine public service broadcaster.

3.3. *International Standards and Domestic Pressure*

In order to protect the right to freedom of expression, the media must be permitted to operate independently of government control. This is necessary for the media to act as public watchdog and to ensure that the public has access to a wide range of opinions, especially on matters of public interest.

Under international law, it is quite clear that bodies with regulatory or other powers over public and/or private broadcasters should be independent and be protected against political interference. In a Joint Declaration issued on 18 December 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression state:

> *All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.*

Regional bodies, including the Council of Europe and the African Commission on Human and Peoples' Rights, have also stressed the fundamental importance of independent regulatory authorities. The latter adopted a *Declaration of Principles on Freedom of Expression in Africa*, at its 32nd Session, 17-23 October 2002, which states:

> *Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.*

The Committee of Ministers of the Council of Europe adopted a Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector on 20 December 2000, which states:

> *[T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector…specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law.*

The Recommendation goes on to note that Member States should set up independent regulatory authorities. Its guidelines provide that Member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities which clearly affirms and protects their

independence. The Recommendation further provides that this framework should guarantee that members of regulatory bodies are appointed in a democratic and transparent manner.

The Supreme Court of Sri Lanka has also found that the guarantees of freedom of expression found in the Constitution of Sri Lanka require the independent regulation of broadcasting (see below for an analysis of the *Broadcasting Authority Bill Case.* This was mandated, among other things, by the role of the government as trustee of the airwaves/frequencies which are universally regarded as public property and which must therefore be used for the public good.

States' obligations to promote freedom of expression and of the media include positive elements, as well as a requirement of non-interference. A key positive obligation is the need to promote pluralism within, and ensure equal access of all to the media. Several international courts and authoritative bodies have held this in their jurisprudence. For example, the Inter-American Court has held that freedom of expression requires that, "the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media."[8] Similarly, the European Court of Human Rights has stated: "[Imparting] information and ideas of general interest … cannot be successfully accomplished unless it is grounded in the principle of pluralism."[9]

The UN Human Rights Committee (HRC), the body tasked with ensuring implementation of the *International Covenant on Civil and Political Rights* (ICCPR), which Sri Lanka ratified in 1980, has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance 'national unity' violate freedom of expression:

> *The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.*[10]

Sri Lanka's approach to broadcasting has long been the subject of critical attention by the HRC, in particular in the context of its examination of national practices through the procedure of periodic reporting on implementation of the ICCPR.

In July 1995, the HRC, in its Concluding Observations on Sri Lanka, categorically recommended:

> *[The Sri Lankan Government] should take the necessary steps to prevent control and manipulation of electronic media by the Government."*[11]

This was in response to its finding that, "Government ownership and control over much of the electronic media might undermine the right of everyone to seek, receive and impart information and ideas of all kinds" and represents a violation of Article 19 of the ICCPR, guaranteeing freedom of expression.

Despite this clear recommendation, made nearly eleven years ago, no changes have been introduced to bring the legal and regulatory regimes for broadcasting in Sri Lanka into line with international law.

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[8] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5*, para. 34.
[9] *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.
[10] *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7
[11] UN Doc. CCPR/C/79/Add. 56, 27 July 1995.

In 2003, in the context of consideration of Sri Lanka's Fourth and Fifth Periodic Reports, the HRC, in its Concluding Observations, expressed concern about the privileged position of the State broadcaster and called on the Government to address this and to ensure pluralism in Sri Lankan broadcasting[12]

Domestic committees and pressure groups have raised similar concerns. In October 1994, the Minister of Information in the newly elected People's Alliance government submitted a cabinet paper which constituted a radical break with the past by promising a major overhaul of existing law and practice in the media sector. The Cabinet promised reform of existing regulation to strengthen freedom of expression and the right to information.[13]

The Minister then appointed a Committee, which included leading lawyers and human rights advocates, to set out a programme of legislative reform. The report submitted by this committee (the Committee Report) stands as a model of liberal thinking on broadcasting issues.[14]

The Committee Report came to the unequivocal conclusion that;

> *"While the need for freedom of expression is acknowledged, the existing laws do not contain adequate provision to ensure it. What we have seen is that political authorities exercise supervision, if not control, over this important medium of communication."[15]*

The Committee Report made an important critique of the Sri Lanka's broadcasting regime that is still extremely valid. It made the point that purely permitting private stations to proliferate cannot satisfy the duty imposed upon the government to ensure that the state funded broadcast media has editorial independence. Thus;

> *It is important that private broadcasting exists; this is one way of promoting pluralism in sources of information and preventing media monopolies. It would be a mistake however to think that pluralism can be ensured simply by permitting private broadcasting. Commercial stations are often unwilling to criticise government policy for various reasons; they are influenced by business considerations and the need to earn advertisement revenue.......While media diversity is important therefore, granting licenses to private broadcasters should not be viewed as a substitute for ensuring the pluralism and independence of public-funded broadcasting. The State will continue to be the main and significant component of broadcasting. Amendments should seek to achieve the public's right to receive information and opinion on matters of public interest.[16]*

In regard to community radio, it was observed that this area is covered by the Regional Service of the SLBC. Consequently, it possesses the limitation of being government oriented in programming and not necessarily dealing with real community issue except very superficially, and that too, on the basis of prevailing political pressures and interests."[17]

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[12] UN Doc. CCPR/CO/79/LKA, 1 December 2003.

[13] See relevant Note to the Cabinet, 1994 as annexed to the Committee Report.

[14] Report of the Committee to Advise on the Reform of Laws affecting Media Freedom and Freedom of Expression, 1996; see Annexure One for relevant excerpts.

[15] *Ibid*, at page 37

[16] *Ibid*, at page 38

[17] *Ibid*, at page 38

Generally its recommendations were that an independent broadcasting authority oversee the implementation of broadcasting policy and broadcast licensing in Sri Lanka. Importantly, the editorial independence of State broadcasters and the principle of editorial independence should be guaranteed by law The Committee Report further stated that:

> *Radio and television broadcasting by the state should be undertaken by separate corporations as now but with necessary changes in the law to guarantee both the independence of their governing bodies and their editorial independence. They should be governed by boards which are independent of government; members should see themselves as independent trustees of the public interest in broadcasting and not as representatives of any special interests. They should be appointed for a fixed term according to specified criteria. The selection process should be such as to ensure it is fair and not subject to political or other pressure....*"[18]

A specific feature of its recommendations was the setting up of an independent Media Council which would cover both the functioning of the print media as well as the electronic media. Its primary mandate was to receive and investigate complaints against the print media as well as the broadcast media. Such a Council would comprise members, the majority of which would be media personnel with proven competence and integrity. The other members would comprise persons of 'intellectual attainment' and would include those with judicial or arbitral experience. Security of tenure of the members would be guaranteed by law and it would be a body functioning wholly independently from the Government.[19]

Where community radio was concerned, it was recommended that a policy for the development of community radio should be set out in law. It should also receive limited support from the State with assurances against governmental interference in programming. The Committee Report stated that while community radio should not be precluded from broadcasting news, it should also be permitted to broadcast commercials provided that such commercial programming would be limited and in any event, would not exceed fifty per cent of the broadcast time.

These Recommendations were hailed at that time as reflecting praiseworthy attempts towards reform. The Government, however, declined to take measures to implement any of these key recommendations. Instead, a Select Committee of Parliament was appointed in 1998 to look into the legislative and regulatory framework relating to the media. A specific part of its mandate included the following;

- the establishment of an Authority to facilitate the development of a broadcasting industry in Sri Lanka which is efficient, competitive and responsive to consumer needs and to ensure that pluralism is achieved in broadcasting as a whole and to provide for;

  (i) the composition of such an Authority which is independent in character;
  (ii) the regulatory and licensing powers that my be conferred on such an Authority and powers to ensure that there is no racial and political bias in reporting; and
  (iii) matters connected with or incidental thereto.

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[18] *Ibid*, at page 39
[19] *Ibid*, at page 40

In their reports to this Select Committee, certain organisations – particularly rights groups such as the Free Media Movement and the Civil Rights Movement – reiterated the concerns and recommendations in the Committee Report.

However, the Select Committee concluded its deliberations without arriving at any conclusive recommendations. With the lapsing of the Parliamentary Select Committee process, amendment of laws relating to the electronic media also lost momentum for some years.

In the year 2002, a different Government in power announced its intention of enacting new telecommunications, cable and broadcasting laws, (including proposed reform of the Telecommunication Regulatory Commission set up in terms of the Telecommunications Act, No 25 of 1991 (as amended by Act, No 27 of 1996).[20] However, this promise was not translated to concrete terms. Similarly, though a committee to work on policy formulation for all state owned media was appointed during this year, no reports on their recommendations were made public.[21]

Critical reports thereafter continued to point to the serious deficiencies in the functioning of the broadcasting regime and called for amendments to the Sri Lanka Broadcasting Corporation Act.[22] Proposals by a domestic advocacy body, the Free Media Movement mooted the broadbasing of the state owned media to public service broadcasting units.[23] However, no forward movement on any of these proposals was evident.

In contrast to the stultifying of the electronic media reform process, vigorous lobbying resulted in important changes to laws inimical to the print media. In mid 2002, criminal defamation provisions in the Penal Code and Press Council law were abolished.[24] Thereafter, influential advocacy campaigns took place specifically in relation to the enactment of a Contempt of Court law and a Freedom of Information law, thereby building a strong base of public opinion for law reform.

Insofar as the electronic media is concerned, as noted above, many of the recommendations in the Committee Report remain relevant currently. The one exception is conceivably its suggestion in regard to the establishing of a Media Council to look into complaints against the broadcast and print media. Though this was a salutary recommendation then, it has now become redundant with the recent establishing of a Press Complaints Commission by print media bodies.[25]

Implementing an independent regulatory body on the lines of the PCC in regard to the electronic media was imperative. Unfortunately however, this longstanding recommendation contained both in the Committee Report and in proposals by media advocacy bodies has yet not been implemented.

3.4. Analysis of the Relevant Constitutional Framework

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[20] K Pinto-Jayawardena, 2003:159

[21] *The Island*, October 5th, 2002

[22] K Pinto-Jayawardena, 2003:156

[23] Free Media Movement and INFORM report on state media, 2003.

[24] Penal Code Amendment Act No 12 of 2002 in Parliament and Press Council Amendment Act No 13 of 2002.

[25] The PCC, set up under the Sri Lanka Press Institute (SLPI), is a collaborative venture of the Editors Guild, the Newspaper Society and the Free Media Movement. Established under the Companies Act, it is entrusted with the task of implementation and interpretation of the Code of Professional Practice that had been formulated by the Editors Guild. Its primary task is the conciliation, mediation and arbitration of disputes between the public and the press. Currently while it has afforded some avenue for aggrieved persons to complain against the newspapers, the efficacy of its sanctions remain a problem. Broadbasing the membership of the SLPI which is presently linked to a few media groups only, has also been urged.

This analysis is divided into two parts in its examination of the constitutional provision; firstly in relation to the broadcasting regime as a whole and secondly in regard to the independent functioning of community radio given the special justification that can be applied in the latter context.

Though it is so divided for the purposes of analysis, it is evident that the latter cannot function in an isolated manner. Rather, general reform of the broadcasting regime is a vital pre-condition to the effective functioning of community radio. This is an inevitable conclusion of this Study as buttressed by our emperical findings as well as research analysis.[26]

3.4.1. The Constitutional Justification for the Independent Functioning of the Broadcasting Sector

Certain principles as articulated by Sri Lanka's Supreme Court have specific relevance in the context of the independent functioning of the broadcasting sector.

The relevant Sri Lankan Constitutional Provision states in Article 14(1) (a), that;

> *Every citizen is entitled to the freedom of speech and expression, including publication.*

The Constitution Bill of August 2000 (which was never enacted into law due to a lack of political consensus) states that;

> *Article 16(1) Every person is entitled to the freedom of speech and expression including publication and this right shall include the freedom to express opinions and to seek, receive and impart information and ideas either orally, in writing, in print, in the form of art or through any other medium.*

In jurisprudence spanning more than two decades since the prevalent Constitution was enacted in 1978, the Sri Lankan Supreme Court has examined the precise scope and content of Article 14(1) (a).

It has been judicially stated that this article is not to be interpreted narrowly.

> *Not only does it include every form of expression, but its protection may be invoked in combination with other express guarantees (such as the right to equality); and it extends to and includes implied guarantees necessary to make the express guarantees meaningful. Thus it may include the right to obtain and record information, may be by means of oral interviews, publications, tape-recordings, photographs and the like, and, arguably, it may even extend to a privilege not to be compelled to disclose sources of information, if that privilege is necessary to make the right to information "fully meaningful". Likewise, other rights may be needed to make the actual exercise of the freedom of speech effective: rights in respect of venues, amplifying devices, etc.[27]*

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[26] Applicable judicial decisions relating to the regulatory regime for broadcasting in Sri Lanka are referable to in Annexure Two to this Study.

[27] per MDH Fernando J in *Wimal Fernando v SLBC*, [1996] (1) Sri LR, 157 – for the factual discussion of this decision see Annexure Two to this Study.

In the above case, the right of a participatory listener to ensure that broadcast programmes to which he contributes was secured within an interpretation of Article 14(1)(a).

A further factor is of interest. Dicta in the judgment was to the effect that if a mere listener had complained instead of a ***participatory listener***, the violation of rights would have arisen under Article 10 of the Constitution guaranteeing the freedom of thought rather than purely in terms of freedom of speech protection afforded by Article 14(1)(a). This was on the reasoning that information is the staple food of thought and that the right to information *simpliciter*, is a corollary of the freedom of thought.

To some, such distinctions may amount to an exercise of judicial indulgence in extreme constitutional rationalisation. However, there was a specific reason why the Court preferred this line of reasoning. Article 14(1)(a) could be restricted by law (including regulations relating to public security) on a number of grounds including racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence (Article 15 (2). That Article is also subject to a more general category of restrictions including national security, public order and the protection of public health or morality (Article 15(7). These latter restrictions include the inexcusably vague grounds of " securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society."

In contrast, Article 10 embodies a near absolute right which could be amended only through a rigorous parliamentary procedure including approval by not less than two thirds of Parliament as well as by the people through a referendum. (Article 83).

Obviously, the Justices were of the view that it would be safer to include the right to opinion within a right that could not be easily departed from. This judicial view was re-iterated with equal force in the second seminal decision of the Supreme Court in relation to Sri Lanka's broadcasting sector.

In this second decision[28] the Court asserted that though licensing *per se* would not amount to an infringement of the constitutional rights of broadcasters, such a licensing body for the broadcasting industry in Sri Lanka must be independent and free from state control.

Further, it cannot treat state broadcasters with special favour and impose more stringent rules on private broadcasters in regard to the content of the programmes broadcast and the consequences that would ensue if the required standards are not complied with.

Importantly for the purposes of our argument, the Court linked up the stipulation in Article 4(d) of the Constitution which states that "the fundamental rights which are by the Constitution declared and recognised, shall be respected, secured and advanced by all organs of government and shall not be abridged, restricted or denied save in the manner and to the extent hereinafter provided" to its exhortation to ensure the constitutional licencing of broadcasting

Its finding that the freedom of thought as well as the freedom of expression had been violated by a proposed broadcasting authority which infringed all the above conditions was key to the determination. The Justices imposed stringent procedures for remedying the unconstitutionality of the draft law; the bill setting up the proposed authority had to be approved by two thirds of Parliament

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[28] *The Determination of the Supreme Court of Sri Lanka in the Broadcasting Authority Bill* [1997, SD No 1/97-15/97], also analysed at length in Annexure Two to this Study.

and also pass muster by the people at a referendum. The bill was withdrawn from the Order Paper of Parliament and did not resurface thereafter.

This judgement set a healthy precedent for regulation of Sri Lanka's broadcasting sector that is exceedingly useful for our Study and its Recommendations as detailed below.

3.4.2. The Constitutional Justification for the Independent   Functioning of Community Radio

The principles elucidated above have immediate relevance where the independent functioning of community radio is concerned. Though this has not been specifically agitated before the courts, a clear constitutional justification can be adduced in the following manner.

The relevance of Article 4(d) of the Constitution in the context of securing the independence of the broadcasting sector in Sri Lanka has already been affirmed by the Court in the Broadcasting Authority Bill determination. This has a powerful rationale where community radio is concerned when it is read together with Article 3 of the Constitution which declares that sovereignty resides in the people. This concept of peoples' sovereignty (viz; Article 3 of the Constitution) can be usefully employed in regard to empowering the functioning of community radio in the country within an expanded definition of constitutionalism.

Constitutionalism is traditionally regarded as encompassing within its ambit, notions such as supremacy of the Constitution, restraints on limits of power and limits on majoritarianism. However, in the context of the Sri Lankan Constitution, where sovereignty resides in the people, this concept has been given material justiciable content that has transcended beyond those traditional notions.

A number of judicial decisions in recent times have effectively used these principles to advance the notion of peoples' rights. These have ranged from the right of a university student to be regarded as a successful candidate at the final examination[29] to judicial review of a Provincial Governor's exercise of discretion[30] the right of a displaced property owner to compensation before eviction by the State[31] and the right of a university lecturer to be considered eligible for the post of senior lecturer.[32]

Particularly, these cases include a challenge to the postponement of a Provincial poll and failure to fix a new date of poll by the Commissioner of Elections[33] and judicial assertion of the right to franchise in Article 4 (e) of the Constitution tied up with the freedom of expression in Article 14(1)(a) with the whole being regarded as a manifestation of Article 3 of the Constitution which declares that sovereignty resides in the people.[34]

In short, the principle of constitutionalism and peoples' sovereignty must address the concept of sovereign power of the people thereby not only providing for the safeguarding of each member of the political community but also pro-actively empowering the members of the political community if they are to possess a meaningful sphere of genuine autonomy.

Carl Frederich, writing on the principle of constitutionalism, has said;

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[29] *WKC Perera v Prof Edrisinghe*, [1995] (1) SLR.

[30] *Premachandra v Jayawickreme*, [1994] (2) SLR, 90)

[31] *Heather Mundy v Central Environmental Authority and Others* SC Appeal 58/03, SC Minutes of 20.01.2004.

[32] *Dr Kunanandan v University of Jaffna*, CA/1559/04, CA Minutes of 15.07.2004.

[33] *Karunatilleke v Dissanayake*, [1999], 1 SLR, 157.

[34] *Thavaneethan v Commissioner of Elections* [2003] (1) SLR 74; *Mediwake vs Commissioner of Elections*, [2001] (1) SLR 177; *Centre for Policy Alternatives v Commissioner of Elections*, [2003] (1) SLR, 277.

'The core objective of constitutionalism is that of safeguarding each member of the political community as a political person possessing a sphere of genuine autonomy'[35]

A good example is furnished by the institution of the communes in Switzerland where members of the communes themselves decide the manner in which they should be governed and meet for that purpose in a convenient place to reach consensus on their local representatives and agree on the conducting of their public affairs such as finances, investments and building projects.[36]

The Research Team points to the same spirit underlying the functioning of community radio in its most essential respects. If therefore, the concept of the sovereign power of the people which is constitutionally entrenched, is to be taken some distance towards its logical culmination, the people need to be empowered at village level to disseminate information and give expression to their daily needs through the concept of community radio.

This is not only a positive but also a necessary measure as exemplified in a number of Articles of the Directive Principles of State Policy in Sri Lanka's Constitution[37]. Though the Directive Principles are not directly justiciable in court, they have been accorded a particular importance in judicial interpretation of the constitutional provisions.[38]

The application of these principles in the general context of the independent functioning of Sri Lanka's broadcasting sector as exhorted to by the Supreme Court in decisions cited in this Study provides an excellent overall rationale towards reform of the existing legal framework in that regard as recommended below.

3.5. Analysis of the Relevant Statutory Framework

The Research Team conducted a critical analysis of relevant legislation – including the Sri Lanka Broadcasting Corporation Act No 37 of 1966 (as amended) and the Telecommunications Act, No 25 of 1991 (as amended by Act, No 27 of 1996).

The analysis took into account principles relating to the management of the broadcasting sector during election times as contained in the 13th Amendment to the Constitution of Sri Lanka. Analysis of the election rules applicable to the electronic media was particularly relevant in light of the fact that elections were pending when the research was conducted. The recommendations are informed by international standards but also, based on the case study of UCR.

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[35] *Transcendent Justice: The Religious Dimension of Constitutionalism*, Durham, North Carolina, 1964, p 17.

[36] *The Swiss Constitution; Lessons for Sri Lanka*, J de A. Guneratne, CEPRA, Colombo, 1995.

[37] See Article 27(2) (a) which mandates the full realisation of the fundamental rights and freedoms of all persons and particularly, Article 27 (2) (g) which is committed to *inter alia*, "facilitating the full development of the human personality."

[38] Article 27(1) of the Constitution states that; " The Directive Principles of State Policy herein contained shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society." Though the Principles are not directly justiciable, they have been used by the Supreme Court to guide its reasoning as for example in decisions such as *In Re the Constitutionality of the Provincial Councils Bill and the Thirteenth Amendment to the Constitution Bill* [1987] (2) Sri L.R. 312, at page 326, *Maithripala Senanayake Vs Mahindasoma and Others* S.CC. Appeal No 41/96 Minutes of 14.12.96 at pages 13-14 of the judgement (unreported) and *Seneviratne v UGC*, [1978-79-80] 1 Sri L.R. 182, at page 216.

The Research Team's conclusion was that local radio stations in Sri Lanka remain subject to considerable political pressure. As noted, this is the result of their dependence on a politicised State broadcaster (SLBC) and their lack of independence from governing authorities.

3.5.1. *The Sri Lanka Broadcasting Corporation Act (as amended)*

The SLBC Act, No 37 of 1966 (as amended), (hereafter the SLBC Act) establishes the Sri Lankan Broadcasting Corporation and grants it responsibility for various aspects of broadcasting in Sri Lanka, as well as for the development and improvement of services in the public interest. SLBC also has various duties regarding any private broadcasting licences that the Minister may issue. Additional functions of SLBC include, *inter alia*:

- Exercising supervision and control over programmes broadcast by the Corporation[39] and
- Advising the Minister regarding other broadcasting matters[40]

It is the duty of SLBC to ensure that:

- Nothing is included in programmes which might offend good taste or decency.
- Programmes are of high quality and maintain a proper balance of subject matter.
- News is presented with due accuracy, impartiality, and with due regard to the public interest[41]

As has been noted, international standards provide for the independent overall regulation of the broadcast media. The same principles apply to the governance structure for any public media. As the Supreme Court of Ghana has noted: "[T]he state-owned media are national assets: they belong to the entire community, not to the abstraction known as the state; nor to the government in office, or to its party. If such national assets were to become the mouth-piece of any one or combination of the parties vying for power, democracy would be no more than a sham."[42]

Section 44 of the SLBC Act empowers the Minister to issue licences for the establishment and maintenance of private broadcasting stations. Section 44(4) provides for regulations to be made by the Minister regarding the control and supervision by SLBC over these private stations. These are intrusive powers which should, as noted above, be exercised by an independently constituted body.

This power of supervision includes the following provisions: subsection (b) deals with control of content and programmes; subsection (d) prohibits the ownership of private broadcasters by prescribed persons or classes of persons; subsection (e) regulates the transfer of shares in companies holding private broadcasting licences; and subsection (g) deals with fees to be charged for such licenses.

The SLBC lacks the requisite independence, not only because of its own regulatory role over private broadcasters but also in its own right as a State broadcaster with a mandate to serve the public interest. An overriding negative feature of the Act is the subservient position that it accords all governing authorities of the SLBC in relation to the political authorities. A robust critique of its provisions includes the following;

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[39] See section 3(1)(b).
[40] See section 3(1)(c)).
[41] See sections 3(2)(a)-(c).
[42] *New Patriotic Party v. Ghana Broadcasting Corp.*, 30 November 1993, Writ No. 1/93, p. 17.

a) At present, pursuant to the SLBC Act, the five members of the SLBC Board are all appointed by the Minister. No qualifications or hiring criteria are specified;[43]

b) By Section 8(1) the Minister may, if he considers it expedient to do so, remove by Order published in the Gazette, any member of the Corporation <u>without reasons stated.</u> (emphasis ours)

c) By Section 5, the Corporation is required to comply with the general policy of the Government in respect to broadcasting and shall comply with any general or special directions given by the Minister pursuant to the policy of the Government in relation thereto

The latitude afforded to politicians through these provisions to exercise control over the functioning of the SLBC has, through the years, led to a merciless deterioration of the standards of the institution and routine political appointments of its Chairmen with every successive change in government.

3.5.2. *The Sri Lanka Telecommunications Act, No 25 of 1991 (as amended)*

The Sri Lanka Telecommunications Act, No 25 of 1991 vested the functions of technical regulation of radio frequencies earlier handled by the Telecommunications Department (under Ordinance No 50 of 1944) in an Authority. The Authority was empowered to *inter alia*, manage and control the use of the radio frequency spectrum and issue licences. It had the power to withdraw or suspend use of such allocated frequency.

Act No 27 of 1996 amended the parent Act No 25 of 1991 to replace the Authority with a Telecommunications Regulatory Commission (Commission). The Commission's powers included the control of the use of the radio frequency spectrum and the authority to issue licenses to use radio frequencies in Sri Lanka, as well as to maintain all telecommunication apparatuses (equipment). Like the Authority, it is also authorised to revoke a licence. The amendment law also provided for an appeal to be made to the Court of Appeal against the refusal to issue a licence or a revocation as the case may be.[44]

The Commission, like the SLBC, is a body over which the Government has been granted a degree of control by law. By Section 3 of the Amendment Act, its membership comprises the Secretary to the Minister, who is the Chairman, the Director General of the Commission, and three other members appointed by the Minister on stipulated criteria. The removal of members of the Commission is however, for reason assigned.[45]

The Director General of Telecommunications (effectively the chief executive officer of the Commission) is appointed by the Minister without criteria being specified for such appointment and the conditions of employment including remuneration are determined by the Minister (Section 22B). In addition, there is no security of tenure for the Director General as removal by the Minister is not for reason specified. (Section 22B(4).

The cumulative effect of these provisions in diminishing the independence of the Commission is undoubted.

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[43] Section 6.
[44] Section 22(4).
[45] Schedule to the Act, Section 3.

3.5.3. The 17th Amendment to the Constitution

During election times, the SLBC had been a special target of government politicians intent on using broadcasting time for their own partisan propaganda. This is borne out by several independent studies conducted by research institutions during the time of elections. [46]

Sri Lanka's Supreme Court, during the mid to late 1990's in particular, had intervened to prevent such partisan use by delivering judgements that affirmed the right that state resources (maintained with the contributions of tax payers of all political persuasions) should not be used for the benefit of one political party alone. [47]

However, from the year 2000 onwards, such judicial interventions decreased. In some instances, it was even contrarily implied by judges that the existence of the private media through which opposition political parties aired their views was sufficient reason for the state media to be used by the government to the exclusion of their political competitors. [48]

In this regard, responding to an increased public demand for greater accountability in the use of state resources during election times, Sri Lanka's Parliament unanimously passed the 17th Amendment to the Constitution in 2001 which imposed certain prohibitions in that respect.

Article 104B(4) of the 17th Amendment empowered 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. A primary objective of this provision is to prevent the abuse of State resources, including State broadcasters and State-controlled local radio stations, in the context of elections.

Section 104B(5) authorised the Elections Commission to issue guidelines designed to bring about free and fair elections. Once issued, these guidelines must be adhered to by all broadcasting and telecasting operators, proprietors, publishers, political officials and others. Subsections (b) and (c) of this section single out the Chairmen of the SLBC and the Sri Lanka Ruphavini Corporation (SLRC, State television) as having a particular duty to respect these guidelines. These subsections also set out a procedure whereby the Elections Commission may appoint a Competent Authority to manage media institutions in the event of a contravention of the guidelines.

This constitutional provision was further strengthened by the Competent Authority (Powers and Functions) Act, No 3 of 2002 (passed by Parliament in March 2002), which vests extensive powers in a Competent Authority appointed by the Elections Commissioner, should a State broadcaster breach

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[46] Out of the many such reports on prevalent patterns of abuse of the SLBC, see monitoring reports of the Centre for Monitoring Election Violence, reports of the Programme For Protection of Public Resources and Transparency International (Sri Lanka) Study, 2004 and Reports of the European Commission elections observor teams.

[47] See for example, *Don Ranjith Deshapriya v Divisional Secretary, Dodangoda* [1999] 2 SLR, 412, (per judgment of MDH Fernando J) - ruling that public officials paid out of public funds, collected directly or indirectly from citizens of all shades of political opinion, cannot be used to advance the interests of those of one political persuasion alone. This prohibition was held to apply to public made directly to politicians as well as indirectly by diverting equipment, facilities of the State to the benefit of one political party

[48] For example, in SC(FR) No 633/2001, filed by a member of the Free Media Movement documenting political use of the telecasting and broadcasting media in regard to the 5th December 2001 General Elections. During the course of hearing the application for the preliminary step of leave to proceed on 26/11/2001, Chief Justice SN Silva presiding over the Bench stated the Petitioner should turn off the state run telecasting station Rupavahini and switch to another private media channel if he found the state media to be biased in its coverage. Leave was not granted and the matter put off indefinitely despite clear documentary evidence of blatantly political coverage.

its obligations under the 17th Amendment. The Authority is empowered to monitor SLBC and SLRC programmes to ensure that the election guidelines are being adhered to and it is vested with all requisite powers to ensure that they respect the guidelines.

Moreover, the Authority has the discretion to advise the Minister of the extent to which the guidelines have been contravened, as well as to seize broadcasting apparatus, acquire property and prohibit the broadcasting of any material considered to be counter to the public interest. The Authority also possesses general powers to take any action it deems necessary to ensure a free and fair election.

Though a number of elections have been held after the enactment of the 17th Amendment as well as the passing of enabling legislation, the use of these provisions by the Commissioner of Elections has been faltering. In some instances, a Competent Authority has been appointed but only at the very end of the electioneering period resulting in little practical impact on the use of the electronic media in particular. However, these provisions do constitute a definite improvement of the law. Further amendments to ensure even greater efficacy are suggested in Part 7 of this Study.

4. Community Interest Broadcasting

4.7. The Establishment of Local Radio in Sri Lanka

In Sri Lanka, according to Phillip O. Keirstead and Sonia-Kay Keirstead, local radio "came about as the result of an article written by N. Chitty (Sri Lankan diplomat)…on farmers' participation in the production of radio programmes about their own problems." Knud Ebbesen, then Director of the Danish Public Access Radio project, became interested in Sri Lanka and was instrumental in setting up local radio in Sri Lanka.[49]

The concept of local radio was introduced to Sri Lanka with the initiation of Mahaweli Community Radio (MCR) at the beginning of the 1980's, although farm and rural broadcasting produced by the State broadcaster was not unfamiliar to Sri Lankan audiences.

MCR, a collaborative effort of the State-owned Sri Lanka Broadcasting Corporation (SLBC) and the United Nations Educational and Cultural Organization (UNESCO), was the result of a proposal made by Ebbesen, after a special study of the Mahaweli resettlement project, to develop a local radio as part of the larger Mahaweli developments.

With funding from the Danish International Development Agency (DANIDA), UNESCO agreed to sponsor the project which sought "to accelerate and facilitate the socio-economic improvement of the new settlers in the Mahaweli Development plan through the rapid, timely and relevant sharing of experiences using the medium of radio."[50]

The MCR was built on the experience of *Baandvaerkstedet* (the Tape-Workshop), a public access department of Radio Denmark. Public access radio in Denmark "was studied by the (UNESCO) consultants as well as SLBC personnel, and an approach suitable for local conditions was adopted"[51]

MCR was established with its head office in Kandy, the provincial capital, on 12 March 1981, and first broadcast five months later, in October. Initially, it produced and taped three weekly programmes

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[49] Valbuena, AMIC, 1993:17
[50] As quoted by Aabenhus, MCR Restricted Reports, 1985: 01
[51] Fernando, AMIC, 1993: 49

which were broadcast over the regional SLBC station, Rajarata Sevaya (RS), six times a week (i.e. broadcast twice). A thirty-minute programme was also broadcast over the national service of the SLBC. Later, this broadcasting schedule was extended to the two other regional SLBC services, Ruhunu Sevaya and Kandurata Sevaya.

A production unit created the programmes (see below), which aimed to offer villagers a better opportunity to exchange experiences and to learn from one another. Central themes of the broadcasts included development-oriented topics covering aspects of village life such as "farming, nutrition, marketing, housekeeping, youth problems as well as community activities and the cultural life in the village."[52]

According to researcher Victor T. Valbuena, the purpose of establishing a separate, community-based radio programming service under the aegis of SLBC was as follows:

> *[R]adio would be used to motivate the people in the Mahaweli settlements to take on the responsibility for bringing about change in themselves and in their communities. This, it was envisioned, would be done through community radio, or more precisely, through community-based radio programming and production. This would be the Mahaweli Community Radio or MCR.[53]*

A listener survey conducted by the Listener Research Division (now Audience Research Division) of SLBC in 1982 revealed that the MCR programmes had no separate designation and were widely considered regular programmes of Rajarata Sevaya. A possible reason for this was the subtlety of the difference between RS programmes and MCR programmes, both of which employed a unique broadcasting technique. An expanded study conducted in 1984 established that listeners had become more aware of the distinct nature of MCR programmes. Commenting on these programmes, Ebbesen notes:

> *[W]ithout effacing the development objectives of the communication, more time in the programs was dedicated to problems found in the villages selected for production. Authorities responsible for shortcomings in the village were confronted with the consequences for the villagers and often were able to design solutions. In other instances the producers were able to guide the villagers to solve their own problems and a radio program then communicated the process to the listeners.*

Also according to Ebbesen, "this important assistance to the settlers has uncovered a great demand for expansion of programme time and introduction of new and additional programme formats."[54]

4.8. MCR Methodology

In the late 60s and 70s, the SLBC was very active in the field of development-oriented programming based on theories which were popular at the time. This model,

> *tended to believe that the potential of mass communication was enormous in convincing people to take part in implementing development activities.....this concept resulted in the creation of a separate rural service (at SLBC) to support the Grow*

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[52] publicity leaflet to launch MCR, issued by the project in 1981.
[53] Valbuena, AMIC, 1993: 69

[54] Fernando, 1990

> *More Food campaign and the Food Drive. It was a process of telling and teaching from the centre to the periphery.*[55]

The method SLBC followed was to send producers from Colombo to rural areas for short visits to collect materials for programmes.

> *But due to the shortness of the visits and the absence of an overall strategy only influential active farmers were interviewed. The model was the trickle down system. It was believed that information and persuasive messages would transfer ideas and knowledge and lead to motivation.*[56]

Furthermore:

> *Stories and interviews with…. minority segments, manipulated by the communicators, became the main feature It was believed that the information and persuasive messages in these programs were bullets, which had the power to transfer ideas, feelings, knowledge and motivation automatically. But as far as the audience was concerned these were just blunt bullets from guns that did not even have the desired range...the whole operation was a result of a misconception of the role of radio, as a result of the then dominant model of development.*[57]

MCR planners were familiar with this 'old model' employed by SLBC and sought to deviate from it by creating truly local radio. The approach adopted for MCR was based on the Free Access Radio of Radio Denmark, *Baandvaerkstedet* (the Tape-Workshop). Aabenhus describes the Tape-Workshop as,

> *giving access to people 'off the street' who wished to express their point of view in the form of a radio program. All necessary equipment and professional assistance is put at their disposal. Proposals are selected by a 'Working Group' to which representatives for the 'Users' (i.e. those who are doing or just finished programs) elect three, the professional staff appoint two. All programs are broadcast*[58]

The assumption underlying this approach is that it is important to provide facilities for and assistance to community members to encourage them to create their own radio programmes. Explaining the validity of the Tape-Workshop method, Aabenhus goes on to state:

> *[T]he original aim was to transplant the ideas of access and participation into the context of Third World farmers, within the framework of a major settlement scheme. Participation in the media process, through doing your own program, through the very endeavour of formulating your point of view was seen as a major step towards developing openness and awareness, ability to learn new methods, and willingness to talk of new practices. It would bring neglected issues to the fore and it would add a new type of program with a high degree of credibility because the majority of programs would be by people who related their own experiences.*[59]

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[55] Jayaweera, *Four Essays MCR Workbook*. 1985:09
[56] Fernando, AMIC, 1993 : 47
[57] Jayaweera, *Four Essays MCR Workbook*, 1985: 09-10

[58] Aabenhus,Four Essays 1985: 27
[59] *ibid*

However, the free access model was redesigned to suit local conditions.

Ebbesen describes the final version of the model offered for adoption by Consultants and media personnel of SLBC.

First, the two producers in a team, in consultation with their colleagues and the project management, select a village for production. One of the producers then pays a short visit to have preliminary discussions with villagers and to organize accommodation for the team which arrives the following week. Here it is important to select a place without any individual bias...Most often the team will select a temple, a community centre or another common place and avoid private premises.

At the next project program meeting (held weekly on Mondays) this producer will report his observations and the possibilities will be discussed by the entire program staff including executives ...

Then, on the Tuesday morning in the first week, the team travels to the village. The two producers will be accompanied by a cook and a driver with kitchen utensils, camp beds and other items necessary for a four days' stay in the village. Each of the producers brings a portable tape-recorder but, on the day of arrival, these will not be exposed. They make themselves known in the village and work to create an atmosphere of credibility before they start recording ...

In the course of the Tuesday evening and night the producers will have established in the village and prepared a rough plan for the recordings to be done from Wednesday morning. They will get the villagers to participate as much as possible in the process of planning and recording. The producers will not only plan interviews, but will also search for sound-material, music, songs and other effects ...

The second week will be spent in the office where the producers will monitor all their recordings and plan the editing and mixing of the programs ...

On the third week the team will consist of ten staff members including two producers, two technical assistants, two drivers, three laborers and a cook. This team will stay from Tuesday to Friday and again share the village life. They will bring a complete set of equipment for the production of radio programs, including a power supply. On the Tuesday night the villagers will arrange a cultural show based on their own, folklore, with songs, music and drama performed by the villagers themselves..... All programs will be monitored and evaluated in the village before the team leaves on the Friday evening. The programs are broadcast the following week.[60]

According to Ebbesen, the MCR encouraged,

villagers to take an active part in the development process or, even better, to take their own initiative to improve living conditions in their communities. Development implies change, and the first change to take place is in the attitude of the people who will be directly affected by the development. They have to be helped to understand that they can do something to help themselves, instead of just waiting for others to

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[60] Ebbesen (as quoted in AMIC), 1993:39,40 & 41

take action. If they do not realize this, they and their community will simply remain in the infinitely long queue of backward rural areas.

The project from the very beginning was based on the belief that the radio would be a powerful instrument to motivate village listeners. The immediate objective was to develop the theoretical background for such a communication system, then to put it into a practical format and eventually to establish it as a permanent part of the Sri Lanka Broadcasting Corporation's program output.[61]

The project was designed to allow the Mahaweli Authority of Sri Lanka (MASL) to cooperate closely with the Accelerated Mahaweli Development Scheme, but "[MASL] was neither part of nor responsible for it," which was "of great significance in its development."[62] According to MCR planners, two important project components were set out prior to the commencement of the service.

1. A pre-study of the target area was carried out to collect basic data on the socio-economic conditions in order to obtain a community profile of the potential listeners.
2. Special teams of producers were given intensive training in all aspects of rural life, with special reference to the Mahaweli settlements.

The Research Team's analysis of MCR practices yielded the following observations:

1. Generally, most of the programmes were produced in the villages by the broadcasters in the presence of villagers.
2. This lessened the gap between villagers and broadcasters.
3. It also allowed communities to familiarise themselves with techniques of radio programme production.
4. Radio was used to motivate village listeners.
5. Programmes were produced and broadcast by a team of professionally trained broadcasters on behalf of the community.
6. Guidance, facilities and equipment were provided to the broadcasters to do programmes in the villages.
7. The programme topics, content, format and air times were selected by the broadcasters and project executives in consultation with the community. The final decision laid with the project executives.
8. Broadcast staff spent time living with villagers, allowing the broadcasters to familiarise themselves with the local way of life and problems.
9. As the project planners later realised, this process was costly and time consuming, and as a result had to be modified.

4.9. MCR Services

At one point, MCR consisted of a regional service and three local services. The former failed to survive the withdrawal of DANIDA/UNESCO support and no longer exists.

4.3.1. The Regional Service

In December 1983, a Tripartite Review by SLBC/Sri Lankan Government, UNESCO and DANIDA recommended the creation of a special regional service for the Mahaweli settlement areas. Separate programme production units were established in the three regional SLBC stations, in order to

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[61] *ibid*
[62] Fernando, AMIC, 1993:49.

broadcast development-oriented programmes. Programmes were broadcast from 19:30 to 20:30 over three regional stations in Anuradhapura, Matara, and Kandy. The programs were produced separately by these stations but followed a similar program approach.

Over time, there was also a change in the programming approach. A daily, one-hour programme, known as *Gemi Horawa* or 'Rural Program Belt', which was based largely on listener participation, soon became the staple of MCR. The longer duration, planned programmes which had originally characterised the MCR's programming were replaced by a collection of shorter programmes based largely on an interview format. This approach eliminated the necessity for repeated field visits and living in villages which was comparatively expensive. According to Aabenhus, there was a switch to "variety programming where a number of shorter programs that were five, ten, or fifteen minutes each were introduced in a one-hour live continuity schedule under the name, 'Rural Program Belt.[63]

He also noted that, from an economic perspective, it was "quite clear that going by jeep to villages, staying for a number of days while producing programs is an expensive method compared to the general program routine in Third World broadcasting."

In an interview in Colombo on 9 February 1987, E.S.T. Fernando, then coordinator of the MCR project, explained the decision. He noted that the earlier technique – which relied on extensive and repeated field visits by the production teams – were simply too expensive and he maintained that "consideration of cost factors was one of the reasons for development of the one-hour rural belt carried by the three SLBC stations."

Even this modified version, however, was a significant departure from the traditional central and regional SLBC systems of programme production, being based on the two-way communication concept, which provided for the active participation of listeners.

4.3.2. The Local Services

On the recommendation of the Tripartite Review, the first truly local radio station of MCR, Girandurukotte Community Radio (GCR), was also established in April 1986 to provide services to the 25,000 settler families in the Mahaweli "C Zone". Established as a joint effort of SLBC and MASL, the new service was initially funded by the European Economic Community. The initiative was prompted by a perceived need by MCR project planners and MASL for an efficient channel of communication between the settlers and local authorities. Planners sought to develop it as a "listener's radio" which would support development efforts in the target communities.

The intent behind GCR was to have a station with a few professional producers, supported by a core group of community volunteers. This personnel scheme was designed to conserve funds and generate significant local participation. As Valbuena points out, "in the GCR approach, there is, theoretically, immediate listener access to the medium and immediate feedback, and possibly more opportunities for participation in programme planning and production." [64]

GCR was hailed as "an important landmark in the history of community radio in Sri Lanka" [65] and "a tremendous success from the very beginning," [66]

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[63] Aabenhus, Four Essays, 1985:03
[64] Valbuena, AMIC,1993:100
[65] Fernando, 1990
[66] Ebbesen (as quoted in AMIC), 1993 :42. Annexure Three to this study contains a series of interviews focusing on MCR decision-making processes and community radio.

Spurred by this ostensible success, the project established two more 'local' radios at Mahiluppalama, Anuradhapura, in October 1987, and at Kotmale, Central Province, in February 1991, using the same approaches and techniques as GCR. A few more local radios for other Mahaweli zones were planned, but were never set up. The present status of these stations is as follows:

Girandurukotte
GCR is no longer operating because its transmitter, which was used to broadcast programmes, has been removed by SLBC, apparently without cause.

Mahaillupallama
The Team visited the station at Mahaillupallama and found only two people present, a security guard outside the premises and a single operator, Dayananda, formerly the station Controller. This station, too, is no longer operating because its transmitter and other required broadcasting equipment has been removed by the Station Chairman.

Kotmale
Kotmale Community Radio (KCR) is perhaps the best known community radio station in Sri Lanka. While still operating, it is facing significant economic and human resource problems. It seems to be becoming more commercially-oriented than community-oriented and this metamorphosis seems likely to change the entire character of the station soon.

4.4. The MCR Experience: Some Problems

The MCR project has been studied, evaluated (and even replicated) by researchers, media experts, community radio activists and many others during the past two and a half decades. These studies generally confirm that it "has indeed made a significant effort that simply cannot be ignored." [67]

According to researcher Victor Valbuena, a pertinent question was as to how long could MCR sustain its programme format, given the costs, especially to attract good quality people? MCR was in danger of running out of resources; it might also run out of personnel, motivation, volunteers and production concepts. Valbuena correctly stated: "It is extremely difficult to sustain this kind of format creatively in any broadcasting situation."[68]

Specifically, where KCR was concerned, when its Internet project was carried on with UNESCO collaboration, its functioning contributed to the development of the community. This project allowed direct Internet access to users as well as indirect access whereby listeners were able to write in questions or provide topics that were researched by trained volunteers. This research would be translated into Sinhala or Tamil and broadcast back to the listeners. Web pages were created by eager volunteers, listeners clubs were established and a data base of information requests was maintained.

In 2001, a study done for the Rockefeller Foundation concluded that KCR was an "example of community radio stations that were established and partly funded by the government with little political interference."[69]

However, if this conclusion was true at all during the early years of the KCR, it is certainly not the current reality as was documented by the Research Team during this Study. Broadcasters at KCR remained wary of involvement in issues that challenged the political authorities during broadcasts, on

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[67] Valbuena, AMIC, 1993**:**111
[68] *ibid*, 1993:113
[69] Dagron, 2001.

the basis perhaps that 'discretion is the better part of valour." While this approach may have been conducive to a "safe" broadcast environment, there was no doubt that it had the effect of diminishing the energies of the broadcasters and preventing them from engaging in vital dialogues between the communities and the political authorities.

When the Research Team visited KCR and conducted indepth interviews as well as focus group discussions with its staff, volunteers and listeners, it was clear that the old enthusiasm had waned and that the energies of the project had been sapped by the abrasively politicisation of the broadcasting sphere.

Where MCR was concerned, the competing points of view in regard to the purported independence of Sri Lanka's community radio stations is brought out in the succeeding analysis.

When M.J.R. David, pioneer MCR broadcaster, university lecturer, now attached to BBC World Service, was asked: "Do MCR broadcasters actually have the freedom of deciding the content of their broadcasts?" he replied: "To a great extent it was independent as there was very little interference from Colombo other than taking away jeeps and broadcast equipment from time to time." [70]

An opposing point of view has been expressed by Nalaka Gunawardena, media commentator and Director of Panos South Asia. He has pointed out that the MCR broadcasters only enjoyed independence insofar as they did not undermine the interests of the government or the political party in power:

> *A globally persistent myth holds that community radio has been thriving in Sri Lanka for two decades. In reality, all we have is rural transmissions of SLBC masquerading as 'community radio'. For sure, the stations are located in remote areas, involve local people in programme production and broadcast to a predominantly agrarian audience. But listeners have no say in running the station that are managed by a tight bureaucracy in the capital Colombo, and whose rigid guidelines control content: strictly no politics, and nothing remotely against the government in office.* [71]

As it is, these two points of views may seem to be at loggerheads. This dichotomy can be understood only if we take into account the fact that MCR is a SLBC enterprise (with DANIDA and UNESCO assistance, of course) and its broadcasters were subjected to strict control, both apparent and hidden, by its owners (ie SLBC) exercising its authority through regional directors and controllers. MCR program contents were mostly limited to the dissemination of agricultural instructions and information, and other materials useful to day to day life of the villagers, and as Gunawardena says,' strictly no politics and nothing remotely against the government in office'. It was very evident, that the 'carrot and cane' technique was engaged to ensure conformity. This had a certain patronising logic to it given that the local stations were established to take the development messages of the 'centre' to the masses rather than let the masses voice their 'views'.

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[70] M.J.R. David, email interview, 2005.

[71] Gunawardena, 2003. See also observations supporting this view contained in a study by the Community Radio Network (http:// www.communityradionetwork.org/leftlinks/comm-radio-southasian/Sri Lanka wherein it is pointed out that "Both MCR and Kotmale projects are credited with working towards the development and enrichment of the community. However, the government's control of community broadcasting through the state owned SLBC has prevented the emergence of a wholly effective participatory medium 'owned by the communities."

4.5. MCR: Community or Local Radio

Community radio has long been defined by its proponents as "radio of the people, by the people and for the people." This phrase captures the driving force behind successful community radio.

It may justly be said that MCR, while making a valuable contribution, has not really attained the goals of community radio. Broadly speaking, interviewee Wijayananda Jayaweera's statement accurately describes MCR: "I would not call MCR a community radio. It was a radio service with a purpose; that is to service Mahaweli settlers within whatever limitations imposed by the general broadcasting scenario existed in Sri Lanka." [72] Indeed, Jayaweera noted limitations of the MCR approach as early as 1984, when he was Organizer of MCR:

> [T]o maintain the community atmosphere, appropriate methods of organizing and managing must be devised. Feasibility to run these stations on a cooperative basis, under a special broadcasting license issued by the Ministry of State, could be considered a fruitful way to start. Along with the members of the community, who will form the majority segment of the shareholders, SLBC and MASL could become limited shareholders with a seat on the Board of Directors of the cooperative society.[73]

This proposal is closer to the modern, widely accepted definition of community radio than that which was used – and is still used – in Sri Lanka.

Dr. Felix Librero has stated:

> [E]xcept for a few cases in the Philippines, we can hardly see in the region an entire radio station whose programming is completely based on the philosophy and techniques of community radio. What we see in fact, is a number of community-oriented specific radio programmes inserted as part of a larger programming scheme based on either merely informing people (which is really one-way communication) or profit motivations (which is the purpose of commercial broadcasting). Under these conditions, participatory broadcasting, which is a critical approach in broadcasting, cannot completely flourish.[74]

The MCR planners did not challenge or act on Jayaweera's and Librero's views. Instead, they opted to amend the original MCR model, under which broadcasters lived with villagers for several days and did programmes in their presence and with their participation. This was replaced by the *Gemi Horawa* model which involved curtailed field visits and more limited community participation and involvement. Additionally, there is no evidence to indicate that these views, which were gaining community support at the time, were discussed, debated or analysed by MCR policy makers and broadcasters. Nearly two decades later, real community radio has still not been implemented within the MCR system.

At a focus group discussion on 8 July 2005 at KCR, volunteers and relief announcers who had been working at KCR for an extended period under the guidance of Controller Sunil Wijesinghe noted:

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[72] Jayaweera, email interview, 2005.
[73] Jayaweera, *Four Essays* 1984:17
[74] Libero, AMIC1993:58

The community radio is a radio run by a team of professional broadcasters for the benefit of the community. It is a place where the community can freely come in, where they can participate in programs but not belong to them.

When questioned about the importance of community participation in broadcasting during interviews, KCR broadcasters seemed hesitant to commit to any particular position. They generally claimed to be unfamiliar with community radio "of the people, by the people and for the people" because KCR had not yet held a formal debate or discussion on the subject.

Harischandra Perera, the Controller of GCR, was interviewed in 2005. Perera defined community radio as a "convenient method to present ideas and creations of the community in a way very close to them." This definition has been widely accepted by regular contributors to and listeners of KCR. For example, T.B. Abeykoon and Martin Thelkarage, attorneys by profession, have contributed to KCR programmes since the late 1990s. Abeykoon is the founding member and patron of the KCR listeners' club, *Mithuru Samajaya.* Both Abeykoon and Martin suggested that KCR should not belong to the community. Abeykoon was emphatic on this point, but argued that the community should be allowed to participate in programmes and that the station should broadcast programmes which were useful to the community.

On 30 and 31 July 2005, the Study Team interviewed sixteen listeners in a region near Girandurukotte using a semi-structured interview method. When asked who should own, manage and sustain a true community radio only one of the respondents said it was the community itself. Despite the small number of interview participants, it is notable that some believed that the MCR technique should be better developed because the concept of community radio had not taken root with the practitioners. This again goes on to prove that neither the MCR nor its practitioners had in mind that, at certain point of time the communities should take over these stations and run and maintain them as true community radios, although mention of this fact here is not to undermine or undervalue the services rendered by MCR broadcasters.

4.6. MCR's Problems: An Analysis

It is apparent from the above that the MCR experience has not been an unalloyed success. Only one of four stations is currently operational and problems of independence, funding and community participation persist even for this station. The analysis of the research team is that these broadcasters have faced serious hurdles arising from a disabling environment, including the following:

- Although SLBC was instrumental in establishing these community radio broadcasting stations, it later significantly scaled back its support for them. Economic problems at SLBC are likely to be the underlying cause. As Jayaweera stated: "[R]educed allotment of public funds to SLBC has translated into a reduction in its obligations towards these stations. Though it has been advised to make up the shortfall by generating advertising revenue by competing with private broadcasters, this has undermined its public service orientation. It comes as no surprise, therefore, that under these circumstances community radio services are being looked upon as burdens by national broadcasting systems." [75]

- SLBC has exercised tight control over these local radio stations and is apparently not amenable to changing this policy, resulting in the inability of these stations to function effectively. This problem has been examined by Don Slater and colleagues in their study of

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[75] Jayaweera, email interview, 2005

the KCR Internet Project. [76] According to this study, the KCR was wholly governed by the SLBC. Specifically, SLBC controls all KCR finances, manages revenue and must authorise every KCR expenditure. Strict limits have been placed on staff salaries and on the monthly allowable mileage for the station van. Any changes in advertising rates must be authorised by SLBC which, according to testimonial evidence, can take months, and this, in turn, significantly complicates commercial negotiations. Accordingly, the KCR project has insufficient resources and essentially no autonomy. It has further often been destabilised by threats of closure. This demonstrates the harm and inefficiency that SLBC's policies have engendered in these stations.

- When financing and implementing agencies stopped supporting these local radios, leading personalities such as Fernando, Jayaweera and David, who had provided active and enthusiastic involvement in planning and implementing the MCR project, had to leave for various reasons. Their successors as project leaders, albeit one or two perhaps like present KCR controller Sunil Wijesinghe, were not of the same calibre and apparently lacked commitment to the concepts and techniques developed over the years by MCR. Lacking leadership and guidance, MCR suddenly became 'an abandoned child'. Furthermore, new leadership at SLBC was more interested in using MCR resources for the needs of the centre. As Slater *et al.* put it in the study referred to above, "SLBC was not only overly controlling, bureaucratically moribund and unresponsive; it was also *perpetually in a state of crisis and confusion, with a bewildering profusion of rumours, plans and personnel changes both within SLBC and its governing ministry.*" [emphasis added]

The Research Team has already noted that MCR regional services have effectively collapsed and MCR local radios are on the verge of collapse. The response by the Mahaweli communities to this has been subdued. The Research Team found little evidence that these communities mobilised to express support for MCR. No protests or other public campaigns were orchestrated to save MCR. The Research Team concludes from this that these communities did not view the MCR project as sufficiently community-oriented for them to take action to save it from collapse. According to the data compiled by the Research Team, this lack of community support for MCR was not unexpected.

As Ebbesen, who is credited with designing the project, states: "[T]he project from the very beginning was based on the belief that radio would be a powerful instrument to motivate village listeners."[77]

The Research Team concludes that the intentions of the planners were sincere; they seemed committed to serve the communities. As Valbuena concludes after an exhaustive study of the impact of MCR: "[I]t has created a tremendous impact on the lives of Sri Lankan settlers in the Mahaweli. It has proved to be a powerful tool for the education and the development of people and communities."[78]

At the same time, no plan or mechanism existed to involve the community in the planning and implementation of the project. The communities were merely recipients of messages and were infrequently providers of content. This is an important lesson for future endeavours in this area.

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[76] Ebbesen, 1986.
[77] Ebbesen, AMIC 1993:37
[78] Valbuena, AMIC,1993:112

5. Case Study: Uva Community Radio (UCR)

5.1. The Establishment of the Uva Community Radio

Uva Community Radio (UCR) was planned as an integral part of the Uva Area Based Growth and Equity Program implemented by UNDP Colombo. The community radio component was conceived as a tool to facilitate peoples' participation in development planning, implementation and evaluation. Previous development programmes had lacked community participation in development and therefore had failed to advance community aspirations, to reflect community opinion on contextually significant issues, and to maximise community income. The Uva Area Based Growth and Development Project differed from previous projects, particularly in its emphasis on bringing development initiatives closer to the people. Specifically, the project sought to integrate community participation into every level of programme development, planning and implementation. It established Uva Community Radio as the main participatory communication tool.

UNESCO was assigned to implement the UCR aspect of the project. UCR was established under a Memorandum of Understanding (MOU) between the Uva Provincial Council (UPC) and the SLBC which provided that the SLBC should nominate a station manager and a technical officer, and provide engineering assistance, while the UPC would bear recurrent costs, including staff remuneration. The station's broadcast frequency would be owned by SLBC. SLBC was also obliged to assume editorial responsibilities and the SLBC-nominated station manager was expected to safeguard these interests.

The key driver behind this was the fact that broadcasting is not a devolved subject under the 13th Amendment to the Constitution of Sri Lanka under which the Provincial Councils were established. Therefore it was not possible for UPC to obtain a frequency or broadcast license directly from local authorities. UPC therefore needed to cooperate with SLBC to gain access to a frequency for the proposed station.

UCR's geographic target area was the entire Uva Province, which consists of the Badulla and Monaragala Districts. However, in practice UCR does not reach the entire Province. It is difficult for those residing outside Badulla to participate in the station activities due to transport costs and time needed for travel, while visits by production teams also are time-consuming and costly. As a result, the Research Team concludes that there should be at least two additional community radio stations, ideally in Bibila and Buttala.

Some key features of the UCR are as follows:

- Location: Bandarawela, Uva Province, some 200 kilometres from Colombo, the capital of Sri Lanka
- Broadcast Languages: Sinhala and Tamil
- Year Established: 2003
- Broadcast Time: 12 1/2 hours daily
- Coverage: the aim is all of Uva Province but it also reaches significant parts of the Eastern Southern and Sabaragamuwa Provinces.
- Broadcast Frequency: 87.6.
- Transmitter Power: 1000 watts

A recent report on the media in Sri Lanka by two civil society research centres states:

Unlike in the case of other community services, the Uva service involves members of the community not only as content providers but also as broadcasters in both Sinhala and Tamil programming. This was done via the nearly 200 Gnana Samaja (Knowledge Societies) which have been set up across the province, representing a cross section of society with an average membership of approximately 50 persons each.

Approximately one fourth of these members have received basic training on the concepts of community radio and radio journalism. All programs are planned and scheduled with the involvement of the Gnana Samajas (Knowledge Societies) via radio facilitators who visit the Societies in order to discuss potential stories, production mechanisms and scheduling details. The Societies are also given 30 minute slots in order to broadcast their own programming with no editorial interventions made by the stations. [79]

5.2. The UCR Institutional Framework

UCR administrators sought to develop a strategy to reach the largest number of communities possible throughout the Uva province, and to encourage as large a demographic as possible to become involved in UCR operations and management. Accordingly, a community network of approximately two hundred (200) Knowledge Societies (KS) was established. KS were grassroots-level social organisations that functioned under a constitution. Specifically, KS at the grassroots level consisted of general membership as well as elected officials with two-year terms. KS were originally created to broaden community ownership of radio stations and to increase participation in programmes. By design, each KS had one volunteer group; more than 1500 volunteers underwent training on various aspects of radio broadcasting. The KS were clustered at the divisional secretariat level (ie' at the most senior level of decentralised administration) and were then formed into district organisations and a provincial federation (KS Federation).

Using the KS structure in the management of community radio was a compelling possibility. UNESCO proposed to include representatives of the KS Federation in the management board of UCR (UNESCO consultant's report, 2003). Members of the KS evinced enthusiasm about this proposal; the Research Team found that members of these KS were in favour of community-owned and managed radio stations. Approximately 15,000 people from two districts discussed approaches to develop community ownership and management of a radio station, using the KS infrastructure to sustain it.

After consultation with KS members, the KS Federation proposed the following structure for the UCR Management Council of 15 members:

- Knowledge Society   9 members
- Provincial Council   1 member
- Officials of the Provincial Council   3 members
- UCR staff   2 members

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[79] The Centre for Policy Alternatives and International Media Support, *A Study of Media in Sri Lanka (excluding the North and East)* April, 2005:14

However, this proposal was opposed by SLBC and UPC political authorities and administrators. In an interview, Ms. Ambanwela provincial administrator on 8 February 2005 at the UPC office expressed scepticism about the capacity of KS members to assume greater responsibility in the management of UCR. In particular, the political leadership was opposed to allocating a majority of seats in the proposed management body to KS members. Indeed, the political authorities even went so far as to object to the word "knowledge" in the phrase, Knowledge Society.

5.3. The Solution Offered by UNESCO

UNESCO sought to develop a solution designed to ensure UCR editorial autonomy, as well as accountability to the local community. To this end, UNESCO coordinated several workshops in which participating stakeholders discussed the issues and possible solutions:

Under the MOU, SLBC retained editorial responsibility for UCR, significantly curtailing the independence of the radio. It was obvious that it would not be possible to establish a totally autonomous administrative body for UCR. Traditionally, the SLBC has had close links to the government and, at the relevant time, the political party which governed UPC was different from the party running the national government. This political tension had a significant impact on the discussions.

Nevertheless, after much deliberation it was agreed that neither the SLBC nor the UPC would have a major stake in the editorial policies of UCR. Rather, the editorial policy would be determined by the Manager and UCR journalists, in line with programme guidelines developed and introduced by UNESCO in consultation with major stake holders, SLBC, UPC and the KS members. On 24 October 2002, UNESCO convened a meeting of stakeholders to develop the broadcasters' guidelines. Among the participants was Chief Minister of UPC, Council members, the Chief Secretary of the UPC, a representative from the Ministry of Mass Communication of the central government, the Deputy Director General and Chief Engineer of SLBC, and KS representatives. The guidelines were discussed and adopted at the meeting by all parties, and a decision was taken to include them in a new MOU between UPC and SLBC, which was signed subsequently.[80]

These guidelines were unilaterally violated by the SLBC in 2004.[81] The demands of democratic freedom urged by UCR broadcasters, made the political leadership somewhat suspicious about the editorial autonomy granted to the station. The perceived need for some form of control over programme content was raised by the UPC in a number of discussions. On the other hand, the SLBC wanted to keep a tight control on editorial policy. It was a formidable task for the UCR planners to bring both parties to agree that editorial independence is an indispensable attribute for community radio.

UNESCO recommended the establishment of an interim Governing Board comprising thirteen members for UCR until a legal and administrative framework ensuring its status as a community radio could be established. As a transitional measure, the Provincial Council could appoint six members, the Provincial Administration three and NGO and community organisations – including the KS – four, through a broad consultation. This suggestion was not taken seriously by either UPC or SLBC.

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[80] see Annexure Four.
[81] See the UCR case study in Annexure Five. Annexure Six contains interviews with several different individuals and groups at UCR.

5.4. Insufficient Occupational Security

One perspective which emerged from the Research Team's interviews with UCR broadcasters is their complete lack of job security. They can be hired and fired without cause by UPC. For obvious reasons, this practice negatively impacts on the broadcasters. It limits UCR broadcasters' confidence in themselves as broadcasting professionals and as protesters against what they perceive to be the arbitrary politicisation of a leading radio station striving to maintain some ideal of community radio (see below).

The Research Team observed that this was a more general problem at SLBC. For example, the Research Team found that relief announcers at the Kotmale Community Radio had been working for many years without any security of employment. These announcers were naturally highly dissatisfied with the status quo. Furthermore, downsizing at all SLBC radio services and the practice of promoting newly-hired staff and bypassing others resulted in considerable frustration on the part of broadcasters.

5.5. UCR: The Role of the Community

UCR was designed to be a bilingual service in Sinhala and Tamil, but allocating airtime for broadcasts in each language was a complicated and sensitive matter. The outcome of this issue was guided by the KSs, without obtaining permission from either the SLBC or UPC to address this issue. Instead, each society submitted their proposal for bilingual services at the plenary of the Federation held in Badulla and, after discussion; a unanimous decision was taken in this regard, in accordance with the table below:

DAY	TIME	LANGUAGE	TIME	LANGUAGE
Mon. - Fri.	0530 – 1530	Sinhala	1530 – 2400	Tamil
Saturday	0530 – 2400	T A	M	I L
Sunday	0530 – 2400	S I N	H A	L A

This is a good example of the communities involving themselves in decision-making processes relating to broadcast planning and implementation.

5.6. UCR: the Use of ICTs

In light of the perceived need to increase opportunities for field participation, UNESCO developed a separate project to support the establishment of community multimedia centres (CMCs). These centres would explore the potential of combining old and new information and communication technologies (ICT) to expand opportunities for Uva citizens through UCR. Three CMCs have been established in Buttala, Giradurukotte and UCR. Facilities were stocked with up to ten computers, software and Internet connectivity. A major purpose of this project was to assist the local population to produce 'broadcast inserts' for community radio programmes. Another significant purpose of this project was to develop and test a network access model, designed to reduce barriers and empower marginalized communities. The goal was to use ICTs to enable these communities to expand their knowledge bases and to encourage community actors to solve their community's development problems.

Internet connectivity was thought to be a useful tool for local radio stations, to improve the quality of programmes and increase the size of the audience, which might make the station more competitive. Increasing broadcasting quality and audience share would then allow the station to generate more income from advertisements. [82]

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[82] Material contained in 5.1 to 5.6 is largely based on UNESCO consultant's (T. Jayaratne, 2002-2003) unpublished reports

5.7. Political Crisis: The 2004 General Election

5.7.1. Overview of the 2004 Election Crisis at UCR

To understand what happened at UCR, during the period preceding the 2004 General Election, we need to recall the events of 2002, the United National Front (UNF) coalition headed by the United National Party came into power in a hung Parliament. Under the sweeping powers vested with the Executive Presidency, by the Constitution the President dissolved the Parliament prematurely in February 2004. As a prelude to this step, the President took over three ministries including media and information which, many saw as a step to use state owned media to utilize for election campaigning .

Insofar as the 2004 elections were concerned, under the existing election laws, all media especially the state owned media had to adhere to the instructions given by the Commissioner of elections during election period.

The SLBC chairman, who was appointed to the post by the President herself after the take over of Media ministry, appointed a new manager to UCR. The new manager, tried to introduce sweeping changes to the program schedules developed by the communities in order to accommodate propaganda programs in keeping with the mandate given to him by the chairman SLBC. However, UCR broadcasters resisted this move, insisting that the guidelines issued by the commissioner of elections should be strictly adhered to. This created a conflict of interests. With the collaboration and cooperation of the UPC, SLBC created a situation where, the UCR broadcasters had no choice but stay away from the station.

5.7.2. Mobilisation Against Politicisation

Certain members of the community reacted strongly to this interference. At a meeting on 19 June 2005, one broadcaster stated: "The community immediately gathered around them in their struggle against the politicisation of UCR. An organisation named [the] Association to Protect UCR was formed and one Alex Perera, a regular broadcaster, [and] school teacher of an exclusive school in the area was selected as its convener." Meanwhile, Pradeep Weerasighe, the Manager of UCR at that time, "made announcements over UCR urging KS members not to enter into any sort of transactions with broadcasters who left UCR."

Broadcasters participating in the 19 June 2005 meeting noted that the Association to Protect UCR made representations to the Secretary of the Ministry of Media and Information, the Director General of the President's Media Unit and the Chairman of SLBC. Specifically, the Association stated that broadcasters should be permitted to work with the independence they enjoyed earlier. As civil society members, the Association to Protect UCR endorsed the stand taken by the UCR broadcasters. They informed the persons concerned that "there will be demonstrations, protest meetings, hunger strikes, etc. to support the position taken by the broadcasters which, at that juncture, would become politically disadvantageous to the President's party."

The UCR broadcasters also informed other civil society organisations, including the Free Media Movement, a domestic advocacy body. The Free Media Movement gave publicity to the sensitive issue on the Internet and arranged a proposed press conference in Colombo. This press conference would have been timed to coincide with the general election because the Ministry of Media and

Information, under which SLBC and its regional and community radios functioned, was taken over by the President prior to the election. A major allegation during the election was that the state media was being used for propaganda by the President's alliance (UPFA).

If the press conference had been held as planned in Colombo, the issue might have reached national and international levels, gaining the attention of a much wider audience. This, in turn, would have provided a platform to discuss the problems related to UCR and the concept of community radio in Sri Lanka. Furthermore, a national conference of this sort might have turned ownership of the media – or, more precisely, State control of the media – into an important election issue. However, on the advice of the Association to Protect UCR, the UCR broadcasters asked the Free Media Movement to cancel the proposed press conference.

Eventually, the Station Manager, Weerasinghe, was recalled to Colombo. On Weerasighe's suggestion the Chairman sent one Harischandra to UCR on the 24th of March 2004.

The broadcasters claimed that the new manager made false allegation to the effect that the broadcasters had damaged the valuable equipment before they decided to keep away from the station. The enquiry by the UPC took a couple of weeks and by that time the elections were over. During this period Harischandra managed to run the service with the help of presenters from Colombo and Giradurukotte.

The UCR broadcasters however maintained that they were able to prevent UCR being used for political propaganda during election period.

5.7.3. The Longer-Term Impact of the Mobilisation

Weerasinghe's recall to Colombo was clearly a short-term victory for the broadcasters and the Association to Protect UCR played a key role in this victory. However, the longer term consequences of this approach were negative.

According to evidence gathered by the Research Team, the Association to Protect UCR was not a grassroots organisation with a large on-the-ground membership but rather a temporary grouping of a small number of leading personalities in Bandarawela. Accordingly, the organisation did not derive its authority from popular community support but from personal and professional connections or alliances.

The grassroots KS, however, did not intervene during the 2004 general election crisis. The Research Team interviewed members of the KS and discovered that broadcasters appeared to be reluctant to solicit or accept their involvement in that situation. The UCR broadcasters' decision to strengthen ties with the Association to Protect UCR instead of deriving popular support from the communities created distance between the broadcasters and the KS.

The Research Team observes that the KS network is now inactive and this might be attributed, at least in part, to the approach taken during the 2004 general election crisis. This means that UCR has lost the most important characteristic of a community radio – community involvement. This in turn has directly influenced the substance of the UCR broadcasts. In interviews with community members, the Research Team found that they regarded UCR as just "another channel" playing music to fill airtime previously occupied by community-driven content.

From what the Research Team observed in its meetings with KS members, broadcasters and listeners, it concludes that UCR is presently not in a position to re-activate the vital KS mechanism because UCR has been deprived of community participation. In short:

- Communities no longer participate in formulating plans and policies for the radio service.
- Communities no longer participate in decisions concerning programme content, duration and schedules.
- There are no realistic opportunities for members of the community, as individuals or groups, to produce programmes.
- There is no continuous interaction between producers and listeners.
- Almost all UCR programmes now originate from the studios and not from the community.
- The following programmes planned and included in the initial programme schedule with the active participation of the communities are missing from current programme schedules of the UCR:

PROGRAMME	BRIEF DESCRIPTION
"Audio diary"	Field recordings of the problems people, primarily women, face in maintaining a family without the support of a spouse
"Tell your Grievances"	Airtime for members of the community to speak about their grievances and to seek redress
"News Magazine"	Compilation of stories sent in by volunteers in the field
"Knowledge Society Programs"	Programmes produced and presented by the KS
"News from the Other Stations"	Critical analyses of news bulletins broadcast over other radio channels
"Intercity"	Live programme discussing problems in the cities and towns of the province
"Strictly for Men/Women"	Programme for young men and women
"Top of the Hits from Uva"	Live community cultural show
"Late Night Show"	Programme providing a platform for plantation sector members and the Tamil communities to express themselves
"Internet Browsing"	Browsing Internet by and on behalf of the people
"Workers Without Frontiers"	Programme for family members of migratory workers
"Weekly Fair"	Live broadcast from a popular weekly fair: a trade centre and a meeting place for villagers

- A significant part of the airtime is now utilised to play popular songs created by the Colombo-based music industry.
- The majority of live outside broadcasts now come from religious ceremonies.

- The broadcasters themselves are disillusioned and unhappy as they feel there is a gap between what they practice and what they learnt.

5.7.4. UCR: A Series of Compromises?

Uva Community Radio was created to be a catalyst to facilitate peoples' participation in development planning, implementation and evaluation. To achieve this end, it had to be a free and independent community radio by definition and in practice. A community radio station without the necessary freedom and independence to air community-driven programming and deal with real, compelling issues cannot be a catalyst.

The UCR case study might serve as a general example of the problems potentially faced by community broadcasters in Sri Lanka. It demonstrates that creating a legal and regulatory framework that allows community radio stations to function independently from the State broadcaster is a key first step toward establishing a successful community radio station. The creation of such an infrastructure might better encourage community representation in station management. This institutional framework must clarify individual responsibilities and indicate who is accountable for what.

The Research Team further discovered that in the effort to establish the UCR project, the planners resorted to a two-pronged compromise by 1) establishing a network of community based societies to promote maximum possible community participation and 2) introducing a set of broadcast guidelines in order to protect the editorial independence of the radio station. Unfortunately, this two-pronged compromise was ineffective.

6. An Analysis of the Key Challenges Facing Community Radio

The Research Team is of the view that Sri Lanka's political culture might be described as having an antagonistic approach to community radio initiatives. In the specific case of the UCR, the political attitude towards the initiative was apparently antagonistic. Specifically, their control destabilised the broadcasters, which eventually resulted in UCR's marked decrease in community-driven programming, ostensibly as part of an effort to stay on the air.

To overcome this problem in the Sri Lankan political climate, the Research Team concludes that future community radio initiatives in Sri Lanka should be redesigned. They should be relatively smaller and established in cohesive communities that have articulated common goals and are thus able to successfully surmount destabilising influences. This section focuses primarily on issues relating to the role of the community, as well as financial stability.

6.1. The Concept of 'the Community'

A key underlying feature of all the community radio experiences examined in this Study is the manner in which the concept of 'community' was understood and accepted by those involved. The MCR project planners conceived of the community as a "group which shares more or less the same fate, speak a common vernacular, and has a common perception of community boundaries" [83]

This fairly simplistic definition of a 'community' simultaneously creates space for community exclusion and ignores inherent diversities. A more realistic definition of 'community' should account

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[83] MCR Restricted Reports No 7, 1984:06

for different groups and interests because communities are generally composed of various groups, including minority and marginalized peoples. With regard to providing these various component parts of a community with a voice and other forms of access, it is imperative that the diversity of each community is adequately recognised and represented. Voices and views from marginalized groups, such as women and youth, must be heard and promoted to protect the interests, cultures and linguistic diversity of each minority (ethnic, gender or otherwise) in each community.

Based on field research, the Research Team believes that MCR planners had not adequately provided for the diversities inherent in communities.

As Valbuena[84] notes: "MCR has one major shortfall. This is the inability to organise a Tamil-speaking team for production work in the Tamil areas of the Mahaweli settlements. A special programme for Tamil villagers was thought of, but this was discouraged by national officials."

Don Slater *et al*., in their study of Kotmale Radio Internet Project,[85] examined the conceptualisation of community in the Sri Lankan context. The Sri Lanka 'community' or 'village ideology' is not necessarily the same as the 'community media' ideal that KCR took on board via UNESCO and DANIDA. The Sri Lankan term involves a nostalgic ideal of community that is intrinsically tied to reconstructing the moral core of the nation. In this view, the community ('the people') seem united and good. The same view sits considerably less well with a view of community as a place of differences, divisions, conflicts, diverse needs and interests, and ethnic inclusions and exclusions. This holding up of 'the villager' by the MCR project as a model of the target demographic had an undesirable influence on MCR's ability to reflect the community. This generalised view of community could also result in a diffused populism, which treats 'the people' as unrealistically united instead of as a complex matrix of groups with both similar and different needs and problems. This reference to an idealised audience may have further distanced broadcasters from their actual audience.

In the case of UCR, the Research Team examined its initial programme schedule and the method applied to develop it, and determined that it did take into account the need to cater to diverse groups within the community. Where the needs of ethnic minorities are concerned, the station broadcasts daily Tamil programmes in addition to a full day Saturday Tamil broadcast. This bilingual broadcast reaching the eastern province promoted and enabled greater discourse and experience sharing between war-affected communities of all ethnic groups. The station also broadcasts cross-translated programming from Tamil to Sinhala and vice-versa.

However, as stated below, though these were brave attempts, they were isolated to UCR as well as limited in their reach.

Generally, the facilitating role that could have been played by community radio in fostering harmonious relationships between Sinhala, Tamil and Muslim communities had decreased to a considerable extent at the time of conducting this Study.

6.2. Non-Inclusion of Concerns of Women in Community Broadcasting

Sri Lanka's record of gender empowerment in the public sphere has suffered, for a long time, from a highly over valued sense of complacency, in comparison to neighbouring countries in South Asia. The

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[84] Valbuena, AMIC, 1993:108
[85] Slater, 2002:20

election of the world's first woman prime minister in 1960 (Sirimavo Bandaranaike), had been preceded by a long history of the political struggles of women, a most notable achievement of which was the granting of universal adult franchise for women as far back as 1931.

From that point onwards, Sri Lanka marked a record of achievement in respect of human development indicators that appeared to be admirable from a gender perspective. As the country entered the twenty first century, literacy levels of women averaged at 83.1% as compared to male literacy at 90.1%. As far as education was concerned, women outnumbered men at universities. Women also enjoyed a longer life span than men - 74.2, as against 69.5 years for men and maternal mortality was at significantly low levels.

This was buttressed on the other hand by an apparent commitment of the state towards adherence to domestic and international standards of gender empowerment as manifested by a separate ministry for women's affairs under which operated several local committees and commissions. Ratification of the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol permitting individual communications to be filed under CEDAW was also notable.

Yet, the actual impact that women had in the political and public sphere has continued to be minimal. Despite one or two women assuming the uppermost levels of political leadership, the overall participation of women in the formal political process has sunk to the lowest levels yet experienced in the South Asian region as compared to India, Pakistan and Bangladesh.

Again, while women have occupied the highest places in public administration and the judiciary, their impact on public policy has been muted. This overall marginalisation has been further aggravated by the ethnic and civil violence that has resulted in women becoming its most vulnerable targets. The spillover of violence into everyday life has been marked with the increase in phenomena of domestic violence and sexual harassment.

Did the community radio experience in Sri Lanka provide a space for the vigorous articulation of women's voices on their specific concerns? Based on our research, the answer to this question is in the negative. Programming that was systematically targeted at empowering the women of the communities was conspicuously lacking as borne out by interviews that we conducted.

MCR and UCR as well as KCR had a focus on topics seen as "specific to women" (ie; domestic tasks of cooking, sewing etc) as well as the inclusion of general programmmes on home gardens, credit empowerment schemes and the like. However, addressing more contested issues such as domestic violence or challenges to perceived notions of the local culture and religion that subordinate women was not evidenced.

We saw the personal empowerment of some of the women from the communities particularly in Uva who had been given leadership positions in the Knowledge Societies and were thus able to engage with the discussions in an extremely informed manner. However, (as distinguished from these individual examples) community radio had not been used as an effective tool to pursue an overall empowerment of the women of the communities.

We saw this as yet another consequence of the failure of community radio to derive its strength and spirit from the specific concerns and needs of the communities.

6.3. The Need for Community Ownership

Consequent to a thorough examination of the Sri Lankan experience, the Research Team concludes that none of the efforts to establish community radio broadcasting stemmed from a demand or strongly-felt need by a mobilised community. Instead, all community radio stations were established by policy makers and the planners of various development projects, with a view to catering to the objectives and needs of that particular project.

Central or provincial government institutions can aid a community, but the community itself must assume a significant amount of the responsibility to follow through on any top-down assistance. The World Association of Community Broadcasters (AMARC) has made it clear that successful community radio initiatives depend on efforts by communities for communities, which require realistic community ownership and control schemes. [86]

The Research Team observed that community participation in decisions concerning programme content, duration and schedules was minimal in every station studied, with the exception of UCR. A higher level of participation by the communities can provide, as Jankowski observes, "airspace to local cultural manifestations, to ethnic minority groups, to the hot political issues in the neighbourhood or locality"[87]

As Jankowski demonstrates, community participation in the programme planning process will create a sense of togetherness as well as a sense of community ownership, which encourages the community to actively participate in all aspects of the radio station.

There is no motivation to own and manage a means of communication of their own unless the community is mobilised toward this goal. The MCR experience highlights this. The Research Team discovered that, after many years of MCR broadcasting, the majority of MCR's listening public and programme makers have yet to understand the function of a true community radio station. Accordingly, the demand for community radio as a means of communication does not figure as a priority among the Mahaweli communities. According to the Research Team, both community members and programme makers were silent in the face of efforts to alter the infrastructure and broadcasting make-up of the station. The Team concludes that this is because Mahaweli communities have not been sufficiently mobilised. This conclusion was drawn by contrasting the sense of community ownership of the Mahaweli communities with that of the Uva communities. In the case of UCR, the communities were able to define the concept of community radio appropriately and were prepared to come forward, at least to some extent, to protect 'their radio', because they had mobilised themselves before the establishment of the radio station.

The general lack of community mobilisation is indicative of the larger problem: the lack of an enabling environment for community radio in Sri Lanka. The unfortunate reality is that a local radio can be established and maintained only under the guidance, influence and control of the State-owned SLBC. As noted above, Sri Lanka's political culture has been and will probably continue to be antagonistic toward independent community radio.

6.4. Institutional Issues

The management structure needs to be clear and agreed upon if a community is to assume primary responsibility for the programming and day-to-day management of a broadcasting station. The

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[86] AMARC, 1998 as quoted in *Community Radio Handbook*, UNESCO 2001:3
[87] Jankowski, 1994:3

Research Team conducted numerous interviews and discussions with community members, listeners and broadcasters, with a view to ascertaining who might assume these responsibilities. The participants largely answered that an independent council or a separate body should take charge of the stations. However, there was no consensus regarding the composition, nature of, or model for this body. The MCR and UCR planners put forward proposals which advocated varying degrees of autonomy. Taking into account the experience with MCR, National Coordinator E.S.T. Fernando proposed new structures for rural communication in 1990, stating:

> *A Rural Communication Agency is vital for the promotion of community radio in Sri Lanka ... (Agency) could comprise a governing body which will be representative of participating ministries, departments and corporations who will be partners in the National Development strategy. The RCA will implement its policies through an executive body under which the individual community radio stations would function.* [88]

Although Fernando realised the need for a separate body, his plan was formulated through the prism of government control and not community empowerment. In contrast, as early as 1984, Jayaweera foresaw that, "to maintain the community atmosphere, appropriate methods of organizing and managing must be devised." As a fruitful way to start, he proposed that the feasibility of running community radio stations on a cooperative basis under a special broadcasting license issued by the ministry of State should be explored, writing:

> *Along with the members of the community, who will form the major segment of the shareholders, SLBC and MASL could become limited shareholders with a seat on the Board of Directors of the co-operative society'. SLBC can provide skilled staff, including the Station Manager.* [89]

The institutional framework proposed for the Uva Community Radio by the various community organisations, including the KS network, represented a relatively liberal approach. This proposal foresaw that the majority of Directors would be appointed from the community, through the KS structures, with the provincial council and others nominating the rest. The chair would be elected by the members of the board. As noted, this proposal was abandoned in the wake of strong opposition from certain UPC officials and political figures.

The Research Team analysed the relationship between SLBC and both the MCR and UCR projects. In its final evaluation report DANIDA, which was instrumental in establishing MCR, pointed out that, "the combination of community radio with national broadcasting under the same management has proved unsatisfactory." DANIDA further stated:

> *As the project has progressed ... it has become clear that the MCR concept is too different from the traditional centre-oriented approach to broadcasting of SLBC. This difference in approach and philosophy to rural radio communication has over the years created friction between SLBC management and the MCR project.*

6.5. Sustainability

The Research Team placed considerable emphasis on the question of why all regional stations of SLBC (including MCR local stations and UCR) faced great financial sustainability challenges.

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[88] Fernando, AMIC1993:55
[89] Jayaweera, Four Essays, 1984:17

The sustainability problem emerged in the 1990s. Specifically, due to the deregulation policy under the economic restructuring programme introduced by the government in the early 1990s, SLBC lost its radio broadcasting monopoly and, for the first time, had to compete with private commercial radio and TV stations. As a result of this, SLBC lost a sizable portion of its advertising revenue. Moreover, in the mid-1990s, the government of Sri Lanka abolished the license fee, from which SLBC had derived one-third of its total income, thereby exacerbating SLBC's financial crisis.

Due to these financial pressures, SLBC could no longer sustain its regional and local radio networks. Unfortunately, SLBC did not allow these stations to develop and implement their own sustainability mechanisms. Later, under pressure, SLBC did agree to allow UCR to operate an independent bank account and to develop a sustainability programme of its own. However, UPC and SLBC's attempts at interference made it difficult to implement this sustainability programme. As a result, these local radio stations have adopted a strategy of generating income primarily through commercial advertising which, in turn, resulted in the loss of their local and public service character.

These concerns were true of other community radio stations as well. For example even at the height of the functioning of KCR, when glowing articles were being written about its interactions with the community, significant warning signals were apparent. In a study which appreciated the positive contributions of KCR, it is also cautioned that "the operational and financial sustainability of the project merits more attention and consideration needs to be given to better utilisation of technical capacities for increasing revenue. In addition, the project has reached a point where staff management coordination, required review and remedial action."[90]

The Research Team's findings indicate that broadcasters at many community radio stations resent SLBC's direct control over all expenditure. Many of these broadcasters also indicated their dissatisfaction with SLBC's practice of channelling the revenue they generated back to SLBC instead of letting them keep it for their stations.

For example, even though SLBC agreed to allow UCR to operate an independent bank account and to develop a sustainability programme, aspects of UPC's and SLBC's direct control over finances negatively impacted on UCR's capacity to sustain itself. Similarly, Don Slater *et al.* remarked on the negative effects of SLBC's continuing, comprehensive control over KCR finances. KCR broadcasters interviewed by the Research Team emphasised that, in their view, income generated by KCR should be used for the benefit of the station and not be channelled primarily back to SLBC.

The Research Team's analysis indicates that to sustain themselves, community radio stations should be permitted to solicit programme sponsorship and limited revenue through advertising local community products. These practices would require strict regulations to prevent these stations from becoming overly commercial and losing their community-driven character.

Moreover, for these forms of income to be self-sustaining, community broadcasters must be owned and managed by the community. Without this, volunteer and other forms of local commitment that make community radio viable cannot be generated. As Girard wrote, "community radio listeners are the producers, managers, directors and even owners of the stations." [91]

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[90] See observations in the World Bank Poverty Reduction Group's Empowerment Case Studies" Project Report, 2003
[91] Girad, 1992;2

The Research Team's analysis of the Sri Lankan experience supports this view. In its interviews with broadcasters and community members, the Team discovered a sense of confidence that communities are capable of assuming the social and financial responsibility of sustaining community radio in the long run, but only if the requisite legal and regulatory environment is in place and they are allowed to function independently.

6.6. Eliminating Political Pressure

Political pressure on community radio stations, must be eliminated. Political parties, currently accustomed to exercising such pressure, must no longer be permitted to do so. Political pressure on community radio stations has long been possible because so many media institutions, including community broadcasting stations, are – as noted earlier – subject to considerable State control. Community radio stations are thus vulnerable to abuse and have been used as political tools to disseminate various forms of government propaganda.

An important part of the solution to this problem is to ensure that these broadcasters really are subject to community control and oversight, instead of being operated as joint ventures of SLBC and the relevant Provincial Council. As has been perceptively observed, "the smokescreen of state owned community radio" has been used effectively by the bureaucrats hand-in-glove with commercial interests to cover up a multitude of sins.

> *"The first step towards true community radio is to shatter this myth, recognise the vacuum and agitate for the true liberation of the airwaves."* [92]

6.7. Community Radio Stations and Devolution of Power

Given their local nature, the Research Team is of the view that authority over community radio could not effectively be exercised by central government alone and this provided the motivation for these cooperative arrangements, such as the UCR MOU, which were designed to ensure ongoing centralisation of at least some aspects of broadcasting regulation. A combination of formal authority vesting in the central government and the ability to exert authority resting with the provincial government made such arrangements almost inevitable.

However, where the provincial council and central government are governed by different political parties, the Research Team has observed that tensions, sometimes serious, may emerge which can affect local radios. [93] For example, in the UCR case, by 2002, the once collaborative atmosphere had become fragmented and antagonistic. The impact this had on the local radio was further complicated by the lack of: 1) a national broadcasting policy; 2) sufficient regulatory and legal safeguards to guarantee the radio operational independence; and 3) a general appreciation of the importance and purpose of community radio. The Research Team also found that later attempts to reconcile these tensions were ineffective.

Despite the UCR's negative experiences, the Research Team concludes that Provincial Councils and local authorities should be encouraged to operate local radio stations, provided that effective regulatory control is imposed by an independent authority.

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[92] Gunewardene, 2003
[93] See for practical illustrations, the interviews in Annexure Six

The Research Team further concludes that while it is feasible for community broadcasting to be regulated from the centre – so that constitutional change is not needed – this needs to be distinguished from efforts to encourage the establishment of community-based or local radio stations.

7. Recommendations for Policy and Legal/Regulatory Reform

7.1. Policy Reform

This Section sets out the Research Team's recommendations for policy makers and those setting up community broadcasters which are in conjunction with the legal framework recommendations detailed thereafter. These recommendations are aimed at a range of different actors.

7.1.1. 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.

7.1.2. 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.

7.1.3. 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.

7.2. Legal/Regulatory Reform

7.2.1. 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.[94] 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).[95]

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

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[94] The Constitutional Council (CC) established in terms of the 17th 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.

[95] 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 17th 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.

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 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[96] read with Article 12(1)[97] and Article 14(1)(a)[98] 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.[99] A number of judicial decisions both in the domestic courts and elsewhere are pertinent in this regard.[100]

6. As remarked above, the Committee Report[101] had advised the establishing of a independent Media Council and empowering it *interalia,* 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.

7.2.2. 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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[96] provision whereby fundamental rights applications are filed in the Supreme Court
[97] Right to equal treatment before the law
[98] Right to freedom of expression and publication.
[99] per Lord Diplock in *CCSU v Minister of Civil Service* (1985) AC 374.
[100] Vide *Jayasena v Punchiappuhamy*, [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.
[101] 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.

7.2.3. 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."[102] 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

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[102] *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*, 2002.

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.

7.2.4. Amendment of the 17th 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 17th Amendment where Article 104B(4) of the 17th Amendment empowers the Elections Commission to prohibit the use of any movable or immovable <u>property</u> 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 17th 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 17th Amendment, in so far as elections are concerned, should incorporate the general principles relating to the free and fair conduct of elections, viz;

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 17th Amendment 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 17th Amendment 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.

8. Conclusion

The establishment of effective, sustainable community broadcasting presents multidimensional, multidisciplinary challenges. Action is needed at various levels – grassroots, regional and national – to address these challenges. Holistic approaches involving appropriate policy frameworks, both at the level of community radios but also nationally and provincially, addressing education, employment, financial practices, access to information, public sector procurement and so on, are needed.

This Study focuses primarily on the external policy framework for community radio and, in particular, the legal and regulatory framework for the establishment of community radio in Sri Lanka. It

establishes that a poor legal and regulatory framework can seriously undermine the potential for sustainable, independent community radio. This has, to a large extent, been the case in Sri Lanka, and most of the local radios studied here have either ceased to function altogether or have lost their community roots.

Far-reaching reform of the legislative, constitutional and policy framework within which community radio operates in Sri Lanka is needed. Overall broadcast regulation needs to be protected against government and political interference and placed under the overall supervision of an independent body. Specific rules for licensing and regulating community radio need to be developed which reflect the particular realities they face as small, community-based and resource poor, not-for-profit broadcasters. In parallel to this, the legal framework for SLBC needs to be substantially amended to transform what is currently a government broadcaster into a public service broadcaster.

This Study demonstrates a considerable interest among rural Sri Lankans in community radio. It also reflects the potential contribution community radio can make to enhancing development work, to building stronger local communities and to giving voice to the poor and marginalized. The Research Team thus believes that, if the legislative and regulatory framework for community radio is fostered, rather than obstructed, independent, truly community-based broadcasting will quickly emerge. This sector could make a significant contribution to sustainable, equitable development in Sri Lanka.

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