Community broadcasting: good practice in policy, law and regulation

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This year marks the fifteenth occasion of World Press Freedom Day but for those of us in community broadcasting we have another anniversary to celebrate. Twenty-five years ago, in 1983, a group of Canadian community radio activists had the optimism to believe that beyond their borders not only were there others engaged in the practice of community broadcasting, but that there was, perhaps, out there, an embryonic international movement waiting to be born. Although at the time, community radio was not much known outside the Americas, together with a few European countries and Australia, this small founding group had the audacity to title their small gathering a World Assembly of Community Radio Broadcasters. Or rather, as this was Quebec, *La Assemble Mondiale des Artesans des Radio Communautaires*, or AMARC, for short. Community radio broadcasters are indeed artisans or craftspeople, creating images with sounds, not designing media to a formula driven by marketing calculation or propagandistic intent, but drawing on a passion for the medium and a belief that community broadcasting can make a difference to people's lives and livelihoods.

When AMARC first began in the early 1980s we drew inspiration from stories of KPFA and the Pacifica Network in the USA, from the rise of free radio in France and Italy, stations like Radio Popolare of Milan, from the Australian experience starting with 5UV in Adelaide, and from Ireland where BLB was broadcasting community radio south of Dublin. But this was not a phenomenon of developed countries alone. We drew inspiration too from the rich history of community broadcasting in Latin America, that dates back to the Bolivian miner's radios of the late 1940s, and today has a presence in almost every Latin American country – not only worker's radios like those of the Bolivian miners, but educational radios, indigenous people's radios, women's radios, radios in almost every major urban centre and in some of the remotest rural communities. Over the years, the Latin American experience has profoundly influenced the growth of the international community radio movement particularly as we have come to better understand the role of media in development.

Beyond Latin America, there was almost no experience of community radio in the developing world. It was not until 1991, that the first community radio initiative in Asia, the Tambuli project in the Philippines, got off the ground. It was the same year, in Africa, that the Malian revolution led to the opening up of the airwaves, previously a state monopoly throughout Africa. Mali was quickly followed in 1992 by community radio in Benin also after a democratic revolution, and then by South Africa. In South Africa, the first community radio stations in 1983 were illegal but licensing commenced in 1994 under the transitional government, and has flourished in the post apartheid era. The growth of community radio in Africa, from the mid 1990s onwards, and more recently in Asia, has brought a much greater focus on and awareness of the role that community radio can play in voice and empowerment.

In almost all cases we find a close correlation between the emergence of community radio and political change towards greater democracy. In Mozambique, for example, it

was the end of conflict and the emergence of multiparty democracy that provided the conditions in which community broadcasting commenced and also now flourishes. Not only in Africa, but in Asia, we find similar patterns. Community radio started in Nepal in 1997, following the first democratic revolution. It played a central role in the defense of democracy and human rights in 2005 and since the second democratic revolution in Nepal of May 2006, there has been rapid growth. Similarly in Indonesia community broadcasting emerged after the fall of the Suharto dictatorship in 2000.

Recent years have also seen mainstream recognition of community radio in the discourse of human rights and of development. Driven in the part by the dotcom boom there has been increasing discussion of the role of information and communications in development. For some the Internet was seen as a panacea to all ills, but the dotcom bust produced more sober reflection, from which, among other things, emerged a growing recognition of the vital importance of traditional communication media, and especially radio, in reaching the poorest and most marginalised people of the world.

Economists like Amartya Sen, Joseph Stiglitz and Jeffrey Sachs have all highlighted the importance to effective and sustainable development of having a free, independent and pluralistic media environment that can not only provide access to knowledge and information but can contribute to transparency, good governance and the rooting out of corruption. Community broadcasting, in this broader context, is now seen by many development experts as a vital tool to empower the poorest people and communities.

The freedom to establish private broadcasting outlets does not guarantee everyone is able to exercise equally their right to freedom of opinion and expression. Civil society organisations in general and organisations of disadvantaged people in particular are not typically able to compete on purely economic terms with private commercial broadcasters. People and groups who face social and economic marginalisation, especially those in rural areas, are often poorly served or not served at all by private commercial media, and they lack easy access to finance capital to establish their own services. Community broadcasting provides an alternative social and economic model for media development that can broaden access to information, voice and opinion.

Human rights and development experts have noted that people faced with social and economic exclusion also face systemic obstacles to freedom of expression that are associated with the conditions of poverty – low levels of education and literacy, poor infrastructure, lack of access to electricity and general communications services, discrimination and so on. Community media have become a vital means by which the voiceless are able to exercise their right to freedom of expression and access to information. The 2002 Annual Report of the Special Rapporteur for Freedom of Expression of the Organisation of American States was particularly important in its analysis of the relationship between poverty and freedom of expression and it gave extensive attention to the specific role of community radio. Among the points which that report addressed was the existence of legal obstacles that either prevent or restrict the establishment and operation of community broadcasting services. The report said:

> "Given the potential importance of these community channels for freedom of expression, the establishment of discriminatory frameworks that hinder the allocation of frequencies to community radio stations is unacceptable."

The importance of community broadcasting is also recognised in the Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and People's Rights in 2002, and which calls on African states to ensure:

> "An equitable allocation of frequencies between private broadcast uses, both commercial and community" and states "community broadcasting shall be encouraged given its potential to broaden access by poor and rural communities to the airwaves."

The Ninth United Nations Round Table on Communications for Development, in its final declaration, referred to community media in the following similar terms:

> "Governments should implement a legal and supportive framework favouring the right to free expression and the emergence of free and pluralistic information systems, including the recognition of the specific and crucial role of community media in providing access to communication for isolated and marginalised groups."[1]

Despite such international recognition there remain serious obstacles to establishment of community media in many countries, especially for community broadcasters – radio and television services – that require access to radio spectrum in order to operate. In some countries community broadcast services exist in substantial numbers but being not legally recognized have a precarious existence and frequently face persecution. In other countries they have been prevented from establishing by strictly enforced licensing systems that exclude this form of broadcasting. These difficulties are often associated with governments that seek to control the flow of information but they have also been reinforced in environments where private media are strong by the interests of private media groups in excluding potential competition for audience.

Overall the recent trends for community broadcasting have been positive. There are over 100 countries with some form of community broadcasting rather more than there are countries with national public service broadcasters. Nevertheless there remain many countries where community broadcasting is either not permitted or is reluctantly tolerated but not encouraged. There have been a number of studies, most recently including work by AMARC and by the World Bank Institute, that have examined, in detail, the country level legal and regulatory environments that have given the best results in enabling community broadcasting to establish and to flourish[2]. Countries that can be mentioned as good examples include Benin, South Africa, Australia, Colombia, France and the Netherlands, among others. In these studies are outlined some characteristics of good practice which may be summarised in the following key points:

1. Community broadcasting should be recognized in policy and law as having distinct characteristics and be guaranteed fair and equitable access to the radio frequency spectrum and other broadcast distribution platforms, including digital platforms.
2. Procedures for the award and regulation of broadcast licensing and frequencies for community broadcasting should be fair, open and transparent, and under the administrative responsibility of an independent regulatory body.
3. Community broadcasters should have access to a diversity of funding sources without unreasonable restrictions. This may include public funds administered in such a way that this does not compromise their independence.

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[1] Ninth United Nations Round Table on Communications for Development, Rome, September 2004
[2] AMARC(2008) Best practices on community broadcasting regulatory frameworks – a comparative study of regulatory and legal frameworks and national policies in 19 countries. AMARC-LAC; Buckley, S., K. Duer, S. O'Siochru and T. Mendel (2008) Broadcasting, Voice and Accountability: A Public Interest Approach to Policies, Laws and Regulation. World Bank/University of Michigan Press.

Characteristics of community broadcasting

Community broadcasting generally refers to broadcast media which are *independent, civil society based and which operate for social benefit and not for profit*. There are a wide range of more detailed definitions and descriptions that can be found in policies, laws and regulations as well as in academic analyses and practitioner discourse but it is useful to start with these basic elements. Let us consider each of these in turn:

Independence is perhaps the most complex element. The independence of the service means that it should not be directly or indirectly controlled by any body of central or local governmental, or face undue influence by such bodies through ownership or funding. It should also be independent of commercial interests and no commercial broadcaster or other commercial entity should be able to own or otherwise exercise control over the service. Many commentators would argue that community broadcasters should also be editorially independent of any particular political party or religious institution. In practice the principle of independence can be as challenging to defend for community broadcasting as for any other media.

Civil society-based is more or less self explanatory, at least in countries where there is a strong civil society and established legal forms for civil society association. But where civil society is weak or where the legal forms of association are restrictive we often find hybrids that are less easily described. Civil society based implies forms of ownership and control that can be expected to promote and support community participation in programme making, operation and management, and including mechanisms to ensure the provider is accountable to the community it serves.

Operating for social benefit and not-for-profit, taken together, mean that these are media that belong in the field of public interest rather than of private economic gain. Social benefit means the achievement of objectives that contribute to the social and economic well being of the community. Any profit should thus be used wholly and exclusively for securing the future of the service or for the delivery of other social benefit to the members of the public or community that it is intended to serve.

Community broadcasting is often also considered to be a form of local broadcasting but we need to be careful in using geographical indicators to describe forms of social organisation. A community broadcaster operating in Kathmandu, for example, may also be serving that city's global diaspora. Communities may share proximity or place but also cultural, linguistic and other interests. The right to establish community broadcasting services should be available for community-based organisations and other civil society groups in rural and urban areas and for geographical and interest-based communities. They should not face a priori or arbitrary limitations on transmission power or transmission coverage nor should they be reserved exclusively for particular social groups or communities, rural or urban. They should also not face any content restrictions beyond those which legitimately apply to all broadcast media.

They should be owned by and accountable to the community that is served and should provide for participation by the community in management as well as in programme making. Characteristics which might be usefully included in any legal or regulatory definition of community broadcasting – and derived from countries where specific licensing arrangements for community broadcasting are in place – specify that they:

- are independent of the government and of commercial organizations;

- serve specific communities, either geographical or communities of interest;
- have ownership and management representative of that community;
- operate for purposes of social benefit rather than private financial profit;
- enable participation by the community in program-making and management

These provisions form a good basis for legal or regulatory definition. The regulatory framework, including the terms and conditions of licensing, may require these characteristics to be respected, while allowing flexibility for the broadcaster to adapt its service to best meet the needs and conditions of the community it is intended to serve.

In practice there are significant variations in the definitions of community broadcasting but most definitions include some or all of these characteristics. The African Charter on Broadcasting, adopted in 2002 by media practitioners and freedom of expression advocates from throughout Africa, has become a widely referenced statement of good practice for media policy, law and regulation. It includes the following definition:

> "Community broadcasting is broadcasting which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit."[3]

South Africa is one of the countries that has adopted a comprehensive legal and regulatory framework for community broadcasting. The South African Broadcasting Act of 1999 describes provisions for licensing of community broadcasting as follows:

> (1) Despite the provisions of this Act or any other law, a community broadcasting service licence may be granted by the Authority in the following categories:
> (a) Free-to-air radio broadcasting service;
> (b) free-to-air television service.
> (2) The licence of a community broadcasting service must be held by a licensee.
> (3) The licensee referred to in subsection (2) must be managed and controlled by a board which must be democratically elected, from members of the community in the licensed geographic area.
> (4) The programming provided by a community broadcasting service must reflect the needs of the people in the community which must include amongst others cultural, religious, language and demographic needs and must--
> (a) provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the broadcasting service covering the same area;
> (b) be informational, educational and entertaining;
> (c) focus on the provision of programmes that highlight grassroots community issues, including, but not limited to, developmental issues, health care, basic information and general education, environmental affairs, local and international, and the reflection of local culture; and
> (d) promote the development of a sense of common purpose with democracy and improve quality of life.
> (5) All surplus funds derived from the running of a community broadcasting station must be invested for the benefit of the particular community and monitored by the Authority, which has the power to audit the financial records of the services.[4]

Recognition and differentiation of community broadcasting in law and regulation are desirable features but not sufficient. Indeed, in some cases, the legal framework has been operated as a means to limit the viability or influence of community broadcasters by, for example, excessive constraints on transmission power or unreasonable limitations on sources of finance. In Indonesia, for example, community radio is

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[3] The African Charter on Broadcasting was adopted in Windhoek in May 2001.
[4] Broadcasting Act number 4 of 1999, Section 32,

recognised in law, but is limited to very low power and restricted in its sources of revenue. Similar restrictions apply in Brazil. It is essential therefore that the legal and regulatory framework also offers fair and equitable access to frequencies as well as to economic and other resources without the inclusion of unreasonable restrictions.

Broadcasting involves access to a limited resource, namely the radio spectrum. Countries which have adopted policies, laws and regulations designed to encourage community broadcasting have therefore also explicitly in law or administratively in practice reserved a substantial part of the radio frequency spectrum for use by these services. In the United States, for example, community broadcasting has its roots in a historic decision of the Federal Communications Commission in 1945 to reserve 20 per cent of the broadcast spectrum for non-profit services[5]. Thailand has made a similar arrangement in a law passed in 2000[6], while France has in practice allocated around 25 per cent of the FM broadcast spectrum for non-commercial *radios associatives.*

Regulation of community broadcasting and the licensing process

Licensing of broadcast services is generally considered necessary to ensure fair and equitable access the radio spectrum. Unregulated use of the spectrum is an inefficient mechanism for allocation of spectrum resources and can result in interference between competing signals, degrading the quality of service for the listener, or low power services being swamped by high power signals from neighbouring locations. This said, it can be noted that in many countries, and in all regions of the world, community broadcasting has often commenced outside of formal licensing frameworks, in response to demand and in the absence of appropriate legal or regulatory arrangements. Licensing should be designed to support the development of a plurality of independent broadcasters, including community broadcasters, and not as a mechanism to restrict them or to maintain governmental control over broadcast content and ownership.

Licensing procedures for community broadcasting should be fair, open, transparent and set out in law, and should be the responsibility of an independent licensing body. Criteria for application and selection should be established openly and in consultation with civil society. The process should be responsive to demand from community-based organizations that meet the essential characteristics set out in the definition. It is preferable that a portion of the frequency spectrum should be set aside for this purpose. There should be no unnecessary obstacles that would exclude or deter communities from seeking authorization, and the process should be independent of political interference. Licensing of community broadcasting should not present unreasonable technical, economic or other barriers to entry with eligibility criteria based primarily on demonstrating social purpose and social benefit and adequate provisions for community participation in ownership and operation of the service.

The process of applying for a license should be set out clearly in law. This may take the form of a call for applications for a particular locality or applicants may be able to define themselves the different localities they propose to cover. The information to be provided by applicants should be specified by the licensing body and may include:

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[5] Federal Communications Commission (1945) Allocation of Frequencies to the Various Classes of Non-Governmental Services in the Radio Spectrum from 10 Kilocycles to 30,000,000 Kilocycles, Docket No. 6651 (June 27, 1945)

[6] Allocation of Telecommunication and Broadcasting Frequencies Act 2000

- legal status and membership of the applicant;
- proposed coverage and intended audience;
- content of the program service to be provided;
- involvement of and accountability to the community;
- proposals to ensure the delivery of social benefit; and

The application requirements, selection criteria and mode of assessment should be published prior to the invitation to apply for licensing and should be developed in an manner that includes open and public consultation involving civil society groups. Decisions on licence applications should be taken within a reasonable timeframe and allow for public comments to be submitted on the applications received. Any decision not to issue a licence should be accompanied by written reasons and be subject to judicial review. On deciding to issue a licence the regulatory body should confirm, in accordance with technical norms and standards, the frequency assignment to be provided to the licensee, appropriate to the achievement of the proposed coverage of the service that has been approved through the licensing procedure.

In Benin, for example, the *Haute Autorité de l'Audiovisuel et de la Communication* (HAAC) is an independent regulatory body responsible for the licensing of private radio and television services. The HAAC distinguishes between Commercial Radio and Non-Commercial Radio and it publishes a *Cahiers des Charges* setting out the procedure and criteria for licensing of Non-Commercial Radio services. In addition to the not-for-profit status, the HAAC identifies Community Radio by its range, its focus on a specific community, its use of specific languages and its focus on local information and mobilization, cultural development and further education. The licensing process for community radio starts with the HAAC publishing the list of available frequencies based on its frequency map and issuing a published call for applications from all sectors, public, private and commercial. It processes the received applications and allocates the frequencies based on the proposed programme content as well as the viability of the proposed services.

Broadcast licenses may contain certain terms and conditions, either of a general nature, for example set out in the law or in regulations, or specific to an individual broadcaster. The proposals set out in the license application will normally form part of the license terms and conditions. License terms and conditions should be relevant to broadcasting and should be consistent with the objectives set out in the broadcasting law, and be designed to ensure that the community broadcasting service characteristics are protected and maintained for the duration of the license period. They may include:

- specification of the technical characteristics of the service;
- specification of the duration of the license;
- requirement to comply with general broadcast law and regulations;
- requirement to provide the service proposed in the license application;
- provision for sanctions in the case of non-compliance.

In South Africa, the Community Broadcasting Licence specifies the licensee, the station name, the frequency and related technical parameters, the location and coverage area, the commencement date and the expiry date. In addition the Licence requires compliance with a number of general licence conditions for community sound broadcasting including the following requirements:

- to have due regard to the character, control, management, objectives, intentions, undertakings and representations made by the licensee in its application
- to establish and maintain formal structures which provide for community participation in the control, management, operational and programming aspects of the service
- not to change the name or the ownership and control of the licensee or the control of the broadcasting service without written consent of the regulatory authority
- to ensure the licensee is and remains under the control of a non-profit and non-political entity
- to apply profits and any other income to the promotion of its broadcasting activities or in the service of the community
- to establish a procedure for handling complaints and to broadcast information on how to make a complaint

Funding arrangements and sustainability

The regulatory framework for community broadcasting should have regard to the sustainability and resourcing of the sector. License fees should be waived or nominal for community broadcasters so as not exclude communities with few resources. There should be no unreasonable restrictions on sources of revenue such as advertising. Financial models for community broadcasting vary from one country to another and according to local circumstances. Community broadcasting services should have fair and equitable access to a diversity of funding sources. To guarantee their independence community broadcasters should not be dependent on any single source of funding.

In South Africa, for example, there are no funding restrictions imposed by the regulatory framework and advertising and sponsorship are carried. Some international donors make a substantial commitment to the sector. Community radio stations are also able to apply for support from the Media Diversity and Development Agency.

Funding arrangements are only one of the issues that affect the viability and sustainability of community broadcasters. The social base, authenticity and responsiveness of the broadcaster to its audience are crucial factors which are strengthened by interactive programming and by accountable and participatory management structures. Most community broadcasters depend heavily on volunteers to assist in programme making, fund-raising and other activities and rely on the active involvement of local groups and organizations to provide expertise and input on matters of local and community concern. Support programmes should recognize that social, institutional and technical sustainability are as important to the functioning and survival of community broadcasters as economic arrangements.

The most important measure of economic sustainability for a community broadcaster is the ability to secure contributions from their own community by, for example, generating fees from announcements by local organizations and businesses, sponsorships by community groups for special programs, or by charging other organizations for air-time. External donors usually stop their financial support within a few years and should not be considered a principal source of long term assistance.

Community broadcasting should also have opportunities to access public funding support. These may include direct public grants and contracts however public funding arrangements should not be allowed to compromise the independence of the community broadcaster. Several countries have established special funding

mechanisms to support community broadcasting that operate at arms length from government, such as the Media Development and Diversity Agency in South Africa. Where public funding is provided this may come through direct taxation, or through another mechanism such as a levy on cable concessions or a percentage of commercial broadcast revenue as in France with the *Fond de Soutien d'Expression Radiophonique*.

Where a dedicated public funding arrangement is made for community broadcasting this should operate through an independent body rather than a government department. In Australia, for example, the Community Broadcasting Foundation Ltd. (CBF) was established in 1984 as an independent, non-profit funding body[7]. The primary aim of the organisation is to act as a funding agency for the development of community broadcasting (radio and television) in Australia. The CBF receives an annual grant from the Department of Communications, Information Technology and the Arts. The CBF assesses applications for funding and distributes grants for development, programming and infrastructure support, sector coordination and policy development.

The application process and decisions for public funding of community broadcasting should be fair, open and transparent and based on clear public interest criteria. The fund may include regular and guaranteed core financial support according to a transparent formula. The formula may be based on the amount of funds raised from other sources or the size of potential audience or some other objective measure. Funding may also be available for start-up and development costs and to support the provision of joint services to the sector through country level associations of community broadcasters.

Concluding remarks and challenges ahead

The above described and related evidence of good practice can contribute to a set of objectives for media reform that can enable community broadcasting to develop and flourish. At the same time, it remains important to note again that community broadcasting has often been established in the absence of a clearly codified legal and regulatory framework. Sometimes this has been in the context of liberalization. In other cases it has been in the context of weak or failed states or of weak regulation that tolerates community broadcasting without recognising its legitimacy or providing a formal permit to broadcast. Spain is one example where community broadcasters are largely tolerated but operate without formal legal authority. On the other hand some countries, such as India, have put in place regulatory arrangements for community broadcasting but have been less effective in actually implementing them. Political will is also required to implement legal and regulatory provisions in a manner designed to encourage and not restrict the growth and development of community broadcasting.

There are many challenges ahead for community broadcasting – the rush to marketisation of the airwaves, the privatisation of spectrum, the growth of powerful media concentrations that deter politicians from acting in the public interest on media reform, the emergence of new digital broadcasting technologies with the uncertainties that this brings. The migration of audiences to new technologies is perhaps the most far-reaching challenge to community broadcasting development. Community media not only have opportunities on the new digital platforms but are also threatened with being left out by some of the new forms of gate-keeping which could lead the sector

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[7] Community Broadcasting Foundation website www.cbf.com.au

into renewed marginalization or even exclusion. At the heart of this challenge is the tension between the traditional regulation of broadcasting in the public interest and the economic imperatives that drive the development of new distribution platforms.

The substantial worldwide growth of community broadcasting over the last 25 years is an indicator that this sector has a crucial and specific contribution to make to a plural media landscape and that it meets needs which are not well catered for by other media. Growth has taken place both in the number of individual services and in the number of countries that make some provision in policy and law for community broadcasting.

The vital role of community broadcasting is also witnessed in the courage of community radio activists who continue to operate in sometimes very dangerous conditions – in situations of conflict, or in fragile or lawless states where parallel powers show little respect for human rights – risking physical violence and intimidation and sometimes death as in recent times in Philippines and Mexico.

The adoption by progressive minded governments of policies, laws and regulations that enable or regularise this sector is an important step taken in modern processes of media forum and is evidence of a commitment to a participatory and democratic culture.