

Audiovisual media policy,
regulation and independence in
Southeast Asia

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I. INTRODUCTION

The ten countries in South-east Asia covered in this study - Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, East Timor, Thailand and Vietnam - present a vast array of differences regarding the broadcast media. They range from countries like Vietnam, where even private print media are not allowed, let alone private broadcasters, to Thailand, where all broadcasters are somehow public in nature, to Indonesia, where a commercially vibrant private broadcasting sector is characterised by oligopolies of ownership, to the Philippines, where broadcasting is vibrant and chaotic, if highly commercialised.

The same variety is manifested when it comes to broadcast regulation. In Vietnam, Laos and Burma, there are no private media, public media are government-controlled, and there is essentially no regulatory framework. Cambodia also lacks a regulatory framework, with regulation and public broadcasting being conducted directly by a government ministry. In Malaysia, Singapore and the Philippines, both regulators and public broadcasters are largely government controlled, albeit with very different results.

Real efforts to create more independent structures in both Thailand and Indonesia have run into serious problems, largely due to resistance from both government and established media, although important progress has been made towards a more public interest-oriented broadcasting sector. In both countries, the situation remains fluid and it remains unclear how things will develop. In East Timor, there has been backsliding in terms of independence, both for the public broadcast and the regulator, with robust structures introduced by the transitional United Nations (UN) administration being progressively weakened by the local government.

This study provides an overview of the broadcasting environment in the ten countries covered, with a focus on regulatory systems. It outlines the constitutional framework in each country, as well as the status of international law. This is followed by a brief outline of the broadcasting sector in each country, to provide some background context to help with understanding the regulatory regime. The bulk of the study focuses on the legal framework governing public broadcasting, and the broadcast regulator and its powers and role. The study also touches on new media, particularly the internet, in each country, assessing the extent to which new media are able to serve as an alternative to more traditional broadcasters.

II. CONSTITUTIONAL STANDARDS

1. Thailand

Thailand adopted new constitutions in 1997 and again in 2007. The 1997 Constitution included some of the most detailed protections for freedom of expression anywhere in the world, and these were largely replicated in 2007. The 2007 Constitution of the Kingdom of Thailand includes a generic guarantee of freedom of expression, allowing for restrictions as provided for by law for various purposes, including protection of security, the rights of others and maintaining public health and morals.¹ It also prohibits the closure or banning of media outlets and prior censorship, as well as state subsidies to private media. It provides various protections for the presentation by individuals of their views in the media and prohibits elected officials from owning media outlets.² The 2007 Constitution guarantees the right to access information from public bodies.³

The 2007 Constitution is particularly relevant to broadcast regulation. It provides that there shall be one independent state agency responsible for allocating frequencies, which are declared to be a national resource, and for supervising broadcasting and telecommunications. In undertaking these tasks, “regard shall be had to utmost public benefit at national and local levels in terms of education, culture, state security, other public interests, promotion of free and fair competition, and public participation in the operations”. The regulator is also required to prevent such market dominance as may undermine the “liberty to receive information from diverse sources”.⁴

2. Indonesia

The 1945 Constitution of the Republic of Indonesia, as amended, guarantees freedom of expression in several articles. It protects the right to express one’s opinions, in accordance with one’s conscience. “Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.”⁵

¹ Constitution of Thailand, section 45 (available online in English at <http://www.asianlii.org/th/legis/const/2007/1.html#C03P07>, accessed 4 December 2009).

² Ibid., sections 46 and 48.

³ Ibid., sections 56-57.

⁴ Ibid., section 47.

⁵ The 1945 Constitution of the Republic of Indonesia, as amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002, Art. 28E-28F (unofficial translation available online in English at <http://www.us-asean.org/Indonesia/constitution.htm>, accessed 4 December 2009).

Pursuant to Article 28, preserved from earlier versions of the constitution, the freedom to express opinions shall be regulated by law. Article 28J provides a more modern, and detailed, set of rules regarding restrictions on rights, stating that everyone has the duty to respect the rights of others. It allows for restrictions on rights where these are established by law, “for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.”⁶

3. East Timor

The main guarantee of freedom of expression in the Constitution of the Democratic Republic of East Timor, adopted in 2002, is Section 40, guaranteeing the “right to freedom of speech and the right to inform and be informed impartially”.⁷ The same provision rules out censorship and provides, generally, that this right shall be regulated by law based on respect for the Constitution and the dignity of the human person.

Section 41 specifically guarantees freedom of the media, which shall include, “freedom of speech and creativity for journalists, the access to information sources, editorial freedom, protection of independence and professional confidentiality, and the right to create newspapers, publications and other means of broadcasting”.⁸ The independence and impartiality of the public media are also guaranteed, including to protect the country’s culture and traditions, and to ensure the dissemination of diverse opinions. The same provision prohibits monopolisation of the media and provides for the licensing of broadcasters in accordance with the law.

4. Philippines

The 1987 Constitution of the Republic of the Philippines recognises “the vital role of communication and information in nation-building”.⁹ It contains the general guarantee of freedom of expression, which is modelled on the Constitution of the

⁶ The 1945 Constitution of the Republic of Indonesia, art. 28J, cit.

⁷ Constitution of the Democratic Republic of East Timor [Timor-Leste (East Timor)], 20 May 2002, available online at <http://www.unhcr.org/refworld/docid/3dd8dd484.html>, accessed 4 December 2009, Section 40.

⁸ *Ibid.*, Section 41, cit.

⁹ The 1987 Constitution of the Republic of the Philippines, Art. II, Section 24, available online at http://www.gov.ph/index.php?option=com_content&task=view&id=2000316&Itemid=26 (accessed 4 December 2009).

United States, providing: “No law shall be passed abridging the freedom of speech [or] of expression”.¹⁰ It guarantees the right to access information of public interest.¹¹

The Constitution calls on the State to promote cultural development, “based on the principle of unity in diversity in a climate of free artistic and intellectual expression”.¹² It also calls on the State to create a policy environment to foster communications structures “suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press.”¹³ These are lofty goals but it is not clear what they mean in constitutional terms. The next provision prohibits media monopolies and restricts ownership of the media to Philippine citizens.¹⁴

Significantly, the Constitution prohibits the issuance of any franchise to operate a public utility except in accordance with certain conditions, including that this shall be “subject to amendment, alteration, or repeal” by Congress. This includes licences for broadcasting.¹⁵

5. Cambodia

The 1993 Constitution of the Kingdom of Cambodia guarantees freedom of expression and of the press and publication. It also prohibits the abuse of this right in a manner that infringes on the rights of others, the “good traditions” of society, public order or national security. Rules governing the media are to be provided for by law.¹⁶

6. Malaysia and Singapore

According to the Constitution of Malaysia of 1957, every citizen has the right to freedom of speech and expression.¹⁷

The 1963 Constitution of the Republic of Singapore provides for the same protection as in Malaysia.¹⁸ Parliament may impose in both Malaysia and Singapore by law such

¹⁰ Ibid., Art. III, Section 4.

¹¹ Ibid., Art. III, Section 7.

¹² Ibid., Art. XIV, Section 14.

¹³ Ibid., Art. XVI, Section 10.

¹⁴ Ibid., Art. XVI, Section 11.

¹⁵ Ibid., Art. XII, Section 11.

¹⁶ Constitution of the Kingdom of Cambodia, 1993, Art. 41 (available online in English at <http://www.cambodia.gov.kh/unisql1/egov/english/organ.constitution.html>, accessed 4 December 2009).

¹⁷ Constitution of Malaysia, 1957, Part II, Art. 10(1)(a), available online in English at <http://www.commonlii.org/my/legis/const/1957/>, accessed 4 December 2009.

restrictions “as it deems necessary or expedient” to protect security, friendly relations with other countries, public order, morality or the privileges of Parliament, or to prevent contempt of court, defamation or incitement to any offence.¹⁹

7. Vietnam

The 1992 Constitution of the Socialist Republic of Vietnam guarantees freedom of opinion and speech and of the press, and the right to be informed.²⁰ It provides that the state shall promote “information work, the press, radio, television, cinema, publishing, libraries and other means of mass communication”. It also states: “Shall be strictly banned all activities in the fields of culture and information that are detrimental to national interests, and destructive of the personality, morals, and fine lifeway of the Vietnamese.”²¹

This is supplemented by the following provisions: Article 51, which provides that rights and duties shall be determined by the Constitution and by law; Article 74, providing that violations of the rights of citizens or the state shall be dealt with severely; and Article 79, providing that citizens have a duty to obey the Constitution and the law, to safeguard security, social order, and to preserve national secrets.

8. Burma

In Burma, the 2008 Constitution of the Republic of the Union of Myanmar protects the right of citizens to “express and publish freely their convictions and opinions”, as long as this is not contrary to any law enacted with a view to protecting security, law and order, community peace and tranquillity or public order and morality.²²

¹⁸ Constitution of the Republic of Singapore, Part IV, Art. 14(1)(a), available online in English at http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?&actno=Reved-CONST&date=latest&method=part, accessed 4 December 2009.

¹⁹ Constitution of Malaysia, 1957, Art. 10(2)(a), *cit.*, and Constitution of Singapore, Art. 14(2)(a), *cit.*

²⁰ Constitution of the Socialist Republic of Vietnam 1992, Art. 69, available online in English at <http://www.asianlii.org/vn/legis/const/1992/index.html>, accessed 4 December 2009.

²¹ *Ibid.*, Art. 33.

²² Constitution of the Republic of the Union of Myanmar (2008), Art. 354, available online in English at <http://www.mizzima.com/research/1234-constitution-of-the-republic-of-the-union-of-myanmar-2008.html>, accessed 4 December 2009.

9. Laos

In Laos, the 1991 Constitution of the Lao People's Democratic Republic protects the right of citizens to freedom of speech and of the press.²³ There does not appear to be a clause authorising restrictions, but Article 19 provides that the state "eliminates all negative phenomena in the ideological and cultural spheres".

²³ Constitution of the Lao People's Democratic Republic, 1991, available in English at <http://www.unhcr.org/refworld/docid/3ae6b5221a.html>, accessed 4 December 2009, Art. 31.

III. INTERNATIONAL STANDARDS

1. Standards and formal obligations

Different countries in the region have taken on different formal obligations under international law to respect freedom of expression. Arguably, all members of the United Nations, including all countries in South-east Asia, are bound by Article 19 of the Universal Declaration on Human Rights (UDHR), which guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.²⁴

The UDHR was adopted unanimously on 10 December 1948, now international Human Rights Day, as a UN General Assembly resolution. As such, the UDHR is not formally binding on states. However, parts of it, including Article 19, are now widely regarded as having acquired legal force as customary international law.²⁵

The International Covenant on Civil and Political Rights (ICCPR)²⁶ is a legally binding treaty which guarantees freedom of expression, also at Article 19. Six of the ten states covered in this study have ratified the ICCPR, namely: Cambodia (26 May 1992, through accession), Indonesia (23 February 2006, through accession), Philippines (23 October 2006), East Timor (18 September 2003, through accession), Thailand (29 October 1996, through accession) and Vietnam (24 September 1982, through accession).

Laos signed the ICCPR on 7 December 2000. Signing a human rights treaty does not trigger formal legal obligations, but it does place some obligation on the state to respect the rights proclaimed therein. Burma, Malaysia and Singapore have neither signed nor ratified the ICCPR.

These international guarantees of freedom of expression have a number of implications which are relevant to the regulation of broadcasting. It is not the purpose of this study to elaborate on the jurisprudential basis for these standards in any detail – that has

²⁴ UN General Assembly Resolution 217A(III), 10 December 1948.

²⁵ For judicial opinions on human rights guarantees in customary international law, see, for example, *Barcelona Traction, Light and Power Company Limited Case (Belgium v. Spain) (Second Phase)*, ICJ Rep. 1970 3 (International Court of Justice) and *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice). Generally, see M. S. McDougal, H. D. Lasswell, L. C. Chen, *Human Rights and World Public Order* (1980, Princeton, Yale University Press), pp. 273–274, 325–327.

²⁶ UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976.

been done elsewhere²⁷ – but an overview of some of the key standards is provided as a basis for informing the assessment of different countries’ regulatory models.

The right to freedom of expression under international law protects not only the right of individuals to express themselves, as signalled by the term ‘impart’ in Article 19 of the UDHR, but also their right to ‘seek’ and ‘receive’ information and ideas. This recognises the importance to democracy and the protection of all rights of not only freedom to speak, but also the right to have access to a range of information and ideas to inform one’s views and to underpin participation.

Similarly, the right to freedom of expression both prevents the state from taking negative measures that interfere with it, and places positive obligations on the state to create an environment in which the free flow of information can flourish. An example of a positive obligation which has been recognised is the adoption of legislation establishing a right to access information held by public bodies.

A key positive obligation on states is that they should take measures to promote pluralism in the media, so as to satisfy the right to receive information and ideas from a variety of sources. There are many ways to do this, but broadcast regulation, and particularly the process of licensing broadcasters, is one key tool for promoting pluralism. The promotion of independent public service broadcasters operating in the public interest is another.

At the same time, international law makes it clear that the implementation of both restrictions on freedom of expression and positive measures must be undertaken by bodies which are protected against political or other interference, i.e. by independent bodies. The reasons for this are clear, since politically motivated regulation is not consistent with a free flow of information and ideas in society.

2. Mechanisms

The ICCPR establishes the UN Human Rights Committee, a body of 18 experts tasked with promoting compliance with its provisions. Pursuant to Article 28 of the ICCPR, these experts shall be “persons of high moral character and recognized competence in the field of human rights” who shall “serve in their personal capacity”. The Committee currently does not have any members from South-east Asia, although it does have two Asian members.

A key mechanism by which the Committee monitors states’ compliance with their ICCPR obligations is through the requirement, set out in Article 40, to report

²⁷ See, for example, Buckley, Duer, Mendel and O Siochrú, *Broadcasting, Voice, and Accountability: A Public Interest Approach to Policy, Law, and Regulation* (Ann Arbor: University of Michigan Press, 2008).

regularly²⁸ on the “measures they have adopted which give effect to the rights” recognised in the ICCPR, and on the “progress made in the enjoyment of those rights”.

According to the Committee’s most recent official Report on its activities, adopted in March 2009,²⁹ Cambodia was more than six years overdue in providing its second Article 40 report to the Committee, which was due on 31 July 2002. Cambodia’s initial report was provided on 23 September 1998 and the Committee adopted Concluding Observations on this report on 22 July 1999. Vietnam provided its second report on 14 May 2001 and the Committee adopted Concluding Observations on that report on 26 July 2002. The Philippines provided its second report on 18 December 2002 and the Committee adopted Concluding Observations on 1 December 2003. Thailand provided its initial report on 2 August 2004 and the Committee adopted Concluding Observations on 8 July 2005. Neither Indonesia nor East Timor has yet provided an initial report to the Committee. None of the Concluding Observations adopted so far contain significant recommendations of relevance to the regulation of broadcasting.

Of the South-east Asia states, only the Philippines has ratified the (first) Optional Protocol to the ICCPR (22 August 1989). Cambodia signed the (first) Optional Protocol on 27 September 2004 but has yet to ratify it. Through this Protocol, states submit themselves to a procedural mechanism whereby individuals who believe their rights have not been respected may make a complaint, in the form of an official Communication, to the Human Rights Committee. The Committee has decided 13 cases involving the Philippines, none of them involving allegations of a breach of the right to freedom of expression.

The ASEAN (Association of Southeast Asian Nations) Charter, the regional grouping’s constitutional document, was adopted in November 2007 and came into force in December 2008. Article 14 calls for the establishment of an ASEAN human rights body, without specifying any details, for example as to its mandate or working methods. The establishment of the ASEAN Intergovernmental Commission on Human Rights was formally approved on 20 July 2009. The first members were appointed to the Commission at the 15th ASEAN Summit, held from 23 to 25 October 2009 in Thailand.

Pursuant to Article 4 of the Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights, the body shall achieve its objectives through undertaking promotional activities and public awareness raising, building capacity, engaging in dialogue and conducting studies. It also has a mandate to develop an

²⁸ Reports used to be due every five years but reporting obligations are now set on a flexible basis by the Committee.

²⁹ Available at: <http://tb.ohchr.org/default.aspx?ConvType=12&docType=36> (accessed 14 December 2009).

ASEAN Human Rights Declaration. Commentators generally agree that while the development of the Commission is a positive move, the body lacks the teeth needed to address serious human rights abuses in the region.

3. Constitutional status of international law

The status of international law within domestic legal systems varies from country to country. Globally, there are two main models governing this: the monist approach, which sees international law as inherently part of the national legal system (i.e. that they are one integrated system), and the dualist approach, which sees them as separate systems of law. In the monist approach, international law is, at least theoretically, automatically applicable locally, whereas in a dualist system, it needs to be incorporated locally through statute.

Most Common Law countries, including Singapore and Malaysia, follow a dualist approach. International law is applicable only to the extent that it has been incorporated by local law. Monist systems vary in the extent to which international law is incorporated, and may include special provisions on human rights norms. Section 82 of the 2007 Thai Constitution, for example, commits Thailand to respect the treaties and agreements on human rights that Thailand has made.

Section 9 of the Constitution of East Timor provides for the direct application of both general and customary principles of international law, and international treaties. Domestic legislation which is contrary to the latter is void. Section 23 also calls for the rights provisions in the constitution to be interpreted in accordance with the Universal Declaration of Human Rights.

4. Application of international law in practice

The formal status of international legal norms is one thing, and the use which may in practice be made of them either legally or through advocacy is another. The latter use depends on a complex mix of legal culture, advocacy and legal efforts by civil society and the legal profession, history and social attitudes, which have been tested through high-profile cases in both Thailand and Indonesia, with different results.

Two cases from the region, from Thailand and Indonesia, shed light on how international standards are approached by courts. The Thai case involved criminal defamation charges brought by Shin Corp, one of the most powerful companies in Thailand with links to the then Prime Minister, Thaksin Shinawatra, against a media rights campaigner, Supinya Klangnarong.

The case attracted enormous international attention. Part of this involved an attempt by Klangnarong's legal team to introduce expert witnesses to testify as to international standards on freedom of expression and defamation. Unfortunately, Shin Corp's lawyers were not informed in advance about the foreign witnesses and when the latter

were presented to the court, Shin Corp argued that it had not had a chance to obtain its own interpreters.

It was significant that the court accepted Shin Corp's arguments even though Shin Corp had a few days to find its own interpreters and Klangnarong's lawyers identified court-approved legal interpreters whom Shin Corp could have used. Given that this was a criminal case, the right of the defendant to present all evidence in defence should have trumped the claim by the plaintiff that it needed its own interpreters. Some observers believed the real reason for the decision was that the court was reluctant to hear arguments derived from international law.

The second case involved a constitutional challenge in Indonesia to rules providing for imprisonment for defamation and allowing public bodies to bring defamation cases.³⁰ In that case, the Constitutional Court agreed to hear an expert witness on international and comparative national legal standards, by video-link from abroad. In the end, the Court rejected both legs of the constitutional challenge. Notwithstanding this, local observers all confirmed that in their view the international and comparative law evidence was important to the case, and that it was treated seriously by the Court.

³⁰ The case arose out of a criminal defamation conviction of a journalist, although the facts were not really relevant to the constitutional challenge.

IV. AUDIOVISUAL MEDIA

1. Overview

This section sketches the state of the media across South-east Asia, rather than providing a comprehensive description.³¹ The aim is to provide a backdrop within which to situate the analysis of the legal and regulatory environment for the media.

The Philippines probably presents the most diverse media picture in the region, with a wide variety of broadcasters, both radio and television, operating both nationally and locally. At the same time, the leading media houses are very commercialised, with ownership concentrated mainly in the hands of large companies or family businesses. There is also a burgeoning and essentially unregulated radio market where “block timers” purchase time to espouse their views, which has been blamed for the growing lack of public trust in the media.

In Indonesia, there has been a mushrooming of broadcast media (as well as print media) since the fall of the president Suharto in 1998. At the same time, ownership of national television outlets is still concentrated in the hands of relatives and associates of Suharto, and the Golkar party he led, which is still influential in politics. Radio is more diverse, although concentrations of radio ownership are starting to emerge.

Formally, broadcasting in Thailand remains in state hands, although concessions have been granted to a few private television and many private radio operators (see below). There are also a number of registered subscription cable television services in the provinces. In addition, in recent years there has been a rapid growth of formally unlicensed (i.e. illegal) television (mostly cable and satellite) and radio broadcasters. The ‘red’ and ‘yellow’ political movements have largely relied on these unlicensed stations to spread their messages.³²

East Timor presents a unique broadcasting landscape with a national public broadcaster (at least in terms of radio; television distribution is more limited) and networks of community broadcasters. There are still no commercial broadcasters on air, although both commercial television and radio are apparently being developed.

Malaysia has a commercially developed mixed media market with both public and commercial broadcasters vying for market share. However, ownership of the private media is highly concentrated in the hands of individuals and businesses which are close

³¹ A companion background paper for the same meeting contains a detailed review of the state of the media across the region: *Southeast Asian Media: Patterns of Production and Consumption*.

³² The yellow shirts (yellow is the colour of persons born on Monday, and is traditionally associated with the King), or People’s Alliance for Democracy, supported the 2006 coup and call for radical reform of Thai democracy on the basis that the existing system does not work. The red shirts essentially support Thaksin Shinawatra, ousted as prime minister in 2006, and want him to be allowed to return to Thailand and to engage in politics.

to the ruling Barisan Nasional (BN) coalition and, in particular, the dominant United Malays National Organisation (UMNO) party of the Prime Minister, Abdullah Ahmad Badawi (and of former prime minister Mahathir Mohamad).

The media market in Singapore is also highly commercialised, at least in principle. However, ownership is concentrated in government-controlled companies, in particular MediaCorp, entirely owned by the government investment arm, Temasek Holdings. MediaCorp dominates the domestic television market and runs about one third of the FM radio channels.

In Cambodia, as well, although there are a number of private broadcasters, few free-to-air television stations are available in the provinces and most are affiliated in one way or another with the government. One television station, TV9, support the opposition Funcipec party from 1992 to 1997 but now supports the government as well. Radio has a greater reach, and is a bit more diverse, with some opposition stations and some independent broadcasters.

In Vietnam, there are no private print media, let alone private broadcasters. The state exercises strict control over media output, although in recent years there have been limited moves to liberalise reporting, in particular with a view to combating corruption.

There are no independent broadcasters in Burma. The main state broadcaster, Myanmar Radio and Television (MRTV), operates a number of television channels, including both local services and an international service in English. The Psychological Warfare and Public Relations Department of the Ministry of Defence also runs a number of channels. A third operator, Family Entertainment, is a joint state-private pay-TV operation. The main state radio, Myanmar Radio, is run by MRTV. A second FM station, Yangon City FM, was launched in 2001. City FM is operated by the Rangoon City Development Committee and focuses mainly on entertainment.³³ Exiled media, including television, print, on-line and radio, play an important role inside Burma.

In Laos, as in Vietnam and Burma, there do not appear to be any private broadcasters. There are a number of state television stations which broadcast for a number of hours daily and regional stations broadcast in Lao and in tribal languages. The National Radio of Laos, the state radio service, has a national network and a number of regional stations that broadcast in Lao and tribal languages.³⁴ Their programming is limited and rather basic in nature, and many Laotians listen to or view broadcasts from other countries, particularly Thailand.

³³ Information mostly compiled from the BBC Country Profile, available at: http://news.bbc.co.uk/2/hi/europe/country_profiles/1300003.stm.

³⁴ Information mostly compiled from a country study produced by the Federal Research Division of the US Library of Congress, available at: <http://countrystudies.us/laos/95.htm>.

2. Public media

At its best, public service broadcasting can make a significant contribution to diversity and public interest content in broadcasting. This is particularly the case where public broadcasters are independent and adequately resourced. Unfortunately, this is not the case in South-east Asia. Although important efforts are being made in some countries to develop true public service broadcasting, as the survey below shows, these are still nascent and, for the most part, face significant political resistance.

2.1 Thailand

Thailand presents the most complex scenario in the region regarding public broadcasting. It is often said that all broadcasting in Thailand is state broadcasting, due to the fact that all frequencies are controlled by state bodies, mostly by the Mass Communication Organization of Thailand, Plc. (MCOT), supervised by the Prime Minister's Office, by the Royal Thai Army and to a lesser extent by the Public Relations Department (PRD), a service delivery unit within the Thai government which runs Radio Thailand and Television of Thailand (Channel 11). In fact, however, the MCOT and Army both operate their own channels and provide concessions to private actors to run radio and television channels, in what might be described as a form of sub-licensing.

As noted, the MCOT and Royal Thai Army each run their own television channels, which fall directly under their control and cannot be described as independent. However, increasing commercial pressures, and the battle for audience share, have impacted significantly on their programming, which in recent years has moved increasingly towards entertainment and away from news.³⁵

Channel 11, operated by PRD, while also firmly under government control, is more oriented towards public interest programming, although it has a very small market share. It does not carry advertisements, and its programming includes more news and educational material than most other channels, as well as some regional content. Historically, groups like the Campaign for Popular Media Reform (CPMR) targeted this channel for transformation into a public service broadcaster.

Perhaps ironically, public service broadcasting in Thailand developed as a result of a series of otherwise unexpected events. iTV (Independent Television) was launched in 1996 as the first non-state terrestrial television station. In part a response to demands for media reform from civil society and others after what is commonly referred to in Thailand as "Black May",³⁶ iTV was initially welcomed by those interested in media

³⁵ Tangkitvanich, S. and Tanawit, S., "Radio and Television Market Structure" in *Media Reform Research project* (2003, Bangkok, Thailand Research Fund).

³⁶ Black May refers to the 1992 attempt by a military clique to regain power, which was thwarted by mass protests led by students and the middle classes in Bangkok.

reform and independence. It benefited from a 30-year licence and a three-year licence fee waiver, but was also under an obligation to carry 35 per cent news and 35 per cent 'edutainment' in its schedule, and was subject to a 10 per cent cap on ownership by any one individual/company. These obligations were, however, largely set aside after the severe 1997 financial crisis, which rocked the media sector, along with most other sectors. In 1999, Shin Corp, controlled by Thaksin Shinawatra, prime minister between February 2001 and September 2006, took a controlling share of iTV.

After Thaksin's removal as Prime Minister as a result of a coup in September 2006, a long-simmering dispute over iTV's failure to meet its concession fee obligations of around BHT2.2 billion (approx. US\$61 million), along with fines of BHT100 billion (approx. US\$2.8 billion), came to the fore. iTV's concession was cancelled in March 2007, management of the station was handed over to PRD, and its name changed to Thai Independent Television (TITV).

PRD control over the station was always seen as temporary and lobbying began almost immediately to turn the station into a true public service broadcaster. A draft Thai Public Service Broadcasting Agency Act was prepared and was the subject of discussions at a June 2007 conference sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Thai Broadcast Journalists Association, the National Health Foundation, the Thai Health Promotion Foundation, and the Committee on Consumer Protection of the National Legislative Assembly. The Thai Public Broadcasting Service Act came into force in January 2008, creating the Thai Public Broadcasting Service (Thai PBS).

An analysis of the draft Act by the media freedom organisation Article 19 in July 2007 highlighted a number of positive features, as well as recommendations for further improvement.³⁷ Positive features included strong guarantees for the independence of the new broadcaster, along with effective accountability mechanisms and an innovative funding mechanism through an additional 'sin' tax on liquor and tobacco, which is largely insulated against political interference.

The Act includes a number of provisions designed to ensure the independence of Thai PBS, in addition to a provision formally stating that the broadcaster is independent. The nine members of the Board of Directors are nominated by a 15-member Selection Committee comprising the president or another representative from three media bodies (the National Press Council, the Thai Broadcast Journalists Association, and the Confederation of Radio and Television Professional Associations), from eight other representative bodies (the Council of the Mass Communication Academic Institutes of Thailand, the NGO Co-ordination Committee, the Confederation of Consumer

³⁷ Memorandum on the draft Thai Public Service Broadcasting Agency Act, available at: <http://www.article19.org/pdfs/analysis/thailand-psb.pdf>. We have not been able to access an English version of the law finally adopted but we believe that it is reasonably close in content to the May 2007 draft analysed by Article 19 organisation.

Protection Organizations, the National Council of Child and Youth under Royal Patronage, the Council of Disabled People, the Lawyers Council, the Environmental Institute, and the Health Promotion Foundation), and from four official bodies (the Office of the Prime Minister, and the Ministries of Finance, Culture and Education).³⁸ The Selection Committee then forwards precisely nine names, indicating who shall be the chair, to the Prime Minister who formally appoints them.

A number of conditions are placed on who may be nominated for Board membership. Of the nine members, two must have experience in the field of the mass media, three in the area of organisational management, and four in various social fields (such as promoting democracy, working with children or the disabled, and community development).³⁹ Members must be Thai nationals and at least 35 years old, not be bankrupt or incompetent, and not have been convicted of a serious offence or have been fired or removed from office for dishonest performance or a crime of dishonesty.⁴⁰ Various individuals may not be appointed, including civil servants and government officials, political incumbents, board members of state enterprises, and partners and staff of broadcasting enterprises, although individuals are given an opportunity to resign, to clear the way for their appointment to the Board.⁴¹ There are also strong conflict of interest prohibitions on membership.⁴² Members may be removed only upon death, resignation, conviction to a term of imprisonment or falling foul of the prohibitions noted above.⁴³ Members hold office for four years and may be reappointed for up to two consecutive terms.⁴⁴

The Board appoints the Director and also an Executive Committee comprised of the Director, who is the *ex officio* Chair, and not more than six full-time members, including one staff representative. Some of the prohibitions noted above apply to the Director, who must also be less than 65 years old and have various kinds of expertise. The Director may be removed by a two-thirds vote of the Board for a reason. The Director, with Board approval, appoints the Deputy Directors.

Many of the organisation Article 19's recommendations for reform were aimed at increasing the independence of the Board. These included adding a clear section on the objectives of the law, as a guide to interpretation, including more members representing the public on the Selection Committee for the Board, which was incorporated into the revised draft, and providing explicit guarantees in the law for the

³⁸ Thai Public Broadcasting Service Act, January 2008, Section 18.

³⁹ *Ibid.*, Section 17.

⁴⁰ *Ibid.*, Section 19.

⁴¹ *Ibid.*, Section 21.

⁴² *Ibid.*, Section 22.

⁴³ *Ibid.*, Section 24.

⁴⁴ *Ibid.*, Section 23.

independence of the Board and for the public broadcaster itself. Article 19 also recommended that the powers of the Director in relation to the day-to-day functioning of the broadcaster should be enhanced, and that the complaints function be moved from under the Board to a body which was more independent of the broadcaster.

It is too early to tell how this public service broadcasting experiment will work out. Early signs seem to be relatively positive, although Thai PBS's market share remains small and the station is still getting established. It has also come under political pressure arising in part from the complex and confrontational politics that have enveloped Thailand in recent years, presenting a challenge to it as it seeks to map out a new space for public broadcasting in the country.

2.2 Indonesia

The public broadcasting trajectory in Indonesia has resembled other countries in democratic transition. Under the New Order regime of Suharto, the national public broadcasters, TVRI (Televisi Republik Indonesia) and RRI (Radio Republik Indonesia), were government mouthpieces. Unlike in Thailand, where a private broadcaster was transformed into a public service broadcaster, the approach in Indonesia has been to transform the pre-existing state broadcasters, TVRI and RRI.

Following the Suharto period, TVRI and RRI found themselves in a difficult position. They were losing audience share to the more nimble and effective private broadcasters (the number of private television stations rose to ten shortly after Suharto's overthrow); they had vastly bloated staffing quotients, mostly in protected positions as public servants; they had a long-standing broadcasting culture of subservience to the government and of poor production; and they were soon starved of funds.

In 1998 these broadcasters were directly managed by the Ministry of Information through the Directorate of Radio and Television. At that time, funding for them flowed through the Ministry and their staff were Ministry personnel. Government Regulation No. 26/2000 transformed TVRI into a state enterprise and this was followed by Government Regulation No. IX/2002 of 17 April 2002, transforming it into a Limited Company, owned by the state, and subject to supervision by the Ministry of State Owned Enterprises.

A broadcasting act was adopted in 2002,⁴⁵ establishing a new framework for broadcast regulation and repealing the former repressive law adopted during the Suharto era.⁴⁶ Despite hopes that it would properly address the issue of public broadcasting and the status of TRVI and RRI, the Broadcasting Act included only two articles on public broadcasters. The first provides, among other things, that public broadcasters, including TVRI and RRI, are "state founded legal entities that are independent,

⁴⁵ Broadcasting Act, 28 November 2002.

⁴⁶ Broadcasting Act No. 24/1997.

neutral and non-commercial, and provide services for the interest of the public”.⁴⁷ They are described locally as Lembaga Penyiaran Publik (Public Broadcasting Bodies). For national public broadcasters, i.e. TVRI and RRI, the five members of the supervisory board are appointed by the President upon the recommendation of Indonesia’s House of Representatives (DPR) for terms of five years, renewable once.⁴⁸ These broadcasters are “responsible to and shall be supervised by” the DPR.⁴⁹

Article 15 addresses the question of funding for these broadcasters, providing a long list of possible sources of funding, including broadcasting dues, direct support from the budget, advertising, donations and other legal sources of funding. In practice, they receive some funding from the state budget to cover salaries, and raise the rest of their funding from advertising. A plan to require commercial broadcasters to cross-subsidise these public broadcasters has never come to fruition. TVRI has experienced serious financial problems in recent years, having to scale back operations, including closing some of its transmitters.

It may be noted that although these provisions in the 2002 law are helpful, they are extremely sparse and fail to address a number of key public broadcasting issues. These include the programming mandate of the public broadcasters (i.e. what public interests they are expected to satisfy through their programming), the relationship between the board and management and, essentially, how they will be funded (since the law simply includes a comprehensive list of possible funding sources, without actually stipulating which will be provided to these broadcasters).

The basic structure of the appointments seems designed to promote independence, spreading responsibility between the executive and legislative branches, and vesting oversight in the latter, a multi-party body. But there is little of the detail found in many other laws to secure independence, such as protection against removal except for good cause, prohibitions on individuals with strong political connections from being appointed, requirements of expertise and a clear mandate for the board.

According to most observers, both TVRI and RRI have made significant changes in terms of their programming, specifically by demonstrating greater independence from government, although views differ as to exactly how successful they have been in this regard. Otherwise, TVRI has moved to more of a market model in terms of its programme content, with the risk that its public service mandate may be compromised.

⁴⁷ Broadcasting Act 2002, Arts. 14(1) and (2).

⁴⁸ Broadcasting Act 2002, Arts. 14(5) to (8).

⁴⁹ Broadcasting Act 2002, Art. 14(9).

2.3 East Timor

East Timor represents a different trajectory again. The current public broadcaster, The Radio and Television of East Timor (RTTL, *Rádio e Televisão de Timor-Leste*), started life as an information service of UNTAET (the UN Transitional Administration in East Timor). The television service reaches only the main cities of Dili and Baucau but the radio service has transmitters in all 13 of East Timor's district capitals.

RTTL has been the subject of quite a lot of legislative attention during its short life. On 9 May 2002, just 11 days before it ceded control to the local government, UNTAET adopted a regulation that established the East Timor Public Broadcasting Service, setting out clearly its objectives, guiding principles and responsibilities.⁵⁰

The Regulation also provided for the appointment of five members of the Board of Directors by the Transitional Administrator (the head UN representative in the country) from among candidates proposed by the government (two members), the Constituent Assembly (one member), and journalists working for the public television and radio (one member each).⁵¹ The Regulation incorporated rules prohibiting those with strong political connections or a conflict of interest from being appointed,⁵² and protecting members from removal except in very limited circumstances.⁵³ Funding for the public broadcaster was to come from donations, commercial revenues, including advertising, and the general budget.⁵⁴

Nearly a year later, on 10 March 2003, the National Parliament adopted a law changing just one provision in the earlier Regulation, relating to the appointment of members of the Board. Pursuant to the new Law, members were to be appointed by the President, National Parliament and government (one member each), along with two representatives elected from among journalists working, respectively, for public television and radio.⁵⁵

Finally, in July 2008, the Government adopted a decree-law, establishing Rádio e Televisão de Timor-Leste, E.P. as a public company.⁵⁶ The decree-law sets out in some detail the aims and obligations of RTTL,⁵⁷ but fails to describe its governing structure or sources of funding. Instead, Article 5 provides that RTTL "operates as a tutelary

⁵⁰ Regulation No. 2002/06 on the Establishment of the Public Broadcasting Service of East Timor, Sections 3-5.

⁵¹ *Ibid.*, Section 7.

⁵² *Ibid.*, Section 9.

⁵³ *Ibid.*, Section 11.

⁵⁴ *Ibid.*, Section 13.

⁵⁵ Law No. 2/2003.

⁵⁶ Decree-Law No. 42/2008.

⁵⁷ *Ibid.*, Arts. 6-7.

dependent of the member of the Government responsible for the area of the media”, and that this individual shall exercise the powers of the state in relation to RTTL, including by establishing guidelines and rules of procedure. As a result, the status of the public broadcaster as an independent body has at least formally been significantly undermined. RTTL does still have a board of directors, with six members, one nominated by each of the government, the president, the Parliament, civil society, RTL and TVTL. The Chair is nominated by the government.

2.4 Philippines

Public broadcasting in the Philippines, partly due to influence from the United States, has always been limited. The public broadcasting system consists of the Philippine Broadcasting Service, a network of some 30 radio stations across the country, and the National Broadcasting Network (NBN), a national television network. Both operate under the Office of Press Secretary, and are thus part of the government. However, they do not play a major role in broadcasting in the country, having small market shares. Some local civil society groups have been calling for reform of the NBN to transform it into an independent public service broadcaster.

2.5 Other

In Cambodia, Malaysia, Singapore, Vietnam, Burma and Laos the public broadcasters are all firmly under government control in one way or another.

In Cambodia, TVK (National Television Kampuchea) and RNK (National Radio Kampuchea) are both operated under a Directorate General of the Ministry of Information. They thus lack any formal guarantees of independence. In practice, as well, they are strongly biased in favour of the government. This is significant given their dominant role, particularly in the provinces.

The situation in Malaysia is quite similar to that of Cambodia. The state broadcaster, Radio Television Malaysia (RTM), is responsible to the Ministry of Information, Communication and Culture, falling under its Department of Broadcasting. The Director General is appointed directly by the Minister. Discussions on privatisation of RTM have been ongoing for some time, but have not come to fruition. Commercial competition from private broadcasters has resulted in significant drops in audience and advertising market shares over the last 20 years (the first private channel was licensed in 1984), but these broadcasters, as in Cambodia, all have links to the government so there is still little competition in terms of news diversity.

Singapore operates more of a privatised model, with MediaCorp (Media Corporation of Singapore), the main broadcaster in both the television and radio markets, being wholly owned by the government investment arm, Temasek Holdings (which is again wholly owned by government). The government exerts control over MediaCorp through its ownership and control of Temasek.

In Vietnam, where there are no private broadcasters, the key state broadcasters are Vietnam Television (VTV) and Voice of Vietnam radio (VoV), described in the oversight legislation as ‘government attached agencies’ engaged in ‘non-business activities’ which are tasked with disseminating the Communist Party of Vietnam’s guidelines and policies.⁵⁸ News and current affairs programming remains tightly controlled, although broadcasters may now outsource other programming. The core principles of subordination to key Party doctrines and objectives, and support for national stability, remain firm.

The situation in Burma is similar to that of Vietnam. There are no private broadcasters. The main state broadcaster, Myanmar Radio and Television (MRTV), operates under tight government control, and serves to disseminate government propaganda. Other broadcasters, run by the army and Rangoon city, are also tightly controlled.

Broadcasting in Laos is quite basic, as compared with the other countries of the region. The Ministry of Information and Culture run national radio and television networks, Lao National Radio (LNR) and Lao National Television (LNTV), respectively, which are under tight government control. There do not appear to be any private broadcasters.

This survey demonstrates the limited nature of moves towards public service broadcasting in South-east Asia. In Cambodia, Malaysia, Singapore, Vietnam, Burma and Laos, state broadcasters, firmly under government control, dominate the broadcasting sectors. In the Philippines, too, the state broadcaster is government controlled, but it is under-resourced and has a small market share.

Developments towards public service broadcasting have been more pronounced in Thailand, Indonesia and East Timor. In Thailand, although the main state broadcasters are still under government control, the development of Thai PBS over the last few years is very significant. This broadcaster has not yet developed a significant market share, and it is too early to assess whether it will be successful, but it has the strongest legal and structural guarantees of independence of any public broadcaster in the region.

In Indonesia, TVRI and RRI have undergone significant transformation since 1998. The legal framework has also been strengthened, although it remains rudimentary compared to the Thai rules and those of established democracies. At the same time, TVRI, in particular, has lost market share and faces severe financial problems.

In East Timor, the public broadcaster, RTTL, is unique in that it plays a very important, indeed dominant, role in the broadcasting sector while demonstrating some attributes of a public service broadcaster. However, recent legal developments have significantly reduced its independence; it remains to be seen how this will impact on programme content.

⁵⁸ Decrees 82/2003/ND-CP, 83/2003/ND-CP and 96/2003/ND-CP define the ‘functions, tasks, powers and organisational structure’ of VNA, VoV and VTV respectively.

V. REGULATION OF AUDIOVISUAL MEDIA

1. Functions

Broadcast regulators perform different functions in different countries. Key functions allocated to independent regulators in democracies include licensing of broadcasters, including setting and enforcing licence conditions, and oversight of broadcast content, normally through detailed codes developed in consultation with stakeholders, including broadcasters themselves. In some countries, content regulation is undertaken on a self-regulatory basis by broadcast organisations. Broadcast regulators may also be given a range of other functions, such as monitoring and taking action to prevent undue concentration of media ownership, overseeing the implementation of rules regarding election broadcasting and enforcing rules regarding foreign broadcasting.

Thailand, the Philippines and Singapore are the only countries in South-east Asia where the law clearly provides for licensing of broadcasters by the regulator. In East Timor, the role of the regulator in relation to licensing remains unclear. In Indonesia, the clear intention in the 2002 Broadcasting Act to give the regulator, the Indonesian Broadcast Commission (KPI *Komisi Penyiaran Indonesia*), effective powers to license broadcasters, while retaining a formal role for the government, has been undone and this power now resides with a government ministry. In Malaysia, in contrast, the law always envisaged final control over licensing being vested in a minister.

Responsibility for broadcast content regulation in both Thailand and East Timor remains unclear. In Indonesia, KPI continues to address content issues, although the Ministry of Communications and Information has also asserted a parallel responsibility in this area, and the Press Council also formally has a content oversight function. The Philippines is unique in the region inasmuch as content regulation is addressed through self-regulation. Self-regulation is also promoted by the Malaysian legislation, though in practice this has not worked well and the government-controlled Commission is likely to adopt a code instead.

In Thailand, the Operation of Radio and Television Broadcasting Act, which came into force in March 2008, sets standards for regulation, including the role of the regulator. In March 2000, the Allocation of Telecommunications and Broadcasting Frequencies Act (Frequencies Act) was passed, providing for the appointment of a National Broadcasting Commission (NBC). It is clear from both the 2000 Frequencies Act and the 2008 Broadcasting Act that the independent broadcast regulator⁵⁹ is intended to exercise full powers over the licensing of broadcasters (i.e. that it should consider licence applications and issue licences, including by setting licence conditions).

⁵⁹ The 2000 Frequencies Act allocated powers over broadcast regulation to the NBC. This has been overtaken by the new Constitution which provides for a merged National Broadcasting and Telecommunications Commission. See below.

However, for various reasons (*see below*) the NBC was never appointed and this has blocked implementation of the broadcasting rules, with the result that no new licences were issued for some time. Despite this, community and local commercial radio stations have mushroomed, as well as local television, in particular being made available via cable distribution. Formally, these broadcasters are illegal, and they have frequently been subject to official harassment.⁶⁰

Transitory provisions in the 2008 Broadcasting Act provide for a committee to work with the existing NTC, operating as an interim licensing body. This rule gives the NTC the power to issue one-year licences to non-profit community radio and cable television operators, but not to commercial radio broadcasters. Reportedly more than 5,000 applications for such licences are pending, although most appear to be from commercial radios and the number of licences likely to be actually issued is rumoured to be more in the order of 100.

The 2000 Frequencies Act reserves 20 per cent of the available broadcast frequencies for not-for-profit broadcasting. Although no frequencies have so far been allocated in this category, there has been a lot of debate over what it should cover, in terms both of the actual frequencies to be allocated and what sort of broadcasters would qualify for them. There are, in particular, claims that people's media should be eligible for these frequencies in addition to community broadcasters. It appears likely that the reservation of 20 per cent of the frequencies for public interest broadcasting will remain in place.⁶¹

The self-regulatory mechanism in Thailand for the print sector – the Press Council – does not extend to broadcasters, leaving this sector unregulated as regards content. Instead, the new Broadcasting Law facilitates the development of self-regulatory bodies and these have just started to be established. One such body, the Broadcasting News Council of Thailand, was established on 20 October 2009. It remains to be seen how effective it will be in addressing content issues.

The 2002 Indonesian Broadcasting Act recognises two types of broadcasting – radio and television – along with four types of broadcasters – public, private, community and subscription services.⁶² It also establishes the Indonesia Broadcasting Commission or KPI. Rules on concentration of ownership are provided for in Article 18, which provides generally that undue concentration of ownership is prohibited, along with

⁶⁰ See, for example, the Alert issued over IFEX by SEAPA on 22 April 2009 detailing police raids on broadcasters deemed to be too pro-Thaksin. Available at: http://www.ifex.org/thailand/2009/04/22/anti-government_broadcasters_raided, accessed 4 December 2009.

⁶¹ The 2007 Constitution required amendments to the 2000 Frequency Act and these are presently being discussed.

⁶² Indonesian Broadcasting Act, 2000, Art. 13.

various forms of cross-ownership – for example of both a commercial radio and television, or both a commercial broadcaster and a print media outlet. Article 30 of the Act prohibits foreign broadcasters and provides for KPI and the government to work out further provisions regarding foreign ownership.

Article 33 of the Act requires broadcasters to have a licence before they commence broadcasting. The process for obtaining a licence is not very clear in the Act, which provides that KPI will evaluate the application and make a recommendation to grant a licence. Then, KPI and the government will meet to agree on licensing and, finally, the government will administratively issue the broadcasting licence and frequency authorisation, based on KPI's recommendation.

In early 2006, however, the government adopted four broadcasting regulations giving power to the government, specifically the Ministry of Communications and Information, to issue licences, effectively sidelining KPI and restricting its role to making recommendations about the ability of an applicant to be a broadcaster. The regulations also addressed programme content, foreign broadcasting and ownership concentration, again giving the Ministry of Communications and Information power to exercise control in these areas. In a decision on an appeal to the Constitutional Court of 5 February 2006, the regulations were upheld; this has seriously undermined the role of KPI in licensing.

The Broadcasting Act also contains a number of provisions on content, calling for it to be in line with the “principles, objectives, functions and directions” of broadcasting,⁶³ and imposing a number of both negative and positive content obligations on broadcasters.⁶⁴ Articles 37-39 address broadcasting language, calling for Bahasa Indonesia to be the primary broadcasting language, but allowing for broadcasts in local and foreign languages under certain conditions. KPI is tasked with developing a code of conduct for broadcasters, monitoring its implementation and requiring broadcasters to broadcast or publish statements where they are in breach.⁶⁵

It is not clear how these rules mesh with the provisions of the 1999 Press Law, which also covers broadcasters. That Law establishes the Press Council, and gives it a mandate to address complaints regarding content in all media, including broadcasters.⁶⁶ One difference is that while the Press Council is largely responsive in relation to complaints, KPI has been more proactive.

The institutional structures for broadcasting in East Timor are somewhat complicated. On 21 July 2001, UNTAET adopted Regulation No. 2001/15 on the Establishment of an Authority for the Regulation of Telecommunications in East Timor. Among

⁶³ *Ibid.*, Art. 35.

⁶⁴ *Ibid.*, Art. 36.

⁶⁵ *Ibid.*, Arts. 48-51.

⁶⁶ Press Law, Art. 15.

other things, this established the Communications Regulatory Authority (CRA). On 22 May 2003, the new independent government adopted Decree-Law No. 12/2003 Establishing the Communications Regulatory Authority and Approving the Statutes Thereof, allocating regulatory responsibilities to the Authority for the Regulation of Communications (ARCOM).

The Decree-Law also preserved the earlier UNTAET Regulation, except to the extent of any inconsistency with its own provisions.⁶⁷ It is not entirely clear, however, whether ARCOM is legally the successor to the CRA and, hence, whether provisions in the Regulation relating to the CRA carry over to ARCOM. It would appear that the CRA was never actually established in practice.

The 2003 Decree-Law provides only an overview of the mandate of ARCOM. It provides that ARCOM is responsible for ensuring “the regulation and supervision of the communications sector” and “the management of the electromagnetic spectrum”.⁶⁸ Neither the Decree-Law nor the Statutes specifically refer to the licensing of broadcasters. Article 16 of the latter gives ARCOM the power to hear complaints from consumers and users, and to “recommend or determine” remedial measures. Pursuant to Article 17, ARCOM may also “recommend or determine” corrective measures in light of a failure to meet obligations. But it is not specifically authorised to adopt a code of conduct and it has not so far done so. It would also appear not to have entered into the issue of content regulation.

The 2001 UNTAET Regulation is much more explicit on the powers of the CRA. Pursuant to section 4, CRA is responsible for issuing licences for use of the radio spectrum, including setting licence conditions, and for enforcing compliance with licences, as well as planning spectrum use.⁶⁹ Section 52 recognises two types of broadcasting – radio and television – and three types of broadcasters – public, private and community. No one may use a frequency without a licence issued by CRA.⁷⁰ Sections 29-30 outline the process for issuing and amending licences (see also sections 46 and 51 specifically on the requirement for licences for broadcasting activities, sections 43-44 and 47 on the powers of the CRA in respect thereof, and sections 53-54 on the licensing process).

Section 22 provides for the establishment, by the CRA Council, of a Broadcasting and Monitoring and Complaints Committee. Section 62 sets out the duties of this Committee as being to monitor compliance by broadcasters with their licence

⁶⁷ Decree-Law No. 12/2003 Establishing the Communications Regulatory Authority and Approving the Statutes Thereof, Section 9.

⁶⁸ *Ibid.*, Section 6.

⁶⁹ Regulation No. 2001/15 on the Establishment of an Authority for the Regulation of Telecommunications in East Timor, Section 25.

⁷⁰ *Ibid.*, Sections 27-28.

conditions and any codes of conduct issued by the CRA. Section 62 also gives the Committee a mandate to monitor “cross media control of broadcasting services with a view to advising CRA as to the need any limitation on ownership which might, from time to time be required.”

In the Philippines, the National Telecommunications Commission, created by section 14 of Executive Order No. 546 of 23 July 1979, is responsible for issuing licences but has no power over content. Broadcasters are also required to obtain approval of the House of Representatives of the Congress for permission to broadcast, in line with Article XII, Section 11 of the Constitution.

Content regulation is undertaken on a self-regulatory basis by broadcasters themselves. Association of Broadcasters of the Philippines (KBP, *Kapisanan ng mga Brodkaster ng Pilipinas*) is the leading broadcast organisation, composed of owners and operators of radio and television stations (Regular Members) and the radio and television stations themselves (Associate Members). It has a detailed Broadcast Code, as well as other standard-setting documents. Its sanctions include suspension or expulsion from the organisation, as well as imposing fines, although these tend to be small.

In Malaysia, the Communications and Multimedia Commission Act, No. 589 of 1998 creates a Commission of the same name. Its role is merely to advise the Minister in relation to communications issues.⁷¹ The Minister must have due regard to the recommendation of the Commission when granting a licence, but otherwise such granting, as well as the imposition of licence conditions, is in his or her discretion.⁷² At the same time, the Commission has a general power to issue directions to licensees regarding non-compliance with the law or their licence conditions.⁷³

The Communications and Multimedia Act contains a number of provisions relating to concentration of ownership. Section 133 generally prohibits conduct which “has the purpose of substantially lessening competition in a communications market”. The Commission has the power to publish guidelines clarifying what this means⁷⁴ and to direct a licensee in a “dominant position” to take action to redress the problem.⁷⁵ The Commission, or any other person, also has the power to seek an injunction against anyone contravening these provisions,⁷⁶ and a breach of these rules may lead to a fine

⁷¹ The Communications and Multimedia Commission Act, No. 589 of 1998, Section 16 (see also Section 29 of the Communications and Multimedia Act).

⁷² *Ibid.*, Section 30.

⁷³ *Ibid.*, Section 51.

⁷⁴ *Ibid.*, Section 134(1).

⁷⁵ *Ibid.*, Section 139(1).

⁷⁶ *Ibid.*, Section 142(1).

of up to MYR500,000 (approximately UD\$150,000) and/or imprisonment for up to five years.⁷⁷

In relation to content issues, the Malaysian law takes the approach of Australia, providing for voluntary standards to be issued by broadcasters, but allowing for the Commission to issue binding standards where it deems the voluntary system not to be effective.⁷⁸ There has been reluctance on the part of broadcasters to adopt their own code and the Commission has established a Content Forum to discuss a mandatory code, which is ongoing. A set of guidelines for broadcasters and online media has been adopted by the Content Forum but no code *per se* has been adopted yet.

The Media Development Authority of Singapore Act provides for the establishment of the Media Development Authority of Singapore.⁷⁹ The Authority is responsible for licensing and other regulatory functions for broadcasters.⁸⁰ This includes ensuring that there is an adequate range of media services, that there is effective competition in the market, and that high standards are maintained. The licensing power of the MDA is reaffirmed in the Broadcasting Act.⁸¹

The Broadcasting Act also grants the Authority the power to issue Codes of Practice relating to programming and advertising.⁸² Compliance is mandatory⁸³ and breach of any such codes may lead to licence suspension or revocation, or fines.⁸⁴

As noted, there are no regulatory bodies for broadcasting in Cambodia, Vietnam, Burma and Laos (and no private broadcasters in the latter three). In Cambodia, licensing is undertaken directly by the Ministry of Information.

2. Progress

As with public service broadcasting, the more progressive developments regarding broadcast regulation are found in Thailand, Indonesia and East Timor. In Thailand, if anything, the legal framework might be described as being too progressive, leading to a stalemate between different stakeholders and a failure to appoint the broadcast regulator. Assuming that amendments to the Frequencies Act are in line with the

⁷⁷ *Ibid.*, Section 143.

⁷⁸ *Ibid.*, Chapters 9 and 10.

⁷⁹ Media Development Authority of Singapore Act, No. 34 of 2002, Section 3.

⁸⁰ *Ibid.*, Section 11.

⁸¹ Broadcasting Act, No. 15 of 1994, Section 17.

⁸² *Ibid.*, Section 18.

⁸³ *Ibid.*, Section 25.

⁸⁴ *Ibid.*, Section 24.

original enactment, albeit providing for a more practical means of appointing the regulator, this should provide a good basis for independent regulation of the sector.

The Indonesian Broadcasting Act provides for an independent regulator, KPI, along with a package of measures that are designed to protect its independence. In practice, individuals appointed to KPI have demonstrated their independence although, as noted above, their role has been seriously circumscribed since the Act was first adopted in 2002.

There has been unfortunate backsliding in relation to the independence of the oversight body for broadcasting in East Timor. Regulation 2001/15 provided for a relatively independent body, the CRA, to oversee broadcasting. However, the regulation had a significant flaw: it provided for members to be appointed by the UN Transitional Administrator, not necessarily a good model for the post-independence period. Unfortunately, that model was essentially retained after independence and the law now provides for members of the current oversight body, ARCOM, to be appointed by the government, while other protections for independence found in the earlier Regulations have largely been removed.

In the Philippines, Malaysia and Singapore, broadcast regulators lack independence from government. Although the broadcasting sector is relatively independent and diverse in the Philippines, in Malaysia and Singapore, government control over regulation has been used to control broadcasters.

Cambodia, Vietnam, Burma and Laos all lack specialised broadcast regulators. In the latter three, there are no private broadcasters and the public broadcasters are firmly under government control, so formally there is no need for a broadcast regulator. In Cambodia, regulation of broadcasting is undertaken directly by a government ministry, with the expected results in terms of the independence and diversity of the sector.

3. Independence

It is well established under international law that broadcast regulation should be undertaken by bodies which are independent of government. Otherwise, there is a serious risk of political interference, to the detriment of the freedom and independence of broadcasting. As with public service broadcasting, and as the survey below demonstrates, countries in South-east Asia are struggling to meet international standards in this area.

Thailand once again presents the most complex scenario regarding broadcast regulation, including in relation to the independence of the regulator. As noted above, section 40 of the 1997 Constitution explicitly states that radio frequencies are a national resource which shall be managed in the public interest by an “independent regulatory body” whether for purposes of broadcasting or telecommunications. The same guarantees are provided for in Article 47 of the 2007 Constitution, with the

important addition that the latter provides for ‘one’ independent regulator for both sectors.

After Black May, in 1992, a National Broadcasting Commission was set up under the PRD but it has largely been absent from the broadcasting debate since 1997. The 2000 Frequencies Act provides for the appointment of two regulatory bodies – a (new) National Broadcasting Commission and the National Telecommunications Commission (NTC) – and details the manner in which members are to be appointed.

The Frequencies Act provided for the appointment of two selection panels, members of which would be nominated by different stakeholder groups. The selection panels, in turn, would nominate a shortlist of 14 candidates for membership of each of the NBC and NTC to the Senate, which would appoint one-half of these, namely seven members, to each body.

The process of appointments has been fraught with conflict and delay. There was, in particular, conflict over who was eligible to nominate members for the four places on the 17-member NBC selection panel allocated to media professionals. The Council of State reduced the number of groups entitled to vote on these representatives from 46 to 27, leaving 18 votes, or two-thirds of the total, in the hands of the commercial and military broadcast operators. The conflict led to a very messy process, including legal challenges and the involvement of the Senate panel responsible for final selection of NBC members. In the end, the NBC was never appointed, resulting in paralysis in broadcast regulation, and leaving aspirant broadcasters, and particularly community broadcasters, in a legal limbo. The NTC, on the other hand, was finally appointed in 2004 and has been functional since then.

The adoption of the 2007 Constitution changed the ground-rules with the result that there is a need to amend the Frequencies Act to provide for only one regulator, which is likely to be called the National Broadcasting and Telecommunications Commission (NBTC). This process is ongoing, and is not expected to be resolved for some time. To address the regulatory vacuum, as noted above, the NTC has been given limited powers to regulate broadcasting.

Broadcast regulation in Indonesia was traditionally vested in the Ministry of Information. However, this ministry was abolished when newly installed President Abdurrahman Wahid announced his first cabinet in October 1999. The lacuna was quickly filled as what has become the Ministry of Communications and Information took control of the portfolio.

Broadcasting Law No. 32/2002 sets out a number of “principles, objectives, functions and directions” for broadcasting as a whole,⁸⁵ which include several references to the idea of independence.

⁸⁵ Broadcasting Law No. 32/2002, Arts. 2-5.

Article 7 establishes the Indonesia Broadcasting Commission (KPI) as an “independent state body” responsible for broadcast regulation, with national and regional bodies under the supervision, respectively, of the DPR and the Provincial People’s Representative Councils (DPRDs). Funding for the KPIs comes from the state and regional budgets, and the secretariats are funded by the state.

The process for selecting the nine members of the national KPI and seven members of the regional KPIs is detailed in Articles 9 and 10. Members may be nominated by the public and are elected by the DPR or DPRDs based on an “open fit and proper test”. The formal appointment of members is done by the President and Governors, respectively.

A number of conditions are placed on who may be appointed as a member, including loyalty to *Pancasila*⁸⁶ and the Constitution, being a citizen of Indonesia, having a university degree or demonstrating the equivalent intellectual capacity, including knowledge of broadcasting, not being directly or indirectly involved in mass media activities, and not being a member of a legislative or judicial body, or a government official.

Membership is for three years and may be renewed once. Members may be removed following imprisonment due to a court decision or by Presidential Decree upon the recommendation of the DPR (or the equivalent for members of regional KPIs). The members elect the chair and vice-chair from among themselves.

The first nine members of the KPI were appointed by the DPR in January 2004 and other rounds of appointments have taken place since then. Most observers agree that the membership, as well as the activities of the national KPI, at least, demonstrate a reasonable degree of independence. The problem lies more in their limited powers, which have gradually been whittled down.

In East Timor, UNTAET Regulation No. 2001/15 provides that the Communications Regulatory Authority (CRA) has a responsibility to “regulate and manage the radio frequency spectrum” and to “facilitate the development of a broadcasting industry in East Timor that is efficient, competitive and responsive to audience needs”.⁸⁷ The CRA was also responsible for telecommunications regulation.

Section 5 of the Regulation provides that the CRA shall be independent and impartial in the exercise of its functions. Section 7 provides that the Chair and between three and five other councillors shall be appointed by the Transitional Administrator, for a term of three years, renewable once.⁸⁸ Pursuant to section 9, councillors shall be

⁸⁶ *Pancasila* is a set of five principles considered to be foundational to the Indonesian State, including belief in one god, the unity of Indonesia, democracy and social justice.

⁸⁷ UNTAET Regulation No. 2001/15, Section 4(1).

⁸⁸ *Ibid.*, Section 11.

committed to “fairness, openness and accountability”, shall have relevant expertise, and shall, collectively, represent a broad cross-section of society. Section 10 provides a long list of disqualification rules for councillors, covering elected officials, members of political parties or individuals with substantial interests in telecommunications or broadcasting.

Section 12 provides for the removal of councillors by the Transitional Administrator under certain conditions, including where they have been convicted of a criminal offence involving moral turpitude and carrying a sentence of more than three years, have been absent from three consecutive meetings of the Council without cause, have failed to disclose a conflicting interest or are unable to perform their duties effectively. The latter is rather broad in scope and could potentially be abused.

Pursuant to section 17, the Council appoints its own staff, including a Chief Executive Officer, in consultation with the Public Service Commission. Funding for the CRA comes from the consolidated budget.⁸⁹

In practice, at least since independence, broadcasting and telecommunications regulation appears to have been the responsibility of the Directorate of Telecommunications, Ministry of Transport, Communications and Public Works. Decree-Law No. 12/2003 dissolved this Directorate and allocated its responsibilities and resources to the Authority for the Regulation of Communications (ARCOM), which is to have “administrative and financial autonomy”.⁹⁰

The main provisions relating to ARCOM are contained in an Annex to the Decree-Law titled Statutes of the Communications Regulatory Authority. Section 1 again reiterates the independence of ARCOM, and this is bolstered by section 4. The documents do not refer to broadcasting as such, instead referring to communications (as well, at times, to telecommunications, presumably a sub-category of communications, which would additionally include broadcasting).

The ARCOM Board comprises a President and two voting members, appointed by the Prime Minister, on the basis of nominations from the Minister of Transport, Communications and Public Works. Board members must be “people with recognised reputation, independence, and technical and professional competence”. Rules against commercial conflicts of interest are provided for, and the term of office is three years, renewable once.⁹¹ Members may be removed on various grounds, including by the Prime Minister, on the basis of a proposal from the Minister of Transport, Communications and Public Works, in case of proof of a serious failure to perform duties.⁹² The entire Board may be dissolved, through the same procedure, for serious

⁸⁹ *Ibid.*, Section 18.

⁹⁰ Decree-Law No. 12/2003, Section 1.

⁹¹ *Ibid.*, Section 21.

⁹² Annex to the Decree-Law No. 12/2003, Section 23.

irregularities in its work or for significant overspending without justification.⁹³ The independence of the Board is formally guaranteed in the Statutes.⁹⁴

The Statutes also establish a Monitoring Committee comprising a president and two other members, one of whom must be an auditor or accountant. Members are appointed jointly by the Minister of Planning and Finance, and the Minister of Transport, Communications and Public Works. The Committee is responsible “for controlling the legality and cost-effectiveness of ARCOM’s financial and property management”.⁹⁵ ARCOM is required to submit an annual report on its work to the government and to the National Parliament.⁹⁶ As noted above, it is not clear whether the more detailed protections for independence of the CRA carry over to ARCOM.

Licensing of broadcasters in the Philippines is undertaken by the National Telecommunications Commission (NTC). The three NTC Commissioners are appointed by the President, with the two deputy commissioners ‘preferably’ being a lawyer and an economist. Commissioners are required to be “of unquestioned integrity, proven competence, and recognized as experts in their fields, related, as much as possible, to communications”.⁹⁷

There have been a number of incidents in recent years of the NTC attempting to use its licensing powers for political ends, although these have normally been successfully challenged by civil society groups.⁹⁸ The Philippines is to some extent anomalous: despite the fact that the regulator is not independent, in practice there is a wide variety of broadcasters which demonstrate a relatively high degree of editorial independence and represent a wide range of viewpoints. At the same time, commercial pressures dominate, to the detriment of freedom of expression.

Cambodia still has no law governing broadcast regulation. According to some sources, a draft is being prepared by the Ministry of Information while other sources suggest that the Press Law is being revised, also by the Ministry of Information, to bring broadcast regulation within its remit. At the moment, broadcast regulation is undertaken directly by the Ministry of Information, with predictable implications in terms of political interference. Commentators suggest that there has been little change since 2000, when a report commissioned by SIDA noted that, “when it comes to granting licences to new television and radio stations, the fickle application of rules and

⁹³ *Ibid.*, Section 24.

⁹⁴ *Ibid.*, Section 25.

⁹⁵ *Ibid.*, Sections 31-32.

⁹⁶ *Ibid.*, Section 48.

⁹⁷ Executive Order No. 546 of 23 July 1979, Section 16.

⁹⁸ See ARTICLE 19 and CMFR, *Freedom of Expression and the Media: Baseline Studies: Philippines* (2005, London, ARTICLE 19), pp. 42-43.

policies must be tackled.”⁹⁹ In practice, broadcasters are overwhelmingly linked to the government.

In Malaysia, the Communications and Multimedia Act, No. 588 of 1998 governs broadcast regulation, along with the Communications and Multimedia Commission Act, No. 589 of 1998. The Commission is appointed by the Minister of Energy, Water and Communications, and consists of a chair, three government representatives and between two and five other members (section 6 of the Commission Act). Although members must declare any interests in the sector to the Minister, who shall take this into account when making appointments (section 8), there do not appear to be other conditions on members. As noted above, final decision-making in relation to licences rests with the Minister with the result that, in practice, as in Cambodia, broadcasters are overwhelmingly linked to and supportive of the government.

Pursuant to the Media Development Authority of Singapore Act, No. 34 of 2002, the Media Development Authority has a Chairman and between 5 and 16 members, all appointed by the Minister.¹⁰⁰ The Act includes rules on conflict of interest,¹⁰¹ but does not impose any other conditions on members. Members may be removed, largely at the discretion of the Minister.¹⁰²

As noted above, there are no private broadcasters in Vietnam. The state broadcasters Vietnam Television (VTV) and Voice of Vietnam radio (VoV) dominate the airwaves. The situations in Burma and Laos are similar.

⁹⁹ Edman, B., *Trapped in the Past, Seeking Out a Future: A Study on the Cambodian Media Sector* (2000, Stockholm, Sida and ForumSyd), p. 11.

¹⁰⁰ Media Development Authority of Singapore Act, No. 34 of 2002, Section 5.

¹⁰¹ *Ibid.*, Section 10.

¹⁰² *Ibid.*, Section 7.

VI. NEW MEDIA

New technologies, and particularly the internet, have opened up radical new possibilities for freedom of expression and the free flow of information. They are significantly more difficult for governments to control, and offer unprecedented opportunities for citizen involvement in the mass dissemination and receipt of information. The extent to which these opportunities have been available in the countries of South-east Asia varies considerably. Some countries impose few restrictions on use of the internet, others have applied or extended existing legal restrictions to the internet, and yet others have devised special regimes for control.

There have been some important developments relating to new media in Thailand, although internet penetration remains limited, particularly outside the main cities. At the same time, some important alternative news sources are now available only over the internet, including www.prachatai.com, www.sameskybooks.org, www.midnightuniv.org and www.isranews.org.¹⁰³

In July 2007, the Computer-Related Offences Commission Act of Thailand was adopted. Although primarily aimed at addressing computer-related crime, the Act also imposes a number of restrictions on freedom of expression, including special rules on defamation on the internet. The Act covers the crime of *lèse majesté*, or insulting the Royal Institution. Thousands of websites have been banned under these provisions and a few charges have been laid for violating the *lèse majesté* rules over the Internet.

In Indonesia, similarly, Law No. 11 of 2008 concerning Information and Electronic Transactions was adopted with the primary aim of restricting internet crime. Once again, the law includes a number of restrictions on internet content, including making it a crime to disseminate defamatory material. In May 2009, the Constitutional Court rejected a challenge to this rule, holding that it was a legitimate restriction on freedom of expression. The law provides for up to six years' imprisonment for defamation, as compared to one year under the general criminal law. At least two people have been charged under these provisions.

The internet is not widely available in East Timor and, to date, the authorities have not sought to regulate its use. The same is true in Cambodia, although access rates have increased significantly in recent years. In the Philippines, as well, the authorities have not yet sought to impose special conditions on internet content. A law on electronic commerce¹⁰⁴ has been adopted but does not impose general restrictions on internet content.

¹⁰³ See Article 19 and National Press Council of Thailand, *Impact of Defamation Law on Freedom of Expression in Thailand* (London: Article 19, 2000).

¹⁰⁴ Republic Act No. 8792 of 2000 on Electronic Commerce.

In Malaysia, the internet has offered some respite from the strict control over content imposed on other forms of media, and the government has made promises to keep the internet censorship free. This form of communication flourished following the sacking of Deputy Prime Minister Anwar Ibrahim in September 1998, partly driven by the high degree of public interest in this event. Although much of the activity was short-term and not very professional, important online media also emerged and remain a key source of independent news to this day. Malaysiakini.com is a leading example, which has inspired others. Since that time, the on-line news media sector has grown considerably.

However, even the internet has been subject to attempts to exert control, normally exercised through Malaysia's draconian laws of general application, including the Sedition Act 1984 and the notorious Internal Security Act, No. 82 of 1960. In January 2003, Malaysiakini.com's offices were raided following a report by UMNO Youth to the police that the online site had published seditious material. A number of computers and other 'evidence' were seized, although these were eventually returned. Several bloggers, including Raja Petra, Abdul Rashid Abu Bakar, and the famous blogger Syed Azidi Syed Aziz, have recently been charged and detained under the Sedition Act.

Other forms of internet censorship have also been used in Malaysia. In April 2009, reporter Wong Shu Qi and photographer Saw Siow Feng, from the online media merdekareview.com, were denied entry into new Prime Minister Najib Razak's department to cover the Cabinet line-up announcement. More recently, in September 2009, several staff at Malaysiakini.com were questioned by the Communications and Multimedia Commission over material on their website relating to a protest that the CMC deemed offensive. There have also been recent reports that the CMC wants to introduce filtering to block 'undesirable' websites.

Developments regarding the internet in Singapore have been less positive in terms of providing a space for independent reporting, but the medium has been subject to less stringent censorship than traditional media outlets. The Media Development Authority has in place a system of website licences, and it also licenses internet service providers. The Authority has issued an internet Code of Practice, binding on both internet content and service providers.

In Vietnam, as well, the internet has provided marginally more space for independent reporting, although earlier progress in this respect appears to have stalled, if not been reversed. Online media such as VnExpress and VietnamNet have been allowed to experiment with quasi-private structures, although this space seems to have been largely closed down. In early 2009, VnExpress moved its editorial operations to the Ministry of Science and Technology from the private FPT Telecoms, reportedly after some high-ranking people in the Communist Party reminded it that private ownership was prohibited. VietnamNet similarly transferred its news department from the privatised Vietnam Posts and Telecommunications Group (VNPT) to the Ministry of Information and Communication (MIC) in June 2008.

Burma exercises strict control over the internet, as demonstrated by the country-wide blocking of access during the September 2007 protests. The Electronic Transactions Law 2004 provides that anyone who uses a computer to commit “any act detrimental to the security of the state or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture” shall be imprisoned for between seven and fifteen years.

Numerous charges were laid in the aftermath of the September 2007 protests. Nay Phone Latt, a Burmese blogger (nayphonelatt.net), was sentenced in November 2008 to more than 20 years in prison. Zarganar, a well-known Burmese comedian, was sentenced the same month to 59 years in jail for criticising the government online.

In Laos, internet usage is in its infancy, having been introduced only recently. There are at least three ISPs, LaoTel, run by the government, GlobeNet, a private provider, and PlanetOnline, an Australian provider, and only a few tens of thousands of users. There is also very little content in the local language, Laotian. The international internet link for LaoTel is via SingNet, so that filtering of ‘objectionable’ content by SingNet is automatically passed on to Laotian users.¹⁰⁵ In October 2000, the government published a set of vague guidelines on Internet use in the *Vientiane Times*, a government newspaper. The guidelines warned people “not to use the Internet in the wrong way” and included a number of rules governing online content. Southeast Asian Press Alliance (SEAPA) reported in 2004 that: “the internet is allowed but highly controlled and monitored.”¹⁰⁶

As this survey above demonstrates, different approaches have been taken in South-east Asia regarding internet media. In Cambodia, East Timor and the Philippines, the internet has been largely left alone, albeit perhaps for different reasons. Thailand and Indonesia have imposed content controls primarily in the context of laws dealing primarily with electronic commerce. In both countries, individuals have been criminally charged for internet content, with Thailand leading the way with some harsh *lèse majesté* charges.

In Malaysia, while the internet has provided an important alternative forum, at the same time, the government has not lived up to earlier promises to refrain altogether from censoring it. Existing laws, in particular the Sedition Act, along with administrative measures and other forms of harassment, have been abused to limit unwanted internet content.

In Singapore, Burma, Vietnam and Laos, extensive control over the internet has been achieved through both the application of general rules and special internet legislation.

¹⁰⁵ Information mainly from: <http://www.isoc.org/oti/articles/0401/rao3.html>.

¹⁰⁶ See: <http://www.seapabkk.org/newdesign/commentarydetail.php?No=284&keyword=laos>.

VII. CONCLUSION

Independent, public interest audiovisual media – both traditional and new media – can play a very important democratic role, providing a platform for the discussion and resolution of social issues, disseminating important information to citizens, raising awareness, and providing individuals with much needed diversion and entertainment. The regulatory framework impacts in important ways on the ability of the media to achieve these goals.

Core international standards regarding broadcast regulation are respected more in the breach than the observance in South-east Asia. Respect for the principles of independence and diversity is particularly weak. This is perhaps to be expected in the more repressive countries – Burma, Laos and Vietnam – but the performance of countries like the Philippines, Indonesia, Thailand and East Timor can only be described as disappointing. The lack of serious progress on regulatory reform in Cambodia, Malaysia and Singapore is also unfortunate. It is surprising, for example, that in not one of the countries in the region does an independent regulator actually issue broadcasting licences. More progress has been made in terms of public service broadcasting, although even there developments have been limited.

Both positive and negative trends may be observed. In Indonesia and East Timor, significant general advances in media freedom followed the end of the Suharto period and independence, respectively. A somewhat analogous process took place in Thailand after the adoption of the People's Constitution in 1997. Perhaps predictably, the important gains in Indonesia and East Timor could not be maintained, while in Thailand, the very progressive reforms foreseen in the Constitution and legislation could not be implemented. In each case, an important factor inhibiting reform was the reluctance of the politically and economically powerful to vest control over broadcast regulation in an independent body.

In Indonesia and Thailand, the general trend in terms of public broadcasting has been more positive. While encouraging, this may also to some extent be a consequence of the waning or limited influence of these broadcasters in a highly commercialised market. In contrast, it may be noted that in East Timor, where the public broadcaster continues to play a very significant role, there has been backtracking in terms of independence.

In some countries, notably Malaysia and to a lesser extent Singapore and Vietnam, internet media have been allowed greater freedom to develop as an alternative democratic space. In both Malaysia and Vietnam, however, the early promise of the new media platforms has only been partly realised. At the same time, these are extremely interesting developments, with important potential for the future.

Overall, a lack of real political will has stymied audiovisual media reform in all countries in the region since 2000, although significant advances were achieved in some countries at the end of the 1990s. Outside Thailand, where reforms are ongoing,

there also seems to be little chance of major reform in the near future. Whether the Thai reforms come to fruition and how they play out will, therefore, be very interesting to observe. If successful, they may add some impetus for reform elsewhere in the region.

It is difficult to assess the impact of the problems described in this study on actual media output. The Philippines is somewhat anomalous, as the lack of an independent regulator does not appear to have resulted in serious political bias in the licensing process. There is no question, however, that in all the other countries in the region, control over regulation has led to a situation where most private broadcasters tend to support the government. At the same time, in most countries, commercial pressures are paramount, leading to lower quality and cheaper content focusing heavily on entertainment. It is very difficult to assess the relative impact of commercial pressures versus political control.

The way forward is not in doubt: independent regulators need to be given the power to regulate broadcasting under clear public interest rules, with analogous needs for public broadcasters, namely independence and clear public interest mandates. And freedom of the internet should simply be respected. The strategy for getting there is much less clear and needs to be tailored to different country situations. In many countries – with Thailand and Indonesia being exceptions – awareness about the need for media law reform and what form it should take is low, even among media freedom advocates, pointing to an obvious component of the way forward. Building the political will for reform will, however, be a challenge in most countries in the region. Achieving greater freedom on the internet may be a useful way for advocates to chart a middle path.

This study provides a very general overview. As a next step, it would be useful to integrate more local analysis on what is available through the broadcast media, as well as on how regulatory systems affect that content. A more in-depth study could also consider a number of specific regulatory issues, such as measures to promote media diversity, concentration of ownership both in fact and from a regulatory perspective, rules on foreign investment, local content rules, election broadcasting and copyright rules. It would also be useful to probe more deeply into internet regulation and regulation of audiovisual media content.

Abbreviations used

ARCOM	Authority for the Regulation of Communications (East Timor)
ASEAN	Association of Southeast Asian Nations
BN	<i>Barisan Nasional</i> (Malaysia)
CPMR	Campaign for Popular Media Reform (Thailand)
CRA	Communications Regulatory Authority (East Timor)
DPR	Indonesia's House of Representatives
ICCPR	International Covenant on Civil and Political Rights
KBP	Association of Broadcasters of the Philippines, <i>Kapisanan ng mga Brodkaster ng Pilipinas</i>
KPI	Indonesian Broadcast Commission, <i>Komisi Penyiaran Indonesia</i>
LNR	Lao National Radio
LNTV	Lao National Television
MCOT	Mass Communication Organization of Thailand, Plc. (MCOT)
MIC	Ministry of Information and Communication (Vietnam)
MRTV	Myanmar Radio and Television
NBC	National Broadcasting Commission
NBN	National Broadcasting Network (Philippines)
NTC	National Telecommunications Commission (Thailand)
PRD	Public Relations Department (Thailand)
RNK	National Radio Kampuchea (Cambodia)
RRI	Radio of the Republic of Indonesia, <i>Radio Republik Indonesia</i>
RTM	Radio Television Malaysia
RTTL	Radio and Television of East Timor, <i>Rádio e Televisão de Timor-Leste</i>
SEAPA	Southeast Asian Press Alliance
TITV	Thai Independent Television

TVK	National Television Kampuchea (Cambodia)
TVRI	Television of the Republic of Indonesia, <i>Televisi Republik Indonesia</i>
UDHR	Universal Declaration on Human Rights
UMNO	United Malays National Organisation
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNTAET	UN Transitional Administration in East Timor
VNPT	Vietnam Posts and Telecommunications Group
VoV	Voice of Vietnam radio
VTV	Vietnam Television

List of companies mentioned

Family Entertainment

FPT Telecoms

GlobeNet

LaoTel

MediaCorp

PlanetOnline

Shin Corp

Temasek Holdings

Vietnam Posts and Telecommunications Group

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