



BRIEFING NOTE SERIES ON FREEDOM OF EXPRESSION

Public Service Broadcasting

Centre for Law and Democracy
International Media Support (IMS)

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Public service broadcasters (PSBs) play a vital role in the media landscape. They can serve as a source of diverse and high-quality programming, particularly in ways which a pure market approach would not necessarily support. PSBs can also serve to foster national identity within a framework of respect for minorities, and to promote socially inclusive and human rights respecting values. In a rich media landscape, PSBs can often set the tone, spurring their counterparts in the commercial sector to produce higher quality and more sophisticated programming.

Mandate

PSBs serve the public interest by complementing and extending the programming offered by commercial broadcasters, thereby enhancing diversity in the media. To ensure that PSBs meet programming needs that are responsive to the public interest and to ensure accountability in terms of programming, it is important to set out a clear public service mandate in law and/or regulation for public broadcasters. This should be relatively detailed, without unduly binding the hands of public broadcasters.

The precise mandate will vary from country to country but a number of features are found in most countries. Comprehensive news and current affairs programming is a hallmark of PSB, and it is important that this be accurate, impartial and balanced. In most cases, PSBs cover the proceedings of key decision-making bodies, most importantly the legislature, and provide in-depth coverage of developments at the national but also the international and local levels.

PSBs are normally expected to provide programming both of broad appeal and of interest to specialised audiences, often with a focus on traditionally neglected areas such as educational programming and programming directed at

minorities. It is also common for PSBs to be required to ensure that their signals reach as large a portion of the population as possible, which is natural given that they are publicly funded.

Independence

If PSBs are not protected against government interference, i.e. if they are not independent, they cannot effectively fulfil their public service mandates. The importance of this has been eloquently described by the Supreme Court of Ghana in *New Patriotic Party v. Ghana Broadcasting Corp.*:

[T]he state-owned media are national assets: they belong to the entire community, not to the abstraction known as the state; nor to the government in office, or to its party. If such national assets were to become the mouth-piece of any one or combination of the parties vying for power, democracy would be no more than a sham.

The need for independence among PSBs also flows from international guarantees of the right to freedom of expression, as reflected in the following statement by the UN Human Rights Committee (UNHRC) in its General Comment No. 34:

States parties should ensure that public broadcasting services operate in an independent manner. In this regard, States parties should guarantee their independence and editorial freedom. They should provide funding in a manner that does not undermine their independence.

Numerous Declarations adopted under the guidance of UNESCO also note the importance of independent public service broadcasters, while the 2010 Joint Declaration of the special international

mandates on freedom of expression expressed concern about public broadcasters being subject to political “influence or control” which results in them serving “as government mouthpieces instead of as independent bodies operating in the public interest”.

In practical terms, protecting the independence of broadcasters can be achieved in many of the same ways as promoting the independence of broadcast regulators (see Briefing Note 7). In particular, it is very important to ensure that they are overseen by governing boards and that the way in which members are appointed to these bodies ensures their independence.

An additional level of protection is common for PSBs through what is known as editorial independence, which refers to the idea that editorial decisions should be made by professional staff (editors) instead of the governing board. This can be achieved by ensuring a clear separation between the governing body (which has overall responsibility for the organisation) and managers and editors (who are responsible for day-to-day decision-making). The governing body should oversee the work and report to the government, while the professional staff should manage the organisation’s operations. This can operate as a sort of dual layer of protection against government interference, since those who would seek to influence the broadcaster must pass through both the board and then the editorial team.

Funding

To properly fulfil their mandate, which normally includes delivering outputs over and beyond what is expected from commercial broadcasters, PSBs need to benefit from some form of public funding. At the same time, this funding must be provided in a way that is insulated from government control, as part of the system of protecting the independence of PSBs.

Good practice in this area is to provide funding via an established licence or other fee, rather than directly from the government budget. In some countries, PSBs are funded through a mandatory

levy paid by all households which have a radio or television set. While this has the benefit of providing consistent levels of funding over time and is relatively insulated from government interference, it can be difficult and/or expensive to collect these fees. An alternative is to levy the fee alongside some other centrally collected fee, such as the electricity bill, which minimises collection costs. There are also some innovative approaches here, such as Thailand, which funds PSB through a tax on liquor and tobacco.

In many countries, PSBs rely on a mixed funding model, whereby some of their funding is provided from public sources and some from commercial activities, including advertising. Recommendation 1878 (2009) of the Parliamentary Assembly of the Council of Europe refers to the following possible sources of funding:

The funding of public service media may be ensured, through a flat broadcasting licence fee, taxation, state subsidies, subscription fees, advertising and sponsoring revenue, specialised pay-per-view or on-demand services, the sale of related products such as books, videos or films, and the exploitation of their audiovisual archives.

While a mixed funding model provides more resources for PSBs and can also help enhance their independence, excessive reliance on commercial sources of funding can start to erode the lines between PSBs and commercial broadcasting. In the end, if the public wants PSBs to provide additional services to what is available via commercial broadcasting, an appropriate measure of public funding must be provided to achieve this.

Accountability

Independence from government does not mean that PSBs should not be accountable, ultimately to the people. This flows both from the fact that they receive public funding and from the fact that they perform a public service and are an important public resource.

Better practice here is for PSBs to be accountable to parliament, rather than directly to government. This is achieved, for example, by requiring PSBs to submit annual reports, along with externally audited accounts, to the legislature for its review. This can be supplemented by more direct forms of public accountability, such as an obligation to hold public meetings, conduct surveys and provide other means by which the public can provide direct feedback to the public broadcaster. PSBs

should also be subject to the right to information law, so that members of the public can obtain information on request from PSBs, subject to legitimate exceptions (see Briefing Note 3). Another type of direct accountability is to require PSBs to adopt codes of conduct regarding their behaviour and programming, and to put in place systems whereby members of the public can complain about breaches of the code.

FURTHER READING

- ARTICLE 19, *A Model Public Service Broadcasting Law*, 2005: <http://www.article19.org/data/files/pdfs/standards/modelpsblaw.pdf>
- Democratic Governance Group of United Nations Development Programme Bureau for Development Policy, *Supporting Public Broadcasting: Learning from Bosnia and Herzegovina's Experience*, 2004: <http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/oslo-governance-center/ogc-fellowship-papers/supporting-public-service-broadcasting-learning-from-bosnia-and-herzegovinas-experience/PublicServiceBroadcasting.pdf>
- Toby Mendel, *Public Service Broadcasting: A Comparative Legal Survey*, UNESCO, 2011: <http://unesdoc.unesco.org/images/0019/001924/192459e.pdf>