

Note

by

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on

the Draft Regulation on Broadcasting in East Timor

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This Note provides a brief analysis of the Draft Regulation on Broadcasting in East Timor dated May 2001. It is based on international standards and comparative broadcasting practice.

The Draft Regulation is largely consistent with international standards and best comparative practice in this area, in particular by seeking to ensure that broadcast regulation is done in a manner that is independent of political control or interference while ensuring appropriate accountability. There are, however, a few areas where the Draft Regulation could be improved.

Section 3

Paragraph (c) provides that the Broadcasting Authority is responsible for ‘supervising’ broadcasters. This is a very general term of the type which should normally be avoided when allocating regulatory powers in relation to the media. The Authority is responsible for ensuring compliance with license conditions. If this is what is meant, it should be stated clearly as such but otherwise this power should be removed from the Draft Regulation.

Section 4.11

This Section provides that the Chairperson of the Broadcasting Authority shall be appointed by the Transitional Administrator, after consultation with the National Council. It is likely that powers now exercised by the Transitional Administrator will, at some point in the future, be exercised by a president or prime minister. The power to appoint the Chairperson is obviously of some significance and it would be better if this were done by the members themselves (as is common in many countries). Otherwise, the power could be constrained in some manner (e.g. by a requirement of consultation, as with the selection of members). The same point applies to Section 21.10, providing for appointment of the Chairperson of the Board of Directors of the public broadcaster.

Section 10.2

This Section provides that private broadcasters must apply for a license within 2 months of the Regulation coming into force. It should make it clear that private broadcasters already providing a service will be allowed to continue to do so until their license application has been decided by the Broadcasting Authority. Presumably this is the intention, but it is not clear in the Draft Regulation.

Section 11.8

This Section states that licenses may be for up to five years. In most jurisdictions, this is simply set at a fixed period of time. It is important to ensure that even an independent broadcast regulator does not act in arbitrary ways, and setting the length of licenses is one way of reducing the scope of discretionary power vested in the Authority.

Section 24.1

This Section provides, among other things, that funding for the PBC may come directly from the Consolidated Budget. One of the most potent means of interfering with the work of a public broadcaster is through control over the budget. To prevent this, many countries provide public funding exclusively through a license fee. If this is not possible at present in East Timor, it may still be possible to help insulate the budget from political manipulation, for example by requiring consultation with the Broadcasting Authority for any changes in the level of direct subsidy.

Section 30.3

This Section requires private broadcasters to keep all materials for 30 days, presumably to give individuals and the Authority time to bring or initiate complaints. This should be extended to cover PBC as well. If Section 30.2 means that PBC must keep ALL the material it produces, it is probably unrealistic as this would be quite expensive.

Section 32

The definition of both public and community broadcasters is inadequate. There is no reason why public broadcasters should be national and they are not defined primarily

by the fact that they are not commercial but rather by the fact that they are publicly funded and serve public interests. Community broadcasters do not have to serve communities that are not reached by other broadcasters. The following definitions might be considered:

Public Broadcaster

A Public Broadcaster is a broadcaster which receives public funding and which is required to serve specific public interests.

Community Broadcaster

A Community Broadcaster is a broadcaster which is controlled by a non-profit entity and operates on a non-profit basis, carries programming serving a particular community including by reflecting the special interests and needs of that community, and is managed and operated primarily by members of that community.

Appendix I

Paragraph 2 of the policy objectives deals with promoting broadcasting which is not in contradiction with the religious values of East Timor. This may easily be misinterpreted and used to prohibit, for example, a programme which critically analysed certain accepted religious tenets. In any case, it is too specific a statement for a policy objective (what about material that is in contradiction with other important cultural value, for example?)

Paragraph 8 provides that foreign broadcasters should not be established until local broadcasters are well developed. While a laudable objective, this may actually restrict the access of the people of East Timor to broadcasting, as it will be some time until local broadcasting is well developed. Also, the notion 'well developed' is almost impossible subjective. It might be better to simply require that any licensing of foreign broadcasters not undermine the development of local broadcasting.

Appendix II

Part II of this document is unclear. In paragraph 1 and 2 it appears to prescribe a fixed system for promoting local content, while in paragraph 6 provides for a flexible system. This should be clarified. Also, it should be clear that the quota for local content provided for in paragraph 1 may be different for different broadcasters, depending on a variety of factors including the type of programming they specialise in (in South Africa there is a lower rate of local content, for example for broadcasters who carry mainly feature films) and their capacity to meet the quota. Paragraph 2, while serving a laudable objective, is too detailed. The law should not impose excessively strict conditions on local broadcasters, who will find it difficult enough to become established even in the absence of onerous legal requirements.