

Favorable Legal Frameworks for Civil Society's access to Broadcasting Media

Situation in the Continent

Limitations or obstacles for civil society's access

- Argentina: exclusion by law
- Mexico: economic and technical requirements
- Guatemala and Paraguay: invitation to tender
- Uruguay: administration practices and discretionality

Obstacles to use once access is gained

- Brazil and Chile: coverage and power, lack of income to be independent (State? Poor Communities?)
- Venezuela and Colombia: association, contents
- Colombia, Brazil and the rest: only rural areas, one single frequency, no capitals, marginal frequencies

Current Models

The current model: Exclusion

Commercial and public radio stations are sufficient. Community radio stations are not necessary; they should be persecuted because they are illegal.

The ascendant model of the three P's

Since 1994-1995, specific regulations for community radio stations have been developed. On one hand, this acknowledgement could be considered one step forward;

however, it is a strait jacket since community radio stations are marginalized and reduced to marginal expression. Even worse, because of the “legitimacy” of “now being legal”, radio operators can be taken to jail for the terrible crime of expressing themselves.

The open model: general rules, not specific rules

This model was recently applied in Ecuador and has some influence in Canadian regulations. It is a general radio-broadcasting legislation about equal rights, with no much reference to community radio stations.

Some dilemmas to the social movement

(to be related with the general and specific framework dilemmas)

- Radio broadcasting seen only as telecommunications or marketing
- Privatization of the radio electronic spectrum (FCC and WSIS)
- Acknowledgement from the human right perspective (Declaration of Principles on Freedom of Expression and 2002 Reporter’s Annual Report)
- Dormant right: People do not see clearly that this is a right they should fight for, and a right to be exerted. Force correlation is very unequal and the private sector has major interests. Governments are not always willing to fight against these interests to protect community radio stations, or just do not consider this an important issue.
- New technologies: Not only Internet but also radio broadcasting; universal Internet access: use, appropriation and access to production, distribution or diffusion media. New digital frequencies to be distributed in the future should be reserved for the civil society.

Alternatives proposed

Before acting: Public policies, and not only legal frameworks, should be established when dealing with these topics. Appropriate frameworks should also be created in order to acknowledge the work of community radios. In addition, the following are necessary among others: decision-making mechanisms for the civil society to reserve frequencies in the national frequency plans; subsidies; tax exemptions; support programs for radio-station training and sustainability.

Let us now consider the legal frameworks in the light of this proposal:

- General and specific regulatory frameworks
(both in terms of concepts and strategies)

General framework (let us say a legislation on telecommunications or broadcasting)

Advantages: the existence of clearer, fairer and more transparent guidelines for everyone, based on the fact that broadcasting is not an activity that necessarily requires an enterprise with certain characteristics, but a right that any organization or individual may exert. Legally-established frameworks not interfering with the access to communication and defining open rules for everybody should be sufficient. They would correspond to the active policies that can be observed in the international context to promote community and indigenous radio stations through subsidies, tax exemptions and other types of support.

Difficulties: There is the risk that such guidelines may be intended to satisfy the political interests of the government in office, which is not obliged to make them comply with any existing legislation on this matter.

Specific framework (let us say a legislation or some specific guidelines for community radio stations and /or television)

Difficulties: Due to recent regional events, there are several risks because they are used as real barriers that prevent people from exerting effectively their freedom of expression. For example, community radio stations are considered: *i)* small-sized; *ii)* non-profit / non-loose entities; *iii)* marginal, local (serving local interests).

They do not lose sight of their objectives without losing independence (as observed from experiences in Colombia or Venezuela, or from fears in Argentina and Brazil).

Advantages: If they were possible, they would serve to determine a clear set of rules that governments and regulatory bodies should comply with. In addition, and according to that force correlation already mentioned, a specific framework is more likely to be structured by means of a legislation or some regulations insofar as the biggest interests —those of radio broadcasting and telecommunications— are not affected.