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**The Legislative Council of
The Hong Kong Special Administrative Region
Panel on Information Technology and Broadcasting
Submission By Human Rights Monitor**

Introduction

Public broadcasters around the world are under increasing pressure and are facing increasing competition. Access to thousands of channels at the click of a button, and there is growing argument that there is no need to force taxpayers to pay for programming they do not want or enjoy¹ – consumer’s choice as it is called by some.

Human Rights Monitor urges the government to bear in mind the principles as stipulated under the Vienna Declaration on Public Broadcasting Article 2, “Freedom of the media is to guarantee public broadcasters their independence in the exercise of the tasks conferred upon them. To avoid pressure by the government of the day or other private bodies, this principle should be enshrined in national constitutions, broadcasting statutes as well as the statutes of international organizations,”² while at the same time adhering to its obligations under Article 19 of the ICCPR as guaranteed under Article 39 of the Hong Kong Basic Law.

¹ http://www.aim.org/special_report/A3782_0_8_0_C/

² <http://www.freemedia.at/declarat.htm#The%20Vienna%20Declaration>

The Role of PSB in Hong Kong

Here in Hong Kong challenges are being made to public broadcasting and the role it serves is becoming more of an issue. As it stands, RTHK is a government department and fully funded by the government. Although as stated by the Legislative Council Brief that there is apparently “no clear policy” on public broadcasting in Hong Kong³, RTHK’s Mission, Vision and Values should provide a clear idea of what its mandate is all about. However, the fact that this is challenged constantly indicates that it may indicate to an extent the fact that this mission and vision is not shared by the government or its critics. The more contentious value which is of particular concern to the Human Rights Monitor is that of “**editorial independence**”, although other factors could also pose a potential “threat” if interfered with.

Although it is often pointed out that RTHK should be focusing on promoting the government’s policies, the government already has its own “media machine” in the form of the Government Information Services (GIS), and there is certainly no room for another mouthpiece. RTHK exists as a public broadcaster and not as a propaganda machine.

Issues relating to editorial independence and press freedom are intrinsically linked. Article 19 of the International Covenant on Civil and Political Rights provides that “Everyone shall have the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.”⁴

Editorial Independence for PSB

A. Past to Present

Since the handover, the role of RTHK has been consistently challenged, should it be a government mouthpiece or is it an independent public broadcaster. In fact, back in 1998, a member of the Chinese National People’s Political Consultative Conference Standing Committee Xu Simin, said when responding to his request to keep RTHK “under

³ http://www.legco.gov.hk/yr05-06/english/panels/itb/papers/ctb_cr_9_17_9-05-e.pdf

⁴ http://www.unhcr.ch/html/menu3/b/a_cepr.htm

control”, the then Chief Executive Tung Chee Hwa said “slowly, slowly”, when asked at a press conference later whether it was indeed true that he said this, Mr. Tung made no denials.⁵ Mr. Tung lashed out at the broadcaster when one of its satirical programmes Headliner compared the Taleban regime in Afghanistan to Tung’s policy address in a skit calling it “bad taste”.⁶

Xu Simin is no stranger when it comes to attacking the broadcaster, having been quoted as saying “No public radio in the world teases its country and leadership, but RTHK does. Do they have the power to tease [the] Chinese Government?”⁷ He has also implied that RTHK should not bite the hand that feeds it (note that the EOC has had similar problems in its role).⁸

Issues relating to editorial independence and the free press are often intrinsically linked. Prominent radio hosts Albert Cheng and Raymond Wong (both of whom worked in Commercial Radio) quit their programmes in 2004 claiming that they were harassed and had been assaulted.⁹

Albert Cheng took a “sabbatical” in March 2004 after claiming that he had received death threats and the two presenters who stood in also left after allegedly receiving anonymous criticisms of the Chinese government. When Albert announced after a few months that there was a possibility he would stand for elections, Commercial Radio’s Chief Executive Winnie Yu allegedly told Albert that his contract would only be honored if he did not stand, and after he announced in the end that he would stand, the show Teacup in a Storm was yanked off the air. The new show that took its place, was more mellow compared with the raucous Cheng style, known to many to symbolize the airing of their views.¹⁰ Mr. Cheng indeed had good reason to fear for his life, since he barely survived an attack by 2 men who slashed him with butcher knives outside the station in 1998.

⁵ Slow Road To Censorship SCMP 3rd March 1998

⁶ End RTHK’s identity crisis SCMP 25th October 2001

⁷ RTHK critic fires more salvos SCMP March 27th 1998

⁸ <http://www.asiamedia.ucla.edu/article.asp?parentid=37286>

⁹ <http://www.taipetimes.com/News/world/archives/2005/07/18/2003264011>

¹⁰ Hong Kong radio host silenced The Vancouver Sun (British Columbia) August 4, 2004

Likewise, equally candid host Raymond Wong quit over threats made to his safety. One of his shops was doused with red paint, an action generally associated with triad activity. He was also confronted in the street by 3 triad members. According to a local English satirical magazine Spike (which has since closed), threats received by the broadcasters are most probably linked to an underworld linked HK business giant acting for the Chinese secret police.¹¹

When political commentator Allen Lee took over from Albert Cheng, he soon announced he would resign as a National Party Congress deputy and would stop working at the radio station. He claimed that he had been approached by a number of prominent local and mainland people following his taking up of his job as radio host, who had all of a sudden expressed an interest to “speak to him”. Meanwhile, morning programme host on RTHK’s Talkabout Ng Chi Sum was switched to an evening programme Open Line, Open Views in a move the public broadcaster maintained was unrelated to political pressure.¹²

Although Chief Secretary Michael Suen Ming-yeung sought to reassure the community that the “rule of law would prevail”,¹³ many feared this meant the end of press freedom, RTHK however still symbolically stood for editorial independence, providing members of the community with a platform to express their free and unfettered views.

According to press reports, RTHK is looking at recruiting Raymond Wong to host one of their programmes, which has drawn criticism from the pro-Beijing parties, including the Democratic Alliance for the Betterment of Hong Kong, with one of its members, Lau Kong Wah saying it would be unthinkable for RTHK to employ a talk show host who “opposes the government everyday”¹⁴. This is a classic example of people not having a clear understanding of what a public broadcaster should do.

¹¹ Underworld-linked mogul threatened HK radio hosts for Beijing AFP, 4th July 2004

¹²

http://72.14.207.104/search?q=cache:xWvITKSVRj0J:www.thestandard.com.hk/news_detail_frame.cfm%3Farticleid%3D47623%26intcatid%3D42+chu+pui+hing+press+freedom&hl=en&ct=clnk&cd=2

¹³ Allen Lee quits, but free speech 'safe'; Michael Suen says while three talk-show hosts have left, freedom of expression is not under threat SCMP May 20, 2004

¹⁴ RTHK ready to fight fire with firebrand radio talk show host (SCMP 3 March 2006)

Human Rights Monitor urges the government not to interfere with editorial independence of the public broadcaster.

B. Controversy

During Chief Executive Donald Tsang's electoral campaign he expressed his dislike for RTHK's racing coverage and it was later revealed that in fact there had been an agreement between the broadcaster and the government to drop the coverage¹⁵. He was also quoted as saying that RTHK should be spending more time explaining government policies rather than broadcasting racing and entertainment programmes such as the Top Ten Chinese Gold Songs.

Concerns were raised however over whether this should have been a programming decision, and whether it is in line with the Framework Agreement as signed between RTHK and the Commerce, Industry and Technology Bureau had been adhered to, and whether there had been any kind of interference into RTHK's programming decisions. (The Director of Broadcasting however did say that the decision to drop horse racing coverage had been made a long time ago (RTHK has to pay the HK Jockey Club \$750,000 a year to broadcast live racing¹⁶) and calls to drop the Gold Songs Award will not be heeded, since it was profit making for the broadcaster.

Human Rights Monitor expresses its concerns over the handling of this issue as it can be perceived as a threat to the autonomy of the broadcaster and freedom of the press as a whole.

C. Public Broadcasting Review Committee

Earlier this year, the Chief Executive appointed an independent committee to "review" public broadcasting in Hong Kong. The Secretary for Commerce, Industry and Technology John Tsang reiterated that it was not targeting RTHK at all, and that it was only "one of the components of public broadcasting".¹⁷ However this comment is in itself questionable, since RTHK is the only public broadcaster in the territory, any conclusions made by this committee will undoubtedly

¹⁵ <http://www.asiamedia.ucla.edu/article.asp?parentid=27092>

¹⁶ Pressure rises for RTHK to scrap horse-racing show SCMP July 2, 2005

¹⁷ <http://www.asiamedia.ucla.edu/article.asp?parentid=37286>

affect its future.

According to the government release, the committee would be examining “the justifications for PSB in the development of Hong Kong’s broadcasting market, as well as its role and purposes against the resources required for such broadcasting,.....issues concerning public accountability, programming policy and good governance as well as measures for the administration to evaluate the effectiveness of PSB.”¹⁸ Human Rights Monitor is concerned that although the government is looking for “the best way forward”¹⁹, the fact that the word “justification” was used, arguably denotes a sense that RTHK in fact has to prove its worth in order to survive or exist.

Human Rights Monitor is also concerned over the composition of this committee. In spite of calls from both RTHK and the RTHK union as well as legislators to have a wider representation within the Public Broadcasting Committee, the composition of the committee consists of former “rivals” so to speak, basically people who formerly worked in the commercial sector as well as newspaper editors or academics, none of whom had worked in the public broadcasting sector before, not even an RTHK ex-staffer.

Although Human Rights Monitor acknowledges it may be difficult to change the composition or membership of the committee at this late stage, it could still provide a forum or “channel” for RTHK staff and management to share their experiences and provide for a more comprehensive review.

Proposed Institutional Arrangement

The structure and governance of RTHK has always been a contentious one and one which is not likely to be resolved any time soon.

Corporatization had been debated in the early 90s, and just last year, the Chinese University conducted a poll, and more than half of the

¹⁸ <http://www.info.gov.hk/gia/general/200601/17/P200601170179.htm>

¹⁹ <http://www.info.gov.hk/gia/general/200601/17/P200601170179.htm>

respondents believed that RTHK should be transformed into a public corporation.²⁰

Comparisons are often drawn from the BBC model, the US model which is more commercially driven. Public broadcasters may be partially funded or fully funded by the government depending on the country.

Human Rights Monitor believes that before any structural changes are made to the public broadcaster, there should be open and wide consultation along with members of the community, legislature as well as the staff and management of RTHK (who will be most affected by any changes implemented). The Government has no special right over the use of airtime for publicizing its own policies but should rather be strictly used for public interest announcements.

The airing of the government opinions/policies should be decided through the professional judgment of the media organization in the course of exercising his/her editorial decision.

All broadcasters in Hong Kong have the right not to be bound to air government opinions. No private or public broadcaster should become a tool of government propaganda.

A distinction should certainly be made between a public and governmental institution. As a public broadcaster, its duty is to the public and they are accountable to them as such. The UN's Paris Principles apply to the status of national institutions vesting them with the right to "protect and promote human rights²¹." As a public broadcaster, RTHK's role is to reflect the goings on of the society while at the same time offering the community and public a platform to air their views. The Paris Principles should apply in the broad sense to the public broadcaster as well, and accordingly, there should be a "stable mandate for members of the institution, without which there can be no

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http://smartkids.thestandard.com.hk/news_detail.asp?we_cat=4&art_id=4343&sid=5183828&con_type=1&d_str=20051027

²¹ <http://www.unhchr.ch/html/menu6/2/fs19.htm#annex>

real independence, their appointment shall be effected by an official act...²²

Serving Both the Majority and the Minorities

One of RTHK's missions is to "serve a broad spectrum of audiences and cater to the needs of minority interest groups²³". As a public broadcaster, RTHK has the added role of having to cater to minority interests as well. This is something which the Hong Kong government and RTHK's competitors have chosen to focus on all the time.

They consistently refer to the fact that RTHK should not be "competing" with its commercial counterparts or do what other commercial broadcasters are doing. However, in face of converging technologies, news programmes, educational programmes are arguably covered by other forms of media (Discovery Channel or 24 hour news programmes).

Human Rights Monitor is of the opinion that a public broadcaster could provide a different perspective, and not be driven by commercial demands (pressures from advertisers or from a constant looming threat from the government by way of a "looming cut on public funding") as well as a comprehensive news coverage (impartial and independent).

Moving with the Times

RTHK is not a stranger to being the pioneer when it comes to programme choices and keeping up with technology. It was one of the first to introduce the "phone-in" genre of programmes as well as online broadcasting. Just last year, it began testing digital transmission which supposedly improves reception tremendously. Commercial broadcasters however have shown little interest as arguably it would open up the broadcasting spectrum and therefore create more competition.²⁴ The nature of RTHK being a public broadcaster and free from commercial pressures, allows it to "experiment" and service the community in a far more efficient manner. Human Rights Monitor fears that any attempt to deplete the broadcaster's resources could result in a reduction in its effectiveness.

²² <http://www.unhchr.ch/html/menu6/2/fs19.htm#annex>

²³ http://www.rthk.org.hk/about/vmvs/vmvs_eng.htm

²⁴ RTHK moves to promote digital broadcasts [The Standard February 22, 2005]

One legislator former broadcaster Albert Cheng expressed concern over what he suspected were attempts to “dry up RTHK” by cutting its funding and not giving it facilities.²⁵ Some sources say that the amount of bureaucratic paperwork (synonymous with any government department), which has to be involved to hire camera crews, equipment, etc but to name a few) stifles the broadcaster to function effectively in this ever changing and fast paced media environment.

Although there were plans to move the broadcaster to new headquarters in Tseung Kwan O, plans were indefinitely shelved and had according to the Deputy Secretary for Commerce, Industry and Technology Marion Lai been listed as the lowest priority for a public works project. The broadcaster currently occupies 3 buildings in Broadcast Drive, and if sold could have paid for the new premises. With the lack of new facilities, and the use of old equipment, housed in a dilapidated building, many are concerned that this will eventually affect the broadcaster’s smooth running and efficiency.²⁶

Public Access Channels

Human Rights Monitor supports in theory the provision of more channels enabling more access to the airwaves for the community. The setting up of community channels should be supported. However, HKHRM reiterates that this should not come at the expense of the preservation of RTHK as an effectively functioning public broadcaster.

With technological advancement, internet radio could also be seen as a possible platform. However with the digital divide and the fact that with the wealth gap which still exists in Hong Kong, internet services are still not as freely available and free in the same way as radio services are. It is important for the government to open up more airwaves especially those in the FM spectrum for RTHK’s use or for public access.

Although the government has often reiterated there are a lack of frequencies to set up any other radio channels. RTHK Radio 5 which is broadcast in AM does not work sufficiently well in the high rise environment in Hong Kong and should have at least a single FM

²⁵ Lawmaker suspects plan to ‘dry up’ RTHK [SCMP April 9, 2005]

²⁶ Ibid.

frequency dedicated to it. English speaking minorities have also been pushing for an FM frequency for its radio services for a long time (since AM simply does not work in the high rise environment of Hong Kong). Although there are FM transmitters dotted in certain areas of Hong Kong for these channels, it does not cover the territory, and according to some engineering experts, would not be difficult to do. In addition, the FM frequency previously used by the British Forces Broadcasting Services, and is now delegated to the PLA has been left idle and is arguably left to “waste”.

Non-profit organizations also need a platform in an opportunity to air their views. Some political groups such as the Article 45 group, and the Democratic Party have their own station (although on Internet). Other groups such as People’s Radio Hong Kong have also ventured out with their own net station, and if more of these platforms are opened up then there would be easier access from both the users and the target audience as well.

With growing pressures in the commercial market to produce mass market driven programming, it is important for public broadcasters like RTHK to be given a dedicated channel to air their views. In fact, Wharf Cable’s licence stipulates that at least three channels should be allocated for government use.²⁷ The question is, why does RTHK not have a dedicated television channel (having to literally “bargain” for airtime with other commercial broadcasters, resulting in top rate news and current affairs programmes being shown at midnight). The possibility of a public access channel for local communities has at the same time been ignored.

Recommendations

1. Apart from enshrining editorial independence and press freedom as guarded in the international covenants and as stipulated in the Framework Agreement signed between the broadcaster and the government and statutory remedies should be available in case of breach.
2. Human Rights Monitor recommends that any attempt to change the corporate structure, accountability issues and revamp the

²⁷ http://www.consumer.org.hk/website/wrap_en2/broadcast/19960120/bcassume.htm

governance should be proceeded with caution and in an open and transparent manner and should not proceed without proper consultation.

3. Any changes implemented should not affect the quality and quantity of output of programmes of RTHK or other commercial broadcasters.
4. The preservation of the job security of staff members and to ensure that the staff union can operate in an unfettered manner and function effectively as broadcasting professionals.
5. A review should be conducted into the cumbersome administrative and financial procedures coupled with depleting resources, which makes it difficult for the broadcaster to function competitively in a technologically driven media environment.
6. Any interference with the public broadcaster could result in local and international ramifications (reference to BBC crisis) and we urge the government to exercise caution in this review.
7. The Government should pledge that the public broadcaster RTHK will remain a public broadcaster and not be morphed into a government mouthpiece.