



ASIAN HUMAN RIGHTS COMMISSION

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Submission by the Asian Human Rights Commission to the Committee on the Review of Public Service Broadcasting

Introduction

The emergence of public service broadcasting (PSB) can essentially be attributed to a general public distrust in state-controlled media and profit-driven commercial enterprises. Mistrust of state-controlled media stems from the ability of the State to manipulate and control services according to its own objectives, while general distrust of commercial enterprises can be attributed to their reliance on profitability and market forces to determine programming. By contrast, PSB is largely free of such market and political constraints: PSB is funded, in part or in full, by the public through its government, however PSB retains independence from government policies. This freedom and integrity has earned PSB, including Radio Television Hong Kong (RTHK), the trust and respect of the community.

In this context, the Asian Human Rights Commission (AHRC) wishes to urge the review panel to recognize the importance of RTHK to Hong Kong, and to advise the government to preserve or introduce the mechanisms required to maintain RTHK as a respected and valuable media and public service institution.

The main concerns of the AHRC in this submission are:

- The role of RTHK
- Independence
- Structural changes
- Sustainability

Role of RTHK

The role of RTHK is, broadly, to “inform, educate and entertain”, in accordance with the catch-phrase of PSB. More specifically, RTHK must deliver diverse programming, supply credible public interest information and to provide a voice to the Hong Kong people. First and foremost, RTHK is neither a propaganda service nor a commercial service: it is a public service.

Abdul Waheed Khan, UNESCO’s Assistant Director-General for Communication and Information, has stated:

It is crucial that PSB serves all populations reflecting the needs, concerns and expectations of the different audiences irrespective of their sizes. PSB is an essential instrument to ensure plurality, social inclusion and to strengthen the civil society. In this sense the mission of the PSB lies in the heart of sustainable development, because it empowers people to take informed decisions vital to their own development.¹

In the past, RTHK has provided Hong Kong residents with a high level of programmes that cater both to a variety of minority groups and to a broader section of the population. For example, phone-in programmes provide a valuable forum for the Hong Kong public to freely discuss issues of public interest, such as local and national politics and policies affecting socio-economic interests, and are a means to promote civic responsibility. In addition, RTHK is much praised for its current affairs programmes, which aid in public awareness of current issues and provide a source for public debate.

Current affairs and public forum-based programmes on RTHK have been challenged by pro-government forces in Hong Kong due to their critical stance on the Hong Kong and Chinese governments. However, the ability of the media and public to discuss political issues freely is a right enshrined in international law and is the cornerstone of a democratic society. The importance of the independence of both RTHK and the public in expressing ideas and opinions is discussed further in the point below.

In regards to minority interests, RTHK produces documentaries on various cultural and ethnic issues, which promote understanding and harmony within the community. The AHRC had close contact with RTHK's documentary unit during the creation of a programme on asylum seekers in Hong Kong. Notably, RTHK became involved due to its dedication to the public interest and the public's right to know. We found the staff professional, and the institution to be well-organized, and created a programme that was beneficial to the community.

If Hong Kong is to continue to advertise itself as a cosmopolitan metropolis of "astonishing diversity and sophistication"², institutions such as RTHK should continue to be granted with the freedom from market forces necessary to promote such pluralistic ideals.

Independence vital to RTHK's role

The independence of RTHK and its ability to function without government interference is vital to the maintenance of RTHK's integrity and public credibility, and thus to its ability to continue to function to the true benefit of the community. Public service broadcasters

¹ Abdul Waheed Khan, UNESCO's Assistant Director-General for Communication and Information, in UNESCO's "Public Service Broadcasting: A Best Practices Sourcebook", http://portal.unesco.org/ci/en/ev.php-URL_ID=20339&URL_DO=DO_TOPIC&URL_SECTION=201.html

² <http://www.discoverhongkong.com/eng/travelneeds/business/index.jhtml>

have a privileged but duty-bound position: the media is protected under freedom of expression and yet is driven to enable the public the same freedom by satisfying the public's right to know on matters of public interest. Without this relationship between the media and the public, the media "would be unable to play its vital role of 'public watchdog'".³

Hong Kong is bound under international law to respect the right of RTHK to broadcast freely and the public to listen. Hong Kong is subject to the Universal Declaration of Human Rights (UDHR), of which Article 19 clearly imposes legally binding obligations on State Parties to respect the right to freedom of opinion and expression.⁴ This right is also protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Freedom of expression has been deemed one of the most important rights guaranteed by the ICCPR, UDHR and other international instruments. Resolution 59(1) on the United Nations General Assembly stated, "Freedom of information is a fundamental human right and...the touchstone of all the freedoms to which the United Nations is consecrated."⁵

This sentiment was adopted and expanded by the European Court of Human Rights:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.⁶

Thus, RTHK should have the freedom to provide objective, fair and reliable information, including the provision of an open platform for public discussion, without pressure or direction from the government. The freedom to fulfill these functions will enable RTHK to accomplish its responsibility to the community as 'public watchdog'. As stated by the European Court of Human Rights, this freedom should not be curtailed for the sake of government sensibilities.

The AHRC wishes to highlight the fact that this is supported by the Hong Kong people. In a recent survey of 1,044 Hong Kong citizens 80.5% stated that RTHK should monitor the government and criticize the government's policies.⁷ This illustrates that the Hong

³ European Court of Human Rights, *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, 14 EHRR 843, para.63

⁴ Article 19, UDHR, adopted by the UN General Assembly on 10 December 1948, Resolution 217A(III).

⁵ United Nations General Assembly, First session 1946, see Toby Mendel: Public Service Broadcasting. A Comparative Legal Survey, UNESCO, 2000,

[http://www.unesco.org/webworld/publications/mendel/inter_standards.html#\(9\)](http://www.unesco.org/webworld/publications/mendel/inter_standards.html#(9))

⁶ *Handyside v. United Kingdom*, 7 December 1976, 1 EHRR 737, para. 49.

⁷ School of Journalism and Communication, The Chinese University of Hong Kong, "Carrying through Public Service Broadcasting, Providing Quality Programming and Promoting Cultural Development", www.com.cuhk.edu.hk/05-06/t2/EngPositionPaper.pdf

Kong population is strongly supportive of an independent RTHK, which is not constrained by the Government.

The duty of government to enable RTHK to function with full editorial and programming independence should not be viewed as a burden without rewards. The ability of RTHK to promote accountability and transparency in government will promote harmony and civic responsibility within the Hong Kong population, while promoting Hong Kong as a diverse and free society to the world.

Structural changes

A necessary step towards the true independence of RTHK requires discussion of the present structure and governance of RTHK. RTHK is currently a government department, which is subject to the operational and developmental constraints that government entails.

The Vienna Declaration on Public Broadcasting “[c]alls for constitutional and statutory measures to remove the governing and managing bodies of public broadcasters from everyday politics”.⁸

In lieu of RTHK’s present status, there has been much discussion in Hong Kong on the possibility of “corporatisation” of PSB. This process would entail separating RTHK from the government and restructuring RTHK as a corporation under statute. Thus, RTHK would no longer be a government department but would function independently, enabling RTHK employees to make decisions free from any political constraints.

The creation of a distinction between a public and governmental body is necessary in order to promote independence. As a governmental institution there will always be pressure, real or potential, on the independence of RTHK due to the constraints of its governmental status. Also, the freedom of RTHK from government would allow the broadcaster to further establish itself in the community by defining its place in the market, not on the basis of profits but on the basis of people. This ethos should be further promoted by securing the role of RTHK within legislation, as legislation will provide the means to ensure that issues of accountability and structural governance are addressed and enforced.

In an address to the media in 1999, Donald McDonald, Chairman of the Australian Broadcasting Corporation (ABC), declared the evolution of the ABC from a Commission to a statutory corporation was the “turning point” in the Australian public service broadcaster’s history. Mr. McDonald stated that the process, which entailed the creation of a Charter, enabled the ABC to cement a place in Australian life by identifying programme genres for the ABC to undertake: e.g. drama, the arts, sport and education,

⁸ International Press Institute, *The Vienna Declaration on Public Broadcasting*, September 22-24, 1993, <http://www.freemedia.at/declarat.htm>

while retaining a balance between specialist minority programmes with those of broad appeal.⁹

The same opportunity should be provided for RTHK: to redefine its program content in a new, but regularly reviewed, document that consolidates and further establishes the role of RTHK in the community.

Sustainability

Public service broadcasters all over the world are under threat due to a lack of finances and a fear that digital technology will leave them lagging behind.

RTHK receives an annual allocation of 400 million Hong Kong dollars in public funding. This figure is substantially lower than public broadcasters such as the BBC in the UK, NHK in Japan and ABC in Australia. In addition, on average, each Hong Kong citizen contributes just \$61 annually to RTHK to meet its operating costs, while UK citizens contribute an equivalent of HK\$718 to the BBC annually, and Japanese citizens contribute HK\$344 to NHK annually.

In order to meet the challenges of the future, to remain viable in a fast-changing industry, and to continue to produce programs of a high standard, RTHK requires adequate, indexed and ongoing funding. This funding should predominantly stem from public contributions to allow RTHK to maintain its independence from market forces, and continue to create niche and alternative programs that would otherwise not be broadcast for reasons of commercial infeasibility. RTHK is an investment by the public in maintaining a real choice in broadcasters, which is of a high standard, addresses their diverse broadcasting needs and continues to evolve with the industry.

The community understands of the importance of RTHK and are willing to contribute to RTHK. In the survey conducted by the Chinese University of Hong Kong, the Hong Kong public emphatically denied that government resources to RTHK should be reduced. In fact, 37.4% of the study group agreed that resources should be increased.¹⁰ There is no reason for RTHK to be left behind, nor is there is any reason for RTHK to become a commercial public broadcaster. It seems clear that public funding should continue, and an increase in public funding is even warranted.

If RTHK is to continue to succeed into the future, the government must refrain from seeing RTHK purely in terms of the “economic nature of public service broadcasting”¹¹

⁹ Donald McDonald, “The Importance of Public Broadcasting”, 3 September 1999, <http://www.abc.net.au/corp/pubs/speeches/s527137.htm>

¹⁰ 57.8% stated that resources should remain the same, while only 4.7% stated that government resources should be reduced to RTHK. School of Journalism and Communication, The Chinese University of Hong Kong, “Carrying through Public Service Broadcasting, Providing Quality Programming and Promoting Cultural Development”, www.com.cuhk.edu.hk/05-06/t2/EngPositionPaper.pdf

¹¹ Legislative Council Brief by the Communications and Technology Branch Commerce, Industry and Technology Bureau, File Ref. CTB(CR) 9/17/9 (05), “Review of Public Service Broadcasting”, 17 January 2006

and begin to view RTHK as a public service which enriches and enhances the well-being of the community and, as a result, benefits the government.

Conclusion

RTHK should be allowed to continue to maintain high standards, while producing programmes that may be undesirable to government and market forces. In this regard, RTHK's independence, sustainability and permanence are of utmost importance.

In consideration of the issues raised in this submission, the AHRC makes the following recommendations:

1. The editorial independence and freedom of expression of RTHK, as required under international law and the ideals of democracy, should be enshrined in statute and given full respect by the Government.
2. RTHK should strive to fulfill its responsibilities to the public by providing unbiased and credible information, in addition to a platform for fair and democratic discussions.
3. RTHK should be transformed into a statutory corporation to ensure the existence of RTHK and to ensure that management of RTHK remains separate from the government.
4. Any changes in structure or governance of RTHK should occur in a process which is transparent and inclusive of free public involvement.
5. The Government should provide RTHK with sufficient funding to allow RTHK to be sustainable, to maintain high standards of broadcasting and to allow RTHK to fulfill its obligations to the public as a public service provider.
6. RTHK should continue to exist in order to strive for quality in programming, cater to the diverse needs of the community and balance programmes for minority sections of the public with broader interest programming.
7. We urge the Government to refrain from placing restrictions or pressure on RTHK in order to transform RTHK into a government propaganda institution.