

# SELF-REGULATION & THE MALAYSIAN MEDIA

RESEARCH REPORT ON A MEDIA COUNCIL FOR MALAYSIA



# NATIONAL CONSULTATION FOR A MALAYSIAN MEDIA COUNCIL

**Program Title:** Malaysia Reform Initiative

**Date of Publication:** December 31 2018

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# CONTENTS

- CONTENTS.....1**
- EXECUTIVE SUMMARY.....2**
- SECTION I: THE MEDIA COUNCIL: HISTORICAL DEVELOPMENT.....3**
- BRIEF OVERVIEW OF THE MEDIA LANDSCAPE IN MALAYSIA.....5**
- LEGISLATION AND EXTRA-LEGAL CONCERNS.....5**
- MEDIA COUNCIL INITIATIVES IN MALAYSIA.....6**
- SECTION II: EXISTING MODELS.....8**
- AUSTRALIA.....8**
- GERMANY.....9**
- INDIA.....10**
- INDONESIA.....10**
- IRELAND.....11**
- PHILIPPINES.....11**
- SOUTH AFRICA.....12**
- SWEDEN.....13**
- SECTION III: THEMATIC DEBATES ON THE MEDIA COUNCIL.....14**
- REPEAL OF REPRESSIVE LEGISLATION.....14**
- RELATIONSHIP TO GOVERNMENT.....14**
- FUNDING.....15**
- ROLE AND FUNCTIONS OF THE MEDIA COUNCIL.....15**
- COMPOSITION OF THE COUNCIL.....15**
- THE CODE OF ETHICS.....15**
- APPENDIX A: DRAFT CONSTITUTION FOR A MEDIA COUNCIL.....16**
- DRAFT CONSTITUTION FOR THE MALAYSIAN MEDIA COUNCIL.....16**
- Definitions.....16
- Article One: Aims and Objectives.....17
- Article Two: Membership and governance of the Malaysian Media Council.....18
- Article Four: The Annual General Assembly and Extraordinary Meetings of the Council.....19
- Article Seven: The Secretariat, sub-committees and offices of the Council.....21
- Article Eight: Meetings of the Board.....21
- Article Ten: Openness of the Council.....21
- Article Eleven: Indemnity.....21
- APPENDIX B: NUJ CODE OF ETHICS.....23**

# EXECUTIVE SUMMARY

The Malaysian government and press have mooted the idea of a press council for the nation since the early 1970s, a body that would govern the ethics of journalists and editors. The legislative landscape, however, has not been conducive: Repeatedly journalists have stated that they would not participate in a Press Council until after the repeal of the Printing Presses and Publications Act (PPPA). This reluctance is understandable, given that the first tenet of the National Union of Journalists' Code of Ethics is that the main duty of journalists is to uphold the right of the public to the truth. This principle is in clear conflict with the licensing provisions in the PPPA which privilege the Minister and his ability to regulate news content.

The aim of a Media Council would be to promote and regulate media ethics; uphold professionalism through standards setting; and promoting and upholding media freedom. The latter could, and in the most effective models does, include a public education component. Often the Media Council is set up by constituting bodies, such as editors' organizations and the National Union of Journalists. It is important to note that the Media Council does not replace these bodies, and needs to have a measure of independence from these bodies to ensure that there is not regulatory capture of the body, as is alleged to have happened in most jurisdictions where the council is seen as lacking in enforcement powers.

Recent developments, in particular the Pakatan Harapan commitment to repeal the PPPA and other repressive legislation, have revived discussion of a self-regulatory body, here styled a Media Council to include all producers of news regardless of media. With the challenge of unregulated online content, the financial obstacles to both licensed and unlicensed media, and the global news dominance of players such as Google and Yahoo, the need for a mechanism to help restore, maintain and increase public confidence in news publications can help the sustainability of local news media, especially if the model is tied to official recognition, as for instance in Ireland.

This paper looks at models around the world, at some of the current and ongoing debates on the efficacy of a self-regulatory body, and the history of the idea of a media council in Malaysia. The aim is to provoke debate and hopefully resolution on some of the obstacles to establishing a council, recognizing that the repeal of repressive legislation, particularly the PPPA, is still the major hurdle to a self-regulatory body.

# SECTION I: THE MEDIA COUNCIL: HISTORICAL DEVELOPMENT

The first Press Council was established by the press themselves in Sweden in 1916 (Yan 2006), and there has been checkered development of the idea of self-regulation since then.

One of the key early motivations to start a self-regulatory body was to ensure that the government did not interfere in the running of the media and, as the repeated inquiries into the UK Press Complaints Council (Cohen-Almagor 2015) and the Australian Press Council (Donovan et al 2012) both indicate, the independence of the media from government remains a core motivation for self-regulation.

As recent developments in Australia, Indonesia and South Africa show, however, in a time of decreasing confidence in the media, media councils can also be an important intermediary between the public and professional journalists, allowing a two-way discussion between the needs of the public and the needs of professionalism in covering news and maintaining the public interest.

Nonetheless, the ability of the traditional self-regulatory Press Council, peopled by journalists, editors and owners, to uphold the public interest has come under scrutiny, particularly in the Australian and British contexts. The evolution of the UK Press Complaints Commission is instructive. Started in 1953, a response to both the Ross Commission of 1947 and the passage of the Defamation Act in 1952, the first iteration of the Press Council in the UK was composed only of newspaper owners, though later journalists and editors were invited to join. The Council was funded, sparingly, by the newspapers, and the Council showed that it placed the independence of the media (from government rather than owners) above considerations of either ethics or even legality, according to observer Raphael Cohen-Almagor. The manifest failure of this Council led to successive reviews, with the most recent, and most comprehensive, being the so-called Leveson Inquiry in 2011-2012. The report from this inquiry was damning of the role of both the press and the Press Complaints Commission, and though it called once more for independent self-regulation, it also said that legal sanction and regulation of the media should be considered if self-regulation failed once more. Since then, two regulators, one officially recognized and one not, have been established in the UK, but neither seems to be stemming the deterioration in public confidence in the media.

The UK model demonstrates, in some senses, a unique cultural conglomeration of factors, but it is worth looking closely at some of the causes of its persistent failure. First, the UK government is reluctant to regulate. The persistent myth that the media has been able to make or break government, circulating at least since the Conservative Party's 1992 election victory and the tabloid headline of "It's the Sun Wot Won It", have made UK politicians wary of being seen to interfere in the media's independence. This wariness, however, is complemented by the UK's long history of tabloid media that regularly intrude into the private lives of public personalities (in sharp contrast to, for example, Germany), and the reluctance to adopt a model that gives a meaningful role to public representation on the regulator. Thus, the weakness of the UK model is due to cultural as well as institutional factors. The importance of cultural factors also explains the success of the German model, despite strong ties to Government. These issues will be explored further in the case studies below. First, however, this paper turns to the Malaysian media, to provide cultural and legislative context for a self-regulatory body here.

# BRIEF OVERVIEW OF THE MEDIA LANDSCAPE IN MALAYSIA

## LEGISLATION AND EXTRA-LEGAL CONCERNS

The media in Malaysia is governed by a restrictive set of laws and regulations, ranging from the recently enacted Anti-Fake News Act to the colonial-era Sedition Act. While the Federal Constitution guarantees freedom of expression (Article 10), there are no laws that articulate how this freedom is to be ensured, what the legitimate limits to freedom of expression might be nor how infractions of this freedom should be penalized. Instead, there exists a raft of laws which criminalize free speech arbitrarily (see e.g. Leong 2015). For a media council to be effective, there thus needs to be overarching reform of the legislative landscape, with a repeal of, at minimum, the Printing Presses and Publications Act. This position has been repeatedly stated by the National Union of Journalists, among others.

An important factor to consider in the establishment of the Media Council is existing fragmentation in the media landscape. Malaysian media are divided by language, reflecting cleavages of race and religion, as well as an urban-rural media divide. Further, the media of Peninsular Malaysia is very different from the media of East Malaysia. Lastly, there is the difference between licensed (print, broadcast) and unlicensed (online) media. The former are often owned in part or in whole by political parties and/ or government bodies, and while the latter have greater claims to editorial independence, their sources of funding are often opaque.

This landscape, and the history of the media in Malaysia present particular challenges to the establishment of a media council. The Council would have to ensure adequate representation, either at a board or committee level, for the variety of media in the nation. Further, at the outset it would have to state a position on transparency of ownership or the question of political ownership.

Aside from the legal restrictions on the media, as the recent reinstatement of the Sedition Act shows, the political culture favors restriction and censorship over discussion and debate. The newsrooms reflect this bias through pervasive self-censorship.

Research (Motlagh et al 2013) has also shown a lack of awareness of codes of ethics, and journalists' willingness to breach ethical standards, as defined by the National Union of Journalists, in search of a story. Almost a quarter of journalists surveyed believed that a code of ethics is of little practical use in terms of guiding decision-making, although there was overwhelming support for the existence of such a code. Although not surveyed in the article, there is comparatively little evidence of a pervasive problem in terms of bribery or 'envelope' journalism. Rather the problem is that most journalists appear to be unaware of the NUJM (or other local) codes of ethics, and there is little newsroom discussion, debate or training on how these principles should or could be applied in practice.

Issues of sexual harassment of journalists have recently been raised, and there have been persistent concerns about the depiction of women and minorities in the media (e.g. Kaur 2007; Wang 2007). While conversations on a media council in Malaysia, explored in the next section, have focused on the

relationship with the press and the government, or the coverage by the media, these debates show that there is a potential role in proactive standards setting to ensure, for example, that women journalists have a safe work environment.

## **MEDIA COUNCIL INITIATIVES IN MALAYSIA**

The formation of a media or press council in Malaysia has been a recurrent theme since as early as the 1970s, focusing primarily on the press (Hasim & Merican 2002). The main obstacle to the formation of a council until the present government has been the commitment to maintaining the Printing Presses and Publications Act (PPPA). Understandably, the press has felt that the industry was already tightly regulated due to the provisions of this act, which includes provisions for licensing which give the Home Minister the power to reject, restrict or rescind licenses.

An important initiative was the delivery of a petition of over 900 journalists to the Home Minister, in 1999, asking for the repeal of the PPPA, with an undertaking to investigate the possibility of setting up a Press Council after the repeal. This initiative was started by individual journalists, but NUJ members, in a survey conducted later, agreed overwhelmingly that they would support a press council, but only if the PPPA was repealed first.

Models for a press council have, therefore, primarily come from organizations of media owners or academics, rather than journalists, and have focused on a Press Council established by statute. Recent discussions, since the formation of the new Government in May 2018, have focused on a self-regulatory body recognized in statute, with the media advisor to the Prime Minister, A Kadir Jasin, making it clear that the government expects initiatives to come from the media themselves (Malay Mail 4 October 2018).

In discussions with owners and editors, however, various issues have come up, which will be noted here and explored further in the next section. First, the issue of incentives: Why would media owners and editors of commercial media join a media council? This issue was closely tied to the issue of funding, with the underlying problem of whether a media council could give commercial outfits, particularly given the huge dominance of international players such as Google, an incentive to spend money on membership of a media council.

A second set of issues have arisen around accessibility, with the possibility of members of the public paying a nominal fee to access the arbitration services of the media council. While no other media council examined here has such a fee, the rationale for a fee was to ensure only genuine complainants lodged a complaint. This rationale is based upon a fear that the volume of complaints would otherwise overwhelm both the Council and the member media organizations, and this is fear needs to be addressed. Another issue here is whether 'busybody' complaints should be allowed, that is, can a complainant lodge a complaint when they have not been directly affected. If so, this restriction could prevent public interest complaints, such as against poor standards in reporting, discrimination, or sensationalism.

Third, and tapping into current debates elsewhere, was the powers of the Media Council. From a suggestion made by a senior journalist at a public forum that the Media Council have the power to jail errant journalists and editors, to the concern that if members were fined, they would leave a voluntary organization, this area of debate has sparked a wide range of suggestions.

The next section of the paper looks at case studies that illuminate how these issues have been handled elsewhere.

# SECTION II: EXISTING MODELS

This section does not aim to be comprehensive, but it aims to give an idea of the diversity of motivations, structures and funding that currently exist. It is important to emphasise that culture, the depth of public commitment to media freedom and diversity, and legislative structures outside the media council all play important roles in ensuring the success or failure of a council in its key aims. We have focused in this section on models which can help shed light on ways forward for Malaysia, ignoring those that are similar to those listed; or which have not shown capacity to meet the challenges facing the media today.

## **AUSTRALIA**

**ESTABLISHED:** 1976

### **COMPOSED OF:**

The number of members can vary, at the time of writing it consisted of 24 members. Ten of these, including the Chair two Vice-Chairs, are members of the “public”, eleven are nominees of “constituent members”, (unions, organizations and corporations involved in the media), and two are independent journalists.

There is a secretariat, consisting of ten people as of 30 June 2017. The Council also has various committees, for example, which determine the total funding required for the year and how it is to be divided among constituent members.

### **FUNDED BY:**

Industry (constituent bodies)

### **MAIN AIMS:**

Main role is as an adjudication body between the press and the public, though it also does research into standards setting; and has a role in upholding media freedom, defined as preventing government interference in the media.

### **RELATIONSHIP TO GOVERNMENT:**

Is not officially linked to the government.

### **ANY CRITICISMS:**

The body is often seen as toothless, in that it can only request newspapers to run adjudications. These adjudications are to be published where requested by the Council. However, critics allege that there is a strong degree of industry capture. Research has shown that the placement of adjudications tends to favor the newspapers over the legitimate grievances of members of the public (Donovan et al 2012).

The 2012 Finkelstein review noted that limitations of the Council included a lack of funds, which has seen the funding of the Council substantially increase; and that it did not include online news outlets (which it now does). The voluntary nature of the Council and the ability of publishers to withdraw funds were criticized; and the review suggested that the Council should be complemented by inhouse

measures by publishers (such as ombudspersons). It also recommended that the Council cover broadcast, to complement the role of the broadcast industry regulator.

Owners' representation on the Council is also seen as being problematic in terms of upholding journalistic ethics and independence.

#### **OTHER:**

Among the recommendations of the Finkelstein review have been increasing the public representation of the Council; expanding it to include other forms of media; imposing a 'kitemark' system for members to show their adherence to a standard of ethics not met by those outside the Council. Developments since the review seem to indicate that the Press Council is responding to criticisms.

## **GERMANY**

**ESTABLISHED:** 1956/ 1985 (revived after an interregnum).

#### **COMPOSED OF:**

Germany is one of the few countries that has a council comprised entirely of industry figures. The council's members are restricted to the press, although it includes online editions of newspapers.

#### **FUNDED BY:**

The Council is funded 30% by government; 55% by publisher organizations; and journalist organizations paying 15%. The government's non-interference in the Council is guaranteed by statute. Funding by the government cannot exceed 49% of the total funds of the Council.

#### **MAIN AIMS:**

Like many European Councils, the German Council was a direct response to the threat of government regulation, so its main aim is adjudication between the press and the public, and to ensure that regulation remains independent of the State.

#### **RELATIONSHIP TO GOVERNMENT:**

Despite the funding model, the Council is fiercely independent of the State. This independence would be hard to guarantee if not for the combination of a strong Constitutional guarantee for freedom of expression, the statutory guarantee of independence, and a public culture in favor of independence.

#### **KEY FEATURES:**

Germany's model is often seen by critics as weak, as it has no enforcing power. Its main strength comes from the strength of the public's desire for a free, ethical press, and willingness to engage with the regulator to achieve this.

#### **ANY CRITICISMS:**

The major concern with this model is that it has no enforcement powers. Members can either refuse to publish adjudications (although since the mid-80s 90% have undertaken to publish them), or choose where and how these decisions are published. For instance, one newspaper ran the decision under the headline "Mad! Press Council reprimands *Bild* about this arsonist" (Fielden 2012).

## INDIA

**ESTABLISHED:** 1966/ 1978, by an Act of Parliament.

### COMPOSED OF:

Twenty-eight members, chaired by a retired judge (by convention). Five members are nominated by Parliament, three from “cultural, legal and literacy” fields; and 20 from the media. Of these, six come from editors; seven from journalists; six from management; and one from agencies. They each serve a maximum of two three-year terms.

### FUNDED BY:

A levy on larger media (newspapers with a circulation of more than 5000): An interesting model because it means that it remains independent of both government and the publishers.

### MAIN AIMS:

Main role is as an adjudicating body both into complaints and into upholding press freedom, but it also undertakes investigations, for example it has undertaken several into the role of the media following incidents of racial violence. It does not undertake training, although it has advised the need for the training of journalists in its reports. It only covers newspapers.

### RELATIONSHIP TO GOVERNMENT:

The Council is a statutory body, but does not receive government funding. Hearings of the Council are subject to the Penal Code, in that providing false evidence and contempt of court are criminalized.

## INDONESIA

**ESTABLISHED:** In 1968 but became independent in 1999. Established as a statutory body, but now tasked with ensuring the independence of the media, compared with acting as a government advisor prior to *Reformasi*.

### COMPOSED OF:

The *Dewan Pers* has nine elected members, three each from journalists’ organizations; editors and owners; and members of the public.

### FUNDED BY:

Serving as an elected Council member is a voluntary position, a decision taken to ensure the independence of the Council from the Government: It does not seem a sustainable solution, however (based on personal communication). The Secretariat is funded by the Government.

### MAIN AIMS:

Its main aim is to protect press freedom. The Council also sets standards; adjudicates complaints; manages relationships between the public, the press and the government; proposes reform.

### RELATIONSHIP TO GOVERNMENT:

The Council is fiercely independent, though primarily due to both public support and the history of media repression during the *Orde Baru*. Nonetheless, the President endorses the appointment of members to the Council. The Council has been working with police and the Government to ensure that

it is the first point of call in any criminal action against the media, so police will not, for instance, raid a publication accused of blasphemy, but go to the Press Council with complaints first, or direct the member of the public who lodged a report to go to the Press Council first.

#### **KEY FEATURES:**

It has the power to impose penal sanctions on journalists/ editors, but has not done so. Not all newspapers are members of the Press Council, but the Council adjudicates complaints pertaining to any newspaper outlet. Further, those who are not members still have access to mediation services by the Council, which sees this service as critical to preserving media freedom.

In cases of defamation, members of the public have to undertake NOT to use the Press Council's ruling during hearings, if they seek legal redress following a ruling.

One of the key challenges faced by the Council is the rise of extremism in Indonesia, in particular the propensity for groups to escalate demands through physical confrontation, which the Council is still searching for a means to combat. A second challenge has been the relationship between the media and the police, but through training with the police force, the tensions here are being resolved.

## **IRELAND**

**ESTABLISHED:** 2007

#### **COMPOSED OF:**

Consists of 13 Directors: seven representatives of the public; six members to represent the media. The Chair is appointed by the Directors of the Council, and in turn chooses an Appointments Committee to choose the remaining Directors on the expiry of their term. The appointments process is recognized in the Defamation Act 2009.

#### **FUNDED BY:**

Subscriptions and contributions by members.

#### **MAIN AIMS:**

Its main aim, as laid out in the Constitution, is to adjudicate complaints, and to uphold freedom of expression.

#### **RELATIONSHIP TO GOVERNMENT:**

The Council is recognized in the Defamation Act, and a print publication's membership of the Press Council can be presented in court as showing that it upholds ethical, responsible journalism. Thus, there is statutory recognition of the Press Council in Ireland, although the Council is financially independent of Government. This model thus has a major incentive to publishers to be members of the Council, in that it can help to lower defamation awards and costs.

## **PHILIPPINES**

**ESTABLISHED:** Originally in 1965, most recent iteration in 1993.

#### **COMPOSED OF:**

An executive director, a chairperson, a vice-chair, a secretary and a treasurer, elected from and by the members. Not all vacancies are continuously filled, due to ambivalence by members.

**FUNDED BY:**

By membership dues, but one criticism is that funding for the body is inadequate.

**MAIN AIMS:**

Main function is adjudication.

**RELATIONSHIP TO GOVERNMENT:**

The Council is recognized in legislation but is fully independent.

**ANY CRITICISMS:**

The council is seen as toothless and hampered by lack of public awareness. Regional councils in the Philippines are seen as more effective.

## **SOUTH AFRICA**

**ESTABLISHED:** Most recently relaunched in 2007.

**COMPOSED OF:**

Chaired by a retired judge and has both press and public representatives. The latter, however, often are related to the media. Thus, for example, one of the current public members is a former editor.

**FUNDED BY:**

Subscriber organizations.

**MAIN AIMS:**

The main aim of the Council is adjudication of complaints, which it sees as being based upon the pillars of freedom of expression and ethical conduct, thus its role in upholding freedom of expression is secondary to its role in adjudication.

**RELATIONSHIP TO GOVERNMENT:**

The Press Council has been repeatedly criticized by the ANC government, which has suggested replacing it with a Media Appeals Tribunal, which would have government representation. The Press Council has been responsive to the criticisms.

**KEY FEATURES:**

Funded in advance by subscriber organizations, based on a budget prepared by a finance committee. Public members are appointed by a retired judge, rather than subscriber members, to help prevent regulatory capture.

**ANY CRITICISMS:**

It has been criticized by the ANC for being toothless, but a study indicates that few outlets re-offend after being reprimanded by the Council. Likewise, the ANC has claimed that the body is not independent from the media, yet in 57% of cases the Council found against the newspaper – much higher than many other similar bodies. Critics allege that the ANC's criticisms are because they wish to impose a body which gives politicians more control over the press (Reid 2017).

## **SWEDEN**

**ESTABLISHED:** 1766/ 1916, with an ombudsperson established in 1969.

### **COMPOSED OF:**

A chair, who is a judge; one representative each from the four constituting bodies who set up the Press Council, that is the Newspaper Publishers' Association, the Magazine Publishers' Association, the Swedish Union of Journalists and the National Press Club; and three representatives from the general public with no ties to the media business.

### **FUNDED BY:**

Financed by the four constituting bodies.

### **MAIN AIMS:**

Main focus is on adjudication: Their website does not mention press freedom or upholding ethics, although the constituting bodies were responsible for drafting the Swedish journalists' Code of Ethics.

### **RELATIONSHIP TO GOVERNMENT:**

Wholly independent of government.

### **KEY FEATURES:**

Complainants must be personally mentioned in the stories that form the basis of their complaints, limiting the public interest role of the Press Council. Complaints are submitted to the Press Ombudsperson, who sends cases to the Council, with those found guilty of breaching the code of ethics having to print a statement by the Council and pay the Council a fee.

# SECTION III: THEMATIC DEBATES ON THE MEDIA COUNCIL

## REPEAL OF REPRESSIVE LEGISLATION

There is consensus among most media players and those members of civil society who have been consulted that the PPPA needs to be repealed before a Media Council can be constituted. There is less agreement on the need to amend other laws. Academic Wang Lay Kim suggested in a forum that the Media Council needs to be part of a new information ecosystem, but as yet there is little consensus or public debate on what that would look like. Issues include:

- a) Repeal or amendment of the Official Secrets Act/ Implementation of a Freedom of Information Act.
- b) Reform of the Communications and Multimedia Act, and related forums.
- c) Amendment of the Penal Code.
- d) Repeal of the Sedition Act.

## RELATIONSHIP TO GOVERNMENT

There seems to be consensus among media players that the Media Council should be recognized in statute, but there are still major issues here:

- a) Should government be represented on the Media Council?
- b) Should government fund the Council, and if so what power does this give the government over the Council?
- c) If the Council is recognized in statute, how? Current suggestions include an Act constituting the Media Council, which does not appear to have much support; or recognition for the role of the Council in defamation law, as in the Irish model. Another idea is recognizing the role of the Media Council in a new piece of legislation which aims to articulate Article 10 of the Constitution, that is the guarantee of freedom of expression.
- d) What powers would recognition confer? Suggestions made include that the Council is given the task of journalist accreditation, with different forms of accreditation for Council members (who agree to uphold ethical standards) and those who are not members of the Council.
- e) Should the Council present a report to Parliament? Should Parliament play a role in appointments?

## **FUNDING**

As the case studies show, there is little consensus on funding. Most Councils are funded in whole or part by members or subscribers, while some of the most independent have some government funding.

Among those which have no government funding, the sufficient allocation of funds to the Council is a recurrent theme. Issues thus include:

- a) Should the Government fund, in whole or in part, the Council? If so, to what extent, and how can independence from Government be guaranteed?
- b) How should the total level of funding be determined? The South African model of a finance committee determining funding needs in advance could be one model; few others seem to address this question beyond asserting the need for adequate funds.
- c) Should Board members be recompensed for their time? Most models compensate Council members, but Indonesia decided against this, primarily to ensure independence from Government, given that the Government fully funds the Council's secretariat. According to one Council member, this feature is, however, under review.

## **ROLE AND FUNCTIONS OF THE MEDIA COUNCIL**

In all the models examined here, the Council plays a role in arbitrating disputes between the public and the media. There are further roles that the Council plays in various jurisdictions which include:

- a) Promotion of freedom of expression and media freedom.
- b) Working to ensure journalist physical safety and security.
- c) Public education on the importance of media freedom, freedom of expression.
- d) Standards-setting on issues ranging from coverage of children to best practice in reporting racial conflict.
- e) Relevant research on media and ethics.
- f) Accreditation of journalists.

## **COMPOSITION OF THE COUNCIL**

The composition of the Council is a key area of discussion. The key debates are around the number of Board (or similar) members, with numbers proposed ranging from nine to 25; the balance between journalists and editors; whether owners should be represented; and whether the public should be represented. How members of the Board should be elected or appointed is another key area of debate. How well the Board can represent the diversity of Malaysian media, and whether this diversity should be institutionalized in terms of representation, has been a point of discussion.

## **THE CODE OF ETHICS**

A defining document of any Media Council is its code of ethics, which often is responsive to the needs of the society and culture within which the Council operates. Various codes of ethics have been drafted by the NUJ, the Malaysian Press Institute and others (see Appendix B).

# APPENDIX A: DRAFT CONSTITUTION FOR A MEDIA COUNCIL

The following draft was prepared by CIJ in consultation with various journalist groups and academics.

## DRAFT CONSTITUTION FOR THE MALAYSIAN MEDIA COUNCIL

### PREAMBLE

The Malaysian Media Council is a self-regulatory body for all journalists and news editors and exists to protect the freedom and independence of news organizations and journalists working within Malaysia. The media in Malaysia must be allowed to function in the manner for which it was designed and purposed, which is to build the country, uphold truth and justice, and check on abuse of power through information, opinions and ideas. In short, there is an urgent need to create a media environment that supports democracy and good governance, and promotes human and social development, protected by Article 10 of the Federal Constitution.

For this to exist, the media must be allowed to self-regulate with no intervention from the state unless invited by major stakeholders of media communication, namely the media owners, editors, journalists and the public. Self-regulation and restrictive laws cannot co-exist. The path to self-regulation needs to start with the repeal of restrictive media laws to ensure the regulatory environment supports the absence of restrictions on the media. All this to be in tandem with the move towards self-regulation and this comes in the form of a media council.

### DEFINITIONS

**Media** is a reference to the media community as a whole which includes media organizations, media owners and media practitioners or journalists and this includes publishers and editors. Media constitute a space in which the debates and issues of a society can be articulated.

**Media organization** is defined as an organization with an editorial structure which provides news content for public consumption. This includes, but not restricted to, organizations that produce news content in these forms: text, photographs, infographics, video and audio for print, broadcast and online media.

**News content** is also referred to as editorial content or media content. News content serves to inform, educate, raise public awareness and encourage public discourse. That which will not be considered as news content include: content published or broadcast in media channels owned by political party for their members as this is propaganda; content produced by advertising and public

relations agencies as this is marketing content or branded content; advertorials; blog posts by individuals as these are personal views expressed in a public sphere; and sites that publishes curated content as the content is not generated by site owners but taken from another source. All these are outside the purview of the media council.

**Journalism** is the act of gathering, assessing, creating, and presenting news and information for public consumption and this includes news, feature stories, opinions, commentaries, analyses, radio packages, videos, photographs and infographics.

**A media practitioner** is person who is directly involved in the editorial operations of the media organization from the news gathering process to production and post-production.

**Media council** will be the term used instead of “press council” to denote a broader membership composition. Press council tends to be perceived as a body whose membership is confined to print organizations while media council is perceived as a body with a multi-channel membership that includes broadcast and online media. The media council is a self-regulated body that does not come under the purview of any government ministry, agency, official or persons appointed by the government.

**Self-regulation** is combination of standards<sup>1</sup> setting out the appropriate codes of behavior for the media that are necessary to support freedom of expression, and process how those behaviors will be monitored or held to account. Self-regulation can also drive up professional standards by requiring organizations to think about and even develop their own standards of behavior.

**Editorial independence** is taken to mean the right of journalists to decide what to cover, how to cover it and where to place the story in a newspaper, magazine, online or broadcast, regardless of the views of the owners. This will enable journalists to operate free of direct and indirect control of the commercial interests of the owners. In doing so, journalists are required to, at all times, uphold the Code of Conduct approved by the media council.

## **ARTICLE ONE: AIMS AND OBJECTIVES**

- 1.1 To promote and protect freedom of the media in Malaysia, as guaranteed under Article 10 of the Federal Constitution of Malaysia and Article 19 of the Universal Declaration of Human Rights;
- 1.2 To promote ethical conduct among journalists and media practitioners, as outlined in Schedule I, the Code of Ethics for Journalists in Malaysia;
- 1.3 To set standards of excellence in ethical conduct and reporting through model policies and research;
- 1.4 To provide the general public with a complaints and redress procedure;
- 1.5 To educate the legislators, journalists, media owners and the general public on the role of ethical and responsible journalism.
- 1.6 To collaborate with similar bodies locally or internationally with the aim of sharing best practice

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1 The Importance of Self Regulation of the Media in Upholding Freedom of Expression, UNESCO

and improving regulation within Malaysia.

## **ARTICLE TWO: MEMBERSHIP AND GOVERNANCE OF THE MALAYSIAN MEDIA COUNCIL**

- 2.1 a. Membership of the Malaysian Media Council (henceforth “the Council”) shall be open to all organizations, journalists and individuals actively involved in the regular production of news content whether in print, broadcast, or published online; and
- b. Who agree to abide by, uphold and promote the Code of Ethics for Journalists in Malaysia (Schedule I); and
- c. Who agree to abide by the decisions of the Board in matters of public complaint, including, but not limited to, the printing of retractions or apologies; and/ or the training of individual journalists and/ or editors; and
- d. Who has paid the requisite membership fees detailed in Schedule B; and
- e. In the case of organizational members, have openly and transparently declared the ownership and funding of their organization.
- 2.2 The Council shall be governed by a Board which shall be elected by the Membership as described in Article Three below.
- 2.3 a. The Board shall, by simple majority, make a decision on the eligibility of any applicant or delegate such responsibility to a sub-committee.
- b. If an applicant for membership is found ineligible and they choose to appeal, they can bring a motion to the Annual General Assembly of the Council if they have the support of at least 50 current members.

## **ARTICLE THREE: ELECTION OF THE MALAYSIAN MEDIA COUNCIL BOARD**

- 3.1 a. The governing body of the Council (herein known as “the Board”) shall consist of nine members elected by current members at an Annual General Assembly, with not more than one member coming from a single media organization;
- b. Three elected members shall be drawn from editors and management; three members shall come from journalists, including freelancers; and three members shall be drawn from the public on a rotating basis as outlined in Article Four;
- c. The election of the Board is for a two year term, with an individual able to serve a maximum of four years.
- 3.2 a. Eight weeks prior to the Annual General Assembly, the current Board shall publish a call for applications from the general public, clearly stating the criteria upon which selection for election shall be made, with a closing date for applications being no more than three weeks before the Annual General Assembly;
- b. Based upon the published criteria, which should include ensuring diversity of the Board, the outgoing Board shall present a minimum of six names to the Annual General Assembly, from which three shall be elected;
- c. Should there be less than six applicants from the general public by the closing date, the Board has the authority to approach respected individuals to ensure the requisite number of candidates are submitted to the Annual General Assembly.
- 3.3 a. All currently paid-up Members are eligible to stand for election in either the editor or journalist category, unless constrained by Article 3.6 below;
- b. Members of the Council, or persons who qualify for membership, are not eligible to stand in the public category.

- 3.4 a. i. The conduct of elections shall be the responsibility of outgoing Board members who are not standing for re-election;
- ii. In the absence of an outgoing Board, a board of three eminent persons can be invited to conduct the elections.
- b. A list of candidates in each category shall be sent to each Member no less than two weeks prior to the Annual General Meeting,
- c. i. All currently paid-up Members are eligible to vote for the Board, whether in person, through a postal or online vote or through designating their vote to another Member; and
- ii. Each member can vote for three candidates each in the editor, journalist and public categories.
- iii. The three candidates in each category with the highest number of votes shall be elected to the Board.
- d. Should there be a dispute in the Electoral Process, the outgoing Board may appoint an Independent Arbitration Panel consisting of three members, including at least one eminent person, either a retired judge; an academic specializing in law; or a former chair of the Bar Council.
- 3.5 The Board shall elect from among the public members of the Board a Chairperson, whose responsibility is to convene meetings of the Board and to publicly represent the Council.
- 3.6 Board members shall serve a maximum of two terms.
- 3.7 Public members of the Board may, should they wish, serve two consecutive terms as ex-officio members, and be eligible for the rights and duties of ordinary Council members.
- 3.8 On the resignation or death of a Board member, an Extraordinary General Meeting may be held to elect a replacement, unless the resignation or death occurs within the four months prior to an Annual General Assembly.
- 3.9 Members of the Board who fail to attend three meetings of the Board in a row without written justification will be deemed to have vacated their position on the Board, triggering Article 3.8.
- 3.10 The Council may, by a vote of two-thirds at either the Annual General Assembly or at an Extraordinary General Meeting, remove a member of the Board if they are deemed to have brought the good name of the Council into disrepute.

#### **ARTICLE FOUR: THE ANNUAL GENERAL ASSEMBLY AND EXTRAORDINARY MEETINGS OF THE COUNCIL**

- 4.1 The highest decision-making body of the Council is the Annual General Assembly.
- 4.2 An Annual General Assembly shall be held within six months of the end of the financial year.
- 4.3 An Extraordinary General Meeting (EGM) of the Council shall be held if more than one fifth of the Membership sign a petition to the Chairperson requesting such a meeting, with such petition stating the purpose and extent of the EGM, including any resolutions to be debated, which shall be the full extent of the business of the EGM.
- 4.4 The Chairperson of the Board shall chair all meetings of the Council. In their absence, a vice-chair may be nominated from within the Board by the Chairperson or, in the absence of a nomination, as agreed upon in writing by the other Board members.
- 4.5 In addition to any other business, the Annual General Assembly shall:
- i. Confirm the minutes of the previous Annual General Assembly, as prepared by the Board, and the minutes of any EGM held since the previous Annual General Assembly; and
- ii. receive and consider a report on the activities of the Board since the previous Annual General Assembly; and
- iii. receive and consider audited accounts and a financial statement for the preceding financial year; and
- iv. elect a minimum of four and maximum of five new members of the Board, to replace a similar

number of outgoing members.

4.6 The Chairperson shall give Members at least eight weeks' notice of the Annual General Assembly, and publish the date, venue and any submitted resolutions at least 14 days prior to the Assembly.

Notices to all meetings should be sent out by any reasonable means, including electronic or post, and should also be published on the Council website.

4.7 Any resolutions that involve an amendment to this Constitution must be supplied in writing to the Chairperson at least 21 days prior to the Assembly. The Chairperson must provide written or electronic confirmation of receipt of such a resolution.

4.8 The quorum for the Assembly consists of at least a third or 50 persons representing the current Membership, whichever is lower.

## **ARTICLE FIVE: FUNDING AND FINANCES**

5.1 The Council is a non-profit organization.

5.2 The Council may seek up to 75% of its funding from the Government or private bodies as long as such funding does not compromise the Council or the Board's independence and impartiality.

5.3 Fees for organizational subscriptions and individual membership are set out in Schedule B, and may be amended by a simple majority vote at the Annual General Assembly.

5.4 a. The Board shall present an audited financial report to the Annual General Assembly to be debated and voted upon by the membership. The financial year of the Council shall follow the tax year.

b. Should the Assembly be unsatisfied with the audited financial report, a motion passed by two-thirds of the Assembly can demand an audit of the accounts from an auditor that had not previously been associated with the Council.

5.5 Remuneration for the Board shall be determined by the Annual General Assembly.

5.6 The income and assets of the Council shall be applied solely to carrying out the purposes mentioned in Article One of this Constitution and at no time shall there be any distribution, whether in money, property or otherwise from its income or assets to its members as such or to any relative, trustee or representative of or for a Board member. In the event of dissolution of the Council from any cause, its net assets after payment of its just debts shall be distributed to such charitable or educational purposes as Council specifies.

## **ARTICLE SIX: COMPLAINTS AND REDRESS FUNCTION OF THE COUNCIL**

6.1 Recognizing that the key public interface between the Council and the general public will be through its complaints mechanism, this Article sets out processes and procedures for public grievance mechanisms.

6.2 The Council provides arbitration free of charge, recognizing the service this function plays in ensuring public confidence in Members of the Council, and in helping to promote understanding of ethical journalism.

6.3 The Council shall provide a simple form to facilitate complaints, but shall accept all complaints regardless of format, as long as requisite information is provided. Anonymous complaints shall not be accepted.

6.4 The Board shall establish a complaints committee, which comprises at least one Board member, supported by the secretariat and outside experts as per invitation, to advise on the handling of complaints on a case by case basis. This committee has the power to dismiss or aggregate complaints for adjudication and provide advice to the board on their resolution.

6.5 The Board shall adjudicate all complaints on the basis of best practice journalism and in line with the

Code of Ethics in Schedule A, publishing decisions on a public website or similarly accessible forum.

6.6 Complainants undertake to not seek redress for complaints from other bodies, including legal redress, until avenues of appeal under the Media Council are exhausted.

6.7 Complainants who make repeated, vexatious requests, as agreed upon by the Board, shall be fined RM10 and/ or be barred from accessing Media Council services.

## **ARTICLE SEVEN: THE SECRETARIAT, SUB-COMMITTEES AND OFFICES OF THE COUNCIL**

7.1 The Board may appoint a secretariat to help with the daily administration and functions of the Council.

7.2 The Council may establish subsidiary offices to ensure that the Council is able to perform its duties in a fair manner across the territory of Malaysia.

7.3 The Board may appoint sub-committees to ensure the Council is able to carry out its aims and objectives in as representative a manner as possible. Appointments to sub-committees should take into account the need for the Council to accurately reflect the needs and aspirations of diverse populations in Malaysia, in terms of race, religion, gender, geography, and sexuality, among others.

## **ARTICLE EIGHT: MEETINGS OF THE BOARD**

8.1 i. The Board shall meet as many times in a year as the Chairperson deems necessary, but not less than five times between one Annual General Assembly and the next; or where four members of the Board require a meeting.

ii. In the latter instance, a Board meeting must be held within 21 days of the Chairperson receiving notice.

8.2 The quorum for the meeting of the Board shall be five members, and decisions made by a simple majority vote, with the Chairperson having a casting vote if votes are equal.

8.3 Meetings of the Board may be held in person or using electronic means of communication; regardless notice of at least seven days must be given prior to the meeting being held.

8.4 A member of the Board shall be elected Secretary and responsible for ensuring accurate minutes are taken and distributed.

## **ARTICLE NINE: AMENDMENTS TO THIS CONSTITUTION**

9.1 Any amendment of this Constitution may be taken only by two-thirds of the Membership voting at a properly constituted Annual General Assembly either in person or in absentia.

9.2 All proposed amendments must be given to the Members in writing at least 21 days prior to the Annual General Assembly.

## **ARTICLE TEN: OPENNESS OF THE COUNCIL**

10.1 Any member shall be able to request access to the records, books or other documents (however held) of the Council, and receive such access free of charge within a reasonable time-frame and in any instance within 21 days of the request.

## **ARTICLE ELEVEN: INDEMNITY**

11.1 A Board or sub-committee member shall be indemnified by the Council against a loss or liability suffered or incurred by the member in the course of, and by reason of, discharging such duties as a

member.

# APPENDIX B: NUJ CODE OF ETHICS

1. Respect for truth and for the right of the public to truth is the first duty of the journalists. To defend the freedom of the Press, to deal with the professional conduct of its members and to maintain high ethical standards in journalism.
2. In pursuance of this duty he (sic) will defend the twin principles: freedom in the honest collection and publications of news; and the right of fair comment and criticism.
3. The journalist reports only in accordance with the facts of which he knows the origin. He will not suppress essential information or falsify documents.
4. He will use only fair methods to obtain news, photographs and documents.
5. Any published information which is found to be harmfully inaccurate he will do his utmost to rectify.
6. He will observe professional secret regarding the source of information obtained in confidence.
7. He will regard as grave professional offences the following:
  - a. Plagiarism
  - b. Calumny, slander, libel and unfounded accusations
  - c. The acceptance of a bribe in any form in consideration of either publication or suppression.
8. He recognises in professional matters, the jurisdiction of his colleagues only; he excludes every kind of interference by governments or others.