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The Formation of A Media Council: The Experience of Malaysia

Introduction

There are several types of media councils. In some countries they are called press council and in others they are called media council. While in other countries may have the press ombudsman, or press complaints commission. These bodies are either formed as an association or with involvement of the state, such as through Parliament.

Whether it is formed as a voluntary body or otherwise, the main function of these bodies is to oversee or to regulate the press or media in certain respects, especially in the practice of journalism, print or electronic.

It is worth noting how the press or media council came about in the world. Earlier the press in some countries were regulated by the states, however, there are states without state regulations governing the mass media. In some of these countries without state regulations, there was still a need to regulate the press in for the benefit of the people. However, since state involvement is against certain country's political and constitutional philosophy, a self-regulatory press council is formed. There are press councils in certain states or cities in the United States, formed through association.

The first such press council was established in Sweden in 1916, as an independent self-regulator. This means that the press formed the body that regulates the performance of the press. The British Press Council was developed variably between 1947 and 1977. There are now at least 50 press or media councils or similar bodies in the world.

Interestingly, the press or media councils do not only exist in countries without state regulations but in countries with state regulations as well.

This paper will briefly look into the need for a press council and to look at how Malaysia is going about doing it. It will also look at the thrust of press or media council, i.e. at how the practice of the media is regulated through a code of ethics.

Toward a Self-Regulatory Mechanism: The Malaysian Experience

The idea or suggestion to establish a press council for Malaysia have been raised several times. Interested parties such as the Malaysian Press Institute (MPI) and bodies associated with the press have discussed the issue since 1970's. However, there was no conclusive decision as there were opposing views about the formation of a press council.

The first was mooted in 1973 during the time of Tun Abdul Razak Hussein, the then prime minister of Malaysia. A high-level committee comprising media people was formed. But nothing was heard after that. Later, in 1983, the idea of forming a press council was raised again in a National Communication Policy Convention to establish a communication policy for Malaysia. The press was not supportive. The main argument then was that there were many laws in Malaysia that restrict the freedom of the press. The press then did not want the press council to be another form of control. So the idea was shot down once again.

In 1989, an organisation called the Organisation of Newspaper Editors (ONE) was formed. The idea behind the formation was to maintain and to nurture freedom of the press in the country. However, ONE is not an organisation similar to press council. Very little is known of this organisation or its activities apart from the initial announcement.

In another development, in 1989, Malaysian Press Institute (MPI) spearheaded the launching of Malaysian Journalism Code of Ethics, which was done by Tan Sri Abdul Samad Ismail, a leading figure in Malaysian journalism. At the launching, Dato' Mazlan Nordin, another leading figure in Malaysian journalism, suggested that a body headed by a retired high court judge be formed to oversee the operations

of the code. However, there was no follow-up on the suggestion.

Meanwhile, seminars on press and media councils and related bodies organised by the World Association of Press-Media Councils were held in Kuala Lumpur. Leading Malaysian journalists took part in the seminars but there was no immediate follow up. In the last four years or so, Unesco have been commemorating World Press Freedom Day on May 3, in Malaysia. The occasion was received well by the Malaysian media.

The current interest in a press council was rekindled, as a result of two events. First, some 599 journalists signed a petition to the government seeking the repealing of the Printing Presses and Publications Act (1984). They have requested that a media council be set up. Second, at about the same time, several mega defamation suits, suits seeking huge damages, were being brought to courts involving the media and journalists.

At about the same time, Charter2000, spearheaded by Aliran Kesedaran Negara (Aliran) was formed to fight for freedom of the press in the country.

SUHAKAM (the Malaysian Human Rights Commission) was also involved in the media issues as some journalists have approached the commission to discuss their problems.

Following the petition, the Government requested the Malaysian Press Institute (MPI) to study the matter as it involved journalists. The institute formed a committee to study the proposal which recommended that a media council be set up. A report had been submitted to the government. It had been circulated to the media organizations for their comments, as part of the consultation process.

The Malaysian Experience

In the first instance, the committee carried out a survey among editors and others. The objective of the survey was to find out the following:

- Whether there is need to set up a media council in Malaysia;
- To identify the composition of the of the council;
- To identify the type of media council to be set up;

- whether the voluntary type or the statutory type;
- To identify who should chair the council;
- To determine when the council should be set up;
- To identify the source of finance for the council;
- To identify the body that should administer the council;
- To identify the jurisdiction of the council; whether limited to the traditional media or include the online as well;
- To identify the name of the council.

Thirty per cent of 100 survey questionnaires were returned. Although the return was not very high, nevertheless the results gave a good idea to the committee on how the council should be formulated. An overwhelming 93.3% of the respondents indicated that a media council should be formed. That was a strong enough indication to set up a media council. We will report below some of the more salient points from the survey.

What should be the composition of the media council? Some 40% said more media representatives should be in the council, 20% said only media representatives, some 23.3% said there should be equal number of representatives while 16.7% did not reply. On distribution of membership, majority of respondents indicated media, professionals, NGOs, academicians and journalist association/union should be in the council. Preference for politicians and government representatives was low. Based on this result, and after comparing with other press councils, the committee decided to give more representation to the media, 2/3 media and 1/3 non-media. The membership will comprise the media, professionals, NGOs, academicians and journalist association/unions. There will be no politicians and no government representatives (except if they represent government media entity).

What should be the status of the media council? Majority of respondents (56.7%) said it should be a statutory body formed by an Act of Parliament, while 36.7% said it should be voluntary.

Who should head the media council? Majority of respondents (60%) said a media person should head the body, while 23.3% said it should be a judge. After due deliberation

and after considering the practice in other countries, the committee decided to opt for the judge as it felt a person with legal background should head the body.

What should be the name of the council? Some 80% of the respondents chose Media Council of Malaysia, 6.7% Media Complaints Commission, and 6.7% Malaysian Media Commission. The committee, therefore, select the more popular name.

Based on the results of the survey, the committee studied various press councils and related bodies in the world. Basically, there are two types or entities of press or media council, i.e. the self-regulatory voluntary type and self-regulatory formed through an Act of Parliament. The emphasis here is on self-regulatory. The voluntary type is formed by several media or press organisations. It has been found that this type of media council is not very successful in developing countries. However, there are successful ones, such as the Australian Press Council. A second type is the press council formed by an Act of Parliament. A good example is the Indian Press Council. Even though formed by Parliament, it is still self-regulatory. (See Appendix 1).

The Australian Press Council and the Indian Press Council are the same in almost all aspects, except for the way the councils were formed.

The committee tasked with studying the possibility of establishing a press council, as part of its work, carried out a survey among editors, journalists, political parties to gauge their opinion regarding the formation of a press or media council. The majority of those replied opted for the Indian Press Council, i.e. the formation should be done through Parliament. The committee set up to study the formation of a media council, accordingly chose the Indian model to work on.

Although the report is now ready, the process is far from over. Integral to the council will be a code of ethics. Journalist and others involved in the media will have to be consulted especially in with regards to the code. Some form of acceptance and consensus would be necessary.

The Objectives of Media Council

The main purpose of media council is to protect the interests of the press/media, and the people, and in so doing, the

interests of the nation. Other objectives are:

- To ensure freedom of the press/media is protected.
- To ensure the media channel with the people is always open.
- To receive complaints from the people with regards to actions of the media.
- To monitor from time to time laws related to the media.
- Become a referral body with regards to the press/media and journalism.
- To act as a forum for discussing responsibility and performance of the media by the industry and the profession.
- Enhancing the status of the journalists.
- To give editors guidelines on ensuring "fair competition".
- To give editors guidelines as benchmarking with regards to professional performance of the journalists as acceptable at the international level.

The Need for a Code of Ethics

The basis of procedure of the majority of press/media council around the world is a specific code of ethics. In Malaysia, there are a number of codes of journalistic conduct, administered by namely, the National Union of Journalists, the Malaysian Association of Malay Journalists and the Malaysian Press Institute. Similar codes are also established by the Chinese journalistic fraternity.

The significance of ethics or a codified form of behavior for journalism is a response toward the development of professionalism. This has taken various forms including the organization into associations and the formation of Press Councils. Malaysia's experience toward the formation of a media council implies the need to have some form of codes of standards or principles, accepted and "legitimized" by all parties concerned to which reference can be made.

What is the understanding of a code of ethics among the Malaysian journalistic fraternity? What has been observed in the process (of establishing the Council) and well before that, the fraternity agrees that a journalistic code of ethics refers to

a set of principles of professional conduct, and, to use McQuail's adjective "adopted" and "controlled" by journalists themselves (2000: 151). The question that comes to mind are adopted and controlled by whom? These are some of the unresolved issues where codes of ethics in Malaysia are concerned. There is no single code consciously referred to. The closest that the Malaysian journalistic fraternity has is the Canons of Journalism, declared by the Malaysian Press Institute (MPI) on May 20 1989. The MPI represents some 30 mass media organizations in the country.

In formulating the code then, the Committee responsible comprising editors of both print and electronic media organizations, convened several times to study codes used in several countries such as the United States, Japan, South Korea, the Philippines and Indonesia. On May 20, 1989, Journalism Laureate Abdul Samad Ismail was given the honor to declare the "Etika Kewartawanan Malaysia" before representatives of the media and journalistic organizations such as major newspaper groups of the New Straits Times, Utusan Melayu, Nanyang Siang Pau, Tamil Nesan, Karangkrak; and the Organization of Newspaper Editors (ONE), The National Press Club (NPC), Sports Writers Association of Malaysia (SAM) and Association of Women Journalists Malaysia (PERTAMA).

The code defines who is a journalist and the role of the journalist in Malaysia; and was formulated based upon the principles of Rukunegara, the role of the journalists in nation-building, ethnic harmony and national integration, the dangers of extremism, and the values of a democratic, tolerant and liberal society.

The current effort toward forming a media council in Malaysia with the code of ethics serving as the sanctioning mechanism reflects a number of concerns apart from self-regulation – paramount of which is the protection from criticism and threats at undermining state and society. Although the many different codes, as stated by McQuail (2000:151) reflect the differences in the conventions and traditions of the country concerned and in the relative influence of different interest parties, most codes concentrate on the provision of reliable information and on avoiding distortion, suppression, bias, sensationalism and the invasion of privacy (Harris, 1992 in McQuail, *ibid.*). These are also the

focus in the formulation of a code of ethics for the Council. Based on the mandate given by the Annual General Meeting of the MPI on February 24 2001 agreeing upon studying recommendations for a Press Council in Malaysia, a working committee was formed to look into the basis for devising a new code of ethics and its significance in the operation of a self-regulatory mechanism. With the code of ethics in mind, press/media councils/commissions in the following countries were studied: Australia, Austria, Denmark, Finland, India, the Netherlands, New Zealand, Sweden, South Korea, Taiwan and the United Kingdom. Generally, most countries have a code of ethics as the basis of procedure.

Apart from that, several sessions were held with editors and representatives of news media organizations; as well as with the National Union of Journalists and the Association of Malay Journalists, Malaysia. The consensus was that if a new code of ethics were to be formulated and operationalized, it may not be too broad and ambiguous nor legalistic in nature. Along the way, the MPI suggests that the new code incorporates several pertinent provisions from the Canons of Journalism declared in 1989.

The draft of the proposed code has nine provisions as follows:

1. Rules of Reportage
2. Editorial Comment
3. Concerns on Privacy
4. Use of Pictures and Sound
5. Methods of Gathering Information
6. Communalism, Religion, Gender and Stereotyping
7. Sources and Confidentiality
8. Plagiarism
9. Accountability and Professional Rules

In the several rounds of discussions with members of the fraternity, the code is to concentrate on the print media, with reference, as and when applicable, to the electronic and on-line news providers. The underlying objective of the code is to serve and protect. Its preamble states that the fundamental objective of journalism is to serve the public in all its manifestations with news, views, information and ideas founded on the belief of public enlightenment, civic tolerance

and national aspirations in the building of a peaceful and a harmonious nation. It emphasizes on the Protection of the individual from unwarranted suffering from publicity and violation of privacy. Similar to codes in other countries, the draft code obliges the journalist to abide to norms of universally recognized professionalism, and expected to maintain professional integrity. Hence, norms of fairness in the communication of news and views with due discernment and adaptation in view of national interests, universal values and professional objectives brought to attention. The preamble maintains that such behavioral requirements gravitate from the need for self-regulation.

At this juncture, it has to be noted that in every case, without exception, a code has to be accepted, and respected. Debates for a self-regulatory mechanism for the press has been going on for some time, especially over the last few years. While the general argument among proponents that a Media/ Press Council would replace a number of "draconian" statutes and provisions as in the Printing Presses and Publications Act (1984) for example, it could also be argued that such a code may be prompted by fear – ironically both of legislative measures, and of content generated by operators apparently outside the jurisdiction of existing statutes.

In the interim period, there has been some expressed interests by concerned parties on the nature of the proposed code. A such, the Working Committee suggests that the MPI convene sessions involving all parties involved so as to disseminate and share relevant and pertinent information on the essence and the spirit behind the code. A fair and apolitical acceptance of the proposed code may be realized in asking (and answering) the following questions:

1. What is a Code of Ethics?
2. What is a Code of Ethics for Journalism?
3. Who are the beneficiaries?
4. Who administers the code?
5. What are the social costs?
6. What service does it provide?
7. What do the stakeholders think?
8. How does it ensure press/media credibility?
9. What threats are there to the state, public and the profession that requires such a code?

10. How would the code mitigate such threats?
11. Why would anybody endorse the code?
12. How would it be operationalized?
13. When would it be operationalized?
14. How different is the code from existing legal provisions?
15. Who is the REAL beneficiary?
16. Who legitimizes the code?
17. Who supports it?
18. Does it generate social stability?
19. Does it improve the profession?
20. Is the code the correct solution?
21. Does the code safeguard the truth?
22. Would such a code be effective in meeting the desired objective?

A code takes many forms – from the likes of Hammurabi’s Code (also called Hammurabi’s Law) to personal ideals. Codes are shaped by many forces – the outcome of a much larger historical, political, economic, and cultural forces. (Cooper, 1989). Nevertheless, Cooper (1989:30) suggests a fivefold criteria as to the validity and value of a (media) code of ethics – namely, (1) concrete (2) representative (3) focussed (4) intentional (5) meaning. Eventhough such a criteria (of a journalistic code) may not necessarily manifest the quintessence of journalism, it may be quite definitely be more of a translation of theory into practice.

Conclusion

The report of the Committee’s work is now in the hands of editors and others connected with the media, including journalist unions and associations. This is just the beginning of a process, hopefully will bring to fruition the proposed media council. Comments so far have narrowed down to two issues, namely, the repeal of certain Acts considered restrictive to the press as a pre-requisite for the setting up of the council, and the composition of the council members.

While the composition of the members of the council can be resolved quite easily, the requirement for repeal may not be that easy to achieve. It should be pointed out that not all the provisions in the Press laws are “bad”. Provisions for undesirable publications, such as pornography, should be

retained as it is against public morality. Likewise, the Official Secrets Act (Mohd Safar Hasim, 2002). There are other ways of making the press laws milder, or not too restrictive, such as being done by Malaysian Commission for Human Rights (SUHAKAM), mainly through repealing certain provisions, and not the whole laws (See Appendix 2). It should be remembered how the laws came about and why certain provisions were incorporated later on.

The best hope is for the media in Malaysia to accept the Media Council as proposed. The council then can make repealing of certain provisions of media laws as its top priority.

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References

Appendix 1

The Press Council of India

The Press Council of India was first set up in the year 1966 on the recommendations of the First Press Commission. In the discharge of its twin-fold function of preserving the freedom of the press and maintaining, and improving the standards, the Council performs a multi-faceted role.

It acts on the one hand as a quasi-judicial authority with all the powers of a Civil Court and on the other, in its advisory capacity, it guides the press as well as the authorities on any matter that may have a bearing on the freedom of the press as well and its preservation.

The Press Council is headed by a Chairman who has, by convention, been a sitting/retired judge of the Supreme Court of India. Besides, the Council consists of 28 other members, of whom 20 represent the press, five are from two houses of Parliament and three represent the cultural, literary and legal fields and are nominated by the Sahitya Academy, University Grants Commission and the Bar Council of India respectively. The Council is funded by the revenue collected by it as its fee levied on the registered newspapers in the country on the basis of their circulation, the deficit being made good by way of grant by the Central Government. Though, to some extent, the Council is dependent on the government for finance, in so far as its functional autonomy is concerned, it has remained completely uninfluenced by any extraneous considerations in the discharge of its quasi-judicial functions.

Appendix 2

AUGUST 2002

FOR IMMEDIATE RELEASE

PRESS STATEMENT

The Human Rights Commission of Malaysia (SUHAKAM) held a Workshop on Press Freedom today.

The Workshop was officiated by SUHAKAM's Chairman, Tan Sri Abu Talib Othman.

The panelists for the Workshop were the Deputy Minister of Home Affairs, Datuk Chor Chee Heung, Senator Datuk Zainudin Maidin, Professor Dr Mohd. Safar Hashim from the Communications Department of Universiti Kebangsaan Malaysia, Mr Steven Gan, the Editor of Malaysiakini and Encik Ahmad Lutfi Othman, the Spokesperson for the Alternative Media Activists Group.

Participants of the workshop consisted of representatives from the Home Ministry, the Attorney General's Chambers, the Police and the media – both mainstream and alternative.

A discussion was held after the presentation of papers by the panelists.

The Workshop concurred that there is a need to seek a balance between the need to preserve national security, racial harmony and national interest and the freedom of the media.

In relation thereto, issues that were discussed include:

- a) the need to review the provisions of the Printing Presses and Publications Act 1984 in particular the provisions concerning judicial review and the right to be heard in relation to the Minister's decision on the granting of permit to print and publish a newspaper;

- b) the need to review the provisions of the Official Secrets Act 1972 including the definition of "official secrets" under the said Act and the mandatory sentence of not less than one year imprisonment concerning offences in relation to wrongful communication of official secrets;
- c) the proposal to establish an independent and impartial self-regulating body or Media Council and to promote a Code of Ethics to improve the standards of the journalistic profession and to enable journalists to exercise greater control over their profession ;
- d) the training of journalists, broadcasters and other media professionals to ensure effective and responsible reporting by the media ;
- e) the Courts should take into consideration of the spirit of press freedom when awarding damages under the Defamation Act 1957;
- f) to consider the enactment of a Freedom of Information Act and to provide for independent judicial review of administrative decisions relating to the media;
- g) the provision of accreditation tags or press tags to all bona fide media practitioners in the country including those in e-media.
- h) The automatic approval and renewal of publishing permits. In particular, the KDN should institute a deficit system whereby action will be taken against errant publications based on this system;

SUHAKAM will take in consideration the issues raised at the Workshop and make the appropriate recommendations in its report on the Workshop.

PROFESSOR DATO' HAMDAN ADNAN
Organizing Chairman
Human Rights Commission of Malaysia