

ISSN 1821-6544



African Communication Research

a peer-reviewed journal

**Published by the Faculty of Social Sciences and
Communications at St. Augustine University of Tanzania,
Mwanza, Tanzania**

as a service to communication research in Africa.

**African Communication Research
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This issue dedicated to

Media Councils in Africa

AFRICAN COMMUNICATION RESEARCH, VOL. 5, No. 2 (2012)



African Communication Research

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Volume 5, No. 2

September, 2012

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Editorial: What makes media councils work well?

The evaluations of the performance of the five media councils in Kenya, Tanzania, Malawi, Ghana and Nigeria do not paint a picture of general success of media councils in Africa. Other informal reports from Zambia and Cote d'Ivoire also show disappointing results. There is almost universal agreement, however, that some form of non-governmental, professionally-based monitoring of media abuses is preferable to interventions against journalists on the part of the coercive power of the state. There have been vigorous reactions throughout Africa against statutory councils that seem to allow governments to take punitive action against journalists. Kenya seems to be a case where the council gets government financial support in a way that does not invade professional freedom.

What seems to be the positive contribution of Media Councils in the African context?

1. Virtually all of them are making some effort to adjudicate complaints of defamation, false information or other abuses in a way that is seen as fair and preferable to the long, expensive process of the courts. Although most councils deal with relatively few cases in a year—5 to 15—they are handled quickly.
2. There is some evidence that offering the public the right of appeal does make the media more careful in using aggressive and abusive journalistic practices.
3. Virtually all media councils have introduced a standard, widely accepted code of ethics which can be a useful set of journalistic guidelines in a country.
4. Many of the councils have a very useful program of training of journalists in the area of media ethics and specialized areas such as environmental journalism, human rights journalism or political reporting. Often the media council will influence the strength of the professional (and ethical) training in the university journalism programs.
5. Some of the more active have a series of useful training publications.

What seem to be the factors of success of media councils.

The members of the governing council are important, but clearly, the major factor is vigorous, imaginative management of the media council which not only introduces good programs but also is able to get the funding. Effective management gets competent staff, makes them work efficiently, and pays them well. The best example is the Media Council of Tanzania (MCT) which currently has an annual budget of US\$1,000,000 coming mainly from donor foundations. The MCT has many effective programs which gets it very ample funding.

A second factor of success is having the broad and united support of prestigious people with many lines of influence in the society. The governing council often includes persons of this background. Particularly important is the presence and support of influential leaders who have a solid vision of national development and communication development. The best often have strong academic credentials with ties to major national and international policy makers. These lines of influence extend into the worlds of government, politics, business, the churches and, of course, the media businesses. These prestigious persons can isolate potential opposition and rally important unified cooperation.

Another important factor is a stable government and political leadership which respects at least the mechanisms of procedural democracy. Especially important is the independence of the judiciary. This sort of government will respect the tradition of media freedom and a non-statutory media council, in part, because of all the benefits this brings from internal national support and international support. The concentration of political power in countries such as Uganda is an example of a situation of continual threat to journalistic freedom.

A further important factor is the leadership of editorial teams in the media of the country—mature, well-educated in terms of ethical, professional standards. These editors are the real owners of a media council. The backing of this editorial leadership by good proprietors is, of course, important. Good editorial leadership implies that the editors have an agenda of promoting democratic procedures, major goals of national development and know how to direct the influence of public opinion on crucial issues.

Where the media councils are functioning well, there is considerable interaction and consensus among all these major actors on how to improve the quality of media services and the role of the media council in this. Where the media councils have not been functioning well, the

basic cause seems to be the lack of mutual interaction, agreement and will to reach a consensus about what the council should do. Often, the different factions each want to form its own independent council. In the end, none of the organizations functions well.

To sum up, the success of a media council depends very much on the unified desire of the leadership in the media community--editors, proprietors, prestigious moral and intellectual leaders, leaders in journalism education, associations of media professionals, the media advocacy organizations--all aiming to make the media a true service to the development of the nation.

Robert A. White
Coordinating Editor



ROBERT A. WHITE



Media regulation in emerging democracies: The example of Kenya's hybrid model

By Levi Obonyo and Clayton Peel

Abstract

Regulation of the media is, in some form, a negotiation between the media, those in power and the general public. The Media Council of Kenya, after an initial experiment with a statutory council and then a non-statutory council, is a mix between a non-statutory council but depending on government funding. Because of the years of government hostility to the media, leaders among journalists preferred a non-statutory council. However, the non-statutory council that was established could not fund itself and seemed to have little effectiveness in its regulatory efforts because of the lack of official backing. The government funding and representation on the council does not seem to be dominant because it is through parliament and is multi-party in nature. In effect, Kenya has worked out a "third way" between a statutory and non-statutory council.

Key words: statutory media council, regulatory agencies in Africa, Kenya media

Introduction:

To self-regulate, or to be regulated by the state? This is a question that is not so much a choice confronting journalists, as it is a situation to be negotiated between the media, those in power and the general public. Often the confrontations between these three major actors demand urgent negotiation, and media councils can be mediators or the site of mediation. Countries where the media sector has been

Author biographical note

Levi Obonyo (lobonyo@daystar.ac.ke) is Dean of the School of Communication, Language and Performing Arts at Daystar University and is the immediate past chairman of the Media Council of Kenya. He is the current president of the East African Communication Association. He has published extensively on print-media cartoons, Kenya post-election violence and is co-author with Erneo Nyamboga of *Journalism and the Rule of Law*.
Dr. Clayton Peel (cpeel@daystar.ac.ke) is Senior Lecturer in Communication and Journalism at Daystar University. A native of Zimbabwe where he was deputy editor of *The Chronicle* and was involved in the formative stages of a voluntary regulatory agency in Zimbabwe, he has published on the Zimbabwean journalistic diaspora and religious broadcasting in Zimbabwe.

complacent and the civil society reluctant to engage those in power, the media have had that choice made for them by governments which decided it was time to subject the media to rigorous statutory control. As is often the case, when governments seek to take on the media they may choose to compromise the civil society immediately before the public has a chance to react. The assault on the media is made so fast that there is hardly time to rally the media sector or the civil society to the cause of freedom of expression.

Zimbabwe is one such example where the government has decided to subject the media to rigorous statutory control (Compagnon, 2011, p. 131; Chuma, 2011, p. 271). Kenya began to travel the path of statutory control and then changed gears, first towards an independent regulator before settling for the middle ground between statutory and self-regulation. There are other contexts where the media were successful in adopting self regulatory methods, sometimes to their government's satisfaction. This fortunate case happened with Kenya's hybrid (Obonyo & Nyamboga, 2011, p. 5) and Tanzania's independent regulator (Lush, 1998, p. 54) where the experiment with self-regulation is ongoing.

But self-regulation has not been a long or consistent tradition in Africa. In Uganda for example, President Yoweri Kaguta Museveni's government moved in 1995, over strident objections by journalists, to establish a media council directly under the authority of the information minister, "reflecting the view at the time the law was passed that journalists often operated irresponsibly, outside any code of ethics, and required oversight" (Kayanja, 2002, p. 161). Uganda presents an interesting study where, in objection to Museveni's move, 42 media houses set up an Independent Media Council of Uganda in 2006. The study of how the varying approaches to regulated media practice are evolving in the African context must be situated in a wider debate. Even in Western so-called mature democracies, government legislation of media leaves many questions about how much free expression can be allowed.

Obviously, not all state authorities seek the delicate balance between free expression and imposed norms of responsibility. African governments, with notable exceptions, have had a deep unease over media autonomy. More than a decade into the third millennium, with online journalism, citizen journalism and individual blogs challenging archaic journalism "accreditation" processes, there are still governments insisting on a bureaucratic regulation of the media.

African leaders call for a patriotic journalism, “a development press, one that would assist in the positive development of their...nation states. They wanted a cultural stamp of their own making and not one imported from core nations or ‘Made in the USA’” (McPhail, 2011, p. 65). On a few occasions, governments were ready to consult the industry, but within a paradigm that the governments wanted to introduce. In Tanzania, where the government drew up plans in 1993 for a state-directed media council, before relenting and allowing journalists to create their own regulatory mechanism, the leading argument was that the state must instill “a sense of responsibility and public service” among media workers.

As Nyamnjoh more directly puts it, African leaders often want a conformist media that takes government objectives for their objectives (Nyamnjoh, 2005, p. 161). In the words of Zimbabwe’s first post-independence Director of Information, Justin Nyoka, “Freedom of media is a spurious western concept, since media always reflect the particular values of a place. Journalists should be sensitive to the direction of the government...” (Zaffiro, 2002, p. 107). Even the more liberal South African government has vacillated in its stance on media freedoms. The governing African National Congress is now increasingly uncomfortable with the country’s media and pushing for a statutory mechanism to set and enforce media standards (Kruger, 2009, p. 7). Conversely, the global standard appears to have moved towards non-statutory enforcement (Article 19, 2006). In African contexts where governments are moving to regulate media, the response of the media and the civil society is angry protest or, at best, cautious acceptance. Aspirations towards statutory regulation by the South African government have drawn sustained criticism from within South Africa and abroad. However, the media background and the country experiences where some form of regulation has been insisted upon are not uniform in nature. It is in this context that the unique Kenyan case is worth exploring.

Purpose Statement

The strangulation of media, as happened in Zimbabwe in the last decade, contrasts with an apparently genial consensus over media regulation that is emerging in Kenya. The self-regulatory mechanism that does apply in Tanzania today is also different. An alternative model is some form of combined statutory and self-regulatory mechanisms such as is operating in Uganda. Each of these regulatory forms provides

lessons for students of media responsibility and regulation. They also provide models of negotiation between the many stakeholders involved in building media systems. Also pertinent are the social and political histories of the respective countries and how these histories impact on the media organizations? If the regulatory mechanisms and the frameworks in which they are situated are contested, whose interests are paramount? These are just some of the issues that must be taken into consideration.

This paper does not attempt to answer all of these questions. Here we explore the literature in media regulation as a basis for outlining the evolution of the Kenyan model as an example of a compromise that may address some of the weaknesses of both self and statutory regulation while also taking advantage of the strengths of both.

Disparaging assessments of media regulation in African countries lack authenticity if they do not document and engage with operations within those frameworks. There are already too many superficial assessments leading to simplistic, negative views of Kenya's media regulatory framework (Article 19, 2006, p. 3).

Situating the Kenyan media environment in its context could provide a more nuanced understanding of the many factors involved in drawing conclusions that such analysis may come up with. The other useful purpose served by this paper is understanding media regulation's complex situation within and beyond the authoritarian-libertarian binaries. The possibility that both media workers and governments are motivated by a desire for freedom of expression and social responsibility within some combination of statutory or non-statutory regulatory frameworks may also be explored. The binaries of libertarian and authoritarian media governance are legitimate. But the libertarian view has taken a direction in which media are "asked to assume more responsibility for their own performance than merely to present their own ideas freely, and government (has) undertook, even in the most libertarian societies, more acts of control" (Davison, Boylan, & Yu, 1982, p. 42). This government control, or lack of it, within demands for a more socially responsible media, is a key consideration in this discussion.

The background of the debate over statutory or non-statutory regulation

The concept of statutory governance versus independent self-regulation of the media has preoccupied scholars for decades.

Governments and media worldwide have reflected, debated, and legislated on the issues since the end of the Second World War – long before the genesis of regulation processes now accelerating in the post-independence sub-Saharan states (McPhail, 2011). In a detailed account, McPhail charts the debates over decades between proponents of a “free flow” of information, who were usually from the liberal democracies of the West, on the one hand, and a combination of Soviet and Warsaw Pact countries and the newly-liberated ex-colonies, on the other. This includes those in Africa, whose leaders have argued that the political, social, and cultural environments that were taking shape in the new nations they governed required a government-driven, national unity and development-focused approach, rather than a free-for-all determined by market factors.

Literature by early fathers of African nations clearly suggests a strong government role. For example, according to Kenyan Tom Mboya, the role of the media was to contribute to the development of the nation state, with specific focus in improving the economy and the lifestyle of the masses. The media, he said, was to be judged on the basis of whether media was “hostile or sympathetic to the national cause; was it reactionary or progressive; was it identified with the imperialist forces and money interests in the former colonial countries; and how far is it regarded as a tool of foreign penetration and an agent of neo-colonialism” (Mboya, 1970, p. 136). The success of the African media, he suggested, was to be gauged on the extent to which it contributed to the fight against malaria and in the citizens’ adoption of better farming methods. And in the 1967 manifesto, the Tanzanian government under the leadership of Julius Nyerere, saw the media as one of the pillars of national development.

The founding fathers of postcolonial states may have had legitimate concerns in the face of the huge challenges presented by nation-building and the need to use the media at their disposal to foster messages appropriate to the tasks. But their aspirations, however well-meaning, became linked to Soviet-style totalitarian objectives, which were to resist a free media environment. The aims of Soviet media theory were clear: under the guise of preventing capitalist ownership of the means of discourse and preserving media outlets for the good of “the proletariat”, the governments took permanent control of every outlet which would have diluted the regime’s guidance of public discourse (McPhail, 2011, p. 69).

The likelihood that this mindset influenced the motives of the postcolonial governments is high. Scholars are broadly agreed that African governments became more concerned about retaining political power and closing the space for alternative political views than pursuing their original development goals (Nyamnjoh, 2005). Regarding the Kenyan context, Mbeke, Ugangu, and Okello-Orlale wrote:

...in the years following independence, the Voice of Kenya transformed into a propaganda department for the state – a complete deviation from the purely developmental goals it was supposed to play in the fight against poverty, disease and ignorance. Draconian press laws curtailed press freedom and other forms of public agitation. The new leaders realized that influence and control over the flow of information was a necessary precondition for stemming undue criticism, consolidating political power and ultimately ensuring that the masses played only a passive role in national affairs” (Mbeke, Ugangu, & Okello-Orlale, 2010, pp. 18-19).

The danger that meaningful development goals could be overshadowed by selfish and overzealous implementation of the media governance model is an abiding disincentive for trust in government restraint. One must also be cautious in assuming the responsibility of the media in the use of its freedom as the phone-hacking scandals in the United Kingdom have shown. Offences by editors and senior journalists and their media houses brought public outrage and demands for stricter controls. The extent of state involvement in and governance of the functions of Africa’s media is, therefore, a broad though interesting subject and may not be exhaustively resolved easily. It is useful, however, to explore the factors that are shaping media regulatory bodies in Africa using the Kenyan example.

Obviously, the realities in many countries of Africa and even more so in other countries of the global south differ from Kenya in a variety of ways. We are aware of how difficult it is to apply universal declarations (such as Article 19 of the United Nations Declaration on Human Rights, adopted on 10 December, 1948), to the peculiarities of different country contexts. For all the weight of Article 19 and the broader UN declaration, even Western countries like the United States

have passed legislation making exceptions to the “free flow” and “freedom of expression” mantras, most notably in response to hate speech and the global terror threat (Biagi, 2011, p. 328). The situations and prerogatives of African countries and their governments should not automatically be viewed as dissimilar to the exceptional circumstances cited by Western governments for proscribing the “free flow” of ideas.

In 2003, “rapporteurs for the protection of freedom of expression” at the United Nations, the Organization of American States, and the Organization for Security and Cooperation in Europe, signed a declaration which warned that it would be contrary to the interests of free media expression to have regulatory bodies that are susceptible to political or economic pressure. They stated that:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input, and is not controlled by any particular political party (Article 19, 2006, p. 4).

Article 19, the human rights lobby focusing on the protection of free expression globally, was citing the rapporteurs’ declaration even as it expressed its own reservations over a draft bill by the Kenyan government in 2006 to introduce a media regulatory body which would have government appointees alongside professional journalists, lawyers, and other stakeholders. The bill, the forerunner of the wider negotiated 2007 Media Act, was viewed by Article 19 at the time as supplanting the self-regulatory mechanism which Kenyan journalists had set up in 1995, but which, as Article 19 was to acknowledge, was compromised by “the failure of certain media outlets to act ethically and...the failure of the current voluntary media council to tackle this” (Article 19, 2006, p. 3).

Of these self-regulatory methods, Article 19 noted in 2006 that “[l]essons can be learned from other countries that have successfully established self-regulatory mechanisms. Self-regulatory systems exist in various African countries, including Botswana, South Africa, and Tanzania, and these systems should be studied with a view to incorporating elements from them into the Kenyan system. Additionally, the media that currently participate in the voluntary Media Council

should persuade those newspapers that are outside the mechanism to join”.

Some previous studies, much like Article 19’s perspective above, have favored self-regulatory media councils over statutory regulation – even where, as has become the case in Kenya, for example, the statutory media council is operationally if not financially independent of the government (Mbeke, Ugangu, & Okello-Orlale, 2010, p. 26). However, the same authors claim that the need of government funding – media owners who were supposed to fund the MCK under the initial permutations of the enabling Act have run back to the government for finances (Mbeke, Ugangu, & Okello-Orlale, 2010, p. 37) – places the regulatory body under the leverage of government. They say that “a balance has to be struck between concerns over government funding...and the council’s need to enjoy a certain level of financial security necessary to carry out its functions” (Mbeke, Ugangu, & Okello-Orlale, 2010, p. 26). Although the Kenyan government is willing and able to resource the operations of the MCK (Mbeke, Ugangu, & Okello-Orlale, 2010, p. 68), the authors suggest that donor funding from non-governmental organizations should also be explored. They argue that:

The perception that donor funding would encourage donors to set the agenda for the media [is] not rational. Donors also finance government activities, such as [the] Communication for Development Programme that creates a partnership between UNDP (the United Nations Development Programme) and [the] Ministry of Information and Communication (p.26).

Thus, the Kenyan government’s financial support for the country’s media regulatory body is seen as problematic, even if, as the same authors concede, the MCK “is a public organ...[which] operates like an independent enterprise with no statutory accountability” (Mbeke, Ugangu & Okello-Orlale, 2010, p. 26). This problematic impression has seen some sections of the media reluctant to pay registration fees to the council. To them, there is no parallel between the professional fees a lawyer pays to the Law Society of Kenya, for instance, and the fees required of media practitioners by the MCK. According to Mbeke, Ugangu and Okello-Orlale, in the mind of its detractors, the MCK should not be requiring fees of journalists because “professional fees

are often paid to professional associations. Lawyers in Kenya pay fees to the Law Society of Kenya and not to a quasi-government body”.

But, as these same authors themselves aver, most journalists and media organizations have accepted the accreditation fees, indicating that the MCK, whatever the imperfections, is seen as a necessary compromise to stave off direct, and possibly more stringent, government regulation.

The continued tendencies to impose statutory regulation

Kruger called attention to this fact in his research into self-regulatory councils (mostly in sub-Saharan Africa) when he observed that “new democracies have not yet seen a culture of tolerance taking root in the public arena. The authorities may be tempted to reintroduce controls” (Kruger, 2009, p. 27). He cited the case of the formerly Stalinist nation of Albania, still grappling with the legacy of EnverHoxha’s 40-year authoritarian regime (1945-1985), where according to an Article 19 report, “the authorities over the years vacillated between over-and under-regulation. Since the fall of communism, Albania has struggled to strike the balance between unlimited freedom and over-regulation of the print media” (Kruger, 2009, p. 27).

Kruger alludes also to the South African context, where those who framed the new democratic constitution under which Nelson Mandela and the African National Congress assumed power in 1994 allowed a liberal and largely unregulated media framework. Now, the ruling ANC is showing signs of retreat from that commitment. As Kruger noted, “In South Africa, the self-regulatory system has also come under pressure, with the ruling ANC threatening a statutory Media Appeals Tribunal” (Kruger, 2009, p. 7).

The advocacy for self-regulation was thus more than an argument: it was a presence in the formative environment of the media legislation that now obtains in Kenya. And, as will be seen in the literature, the emergence and gradual reform of the media regulation process in Zimbabwe was also carried out in the presence of advocacy for and mechanisms of non-government media self-regulation (Chuma, 2011, p. 271).

As Chuma’s work notes, Zimbabwean journalists, contending with increasing statutory encroachments on their practice, produced their own blueprint Code of Conduct as far back as 2005 as a way forward towards self-regulation. But the Zimbabwe government at that time was sold to the idea of a statutory media council through which they

could impose regulation on the media and enforce an agreeable domestic environment that would shut out the nascent opposition forces that were threatening President Mugabe's regime. While the Zimbabwe government knew what it wanted to achieve and how to do it, the media and civic society were not united in their conviction regarding the consequences and were not ready to do what ought to be done.

Compagnon describes, in Zimbabwe, a combination of state authoritarianism and an ambivalent journalistic fraternity that gave the government a free run to impose a dictatorial "Media and Information Commission" (MIC) which was not only staffed by Mugabe loyalists, but was recklessly biased, to the point of being successfully challenged several times in Zimbabwe's courts (Compagnon, 2011, pp. 131-132).

Compagnon describes the MIC as having deliberately excluded representatives of the privately-owned media (yet having oversight of their functions), enjoying "discreet power to deny them accreditation, suspend existing accreditation, or revoke it at any time with a wide range of grounds to do so..." (Compagnon, 2011, p. 132). In a chapter of his book documenting Zimbabwe's wider social and political troubles, Compagnon delves into what he calls "the media battlefield: from skirmishes to full-fledged war" (Compagnon, 2011, p. 118) for the most part of the last decade, citing the biased, unprofessional, and at times unlawful conduct of the media commission which, he writes, was highlighted by "several court cases in 2005 and 2006, when its prejudice against independent journalists and the publishers of the *Daily News* was exposed" (Compagnon, 2011, p. 132).

It was clear, as both Compagnon and Chuma point out, that the forces for voluntary media self-regulation in Zimbabwe at the time were weak, and that to some extent it allowed the government to push through its media agenda with little debate (Compagnon, 2011, p. 131; Chuma, 2011, p. 271). Like Compagnon, Chuma's account reveals the MIC to have been "a very partisan body whose mandate appears to be presiding over the demise of the private press".

The ambiguity of standards of non statutory intervention

Authors like Hoffman-Reim query the efficacy of regulation in an era of increasing media diversification. Noting that "the exchange between the roles of communicator and recipient further highlight the fact that traditional demarcations are now obsolete", he notes that the "diversification and segmentation of the communications order together

with the associated decentralization of decision-making processes have made the task of statutory intervention much more difficult" (Hoffman-Reim, 1996, p. 360). Hoffman-Reim's primary focus is on the legal framework of broadcasting (p.3). His work examined six western countries and how they were negotiating the changing technological environment, rather than the challenges in a sub-Saharan context that are being interrogated here. But Hoffman-Reim's highlighting of the political interface with changes in Western broadcasting continues to be relevant to our discussion, to the extent that he admits that the debates draw on a common interest in political support for regulation and the degrees to which these ought to be enforced (pp. 3, 16). He provides an insight into the way that the regulation of broadcasting in the United Kingdom, repealed only in 1990, can be restrictive. The "publicly regulated" supervisory broadcasting authority, the IBA, "was entitled to preventative programming control: The television companies were obliged to have their program planning approved in advance by the IBA. The radio companies could be similarly obliged".

The IBA, Hoffman-Reim added, "advised the program companies upon issues of program planning and was able to issue directives regarding the telecasting or omission of certain programs and on the adherence to or shifting of certain broadcast times...[T]he companies were furthermore obliged, upon request, to make available advanced scripts and other broadcasting documents, as well as picture and sound recordings, to provide the IBA with any desired information, and to permit the inspection of their books...[I]t was not uncommon for programs to be changed...or portions thereof subsequently edited out, or for programs to be retracted as a result of objections. Intervention occurred particularly often in the sensitive area of news reporting about Northern Ireland" (Hoffman-Reim, 1996, p. 81). The justification, often questioned in Britain, was national security.

It does seem that the IBA's mandate in Britain until 1990, enforceable by law on all broadcasters other than the publicly-owned BBC, was much more stringent than what is known of media councils in most of Africa today. Why, then, the intolerance for any form of official media regulation in Africa? Even granted that the expanding capacities of new media and their technologies forced upon Britain the realization that market-driven, private media were here to stay, why does there seem to be a pretense that official regulation was never used in any of the Western liberal democracies?

Since Hoffman-Reim's book, the technologies have advanced and diversified even further than he might have appreciated at the time of writing, but the complexities which these processes pose have not diminished the political will for media regulation in many African countries. On the contrary the complexities seem to enhance the political inclination to regulate.

Are there justifications of statutory regulation?

To some scholars, regulation seems unavoidable. What if the subject of one's free expression would be harmful to a society? Or what if the person expressing the view as a "journalist" is not competent to do so, and "would do society good by at least not expressing their ideas" (Obonyo & Nyamboga, 2011, p. 73)? The issue of regulation is intertwined with that of free expressions and where free expression may be deemed harmful or come from sources whose competence may be deemed suspect. The media have an opinion on everything and everyone. They have a "watchdog" role. But who watches the watchdog? In drawing attention to journalism standards and the levels of training offered, Obonyo and Nyamboga suggest that these may have to be regulated. They write:

One can understand the dilemma of the legislators. If journalism does require a certain degree of respectability then it cannot be an open forum where everybody can do as they please. There must be some sort of gate to separate journalists from others. (Obonyo & Nyamboga, 2011).

These authors argue that, in Kenya, a correct balance between statutory regulation and media self-restraint has been struck. In terms of regulation it is probably [only] in Kenya that we have an independent media council that is also statutory. Elsewhere in the continent, the media council charged with the responsibility of settling disputes in the industry is either fully statutory or lacking independence as is the case of Rwanda, or is non-statutory as is the case of Tanzania. Uganda is in a unique situation of having two media councils, one statutory and the other non-statutory. Prior to the current government, the media council in Kenya was non-statutory. However, this status attracted certain challenges that made it difficult for the council to operate. Too often this council was accused of lacking teeth to stop evident abuses while, at the same time, the council had

challenges of raising sufficient resources to enable it to function both independently and to its full potential.

To address some of the challenges, parliament enacted the Media Act of 2007 that established the statutory council and gave it powers anchored in law. At the same time parliament has since given the council resources to enable it to fulfill its mandate. However, the government does not sit in the council, does not instruct the council, and does not influence it (Obonyo & Nyamboga, 2011, p. 5).

It is our conclusion, therefore, that studies of media and media regulation suggest that it is better to avoid a position that proscribes any statutory dispensation as necessarily harmful. Moralistic distinctions between the statutory and non-statutory regulation may not enhance understandings of the situations on the ground, which is why this study seeks from its comparative analysis indicators of efficiency, better practice, responsibility and accountability, that will mutually benefit both state and media actors. To demand voluntary self-regulation of African countries when Britain, with a reputation of media freedom, found reason under certain circumstances to control and even censor private broadcasting just over two decades ago calls into question a universal condemnation of all statutory interventions.

The case of Kenya

But how did the Kenyan system of both statutory and non-statutory regulation evolve? It emerged through a case of trial and error. That the country has probably one of the liveliest media in the region is less arguable. What, arguably, has come to the service of the Kenyan media is the fact that it is rooted in the concept of free enterprise. When the first Kenyan press was established at the turn of the century it was to serve initially religious, and later, commercial interests. The newspapers associated with the church, for example, *The Taveta Chronicle*, and even later the *Rock* and *Target* initially had one core purpose: to socialize new converts to Christianity. Obviously, the *Rock* and *Target*, later had a much wider objective. Too often such a task was not considered incompatible with the goals of the colonial administration. Whatever regulation that could have been considered could as well have been provided internally. The social objectives of the church were no different than those of the state. Such objectives included the desire to have the African population live in the segregated locations they had been allocated by the administration.

But the subsequent papers that followed these early ones were established to service purely commercial interests. Today's *Standard*, when first established in 1902 by A.M. Jeevanjee was to serve as a safeguard for his commercial interests then revolving around the business of providing fresh supplies to the expatriate community at the coast. The paper was to help put him in better stead than his competition. It is not any great wonder that when the commercial competition collapsed, Jeevanjee, who hardly spoke the English language in which the paper was published, did not seem to have much use for it and sold it to a pair of English hoteliers. Settlers themselves, the new owners completely identified with the position of the colonial administration and, as such, there was little conflict between the press and the administration. As Ainslie (1966, p. 100) observed:

The *Standard* was, and remained consistently for nearly sixty years, the voice of settler demands for more independence from Whitehall, for funds and soldiers to deal with 'the natives', for aid in developing the land... Anyone who saw the *East African Standard* during the years of Mau Mau rebellion might have been forgiven for seeing it as an extremist settler mouthpiece. It expressed all the White hysteria, all the angry settler demands for more and more repressive action by the Colonial Office, that made this period the ugliest in Kenya's history.

When other media emerged, such as the Kenya Broadcasting Corporation, these media were in the hands of the government and the government could not appear to regulate against themselves. But the situation did start to change as people with different driving motifs joined the trade. For example, in 1923, maverick freedom fighter Harry Thuku started publishing *Tangazo*, a medium no more than a collection of fiery speeches by freedom fighters and their demand for land. The publication survived only a couple of issues. But given the limited literate population the colonial administration had little reason to worry about the freedom ideals that would have informed media regulation.

Over the years three strands of newspaper publication emerged in Kenya. In the forefront were media associated with the church. A second type were media associated with social activists both of Asian and African

extraction. Within this category there was a wide range of media some leaning toward radical action while others were more moderate. Even Mwigwithania, then associated with Kenya's founding father Mzee Jomo Kenyatta, was considered for some as more of a cultural pamphlet than a freedom fighter's companion. Certain media associated with missionaries could have fallen under this category but they would have been few. In the third place were the media sympathetic to the colonial administration.

Kent (1972, p. 68) has suggested seven ways in which governments seek to control the media: "in order of severity of inhibition of press freedom... 1. Control of periodical distribution, 2. Control of periodical content or format, 3. Control through official censorship, 4. Control of newspaper personnel, 5. Control of official news, 6. Control of publication's existence, and 7. Control through punitive action". But for any of these formats to apply certain variables have to be in place. Among these variables are included socio-economic, technological, cultural factors that would influence the degree of freedom that a society would enjoy" (Nixon, 1960, p. 13).

According to one perspective, as already observed above and as Lamb (1987, p. 244) noted, "the prime role of the media is to serve the government, not to inform the people. The press is a propaganda vehicle, used to manipulate and organize and control. Any questioning voice is a potential threat and only the government is wise enough to know what the people need to know".

For a long time, Kenya did not have an elaborate body of what could be considered press law. As Ole Ronkei noted, the media in Kenya operated "under the mercy and goodwill of the country's political establishment, and in particular, the president, who [could] order a paper banned anytime" (1995, p. 41). What passed for Kenya's press law was a generalized article 79 in the old constitution. It said:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

However, besides this generalized section of the law there was a sprinkling of legislation in the legal landscape that regulated the press. Among these sections were the Official Secrets Act, Cap 187; defamation Act, Cap 36; Preservation of Public Security Act, Cap 57; Penal Code, Cap 63; Public Order Act, Cap 56; Books and Newspapers Act, Cap 111; Films and Stage Plays Act, Cap 222; Copyright Act, Cap 130; Chief's Authority Act, Cap 128; Police Act, Cap 84; and Armed Forces Act, Cap 199).

The implementation of these restrictive laws was at the whim of the government of the day. Under the presidency of Jomo Kenyatta, typical of these whims was the observation of the then Attorney General Charles Njonjo, who, responding to fears that the head of state was indisposed, said that imagining the death of the president was a treasonable offense. There is, however, no strong record of Kenyatta's reprimand to the press. If anything there were instances when he stood with the press. For instance, when Idi Amin, the then leader of Uganda banned Kenyan newspapers from circulating in Uganda, Kenyatta objected. But the regime of President Daniel arap Moi was a completely different kettle of fish, with constant repression of the media.

As has already been observed, the means by which media were regulated in Kenya has varied over the years. Sometimes it took the form of a parliamentary motion, for example, in 2001, when parliament passed a Statutes Law (Miscellaneous Amendments Bill) whose thrust required newspaper publishers to increase the bond required to be deposited by any start-up newspaper from Ks 10,000 to Ks 1,000,000. Any breach of of the legislation would incur a fine of up to a million shillings or a jail term of up to three years. A subsequent offence would raise the jail term to five years and would bar the offender from ever again publishing in Kenya.

The courts were sometimes not up to the task of regulating the media due to their lack of independence. While the judges enjoyed security of tenure they were appointed by the executive and appeared subservient to the executive. Studies by Transparency International repeatedly found that the public perceived the judiciary to be among the most corrupt institutions in the country. On the whole, however, the state expected the media to do its bidding, and, whenever that did not appear to be the case, the state used all manner of measures to reign in on the media. For example, when the *Weekly Review* appeared to be critical of the government, the government simply instructed state agencies to stop advertising in the magazine. This starved the

magazine of funds and probably marked a turning point in its journalism (Ochieng, 1992).

But as the political temperatures increased in the country so did the relationships between the government and the media. Some, in extreme cases, were banned; others were censored, while in some cases the government raided media printing houses to physically disable printing machines. The state jailed or detained journalists whose work did not appeal to it and granted broadcast frequencies to applying institutions and individuals in a rather opaque manner. By the early 1990s there was a general fear by journalists and the media in general, leading to the movement by the media to seek means by which it would regulate itself, and thus avoid the wrath of the state. The move to self-regulate was thus driven by necessity and by fear.

However, self-regulation efforts soon encountered unique challenges. Chief among these challenges was the lack of resources to enable self-regulation to be effective. The staff of the independent Media Council worked on a voluntary basis. Initially they had no permanent abode from which to operate and they had no mechanism through which to enforce their will on offending media houses. While the industry agreed to fund the media through voluntary contributions that were determined by the size of the media house only a few media houses paid up. The other avenue of revenue – the annual registration fee for every journalist working in the country - met with stiff challenges.

First, most journalists did not pay, arguing that the Ks 2000 registration fee was too high. And, secondly, the independent Council simply did not have the capacity to collect the fees or to enforce its will where journalists failed to pay up. Even in its rulings, when it preferred a penalty against a media house, it was up to the media house to pay the penalty and the Council did not have a way of enforcing its will. The constant message became that the regulator had no “teeth”. It led to a kind of stand off. The media would argue to be allowed to regulate itself while the state would argue that the media had no capacity to regulate itself. But further students of the media had serious reservations regarding the impact of registration of journalists on the freedom of expression. Scholars like Guy Berger argued that journalists’ registration fees was an assault on freedom of speech as it limited the right to only those who had the capacity to pay.

The 2002 elections in Kenya provided the country with an opportunity to revisit the issue afresh. It was obvious that self-regulation was

not as effective as it could have been for the reasons already enumerated above. But in 2002 several former civil society activists who identified with the plight of the press were elected to parliament and into government. While, on the one hand, these advocates believed in the importance of self regulation they also realized the limitations facing the process. It is this challenge that led to the journey to the hybrid process in Kenya. To address the challenge of the capacity of the Council the government provided a legal environment that made it possible for the Council to enforce its rulings. The law passed in 2007 provided the Council with legal recognition, a mandate, and a mechanism to enforce its will. However, the Council still faced the challenge of funding. In the debate and public discussions leading to the setting up of the Council there were strong representations from civil society organizations and from the media itself that it did not want to receive funding from the government because such funding would compromise its mandate – the proverbial “whoever pays the piper calls the tune” mantra.

The thinking behind the call not to receive funding from the state was informed by the fear that the state would use the funding rope to gag and control the Council. The proponents of this school argued that the Council should be funded through the contributions of the media itself and through donor money. But parliament, while passing the law, was equally concerned about the source of revenue for the Council and prohibited it from receiving funding from any other source other than from the media houses themselves and through self-funding. Parliament’s argument was that if the Council did not want money from the state then it could generate funding from its activities such as penalties levied against offending media houses, from annual monthly remittances from the media houses, and from annual registration fees on journalists. But before long it was obvious that the self funding mechanism was not working, and the Council would not be able to execute its mandate.

Two years after coming into effect parliament amended the law and started funding the Council. The fears that the government could use the funding option to control the media were probably overstated. This is because the government does not have real control over the Council. It does not sit on the Council’s board and accountability remains to Parliament through the Parliamentary Select Committee rather than to a government office. The advantage of this arrangement is that the select committee which comprises members from both sides of the

aisle makes it difficult for the Select Committee to be dominated by one opinion. In terms of the composition of the Board the closest that government is to being represented is through the appointment of the Director of Information, who is in charge of the national Kenya News Agency to sit on the Board. But this membership is just one out of the 13 members of the Board that includes three representatives from the Media Owners Association, two from private and public universities respectively, and from the Kenya Union of Journalists and one each from the Kenya Institute of Mass Communication – a government training institution, from the Kenya Correspondents' Association, from the Law Society of Kenya, from the editors' guild and from Public Relations Society of Kenya.

The irony is that the fear of government control is overstated compared to the fear of control by media owners. While there are three representatives from the Media Owners Association, it is conceivable that the representatives of the Editors Guild, of the Correspondents' Association and even of the Kenya Union of Journalists, all who interact rather closely with the Media Owners Association members at one time or the other, could be subservient to the interests of the Association Members. Further, given the nature of the composition of the Kenya Union of Journalists and Kenya Correspondents' Association, again it is conceivable that the articulation of journalists' and correspondents' concerns in these bodies could be a matter of conjecture.

However, Kenya's new constitution does address these fears somewhat. Article 34 does require parliament to put in place, within three years of the promulgation of the constitution, a media regulator that is both independent of government and commercial interests. This would appear to make it difficult for anybody associated with both the government and with the media owners to sit on the board. The process of making this law a reality is ongoing. One would envisage a situation where the industry would turn to the Public Service Commission to recruit members of the Council from competent individuals who are not representatives of the government or the commercial interests. This would make the Board of the Council independent from both government and commercial interests, and still receive resources from the Treasury and be accountable through the Parliament's select committee. And the fact that the decisions of the Council have force of law makes it easy for it to "bite".

A brief conclusion is that the experiment taking place in Kenya means that the choice is not primarily between whether to self regulate or to be regulated by the government. There is a third way.

References:

- Ainslie, R. (1966). *The press in Africa: Communications past and present*. London: Gollanz.
- Article 19. (2006). *Article 19*. Retrieved August 6, 2012, from <http://www.article19.org/data/files/pdfs/analysis/kenya-media-council-bill.pdf>.
- Biagi, S. (2011). *Media impact: An introduction to mass media*. New York: Cengage.
- Chuma, W. (2011). *The press and power in a changing Zimbabwe*. Saarbrücken, Germany: Lambert Academic Publishing.
- Compagnon, D. (2011). *A predictable tragedy: Robert Mugabe and the collapse of Zimbabwe*. Philadelphia: University of Pennsylvania Press.
- Davison, W., Boylan, J., & Yu, F. (1982). *Mass media*. New York: CBS College Publishing.
- Hoffman-Reim, W. (1996). *Regulating media: The licensing and supervision of broadcasting in six countries*. New York: Guilford Press.
- Kayanja, R. (2002). Media reform in Uganda. In M. Price, B. Rozumilowicz, & S. Verhulst (Eds.), *Media reforms: Democratizing the media, Democratizing the state* (pp. 154-172). London and New York: Routledge.
- Kent, K.E. (1972). Freedom of the press: An empirical analysis of one aspect of the concept. *International Communication Gazette*, 18, 65-75.
- Kruger, F. (2009). *Media courts of honour: Self-regulatory councils in Southern Africa and elsewhere*. Windhoek: Friedrich Ebert Stiftung Media Africa.
- Lamb, D. (1987). *The Africans*. New York: Vintage.
- Lush, D. (1998). The role of the African media in the promotion of democracy and human rights. In S. Kayizzi-Mugerwa, A. Olukoshi, & L. Wohlgemuth, *Towards a new partnership with Africa: Challenges and opportunities* (pp. 42-65). Uppsala: Nordiska Afrikainstitutet.

- Mbeke, P., Ugangu, W., & Okello-Orlale, R. (2010). *The media we want: The Kenya media vulnerabilities study*. Nairobi: Friederich Ebert Stiftung.
- Mboya, T. (1970). *The challenge of nationhood*. New York: Praeger Publishers.
- McPhail, T. (2011). *Global communication: Theories, stakeholders, and trends* (3rd ed.). Oxford: John Wiley and Sons.
- Nyamnjoh, F. (2005). *Africa's media, democracy, and the politics of belonging*. London: Zed Books.
- Obonyo, L., & Nyamboga, E. (2011). *Journalists and the rule of law*. Nairobi: International Commission of Jurists.
- Ochieng, P. (1992). *I accuse the press: An insider's view of the media and politics in Africa*. Nairobi: Initiatives Publishers.
- Ole Ronkei, M. (1995). *Emerging communication strategies in the press-church alliance in Kenyan politics*. Unpublished doctoral dissertation, University of Oregon.
- Zaffiro, J. (2002). *Media and democracy in Zimbabwe, 1931-2002*. Colorado Springs: International Academic Publishers.



Media self-regulation in young democracies: Just how effective are voluntary media councils

By Ayub Rioba

Abstract

While much is written about the role of media in mature democracies the present article attempts to evaluate the mechanisms of freedom and responsibility and especially the role of non statutory media councils in young democracies of Africa, taking Tanzania as a case study. This study found that with good management, broad support from the media community as well as government and civic leaders, and very strong support by donor agencies a media council can correct journalistic abuses, raise standards, support a series of organizations such as an editors forum, media owners associations and journalists associations. Media professionals in this study were in favor a non-statutory council backed by the strong educational and advocacy activities of the council.

Key words: media and democracy, media accountability, self regulation, media council

Introduction:

In the early 1990s, Tanzania – like the rest of Africa – embarked on political reforms to institute liberal democracy (Shivji, 1994). Among other forms of liberalization came the opening to a free press deemed integral to pluralistic democracy (Kilimwiko, 2009). The post-colonial era with its developmentalist agenda had faced strenuous challenges that made political and economic reforms inevitable (Amani et al, 2006; Malyamkono et al 2006). The demands for a free press in the new paradigm meant a radical departure from the colonial and post-colonial political culture which restricted press freedom in the name of national unity and centralized state planning (Konde, 1984). National policy moved towards a freer, diverse and self-regulated media regime (see Sturmer & Rioba, 2000).

Author biographical note

Ayubu Rioba (ayubrioba@hotmail.com), a Lecturer in the School of Journalism and Mass Communication at the University of Dar es Salaam, has recently finished his PhD in mass communication at the University of Tampere, Finland. His recent publications include “The Role of Media in Africa’s Multiparty Democracy in A. Magnuson, 2010.

The major premise in the call for a free press was that since African countries had adopted Western liberal democracy – with its free market fundamentals as a panacea to economic failures – then it followed automatically that the media sector also had to adopt and reflect that form of democracy (Bourgault, 1995; Eribo, & Jong-Ebort, 1997; Mwangi, 2010; Mason, 2001; Joseph, 1997). This move was supported by the argument that a free media is both desirable and necessary in a democracy for holding the government accountable to citizens; for promoting diversity of views and for creating an informed citizenry through free flow of information and unfettered debate (see Dahlgren, 2009; Gurevitch et al, 1995; Curran, 2002; White, 2008; Killian, 2010, 2011; Christians et al, 2009). It was this conceptual position that inspired media activists, policy advocacy groups and civil society in the early 1990s to demand press freedom and self-regulation as a way of enhancing the mass media's role in the democratization process (Mafeje, 2002).

Consequently, in 1995 Tanzanian media practitioners, as well as supporters from civil society, established a voluntary, independent and non-statutory council to guide the self-regulation of mass media as an integral part of liberal democracy. The Media Council of Tanzania (MCT) was charged with the task of enhancing media accountability, carrying out arbitration on complaints and promoting professionalism in the sector.

However, critical reflection on the seemingly well intended campaign for media freedom reveals that while campaigners have demanded media "freedom" and "independence" from governments, they have also tended to overlook – or ignore – some underlying ambiguities accompanying liberal democracy concepts. Apart from the anomaly inherent in uncritical adoption of Western concepts in Africa's radically different circumstances in terms of history, culture, political organization, economic framework, there is also the question of the negative influences of free markets on media "freedom" and "independence" (see, for example, Ronning, 1994; McChesney, 1999; Curran, 2002; Christians et al, 2009).

Since the MCT was established in 1995 many countries on the continent and elsewhere have sent pilgrims to Tanzania to learn from MCT's seeming success story in spearheading self-regulation of mass media. But in which ways – and to what extent – has the MCT in fact succeeded in mounting self-regulation in Tanzania's young democracy. For many the MCT remains like a parcel that has not been unpacked.

Although self-regulation, promoted by independent media councils, is deemed a better alternative than government control through legislation, there is still lack of clarity about how effective it is, or can be, in the context of young democracies such as those in Africa (Bussiek, 2008; Dennis, 1995; Da Silva & Paulino, 2007). This article seeks to interrogate the effectiveness of the voluntary, independent and non-statutory Media Council of Tanzania (MCT) in developing self-regulation in Tanzania's struggling democracy.

In principle, self-regulation entails all the mechanisms employed by media practitioners themselves in the newsrooms and outside for ensuring accountability. It involves a hierarchy of rules, processes, procedures and practices all administered by professionals themselves and appraised by the audiences in terms of readership, listenership or viewership (see Bertrand, 2002; Gadzekpo, 2010; Rioba, 2012).

From the outset, it is important to point out that self-regulation is only one way and, at best, only one part of the process of regulating the media services of a country. Nordenstreng (2010, p. 428), for example, distinguishes four categories under which media are regulated:

Law enacted by Parliament and other state bodies and executed by courts;

Market based on private property, commercial advertising and consumer choice;

Public thorough citizens associations and public opinion;

Media themselves through journalists and managers;

All the four may – and do – have a role to play in regulating mass media in society. But what distinguishes advanced democracies from young democratising countries like Tanzania is the extent to which the government exercises control on media practice. For example, in liberal – as well as other advanced – democracies, media ownership is deemed as ownership of any other business and therefore that the regulation of media behavior is best left to the invisible hand of the market.

However, apart from the criticism about negative influences of the free markets on media practice, scholars such as Nordenstreng (2010) are critical of self-regulation seeing it as the weakest form of the four because of professionals' inclination towards more autonomy, which leads to what he terms as "fortress journalism". The autonomy of mass media, arguably, can best be understood from the perspective of serving wider societal interests – not narrow interests of the media as well as advertisers which is increasingly becoming common.

Many African countries, including Tanzania, are still trapped in the early stages of democratization during which the old paradigm of state control is in constant friction with the new self regulating freedom and where the new does not necessarily fit in (see Hynes, 2001; Matumaini, 2011; Rioba, 2012). While the legacy of one-partyism is still very much present in Tanzania (Baregu, 2000), the new imposed culture of liberalism, multipartyism and free markets appears to be ill-equipped to help media practitioners self-regulate themselves.

Just how effective is media self-regulation

The central thesis of this study is that since theories on the role of media in liberal democracy see government regulation as too prone to limit media freedom, media self regulation emerges as the most workable alternative regulatory mechanism in Africa (Blake, 1997; Berger, 2007). But theories of the role of media in democracy, including theories of self-regulation, have mainly focused on developed countries with more mature democracies while there is very little research and commentary on the role of media regulation in young democracies (Berger, 2002; White, 2008). The demand for less government involvement in controlling media behavior appears to be increasing in developing countries, but the dilemma of the negative influence of free markets on mass media has not been addressed adequately (Dahlgren, 2009). Although theoretically free markets are said to guarantee media diversity and "independence" experiences in advanced liberal democracies indicate that trends towards merger, acquisition, and conglomeration of corporate media is killing both diversity and independence (see for example, McChesney, 1999; Chomsky, 1995; Baker, 2001; Curran, 2002; Christians et al, 2009). More airtime and space in media is increasingly dedicated to entertainment and promotion of consumerism while little time is spared for public affairs and engagement of citizens on governance issues (Curran, 2002). It is against this background that a scholarly need arises to investigate the effectiveness of independent media councils as mechanisms for spearheading self-regulation of media in young "liberal" democracies.

This article is basically an extension of my PhD research in which I sought to understand the effectiveness of a voluntary media council in enhancing media freedom and accountability in a young democracy. The article specifically aims at contributing to knowledge on this topic through views of journalists and influential persons as well as scrutiny

of the actual workings of the MCT for a selected period of ten years (1997-2006). The article further focuses on two research questions which addressed directly the issue of the effectiveness of media self-regulation?: 1. What are the views of journalists and other stakeholders about self-regulation of media in Tanzania? What is their assessment of the role the MCT has played in introducing self-regulation in the last 15 years? 2. How effective has the MCT been in administering self-regulation of media in Tanzania? What lessons can be drawn from its arbitration process in the first ten years of its existence?

Research methods

Four key methods were employed in generating data in this research. The first one was a questionnaire administered to a sample of 221 journalists across the whole country in selected press clubs and in newsrooms which provide a meaningful representative sample of Tanzanian journalists. The selection of sample media/press clubs, number of journalists, and number of questionnaires is presented below:

S/n	Media / Press Club	Number of journalists	Distributed	Returned
1	Morogoro Press Club & Undergraduate students	60	40	32
2	Zanzibar Press Club	200	60	26
3	Mara Press Club	30	25	10
4.	Dodoma Press Club	31	25	9
5	Lindi Press Club	29	25	9
6	Ruvuma Press Club	32	25	9
7	Arusha Press Club	65	25	5
8	Kagera Press Club	34	25	8
9	Global publishers (newspapers)	60	30	11
10	Mwananchi Communications Ltd.	100	30	19
11	Uhuru & Mzalendo	30	25	8

12	Tanzania Daima	25	20	5
13	New Habari (2006)	50	30	8
14	Majira newspaper	25	25	8
15	The Guardian & Nipashe	50	30	8
16	Daily News & Habari Leo	40	30	15
17	TBC (Radio and TV)	50	25	7
18	ITV & Radio One	40	20	7
19	Star TV (Mwanza and Dar)	40	40	12
20	Mlimani (Radio and TV)	10	25	5
Total		1001	640	221

The second method was focus group discussions with two main groups, one comprising of 12 post-graduate journalism students at St. Augustine University of Tanzania (SAUT) and another with 26 editors at an Editors' Forum (EF). While the first one was appropriate in terms of the number of participants, the one with Editors Forum was a little over twice the maximum number. The problem with such a large number is that within the limited time of the interview some participants do not get a chance to speak and even those who participate tend to rush to make their point so as to give a chance to other speakers. Nevertheless, since it was almost impossible to divide the editors into smaller groups for a focus group discussion, the only practical option was to request them to slot my session in one of their meetings to which they offered two hours.

Both the post-graduate student and editors focus group sessions were conducted in Dar es Salaam on different occasions. While the focus group with SAUT lasted for two hours and eleven minutes the one with editors lasted for one hour and twenty minutes. In both cases a neutral and perceptive moderator was identified to moderate the sessions while the researcher only provided guidance in the specific questions to be addressed. The focus group discussions provided

valuable input to my understanding of the context, intensity of ethical problems, challenges and prospects of self-regulation

The third method was intensive interviews conducted with 32 influential individuals identified by convenience of availability: they were from government, political parties, universities, civil society and among journalists themselves. The individuals were selected on the basis of their roles in society and especially their involvement with issues that relate to media activities.

There were two major objectives in approaching these selected groups for in-depth interviews. The first one was to learn how these groups - which are consumers of media products as well as beneficiaries of the facilitative role of media – view the role of media and self-regulation in the context of Tanzania’s democracy. The second objective was to compare the groups’ views with those of journalists in the focus group discussions as well as in the survey.

S/N	Category	Interviewees
1.	Government	4
2.	Politicians/Political organizations	4
3.	Civil Society/Human rights	4
4.	Academicians	8
5.	Senior journalists	6
6.	MCT staff	7
	Total	33

However, the fourth and main approach was to study the MCT’s archives for analysis of complaints. This approach aimed at discovering, collating, linking and analysing data at the MCT which relates to its arbitration process. This enabled me to study the MCT’s mandate, procedures and handling of complaints, the number of cases each year the verdicts reached, the profiles of complainants, types of complaints, types of media brought before the MCT, costs involved in resolving cases, duration of cases and explanations for unethical practices that result in complaints.

Although the MCT has also been involved in a number of other activities including the training of journalists in media ethics and investigative journalism, organizing media symposia and dialogue among journalists, providing annual prizes for best journalists, supporting press clubs and the Editors' Forum, this part of the study focused on the details of arbitration, a process that engages the public directly in the exercise of media self-regulation and accountability. As the MCT publication on conciliation cases (1997-2006) has put it: *Among the activities of the Media Council of Tanzania (MCT), arbitration is the most visible, attracting interest of people from all walks of life* (MCT, 2010, p. 5). However, the MCT's 2010 report published to mark 10 years of promoting media ethics and accountability, contains just a fraction of all the cases in the period, and lacks analysis that explains the nature of ethical problems, trends of complaints and effectiveness of arbitration process as a significant aspect of self-regulation. This paper intends to provide that analysis.

Particularly relevant in the archives of the MCT in Dar es Salaam were the arbitration cases for selected periods. These cases revealed much about the functioning and effectiveness of the Council. Files of cases ranged from the year 1997 to 2010, and on average there were 10 cases for each year. It should be noted that although some files were not readily available at the MCT archives, the majority that were present provided valuable information from which to draw both quantitative and qualitative analysis. Since no research had been conducted to systematically analyse all this raw case data since 1995, it was necessary to go through all the files in the archive to retrieve information page after page. The objectives of studying MCT cases were to sort out data concerning the way the MCT handled complaints as well as its effectiveness as a self-regulation mechanism. The most revealing aspects of the complaints regarding violation of journalistic responsibility are the following:

- procedures for filing a case
- average number of cases per year
- categories of complainants (politicians, business persons, ordinary people, etc)
- categories of complaints (ethical provisions that are breached most)
- average time it takes for a filed case to be decided
- The average costs of cases to individual complainants and the remedy offered

- Threshold for adherence to Ethics Committee's decisions (% of compliance)
- Procedures for reaching decisions were made the way they were made.

Background of the MCT

The independent, non-statutory and voluntary Media Council of Tanzania (MCT) was established on June 30, 1995 at a conference of journalists and stakeholders held at the Korean Cultural Center in Dar es Salaam. The MCT was to start operations effectively on May 22, 1997 after official registration and upon acquiring funding from the Swedish Embassy in Tanzania. This funding enabled it to form a secretariat and set up an office in Dar es Salaam (Rioba, 2009, p. 110). Since then, the MCT has conducted arbitration of complaints; trained journalists in ethics and investigative journalism; organized workshops and symposia to discuss ethics; prepared codes of ethics for journalists and produced a number of publications addressing issues of quality journalism and accountability.

The MCT also publishes a journal (or, better, a trade magazine), *Scribes*, with articles on the professional activities of journalists and numerous other practical booklets on professional activities of journalists and broadcasters. The MCT has also promoted issues of editorial independence through such initiatives as supporting the establishment of the Editors' Forum and through organizing encounters for professionals to discuss their professional standards. In 2010 and 2011 the MCT promoted a study group which brought out the Dar es Salaam Declaration on Editorial Freedom and Responsibility and then carried out training sessions on this declaration for the university students and press clubs. The MCT also gives annual awards to different categories of outstanding journalists, editors and broadcasters. The MCT regularly has press releases on major media events in Tanzania. All this activity gains the MCT considerable publicity and coverage in the media.

On average, recent annual budgets for the MCT stand at 1 million US Dollars of which less than 10 % comes from local media organizations and other local stakeholders. Most of the budget is covered by donors led by Sweden. Such budgetary implications have often raised issues of sustainability as well as independence of the MCT in spearheading self-regulation. In terms of arbitration, between 1997 and 2006 – a period under this study - the MCT handled over 130

cases, an average of 13 cases per year. Complainants have come from politicians, professionals, business persons, ordinary citizens, institutions and the government.

Almost all media houses are MCT members and up to 98% of arbitration decisions are adhered to by parties to disputes. Still, underneath such impressive statistics are experiences of hassles that complainants have to go through especially with uncooperative editors in newsrooms before their complaints are settled by the Ethics Committee. Whereas the MCT constitution requires the arbitration of cases to be finalized within three months, some cases take over a year to conclude because of, among other factors, procedural hurdles and other unforeseen circumstances.

Findings: How has the MCT contributed to media accountability

The issue of media accountability continues to be contentious in Tanzania. Whereas respondents in the three approaches of this research argue for enhanced, and guaranteed, media freedom in order to sustain democracy, they still express concern over irresponsible media practice. Most respondents – in the survey, focus groups and in-depth interviews – maintain that the leading ethical transgressions in Tanzania include, but are not limited to, the following: telling lies or publishing false allegations; defaming individuals; taking bribes to suppress or promote information; publishing sensational as well as biased content either to maximize sales or serve narrow interests of owners, politicians and businesspersons; use of media as weapons for fighting political or business wars; plagiarizing content as well as failure to respect the right of reply. Most of these violations are also reflected in cases that were filed in the MCT in the period of this research.

What is interesting to note is how survey respondents responded to the question about what they considered to be their main sources of ethical convictions. Although responses in this category do not show the order of importance it is worth mentioning that the majority, 30% of responses, mentioned “personal convictions” followed by 24% of responses which cited “parents and societal values” as sources of ethical convictions. “Newsroom codes of ethics” came third with about 18 % of responses followed by “training in journalism ethics” also with about 17% of responses. “Religion and the fear of God” came last with only 8% of responses.

These results contrast significantly with the results of a study by Rioba (2009) which found that “personal convictions” had the least

responses while “training in journalism ethics”, “education”, “parents” and “religion” came top in a corresponding order (Rioba, 2009, p. 96). One of the explanations for this difference is that as a society drifts towards liberal political and economic policies individuals increasingly turn to the self for a sense of moral direction – as opposed to the sense of community which was very dominant during the socialist years – or prior to colonialism (see, for example, Nyamnjoh, 2005). In other words democratic reforms that have been taking place in Africa, and Tanzania in particular, appear to be reinforcing individualistic values of the liberal strand of democracy which are apparently replacing the deep rooted communal ways of life. What is still not clear at this juncture is whether this shift towards liberal values – particularly in urban areas – is likely to be an incentive, or otherwise, to the effectiveness of self-regulation.

Knowledge of self-regulation

It was more obvious that in the focus groups and in-depth interviews, respondents were more aware of *self-regulation* of media and the role the MCT had played in encouraging media accountability in the country. The majority in this category could also link the concept of self-regulation to liberal multiparty democracy which is being implemented in the country since 1992. Furthermore, a considerable number of respondents in these two categories espoused the criticism about the negative influences of the corporate world – or imperialism interests – on the workings of the media. Furthermore, it was in these two categories that views emerged to support the voluntary and independent MCT in promoting self-regulation instead of endorsing the government’s exercise of control over media practice. It was mainly from these two research groups that more concrete recommendations emerged on how the MCT could be strengthened to enhance its role in developing self-regulation of mass media in the country.

When those interviewed were asked whether they understood the concept of self-regulation, the majority of respondents (about 71%) in the survey answered in the affirmative while about 11% said no. About 18% of respondents did not respond to the question. The majority of those who did not respond to the question were freelancers and correspondents from the press clubs in the regions. Most of the respondents who answered “yes” to this question were those with diploma level or above qualifications in journalism or mass communication or with work experience of more than five years. The

majority of those who did not respond were correspondents from press clubs in the regions, most of whom are less educated (i.e., very few of the respondents in this category had a college diploma). Clearly the concept of self-regulation in Tanzania today is beginning to be associated with the MCT prior to which it only meant newsroom mechanisms such as the postmortem, editorial meetings or editorial sanctions against unethical journalists.

Has the MCT been effective? Survey results

On the question of whether the MCT had enhanced efficiency of mass media performance through self-regulation some 69% of respondents were of the view that it had while 18% said no. About 2% of the respondents said they were not sure. There was no response from 10% of the respondents, almost all of whom were upcountry correspondents with lower educational levels (i.e. Secondary school education and below). About 64% agreed that self-regulation had been an incentive for journalists to adhere to ethics while 18% thought otherwise. About 16% of the respondents did not respond to the question. Furthermore, 70% of respondents agreed that self-regulation had reduced costs of administering cases and complaints while 13% said no. About 15% of respondents had no response while about 4% of respondents said they did not know.

On the question whether self-regulation had increased public trust in the journalism profession the figures dropped significantly. About 54% of respondents agreed with the proposition while 27% disagreed. There were 15% of respondents who did not respond while 4% said they were not sure. The same pattern repeated itself on the question whether self-regulation had enhanced accountability on the part of journalists. About 58% of respondents replied in the affirmative while a fifth said no. About 19% of respondents did not respond to the question and 3% said they were not sure.

Lastly, on the question of whether self-regulation had helped promote press freedom, 64% agreed with the proposition while 18% disagreed. About 16% did not respond to the question while 2% said they were not sure. It is worth noting that about 70% of respondents were confident that the MCT's self-regulation had increased efficiency in journalistic performance and had also reduced costs in handling complaints but the number dropped to 56% on the issues of increased accountability as well as enhanced public trust. This is understandable from the fact that while the issue of enhanced efficiency in journalistic

performance is more related to the training role of the MCT the issue of public trust and increased accountability was still a major challenge owing to unethical behavior of some media outlets and journalists.

Focus groups and in-depth interviews

With the focus groups and especially the in-depth interviews, the main argument was that self-regulation was a better mechanism for media accountability in a democracy despite inherent threats emanating from political and corporate interests. Respondents further argued that the problem with entrusting media accountability to government agency was its well known tendency to control the information sector. This argument is aptly elaborated by Ansah (1991) in his analysis of three major crises facing media in Africa's democratization. According to Ansah, African media faces the crises of power, ownership and resources. On the crisis of power, Ansah posits that weak states are always suspicious of media because they see them as agents of dissent (see also Blake, 1997; Kasoma, 2000; Hyden et al., 2002; Gadzekpo, 2010). In this context, Ansah argues that weak states seek to control media through censorship, economic rewards for media toeing the line as well as reprisals to those that maintain a critical stance. He further argues that since most weak states tend to suffer from a legitimacy problem, they end up seeking control of media to ensure coverage that glorifies and promotes their image to the public.

The second major argument from respondents in the focus groups and in-depth interviews was that since governments in a democracy were expected to be accountable to citizens the media were supposed to enjoy a degree of freedom which could allow them to watch the governments on citizens' behalf (see Nordenstreng 2000, p. 75). It was in this context that most respondents credited the role the MCT had played since 1997 claiming that it had minimized government interference with the workings of mass media despite the existence of the old and strict media laws. Respondents maintained that the MCT had gained credibility and recognition by both the public and the government as a legitimate mechanism to develop self-regulation capacity of mass media in the country. They cited the diversity of complainants to MCT, who range from top government leaders to ordinary citizens as evidence to this argument.

Furthermore, respondents were also of the view that the MCT had helped reduce the economic threat to media through arbitration of cases without hefty fines imposed by courts of law. Furthermore,

respondents also saw self-regulation, through MCT arbitration, as a quicker mechanism to resolve disputes than in courts of law where cases took years to resolve.

On the other hand, some respondents were of the view that self-regulation under the MCT appeared powerless in an environment in which the major media houses were owned by the corporate as well as political moguls who primarily sought to pursue business and political interests often at the expense of societal welfare and democracy. Secondly, they faulted the MCT's self-regulation mechanism for lacking enforcement powers to punish media outlets or journalists who deliberately violated professional ethics. In his study Matumaini (2011) found that 55% of his respondents stated that media houses and individual journalists tended not to respect codes of ethics, an argument that is also raised by Mfumbusa (2006).

Thirdly, respondents also thought the idea of the MCT "shaming" editors and media outlets through its arbitration process was problematic because the same media houses were the main stakeholders who also financed the MCT. Fourthly, MCT was seen as relying too much on donor financial support for its activities which, they argued, eroded its independence as well as legitimacy among its key stakeholders. Since its establishment the MCT has continued to rely heavily on donors for financing its annual budgets. The MCT has a budget of USD 1 million annually which is largely covered by donor countries, led by Sweden, Denmark, Norway and Switzerland and UNESCO. The media fraternity in Tanzania contributes about 8 to 11% of this budget (MCT, 2011).

What should be done to strengthen ethical behavior?

The survey also sought to know from journalists what was required to ensure that mass media adhered to journalism ethics as a way of enhancing their accountability. Interestingly respondents provided the same responses as in the 2009 study, giving journalism training first priority, followed by reforms of media and improved salaries (Rioba, 2009, p. 98). In the views of Tanzanian journalists the issue of continuous training, particularly in journalism ethics and the role of media, appears to be central in enhancing media accountability.

Nevertheless, the changed circumstances under the liberal democratic dispensation and free market economy portend a serious challenge that demands not only more training but also constant dialogue and study among professionals on issues of media roles and

accountability. Furthermore, there are other conceptual challenges in journalism practice that have to be understood in the context of media self-regulation. For example there exists the dilemma of newsroom values – which subject journalists to Western notions of journalism on one hand and African values on the other – and affect the way media people respond to the idea and practice of self-regulation.

On the one hand, journalists are busy responding to neoliberal dictates while on the other, they are confronted by other situational factors that tend to complicate their ethical alignment. Mfumbusa refers to Gans (1979) who identified several values that are usually embedded in the news, one of which was individualism. Mfumbusa observes that according to Gans the ideal individual struggles against adversity and overcomes more powerful forces in society and nature, which, Mfumbusa adds, contrasts sharply from his findings in Tanzanian newsrooms he studied in 2003:

Unlike in the United States where Gans' research was done where self-made men and women are attractive (or admired), as do people who overcome poverty or bureaucracy, the tendency among the interviewees was to tolerate individuals who "beat the system" earning easy success and wealth. Most interviewees do not particularly frown upon dubious success obtained through cheating (2003, p. 93).

Nonetheless, newsroom practices in Tanzania, as in many democratizing countries, suggest that self-regulation *per se* may not be effective if professionalism, the moral imperative to excel, better salaries and working conditions, are not in order or if journalists are subjected to patronizing tendencies of politicians and the business sector (Mfumbusa, 2006).

Furthermore, as Kilimwiko (2009) and Mfumbusa (2006) have noted, media ownership interests characterized by the dominance of the corporate world tend to align with government interests in ways that do not necessarily serve the general welfare of citizens or society at large. This trend constitutes a challenge to not only press freedom but also to self-regulation of media in general. A case in point is the trend indicating that during general elections major media houses tend to favor the ruling party at the expense of other opposition parties and candidates (see MISA Election Media Monitoring Project 2000, 2005; Synovate 2010 Media Monitoring Reports). Again a significant number

of responses proposed legal reforms, constitutional guarantee of press freedom and protection of journalists.

This suggestion echoes what the presidential Nyalali Commission recommended in 1991 about a review or repeal of “40 bad laws”, including media laws, which were a snag to democratic dispensation. Although a process has been in place since 2001 to review information and broadcasting policies to guide the new legislation in media, its slow pace raises doubts as to whether the government is willing to carry out further reforms in the media and information sector. So far, media stakeholders, including the MCT and MISA, have handed over their recommendations for new legislation to the government for consideration in the proposed Freedom of Information Bill as well as the Media Services Bill. The main objective of these proposals is to enact media laws which meet provisions in AU Charters which reflect media requirements in a democratic country. Nevertheless, 8% of the responses suggested that the role of the MCT, Editors Forum, and professional associations (including a trade union) should be strengthened while another 8% suggested national debate and dialogue on the role of media in enhancing democracy. A few, however, suggested that access to newspapers and other media outlets be extended to rural populations as well if the media is to play an important role in democracy.

Almost all respondents in focus groups and in-depth interviews admitted that the MCT had been very instrumental in promoting the idea of self-regulation of media in the country despite the fact that it lacked powers to enforce its arbitration decisions. However, several interviewees, particularly those who had worked closely with the MCT believed that the self-regulatory body did not need teeth. One argument put forth was that invitation of the government to provide teeth to a self-regulatory body would prompt the government to think that self-regulation had failed. Creating such impression, they argued, would encourage the government to intervene by instituting more controls on media.

The second argument was that the MCT could not build its legitimacy on the basis of self-regulation only to turn and claim teeth from the very government whose proposal for a statutory council it rejected in the first place. The third argument was that the results, or success, of self-regulation could not be seen overnight and that there was progress being made in the current efforts by the MCT and other stakeholders to improve and sustain self-regulation. Interviewees

argued further that the sanctions imposed through self-regulation were a sufficient punishment to media that breached ethics because no serious editor was ready to face public admonition, very often at the expense of his/her media credibility.

As noted in the survey, focus groups discussions and expert interviews, self-regulation is regarded highly as a desirable mechanism to promote media freedoms and accountability. However, a considerable number of respondents see MCT as a toothless organization which is incapable of disciplining rogue media and irresponsible journalists. This dual image of the MCT and self-regulation comes as the backdrop of another dilemma facing the mass media in a liberal democratic environment; an environment in which the threat to press freedom does not necessarily come from the government as it is traditionally known, but also from the negative influences of free markets on mass media (see Ronning, 1994; McChesney, 1999; Curran, 2002; Mfumbusa, 2008; Christians et al., 2009).

Analysis of MCT arbitration

In the period under study (1997-2006) I was able to access a total of 136 cases that were filed and heard by the Ethics Committee. It was not practically possible to find out how many cases had been rejected by either the secretariat or the Ethics Committee for lack of merit before they could be heard. The year 2001 had the highest number of cases (32) while 1997, 1999 and 2006 had the least number of cases (5). On the whole, in all the cases that were heard by the Ethics Committee in the ten years within this study, the majority (over 80%) of the decisions faulted the media for being unethical. In the remaining cases (less than 20%), the media were either exonerated or the cases were dismissed for lack of merit. Some of the reasons that prompted dismissal of cases included situations in which the complainant had brought a complaint before the MCT about a case that was pending in a court of law.

The second reason for dismissal of cases was when the primary objective of the complainant was monetary compensation and nothing less. There were also cases that were closed (not rejected) because the editors had refused to cooperate. In such cases the Ethics Committee asked the complainant to seek a remedy somewhere else. The majority of complaints (92%) were against newspapers, while about 6% were against radio and the remaining about other types of concerns. For example there were cases in which a journalist complained about a

fellow journalist on an issue that was totally unrelated to his/her media organization.

Profiles of complainants

In the ten years under study (1997-2006) ordinary citizens were the leading complainants scoring 22% followed by politicians who constituted 21%. Civil servants and professionals constituted 14% followed closely by journalists with 13% and businesspersons or companies constituting 11%. Religious leaders and organizations tied with showbiz celebrities with 7% each while organizations, such as educational institutions, held the last position with 5%. The fact that ordinary citizens were the leading complainants in the period under study, it can be argued, is indicative of growing trust in the self-regulatory mechanism. Most ordinary people hardly file cases for defamation or other violations by media in Courts of Law and when they do, they do not ask for billions of Shillings as is normally the case with politicians and businesspersons. However, a closer look again into the origins of those who filed complaints at the MCT in the period under study, two thirds came from Dar es Salaam and its neighbouring districts. In other words the majority of citizens in Tanzania could not access the services of MCT for a number of reasons. Firstly, access to media by most rural Tanzanians is limited. A study conducted by the government in 2007 among citizens on various issues found that in Dar es Salaam 67% of respondents cited radio as their main source of information while only 44% and 43% cited newspapers and television respectively. In other towns, outside Dar es Salaam, 63% of respondents cited radio as their main source of information while 24% cited newspapers and 20% cited television as important. In rural areas 56% cited radio as an important source, but only 7% newspapers and 5% television (Maoni ya Watu, 2007, 53). Secondly, the majority of citizens, particularly in rural areas can hardly afford even the minimal costs of travelling to file cases in Dar es Salaam or even regional headquarters where arbitration can be handled at press clubs offices. Thirdly, awareness is still needed among most citizens in the country on how they could access the services of the MCT in case they have any complaints against media.

Source of information to people in Dar es Salaam, other towns and in rural areas

Source of political, sports and international news	Dar es Salaam	Other towns	Rural areas	All
Radio	67	63	56	60
Word of mouth	19	22	22	21
Newspapers	44	24	7	20
Television	43	20	5	18
Citizen's meetings	7	13	15	12
Church/Mosque	8	11	5	7
Civil society/NGOs	3	3	2	2

Source: *Maoni ya Watu 2007 (a survey by the Ministry of Economic Planning and Empowerment)*

However, a more recent survey⁴ indicated that respondents in the whole of Tanzania who indicated they had access to radio had reached 85%, followed by those with access to a mobile phone (62%), followed by those with access to television (27%) and those with access to internet (4%).

It is not surprising that the leading complainants (76%) came from Dar es Salaam followed by 8% from Northern Tanzania and 5% both in Lake Zone and Central Zone Tanzania. There were fewer complainants from Southern Tanzania, Western Tanzania, and Zanzibar (all with only 2%) of the total number of complainants. The origin of about 12% of complainants could not be established due to missing information. However, it is unlikely that the missing information could have altered the pattern of imbalance that is discussed here.

What the trend shows is that most complainants come from Dar es Salaam because of proximity and access to newspapers. Most of them are politicians, business persons, celebrities, or professionals or civil servants who feel publication of a defamatory article exposes them to a much bigger public. In fact, a significant number of complainants from

regions outside Dar es Salaam were politicians, big business persons, religious leaders or journalists. These are people who have knowledge of the MCT; have access to newspapers; they have the money to cover expenses of following up the cases and motivation or compelling reasons to seek remedy for defamation. Otherwise the cases indicate that ordinary persons outside Dar es Salaam do not have the luxury of complaining at the MCT because apparently they lack awareness of MCT's existence or mandate; they lack access to media outlets and the money to cover expenses of travelling to Dar es Salaam or to press club centres to launch complaints.

Nature of complaints

Most of the complaints (88%) were about articles that were deemed by the complainants to be false or malicious and which had defamed them, subjected them to public ridicule or contempt. Apart from requesting monetary compensation as remedy, or to cover costs incurred in following up the cases, almost all complainants demanded an apology in the same weight they had been defamed. Another category constituting 7% consisted of individuals or institutions whose primary objective was to help put facts and records straight (from their own points of view). In this category, complainants either claimed the media had gotten the facts wrong or that the editors had refused to provide them with the right of reply. Then there were 3% (journalists a photojournalist and a cartoonist) who wanted a remedy after their works were used by other authors without their consent while the 2% simply sought to inform the MCT, or to seek clarification, about ethical controversies in some media content.

Many of the articles about which complainants filed cases with the MCT were so outrageous that in principle no editor worth the title could have allowed them to pass a publication test. Yet some editors continued to stick to their guns defending their decisions to the end and refusing to apologize or to compensate the complainants in question. Normally owners would expect editors to be good at increasing sales and not at doing anything that would jeopardize profits or incomes in their media outlets (Kilimwiko, 2009).

Although the 2% of editors (including other media that had not subscribed to MCT) who refuse to comply with MCT's arbitration decisions may appear to be an insignificant number, it is still a blow to those individuals who turn to MCT for a remedy believing media people can be held accountable through self-regulatory institution. It is

this wanton abuse of professional ethics and seeming impunity that made respondents in all the categories studied in this research suggest improvements in the self-regulation mechanism, including enhancing the capacity of the MCT to issue binding decisions.

Duration of complaints

Clause 18 (10) of the MCT Constitution states:

Complaints sent to the Council shall be attended to immediately and the Ethics Committee shall strive to conclude every matter before it within three months.

One of the arguments put forth in favor of self-regulation is that the process of arbitration takes a much shorter time to reach a verdict while in courts of law cases can drag on for years. In the data that is analyzed for the period of this research, the longest arbitration at the MCT took over a year to reach final verdict while the shortest took less than one month. On the average most cases took between three to four months to reach a conclusion. Some of the reasons provided for the variations in the period of arbitration include the following:

- i. Upon registration of cases complainants are asked, as per procedure, to try settling disputes with the administrative hierarchies of the media outlets in question before the cases could be considered for arbitration. In some cases, the complainants are made to wait for appointments with editors or publishers for months prompting complainants to opt for arbitration at the MCT;
- ii. In some cases the parties to a complaint find a date slated by the MCT for arbitration practically inconvenient for them, prompting postponement for a later date. Some cases are postponed three to four times pending a date that is convenient for both parties to a dispute;
- iii. There are also cases in which, after a decision is reached at the MCT for the parties to settle out of Council, negotiations between editors and complainants drag on for months without any amicable solution;

- iv. Another reason for dragging of some cases is simply non appearance of one or both parties on the date slated for arbitration which leads to postponement to another date;
- v. Some cases were settled within one month because of the convenience of both parties in disputes and convenience for the MCT itself.

Nonetheless, since shorter periods of arbitration – as stipulated in the MCT constitution – constitute one of the main advantages of self-regulation over courts of law, it does not seem healthy for MCT cases to drag beyond three months. Again the dragging out of cases discourages some complainants from relying on the MCT arbitration process in the future because it leads to unnecessary costs of following-up the cases as well as longer periods of psychological suffering by complainants. As respondents in all the categories studied in this research have observed, wasting this advantage would erode the MCT's niche of advantage over courts of law thereby discouraging complainants from turning to the self-regulatory mechanism for a remedy.

Types of remedy sought

Section 1.4 under rules of procedure states thus:

Because mediation is one of the basic pillars of the Council, the Council cannot help complaints whose express purpose (of complaining to the Council) is to get money. Money awarded to complaints in terms of fines from respondents is only a result of mediation, not the basis of filing complaints in the Council. Therefore, the Council advises any would-be complainant whose purpose of coming to the Council is to get money to take their cases to the courts of law.

Still, the majority of complainants who take their cases to the MCT tend to ask for monetary compensation as would be the case in the Courts of Law. Although some complainants would ask a reasonable amount to cover costs of following up the case, there appear to be two other motives as well: one is to gain monetary compensation for being wronged by media as a remedy for actual damages suffered. A good

example is a 17 year old girl named Neema Malekela who brought her case to the MCT claiming that newspaper cartoon strips defaming a woman bearing her name and profile had prompted her father to withdraw the school fees he was paying for her to join a nursing college. Neema, who came from a poor background, was awarded a Tsh two million (Approximately USD\$1,000) consolation grant in the hope that it would help cover her school fees and other expenses that her father had withdrawn.

Another motivation for monetary compensation sought is to punish the media by having them pay for their mistakes and deterring them from harming others in future. Some complainants who learned, after the arbitration process had started, that they could not get monetary compensation in terms of millions of shillings, withdrew their cases and proceeded to the Court of Law.

Frequency of complaints by media outlets

Although the number of times a media outlet appears before the MCT to respond to complaints may not necessarily be a sufficient explanation about its ethical performance, it may be interesting to note that the leading targets of complaints are serious, well established media outlets. Partly, though significantly, one explanation is that at one time the owners of tabloid newspapers pulled out of the MCT because they considered its adjudication as another possible threat to their survival. On the other hand, serious newspapers are considered to have more impact among audiences and hence what they publish is taken more seriously than what is in the tabloids.

Nonetheless, a total of 45 media outlets were brought before the MCT in the period under this research; 15 of them tabloids, 11 serious dailies and weeklies, four radio stations, including the government RTD and three religious newspapers. Other media outlets included two television stations, one with national audience and another one regional. There was also one party (CCM) newspaper, one sports paper and a ministerial newsletter. The leading target of complaints was Nipashe (appearing before the MCT 18 times), followed by *Majira* and *Mwananchi* (eleven times), and *The Guardian* and *Mtanzania* (eight times). The leading tabloid *Ijumaa* appeared before the MCT five times followed by *Dar Leo*, *Risasi*, *Rai* and *Kiu* (four times each). *Kasheshe*, *Daily Mail*, *Msanii Afrika*, *Hoja*, *Taifa Letu*, and *Amani* all appeared before the MCT three times in ten years. There were ten newspapers which appeared two times and the rest appeared only once.

Nevertheless, although some missing information could alter the actual ranking above still the picture of trends remain more realistic.

Conclusion

Although self-regulation can employ various methods of accountability, from within the privacy of newsrooms to the public arena, they may not necessarily be sufficient to ensure professionalism and media accountability in a young democracy as findings in this research also reveal (See also Mfumbusa, 2006). The majority of respondents in this research shared the view that although the MCT had done its best in spearheading self-regulation of media in the country, it still lacked “teeth” to bite irresponsible media. In fact about half of respondents in the survey even suggested government intervention to ensure media accountability. The MCT was also spotted as being so dependent on donors for its sustainability that its own independence was questioned. Again because media owners paid subscription fees to the MCT it made them think the Council had no right to admonish them in public.

Generally, the respondents in this research clearly demonstrate an understanding of shortfalls of Tanzania’s quasi-liberal democracy and its consequent limitations regarding the role of mass media. While respondents generally agree that democratization has expanded space for public debate and citizens’ participation, they still maintain that the guarded interests of those who control the markets tend to limit that space. As a result, they argue, the media are technically abdicating their role as the “voice of the voiceless” or as an effective forum for diverse views – especially those that are opposed to the status quo. Respondents in the focus groups, for example, admit that editors are often given instructions by owners about views or persons that should not be given space or airtime in their media outlets.

Below is a summary of a range of respondents’ ideas about their expectations of democracy, the role of media, issues of accountability and the ideal regulatory framework:

Expectations of Democracy	Role of media in democracy	Ethical issues for accountability	Regulatory framework
<ul style="list-style-type: none"> • Transformative • Responsive to the citizens' genuine needs and aspirations • Enhances citizens participation • Promotes equity and social justice through equitable distribution of resources • Protects societal values and human dignity and community rights, including those of the marginalized • Ensures harmony and continuity 	<ul style="list-style-type: none"> • Inform • Educate • Mobilize • Facilitate debate • Set agenda • Criticize, be watchdog • Be voice of the voiceless • Liberate & transform 	<ul style="list-style-type: none"> • Tell the truth • Be fair to all • Respect societal values • Respect religious values • Expose vices in society • Defend community or societal interests 	<ul style="list-style-type: none"> • Government regulation to meet expectations of transformative democracy • Strong public service media, including grassroots and community media • Self-regulation within the framework of societal norms, professionalism, • Citizens' watch groups • Markets (not central but they have a role)

Looking at the typology above, the views of respondents suggest a different strand of democracy and abiding media regulatory framework which deviates critically from the Western liberal democratic models, particularly in the USA and the UK as described by Nordenstreng (2006) and McQuail (2007). The respondents' views, which still reflect communal values that were central to Africa's pre-colonial communication, appear to be more in tune with the Scandinavian typology presented by Nordenstreng and McQuail as: *Information, Surveillance; Criticism, Participation; Forum, Open Access* than with any other Western model.

Three key points help to summarize the central conclusion of this article. Firstly, most respondents in all the three approaches of this study view media laws, ownership interference, politicians' as well as corporate sector's influence on mass media as major obstacles to the media's role in promoting and sustaining democracy. In general respondents further express concern about irresponsible journalism caused by lack of professionalism, poor pay, corruption and conflict of interests which, according to some of them, can be addressed by either government intervention or through a statutory media council. Almost

all respondents fault the neoliberal media for publishing lies, shallow or inaccurate reports, bias and sensationalism. They also attribute this lack of professionalism to low education, poor salaries and changing values among journalists, factors that render them vulnerable to conflict of interest and corruption. Most of the respondents in focus groups and interviews deem a strong public service media as well as community media as necessary to bridge the gap as well as to serve as a benchmark for the role the media should play in democracy.

Secondly, although respondents generally view MCT as a necessary mechanism to foster self-regulation – as opposed to government control – they still view it as ineffective and in need of “teeth” to make its decisions binding. Since the mass media function within the context of neoliberal democracy, they tend to be more accountable to two centres of power: politicians and those who control the markets. Respondents’ views support a position maintained by Herman and Chomsky (1994), McChesney (1999), Curran (2002) and others about the behavior of media in advanced liberal democracies. Consequently, instead of assisting in transforming or liberating society, the media are seen as manipulating citizens to satisfy interests of owners, politicians and the business sector which sustain them through adverts.

It is thus not surprising that a considerable number of respondents think minimum government intervention is necessary to ensure sanity among media practitioners and to protect the rights of others. Nonetheless, some respondents in focus groups and intensive interviews think it is not appropriate for the government to own media and at the same time to be the prosecutor, judge and executor of punishment to erring media. Equally important, respondents maintain that often the government uses existing draconian laws selectively to punish media outlets that are not performing their watchdog role ethically. It is these arguments that seem to give credence to support for self-regulation of media.

Thirdly, although the MCT seems to have played a significant role in introducing self-regulation of media as cases brought before it for arbitration demonstrate, its effectiveness appears to be limited. On the average in the period under study (1997-2006), the MCT handled about 15 cases each year most of which were from ordinary citizens followed closely by those from politicians. The list of complainants shows a mix of profiles ranging from national leaders (the Tanzanian Vice President, for example) to an ordinary 17 year-old girl whose character was defamed in a series of cartoon strips in a newspaper.

However, the majority of complainants still come from the DaresSalaam and its neighboring districts, a proof that other ordinary citizens, for example, from upcountry may have difficulty accessing MCT services. Two major reasons account for this. One, although they are the leading complainants, most ordinary citizens do not access media as easily as elites and business persons do. Two, even if they have access to media, they tend to lack the money to cover the costs of travel and subsistence while following up their cases.

The duration of the arbitration process varied between one month for the shortest and over a year for the longest. However, in some situations the duration of cases was made unnecessarily long mainly because of non-cooperation from editors or publishers. Compensation or remedy to complainants also varied where the highest was Tsh 3,000,000/- while the lowest was just a handshake. Compared to fines that media are obliged to pay in defamation suits in courts of law, MCT's amounts appear extremely modest and a relief to media outlets.

Nonetheless, almost 90% of cases were about complaints against false, biased or malicious allegations. This calls for critical reflection on whether the arbitration process itself is helping journalism practice to improve. Also it was evident from the findings that there were cases in which editors simply refused to cooperate in the arbitration process and MCT could not do anything about it. This affects not only public trust in self-regulation but also the reliability of the notion that the media in a liberal democratic environment can indeed be willing to be accountable to citizens. This is made more precarious by the fact that codes of ethics in newsrooms have a very limited role as mechanisms of accountability. As Mfumbusa (2006) has aptly observed codes appear to have been adopted to avert the government's regulatory intervention rather than to be tools of serious self-regulation. Similar criticism was made by Nordenstreng (2000) about the effectiveness of self-regulation of media in general.

Two concluding statements can then be extrapolated from the conclusions above. The first is that liberal democracy does not seem to provide an appropriate basis for self-regulation of media in young democracies especially in an environment where media are used by owners, politicians and the corporate world as a tool to facilitate vested interests at the expense of promoting and sustaining democracy. The second statement is that the effectiveness of the Media Council of Tanzania – a central mechanism for fostering self-regulation of media –

is weakened by a number of factors the most important of which include the following:

The mass media, particularly privately owned media, behave as any other business that seeks profits and treat each other as competitors hence weakening the basis for professionalism as well as professional solidarity;

The MCT lacks strong backing from all media houses which are the key sources of its legitimacy;

The MCT's decisions might be adhered to by over 90% of the parties to arbitration but it does not stop media outlets from repeating the same ethical violations;

The MCT only waits for individuals to complain even when often the media commit gross violations of the code of ethics to which they committed themselves;

The MCT does not have a mechanism of ensuring that newsrooms adhere to the code of ethics as a matter of routine;

The MCT lacks powers to enforce its arbitration decisions, something that gives leeway to editors and journalists to violate ethics knowing the nature of consequences;

The MCT is not widely accessible to the majority of citizens, particularly those outside Dar es Salaam and other larger cities;

Despite MCT's efforts to promote its various activities, including arbitration verdicts, there is a lack of convenient mechanisms through which citizens could discuss them and also channel their complaints about ethical violations;

The MCT relies heavily on donor funding for its activities such that its independence has been questioned by both the government and other institutions including some media as well as individuals.

Nevertheless, despite these shortcomings, the MCT has registered some positive results to its credit – as reflected throughout this study – which include the following:

- i. The arbitration process has become more dynamic and acceptable to both the government and the general public. This is evidenced by more complaints from government officials as well as from the public. This year alone, two former Prime Ministers, Frederick Sumaye and Edward Lowassa have filed their complaints with MCT. Another former cabinet minister, Muhammed Seif Khatib and a leading Tanzanian businessman, Ali Mfuruki, have also filed complaints with MCT;
- ii. The MCT has intensified research and publication to bridge the knowledge gap on issues of media practice, media accountability and self-regulation. Currently, the MCT publishes “State of the Media Report”, an annual publication on media environment; *Scribe* – a journal that publishes scholarly articles; *Media Watch & Barazani* – publications that cover media matters as well as reports; specialized manuals for training journalists on specific beats;
- iii. The MCT has recently introduced radio and television spots seeking to create public awareness of its mandate as well as to carry out advocacy messages on the need to enact Freedom of Information and Media Services Laws;
- iv. The MCT now issues a well known Excellency in Journalism Award (EJA) annually, recognizing outstanding performance of journalists which, according to MCT official, it has encouraged competition among journalists to excel in the profession;
- v. The MCT initially supported – and has continued to promote as well as support – the idea of having a viable Editors Forum which enables editors to meet on a regular basis to discuss ethical as well as other daunting challenges facing their profession. The Forum also provides leaders in both the government and the public sector to meet with editors to discuss how best they can work together while respecting and enhancing editorial freedom and independence;
- vi. The MCT started to conduct media monitoring of specific coverage on problematic or sensitive areas, including how the media generally covered issues of people with disability. According to the MCT official, after two years of monitoring media coverage of people with disability, MCT used the findings to advise media practitioners how to improve their coverage. The official says the coverage of people with disability in Tanzania has improved by

95%, prompting a shift to monitoring of other aspects of media coverage.

From these findings, it follows that there would be recommendations on how to strengthen MCT in order to make self-regulation work more effectively. Below are some key recommendations which are born out of research findings:

- i. Enhance support of the MCT by key stakeholders – media owners, editors, journalists and the public;
- ii. Enhance sustainability capacity of the MCT so that it does not have to depend on donors forever;
- iii. Enhance the capacity of the MCT for proactive monitoring and publication of leading defaulters of ethics;
- iv. Enhance the MCT's public education about good journalism and how citizens can demand media accountability; Initiate public or citizens' awareness on how they can demand accountable journalism;
- v. The MCT should initiate and help establish newsroom accountability systems and regular in-house training;
- vi. Strengthen other journalism associations such as Editors Forum, trade unions, Media Institute of Southern Africa (MISA), Tanzanian Association of Media Women (TAMWA), etc.
- vii. Establish a separate Media for Democracy institution to be charged with: media monitoring, media research, in-service training, developing training material, publishing reviews of media performance, carrying out public surveys of media use and citizens' views about media performance, engage the public in demanding media accountability, work closely with the MCT, media houses, civil society and establish mutual relations with government as well as international partners committed to promoting media freedom and accountability;
- viii. Establish true public service media which should be independent from government or other forces with interests to pursue through media. The advantages of such media would be as follows: Firstly, a true public service media would be expected to serve the public and national interests effectively,

efficiently, more professionally and reliably. Secondly, a quality public service media would be well funded to extend its reach to all areas in the country so as to serve all citizens without excuses of costs. Thirdly, such a professional media would serve as a model for other private and commercial media to gauge themselves in terms of professionalism and its focus on information and programming that put public interest first.

I would argue that in a transformative form of democracy the government could – together with parliament, civil society, other citizens’ associations, media industry, professional associations, and other relevant bodies – find a consensus on values and modalities that could enhance the capacity of an independent self-regulatory body to address the pitfalls of neoliberal media (Christians, 2004; Fourie, 2008). While liberal thinking has a tendency to frown at the mention of government in regulating media, under the circumstances of transformative democracy, made evident in this dissertation, such an option is to a large extent inevitable. Nordenstreng (2000, p. 177) for example (also concurring with Hamelink, 1999) rightly argues that laws, markets and media self-regulation tend to coexist and that even self-regulation itself is always accompanied by some degree of legal regulation “not to censor but to guarantee that minimum standards of democratic order and human rights are respected”. Italy and Denmark are examples in Europe where self-regulation of media has been strengthened by statutory force (Rioba, 2012). Nonetheless, I would also argue that any government initiative to institute legal regulation of media must be based on consensus obtained through closer consultations with all key stakeholders as was the case in Tanzania’s process to formulate new information and broadcasting policy from 2001 to 2003.

Such initiatives have to go hand in hand with the establishment of public service media that would provide a benchmark for good journalism while at the same time playing the role of watchdog; unifying and mobilizing citizens; providing a forum for diverse groups to air views; promoting national culture and values as well as setting the agenda for defending and promoting societal interests at all times.

References

- Amani, H. K., Wangwe, S. M., Rweyemamu, D., Aiko, R. & Wanga, G. (2006). Understanding economic and political reforms in Tanzania”. In J.Mensah (Ed.), *Understanding economic reforms in*

- Africa: A tale of seven nations* (pp. 205-233). London: Palgrave Macmillan.
- Ansah, P. (1991). Blueprint for freedom. *Index on Censorship*, 20, 9, 3-8.
- Baker, J. (2001). Is no policy a policy goal?" In K. Tomaselli & H. Dunn (Eds). *Media, democracy and renewal in Southern Africa* (pp. 13-24). Colorado Springs: International Academic Publishers.
- Baregu, M. (2000). Tanzania's hesitant and disjointed constitutional reform process. Paper presented at a Conference on Constitution-Making Process in Southern Africa, July 26-28, 2000 in Dar es Salaam, Tanzania.
- Berger, G. (2002). Theorizing media–democracy relationship in Southern Africa". *The International Communication Gazette*, 64, 1, 21-45.
- Berger, G. (2007). *Media legislation in Africa: A comparative legal survey*. Grahamstown: UNESCO.
- Bertrand, C. (2002). The role and responsibility of the media in a democracy. Paper presented at the UN Africa Symposium on the Human Development Report 2002 in Dar es Salaam, Tanzania.
- Blake, C. (1997). Democratisation: The dominant imperative for national communication policies in Africa in the 21st century. *Gazette – The International Communication Gazette*, 59, 4-5, 253-269.
- Bourgault, L. M. (1995). *Mass media in Sub-Saharan Africa*. Bloomington & Indianapolis: Indiana University Press.
- Bussiek, H. (2008). *Self-regulation of the media in the SADC region: Experiences with media councils in southern Africa*. Windhoek: Friedrich Ebert Stiftung.
- Chomsky, N. and Herman, E.(1994). *Manufacturing consent*. London: Vintage.
- Christians, C. G. (2004). Ubuntu and communitarianism in media ethics. *Ecquid Novi: African Journalism Studies* 25, 2, 235-256.
- Christians, C.G., Glasser, T., McQuail, D., Nordenstreng, K. & White, R. (2009). *Normative theories of the media: Journalism in democratic societies*. Urbana and Chicago: University of Illinois Press.
- Curran, J. (2002). *Media and power*. London, New York: Routledge.
- Da Silva, M. & Paulino, F. (2007). Media accountability systems. *Brazilian Journalism Research*, 3, 1, 138-153.
- Dahlgren, P. (2009). *Media and political engagement: Citizens, communication and democracy*. Cambridge: Cambridge University Press.

- Dennis, E. (1995). Internal examination: Self regulation and the American media. *Cardozo Arts & Entertainment*, 13, 697-704.
- Eribo, F. & Jong-Ebort, W. (1997). *Press freedom and communication in Africa*. Trenton, NJ/Asmara: Africa World Press.
- Fourie, P. (2008). Moral philosophy as the foundation of normative media theory: Questioning African ubuntuism as a framework." In Ward S.J.A. & Wasserman H. (Eds), *Media ethics beyond borders: A global perspective* (pp. 74-89). Johannesburg, SA: Heinemann.
- Gadzekpo, A. (2010). When the watchman slips: Media accountability and democratic reforms in Ghana". *Critical Perspectives No. 22*. Accra: Ghana Center for Democratic Development, 2-23.
- Gans, H.J.(1979). *Deciding what's news: A study of CBS evening news, NBC nightly news, Newsweek and Time*. New York: Pantheon Books.
- Gurevitch, M. & Blumler, J. (1995). *The crisis of public communication*. London: Routledge.
- Hyden, G. & Leslie, M. (2002). Communication and democratization in Africa. In G. Hyden, M.Leslie, & F.Ogundimu (Eds.) *Media and democracy in Africa* (pp.1-28). Uppsala: Nordiska Afrikainstitutet.
- Hynes, J. (2001) *Democracy in the developing world: Africa, Asia and Latin America*. Cambridge: Polity.
- Joseph, R. (1997). Democratization in Africa after 1989: Comparative and theoretical perspectives". *Comparative Politics, Transition to Democracy*. Special Issue in memory of Dankwart A. Rustow 29, 3, 363-382.
- Kasoma, F. (2000). *Media and multiparty politics in Africa*. Tampere: University of Tampere.
- Kilimwiko, L. (2009). *Media, power and politics in Tanzania: Critical analysis of media trends and practice*. Dar es Salaam: FES.
- Killian, B. (2010). The role of the West in establishing democracy in East Africa". *Utafiti – Journal of the College of Arts and Social Sciences, University of Dar es Salaam*, 8, 41-55.
- Killian, B. (2011). Democratic governance, media and development. Paper presented at a Conference on Health and Communication Development in Nairobi, Kenya (June 28).
- Konde, H. (1984). *Press Freedom in Tanzania*. Arusha: EA Publishing Bureau.

- Mafeje, A. (2002). Democratic governance and new democracy in Africa: Agenda for the future. Presentation at the African Forum for Envisioning Africa, held in Nairobi, Kenya (April 26-29).
- Maliyamkono, T. & Mason, H. (2006). *The promise*. Dar es Salaam: Tema Publishers Co. Ltd.
- Mason, A. (2001). The role of civil society in the development of democratic media in Southern Africa: The Namibian example. In Tomaselli, K. & Dunn, H. (Eds.), *Media, democracy and renewal in Southern Africa* (pp. 83-98). Colorado Springs: International Academic Publishers, 83-98.
- Matumaini, J. (2011). What is the state of media freedom in Tanzania? *African Communication Research*, 4, 225-246.
- McChesney, R. (1999). *Rich media, poor democracy: Communication politics in dubious times*. Urbana-Chicago: University of Illinois Press.
- McQuail, D. (2003). *Media accountability and freedom of publication*. New York: Oxford University Press.
- Mfumbusa, B. (2003). *The development of a responsible press in Tanzania*. Dissertation for a Licentiate in Social Sciences with Specialisation in Social Communication. Rome: Gregorian University.
- Mfumbusa, B (2006). Media accountability challengers in Sub-Saharan Africa newsrooms. In Srampical, J. & al., (Eds). *Cross connections: Interdisciplinary communication studies at the Gregorian University*. Rome : Gregorian University.
- Mwangi, C. (2010). A search for an appropriate communication model for media in new democracies in Africa". *International Journal of Communication*, 4, 4-16.
- Nordenstreng, K. (2000). The structural context of media ethics: How media are regulated in democratic society". In Pattyn, B. (Ed.), *Media ethics: Opening social dialogue* (pp. 69-86) Leuven: Peeters.
- Nordenstreng, K. (2006). Media and society: In search of models. In Y. Zassoursky and Zdravomyslova (Eds.), *Glassnost and journalism, 1985-2005* (pp 168-177). Gorbachyev Foundation and the Faculty of Journalism, Mosow State University.
- Nordenstreng, K. (2010). Self-regulation: A contradiction in terms? Discussing Constituents of Journalistic Responsibility". In Pöttker, H & Schwarzenegger, C. (Eds.) *Journalismus International*.
- Nyamnjoh, F. (2005). *Africa's media: Democracy and the politics of Belonging*. London: Zed Books.
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- Rioba, A. (2009). Media in Tanzania's transition to multiparty democracy: An assessment of policy and ethical issues. Licentiate thesis. Tampere: University of Tampere.
- Rioba, A. (2012). Media accountability in Tanzania's multiparty democracy: Does self-regulation work? PhD dissertation. Tampere: University of Tampere. *Europäische Öffentlichkeit und Journalistische Verantwortung*. Köln: Herbert von Halem Verlag, 417-438.
- Nyalali Commission Report (1991). Dar es Salaam.
- Rønning, H. (1994). *Media and democracy: Theories and principles with reference to the African context*. Harare: Sapes Books.
- Shivji, I. (1994). Electoral politics, liberalization and democracy". In Mukandala, R. & Othman, H. (Eds.), *Liberalization and politics: The 1990 elections in Tanzania*. Dar es Salaam: Dar es Salaam University Press.
- Sturmer, M & Rioba, A. (2000). Watchdog in chains: Media regulations in Tanzania from their colonial beginnings to the era of democratization. In S. Brune (Ed.). *Neue medien und öffentlichkeitenpolitik und tele-Kommunikation in Africa, Asien und Lateinamerika*. Band 1 *Öffentlichkeiten. Politik Und Tele-Kommunikation in Afrika, Asien Und Lateinamerika*. Band 1, Hamburg, 241-279.
- White, R. (2008). The role of media in democratic governance. *African Communication Research*, 1, 269-328.



A long wave of novelty: The tension, social and legal tests in the delivery of a National Media Commission in Ghana

By Osei Kwadwo Adow

Abstract

The expectation that the formulation of the National Media Commission (NMC) in the 1992 Constitution of Ghana would provide the mechanisms for the protection of both the freedom of the media and the regulation of the media as well as protection of the rights and freedoms of individuals has not been realized. The NMC has not been able to control increasing abuses of journalistic and editorial responsibility. This article holds that part of the problem is the faulty legal basis in Article 173 of the Constitution and the lack of regulatory powers of the NMC compared to the Parliament, Ministry of Information and the National Communication Authority. A deeper cause of the problem appears to be the lack of a tradition of civility in the public discourse of Ghana, especially in the political sphere, that the NMC can appeal to.

Key words: Ghanaian Constitution, media regulation, National Media

Introduction:

The adoption of the 1992 constitution of the Republic of Ghana marked the first time in the history of mass communication in Ghana that entry barriers were lowered or virtually removed, and the days when the state controlled a large measure of communication resources in the country no longer existed. With this, it was hoped that the constitution would provide protection for the media and also protect individual rights and freedoms within the context of democracy. The same constitution provided for a National Media Commission as a

Author biographical note

Osei Kwadwo Adow (stemson@yahoo.com), a solicitor and barrister of the Supreme Court of Ghana, is Senior Lecturer in political science and Head of the Social Science Department at the Ghana Institute of Journalism. He is co-author with D.K. Twerefou and Ebo Turkson of *Labor Market Flexibility: Employment and Income Flexibility in Ghana* (Geneva: ILO) and "The Politics of Communication Policy Making in Ghana", *African Communication Research*, 3 ,

control mechanism to ensure high standards and also check media excesses. However, there is increasing evidence that the new media freedom is being exercised in a very muddled way as increased participation has decreased professionalism and exacerbated political and social polarization.

A keen observer of the media in Africa observed that beyond the seemingly perfect Ghanaian posturing lies a “messy” “imperfect” world of editorial “sins” (White, 2012, p. 28). Indeed the return of freedom to Ghanaian journalists did not come without public criticism of professional performance. While some journalists came under severe public and official criticism, others found themselves dragged to court to face legal suits, and the lucky few walked away from the corridors of the National Media Commission (NMC) with a mere reprimand (Bonnah, 1996). Ansah (1996) also had this to say ‘...it looked as if the editors had declared war on journalistic ethics or decorum. There are some of them which are so abusive that they appear to be fit for gutters in a jungle’. And the NMC was tolerating this.

On the issue of professional ethics Bimpong-Buta (2007, p. 461), in his book, *The role of the supreme court in the development of constitutional law in Ghana*, quoted a commentator as follows “There are several misfit journalists in the country whose actions must be severely brought under control...some sadly call it freedom of expression, but many of the so-called journalists would not survive a day in a more civilized and democratic country where freedom of speech is well defined and practiced”. These observers seem to be asking whether the media freedom is a blessing or a bane and, if a bane, why is it such a difficult institution to tame. It is also observed that besides the lack of professional training the media’s emergence from decades of state monopoly and authoritarian control encouraged particularly the privately owned press to challenge issues and to test out the laws and their rights under the constitution (Karikari and Kumado, 2000).

This paper will argue that much of the editorial liability has a legal basis. Article 173 of the 1992 Constitution holds that subject to *Article 167 of the constitution (which spells out the functions of the National Media Commission)*, *the National Media Commission shall not exercise any control or direction over the professional functions of a person engaged in the production of newspapers or other means of communication (emphasis mine)*. The question is whether the National Media Commission (NMC) can control the quality of media as a single unit within its constitutional functions without government intervention? Indeed,

there is need to interrogate article 173 within the discourse that the general communication environment in Ghana within which the NMC is embedded is characterized by a civilizing process that is struggling to build up a sufficient stock of social capital.

Bringing in social capital and the civilizing process

To understand better why the National Media Commission finds it so difficult to sustain the quality of professional media performance it may be helpful to examine the weakness of the underlying social capital and what Elias calls the “civilizing process” in Ghanaian society.

When Putman (1993a and 1993b) launched social capital as a popular focus for research and policy discussion, the World Bank found it a useful organizing idea to appreciate development in various societies particularly in developing societies (Smith, 2000-2009). Fukuyama (1999, p. 1) defined social capital as “an instantiated informal norm that promotes cooperation between two or more individuals”. He extended this definition to connote a private good that is nonetheless pervaded by externalities both positive and negative. In this sense, positive externalities is the potential cooperation that remains within the group or individual and the negative externalities is when groups and individuals treat outsiders with suspicion, hostility, or outright hatred and examples are the Ku Klux Klan and the Mafia as having social capital but also produce abundant negative externalities for the larger society in which they are embedded (Partha Dasgupta in Fukuyama, 1999, p. 2).

Accordingly, Fukuyama sees social capital as related to traditional values like honesty, the keeping of commitments, reliable performance of duties, reciprocity and the like. Fukuyama holds further that, another way to look at the concept is through the “radius of trust”. He explains that all groups embodying social capital have a certain radius of trust, that is, the circle of people among whom cooperative norms are operative. If a group’s social capital produces positive externalities, the radius of trust can be larger than the group itself. And it is also possible for the radius of trust to be smaller than the membership of the group which in modern society may be thought of as a series of concentric and overlapping radii of trust. To (Fukuyama, p. 4) social capital functions to reduce transaction costs associated with formal *coordination mechanisms like contracts, bureaucratic rules, provisions in a constitution and the like* (emphasis mine). He holds further that many

complex services are very costly to monitor and are better controlled through internalized professional standards than through formal monitoring mechanisms (p. 4). Borrowing from Alexis de Tocqueville in *Democracy in America*, Fukuyama sees the political function of social capital as the “art of association”, and concludes that an abundant stock of social capital is presumably what produces a dense civil society which in turn has been almost universally seen as a necessary condition for modern liberal democracy (p. 5).

In sum, social capital reflects the prevalence of overwhelming trust for the institutional and regulatory climate of society (Coleman, 1988; Amponsah, 2006, p.52) With civil society, preference will be for a working definition within the context of Shils (1991) and what Elias (1939/2000, pp. 449-483) calls the civilizing process. This is because of the attempt to move away from the use of civil society as being in relation to the state but to use it as one of the fall outs from societies in transition in Africa. This is meant to be used to question the practice of journalism in the so-called emerging democracies such as Ghana. According to Shils, for civil society to exist, the conduct of members of society towards each other must be characterized by civility which translates into polished and refined manners as expressions of respect for other members of society. It is a precondition for democratic practice as citizenship cannot be effective if the rights and the dignity of the person are not respected (Ibrahim, p. 138).

In Elias’ view, the process of civilization involved a progressively stricter control of emotions and habits of restraint which lead to socially institutionalized frontiers of shame and emotional standards. In a sense this means the control of impulse, drives, and emotions regarding our animal nature and putting such activities behind us. When this change occurred it became manifest first in public and in private as well (Elias, 1939/2000, pp. 449-483). It is the contention of this paper that although civil society elements are present in Ghana and taking in some ways a dense form, the civilizing process is rather slow in growth. It is this paper’s further contention that it is not the presence of civil society elements alone or the civilizing process alone that stand to promote democracy but it is the presence of the two that constitute the necessary conditions for the development of democracy in Africa and Ghana in particular.

The choice of the concept of civilizing process and particularly social capital as devices for evaluating the NMC in Ghana are for three reasons: firstly, social capital is important to the effective functioning of

modern societies, and also the *sine qua non* of a stable liberal democracy. This reasoning is based on the assumption that every factor is interacting with and influencing every other factor, and a high rating in press freedom is considered an “effect” of free elections as well as a “cause” of free regime transfer, and a relatively high degree of Editorial Freedom and Responsibility (EFAR) is considered a “cause” of good governance (White, 2012, p. 29), a postulate Mafeje (1995, p. 5) will describe as determinate conditions. Adopting Mafeje is to seal White and Smith (*supra*) into the discourse as practical questions. This has been rightly observed by (Joseph 2008, p. 285) as “...although journalism practice continues to be a challenge to political accountability in various socio-cultural contexts the journalism-democracy paradigm that has developed in the West during the 20th Century may not be the best model for a the normative theory and journalism research in new globalizing political realities...”.

In addition, a chief proponent of social capital considers it as constituting the cultural component of modern societies and as the basis of formal institutions, the rule of law, and rationality (Fukuyama 1999, p. 1). Secondly the notion of social capital and the civilizing process will be a useful way of entering into debates about civil society and central to research, and recently, including the International Monetary Fund (IMF) that wants to “reclaim public life” (Smith 2002-2009, p. 1) What has also been seeded is the awareness of the possibilities of journalism being a part of civic culture (Joseph, 2008, p. 394). And, thirdly, the devices stand as useful and heuristic for looking at the constitutionally entrenched media in African types of democracy in general and Ghana in particular. Indeed, this study is concerned about the absence of long standing traditions of civic engagement that have significantly affected the level of performance and effectiveness of constitutional institutions including Ghana’s National Media Commission.

The first part of this paper provides the map for looking at the media and democratic environment in Ghana, and it involves bringing together social capital and the civilizing process. Second it will provide a historical background of the media that will generate the rationale for the setting up of the National Media Commission as an innovation. Third the paper will critique the 1992 constitution of Ghana with respect to communication and the prevailing control mechanisms. The fourth part will lay out the structure of the NMC and the remaining parts will involve the discussions and testing the innovation. In terms

of methodology, the paper takes a historico-socio-legal approach which is emphasized by Josephi (2008, p. 387). This approach holds that it is only by appreciating the historical, social and political circumstances that the current state of the media can be understood.

The media of mass communication will be seen as groups, each on its own producing public goods that have both positive and negative externalities. The NMC will remain a constitutional construct for the regulation of the media.

It is the argument here that with the absence of a civilizing capacity, the National Media Commission will fail to institutionalize strict control of emotions and professional habits into high media standards sufficient to support the task of building a democratic society. In the case of Ghana, the diminution of social capital within the communication sector can be said to have begun as far back as the period of colonial administration. Perhaps Ansah (1994, pp.16-17; Adow, 2012) and other analysts provide the *raison d'être* for the absence of social capital in Ghanaian communication life. They hold that the immediate post colonial single party states experiment whittled all individual freedoms and fundamental human rights, and when official opposition was outlawed, it only escaped underground thus sowing the seeds of instability, and a spate of military coups as the only method through which an obscene, obscure and opaque despotism could be eliminated, and this has afflicted the country till today.

Historical Background:

Opening the Aperture of the Media -Civil Space: The Agency of Lawyers

The character of colonial administration in the Gold Coast signified the beginnings of the legal basis for the administration of the colony with profound social, economic and political implications. In the course of carrying out the new mode of governance, colonial rule departed from traditional governance and left the local people with no processes in terms of what they would legitimately look up to as the right and proper way to administer the colony. The material conditions of political, economic and social life also created a good deal of tension between the colonial administration and the local people and also began the new social forces in Ghanaian society that would forge new forms of space to confront the alien administration and to protect the social interest. The laws (Ordinances) and their technical interpretation

called in local experts, and naturally lawyers felt the deep urge to take up the challenge.

According to Jones-Quartey (1974, pp. 1-6) one Mr. Niblett an English lawyer realized that there had been a considerable amount of legal and judicial innovation in the country in the form of ordinances passed in 1853, 1876, 1879, and 1883 which provided him a large material for publication (Jones-Quartey, p. 9). Niblett collected and analyzed these legal documents but as to which constituency his allegiance lay, does not come out clearly in the accounts, though some accounts hold that Niblett intended to publish outside the Gold Coast with British society as his readership. From the accounts Niblett's publications did not attract any form of control from the colonial authorities.

By the 1920s, indigenous lawyers had began carving out and endeavoring to consolidate their position in society and to serve as a voice for the colonized. One of the aims of these lawyers was to explain the harsh colonial laws to the people and also begin the crusade for political change in favor of the local people. They employed the newspapers as the medium to battle for both civil and political spaces and to liberate the associated communication space. The advantage they had over the other fragments of society was that by being lawyers they readily understood the colonial policies and could react to them immediately. And as often happens in developed jurisdictions they constituted a group in itself and knew what they wanted and how to find it. The Gold Coast Bar Association constituted the avenue where matters concerning the legal profession and matters of national interest were discussed.

According to Jones-Quartey (1974, p.6) and Ala Adjetey (1996, p.62), the Bannerman brothers established the *Accra Herald* and later changed its name to the *African Herald*. This newspaper began to open up the regular civil space as it was entirely hand written and circulated within limited circles. Later on, J.E. Casely Hayford, Hutton Mills, J.B. Danquah and other lawyers entered into journalism, some of them establishing their own newspapers and others working on newspapers established by other persons. To these lawyers the media became the vehicle within which to discuss the new type of governance and its related political system.

During this period, the colonial administration did not see the need to establish an independent commission to regulate the media but rather defined the excesses of the media within criminal law (Criminal

Code, 1892 (No.12)) and passed libel laws to control the media. The manner, in which the libel laws were employed, undermined the development of any social capital that would contain home grown features of respect and trust within the groups forming the media and the state. Processes that would promote and facilitate coordination and cooperation for mutual benefit did not exist. This seed sown by the colonial administration marked instead the introduction of tension and fear within society. The 1957 constitution however began to open the tightly controlled communication space by providing for freedom of conscience subject to the common law position that under the general civil and criminal laws, particularly those relating to defamation, sedition, obscenity and privacy, the media were free to publish anything (Ashie Kotey, 2000). During this period, the undifferentiated social force that initially confronted the colonial administration had segregated into new social and political groupings to contest for political power. The 1960 constitution was tailored to fit the first African leader Nkrumah, as a particular political party and a social force. Under this constitution, freedom of expression found in article 13 was placed under the president's discretion which required that newspapers had to obtain a license as a condition for publication.

Ansah, in a later writing, explained that the centralized control of the press happened to be an ideological position taken by most African leaders while at the same time most African countries adopted a socialist ideology and patterned their practices and structures along the lines of their ideological mentors and role models in Eastern Europe and China (Ansah, 1994, p. 16). Writing much earlier Ansah had stated that immediately after independence the noticeable feature of the press was the demise or emasculation of privately owned newspapers through political strangulation and the rapid growth in the number of government owned or controlled press (Ansah, 1977, p. 26). He elucidated that the general reasoning for the control of radio was that it had to be monopolized by government for the purposes of protecting the national interest, building the nation and creating a sense of national unity. And this is because any form of decentralized control could provoke divisiveness, parochialism, disintegration and ethnic particularization.

According to him the reason for this state of affairs was that most leaders in the developing countries and Ghana genuinely felt that they needed newspapers and other information media to put across to the people their programs, priorities and achievements and this function

had better been served by their own organs of communication (Ansah, 1977, p. 30). In the process, the private media, which belonged to another set of social forces, wilted (Ansah, 1977, p. 33), and in terms of ownership, control and structure a unique centralized system appeared appropriate in the immediate post colonial period. Post colonial Ghana had to live with the tension and absence of a mediating institution in the form of a constitutional body (a media council) with legal functions enforceable either by ethical and moral considerations or in the courts of law (Ansah, 1994, p. 15).

After the overthrow of Nkrumah in 1966, it was proposed that, as a way out of this situation of no guidance for the media, the shares of the government-owned newspapers be sold to the public for individual citizens to become real owners of the press. However, it was also observed that a few could monopolize the shareholding arrangement so the Press Trust idea was mooted during the era of the Second Republic (Ansah, 1977, p. 33).

Given the past political problems, it was proposed that the media governance structure such as a Press Trust must have a membership from clearly identified national institutions and associations including the bench, the Bar Association, the Journalists Association, the Civil Servants Association, the Chamber of Commerce, the National Council for Women and Development, etc. The reasoning was that these public bodies are reasonably independent of the government and can freely choose representatives who are sufficiently concerned about freedom of speech. To make the Trust independent from politics it was further proposed that a funding arrangement be set up similar to that of the universities which take an annual grant from the budget and the disbursement is left to the universities. An alternative funding arrangement suggested was that the government grant the Trust a working capital (Ansah, 1977, p. 33). When Ansah suggested the idea of a Trust he was mindful of the traditions of intolerance and the ruthlessness established in several parts of independent Africa. He was also mindful of the need to promote human rights and good governance, as well as the need to embark on the project of media pluralism as a bulwark for the promotion of democracy.

The 1979 Constitution of the Second Republic of Ghana subsequently made elaborate provisions for general freedoms and that of the media and thus provided for the establishment of a Press Commission. Unfortunately that Republic and its Constitution did not survive a military coup and the new idea was jettisoned. In July of

1980 and under the Third Republic the president inaugurated a 12-member Press Commission entirely made up of party faithfuls. It was set up to insulate the press from direct political interference so that journalists in the public sector would discharge their duty objectively without the fear of reprisals from the government. In 1981 the Press Freedom Complaints Committee also made up of party faithful was inaugurated to investigate any acts likely to interfere with the freedom of the media to perform their professional duties. It was also to advise the Press Commission on any enactments in existence or contemplated which, in its opinion, impinged upon the freedom of the press in Ghana. The Commission and the Complaints Committee singled out the *Daily Graphic*, a widely circulated newspaper which was state owned and state guided in almost every aspect of the production including the editorial. In August of 1980 the Commission dissolved the boards and directors of all the state-owned media institutions and no reasons were given (Asante, 1996, pp. 81-84).

The Legal Framework for the National Media Commission

The guidelines for the conceptualization of both policy and the law to govern the media commission are based on the national experience since colonial rule. The general legal slogan is that any law that is not inconsistent with the 1992 constitution forms part of the laws of the country. Chapter five of the constitution lays down the general legal framework for freedom of speech. It states by article 21(1) (a) that: “all persons shall have the right to (a) freedom of speech and expression, which shall include freedom of the press and other media”. This provision is protected in Article 12(1) as part of the fundamental human rights and freedoms enshrined in chapter 12 to be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana and shall be enforceable by the Courts as provided for in this constitution.

To entrench this position as fundamental, Article 290 holds that the provisions on the fundamental human rights and freedoms can only be amended after the amending bill has been submitted to a referendum held through out the country and at least 40% of the persons entitled to vote, voted at the referendum and at least 75% of the persons who voted cast their votes in favor of the passing of the bill.

This is a legal construct to forestall any executive encroachments on the grounds of historical antecedent that under the 1960 constitution

the executive had some political control over the legislature while it also had discretion on how to enforce human rights provisions therein. Nkrumah exercised this discretion arbitrarily by putting in jail any person who exercised his inalienable right to free speech. The primary objective of the provisions on the media was also to make information readily available to allow for valued judgments from all citizens (Bimpong Buta, 2007, p. 429). Chapter 12 of the constitution further promoted, protected and guaranteed the freedom and independence of the media. This is explained by the constitution itself in article 162 to mean the following: "there shall be no censorship in Ghana; there shall be no impediments to the establishment of private press or media; and in particular; there shall be no law requiring any person to obtain a license as a prerequisite to the establishment or operation of a newspaper, journal or other media for mass communication or information; editors and publishers of newspapers and other institutions of the mass media shall not be subject to control or interference by government, nor shall they be penalized or harassed for their editorial opinion and view, or the content of their publications. In Article 165 the constitution makes clear its conceptual basis on the media. It holds that for the avoidance of doubt the provisions of chapter 12 shall not be taken to limit the enjoyment of any of the fundamental human rights and freedoms guaranteed under chapter 5 of the constitution.

As a mediating and controlling mechanism the constitution provided for the National Media Commission with functions in article 167 discussed below. To make the Commission independent, the Constitution provided in Article 172 that subject to the constitution and any law not inconsistent with it, the Commission shall not be directed or controlled by any person or authority in the performance of its functions. This is further buttressed in Article 171 by financial independence to the extent that all its administrative expenses including salaries, allowances and pensions payable or in respect of persons serving with the Commission shall be charged on the consolidated Fund. It is within this legal framework that National Media Commission would guide and ensure high standards of professionalism.

However, Article 173 of the 1992 Constitution holds that subject to Article 167 of the constitution (which spells out the functions of the National Media Commission), the National Media Commission shall *not exercise any control or direction over the professional functions of a*

person engaged in the production of newspapers or other means of communication (emphasis mine). This is the contradiction that will dog the National Media Commission in its attempt to fulfill its mandate.

A close look at the constitution reveals that it is a fusion of the British and American models of governance, and this has exposed it to a variety of interpretations regarding state interference and the freedom to operate the media. Indeed there is some uncertainty with regard to which of the two systems Ghana's constitution is modeled after. At one point it is not clear whether Ghana is running the British example of the Independent Broadcasting Authority (IBA) and British Broadcasting Corporation which has direct jurisdictional powers to decide over programming and with a duty to ensure that programs maintain a high general standard and also ensure that nothing is included in programs which offend against good taste or decency or is likely to incite disorder or to be offensive to public feelings (Afreh, 1994, pp. 31-34). Again while the British government has broadcasting traditions, conventions, and shared common cultural and social values that dictate that the powers are used to the minimum, Ghana has no such traditions, conventions, and shared common cultural and social values.

At another point it is not certain whether Ghana has an eye on the American example where with the Communications Act, Congress has delegated supervisory responsibility to the Federal Communications Commission (FCC) while using the broad guidelines of 'the public interest' convenience or necessity to define the FCC's discretionary powers (Afreh, 1994, p.33). Albeit, some similarity is found with the United States example where the FCC's rules are done through formally adopted rules, processing standards, guidelines and adjudicatory decisions. The difference however is that, while under the Act only United States citizens, who qualify as to character, financial resources and technical ability can receive licenses and which can be granted for a limited term, can be renewed, can be sold and can also be revoked or suspended.

The case of Ghana is not exactly as conclusive as that of the United States. The position of the 1992 constitution is that "there shall be no impediments to the establishment of private press or media and in particular, there shall be no laws requiring any person to obtain a license as a prerequisite to the establishment or operation of a newspaper, journal or other media for mass communication or information".

Legal luminaries have observed, however, that going without a license is dangerous and (Afreh, 1994, p. 33) cites article 164 to buttress this point. The article provides that "the provisions of Articles 162 and 163 of this constitution are subject to laws that are reasonably required in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of other persons".

Though a license is not needed to establish a broadcast station in Ghana, by the Telecommunication (Frequency Registration and Control) Decree 1997 (SMCD.71) which is still on the statute books, there is the need to obtain a license. There is as well as the Television Licensing Decree of 1966 (NLCD89), the Television Licensing (Amendment) Regulations of 1991 (L.I. 1520) and above all the National Communications Authority Act, 1996 (Act 524) (NCA), and all these laws must be brought in sync with the 1992 constitution. L.I. 1121 makes detailed provisions on licensing of telecommunication stations, installation or telecommunication apparatus, registration of manufacturers of telecommunication apparatus etc.

Under L.I.1121 a broadcasting organization must submit to International Telecommunication Union through the Ghana Frequency Registration and Control Board seasonal schedules of its broadcasting service. But while by the dictates of the constitution registration has been abolished, Ghana as a member of the International Telecommunications Union does not have a free hand in the allocation and utilization of frequencies, and moreover state security cannot be guaranteed if any person can establish radio and broadcasting services and transmit whatever he or she wants. Notwithstanding No 162 (3) of the constitution, it is still necessary to register and control frequencies used by broadcasting and other telecommunication services.

Afreh suggested that in order to avoid that an executive might pose a danger by using its power to register and control frequencies as a lever to interfere with the establishment and operation of broadcasting stations, it will be necessary that the Media Commission makes regulations for the registration and licensing of other media for mass communication (Afreh, 1994, pp. 35-40). Since Afreh was a judge of the supreme court of Ghana, his opinion that registration and licensing are important shows that the courts will not countenance an unfettered media of mass communication.

Vision and Policy of the National Media Commission:

With the assistance of the Friedrich Ebert foundation the Commission set out its own national policy vision and mission statement. In spelling out the details of the national media policy the members of the commission were guided by national and global developments which called for pluralism and universal access, cultural impoverishment, non marginalization of local language, education and development, technological competence, human resources, institutional capacity and public accountability. The vision of the policy was to include large segments of the population in the communication processes and to foster their participation in decision-making as producers and consumers. The rationale for these principles was to make the public interest paramount and to deregulate the broadcast media which used to be state-controlled by promoting private investment in the sector. Out of this, three working categories were created: public media, commercial media and community media. For print, the overall position of the national media policy was the removal of governmental control over the state-owned or public newspapers, allowing for the proliferation of commercial newspapers and providing the opportunities for non-profit-making, non-sectarian and non-partisan community newspapers in the district assemblies and in every school.

For broadcast, the policy stated that airwaves being a public resource, belong to the people of Ghana and the broadcast media are challenged to hold it in trust and utilize it in a way beneficial to the Ghanaian economy and society as a whole. For film, the policy envisaged a National Film Board to oversee the implementation of the various policy proposals on the development of film in Ghana and in the areas of commercial and community film production. The same goes for the wire services, advertising and public relations.

Establishment of the Commission

Pursuant to Article 166 of the Constitution, the National Media Commission Act, 1993 (Act 449) was passed. The Functions of the Commission are as follows (a) to promote and ensure the freedom and independence of the media for mass communication or information, (b) to take appropriate steps to ensure the establishment and maintenance of the highest journalistic standards in the mass media, including the investigation, mediation and settlement of complaints made against or by the press or other mass media, (c) to insulate the

state-owned media from governmental control, (d) to take measures to ensure that persons responsible for state-owned media afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions, (e) to appoint in consultation with the President, the chairmen and other members of the governing bodies of public corporations managing the state-owned media, (f) to make regulations based on constitutional guarantees for the registration of newspapers and other publications, except that the regulations shall not provide for the exercise of any direction or control over the professional functions of a person engaged in the production of newspapers or other means of mass communication and (g) to perform such other functions as may be prescribed by law not inconsistent with the constitution. In an appendage, the Act provided that in carrying out its functions the commission shall not, by regulations or any other act, require any person to obtain or maintain a license as a condition for the establishment of a newspaper, journal or any other written publication. The allowances of the chairman and members of the commission are charged on the Consolidated Fund and in accordance with Article 71 of the constitution which directs emoluments to be paid to the President and other high public officers. And in accordance with section 23(1) and (2) of the National Media Commission Act 1993 (Act 449) the Chairman of the Commission is expected to submit to parliament an annual report of the commission together with an auditor's report.

Membership of the commission:

A constitutional amendment has changed the composition of its membership from fifteen to eighteen. These bodies as they stand now are: the Ghana Bar Association, the Publishers and Owners of the Private Press, The Ghana Association of Writers and the Ghana Library Association. It also includes the religious bodies i.e. Christian Group (made up of the National Catholic Secretariat, the Christian Council and the Pentecostal Council), and the Federation of Muslim Councils and Ahmadiyya Missions. The training institutions of journalists and communicators, The Ghana Advertisers Association and the Institute of Public Relations of Ghana were also added. The rest are a person from The Ghana National Association of Teachers, two representatives nominated by the Ghana Journalists Association, two persons appointed by the President, and three persons nominated by Parliament. The commission is made to elect one of its own members as chairman. It is significant that from the inception of the

Commission the position of chairman has been occupied by lawyers. The current Chairman however is a seasoned journalist and former ambassador. The executive secretary position has also been occupied mostly by seasoned journalists, some of them with legal background.

Committees of the Commission

The actual work of the Commission is done on the advice of five committees which are the Complaints and Settlement, Training and Relations, the Legal Committee, the Media Committee and the Finance and Administration Committee. What is of interest is that of all the committees the Complaints and Settlement committee is directed by the National Media Commission (Complaints Settlement Procedure) Regulations, 1994 (L.I. 1587). The commission is also charged to undertake the following activities: registration of newspapers, to constitute and reconstitute the state-owned media organizations and publications. Internationally, the Commission is represented on the World Association of Press Councils and it is a member of the African Communication Regulatory Authorities Network (NMC Report, 1999).

Finance and Administration

The Commission itself is serviced by a secretariat. At the head of the administration is an executive secretary who sees to the day to day administration of the Commission. He is assisted by such principal officers as two deputy executive secretaries, one for finance and administration and the other for operations. There are also places for a settlement officer, a legal officer, a research officer, a relations officer, administrative assistants and a principal accountant. The Commission draws its financial emoluments from the consolidated fund. This administrative organization guarantees that the control of the media is firmly placed outside the direct reach of government and made independent of the Commission.

Testing the innovation: Change of Commissioners

The NMC constitutes one of the sites of political exchange owing to the role of the media as one of the powerful resources in Ghanaian society. The constitution provides in article 166(1)(c) that the president must appoint two representatives onto the Commission and Parliament should also nominate three representatives. By law the party in government has four representatives while the opposition has only one

on the Commission. Politically, the majority and minority leaders of the two main political parties National Democratic Party and New Patriotic Party enjoyed automatic membership. This happened during the early months of the institution of the fourth republic when political trust among the major parties was low and there was the fear from opposition quarters that the government might manipulate the Commission. The idea that leading members of parliament – the majority and minority leaders appeared as members of the commission was thought to be a check on each other. With the possibility of a change of government at elections an automatic practice evolved when the term of the commissioners became due and there was a new party in government positions changed and the party out of government would retain only one seat on the Commission. Similarly membership of the boards of state-owned media houses also changed to reflect change in government.

Testing Article 173 of the Constitution

One important article of the constitution that research has hardly touched on is Article 173. The article holds that, “subject to Article 167 of the constitution (which provides for the functions of the National Media Commission,) the National Media Commission shall not exercise any control or direction over the professional functions of a person engaged in the production of newspapers or other means of communication”. Immediately after the promulgation of the 1992 constitution, there was a general and lay understanding of freedom and independence of the media as the media being above criticism (Bonnah Koomson, 1996). Political parties found the media to be the best medium for disseminating their ideas, and subsequently brought a large portion of the media under their control to be used as the route to get hold of political power. Unable to control their own members through print, the airwaves became the battlegrounds of the political parties.

The trial of the NMC then began with the Complaints and Settlement Committee becoming inundated with complaints, with many complaints protesting insults from politicians. The actions of the two major political parties for political power exposed the embryonic absence of social capital as necessary trust and respect for each other and the NMC as well as a regulatory body. The media reflect outright hostility and hatred towards political opponents. Print and radio carry defamatory words and statements such as “liar”, “irresponsible”, “it is

only a fool", "thief", etc, with some of them repeated several times on television as sound bites. Political emotions, impulsive slogans, and defamation campaigns are all channeled through the mass media of communications as the politicians have found out that the NMC has no control over the editorial directions of the media.

In the heat of the 2012 political campaign, a prominent politician who owned a radio and television station made serious genocidal statements against social sectors bordering on hate speech that caused fear and panic and caused concern for national security. Public discussions on the statements roundly condemned the statement and called for the strict control of emotions. The role played by the Commission in dousing the flames was minimal and ineffective. The Commission only struggled to be part of the solution with terse statements from the chairman and the executive secretary warning of the dangers of hate and genocidal speeches.

Already in 2009 a professor in communications and director of Media Foundation for West Africa, Professor Kwame Karikari, described this situation as dangerous where politicians constantly endeavored to own media houses and threw ethics and professionalism to the wind (*Daily Graphic*, April 22, 2009). Realizing that the media was going wild, he remarked that the media had fallen into the hands of unscrupulous politicians due to the alarming increase in the use of indecent language, false allegations, false alarms and blatant lies emerging in the media, especially radio and print media (*Daily Graphic*, 2011, p. 13). In 2011 he organized a forum to celebrate the 10th Anniversary of the repeal of the Criminal Libel Law with the theme "A decade of advocacy for press freedom and freedom of expression". At the forum, former president Agyekum Kuffour advised media organizations to institute measures that would promote self regulation to enhance ethical and professional standards (*Times*, 11 August, 2011).

Raymond Ablorh a student activist with hindsight on the Rwandan experience expressed concern that the National Media commission and the Ghana Journalists Association "ought to deem it expedient and highly imperative to check the media before they kill us all...it is no insult to call the NMC a toothless dog...and the GJA is also being more protective of the journalist with a solidarity hug paying less attention to ensuring that professional standards are upheld' (*Daily Graphic*: August 2, 2011, p.10). Following from these harrowing occurrences, civil society added its voice. The Institute of Economic Affairs (IEA), an NGO, also with the Rwandan experience in mind, organized a

roundtable discussion for political parties, newspaper, radio and television journalists and presenters, the clergy and academia to discuss the anarchy of insults within the society and the mass media. The media came under severe criticism as most of the speakers blamed journalists for disseminating information that had virtually polarized the country (*Daily Graphic*, 2010, 12).

The Apostolic Church of Ghana also condemned the rise of insults in the Ghanaian political environment saying it is important for politicians to tone down (*Times*, August 11, 2011). Arthur Kobina Kennedy, a politician summed it all up that the press has been pouring fuel on every little fire of insult that they find. Indeed, in many instances, the press has been willing to start cycles of insults by exaggerating critiques into insults (*The Chronicle*, August 2, 2011).

Complaints and Settlement committee:

It is within this committee that article 173 of the constitution and dangers of unbridled media freedom may be understood. The 1997/98 annual report of the Commission indicated settling 47 cases. In 1999 it received a total of 87 complaints out of which 38 were addressed to the Commission and 49 were rejoinders. In the year 2000 the commission received a total of 47 complaints with 46 being rejoinders. In 2001, it received 196 complaints with 98 being complaints and 98 rejoinders. In 2003, 47 complaints and 32 rejoinders were received. Eleven of the complaints were struck out because the complainants decided to withdraw the complaints during settlement and by the close of the year 14 complaints were outstanding. In 2004, a total of 48 complaints and rejoinders were received.

In 2005, 34 complaints were received and in 2006, a total of 36 complaints were also received. Significantly, most of these cases were political in nature and reflected the political struggle between the two main parties (the National Democratic Congress (NDC) and the New Patriotic Party (NPP)) *in the private press mainly*. It is inferred that this spate of complaints have resulted from Article 163 of the constitution which placed responsibilities on the state-owned media, but did not place any responsibilities on the private media. The question is; can the NMC breathe some trust and reciprocity into the private media climate infested by politicians? This is indeed a daunting task since the mandate of the NMC does not flow entirely into the programs and activities of the private media. However, it is clear that the Commission has some influential control over the state owned media

houses i.e. The Ghana Broadcasting Corporation, the Ghana News agency, the *Daily Graphic* and its group of newspapers, the Ghanaian Times and its group of newspapers, and can demand that they write and submit reports on their activities.

On the other hand as far as the private media is concerned the NMC is faced with high level of expense in handling complaints but with little power to improve low professional standards media as well as enforce its decisions. In the course of its work one of its past chairmen noted that the Commission could have performed better if it had the power of enforcement. He said further that compliance with its decisions is largely voluntary and dependent on the goodwill of parties. He gave instances where parties had openly stated that they would not appear before the Commission and would not comply with the decision of the Commission (NMC, 2001 Annual Report).

Training and Relations:

Perhaps this is where the Commission has made some superficial strides. However, the question is whether or not the publications and training sessions have made any impact on the media professionals and politicians, particularly those who own media houses. Based on the National Media Commission (Complaints Settlement Procedure) Regulations, 1994, L.I. 1587, the Commission has brought out four publications: *The National Media Policy, Broadcasting Standards, Guidelines for Political Reporting* and *Guidelines for Rejoinders* and its *Review* in furtherance of its purpose (NMC Annual Report: 1997/98). These documents have been highly publicized through workshops and seminars and widely circulated among media houses. The publications were supported by the Friedrich Ebert Stiftung and the United Nations Development Program (UNDP) through its National Governance Program.

As part of the preparations for the 2000 Parliamentary and Presidential elections the Commission in collaboration with the Electoral Commission and the Ghana Journalists Association with sponsorship from the Friedrich Ebert Stiftung, undertook a nationwide seminar on political reporting. The Commission drew on its document titled *Guidelines on Political Reporting*. In the same year the Commission organized a seminar for the board of state-owned media organizations and senior journalists as well as political parties. The general topic was on the implications of the Supreme Court Judgment that granted the NMC the right of appointment of Chief Executive

officers of the State-owned media. Similarly the commission organized a seminar for senior journalists on the media and the law in Ghana.

The specific topics treated at the seminar included: "The 1992 Constitution and the Media in Ghana", "Freedom and Responsibility of the Media", "The judiciary and the Press", and "The Public's Right to Know vs. The individual's Right to Privacy." The Commission again organized a seminar for Political Parties on Media Relations. The topic for the seminar was "Building and Managing Image", "Press Conferences and Press Releases", "Rejoinders", and the "NMC's Complaints and Settlement Mechanism".

And in that same year the Commission had an seminar with talk show presenters, editors and program managers and producers (NMC Annual Report, 2000). In 2006 the Commission held a national conference intended to create a forum for the presidency, leaders of political parties, ministers, judges, members of parliament, the business community, civil society organizations, traditional and religious leaders, and journalists.

This conference was to bring together all these elements to dialogue on the future of the media, with special emphasis on their role in national development. By action of a Constitutional Instrument, the National Media Commission guidelines on newspapers and other publications registration. 2003 C.I. 39, was passed into law. This empowered the Commission to register newspapers and publications. However proprietors of newspapers opposed the legislation claiming that it had the potential to curb freedom of expression.

Loose-fitting hands

Perhaps in the euphoria that greeted the drafting of the 1992 constitution, the framers did not recognize that they had created a creature with loose-fitting hands incapable of performing the onerous functions in its mandate. Three years after the National Media Commission had been established the Parliament of Ghana passed the National Communications Authority Act, 1996 (Act 524) to establish the National Communications Authority to regulate communications by wire, cable, radio, television, satellite and similar means of technology for the orderly development and operation of efficient communication services in Ghana and to provide for related purposes. Among the responsibilities of the NCA was to advise the Minister of Communications who is to oversee the implementation of the provisions in Act 524 and also advise the Minister of Information on

policy formulation and development strategies for the communications industry.

The NCA was also to grant licenses for the operation of communication systems i.e., the system for the conveyance through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, light energy of speech, music and other sounds, visual images etc. Section 4 of the NCA Act provides that the Minister may give to the authority such directions of a general character as appear to him to be required in the public interest relating to the discharge of the functions of the Authority. The Authority has a board and a director general with members appointed by the government. Section 9 of the Act also stipulates that no person shall establish, install, operate or otherwise use a communication system or provide communication services in Ghana unless he has been granted a license for that purpose by the Board.

Section 12 stipulates that an application for a license shall be made to the Authority and shall be in such form and accompanied with such fee and documents as the Board shall determine. Indeed the Board has a large discretion and has control over general provisions for expiry and renewal and conditions for reapplication. The Ministry of Information acting in concert with the Parliament of Ghana and through its committee on Communications also has oversight responsibility for the sector. This means the government still intends to have some control over the media, and no government since 1993 has found it prudent to provide the NMC with legal powers to sanction but rather given such powers to the National Communications Authority. In the year that the NCA was established the board rejected the applications of the Christian Council, the Catholic Secretariat and the Pentecostal Council to establish radio stations and no official reasons were given. (Public Agenda, 1995, p. 1)

On the 11th of January 2010, the government set up a Constitution Review Commission (CRC) under an Inquiry Instrument C.I. 64 to ascertain from Ghanaians their views on the operations of the 1992 constitution and in particular the strengths and weaknesses of the constitution and suggest possible areas of amendment and provide a draft bill for possible amendments. The NMC made a representation at the sitting of the CRC and argued that the NMC should have the responsibility for broadcast authorization and that it should have the power to grant or refuse the granting of a broadcasting frequency as well as its suspension or withdrawal. The CRC submitted its report to

government on 20th December 2011 and the government issued a White Paper on the report. The White Paper indicated that the government does not think that the composition of the NMC puts it in a position to professionally discharge this responsibility. The White Paper held that the allocation of a frequency spectrum goes beyond the requirements of the broadcast media and extends to security, intelligence, navigation and aviation matters.

The White Paper subsequently proposed an independent National Communications Commission (NCC) that will be provided for in the Constitution, and be made responsible for the technical parameters of communications activities including numbered frequency authorization and broadcast authorization. It further proposed that in allocating broadcast frequencies the NCC should consult with the NMC. By this the last breath in the NMC to fight to become potent enough to deliver on its mandate was gone and it will continue to remain in a somewhat inferior position in relation to the other agencies set up to regulate mass communications.

Conclusion - It won't work

Generally what is observed about Ghana in transition is that the colonial and post colonial authoritarian past did not promote lasting traditions of civic engagement but rather sowed seeds of division which are being reflected in society. To this extent almost all state institutions empowered to promote social control in this current democratic era including The National Media Commission have come against strong political forces. At the level of the media, civilizing habits bringing control of emotions and self restraint are at best a thin veneer. This state of affairs comes in the face of national activities such as electoral politics where the media are strategically placed as a facilitator. In their struggle for political power, editorial responsibly is employed by politicians to the extent that the National Media Commission charged to promote high professional standards is rendered ineffective.

Though touted as unique, the NMC will, however, remain on the fringes of media control mechanisms in Ghana because it is inadequately empowered by the constitution and constrained also by Parliament, the Ministry of Information and the National Communication Authority where the real powers of sanctions and enforcement particularly of the broadcast media lie. Still, Ghanaian society has not shown signs of collapse under unprofessional media conduct as happened in some African countries. For all the lack of

social capital, a stronger civil society is proving to be the nursery of democratic practice in post-1992 Ghana (Drah, 1996 p. 23). Having put government on a short leash, civil society is equally standing up against the mafia-like unprofessional conduct of the media.

For the Commission to work, it must be enabled to make regulations not inconsistent with the Constitution, on the production, direction and professional functions of any person engaged in the production of newspapers or other means of communication. Such regulation must have the force of law and the Commission must be able to enforce and execute the law in the form of causes of action, and appeals from its decisions must lie with the High Court, then to the Court of Appeal and finally to the Supreme Court.

Reference

- Adow, Osei K. (2010). The politics of communication policy making in Ghana. *African Communication Research*, 3, 145-182.
- Afreh, D.K (1994). Legal framework for the establishment and operation of independent broadcasting stations. In K.Karikari, (Ed.), *Independent broadcasting In Ghana: Implications and challenges* (pp. 31-41). Legon: Ghana Universities Press.
- Ala Adjetey, P. (1996). The role of the Ghana bar association in Ghana's democratizing process. In F.K.Drah and M. Oquaye, (Eds.), *Civil society in Ghana* (pp. 61-75). Accra: Friedrich Ebert Foundation, Accra.
- Ansah, P.A.V. (1977). The press trust: A new perspective on the press in Africa. *Universitas*, 6, No 1, May.
- Ansah, P.A.V. (1994) Privatization of radio – Implications and challenges. In K.Karikari (Ed.), *Independent broadcasting in Ghana: Implications and challenges* (pp. 25-29). Legon: Ghana Universities Press.
- Ansah, P.A.V.(1996). Blueprint for Freedom. *Index on Censorship*, 20(9), 3-9.
- Asante, E. Clement (1996). *The press in Ghana: Problems and prospects*. Lanham, MD: University Press of America.
- Ashie Kotey, N. E. (2000). The constitution and freedom of the media. In Karikari Kwame and Kumado (Eds.), *The Law and the Media in Ghana* (pp.30-49). Legon: University of Ghana Press.
- Bimpong-Buta, S.Y. (2007), *The role of the supreme court in the development of constitutional law in Ghana*. Advanced Legal Public Publications, Accra

- Bonnah Koomson, P. (1996). A survey of ethical violations by Ghanaian journalists. In K.Karikari, (Ed.), *Ethics in Journalism: Case Studies of Practice in West Africa* (pp. 36-68). Legon: Ghana Universities Press.
- Coleman, A. (1988). Social capital in the creation of human capital. *American Journal of Sociology*, 94, 95-120.
- Drah, F.K. (1996). The concept of civil society. In F.K. Drah and M. Oquaye (Eds.). *Civil society in Africa* (pp 1-39). Legon: University of Ghana in Collaboration with the Freidrich Ebert Stiftung, Ghana Office.
- Elias, N. (1982). *The civilizing process: State formation and civilization*, vol. 2, 1939/2000 (pp. 449-483). Oxford: Blackwell Publishing, 449-483.
- Fukuyama, F. (1995). *Trust: The social virtues and the creation of prosperity*. New York: Free Press.
- Fukuyama, F. (1999). Social capital and civil society. Paper prepared for delivery at the International Monetary Fund Conference on Second Generation Reforms, October 1, 1999.
- Ibrahim, J. (1995). Democratic transition in Africa: Challenges of a new agenda – Concluding remarks. In E.Chole and J. Ibrahim, (Eds.), *Democratization processes in Africa: Problems and prospects* (pp.120-147). Dakar, Senegal: CODESRIA,
- Jones-Quartey, KAB, (1974), A summary history of the Ghana press 1822-1960.Accra: Information Services Department, Government of Ghana.
- Josephi, B. (2008), Journalism research and democracy: Moving out of the Western orbit. *African Communication Research*, 1, 385-404.
- Karikari, K. K. (Ed.) (2000). *The law and the media in Ghana*. Legon: University of Ghana Press.
- Mafeje, A. (1995). Theory of democracy and the African discourse: Breaking bread with my fellow-travelers. In E. Chole and J. Ibrahim (Eds), *Democratization Processes in Africa, Problems and Prospects* (pp. 5-28). Dakar, Senegal: CODESRIA
- Putnam R. (1993a). The prosperous community: Social capital and economic growth, *The American Prospect* 93, 35-42.
- Putnam, R.(1993b). *Making democracy work: Civic traditions in modern Italy*. Princeton: Princeton University Press
- Shills E, (1991). The virtue of civil society: Government and Opposition. In E. Chole E. and J. Ibrahim (Eds.), *Democratization*

- processes in Africa: Problems and prospects* (pp. 118-147). Dakar, Senegal:CODESRIA,
- Smith, M.K.(2000-2009). Social capital. *The Encyclopedia of Informal Education*. 1-8, (www.infed.org/blio/social-capital.htm).
- White, R.A. (2008). The role of media in democratic governance. *African Communication Research*, 1, 269-328.
- White, R.A.(2012). Why don't we have more editorial freedom and responsibility in Africa? *African Communication Research*, 5, 27-80.

Laws and Acts

- National Media Commission (Complaints Settlement Procedure) Regulations, 1994, L.I. 1587
- Telecommunication (Frequency Registration and Control) Decree 1997 (SMCD.71) Television Licensing Decree of 1966 NLCD89),
- Television Licensing (Amendment) Regulations of 1991 (L.I. 1520)
- National Communications Authority Act, 1996 (Act 524) (NCA),
- National Media Commission Act, 1993 (Act 449)
- The 1992 Constitution of the Republic of Ghana
- The Ghana (constitution) Order in Council, 1957
- The Newspaper licensing Act, 1963 Act (189)
- National Media Policy, Published by the National Media Commission,
- National Media Review (Media Monitoring Report), Published by the National Media Commission, September 2006,
- Constitution Review Commission (CRC) Inquiry Instrument C.I. 64
- Government White Paper on the report of the Constitution Review Commission 2012

Reports

- (NMC: 2006 Annual Report).
- (NMC: 2005 Annual Report).
- (NMC: 2004 Annual Report).
- (NMC: 2003 Annual Report).
- (NMC: 2002 Annual Report).
- (NMC: 2001 Annual Report).
- (NMC: 2000 Annual Report).
- (NMC: 1999 Annual Report).
- (NMC: 1997/98 Annual Report).

Government White Paper on the Report of the Constitution Review
Commission Presented to the President in 2012

Newspapers

Daily Graphic, April 22, 2010

Daily Graphic, April 22, 2011

Ghanaian Times, August 11, 2011

Public Agenda, 8-14th September 1995



Who watches the watchdog? Evaluating the contributions of the Media Council of Malawi (MCM) to the quality and performance of the media

By Peter Mhagama and Maclan Kanyang'wa

Abstract

The democratic reforms that took place in Malawi between 1992 and 1994 led to an unprecedented growth in the mass media. The Media Council of Malawi was established as a voluntary, independent and non-statutory institution to promote self discipline among its members and to consider complaints against the media from the public. We argue that since its establishment in 1996 the objectives of MCM are largely unfulfilled and the survival of the MCM is questionable. The immediate problem of the MCM is the lack of funding to monitor the media; enforce ethics; accredit journalists and address public complaints through its disciplinary bodies. The deeper problem is the lack of management ability and ability to mobilize support.

Key words: Media Council of Malawi, self-regulation, ethics, accreditation

Introduction:

In its most common definition, a media council is “a body set up by the media to hear complaints” (Kruger, 2009, p. 18). Important in this definition is the realization by the media themselves of their fallibility. Even more central is the principle of self-regulation, that is, the acceptance of the continual evaluation of respected members of the profession and the willingness of media practitioners to accept correction of undesirable practice. To maintain their freedom and avoid the intervention of the coercive power of government the media

Author biographical note

Peter Mhagama is a Senior Lecturer in the Department of Language and Communication at the Polytechnic, a constituent college of the University of Malawi. His recent publications include “State of Media Freedom in Malawi”. *African Communication Research*, 4, 285-300. **Maclan Kanyang'wa** is Head of Journalism and Media Studies at The Polytechnic (University of Malawi). His recent research focuses on informal institutions and public broadcasting regulation, state of media freedom in Malawi, and media markets and commodification of news in Malawi.

voluntarily set up media councils to scrutinize failings of social responsibility that might taint their image of disinterested public service.

The media are generally known as the “watchdogs of society”, meaning that since citizens cannot scrutinize the day-to-day activities of public officials, civil society organizations and the media, in addition to state agencies, are mandated and given legitimate powers to hold these office bearers accountable (Tettey, 2006, p. 232). It follows, therefore, that “institutions that hold public officials accountable would, themselves, display the qualities of good governance that they expect from government, such as truthfulness, transparency, ethical conduct and due diligence” (Tettey, 2006, p. 244). However, many of those who are targets of media criticism argue that the media have abused the powers invested in them by the general public.

Typical of these accusations are that the media alleges that a party has committed an action but without substantiation or evidence, spreading misinformation, suppression of information, creating half truths, distortion of information, and manipulation of data sources. With the increased freedom that media in Africa have experienced in the last twenty years, they have been increasingly targets of negative criticism, complaints and even lawsuits. The loss of credibility also has its negative economic consequences. In cases where they have been found guilty in the conduct of their duties, media houses and journalists have been subjected to harsh legal sanctions including arrests and incarceration.

To avoid these problems, especially to avert lawsuits and their consequences, self-regulatory systems have been established in many countries “to take up and deal with complaints from the public through arbitration and/or adjudication processes” (Bussiek, 2008, p. 2). Self-regulation also ensures that the media and journalists are held accountable for their actions. These self-regulatory systems operate under an established body or institution known by different names in different countries: media council, press council, complaints commissions, media commissions, press ombudsmen, etc (see Bertrand, 2003). In Malawi, the media’s watchdog is the Media Council of Malawi (MCM). This article attempts to assess the contribution of the Media Council of Malawi (MCM) to the quality and performance of the media in Malawi.

The origins of the Media Council in Malawi

The idea of a media council in Malawi was first articulated at a media conference held in the resort district of Mangochi in January 1994, four months before Malawi conducted the first general elections to return to multiparty democracy on 17th May in the same year. The objectives of the conference were to sensitize journalists on professional ethics, to contribute to the free flow of information and ideas, and to contribute to the establishment of a strong foundation for the independent press. Given the context of elections, the conference was a contribution to the democratization process in Malawi (Chitsulo and Mang'anda, 2011). According to the conference, the media council would be "Voluntary, independent and non statutory to promote self discipline among its members and to consider complaints against the press from the public" (Hall, 1994, p. 84)

The proposal to establish a media council in Malawi should be seen within the context of the broader democratic reforms that took place between 1992 and 1994. During the single party era, (the period preceding the referendum in June 1993 and general election in 1994), the media in Malawi were predominantly affiliated to the ruling Malawi Congress Party (MCP). From 1964 to 1994, the state radio station, the Malawi Broadcasting Corporation (MBC) was the only radio station broadcasting in Malawi, apart from African Bible College (ABC) radio - a religious radio station (Manjawira and Mitunda, 2011). Until the early 1990s, Blantyre Printing and Publishing (BPP) company was established in the one-party state as a "media monopoly" of the print media (Hall, 1994). During the one-party era there were few other newspapers or magazines. What existed could hardly be termed mainstream media, especially since all studiously avoided serious critical journalism and none was particularly successful in terms of circulation (Hall, 1994).

An independent press¹, in its broadest meaning, began in 1991 and early 1992 with photocopied anonymous letters and leaflets distributed in public places at night. Since then, there had been a proliferation of newspapers and other publications. Although some of the newspapers have been going out of business, by 2011 the newspapers still operating and expanding were the Blantyre Newspapers Limited (BNL), publishers of *The Daily Times* and the *Malawi News*, and Nation Publication Limited's (NPL), publishers of *The Nation* and *The Weekend Nation* (Chitsulo and Mang'anda, 2011). These media houses have also come up with an array of weekly papers

and online publications. In addition, the Malawi Communications Regulatory Authority (MACRA) has so far issued 47 broadcasting licenses, for both radio and television.

The proposal for a media council, then, was part of a larger process of emerging media professionalism. Hall (1994) records that there were several organizations of media professionals at that particular time. The most notable were the Journalists Association of Malawi (JAMA), the Publishers Association of Malawi and the Media Workers Union. While recognizing that these organizations- and indeed other bodies- have a key role to play in media development, Hall noted that their role had been limited by the sectional interests that they represented. He expressed some reservations about the influence of these associations.

There are some media development activities which are perhaps much more important in the Malawi context, which these organizations individually are likely to neglect because they fall outside the scope of their interest or because they require resources which may not be available to a single organization (Hall, 1994, p. 84).

In a critical examination of the media economic environment obtaining at the advent of multiparty democracy in Malawi, Hall (1994) explores and outlines in detail the importance and mandate of a media council arguing that it could, among other things, act as an independent and representative forum for the formulation of media policy in Malawi and as a lobby organization on issues affecting the media, such as a legal reform and the creation of an enabling financial environment for media development. Further it would draw up a code of ethics for journalists and appoint an independent complaints body to uphold the code. It would also provide financial assistance for the establishment and expansion of media organizations and act as a channel for assistance for such organizations. The media council would also establish a fund for freedom of expression cases and a mutual liberal insurance policy (Hall, 1994, p 85).

It was further proposed that the media council in Malawi would be constituted by a significant number of members of the media and representatives from other sectors of society as argued below:

The membership might include a representative from every newspaper, several from MBC and other broadcasting organizations, several from each of the various media associations-publishers and unions, the law society, the trade union congress, the churches, a representative from each political party represented in parliament, and so on. This body would constitute "the council" and would probably meet on an annual basis. It would have liberal powers to co-opt new members (Hall, 1994, p. 85).

In spite of the important advantages to be gained from the creation of a media council emphasized by Mike Hall at a media conference in Blantyre in 1994², the idea of the council does not come out clearly among the conference's resolutions. Instead, the conference resolved to establish a co-coordinating "Trust" to lead media policy, development and reform initiatives. The Trust would have sub-committees comprising members of the constituent organizations in areas such as broadcasting, training and ethics. The Trust would be performing duties of a Broadcasting Reform Committee (which was proposed to formulate new broadcasting policy for Malawi) and Media Complaints Committee (MCC) (Hall, 1994).

Contrary to expectations, under the leadership of the Journalists Association of Malawi, the Media Council of Malawi (MCM), rather than the Trust, was established in November 1996. However, due to some problems, which are explained below, the Media Council ceased to function around 2001-2002 (Kruger, 2009, p. 30). Chitsulo and Mang'anda (2011) observe that the first attempt to set up a media council in Malawi faltered due to lack of ownership and commitment by members as well as poor management (see also Venter, 2008, pp. 20-21). JAMA itself died naturally as a consequence of an internal power struggle. Some sections of the media claim that JAMA is still alive albeit on paper while others argue that no one can claim to be its chairperson and no one knows where one can get its paper work³. The youngest offshoot of JAMA is the Journalists Union of Malawi (JUMA). JUMA was established in 2007 with the core objective of promoting and protecting labor rights of journalists. However, the mandate of JAMA was broader than that of JUMA in that the former dealt with labor issues, training issues, ethics and all aspects that make journalism a profession. JAMA also led the moves toward establishment of the Malawi Institute of Journalism, a training school for journalists⁴.

In spite of the demise of the MCM, many recognized the importance of a council and the role it ought to play in a democratic society. There was general agreement that no profession or group of professionals can function properly without a *modus operandi* and a code of ethics regulated by a professional body. This led to a meeting for stakeholders convened in September 2005 at Kuchawe Inn-Zomba by the National Media Institute of Southern Africa (NAMISA). The primary objective of the meeting was to revive the Media Council. Most of the participants at this meeting were media owners, proprietors of media institutions including journalism teaching institutes, highly regarded media practitioners and other key people in the society who had been members of the Media Council before.

The meeting formed a task force that was asked to oversee the resuscitation of the Media Council as a voluntary regulatory institution of the operations of the media in Malawi. MCM was formally re-constituted in February 2007 as a result of dedicated work done by the interested stakeholders in the media industry. It was established as "a non-profit, non-political and self-regulating organization" (Constitution of the MCM, n.d.). This is what is known as self-imposed accountability, "based on voluntary acceptance of certain standards and codes of behavior that govern membership of a professional body or employment in a particular media organization" (Tettey, 2006, p. 242).

The objectives in this study

To understand the forces which led to the establishment of a media council at the advent of multiparty democracy in Malawi it is important to take into consideration the context. Particularly important were those then successfully controlling the media, who were interested in strengthening the media at that time of change from the dictatorship of Banda and the single-party politics to a more pluralistic society. They wanted to see the media as a major factor in a more open public sphere and promote a more open discussion in a time when the media had a strong tendency to be extremely partisan. In spite of their efforts, however, the media in Malawi have remained partisan. A major problem has been that there has been very little capital investment in the emergent press, and the state continues to be the principal stakeholder (Hall, 1994). The Media Council of Malawi was conceived as a major instrument to avoid this partisan media context. How well the MCM has succeeded in this is the central question in this study.

Emergence of media councils

To evaluate the MCM it is helpful to review briefly the literature on media councils and the criteria of a “successful media council”.

The emergence of media councils has been linked to the media’s desire to avert statutory regulations (Bussiek, 2008; Sawant, 2003) which are often seen as deliberate attempts to muzzle freedom of the media. There are of course several criticisms leveled against the media which could attract the wrath of governments forcing it to exercise control and regulation in the spirit of “protecting public interest”. For example, the advent of democracy in many African countries brought with it the enjoyment of some human rights and freedoms including freedom of expression which unfortunately was often mistaken for absolute freedom to say or write anything. In this context, the media have been accused of being irresponsible and lacking discretion in their reportage, being used for political propaganda, and serving parochial interests (Tettey, 2006). This destroys their credibility and the reliability of their reporting in the eyes of the public especially in view of the number of criticisms and complaints leveled against them.

According to Christians, et al (2009, p. 53), “in response to the swelling tide of public criticism, the press promised to carry on its own in-house reforms under the principle of ‘social responsibility’”. Some of the measures include the establishment of media councils to deal with complaints from the public instead of referring such cases to the courts to mete out sanctions on those found guilty. It can be argued that through self-regulation the media are trying to avoid the lawsuits whose outcome could be more damaging to their business and profession than the softer and sometimes not so legally binding sanctions imposed by the media councils. However, this position has been defended by Sawant (2003, p. 17) who argues that:

There are many ways in which the media can offend without straying beyond the law. Ethical guidelines are peculiar to each profession and are designed to prevent the abuse and unmerited use of the power and privilege of the profession. Not all morals of the society or ethics of a profession can further be incorporated in law. Courts cannot decide issues of ethics, and it is beyond their jurisdiction to enforce them.

Nonetheless, media accountability is a necessary component of the democratic process as it provides checks and balances in the practice of journalism and ensures that the media are not immune from working within set guidelines. Media accountability is defined as “the process of compelling the media to conform to the standards of society and holding them answerable to those standards” (Tettey, 2006, p. 233). Both public and private media institutions must recognize the fact that they are working “on behalf of and for the benefit of the people, and they are the people’s trustees for that purpose” (Sawant, 2003, p. 18; Christians et al, 2009), hence the need for them to be accountable.

Theoretical context: Social Responsibility Theory

The issue of media accountability can best be understood within McQuail’s (1987, pp. 117-118) social responsibility theory which justifies society’s expectation of high standards of performance on the part of the media, and accountability of journalists not only to society but to their employers and the market as well. Social responsibility calls for the media’s self-regulation within certain precepts or established institutions like media councils. McQuail (2000, p. 186) further argues that “the main advantage of a developed public responsibility frame include the fact that the need of society can be expressed in a direct way – by claims made on the media, to provide for these needs. In addition, intrinsic to this frame is the idea of a continuous interactive relationship between media and society”.

According to Himelboim & Limor (2008, p. 240), it is in keeping with the principle of social responsibility that “the state is precluded from intervening in media activity and content, while the media, in turn, impose restrictions and limitations on themselves”. These self-imposed restrictions and limitations come in the form of professional ethics or simply codes of ethics. The objectives of the codes of ethics are “enhancing the dignity, influence and reliability of the relevant profession in the eyes of the public, serving as a kind of shield for professionals and preventing the imposition of external supervision and limitations on the field and its practitioners” (Himelboim & Limor, 2008, p. 240). In media circles, the codes of conduct of journalists associations “provide guidelines for media practitioners and provide for requisite sanctions for non-compliance” (Tettey, 2006, p. 242).

Methodology in this study

This research followed a qualitative approach relying on multiple data sources including (a) in-depth interviews with key informants, i.e., media practitioners and researchers, editors of different media houses, chairpersons of media associations and councils. The objective was to get a multiplicity of views and opinions from media practitioners themselves; (b) document reviews, i.e. newspapers, the Communication Act, etc. The principal researchers reviewed newspaper reports and articles dealing with the issue of media freedom and the Media Council of Malawi.

The mandate of the Media Council of Malawi

The function of the Media Council of Malawi vis-à-vis its contribution towards the quality and performance of the media should be understood within the context of its secretariat and the permanent committees through which it carries out its mandate as outlined in its constitution. The Council has the following three permanent committees: Ethics, Complaints and Disciplinary Committee; Membership and Accreditation Committee; and Finance and Audit Committee (MCM, n.d). Through these committees the Council is expected to carry out the following objectives:

- a. Uphold and maintain the freedom of the media in Malawi, including the freedom of expression and the public right to freely receive and impart information and opinion, and to defend/protect the media from undue pressure from any source;
- b. Update, maintain and promote the Code of Ethics and professional standards for media practitioners, journalists and media organizations;
- c. Assist in ensuring that proprietors, publishers, journalists, broadcasters and other media stakeholders adhere to the highest possible standards by strict compliance with the Code of Ethics;
- d. Provide alternative dispute resolution mechanism on matters involving the media and the public.
- e. Accredite local and foreign journalists in Malawi in conjunction with the relevant government agency
- f. Conduct professional development activities for the media in Malawi.

- g. Encourage an ongoing dialogue between the media, government and the public through conferences, seminars, symposia and other fora;
- h. Maintain and promote the status of journalism as a profession;
- i. Promote public awareness of the Council through publication of its activities and operations.
- j. Promote and safeguard the interests of its members and the public in all matters affecting the profession;
- k. Establish and operate an audit bureau of circulation; conduct research relevant to the media; provide independent consultancy services to publishers, broadcasters, media associations and relevant organizations in the interest of developing an independent and effective media;
- l. Reviewing developments in the media.
- m. Carry out any activities necessary and incidental to achieving its objectives.

In view of the foregoing it is safe to assume that some of the objectives outlined in the constitution fall under the role of the secretariat while others are performed by the committees. The objectives that fall under the secretariat include: *a, f, g, i, j, k, l* and *m*. The Ethics, Complaints and Disciplinary Committee is informed by objectives *b, c* and *d*. The Membership and Accreditation Committee deals with objective *e*. This article, therefore, reviews how the council is able to perform its oversight role through these organs. Currently, the governing council of the MCM is apparently unable to meet, so it is difficult to say just what committees are functioning.

The Secretariat

Kruger (2009) has rightly argued that the engine-room of any council, as with any other organization, is an office with full-time officials. The secretariat of the Media Council of Malawi is led by an Executive Director, who is assisted by other members of staff, and is responsible for the day-to-day running of the affairs of the Council and is expected to deal with all correspondence and manage all records of the Council. The Executive Director reports to the National Governing Council and a Board of Trustees (MCM, n.d).

According to the Director, there are supposed to be five officers in the secretariat: the director, a program officer, an accountant, a secretary and an office assistant. Presently, there is only an executive director, a secretary and an accountant, but there is no program officer.

Helping to set national media policy and serving as a lobby organization

The Constitution of the Republic of Malawi, adopted at the reintroduction of multiparty democracy in May 1995, provides citizens with the right to freedom of expression and to report and publish freely, and to be accorded the fullest possible facilities for access to public information (GoM, 1995). "The press shall have the right to report and publish freely, within Malawi and abroad, and to be accorded the fullest possible facilities for access to public information" (GoM, 1995). However, there are many cases in which the constitutional provision of the right to freedom of expression and access to information is limited by other statutes and the lack of an Access to Information Law. For example, Kanyongolo (1994) identifies a list of statutory provisions which can abrogate the exercise of press freedom by prohibiting or unduly restricting the press in its search for information.

Over the last few years a number of laws have been introduced in Malawi that have restricted rather than enabled press freedom and responsibility. These include an amendment to Section 46 of the Penal Code empowering a political appointee of the President of the Republic to censor media content in the name of "public interest". The Media Council of Malawi is therefore expected in the words of Hall (1994) to act as an independent and representative forum for the formulation of media policy in Malawi and as a advocacy organization on issues affecting the media (including lobbying for the repeal of restrictive laws). The role of the MCM in upholding freedom of the press is visible in certain instances. For example, at the height of the debate of the amendment of Section 46 of the Penal Code, the Media Council of Malawi in conjunction with the Media Institute of Southern Africa (MISA-Malawi) published media statements lobbying for the government to repeal the amendment and reconsider its relationship with the media. MCM, MISA-Malawi and other human rights organizations held a series of press conferences condemning the laws. However, all the efforts to have government repeal the laws fell on deaf ears.

On 31 May 2012, however, the Malawi National Assembly voted to repeal the media ban law. The leader of the house, introducing a bill to repeal the law, said Section 46 of the Penal Code was perceived as an unreasonable limitation to free publication, freedom of speech, and freedom of the media. Ironically some of the architects and advocates of the amendment voted for its repeal (Sonani, 2012). The foregoing means that the bill to repeal Section 46 took into account the public outcry regarding the law, including efforts by the council. However, it is worth noting that the amendment followed a change in government after the death of president Bingu wa Mutharika on 5 April 2012. The change in government was more instrumental in the repeal process rather than the efforts of the Council. This argument is supported by the fact that the new government did not only reverse the media ban law but also the Injunctions law⁵ and the change in the national flag. All these were introduced by the previous government.

In general, MISA Malawi is much more visible in policy issues. Presently MISA Malawi is involved in the push for the Access to Information Law (ATI). When the Access to Information Law was conceived in 2006, there was a joint effort between MISA Malawi and the Media Council of Malawi to push for the ATI law. Since 2009, however, the MCM has not been part of the leadership in this campaign for the ATI. The driving force for the ATI law has been MISA Malawi in collaboration with the Ministry of Information.

Training of journalists

Apart from carrying out advocacy programs MCM has partnered with other institutions and NGOs to also carry out capacity building activities for the media in areas of child rights, anti-corruption and maternal health among others (Gondwe, 2012). The MCM has been able to source funds to organize these training programs for journalists. Some quarters have seen the direct involvement of the MCM in these activities as a structural weakness arguing that MCM has departed from its core activities⁶. The argument is that rather than monitoring issues of standards and ethics in the media, MCM overstretches itself in conducting capacity building initiatives such as training workshops which could be left to trainers.

Ethics and professional conduct

In 2010, the Media Council of Malawi, in its attempt to be an independent self regulatory media body, launched the Code of Ethics

and Professional Conduct as well as the Accreditation Policy and Press Card Scheme. The code is intended to govern the conduct of journalists and media house owners while accreditation is intended to promote integrity and professionalism by setting apart those recognized as journalists from the ones who only masquerade as such (Malera, 2010).

The Media Council of Malawi is responsible for settling disputes that erupt between members of the media and the general public through processes of Alternative Dispute Resolution in which any civil case registered with the courts is examined for determination on whether or not to settle it through dialogue and negotiation. Media managers have found this legal provision of out-of-court arbitration less costly, fast, informal, friendly and flexible. While they bemoan that in most cases media organizations incur costs for lawyers, mediation fees and compensation, still they find the negotiations over levels of compensation relatively accommodating and conducive to media practice (Chikunkhuzeni, 2011, p. 67). Chitsulo and Mang'anda (2011) have also alluded to the excessive costs posed by the law of defamation whose application led to the folding up of newspapers such as *The Democrat* and *The Chronicle*.

Procedures of launching a complaint

Any member of the public is free to submit a complaint to the Council. One of the Council's main objectives is to promote and safeguard the interests of its members and the public in all media matters affecting the public, so if a member of the public feels the media are not operating in line with the code of media ethics s/he has a right to launch a complaint to Media Council of Malawi. Complaints are made to the Executive Director of MCM either in person, or by telephone. If the complaint is made against the Executive Director of the MCM, or the Ethics, Complaints and Disciplinary Committee, it is supposed to be lodged with the Chairperson of the Council. Where the complaint is made against the Chairperson of MCM, it is immediately referred to the committee without any attempts by the Executive Director to resolve it. Once the executive Director has received a complaint, he or she is supposed to transmit it to the respondent who is expected to comment within fourteen days. The Executive Director holds an informal discussion with the parties involved and a resolution is made. If an agreement is not reached at this stage then it is referred to the Ethics, Complaints and Disciplinary Committee (MCM, 2009).

Owing to a lack of proper documentation in the council secretariat, it is not certain how many complaints have been presented in a given year or over the years. A categorization of the types of complaints would be helpful. From the few documented cases, one gets the impression that the actual complaints received mostly border on the invasion of privacy, malicious damage resulting from unsubstantiated journalistic claims, failure to respect the right of reply and journalistic misinformation. The typical cases target both media houses and journalists, but few have targeted individual journalists.

The typical procedure in handling complaints has six steps:

- 1) An aggrieved party submits a complaint to the executive director who transmits the complaint to the respondent who is expected to comment within 14 days.
- 2) The executive director then holds discussions with both parties on an informal basis with the hope of achieving speedy settlement.
- 3) The executive director then gives his or her opinion regarding the resolution of the dispute.
- 4) If one or all of the parties are not agreeable to the resolution of the executive director, then the complaint is referred to the Complaints and Disciplinary Committee.
- 5) The chairperson of the committee will then set a date and venue for the case to be heard and decided.
- 6) The committee with the executive director, then makes a decision as what should be done by the media house.

There is not a complaints department as such, but the Executive Director handles most of the complaints. If a case reaches the Ethics, Complaints and Disciplinary Committee, then the six members of the committee (if they are actually present) work with the case. From the evaluation, it seems that in years past there were more complaints and the committee was more active. The MCM activities seem to have reduced the number of complaints, seemingly because the MCM was putting pressure on the media houses. In recent years the staff seems to be less active in handling complaints, and there seems to be less contribution to resolving the problem on the part of the MCM.

While Kruger (2009, p. 33) observes that "most councils act only if they receive a complaint", there have been efforts made by MCM to mediate on conflicts between the public and media organizations. The regulatory body has also made attempts to mitigate conflicts between some radio stations and the Malawi Communications Regulatory Authority. MACRA is a government agency established under Part V

of the Malawi Communications Act (GoM,1998) “to regulate the provision of broadcasting in Malawi to, among other things, meet demand for broadcasting services, to ensure the provision of regular news services and programs on matters of public interest in Malawi; to provide for the broadcast of programs in support of the democratic process through civic education, promote the provision of a diverse range of broadcasting services on a national and local level; to promote the integrity and viability of public broadcasting services, and to ensure equitable treatment of political parties and election of candidates by all broadcasting licensees.”

In 2008 the MCM mediated in a dispute between the state-owned Malawi Broadcasting Corporation (MBC) and Television Malawi (now merged with MBC) and the Malawi National Assembly over refusal by the latter to approve and allocate funds for the former in both 2007 and 2008 budgets. Apparently opposition political parties, the Malawi Congress Party (MCP) and the United Democratic Front (UDF) felt that MBC had failed in its mandate of being a public broadcaster and instead had chosen to affiliate with the then ruling Democratic Progressive Party (DPP) in pursuit of partisan interests. MCM lobbied parliament, through the latter’s Media and Communication Committee, to fund the two institutions. Notwithstanding the intervention and meetings held by MCM with officials from MBC and TVM and members of the Media and Communications Committee of the National Assembly, MBC and TVM ran for two consecutive years without a budget. The foregoing implies that efforts of the council are ignored by policy makers in certain cases.

The Media Council of Malawi has previously also investigated the conduct of the MBC which is a public broadcaster. For example, the Media Institute of Southern Africa (MISA-Malawi) once observed in its complaint to the Council that the conduct of MBC was a catalyst for media wars, a situation which needed to be avoided at all costs, especially as the country drew closer to the general elections in 2009. The MBC had alleged, in some of its editorial content, that journalists from other media houses were being financed by the opposition party, the United Democratic Front (UDF) to write negative stories about the DPP government and write positive stories about the opposition. MISA-Malawi therefore requested the Media Council to intervene as MBC’s conduct also bordered on issues of ethics. MCM confronted the management of MBC with evidence on the issue. The Council was thus able to stop MBC from broadcasting programs which it felt were

provocative in that MBC attacked fellow media practitioners without substantiating their claims (Misa-Malawi, 2008). An example of these provocative programs includes *Makiyolobasi*, a radio cartoon program broadcast on MBC radio critical of key opposition figures.

Media monitoring

Notable in the performance of MCM, therefore, is the fact that it does not exclusively rely on complaints from the public but also conducts its own investigations through its media monitoring program. In its 2008 annual report the MCM (MCM, 2008) observes that 29% of the complaints that it had received between July 2007 and July 2008 were from the public while 71% emanated from the Council's own monitoring. The Council had been able to solicit apologies and retractions in cases of successful mediation. Apart from the statistics contained in the inaugural report of the revived MCM for 2007 to 2008 there are no records of complaints and cases covering 2009 to date emanating from failure to monitor the media for ethical misconduct. The Council, however, in its inaugural year had been able to secure retractions and apologies for ethical misconduct and misrepresentations for both cases reported by the public and issues arising from the Council's own monitoring. Presently the Council does not do its own monitoring due to capacity limitations as will be noted later, hence most of the cases it arbitrates are based on complaints lodged by members of the public⁸. Some analysts recommend that a council should wait for a complaint to be launched before it acts, arguing that doing the contrary "would be inappropriate for a council to be both judge and prosecutor" (Kruger, 2009, p. 33).

Accreditation

MCM has also embarked on accrediting local and foreign journalists in Malawi in conjunction with the relevant government Agency such as the Ministry of Information. The accreditation process commenced in earnest in 2010 with national sensitization of media practitioners and stakeholders on the procedures of the process. Many journalists applied for accreditation and have been given press cards. However, for two years now the Membership and Accreditation Committee has not met owing to lack of resources. This has left the accreditation process hanging in balance⁹. In July 2012, the Government of the Republic of Malawi was supposed to host a high profile African Union (AU) meeting which was to be attended by

delegates from all of Africa including heads of state. This attracted the interest of many local and foreign journalists who needed accreditation to cover the proceeding of the meeting.

Instead of the Media Council of Malawi, it was the African Union Southern African Regional Office (AU SARO) based in Lilongwe in conjunction with with the Malawi Ministry of Information and Civic ¹⁰. The event did not take place in Malawi, though, as a result of disagreements as to whether President Omar Al Bashir of Sudan would be allowed to attend the Lilongwe meeting due to a warrant of arrest issued on him by the International Court of Justice (ICJ) in Hague. The government of Malawi had indicated that it would arrest Al Bashir. There has been a proposal within the Membership and Accreditation Committee to meet virtually online, in view of limited funds. Again, that is subject to approval of the Board of Trustees which has also not been able to convene and decide on such critical issues for a period of more than two years now¹¹.

There have been mixed views on the issue of accrediting journalists by MCM, which according to Kruger (2009, p. 42) is “ill-advised”. He argues that “although a professional register run by the media themselves is marginally better than one administered by the state, it remains out of step with international standards and precedent (Kruger, 2009, p. 42; see also Bussiek, 2008, p. 6). He further warns that this could make MCM a “journalist’s police” (Kruger, 2009, p. 42).

The limitations due to lack of funding

The MCM has no publications and in recent years is unable even to produce annual reports of its activities. Virtually the only publications of the MCM are the code of ethics it devised, the complaints procedures and Accreditation Policy and Procedures. The MCM does not attempt to give awards to outstanding journalistic activities. Rather, awards are given through the Media Institute of Southern Africa (MISA Malawi). MISA Malawi also has a type of annual celebration of World Press Freedom Day on May 3 every year.

Financing MCM

The Media Council of Malawi estimates its potential membership at 43 (MCM, n.d). These potential members include newspapers, radio stations, television stations, media production companies and journalism training institutions. The membership is in four categories

including: community radios with hardly any resources and are voluntary, not-for-profit organizations, commercial organizations that are smaller in their size and relatively large commercial media organizations. These organizations pay annual subscription fees. Individuals are not eligible to join; they can only do so through an institutional organization.

Thus, media houses, journalists training institutions, professional journalists and press clubs form the membership of MCM (MCM, n.d). Members of the Media Council of Malawi pay annual subscription fees. Community radio stations pay 25,000 Malawi Kwacha (83 US Dollars). Not-for-profit institutions pay 50,000 Malawi Kwacha (166 US Dollars), commercial institutions that are smaller in size pay 100,000 Malawi Kwacha (332 US Dollars) and commercial institutions that are large pay 200 000 Kwacha (664 US Dollars). Even though potential membership rests at 43, the number of institutions which ought to be affiliated to MCM could be higher considering that as of September 2012, the Malawi Communications Regulatory Authority had licensed 47 radio and television operators¹². It is worthy of notice, though, that in practice not all listed institutions actually subscribe annually. The MCM observes that it has an average of 20-25 active subscribers while an estimated 15 institutions avail themselves to the activities of the Council when there is a specific activity from which they see immediate benefits. MCM observes also that among the potential subscribers there is a third group that does not really care about the council and its mandate¹³.

Despite the fact that core funding for the operations of the secretariat has been a challenge, as will be argued later, MCM has continued to attract support towards specific program delivery activities. For example, UNICEF has supported MCM with a three-year grant towards child-rights reporting (up to 2012) and MCM signed another agreement towards similar initiatives covering 2012 and beyond. The National Aids Commission (NAC) also approved a one-year grant agreement on HIV and AIDS programming support for media houses. In 2011 MCM partnered with the Danish organization (International Media Support-IMS) for training journalists in conflict-sensitive reporting. MCM has also engaged with PANOS in a maternal health capacity building project for media houses (Gondwe, 2012). In addition, in 2011 MCM signed a memorandum of understanding with the Anti-Corruption Bureau (ACB) for setting up anti-corruption capacity building programming with media houses.

Challenges facing MCM

The mother of all the problems facing MCM is financing. While a membership subscription from institutional members has gone a long way towards meeting some of the operational costs, it has not been sufficient to keep the secretariat running. The challenge that is facing the secretariat including that of other MCM programs is that core funding from the British High Commission to support the formative three-year strategic plan did not get renewed at the expiration of the agreed period from 2007 to 2010. The council does not have a fixed source of funding. As a result, MCM has a high labor turnover. For, instance, in a period of five years (2007 to date) it has changed executive directors four times. Currently, the most active member of staff is the executive director. For the MCM secretariat to function properly it requires about five officers including the executive director, a program officer, a finance officer, administrative officer and an office assistant. Presently the secretariat has only three officers and is unable to operate normally. It has not been able to maintain a program officer to carry out projects. As a result the Executive Director has to combine his roles alongside those of a program officer¹⁴.

Another challenge facing MCM is limited awareness among members of the general public regarding the functions of the council. Chikunkhuzeni (2012, p. 67) observes that in 2011 defamation court cases against the media were numerous. In the past such cases have been easily resolved through the Council's Alternative Dispute Resolution Process. The foregoing points to a general lack of awareness of the existence of the council and a growing mistrust in the effectiveness and readiness of the council to handle disputes¹⁵. Owing to a lack of financial resources the Media Council of Malawi has not been able to implement publicity activities as originally planned¹⁶. Journalists expressed dissatisfaction with the Council arguing that the Council started very strongly but has been weakening over years to the point of extinction. This view is supported by the formation of a new group, the Association of Media Owners (AMO) comprising the private sector media institutions. The AMO aims to speak with a united voice in order to play a greater role in the transformation of the country. The AMO has several objectives, among them to act as a catalyst for change in promoting social transformation for economic growth and democracy in Malawi. It will also ensure accountability of the media to the public including its common goal of protecting the public. The AMO will also be protecting its members, provide a forum for business

issues for media organizations, act as a lobbying platform for media organizations, support media watchdog organizations such as the Media Council of Malawi and the Malawi chapter of the Media Institute of Southern Africa, NAMISA, and ensure sustainability of the media in Malawi.

While AMO says one of its earliest tasks will be to strengthen and revive the Media Council of Malawi, whose main task is to provide self-regulation in the promotion of media ethics in Malawi, the establishment of the former is in essence an important threat to the sustainability of the council considering that it draws its membership from the Council, further dividing the attention of the industry. Some of the objectives of AMO are similar to those of the Council, for example, ensuring accountability of the media. Some journalists interviewed felt that membership with the National Media Institute of Southern Africa (MISA-Malawi) was more fulfilling and beneficial than association with the Media Council of Malawi¹⁷.

With regard to membership and accreditation the challenge that faces MCM is that membership is not mandatory¹⁸. Institutions that join MCM do so at their own preference. Hence, membership tends to fall into a group that is active and subscribes annually, others that participate only in activities where they see direct benefits and those who do not care about the existence of the Council at all. The same applies to accreditation. While the accreditation process has halted owing to lack of financial resources, MCM cannot force individual journalists to get accredited. Journalists pay 2500 Malawi Kwacha (8 US Dollars). Consequently, some journalists have not applied for accreditation since they know that even if they are not accredited by the Council they can still practice as journalists. Their argument is why should they pay for accreditation when they can practice their trade even without recognition by the Council¹⁹.

Conclusion

The foregoing discussion has attested to the need for the media in Malawi to regulate itself. While efforts to resuscitate the Media Council of Malawi bore fruit in its formative years it is obvious that its sustainability remains in balance. Efforts should be made to reorganize the Council to make a meaningful contribution to media regulation in the current process of media development in Malawi. The Council also needs to raise awareness of its potential contribution so that many members of the public become interested in its mandate because at

present people know the existence of the council but not the importance of its mandate. This problem, though not peculiar to Malawi, discourages interest in membership. The problem is compounded by the establishment of another body, the Association of Media Owners (AMO) whose objectives are similar to those of MCM. The continued disregard of MCM's concerns by government on matters constraining media freedom makes the relationship between the two very tense and does not encourage membership in or cooperation with the Council. Media Houses and practitioners need to make concerted efforts that MCM be viable and defend it against all threats affecting its operations and existence. Otherwise the good job done by MCM remains unrecognized and unknown to many, and those that have benefited from the Council are doing little to promote its survival.

(Footnotes)

¹ Chitsulo and Mang'anda (2011) suggest that "independent" was then understood to mean media houses that were not linked to government.

² Three months after Malawians voted in the presidential and general elections on 17 May 1994, the International Federation of Journalists convened a conference in Blantyre to "critically evaluate the role of the media in Malawi and how it could be strengthened to better play its role in building a democratic society".

The conference attracted 60 delegates- publishers, journalists, broadcasters, lawyers, academics, human rights activists and other civil society representatives.

³ This is based on interviews with a selection of media practitioners who participated in the formation of the Journalists Association of Malawi, the Journalists Union of Malawi and the original Media Council of Malawi and the current Media Council of Malawi

⁴ Interview with one of the first trainers at the Malawi Institute of Journalism(MIJ) who is also a former member of the Journalists Association of Malawi (JAMA). This information was confirmed by the Journalists Union of Malawi.

⁵ The Injunctions Law amended in 2011 ordered courts not to grant ex-parte injunctions against government or public officers. Where an inter-partes application is made, the court shall hear the application within three days from the date of the application and the evidence in support of the application were served on the Attorney General. Members of the general public argued that the law was unconstitutional as it stood to deny citizens their right to instant relief when their rights are trampled on.

⁶ Based on an interview with a veteran media practitioner who is also a media scholar. This view is also corroborated by one of the journalists working for the Malawi Broadcasting Corporation (MBC) who looks at MCM involvement in these activities as a survival strategy in view of limited funding towards the functioning of the secretariat.

⁷ This section is based on a letter written by the then Media Institute of Southern Africa (MISA) Malawi Chapter National Director Innocent Chitosi to the Executive Director of the Media Council of Malawi on 6th June 2008 regarding the conduct of the Malawi Broadcasting Corporation (MBC).

⁸ Based on an interview with the Executive Director of the Media Council of Malawi Mr. Valesi Machila on 28 September 2012.

⁹ Based on interviews with Members of the Membership and Accreditation Committee.

¹⁰ Based on an interview with a member of the Membership and Accreditation Committee

¹¹ This section is based on an interview with a member of the Membership and Accreditation Committee. This was also corroborated by a member of the board of trustees.

¹² This is based on a list obtained from the Malawi Communications Regulatory Authority (MACRA) in September 2012.

¹³ This information is based on an interview with the Executive Director of MCM, Mr. Vales Machila conducted on 28 September 2012.

¹⁴ Based on an interview with the Chairperson of MCM Mr. Vales Machila on 28 September 2012.

¹⁵ This argument is based on random interviews with members of the public who were asked if they knew about the existence of MCM and its mandate. The impression that one gets is that the general public is not clear on the mandate of the Council.

The Executive Director of MCM agrees that there is need to sensitize the public on the mandate of MCM.

¹⁶ Interview with the Chairperson of MCM Mr. Vales Machila on 28 September 2012.

¹⁷ This view is also shared by the Journalists Union of Malawi which felt the Media Council of Malawi was reliable at its beginnings. The Journalists Union of Malawi views a strong MCM as an important partner in the struggle for a vibrant media.

¹⁸ Based on an interview with the Chairperson of MCM Mr. Vales Machila on 28 September 2012.

¹⁹ Based on an interview with the Chairperson of MCM Mr. Vales Machila on 28 September 2012.

References

- Chikunkhuzeni, F. (2011). State of media freedom: Malawi. In *So This is Democracy?*. Annual publication of the Media Institute of Southern Africa. Windhoek: Misa.
- Christians, C. G., Glasser, T. L., McQuail, D., Nordenstreng, K. & White, R. (2009). *Normative theories of the media: Journalism in democratic societies*. Urbana, IL: Illinois University Press.
- Chitsulo, E and Mang'anda, G. (2011). Origins, development and management of the newspaper industry in Malawi. In E. Kondowe, P. Kishindo and F. Mkandawire (eds). *Journalism practice in Malawi: History, progress and prospects*. Lilongwe: Unesco.
- Bertrand, C. J. (2003). *An arsenal for democracy: Media accountability systems*. Mahwah, NJ: Lawrence Erlbaum.
- Bussiek, H. (2008). *Self-regulation of the media in the SADC-Region: Experiences with media councils in Southern Africa*. Windhoek: Fesmedia Africa.
- GoM. (1998). *Communication Act*. Zomba: Government Press.
- GoM. (1995). *Constitution of the Republic of Malawi*, Available at: <http://www.sdn.org.mw/constitut/intro.html> [Accessed 9/9/ 2012].
- Gondwe, G. (2012). *Malawi Journos Accreditation in Limbo*. Bizcommunity.com. Available: <http://www.bizcommunity.com/Article/129/59/70810.html> [Accessed 10/9/12].
- Hall, M. (1994). Media economics and finance. In *Media for democracy in Malawi*. Report of a Conference convened by the International Federation of Journalists (IFJ) in Blantyre, Malawi, August 17-19, 1994.
- Himelboim, I. & Limor, Y. (2008). Media perception of freedom of the press: A comparative international analysis of 242 codes of ethics. *Journalism*, 9, No. 3, 235-265.
- Kanyongolo, E. (1994). Press freedom and the law- the need for reform. In *Media for democracy in Malawi*. Report of a Conference convened by the International Federation of Journalists (IFJ) at Blantyre, Malawi, August 17-19, 1994.
- Kruger, F. (2009). *Media courts of honour: Self-regulatory councils in Southern Africa and elsewhere*. Windhoek: Fesmedia Africa.

- Malera, I. (2010). State of media freedom: Malawi'. In *So This is Democracy?* Annual publication of the Media Institute of Southern Africa. Windhoek: Misa.
- Manjawira, E and Mitunda, P. (2011). Origins, growth and management of the broadcasting industry in Malawi. In E. Kondowe, P. Kishindo and F. Mkandawire (Eds), *Journalism practice in Malawi: History, progress and prospects*. Lilongwe: UNESCO.
- MCM (2009). *Malawi media code of ethics, Complaints and disciplinary procedures*. Lilongwe: MCM.
- MCM (2008). *Media Council of Malawi*. Annual Report, July 2007-July 2008. MCM.
- MCM (n.d.). *MCM Constitution*. Available: <http://www.mediacouncilmw.org/constitution.html#sec>. [Accessed 8/9/12]
- McQuail, D. (1987). *Mass communication theory: An introduction*. London: Sage Publications.
- McQuail, D. (2000). *McQuail's mass communication theory*. (4th ed.). London: Sage Publications.
- Misa Malawi. (2008). *Malawi Broadcasting Corporation (MBC) Conduct*. A letter of complaint submitted to MCM. 6 June 2008.
- Sawant, P. B. (2003). Accountability in journalism. *Journal of Mass Media Ethics: Exploring questions of media morality*, 18, No. 1, pp 16-28.
- Sonani, B. (2012). House Repeals Section 46. *The Nation*, Thursday, 31 May, 2012.
- Tettey, W. J. (2006). The politics of media accountability in Africa: An examination of mechanisms and institutions'. *International Communication Gazette*, 68, No.3, pp 229-248.
- Venter, C. (2008). *Accountability and self-regulation of the media in Malawi*. Unpublished research report. Johannesburg: University of the Witwatersrand.

Assessment of Nigerian Press Council in regulating journalism practice

By Nicholas S. Iwokwagh and Moses I. Akurega

Abstract

This article assesses the activities of the Nigerian Press Council in the regulation of journalism practice in Nigeria and the extent to which the Nigerian Press Council has ensured that journalists maintain professional ethics in the discharge of their duties. Findings show that the Nigerian Press Council does provide journalistic instruction but most observers feel it has had relatively little influence on the practice of journalism in Nigeria. The ineffectiveness of the Council stems largely from its lack of competent personnel and lack of funding but more fundamentally a Lagos High Court pronouncement in 2010, which declared it an illegal entity.

Key words: Nigeria, print media, press council, media regulation, journalism ethics

Introduction:

Journalists play crucial roles in society as purveyors of information. They act as watchdogs of society by calling attention to issues that portend danger to the society; this is in addition to their task of highlighting issues that are germane to development and social transformation. In essence, the relevance of journalists to society cannot be overstated because they disseminate information that is of central importance to the growth and continuous survival of society. Akinfeleye (2003) notes that information is especially necessary for effective governance and administration. Further, he observes that "Lack of information or misuse of information or hoarding of information will be counter productive in government and/or

Author biographical note

Nicholas Iwokwagh is Senior Lecturer and Head of Department of Information and Media Technology, Federal University of Technology, Minna, Nigeria. His recent publications include *The 2011 presidential election in Nigeria: The media, opposition politics and social responsibility*, Lambert Academic Publishers and with Herbert W.Batta, Newspaper coverage of corruption issues in Nigeria, *African Communication Research*, 4, 323-342.

Moses Akurega is a PhD student in Mass Communication, Department of Mass Communication, University of Uyo, Akwa Ibom State, Nigeria.

administration” (p.1). This presupposes that apart from being a source of power, information can serve as a catalyst, a propeller or an accelerator of meaningful development.

Journalism thus demands a high degree of public trust. The observance of the highest professional and ethical standard as well as a healthy regard for the public interest is a moral imperative for journalists working in the news media. This explains why the Nigerian Press Council (<http://www.presscouncil.gov.na/code-of-Ethics-for-nigerian-journalists>) holds that truth is the cornerstone of journalism and every journalist should strive diligently to ascertain the truth of every event.

Conscious of the responsibilities and duties of journalists as sources of information, the Nigerian Union of Journalists (NUJ) has prescribed a code of ethics for the practice of journalism in Nigeria. Elements of the Code include:

- Trustfulness
- Accuracy
- Fairness
- Confidentiality
- Incorruptibility

Truthfulness:

Undoubtedly the most important ethical principle of journalism is truthfulness. As stated earlier, journalism can only endure and survive if it enjoys a high degree of trust. This can only happen when the practice is hinged on truthfulness. This means journalists should write and report only the objective truth. Affirming this view, Ganiyu (2004) argues that journalists’ allegiance should be to the truth and not the sources of their stories or even their institutional background.

Accuracy:

Like truthfulness, accuracy is fundamental to the practice of journalism because it enhances the level of trust the public will have for a medium. Accuracy means correctness of facts in news reports. In other words, accuracy demands that references to age, date, name and quotation in news reports must be “factual and precise presentation of verifiable facts” (Ciboh & Iyorkyaa, 2004, p. 54). According to these scholars, journalists should take the trouble to check every name, title, date, spellings and fact to ensure that they are accurate.

Fairness:

Fairness operates in an atmosphere that is devoid of bias. Put differently, fairness means taking a neutral stand on parties in reporting disputes, issues or events. This explains why Ciboh and Iyorkyaa (2004) warn against convicting people in journalistic reports or selecting information in such a way as to portray a foregone conclusion.

Impartiality:

This demands that journalists should not take sides in an issue they are reporting by including their views or opinions in the report.

Decency:

Decency measures the standard of responsible behavior in the society. There are rules that guide public morality in every society which the media should not violate so as not to corrupt societal morality. Ganiyu (2004) For example, observes that the publication of nude people in photographs or the transmission of sexual intercourse on television is against the ethics of decency and should not be engaged in by the media.

Confidentiality:

Journalism practice entails jealously guarding the sources of information. In other words, journalists are bound by professional ethics which forbids them from disclosing their sources of information even under duress (Ganiyu, 2004). In cases that have to do with corruption and/or crime, most sources of information would not want to be identified. Journalists are therefore expected to shield such sources from danger.

Incorruptibility: Journalism demands that the practitioners be upright, live above board, and never succumb to bribery and corruption. In this regard, journalists have been admonished to never receive gratification in order to cover or publish an event; rather, that public interest should, at all times dictate the conduct of journalists (Ganiyu, 2004).

Origins of the Nigerian Press Council

The need to enforce, and ensure strict adherence to the provisions of the code of ethics by journalists led to the establishment of the Nigerian Press Council (NPC). The Council is charged inter alia with the responsibility of monitoring the activities of the media through content

analysis and ensuring that the areas of conflict between journalists and society are minimized. The objective of this paper therefore is to assess the performance of the Council in regulating journalism practice in Nigeria.

Historical Background of the Council

The Nigerian Press Council has an interesting but checkered history. According to the Nigerian Press Council (1998), attempts at establishing this self regulatory body date back to the early 1970s with the setting up of a commission (named the Ekineh Commission after a distinguished Nigerian attorney) by the General Yakubu Gowon's regime. The commission had the mandate to study the prospects for the future of the Nigerian media. However, findings of the Ekineh Commission were not made public so it failed to achieve the aim for which it was set up and did not lead to a regulatory body. Attempts were again made in 1988 via promulgation of the Nigerian Media Decree No. 59 of 1988 to put in place a regulatory body to monitor the practice of journalism in Nigeria. However, this attempt, like the first, was aborted largely because journalists were apprehensive of the seemingly totalitarian powers the Decree conferred on the Council (*Nigerian Press Council*, 1998).

Omole (2000) observes that some provisions of the Decree were clearly objectionable. The questionable provisions, he argued, authorized the government to appoint the majority of the members of the Council. This trend, Omole explained, prompted the Nigerian Press Organization (NPO) to reject these provisions outright and by extension, the Council itself. He recounts that "the Nigerian press rejected both the Nigerian Press Council Decree No. 30 of 1978, which first established the Press Council and the Nigerian Media Council Decree No. 59 of 1988" (p.30).

Adducing reasons for the rejection, Duyile (1989) argued that the NPO would not have anything to do with the Council because of its pro-government composition. Okunna (2003) confirmed the pro-government composition of the Council, arguing that "out of the fifteen members of the council's board; as many as eight would be directly and solely appointed by the government" (p. 123). The government-appointed members included the chairman, two representatives of educational institutions where journalists are trained, three persons representing the general public, one of whom should be a woman, and two representatives of the government of the federation.

Furthermore, it has been argued that “of the remaining seven members made up of six mass media professionals and one member of the Nigerian Bar Association, the government would still appoint all of them, even after they have been elected or nominated by their professional bodies” (Okunna, 2003, p. 125). The nature and character of the composition of the Council therefore led to the conclusion that the Nigerian Press Council cannot be regarded as a self-regulating mechanism in journalism.

There is also the position that the current statute - the Nigerian Press Council Act No. 85 (as amended in Act 60 of 1999) is more or less a consensus Act arising from hard bargaining between government and the Nigerian Press Organisation (NPO), an umbrella body for the major stakeholders in the industry (Akinfeleye, 2000). The stakeholders have been identified as the Nigerian Union of Journalists (NUJ); the Nigerian Guild of Editors (NGE); and the Newspaper Proprietors Association of Nigeria (NPAN). The Nigerian Press Council (NPC) is therefore a parastatal established by Decree N0. 85 of 1992, and the Nigerian Press Council Act No. 85 (as amended in Act 60 of 1999) to ensure the maintenance of high professional standards for the Nigerian Press.

Objectives of the Council

The Nigerian Press Council has, as its primary objective, the regulation of journalism practice in Nigeria. More specifically, the Council was established to act as a buffer between the media and the public. Accordingly, it has been acknowledged that the Council has the mandate of ensuring high ethical and professional standards in the media; enquiring into complaints about the press and conduct of individuals or organizations of the press; monitoring the activities of the press with a view to ensuring compliance with the code of professional and ethical conduct; receiving applications from and documenting the print media, as well as monitoring their performances to ensure that owners and publishers comply with the terms of mission statements and objectives in liaison with the Newspaper Proprietors Association of Nigeria (<http://www.mandate+of+council+of+Nigerian&gov>).

Other objectives of the Council include research on contemporary press development; updating press documentation; reviewing developments likely to restrict the flow of information, and advising on measures aimed at remedying such developments. Others include ensuring the protection of the rights and privileges of journalists in the lawful performance of their duties, and fostering the achievement and

maintenance of high professional standards by the Nigerian press. The Council also has the mandate of reviewing media laws, policies and programs, or developments perceived as hostile to the operations of the press, as well as advising on possible remedies.

Thus, the protection of the rights and privileges of Nigerian journalists is an integral component of the Press Council's functions. However, as laudable and plausible as these objectives seem, operations of the Council have been bedeviled by many challenges which have rendered its operations ineffective.

Challenges of the Council

To many discerning minds, the Nigerian Press Council was dead from conception. Banjoko (2012, p. 1) for instance, remarks that "long before a Federal High Court sitting in Lagos pronounced the Nigerian Press Council an illegal entity, the body had been moribund especially as nobody took any serious matter to it for attribution." One major challenge that is confronting the Council is the question of its constitutionality. Indeed, Decree 85 of 1992 which set up the Council is seen as oppressive, overbearing and grossly incompatible with civilized standards of society (Banjoko, 2012). He cites Justice Liman who, in a court verdict, declared the Council unconstitutional and null and void, observing that sections of the Nigerian Press Council Act constituted a huge bulwark against the full expression of opinions, ideas and views whether by the individual journalists or by the press and, thus, constituted a violation of the rights guaranteed under Section 39 of the 1999 Nigerian Constitution.

Another challenge with which the Council is grappling is the antagonism and severe criticism of media professionals particularly for its obnoxious provisions, and the constitution of the membership of the board. According to *mediaethicsorganisation.com* (2012, p. 2) "the Nigerian Press Council Decree had been lampooned by many professionals particularly for its obnoxious provisions and those who were recommended to constitute its board members."

Another challenge that constitutes a stumbling block to the success of the Council is the precedence set by similar councils in other parts of the world. According to *mediaethicsorganisation.com*, the establishment of similar organizations in other countries had faced stiff opposition. It cites the examples of Sri Lanka where the government, in 1964 (through the Council), introduced a law aimed at taking over one of the three major newspaper groups, a move that resulted in a

nationwide agitation against the government leading to the dissolution of parliament. India is also reported as having had a similar experience in September, 1964. Incidents such as these caused concerns regarding the operations of the Council in Nigeria.

There has also been the genuine fear that the traditional right of journalists to protect their sources of information would be compromised. This, Banjoko (2012) observed, must have informed Justice Liman's view that the Press Council Act was "most praetorian as it has the potential to restrict the expression of opinion and stall the growth and development of ideas that have universally characterized the development of inhabitants" (p. 2). In other words, Justice Liman appears to be saying that responsive press councils should not only provide for individuals to articulate their views and ideas, but also to express them, and impart them in the freest atmosphere, while ensuring that the diffusion of such views and opinions is achieved.

In an interview (July 27, 2012) with the researchers, Shu'aibu Usman Leman, National Secretary of the Nigeria Union of Journalists (NUJ) asserted that the most daunting challenge the Nigerian Press Council has been faced with is the rift in the ranks of the stakeholders at whose instance the Council was established in the first place. These stakeholders, according to him are the Nigerian Union of Journalists (NUJ), the Newspaper Proprietors Association of Nigeria (NPAN) and Nigerian Guild of Editors (NGE).

Leman observed that while the NUJ was not totally opposed to the spirit and mandate of the Council, it was not comfortable with the provision that avails the government the exclusive right to appoint the chairman and a greater percentage of the board members of the Council. He argued that the Union (NUJ) preferred a situation where the major stakeholders would have a free hand to nominate three professional colleagues from whom the government will choose one as the chairman, while the Executive Secretary of the Council will be elected by the members.

Unfortunately, the insistence of the government on determining the composition of the Council generated strong antagonism against the Council among the professionals whose activities it was set up to regulate. This eventually led to the legal process instituted by the Nigerian Guild of Editors (NGE) and Newspaper Proprietors Association of Nigeria (NPAN) the judgment, which subsequently nullified 17 of the 22 clauses in the NPC Act. It is therefore significant that the judgment has rendered the Council relatively inactive, a state

which Leman admits, is seriously threatening the Council's capacity to carry out its mandate.

In another interview (July 26, 2012), Bayo Atoyebi, Executive Secretary of the Nigerian Press Council, confirmed Leman's stand, arguing that the Council is seriously challenged by the apprehension of the Nigerian Guild of Editors and Newspaper Proprietors Association of Nigeria who express the fear that amendments in the Act establishing the Council in 1999 aimed at giving the government the leverage to control, censor and muzzle the press. He particularly decried the nullification of 17 of the 22 clauses in the NPC Act by a Lagos Federal High Court in February, 2010 saying this development has been hindering the Council from carrying out its full mandate.

It is therefore clear from the foregoing that the Nigerian Press Council (NPC) is facing serious challenges in the pursuit of its mandate. The question then is to what extent has the Council fulfilled its purpose in the face of these daunting challenges? Put differently, how well has the Nigerian Press Council carried out its work of regulating journalism practice in Nigeria?

Assessment of NPC in the Regulation of Journalism Practice

With the avalanche of challenges confronting the Nigerian Press Council, the performance of its mandate of regulating journalism practice in Nigeria is now a matter of conjecture. For instance, Zoe Attat (Interview, July 31, 2012), a Senior Correspondent with *Leadership Newspaper Group* in Abuja asserts that the NPC has failed in its broad objective of promoting the standard of journalism practice in Nigeria because it has not been able to rein-in some newspapers that depict indecency in their publications. She particularly cites the example of weekend newspapers that display pictures of scantily dressed women on their front pages every weekend. This, according to her, is a violation of the code of journalism ethics which expects decency.

Shu'aibu Usman Leman, National Secretary, NUJ, shares Attat's convictions (Interview, July 27, 2012). According to him, the NPC has failed in correcting the wrongs it was set up to correct. He attributes this failure to the challenges facing it especially the court judgment standing against it. To this end, he remarked that "the judgment has tied the hands of the Council thus preventing it from carrying out its mandate."

Similarly, Kate Agbo (Interview, July 31, 2012), a correspondent with one of the leading newspapers in Abuja and Treasurer of the NUJ, Abuja Council and active in assessing the activities of NPC questions the Council. In an interview she concluded that expectations should not be high with regards to the capacity of the Council to fulfill its mandate, particularly in the face of the continuing antagonism between the Council and its key stakeholders. Her reasoning was anchored on the Biblical aphorism that a house divided against itself cannot stand.

The picture was not radically different from the standpoint of newspaper editors. For instance, in assessing the NPC with regard to the fulfillment of its mandate, Ibanga Isine, a veteran journalist and Editor of *Leadership Government* scored the Council below average. His argument is that "the council was dead on arrival." Buttressing his claim, Isine holds that "The Nigerian Press Council was not conceived to succeed. Whatever it claims to have achieved has not impacted on the performance of journalism practice in Nigeria."

However, in assessing the performance of the Council so far, the Executive Secretary of the Council, Bayo Atoyebi, sees things differently. According to him, it is untrue and therefore unfair to say that the Council has failed to carry out its mandate. While acknowledging the difficulties faced by the Council, particularly the Lagos Federal High Court judgment of February 25, 2010 that nullified 17 of the 22 clauses in its Act, Atoyebi said the Council has been doing its best to build the capacity of practicing journalists with the aim of upgrading the standard of the profession in Nigeria. He particularly cited the training the NPC held for journalists in the run-up to the 2011 general elections on the art of election coverage, noting that the training was responsible for the enviable standard journalists attained in the coverage of the elections.

On how well the Council has fulfilled its mandate of monitoring newspaper contents, Atoyebi said rather than policing and punishing erring journalists and their newspapers, the Council operates with the *advocacy approach* where newspapers that publish materials that violate the code of journalism ethics are admonished and asked to desist from such publications. This policy, he observes, is working well as most newspapers are humble enough to acknowledge their faults and take corrections. Another area, in which the Council has succeeded, according to Atoyebi, is in the reduction of the obstacles hitherto placed in the way of journalists in the performance of their duties by individuals, government or organizations. He stressed that through the

series of training workshops organized by the Council, journalists have been empowered to enforce their right to information as guaranteed by the Freedom of Information Act. This development, he said has reduced the spate of speculative journalism occasioned by the dearth of factual information by overzealous government officials who hoard information from journalists on the pretext of oath of secrecy.

Conclusion

Findings show that it has been extremely difficult for the Nigerian Press Council to enforce a code of ethics on account of the opposition which it is facing. For instance, the question of the constitutionality of the Council poses a major challenge, first to its legitimacy, then to the nature and character of its operations. A further challenge is the Lagos High Court judgment of February 25, 2010, which nullified 17 out of the 22 clauses of the enabling statute (Decree 85 of 1992) and has prevented the Council from carrying out its intended functions. A major problem is the continuing antagonism between the Council and key stakeholders. In the view of many of those interviewed, the Council has failed to prosecute erring professionals and has failed to promote ethical standards of decency..

Although the Executive Secretary of the Council, Bayo Atoyibi, has enumerated a few achievements of the Council, especially the training courses in journalistic capacity building and advocacy, this does not seem to have had a significant impact on journalism practice in Nigeria.

References

- Akinfeleye, A. (2000). *History of the Nigerian press council*. Lagos: Nigerian Press Council.
- Akinfeleye, A. (2003). *Fourth estate of the realm or fourth estate of the wreck: Imperative of social responsibility of the press*. Lagos: University of Lagos Press.
- Banjoko, D. (2012). Abrogation of Nigerian Press Council Act: the Challenges. Retrieved from <http://www.mediaethicsorganisation.com> on July 10.
- Bayo, A. (2012) *Oral interview*, July 27th
- Ciboh, R. & Iyorkyaa, T. (2004). *News writing*. Makurdi: Aboki Publishers.
- Ganiyu, M. (2004). *The reporter's companion*. Ibadan: Embee Books.

- Nigerian Press Council (2012). Code of ethics for Nigerian Journalists. Retrieved from <http://www.presscouncil.gov.ng/code-of-ethics-for-nigerian-journalists> on July 10th.
- Nigerian Press Council (2012). The Nigerian press council mandate. Retrieved from <http://www.mandateofcouncilofnigeria.gov> on July 10th
- Ibanga, Isine (2012) *Oral interview*, August 3rd.
- Kate Agbo (2012) *Oral interview*, July 31st.
- Nigerian Press Council (1998). *Ethics in Nigerian journalism*. Abuja: Nigerian Press Council.
- Okunna, S. (2003). *Ethics of mass communication*. Enugu: New Generation Books.
- Omole, G. (2000). The Nigerian press council, 1992-1998. In R. Akinfeleye, G. Omole, & O. Omang (Eds.), *History of Nigerian press council*. Abuja: Nigerian Press Council.
- Shu'aibu Usman Leman (2012). *Oral interview*, July 27th.
- Zoe Attat (2012) *Oral interview*, July 31st.



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***African Communication Research* (ISSN 1821-6544) is published three times a year, May, September and December, as a service of the Faculty of Social Sciences and Communications at St. Augustine University of Tanzania, Mwanza, Tanzania for communication researchers of Africa.**

All correspondence should be directed to:

Prof. Robert A. White,
Coordinating Editor
P.O. Box 21399, Nairobi, 00505 Kenya
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