

**REPORT OF THE PRO-TEM COMMITTEE  
MALAYSIAN MEDIA COUNCIL**

**30 JULY 2020**

*Please send all responses to [feedback@mediacouncil.my](mailto:feedback@mediacouncil.my)*

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## **EXECUTIVE SUMMARY**

This report is produced by the protem committee of the Malaysian Media Council, in response to a request by the Minister of Communications and Multimedia.

The report argues the case that the Council is the way forward to regulate the fast changing media industry, particularly to reconcile regulations covering print, broadcast and online media, while ensuring the freedom of press, as guaranteed in Article 10 of the Federal Constitution.

The report sets out the establishment of the Council via an Act of Parliamentary, with the scope, structure and operations of the Council. A draft bill is included.

The report also provides a draft code of conduct for the media industry, a dispute resolution procedure for public complaints against the media and an approximate budget for the Council.

The protem committee hopes that the report is well received, and we look forward to engaging the government to make the Malaysian Media Council a reality.

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## **1. INTRODUCTION**

### **1.1 Background**

The establishment of a media council was first proposed in the 1970s. However the proposal did not make headway. As other countries opted for media self-regulation, Malaysia held on to its regulatory framework, particularly the Printing Presses and Publications Act 1984 (PPPA) and later the Broadcasting Act 1988.

Following the growth of the Internet as a key source of news, the government and media industry once again examined the option of a media council as a way to self-regulate. In 2001, the Malaysian Press Institute carried out a study and developed a detailed proposal, including a draft bill for the Majlis Media Malaysia or Malaysia Media Council. However, the proposal to remove existing media regulation in favour of self-regulation did not get government approval.

In mid 2018, the newly appointed Minister of Communications and Multimedia, Gobind Singh Deo and the media advisor to the prime minister Datuk A Kadir Jasin, called on the media stakeholders to propose a model for a media council, in line with the policy direction of the government.

Several initiatives were undertaken including discussions among publishers and a civil society hosted National Consultation on a Malaysian Media Council resulting in various draft bills on the proposed Malaysian Media Council. These were presented to the government in mid-2019.

On December 6th, 2019, the cabinet approved a proposal by the Minister of Communications and Multimedia to appoint a pro-tem committee to develop the proposal of a media council and report back to the Minister. The Minister and the Media Advisor to the Prime Minister hosted a meeting among media stakeholders on January 16th, 2020 and appointed the pro-tem committee consisting of the following members:

### **1.2 Protem Committee Members**

1. Premesh Chandran (Chief Executive Officer, Malaysiakini)
2. Datuk Dr Chamil Wariya (Chief Executive Officer, Malaysian Press Institute)
3. Datuk Yong Soo Heong (Member of board of trustees, Malaysian Press Institute)
4. Ding Jo Ann (Advisor, Centre For Independent Journalism)
5. Datuk Ahiruddin Attan (President, National Press Club)
6. Gayathry Venkiteswaran (Lecturer, Nottingham University)
7. Kuik Cheng Kang (Editors' Association of Chinese Medium of Malaysia)
8. Tehmina Kaoosji (Institute of Journalists)
9. Radzi Razak (Spokesperson of Gerakan Media Merdeka)
10. Ashwad Ismail (Representative of Astro Awani)
11. Rozaid A. Rahman (Representative of The Star)

12. Jahabar Sadiq (Chief Executive Officer,, The Malaysian Insight)
13. Patrick Lee (Foreign Correspondents' Club Malaysia)
14. Datuk Mokhtar Hussain (Chief Editor, Bernama)

At its first meeting, the pro-tem committee decided to include more members to ensure all stakeholders were represented.

15. PC Liew (Advisor, Media Chinese International Group)
16. Lokman Mansor (Group Editor, NSTP)
17. Professor Zaharom Nain (University of Nottingham)
18. S.S. Yoga representing Sabah and Sarawak
19. Farah Marshita Abdul Patah (Vice President, National Union of Journalists)
20. Muguntan Vanar (President, Sabah Journalist Association)
21. Jacqueline Radoi David (President, Federation of Sarawak Journalists Associations)

Subsequently, Wathshlah Naidu from Centre For Independent Journalism also joined the committee to assist

In its first meeting, the pro-tem committee agreed that the work of the committee will be guided as follows:

### **1.3 Guiding Principles**

1. The scope of the media council shall cover all forms of media including print, broadcast and online and shall cover private as well as public-owned media.
2. The media council will NOT cover individual speech on social media or blogs, for which other laws currently or should cover.
3. Participation in the media council will be on a volunteer or opt-in basis, there will have to be sufficient benefits and incentives for the media industry to participate
4. Laws that curb press freedom or inhibit good journalistic practices will have to be abolished.
5. The media council will have a code of conduct for media as well as a proper grievance procedure.
6. The media council will also look into the overall sustainability of the media industry, improving journalism standards and media literacy.

The committee setup working sub-committees to draft reports in covering four areas:

- The structure and governance of the council
- A draft code of conduct
- A proposed grievance mechanism

- Legal reform to develop media-self regulation

In March 2020, a new minister of communication and multimedia was appointed, Datuk Saifuddin Abdullah. At the same time, the Movement Control Order came into effect on March 18th. Both events placed limitations on the work of the committee.

With the easing of the Movement Control Order, work on the media council proposal resumed in May 2020, leading to this report.

This report provides the rationale for the media council, provides the general structure of the council, as well as provides a draft parliamentary bill complete with a draft code of conduct and dispute resolution procedure, and suggested legal reform.

## **2. RATIONALE**

### **2.1 Reconciliation between traditional media and new media**

The development of the Internet and what is broadly termed “new media” or “online media” has redefined the media industry. Media distribution is no longer dependent on massive printing presses or broadcasting equipment. The Internet allows information consumers and producers to interact at will, using cheap available devices and near ubiquitous connectivity. The Internet user is also no longer bound to national media and is able to access news and entertainment in all forms and languages, generally free of government restrictions and censorship.

Recognising the role of the Internet, the Malaysian government introduced the Communications and Multimedia Act 1998, to regulate online speech. Section 3(3) of the Act, states that “Nothing in this Act shall be construed as permitting the censorship of the Internet” taking a bold step towards uploading the freedom of speech enshrined in Article 10 of the Federal Constitution<sup>1</sup>.

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<sup>1</sup> Article 10:

(1) Subject to Clauses (2), (3) and (4)— (a) every citizen has the right to freedom of speech and expression; (b) all citizens have the right to assemble peaceably and without arms; (c) all citizens have the right to form associations.

(2) Parliament may by law impose— (a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence; (b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order; (c) on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality.

(3) Restrictions on the right to form associations conferred by paragraph (c) of Clause (1) may also be imposed by any law relating to labour or education.

In doing so, the law created a diverged media industry. Publications and broadcasting would be licensed and regulated, but Internet content would not be subject to license and censorship, although post-publishing laws such as sedition, defamation and secrecy would still apply.

At a time when the online media was in its infancy, and access to online media was limited to a smaller percentage of the audience, this divergence was less problematic. However, with the advent of the smartphone, online media has become arguably the most common source of news, especially in urban areas.<sup>2</sup>

The two different standards have created confusion both for the consumer and the producer of news. A satellite tv provider has to spend millions censoring the news if it's viewed by the consumer via a satellite dish and a set top box. The same news can be shown to the viewer free of censorship when accessed via a computer. The print publisher can give one version of the news online, but will have to restrict the same news when printed in the newspaper the next day. The Home Ministry has one set of rules for print and the Malaysian Communication and Multimedia Commission (MCMC) has another set of rules for online media.

The restrictions to print and broadcast were justified on the basis that society had to be protected against information that would harm public order and public morality, or jeopardise national security. Given the cleavages within society, restrictions were also placed against questioning various provisions of the constitution.

However, there is no evidence that online media operating outside these licensing restrictions have caused harm to the public order and public morality, or jeopardized national security. Thus, moving away from restrictions based on the method of distribution, is the first step towards reconciling this divergence, in favour of the constitutional framework for freedom of speech.

As we move away from government restrictions, the media is left to formulate boundaries that promote responsible publishing envisioned by the constitution. This responsibility encompasses fair, balanced and accurate reporting, as well as its role to spotlight injustice and inequality, be a forum for public debate and fact check against fake news. At the same time, media itself needs to be accountable for its own conduct, and ensure that the public have a right to question and hold the media accountable for its reporting.

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(4) In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under paragraph (a) of Clause (2), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law.

<sup>2</sup> The Department of Statistics reported that, at the end of 2019, household Internet penetration increased to 90.1%, while Internet usage in general was at 84.2%. Mobile phone access among Malaysians was close to 100%.



This is the role envisioned for the Malaysian Media Council. The council should represent publishers, practitioners and the public, collectively the producers and consumers of the media. The council's main responsibility is to promote the development of good journalism, while creating a recourse for public accountability, independent of the government of the day. The council should ensure that the journalism is both sufficiently funded and free of interference, so that editors and journalists can carry out their mandates, without fear of persecution.

## **2.2 Incentives for the government**

It is clear that no one political party or coalition will dominate the executive indefinitely. If when a party is in opposition, it welcomes the media scrutiny of the government of the day, the same party should be ready for the same scrutiny when in power.

With growing media plurality, even if one particular media has an ownership bias, the media as an aggregate will offer a variety of views. The diversity of media also makes it almost futile to try to silence the industry as a whole. Moreover, offering the government up for scrutiny to a free media, is a powerful form of legitimacy, whereas curtailing media freedoms quickly erodes authority.

The Council will also reduce the cost of the government to regulate the media. There should be cost reductions at the Home Ministry and the Department of Information, as duties to monitor the media and issue media accreditation moves to the Council.

## **2.3 Addressing disinformation**

Fake news, false news, disinformation, misinformation and hate messaging thrive in an environment where accurate information is absent, and there is a lack of trust in the media. Readers develop a trust relationship with peers on a chat group, an echo chamber of their own biases and beliefs. Inaccurate news and views, spread virally along these channels, just as a virus spreads from person to person silently and without scrutiny.

An independent and professional media industry is the best form of social inoculation against the spread of false and fake news. Armed with news and views based on facts, society becomes less prone to wild accusations and fear mongering. The fabric of knowledge becomes the open platform for debate, understanding and compromise, the best and only counter for divisive misinformation and a language of hate spread in closed social media and chat groups.

## **2.4 Economic benefit**

Various reports have shown that a professional and independent media bring economic benefits to the country.<sup>3</sup> The media creates more responsive public policy, building stronger social foundations on which the workforce can become more productive. It improves transparency and accountability, reducing corruption and improving governance. The media can raise alarm, in times where those inside the system fear speaking out.

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## **2.5 Incentives for the media industry**

The media industry will primarily benefit from being able to set common rules and standards for the industry itself. Such rules can be developed over time as social norms change and new technology and challenges emerge. This is especially important as technology quickly creates new media formats and players, content that could be ‘deep fakes’ as well as algorithm or computer generated content.

The Council will also be the voice of the industry and be able to put forward recommendations for journalistic best practices, and financial sustainability. As globalisation erodes national information boundaries and other nations and foreign companies look to imposing standards and practises that affect local news, the Council can be at the forefront to voice the concerns of the industry and develop methods to ensure professional journalism is safeguarded.

Working with Human Resource Development Fund, the Council can develop training programs and upskill talent in the industry, without creating additional financial burdens.

The Malaysian Media Council Act may also create an alternative complaints procedure, allowing for quick resolutions of defamation and other cases, without costly recourse to the courts. This can also serve the public interest, especially those looking for a quick redress to a report, rather than a lengthy and expensive settlement.

## **3. ROLE AND OBJECTIVES OF THE MEDIA COUNCIL**

Responding to the rationale of the media council, the aims of the Council are to:

1. Defend, uphold, and promote freedom of the media in Malaysia, as guaranteed under Article 10 of the Federal Constitution of Malaysia, Article 19 of the Universal Declaration of Human Rights and other international human rights instruments;

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<sup>3</sup> World Bank: **The Right to Tell : The Role of Mass Media in Economic Development**, <https://openknowledge.worldbank.org/handle/10986/15212>

2. Promote a legislative and regulatory environment conducive to media freedom;
3. Establish the Code of Conduct, and to promote ethical and responsible conduct among journalists and media practitioners;
4. Establish an independent body that responds to public complaints, mediates complaints and advocates on behalf of media industry professionals;
5. Conduct promotion and education of journalism as a matter of public interests and support media literacy among the public;
6. Support the financial sustainability of the media industry, and represent the industry;
7. Accredite members of the media, and protect media professionals in their professional capacity;
8. Conduct relevant research and publish reports on issues related to the media; and
9. Collaborate with similar bodies locally or internationally with the aim of sharing best practice and improving regulation within Malaysia;

These objectives are in line with similar media councils in other jurisdictions.

#### **4. STRUCTURE**

The structure of the Council should represent all major stakeholders in the media industry, particularly, publishers and media practitioners, including editors, journalists, designers and photographers.

The committee agreed that membership should be on a voluntary basis, with sufficient incentives for major media to participate. Compulsory membership would resemble regulatory control and reluctance in terms of cooperation and support for the Council.

The committee also recommended excluding individual expressions of speech, such as in blogs and social media, as these expressions do not follow journalistic checks and balances and can be governed under current laws such as the Communications and Multimedia Act.

In order to be independent, the members of the council should be nominated and selected among its members, and ensure that all stakeholders are represented, with a balance in gender and geographical distribution.

#### **4.1 Membership and Governance**

Membership of the Malaysian Media Council shall be open to all organisations, journalists and individuals actively involved in the regular production of news content whether in print, broadcast, or published online;

- a. Who agree to abide by, uphold and promote the Code of Conduct for Media in Malaysia established by the Council;
- b. Who agree to abide by the decisions in matters of public complaint, including, but not limited to, the printing of corrections, clarification and where necessary retractions or apologies; the training of individual journalists and/ or editors; and
- c. Who have paid the requisite membership fees

Membership applications shall be made to the Executive Committee, which shall be empowered to accept members in three categories (i) media publishers, including state broadcasters and media, (ii) individual journalists or organisations representing journalists associations and media practitioners, and (iii) non-media practitioners, including representatives from civil society organisations.

An Executive Committee is to be elected by the Membership and shall be mandated to make decisions, either by consensus or simple majority, on matters prescribed in the Act. The Executive Committee shall be composed of a minimum of 13 members, comprising:

- a. Four (4) from media publishers, to be voted from amongst members who are registered as such.
- b. Four (4) from groups representing journalist and media practitioners, to be voted from amongst members who are registered as such
- c. Four (4) from non-media practitioners, including civil society organisations, to be voted from amongst members who are registered as such.
- d. A Chairperson, to be elected by the Executive Committee

The Executive Committee can add on voting members to the Committee as it deems necessary to carry out its objectives but not more than 25 members including the Chairperson.

The final composition of the Committee, not including the Chairperson, shall have equal gender representation and at least 25% representatives from Sabah and Sarawak,

All members of the Executive Committee, including the Chairperson, shall serve a two-year term, and can be reelected, but not serve for more than four years continuously.

## **4.2 Secretariat**

A Secretariat is to be established to support the operations and implementation of the Malaysian Media Council activities. A Secretary General will be appointed by the Executive Committee. Where necessary, regional offices are also to be established to support the work of the Council.

## **4.3 Funding**

Funding of the Council shall be via membership fees, to be determined by the Council and a grant from Parliament, and / or by a suitable tax to be determined by Parliament, such as on advertising or internet connectivity.

A budget shall be approved by the Executive Committee. A tentative budget is presented in the schedules

## **5. CODE OF CONDUCT**

The Code of Conduct is the industry's standard on how journalism should be practised in Malaysia. While it borrows from international best practises, it is cognizant of the constitutional position on free speech as well as local practises and concerns.

Fundamentally, the Code of Conduct is a living document. It is meant to evolve as lessons from the journalistic practice emerge, similar to changes in practise in law, medicine and other fields. The code should guide journalism but always scrutinised against the wider principles of justice and human rights. Ultimately, journalism has to serve the public good.

A draft Code of Conduct is included in the schedules. It contains 13 sections that addresses the challenges that journalists, editors and publishers face when producing content. The final code shall be agreed upon by the Council once established.

## **6. GRIEVANCE PROCEDURES**

The key public interface between the Media Council and the general public will be through its grievance mechanism, which will be accessible to any party with an interest in ethical and responsible reporting, or to any person aggrieved by actions of a member of the Media Council aimed at establishing credibility and creating accountability of the media industry. Any member of the public can file a complaint regardless of status, with due regard for the privacy of complainants where applicable.

A grievance mechanism will be established to ensure that alleged breaches of the Media Council Code of Conduct and other related standards are handled and resolved in a fair,

impartial and transparent manner guided by principles relating to non-discrimination, due process, natural justice, good faith, accessibility, efficiency, accountability and independence.

The dispute resolution bodies, including the First Instance Panel and the Appeals Panel, would be set up to investigate, deliberate and deliver decisions, and shall include members of the Council and experts with the necessary expertise, including members possessing the necessary knowledge and skills in the fields of freedom of expression, understanding of the media landscape, and domestic and international human rights law.

The Dispute Resolution Procedures would provide the crucial procedural safeguard of review and deliberation by an independent and impartial Panel and will set out the grounds for complaints, related composition and powers of the adjudication Panels and nature of remedies that could be obtained. Parties to disputes may also avail themselves to alternative resolution options such as bilateral negotiation or mediation as available under the Dispute Resolution Mechanism.

The draft Dispute Resolution Procedures will set up the parameters of the mechanism and its related procedures. The final Procedures shall be incorporated within the Act. It will be supplemented with Standard Operating Procedures and other related dispute resolution guidelines, including on Bilateral Negotiations and Mediation, which shall be endorsed by the Executive Committee and adopted by the Council. Periodic reviews and revisions shall also be commenced and adopted by the Council as necessary to ensure that it meets the evolving context and growing international standards on dispute resolution.

## **7. LEGAL REFORM**

This section presents some of the key areas that need to be considered for media legal reforms, in conjunction with the proposal to form a Malaysian Media Council, in order to create an enabling legal environment for media, including access to information, while setting standards and protections for media professionals.

The fundamental principle and right for the media and people's access to information is enshrined in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In the Malaysian Federal Constitution, these rights are enshrined in Article 10 on freedom of speech; however, these rights are restricted on the grounds on protecting national security, public order, morality and other areas as prescribed in Article 10(4) – which have become justifications for increased restrictions over the media in the past.

Broad-based reforms should ideally address the current legal and non-legal challenges or limitations faced primarily by the media:

- Licensing of print and television and radio broadcasters
- Political ownership and state-run media
- Censorship
- Criminal defamation
- Secrecy laws
- Defamation
- Source protection
- Accreditation of journalists
- Ethical and professional standards not observed across the board
- Weak or limited union representation
- Financial sustainability

### **7.1 The scope of media legal reforms**

Typically, the focus of media reforms involves changes to the laws by removing or amending restrictive laws and/or introducing new ones, or to introduce a new legal framework entirely. Some of these may not be strictly confined to the media but are necessary parts of wider reforms. Laws and policies should ensure media pluralism and diversity, public's access to information, and protections against hate speech, incitement or discrimination.

Beyond the laws, many other factors influence the work of the media – whether positively or negatively – and must be considered when proposing and deciding on the best reforms strategies possible. For example, in creating an enabling environment for press freedom, we will need to ensure that journalists' and creative workers' rights as employees are well protected, as well as sources and whistleblowers who speak to the media.

Below are key changes related to the media that should be on the agenda for detailed discussion on media reforms. These are also informed by the indicators identified by UNESCO in its recommendations for media development.

### **7.2 Constitutional guarantees**

While Article 10 of the Federal Constitution on free speech has been interpreted to include press freedom, albeit not explicitly, it does not guarantee access to public information. A constitutional guarantee is essential to ensure press freedom is protected, thus ensuring the right of media personnel to do their work, and for the public to enjoy the right to public information. An amendment to Article 10 of the Federal Constitution is recommended to guarantee these rights and remove barriers to expression and information.

### **7.3 Repeal of the Printing Presses and Publications Act 1984**

This law has been the major obstacle for the print media and those wishing to publish their own newspapers. The Home Minister has the authority to grant a publishing license. The courts have ruled that such a decision cannot be arbitrary, and the right to publish is

guaranteed under Article 10, and can only be denied on the grounds of public order, public morality and national security.

Nevertheless, applications to print have been denied and existing print media have been threatened with the suspension of their print licenses, affecting their ability to carry out business and their role to keep the public informed.

A repeal of this former colonial law is long overdue. Media companies, publishers and printers are already registered as businesses under the Companies Commission of Malaysia and are subject to laws relating to its operations, defamation, advertising, employment and the Penal Code.

Publishers should at most be required to submit copies of their publications for archival use, which could be placed under the Malaysian National Library Act 1972 or the National Archives Act 2003.

Provisions in the PPPA that deal with imported publications will have to be reviewed for their relevance; and if need be, legislated upon separately, as it was prior to 1984 when they were governed under the Control of Imported Publications Act 1958.

The government should announce a moratorium on the application of the PPPA of up to six months to facilitate the passage and gazettment of the law to establish the Council.

#### **7.4 Review of the regulations in the Communications and Multimedia Act 1998 (CMA)**

Radio and television broadcasters are subject to content regulations, which accompany the broadcast licenses issued. Much like the PPPA, the CMA provides for the Minister to issue conditions for license holders, and these regulations cover the news and entertainment content (Section 205 of the CMA).

There is an urgent need to remove the unduly restrictive provisions (for example, some radio stations are still prohibited on paper to broadcast political content even though the stations chose to open up such discussions since the May 2018 elections). Reviews should also involve the Communications and Multimedia (Licensing) Regulations 2000.

#### **7.5 Enact a Right to Information law**

A repeal of reform of the Official Secrets Act 1972 (OSA) should be prioritised together with the enactment of a federal law to guarantee access to public information. The OSA has prevented the media from reporting on public interest issues, when they have been given confidential documents that show corrupt practices in the public and private sectors.

Dealings related to the controversial 1Malaysia Development Berhad, or agreements between the government and private companies on water management or highways have been



declared as official secrets and cannot be scrutinised by the public. Individuals have been prosecuted under this law for exposing official documents.

A Right to Information law will raise the standards of good governance and public accountability, much needed in the country given its experience of financial and institutional scandals. The law should also include the setting up of an Information Commission and the appointment of information officers at all government and semi-government agencies.

## **7.6 Decriminalise expression**

It is key that expression is decriminalised, both for citizens to enjoy rights to freedom of expression but also for the media to be able to report on issues of public interest. These include:

- Repealing the Sedition Act 1948
- Reforming Sections 499-502 of the Penal Code
- Amending Sections 505 (b) and (c) of the Penal Code to limit the application of the law to speech intended to incite violence or serious public disorder, discrimination or hostility against an individual or clearly defined groups of persons
- Amend the CMA to clearly define and restrict application of Sections 211 and 233 to speech that pose actual harm and risk. Among others, there is a need for prosecution to prove intent, to remove the use of the terms “annoy” and “abuse” which are arbitrary and do not meet international standards on limitations to free expression.
- Amend Section 114(a) of the Evidence Act which extends publishing responsibility to include user-generated contents such as in chat groups, online forums, comment sections and social media posts comments.
- Bring the Finas Act in line with the constitution by removing licensing to conduct various forms of filming.

The government should also consider amending the Government Proceedings Act 1956 to allow for wider criticism to support public participation and scrutiny of those in power and in public interest.

This follows the Federal Court decision in September 2018 that recognised the rights of governments to sue individuals for defamation, in the case of *Chong Chieng Jen vs Government of State of Sarawak & Anor*. While the case is pending trial, it is important to review laws that have given state institutions excessive powers and the immunity from public criticism.

## **7.7 Guarantees for source protection**

As several cases in Malaysia have shown, there are legitimate reasons to guarantee the anonymity of journalist sources. Such a guarantee would support Section 8 of the proposed Code of Conduct on sources and confidentiality.

In 2016, the Malaysian Federal Court agreed with a decision of the Court of Appeal to uphold the decision of the High Court that a journalist did not need to disclose the identity of his sources for an article he had written. High Court judge Lau Bee Lan held that it would be more in the public interest for the court not to order the journalist to reveal his sources.

A relevant example could be Australia where the Evidence Amendment (Journalists Privilege) Act 2011 allows for court discretion to order that a journalist is not required to reveal his or her source. Alternatively, such protections to be included in the defamation law, the Securities Commission Act and the Malaysian Anti-Corruption Commission Act 2009.

### **7.8 Fairness and equality in elections coverage**

Part of the legal reforms towards a more democratic society is where political actors are able to have fair and equal access to the media during election campaigns. In the past, media controls by the ruling coalition meant that those in the opposition would be denied or restricted access.

It is recommended that the Elections Offences Act 1954 is amended to ensure declaration of funding for airtime and advertisements, and guidelines set for the fair allocation of time by state media for political parties and candidates during elections.

### **7.9. Public service media**

Reforms should also include placing state media such as RTM and Bernama under an independent body that serves public interest. This will require guarantees for editorial independence or non-interference, and fairness and equality in representation. The independent body should be separate from the ministerial structure.

### **7.10 Equal access for the media**

The issuance of accreditation passes by the Information Department can be moved to the Malaysian Media Council.

Where particular accreditation is deemed to be required and is justified, it should be done by the hosts and professional bodies that want to ensure standards and support for bona fide media professionals, including freelancers. For example, journalists covering elections in Malaysia will have to apply for passes issued by the Election Commission.

### **7.11 Enforcement of anti-piracy measures**

For the proposed media council to be effective, there should be corresponding support through better enforcement of existing laws on anti-piracy, as provided for under Section 239 of the CMA and Section 41 of the Copyright Act 1987, especially to address illegal streaming and torrent sites.

## **8. CONCLUSION**

As mentioned in the introduction, the call to move away from colonial era restrictions on the media, and to move towards stewardship by media stakeholders, is not new, and is now a common practise in most democracies that regard the media as a key democratic institution.

With the growth of new media, and the constant change in media consumption driven by technological development, a media council will be able to set common standards and practises for the media towards fulfilling its responsibility in informing the public promptly and accurately.

The protem committee has brought together publishers, journalists, academics and civil society actors, and together we highly recommend moving forward with the Malaysian Media Council as envisioned here.

END