

fesmedia  Africa series

**Media Courts of Honour**  
Self-regulatory Councils in Southern  
Africa and elsewhere

*By Franz Krüger*

© 2009 fesmedia Africa  
Friedrich-Ebert-Stiftung  
P O Box 23652  
Windhoek, Namibia  
Tel: +264 61 237 438  
Email: fesmedia@fesmedia.org

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*This report is dedicated to Lungi Dlamini,  
who contributed to the fieldwork on which it is based. Her promising  
young life was cut tragically short in April 2009*



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## ABOUT THE AUTHOR

Franz Krüger is adjunct professor and director of the Wits Radio Academy. He is also the ombud for the Mail & Guardian and a member of the SA Press Appeals Panel. His book *Black, white and grey: journalism ethics in South Africa* was published in 2004, while a second title, *The Radio Journalism Toolkit*, was published in 2006. Both are widely used as prescribed text at colleges and universities in South Africa and abroad.

# 1. Introduction

The Media Council of Tanzania is a court of honour. It has no coercive powers. Its strength is in its legitimacy, which it derives from the fact that it was established by media practitioners themselves.

- *Editorial, Media Watch, newsletter of the Media Council of Tanzania, No 99, June 2008.*

The media make mistakes. Even though news organisations generally place great store by the principle of accuracy, none of them can claim a perfect record. Names are misspelled, titles garbled and events placed in the wrong location. Simple errors of fact of this kind are only the mildest problems that arise in reporting. Other possible transgressions range from invasions of privacy and causing offence to defamation. The issue that confronts the media and the societies in which they work is how these problems should be dealt with. There are several options on offer, from outright state control and regulation through legal recourse of various kinds to the possibility of complaining directly to the individual editor or journalist concerned.

This report is concerned with press or media councils. They are the most prominent of these mechanisms, at least in democracies: self-regulatory structures, offered by the media themselves as avenues of redress for people who have complaints. They have jurisdiction across the media sector – rather than for a single media house – and tend to rely on moral authority alone. No sanctions beyond a reprimand are generally imposed.

In recent years, there has been an upsurge of interest in media councils in Southern Africa, not all of it benign, and this provides an important element of the context for this paper. Several countries have bodies of this kind, and in several others, the media are making moves to join the “club”. In Botswana, by contrast, the government has launched a full frontal attack on the principle of self-regulation, by pushing through the Media Practitioners Act. Besides establishing a licensing system for journalists, the law sets up a statutory Media Council, even though a self-regulatory council already exists. At the time of writing, the media were contesting this act in the courts (*Bots media go to court*, 2009). In South Africa, the self-regulatory system has also come under pressure, with the ruling ANC threatening a statutory Media Appeals Tribunal. (“ANC resolution on ‘Communication and the battle for ideas,’” 2007) More recently, the party has backed away from the idea. Elsewhere on the continent, the governments of Kenya, Uganda, Rwanda, Nigeria and others have pushed with varying degrees of success for stricter, statutory media regulation.

The aim of this paper is to present an overview of the self-regulatory media councils in Southern Africa and elsewhere. The intention is to develop an understanding of the concrete shapes

taken by institutions of this kind under different circumstances. The focus is on the Southern African councils, but a short survey of international precedent will be provided in order to establish the international norm, to the extent that it exists. The purpose is to see whether the Southern African councils fit the pattern established in the rest of the world.

The emphasis will be on the five Southern African countries which had functioning self-regulatory media councils in 2008: South Africa, Tanzania, Botswana, Malawi and Zambia. Since then, Namibia has set up an ombudsman's office as part of the Namibian Editors' Forum. In Zimbabwe, the Voluntary Media Council of Zimbabwe (VMCZ) was established in 2007 after many difficulties (*Zim council launched at last, 2007*), but the political situation in that country remains in flux. Also, the extremely difficult circumstances of the media there make the VMCZ more of an activist body, set up deliberately to oppose state regulation, than a channel for complaints. Councils in Mozambique and Angola are state controlled, and were excluded on that basis.

Both press and media councils are included, the first being understood to deal only with the print media while the latter include other areas of media activity, too, most prominently broadcasting. Where there is a separate council for broadcasting (like the Broadcasting Complaints Commission of SA, the BCCSA), this is not included. Broadcasting licensing authorities like the Independent Communications Authority of SA (Icasa) are not covered either.

The report will proceed as follows: it will begin by considering the argument for self-regulation, discussing some relevant approaches in media theory, ethics and in international instruments. It will rely centrally on the argument that self-regulation is the only method that can provide media accountability without infringing free speech.

A discussion of the shape media councils have taken around the world follows. The history, common features and other aspects will be considered, and then the paper will attempt to define what makes for legitimacy in a media council. Finally, the vexed question of effectiveness will be considered: how do you measure it, and how much responsibility should a council take for the general behaviour of the media?

Then the report will turn to the Southern African councils. A few explanatory points about this aspect need to be made. The section draws extensively from primary research done in 2008 as part of an honours research project in the journalism programme of the University of the Witwatersrand.<sup>1</sup>

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<sup>1</sup> Besides the councils of Malawi, Tanzania, Zambia, Botswana and South Africa, the Mozambican High Authority of the Media was also looked at for comparative purposes, but does not feature much here, since it is a government regulator, not a self-regulatory structure. The author supervised the initial project, and the honours research reports are listed in the bibliography as sources. Funding support for the primary research came from the Friedrich Ebert Stiftung, who also financed this report. Their backing is gratefully acknowledged.

The councils will be considered under a series of parameters, developed for convenience of discussion and analysis. These are:

#### 1) History

Under this heading, the generally brief history of the various councils is considered.

#### 2) Mandate

This covers the breadth of the council mandates, such as which areas of media activity they cover - print, broadcasting and/or advertising. Do they engage in other activities besides the adjudication of complaints? This question relates closely to the seventh parameter, below.

#### 3) Powers

The investigation asks questions about the sanctions available to councils if they rule against a media organisation, as well as about the ability of councils to initiate complaints rather than wait for a complaint to be lodged. This is an area of interest since critics have accused councils of being passive, and demanded that they find ways of being more proactive. Do they get involved in licensing journalists, which is a function often associated with government-controlled media councils?

#### 4) Environment

It is important to situate the councils in their respective landscapes, exploring relationships with key stakeholders, including the state, the media industry and others.

#### 5) Organisational details

This parameter seeks to clarify issues of structure, membership as well as staffing, infrastructure and related issues.

#### 6) Financing model

A key issue is the source of finance for the councils. The extent of direct support from the media themselves – as opposed to the state or donor funding - has implications for the councils' size and ability to function, as well as their independence.

#### 7) Public profile & public activities

The report looks at what the councils do besides adjudicate complaints, and tries to gauge their public profile.

#### 8) Complaints

Finally, the study looks at the complaints dealt with, the kinds of issues raised and rulings.

Several themes will run throughout the study. For one thing, it will try to identify the factors that make for success or failure, and try to identify the historic, environmental, organisational and other issues that have shaped the various councils and experiences of self-regulation.

Effectiveness and legitimacy are crucial topics. The natural expectation of councils, as of any other institution, is that they work. But how do you judge effectiveness? Is it fair – as some critics do – to hold up any missteps by the media as evidence of the failure of self-regulation?

Although they are complex, these issues are critical for anybody in the media, and particularly for the councils themselves. Public trust is an essential requirement for journalists, as the editor of the SA Sunday Independent, Jovial Rantao, argues:“

Credibility is the lifeblood of our profession as journalists. Credibility is to us what oxygen is to the human body. Without it, we are nothing. Without it, not one person will believe a single word that we write. One of the basic tenets of our profession is to ensure that the credibility of the information we gather on a daily basis is unquestionable. (cited in Krüger, 2004, 4 – 5)

Media councils are mechanisms to improve public trust in the media, by demonstrating accountability. It follows that their own credibility is a crucial challenge. It is in a sense separate to the credibility of the media themselves, but no less important. Put differently, the councils can only do their job of boosting media credibility if they are themselves credible.

It is hoped that this study can make a contribution to the understanding of these institutions of media accountability with all their frailties. The experience of the councils raises some broad issues around accountability, credibility, ethics and the way the media and their institutions are shaped by their environment. In the more immediate and practical sense, it is hoped that this study can help the councils build their own stature and credibility. Groups wanting to establish councils in countries where there are as yet none should also benefit. In addition, the study will provide a useful baseline of information against which future developments can be measured.

Over the years, considerable efforts have gone into building effective journalism in new democracies in Africa and elsewhere. As will be explored further below, the argument is simple: strong democracy needs strong media. Money has been poured into legal reform, training initiatives, leadership, business development and other initiatives. Rather less attention has been paid to the need to build strong structures of media accountability, where journalists subject their ethical standards to the scrutiny of their peers. And yet media councils play a crucial role. If they are well run, they can help raise the standards of journalism, defend media freedom and build the credibility of media and journalists. In doing this, they make journalism itself more effective. These media courts of honour deserve far more support than they get from those individuals and groups interested in the growth of strong, independent media.

## 2. The Case For Media Self-Regulation: Review of the Literature

“For journalists, the obligation to accept scrutiny is special, for scrutiny is the sanction which journalists hold over others.” – *Jens Linde, then president of the International Federation of Journalists (2001: 98)*

### Media and democracy

Arguments about the relationship between media and democracy are well rehearsed, and have become a commonplace. In summary, they are based on the premise that democracy cannot work unless citizens have access to the information they need to exercise their rights. As Andrew Belsey writes:

“... if a government is to be accountable to the people it must know what is going on; if the people are to cast their votes wisely and rationally they too must know what is going on. Information is necessary (though of course not sufficient) for a successful democracy, inasmuch as it requires the free circulation of news, opinion, debate and discussion.” (1998: p 10)

The argument has been extensively explored and developed, but for these purposes we need only note that the approach is situated squarely within the normative tradition, and specifically the liberal approach known as the “social responsibility theory of the press”. Formulated in 1947 by the US Hutchins Commission (Vaughn, 2007: 218), it was included in the influential list of four theories of the press published in 1956 by Fred S. Siebert, Theodore Peterson and Wilbur Schramm. (The others were the “libertarian”, “authoritarian” and “Soviet communist” theories). McQuail summarises the social responsibility theory as follows:

Its main foundations are: an assumption that the media do serve essential functions in society, especially in relation to democratic politics; a view that the media should accept an obligation to fulfil these functions – mainly in the sphere of information, and the provision of a platform for diverse views, but also in matters of culture; an emphasis on maximum independence of the media, consistent with their obligations to society; an acceptance of the view that there are certain standards of performance in media work that can be stated and should be followed. In short, media ownership and control is to be viewed as a kind of public stewardship, not a private franchise... (1987:111)

This pluralist, liberal theory has been exhaustively criticised from a wide range of perspectives. (Useful summaries and commentary of these can be found in the first two chapters of

Gurevitch et al, 1982, as well as Curran & Seaton, 1985, ch 16.) For present purposes, however, we do not need to engage with this vast field in any detail. It can just be noted that the social responsibility approach is unashamedly normative, it seeks to define an ideal. Real media in the real world are of course subject to many failings: for instance, one can justifiably point to the way the commercial imperative of media enterprises can distort ideals of objective reporting, as political economy theorists have done. But critiques of this kind do not really undermine the normative claim of the ideal. In fact, it is noticeable that the normative vision which critics themselves hold to (often without spelling it out in detail) in order to demonstrate the media's failings, are often versions of a social responsibility theory. For instance, James Curran's essay "Rethinking media and democracy" makes powerful and cogent criticisms of simplistic liberal views of the media, and then goes on to make concrete suggestions for a media dispensation that would better serve the public interest (in Curran & Gurevitch, 2002: 120 – 141).

Whatever the criticisms, the social responsibility theory remains dominant in professional and political discourse. As Nordenstreng says: "Most of Europe and the rest of the world take social responsibility for granted. It is the dominant mainstream doctrine in journalism and media policies, including public service broadcasting" (as cited in Christians, 2000, p 26). When asked how they see their role, most journalists speak of making a contribution to democracy by providing citizens with information. And such views are reflected in the fact that freedom of speech and therefore the media have become a litmus test for a democratic order. International instruments acknowledge the point. For instance, the Windhoek Declaration on Promoting Independent and Pluralistic Media says: "...the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development." (Unesco, 1991) There is a long list of international documents and treaties that make a similar point, and hardly a country has a constitution without a guarantee of free speech. Famously, the First Amendment of the US Constitution reads: "Congress shall make no law ... abridging the freedom of speech, or of the press ...". Of course, one need look no further than Zimbabwe to see that fine words in a constitution do not always indicate there is real freedom of speech.

## The place of self-regulation

The media have often been described as a fourth estate, alongside the executive, judicial and legislative arms of government. This idea reflects the realisation that the media are a centre of power in their own right. They can influence individual behaviour (though not often as directly as sometimes assumed), they set the agenda for public debate, they can make or destroy reputations. The nature and extent of media power has long been the subject of academic debate (see Curran et al, 1982), whose details need not concern us here. The critical point is that any power can be abused, and needs checks and balances. In the case of the media, this poses a problem, however. If the media are the watchdogs of other centres of power in society, who will take on the job of keeping an eye on them?

The answer is to be found in mechanisms of self-regulation.

From the Hutchins Commission onwards, self-regulation has been seen as an important element in a system based on a social responsibility approach. According to McQuail, the basic principles of that approach include that society can expect high standards of performance, that

journalists should be “accountable to society as well as employers and the market” and that “media should be self-regulating within the framework of the law and established institutions” (1987: 117 – 118).

Kaarle Nordenstreng captures the logic leading here in these four steps:

1. “Media are influential (operating and perceived as a powerful socio-political institution).
2. “Media are free (autonomy guaranteed by national and international law)
3. “Media are accountable (responsibility determined by social relations and legal provisions)
4. “Media accountability is best achieved by proactive self-regulation.” (2000: 80)

In essence, self-regulation is an attempt to balance the need for some accountability with the desire to safeguard media freedom.

The claim to a right to self-regulate is common among the professions. But there are significant differences between the way self-regulation is understood and exercised in the media, and in fields like law and medicine. These other professions regulate the individual practitioners, and maintain registers. Those professional bodies are usually established by statute, which is rare for media councils, and individual lawyers and doctors found guilty of offending the rules can be struck from the roll and thereby prevented from practicing. Media self-regulation generally deals with the news organisation, the employer, and relies on lesser sanctions. The question of the powers of media councils will be further discussed below.

## **Advantages over the use of law**

Self-regulation stands in contrast to regulation by the state, which is common in authoritarian regimes. In Zimbabwe, the ironically named Access to Information and Protection of Privacy Act (Aippa) provides for the establishment of a Media and Information Commission (MIC) with wide powers to licence news media and individual journalists, and has used these powers extensively to control the media. (Recent changes to the law may open up the media landscape in that country, although this is as yet far from certain.)

This is not to say that the law has no hold over journalists in democratic systems. In all countries, there are laws that impact on journalists. Defamation and reporting of vulnerable groups are just two areas that are quite properly dealt with through the legal system. And even in democratic countries, there are often attempts to extend the ambit of the law with respect to journalism, and by implication roll back the sphere covered by self-regulation. In Britain, for instance, there are periodic calls for stricter laws governing privacy. In many other countries, the perceived weakness of media councils – deduced from their inability to put a stop to excesses - leads to calls for the state to take a direct role.

Proponents of self-regulation advance several reasons why it is better to leave the media to look after their own. First, there are the arguments of principle around the importance of a free media, as outlined in the above discussion. In addition, the argument is made that the legal system is too blunt an instrument to deal with the media. In a report on self-regulation in S-E Europe, Article 19 argues:

“The judicial system’s crude alternatives of guilt or innocence are simply inappropriate amid the nuances of daily news production. The courts are blunt instruments. They frequently demand standards of proof, which may be appropriate in a legal setting but which stifle political discourse. Some judges expect journalists to prove everything they write as conclusively as a lawyer would, with forensic evidence, witnesses and concrete proof. They forget that journalists do not have the power of arrest and that people lie to reporters with impunity. ...The law can prevent good journalism, but no law can create it.” (2005: 18)

Proponents of self-regulation also point to practical advantages. In a 1998 lecture, Lord Wakeham, then chair of the British Press Complaints Commission (PCC), offered up ten advantages that self-regulation has over the courts. (Wakeham, 1998). Besides the arguments of principle already discussed, he said the system was flexible and accessible: “People who complain to us do so without any cost to themselves – other than a postage stamp to send us a complaint. They need take no risks on what I think we would all agree are the significant costs and uncertain return of a legal remedy.” In addition, it was quick, he pointed out, taking significantly less time than a court case would.

A core argument Wakeham used was that self-imposed rules have greater moral authority than any that could be imposed from outside. The code used by the PCC was “imbued with all the moral authority of a document written by editors themselves for editors”, he said, and covered issues like accuracy that could not be dealt with in law. He described the code as a set of responsibilities that applied over and above an editor’s legal duties. “I suspect that laws – or a statutory Code – would inevitably be seen not a baseline from which to make editorial judgements (which is what a voluntary Code is) but as a straightjacket to try and get out of,” he argued. A judgment by an editor’s peers would have more weight than a damages award. This could become a marketing tool, he argued, pointing to France, where newspapers wore fines imposed on them as a “badge of honour”. They were feeding on the assumption that the fines were only imposed because the newspaper had some interesting material, he said. An adverse judgment, by contrast, “is an admission by an editor that he or she has broken the rules which he or she frames and agreed to abide by.” (Wakeham, 1998).

## **Self-regulation as self-defence**

Most press councils set themselves the dual aims of upholding standards and defending media freedom. In Germany, the Deutscher Presserat lists several aims. These include not only “to investigate and decide on complaints” and “to determine irregularities in the press and to work towards clearing them up”, but also “to stand up for unhindered access to the sources of news” and “to stand against developments which could endanger free information and formation of opinions among the public” (Deutscher Presserat, nd). The Press Council of India, similarly, was set up “with the object of preserving the freedom of the press and of maintaining and improving the standards of press in India”. (Press Council of India, nd)

Some of the fights fought by councils in defence of media freedom will be discussed below. But at this point, it is important to recognise that the two aims are inextricably linked. Not only

do many councils protest if the government suggests measures that would infringe media freedom, they defend the principle by their existence. A council sets itself up as an alternative to state regulation, and many were founded to head off precisely this kind of threat.

The British example is typical. A Press Council had been set up in 1953, but was widely criticised for its inability to curb the excesses of the tabloid press. Press barons like Rupert Murdoch and Robert Maxwell and the titles they ran were openly contemptuous of any standards. In late 1989, David Mellor, the minister responsible for the media, warned journalists they were “drinking at the last chance saloon.” In the following year, an inquiry by Sir David Calcutt recommended the establishment of a Press Complaints Commission to replace the council. Crucially, the PCC was to be given 18 months to prove itself. If it failed, it would be turned into a statutory body. Publishers moved swiftly to set up the PCC, and editors developed the first Code of Practice. (Article 19 2005: 35-42; PCC - history, nd; NUJ – ethics, nd)

The battle against outside control is never conclusively won by the media. In Britain, calls for tighter regulation of the media emerge periodically, often in response to one or other excess in the media. In mid 2007, a House of Commons committee concluded yet another investigation into self-regulation, this one after a journalist was convicted of illegally accessing phone messages of members of the royal family, and a row over the publication of intrusive pictures of Kate Middleton, the girlfriend of a member of the royal family. The committee criticised the media and said the PCC should have acted more vigorously, but came down in favour of the system of self-regulation. “We do not believe that there is a case for a statutory regulator for the press, which would represent a very dangerous interference with the freedom of the press,” it said (House of Commons 2007).

Around the time the report was released, however, Tony Blair, then in the last days of his time in office as Prime Minister, called for external regulation. In a bitter attack on journalism, he said competition had turned the media into “a feral beast, just tearing people and reputations to bits, but no one dares miss out.” He said: “The reality is that the viewers or readers have no objective yardstick to measure what they are being told. In every other walk of life in our society that exercises power, there are external forms of accountability, not least through the media itself.” (Quoted in Wintour, 2007).

In order to convincingly fend off moves for government regulation, councils have to be able to show they are effective. The difficult question of what constitutes effectiveness by a council will be considered below.

## **Ethics and accountability**

Journalists come to the concept of self-regulation from a slightly different direction, from the ethics of their profession. These provide a set of rules, aligned with the general morality in society, which buttress the trust of audiences – something practitioners need in order to do their work effectively. The profession’s ethics deal with such issues as fairness and accuracy, the avoidance of conflict of interest, the treatment of vulnerable people, protection of sources and many others.

Accountability has taken on ever increasing importance over the years as an element of journalism ethics. The US Society of Professional Journalists drafted an early code of ethics in 1926. This influential code went through several revisions over the years. The first version contains no reference to accountability (SPJ, 1926). In the 1973 revision, the concept puts in an appearance as a single clause in a section entitled "Fair Play" (SPJ, 1973). By 1996, however, accountability becomes one of just four major sections in the code (SPJ, 1996). It lists several points under this heading:

"Journalists are accountable to their readers, listeners, viewers and each other."

"Journalists should:

- Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- Encourage the public to voice grievances against the news media.
- Admit mistakes and correct them promptly
- Expose unethical practices of journalists and the news media.
- Abide by the same high standards to which they hold others." (SPJ, 1976)

In dealing with several scandals in the recent past, the US media have placed great emphasis on finding new ways of making themselves more accessible and transparent to audiences. The New York Times, for instance, went through an intense period of introspection in response to the Jayson Blair scandal in 2003, which involved the discovery that a bright young reporter by that name had fabricated facts, interviews and stories on a significant scale. In response, the paper took various steps to open itself to greater scrutiny. Among these was the establishment of the office of public editor (NYT, 2003). A conference organised by the Poynter Institute under the title "Journalism without Scandal" in the same year highlighted "accountability and accessibility" as one of five themes the media should address. The others included related issues like attribution and sourcing, and corrections and clarifications (Poynter, 2003). Closer to home, the South African Sunday Times called in an outside panel to review their systems after a series of embarrassing blunders. That panel recommended the appointment of a public editor and recommended other steps to improve accountability. (Fray, Harber, Krüger & Milo, 2008: 79 – 87)

## Media Accountability Systems

Self-regulation takes many forms. It begins with individual journalists and editors, who have the freedom to decide for themselves on the limits they want to observe, and extends to industry-wide arrangements. The French academic Claude-Jean Bertrand, who studied these issues extensively, used the term Media Accountability Systems, which he abbreviated as M\*A\*S and defined as "any non-state means of making media responsible towards the public". (2004)

Understanding the term in this way, one can identify many possible mechanisms. In a 2004 listing, Bertrand named some 80 different systems, ranging from internal memo to scholarly journal, letters to the editor to ethics column, ethical audits to reader surveys. But press or media councils are probably the best known and most prominent of these, and they are the subject of this report.

## 3. Press Councils In Practice: The International Experience

“The mission of the Minnesota News Council is to promote fair, vigorous and trusted journalism by creating a forum where the public and the news media can engage each other in examining standards of fairness. – *Mission statement of the Minnesota News Council*

In the following, the study will consider first the history of press councils around the world, and then discuss the common features and points of difference they exhibit. The section will discuss the features that cement a council’s legitimacy, and consider the complex question of effectiveness. The chapter concludes with some preliminary thoughts about the specific effect new democracies, or transitional societies, have on councils.

### History

The development of press councils needs to be seen in the context of the trend towards professionalisation of journalism, which Stephen Ward traces from around the mid-19th Century (2004:204 ff). Leaving to one side the debate about whether journalism is a profession at all, one can note the growth of the markers of professional status: press clubs and other associations, training courses and codes. It was clearly a logical progression that took the media from defining ethical principles and then formalising them as codes, to establishing a mechanism for enforcement.

The Swedish Court of Honour, founded in 1916, is generally seen as the first press council. The court began work in the midst of the First World War, when confidence in the Swedish press had been badly damaged by attempts by both sides in the war to buy influence. The new body saw three distinguished journalists sit in judgment over their peers if a member of the public complained. An important principle was that it was the newspaper that was held to account, not the individual writer. In the early years, the body also took up industrial issues, such as employee grievances, disputes between companies and the like (Article 19:30).

Other Scandinavian countries followed the Swedish example, and similar councils spread across Europe over the decades that followed. There was a particular burst of activity in the 90s, as the collapse of the Soviet Union opened up the media terrain over much of Eastern Europe. It is worth noting that the Southern African councils (with the exception of South Africa) belong to this same generation, as political systems in this part of the world opened up, too. The significance of this will be explored further below.

Some regional and historical patterns can be noted. For instance, the concept of press councils has never taken hold in the US. Councils exist in only a handful of states, like Minnesota.

In 1973, a National News Council was set up, but it only lasted for 11 years, sunk in part by implacable opposition from important parts of the US media. For many US journalists, media councils seem to be too much of an infringement of media freedom.

France, where there is a similar sensitivity to any infringement of free speech as there is in the US, does not have a council either. Otherwise, they are common across Europe. The British example has been followed across the former colonies, and countries like Australia, New Zealand, India and others have well-established councils.

Of relevance in Southern Africa is the more authoritarian Portuguese tradition. Until recently, the media were subject to regulation by the High Authority for Media, a state body, regarded by Nordenstreng as an instrument of government regulation (2004: 82). In 2006, it was replaced by a new body, the Media Regulatory Entity (Santos, 2005). This is not a self-regulatory body, however, since it is a creation of statute and the Portuguese Parliament appoints a number of members. Both Mozambique and Angola – and possibly other former Portuguese colonies – have a similar statutory High Authority for Media.

## Common features

Essentially, a press council is a body set up by the media themselves to hear complaints. The following will discuss the various features and characteristics in turn, highlighting the common features and variations. The parameters identified for the study of SADC councils will not be strictly followed, although the applicable headings will become apparent and are highlighted where necessary. Rather, a more generally descriptive approach will be followed.

**Focus on print media:** Broadcasting has always been subject to greater regulation by the authorities. This is partly because the frequency spectrum is a limited resource, while the historically stronger involvement by states in broadcasting has also been a factor. As a result, most councils concentrate on the print media. There are some exceptions, like Norway and South Africa. In the Norwegian case, the press council has covered broadcasting standards since 1997 (Article 19:24). In South Africa, a separate self-regulatory body, the BCCSA, functions much like the Press Council. Its parent body is the National Association of Broadcasters (NAB), just as the industry body, Print Media SA (PMSA) is behind the Press Council (Krüger, 2004: 36 – 38). In countries with smaller media industries, it makes sense for one body to deal with lapses in both sectors.

The former British Prime Minister Tony Blair is among those who have argued that technological convergence will dictate new forms of regulation. In the speech previously referred to, he said: “As the technology blurs the distinction between papers and television, it becomes increasingly irrational to have different systems of accountability based on technology that no longer can be differentiated in the old way.” (Quoted in Wintour, 2007). At the moment, many councils are grappling with the question of whether and how to deal with Internet publications.

For a council to be self-regulatory, it must obviously be a creature of the media themselves. There are some complexities, however. Usually, **three groups of stakeholders are involved in some way: publishers; journalists, often represented by a union; and the audience, or**

**public.** In many cases, all three are involved in the establishment and running of a council. The Australian Press Council (APC) is a good example: its constitution requires even representation from all three on the 22-member council. They are chosen according to a complex set of rules and arrangements (Australian Press Council, 2009).

The three groups have different interests, and these sometimes lead to tensions. In 1987, the Australian Journalists Association (AJA) left the APC over the council's failure to take a stand against media concentration – a clear example of an area where publishers are likely to have different interests and views than journalists (Kirkman 1996:14). The AJA stayed outside until 2005, by which time it had turned into the Media, Entertainment and Arts Alliance, representing a broader set of interests. A requirement for media players to disclose commercial influence on news coverage had been added to the basic principles, and this eased the alliance's return (Article 19 2005: 29).

There are examples where journalists' unions play the role of council. These include Iceland, Russia, Croatia and Slovenia. However, as Article 19 points out, "it can be difficult for a trade union to defend a member who is under a threat of dismissal from management and then to turn round and find the same member guilty of professional misconduct". (2005:27) In Holland, the *Raad voor de Journalistiek* initially emerged from within the journalists' union, but is now independent. The Turkish Press Council was founded by individual journalists, but managed to get the support of some publishers (Turkish Press Council, 2008).

The British case is unusual, in the sense that the PCC was an initiative of publishers, leaving the journalists right outside. The way in which the PCC was set up in response to government threats, described above, has been called a "coup which left the (National Union of Journalists, the NUJ) outside the system of self-regulation" (Article 19 2005: 40). Significantly, the NUJ maintains its own code and an Ethics Council, which adjudicates complaints against union members (Article 19 2005: 35-42; PCC - history, nd; NUJ – ethics, nd).

There are several councils that are initiatives of the media alone – journalists and publishers – but leave the public out of the picture. These include councils in Italy, Austria and Germany. The argument for this model is that it protects the independence of journalism, and that outsiders sometimes do not understand the issues well enough. However, the inclusion of public representatives undoubtedly boosts credibility.

In Kosovo, the council has embarked on a staged approach: Currently, it consists of editors alone, but it plans in time to draw in other stakeholders (personal communication from the chair, W. Houwen).

The Press Council of India is just one of several that draw on the judiciary for key positions. Its chairperson is a retired judge of the Supreme Court, currently GN Ray (Press Council of India, nd).

**Finance:** In most cases, media companies pick up the costs of councils. They have a direct financial interest in effective self-regulation, after all, as it keeps government interference at bay.

However, other sources of income are sometimes tapped. The state subsidises some councils. In the case of Germany's Deutscher Presserat, the federal government covers roughly a quarter of the annual budget in terms of a 1976 law. It is intended to guarantee the independence of the council, and expressly forbids the government from interfering. (Article 19 2005: 34). The German example is an exception, though. In general, councils shy away from government subsidy since it hardly ever comes without strings attached.

This leaves the option of private donation. North American councils fundraise from corporates and the public. According to its website, the Minnesota News Council derives around 20% of its budget from the media publishing in the state and its associations. Another 40% come from corporations, 30% from foundations and 10% from individuals. The site offers a "donate!" button to make a direct donation (Minnesota News Council, nd).

The advantage of diverse sources of funding is, of course, that it lessens the council's dependence on one group or sector. In transitional societies, where the media are often still operating from a small economic base, outside funding agencies have played a role in funding councils. This will be explored further below.

**A statutory framework:** Most councils are structured as private associations, without a specific basis in legislation. The Turkish Council is particularly vehement on this point. It refuses to formalise its existence even as a foundation or association "because it is the political authority who sets up the status and the field of activity of associations and foundations. For this reason a press council which is set up in the form of an association or foundation, eventually comes into the sphere of political authority, it can be manipulated by political forces." (Turkish Press Council, 2008)

The Press Council of India is a particularly striking exception. It is established in terms of a specific law, the Press Council Act of 1978. While media people are in the majority, there is sizeable representation from cultural, educational and other sectors as well as parliament. The chair is appointed by a committee dominated by the heads of the houses or Parliament, and has to be gazetted (Press Council of India - history, nd). In most other countries, this statutory framework would be seen as moving the council too close to government for comfort.

In Kenya, the government succeeded in turning the self-regulatory Media Council of Kenya (MCK) into a statutory body. A draft bill had drawn strong protests from Kenyan journalists and international media freedom groups. The draft would have forced journalists to reveal their sources, introduced licensing for journalists and given the power to appoint the MCK chair to the information ministry. In negotiations, the most draconian provisions were dropped, and the Kenya Media Act became law in late 2007 (IPI 2007). It should be noted that despite the unease in many countries about this kind of arrangement, the mere existence of a legal framework for a media council does not on its own turn the council into an organ of the state. The council's behaviour and other factors have to be taken into account.

**Function 1: adjudication:** The first and most prominent role for a council is to hear complaints against news media. Most of them have developed a way of working which combines a mediatory approach with a judicial one. Usually, an attempt is first made to find an amicable

solution between complainant and news outlet. This is often undertaken by the council's full-time staff. The Swedish Press Ombudsman (PO) is enjoined to "rapidly seek to resolve disputes between individuals and newspapers caused by adverse publicity through mediation and by offering advice at an early stage of the dispute. Whenever appropriate, PO, through direct contacts with the newspaper in question, shall hurriedly seek to obtain a correction or sufficient space for reply from the injured party" (PO-PON, nd). In the case of the Alberta Press Council, the complainant is encouraged to seek a solution him or herself. If this fails, a formal request for adjudication must be made (Alberta Press Council, 2007).

If it becomes necessary, a hearing is held. Sometimes this is done by the council itself, in other countries a specific sub-committee exists for this purpose. Significantly, it is generally the publisher or editor that has to answer for any mistakes made, rather than the individual journalist.

The process is seen as an alternative to a legal one, and there are special rules to take this into account. In the Indian case, for instance, the complainant is required to state that the matter is not being taken to court. The council's website points out that this is because it cannot deal with any matter that is sub judice (Press Council of India, nd). In other countries, complainants are required to waive their right to legal action.

Councils usually try to make the process as informal as possible. Some councils, like the PCC, discourage the involvement of lawyers, believing they tend to slow matters down. (The relationship between media councils and the law cannot be explored in more detail here. It would offer fruitful ground for further investigation.) In Kosovo, the complainant does not attend a hearing. Instead, the case is made by an official of the council (personal communication from the chair, W. Houwen.)

A core part of the idea of this kind of self-regulation is that the council's authority is mainly moral. The idea is that criticism by their peers is punishment enough for editors – Wakeham's argument to this effect was discussed earlier. As a result, the sanctions available to councils tend to go no further than instructing the offending media house to publish an apology, correction or similar. In a minority of countries, fines can be imposed. Tanzania, one of the countries that are the subject of this research report, has adopted an unusual and innovative approach to this issue. That country's council often imposes damages, to be negotiated between the parties and then paid by the media outlet to the complainant (Media Council of Tanzania, 2007, various cases).

In general, the lack of punitive powers is one of the chief complaints against the system, and has been made in debates on self-regulation around the globe. In India, the council itself asked for additional powers in 1980, to recommend "the denial of certain facilities and concessions in the form of accreditation, advertisements, allocation of newsprint or concessional rates of postage for a certain period in the case of a newspaper which was censured thrice by the Council" (Press Council of India, nd). Seven years later, however, it withdrew the request and decided to stick with moral sanctions only. According to its website, the government raised the issue some time later, and the council then decided to inform the national and state governments of rulings against delinquent media, so that these could take action "in their discretion". (Press

Council of India, nd) This comes very close to imposing punitive sanctions, and is in line with an approach that seems more authoritarian than most.

Who can complain? Usually, anybody affected directly by a report. Britain's PCC gives several reasons for not generally accepting complaints from third parties. They include the difficulty of finding an acceptable solution when the person affected is not part of the conversation, and respect for an individual's privacy and right not to complain (Press Complaints Commission, nd). However, it allows there may be exceptions to the rule.

It is surprising that the Swedish approach, encapsulated in the dual institutions of Press Ombudsman and Press Council, has not been more widely imitated. (South Africa has these two institutions, but they are not used in the same way.) In Sweden, the Ombudsman tries to resolve a matter informally in the first instance, like elsewhere. But if it comes to a formal hearing, s/he acts as an advocate for a complainant, and the hearing is conducted by the council (Article 19: 30-31). This provides complainants with an expert advocate, without introducing the need for lawyers.

It also creates a mechanism for complaints to be initiated from within the system. Another criticism that has been voiced in countries like South Africa is that the system is purely reactive, only taking up issues where there is a complaint. Australia's council publishes an annual review, entitled *State of the News print Media in Australia*, and this allows it to comment on general trends and patterns in reporting (The most recent one is Australian Press Council, 2008).

**Function 2: Defending press freedom:** We have seen how councils defend press freedom by providing a channel for complaints and acting against media excesses. However, most councils see it as their function to act directly if there is a threat, too. As recently as December 2008, the German Press Council added its voice to protests against a bill which was seen as jeopardising the confidentiality of sources (Deutscher Journalistenverband 2008).

In Tanzania, the government suspended the Swahili-language *MwanaHalisi* newspaper in 2008 because it published claims that there were plots against the president that involved his son. The suspension was for three months, and the editors guild responded by imposing a tit-for-tat three-month blackout on the minister responsible. Journalists demonstrated in the streets. (*Editors respond to ban by blacking out minister, 2008*) The step was surprising, because the country has a strong and respected council, which has been used by various senior politicians. The Media Council of Tanzania also protested the suspension, arguing: "Any complaint should be taken before the right bodies for hearing, and in any case, one cannot be a judge in one's own case, as the Government is doing by closing or suspending newspapers whose reportage it does not agree with." (MCT 2008)

Most commonly, councils may respond to threats they see by formulating a view and making it public, as in these two cases. Sometimes this involves making representations to the government on planned laws. The Indian Council has an additional mechanism, however: it makes provision for journalists to lay complaints against officials for infringing press freedom – and often hears cases of this kind. A list of adjudications from 2006/07 lists 31 cases under

the headings “harassment of newsmen” and “facilities for the press”. (Press Council of India - decisions, nd).

Other threats may come from within the media industry itself. In Australia, we have seen how concentration in the media became a divisive issue for the press council. In New Zealand, the council voiced concerns about tendencies towards rationalisation, that involved off-site editing, centralised production and sub-editing. Reviewing a few cases where these processes had led to mistakes being made, the council said: “The consequences of the process to the vitality of the media, particularly at a local level, will deserve close attention.” (New Zealand Press Council 2007: 15). The issue is of interest to South Africa, where similar models are being introduced by some companies.

**Other functions:** Some councils stick narrowly to their core functions, while others seek to develop further forms of public engagement, and reap the benefits of an enhanced profile and credibility as a result. At the time of writing, the Minnesota News Council website was advertising a public debate on coverage of the Somali community, for instance. It also organises mock hearings, where journalism students are able to debate actual cases the council has dealt with (Minnesota News Council, nd). Other councils run training courses in ethics for journalists, offer scholarships to promising students, award prizes, hold debates or produce publications. The common aim of these activities is to boost the standards of journalism, and to raise the level of public debate.

## Legitimacy

What makes for a successful council? Ronning lists three factors according to which the effectiveness of a council can be judged:

- “The degree to which the ethical guidelines forming the basis of its decisions adequately balance the protection necessary for the press to perform its special functions, and various government and individual interests;
- “the consistency and forcefulness with which the council applies ethical standards; and
- “the degree to which newspapers comply with the council’s decisions. (2002: 65 – 66)

From the foregoing discussion, we can extend his list somewhat. The **involvement of all relevant groups**, owners, journalists and public, is widely seen as crucial. All need to feel like they have a stake. The moment journalists are absent, for instance, a council will struggle to earn the respect of the profession. And the involvement of public representatives serves to emphasise that it is a serious exercise in accountability.

A sense of ownership by the various players is also boosted if a council is set up in a fully **participatory process**. The same holds true for the writing of the code: journalists will be more inclined to follow rules they have had a hand in drawing up.

Also, it is important that a council is seen **to represent the whole media industry**. As a voluntary body, it can normally only adjudicate a news outlet that agrees to be subject to its authority. There are often some titles that choose to stay outside the system, but credibility is

undermined if that group is too large or influential. We will see below how The Media Council of Zambia has been damaged by the outright hostility of an influential newspaper, *The Post*. The Australian council, too, has seen major newspaper groups leave and rejoin from time to time (Australian Press Council, 2005). Of course, this is not something a council can control, but it remains an important factor.

As Ronning points out, member newspapers must show **willingness to be subject to the authority of the council**. That means, crucially, that they must publish critical rulings if the council tells them to. The authority of councils is limited to the making of an adverse finding, and much criticism focuses on the perceived “lack of teeth”. If even this authority is undermined, a council risks becoming a laughing stock. In 1981, the German council was faced with the refusal by the *Kölner Express* to print a reprimand. The council suspended activities until 1985, until publishing houses gave an undertaking to print reprimands if so directed. (Deutscher Presserat – Chronik, nd)

It goes without saying that councils need to **deal with complaints effectively**. This means that the solutions found for particular grievances must be considered, and stand scrutiny by outsiders. It also means that complaints should be resolved with reasonable speed. The British PCC says it takes on average 35 working days to deal with an issue. (Press Complaints Commission – About the PCC, nd) Undoubtedly, a quicker turnaround time would be even better, but that speed compares very favourably with the time a court case would take.

The **personal stature** of the individuals involved obviously affects the standing of the council as a whole. In many cases, retired judges are appointed, as are respected journalists, those with a reputation for fairness and professionalism.

A council must be seen to be **independent**, particularly but not only of the state. Independence is shown in structural arrangements, financing and above all by the council’s actions. Since it cannot avoid being a creature of the media, it is particularly vulnerable to accusations that the profession uses it as a mere fig leaf to hide behind, rather than a serious exercise in accountability. It must show a willingness to act decisively when warranted. The support for some councils from outside NGOs, through funding and the like, can become a problem if not carefully handled. A council may come to be seen as belonging to the funder rather than the local media industry itself.

Credibility is also enhanced when the council can build **a profile** for itself in the public mind. This means that it should ensure its activities are publicised, particularly when it comes to rulings. Hearings should be open to the public. Activities that go beyond the adjudication of complaints also help. Public lectures, publications and other forms of public engagement boost a council’s profile.

## The question of effectiveness

The French academic Claude-Jean Bertrand wrote prolifically on self-regulation. Even though it needs some updating, his website [www.media-accountability.org](http://www.media-accountability.org) remains one of the best sources on the subject, with a large collection of papers and documents. While an enthusiastic

supporter of the concept, he was strongly critical of the shape the institutions were in. He wrote in 2002: "Potentially, councils are the most useful M\*A\*S, but their record is not good. ... All told, there are fewer than 35 in operation: not one country in ten has a council – although there are many more democracies than before and many more media, private media.... To what extent have the Danish, German or Norwegian councils improved the media? Could the Australian council do anything to stop the Murdoch group from controlling 60 percent of the Australian daily press? Did the British council play a part in the newspaper revolution of the 1980s, the collapse of reactionary unions and the birth of new dailies?" (Bertrand 2002: 128 – 129)

He listed a series of objections often made to self-regulation generally and to councils specifically (Bertrand 2002: 137 – 147). From an ultra-libertarian perspective, these include the belief that any rules amount to unjustified interference. The argument goes that a journalist's individual conscience is enough. More commonly, though, critics charge that they are a sham which simply allows the media to behave as they please. For many critics, the institutions are doomed to failure because they lack real power. As Ronning writes, "some critics counter that press councils contribute little to protecting press freedom or countervailing individual interests (such as in privacy or reputation) given the weakness of their sanction" (2002: 64). Wakeham's eloquent argument about the superiority of moral sanctions is undermined every time a newspaper makes itself guilty of sensational reporting or shreds an innocent reputation.

Fundamentally, these criticisms raise the question of how the effectiveness of a council should be judged. On one level, one can look at its ability to resolve issues quickly and to the satisfaction of all concerned. Another measure might be the extent to which government interference is held at bay and media freedom protected. But the most difficult question is whether a council's success should be measured against the actual behaviour of the media. After all, if councils are intended to regulate the media, any misstep can be seen as proof of failure. The Swedish Ombudsman, Pär-Arne Jigenius, noted in 1998 that Swedes bought more newspapers per capita than other people, and linked this to the trust they had in newspapers, and this in turn to the effectiveness of the undoubtedly well-respected press council and ombudsman system. "People believe in the facts that appear in the papers," he said, adding that "in countries where the trust in the press is lost, the purchasing of papers per capita is much lower." (Quoted in Article 19 2005: 32/33) Conversely, Article 19 points to the low levels of trust in the British media as evidence of the weaknesses of the self-regulatory system in that country. It quotes an opinion poll as showing that the public saw journalists as least trustworthy of all professions. (Article 19 2005: 41)

The German council takes a more cautious view. It argues: "It would be wrong to causally compare the deficits or lacking quality of journalistic reporting with any lack of quality in the self-regulation. After all, one does not measure the rate of crime in a society according to the quality of its courts." (Deutscher Presserat – The German Press Council, nd).

Both arguments seem glib. Jigenius's chain of causality linking self-regulation to credibility and hence to readership is too easy and convenient by far. One need only make the point that readership is, surely, related to literacy and income levels to show how easily the chain

can fall apart. And the massive success of tabloid newspapers in many societies, with their often tenuous relationship to the basic ethics of reporting, also illustrate that the connection between standards, credibility and audience size is a complex one.

It seems just as dubious for a council to wash its hands of responsibility for the actual behaviour of the media as the German Council seems to have done. If there is no impact, then what would be the point of having councils at all?

But perhaps we can develop a formulation that avoids both pitfalls, of councils both taking complete responsibility for media behaviour, and taking none. One can argue with confidence that public trust is a function of how trustworthy the media's behaviour is. In passing, we should note that this public trust is not only measured by readership levels, but through opinion polls, the content of letters pages and other mechanisms, too. Councils can make a major positive contribution to levels of public trust - but they are not the only factor. The media economy and the level of competitive pressures it creates; training levels; and the character of individual proprietors are just some of the factors that shape the atmosphere for good or ill.

In considering the media culture as a whole, one must also accept that it is shaped over considerable time. An individual lapse is not indicative, but a pattern of behaviour on the part of individual titles, and of the media as a whole, will certainly influence public trust. For councils, the implication is that their effectiveness can and should be judged by their ability to influence media behaviour over time, taking into account the many other factors at play.

Bertrand had some very specific suggestions. He urged councils to see their mandate more broadly. This meant including broadcasting, monitoring the media for problems and initiating complaints, being involved in training and others. He wrote elsewhere:

“Not unlinked to the timidity or weakness of councils is the worst cause of failure - obscurity. The general public had never heard of the PC, did not know what one was or could be, so could neither support it nor use its services, as in West Germany. That is lethal, for the whole point of PCs is to get the public involved in supporting the independence and quality of media. Only the power of the general public, activated by media professionals, can successfully oppose illegitimate government or commercial interference.” (Bertrand 1990: 7)

In short, Bertrand's call was for councils to become more muscular and proactive. It is hard to quarrel with this view. Both as an international phenomenon, and in their various national incarnations, press councils will build respect to the extent that they are seen to be active and have an impact on real media practice.

## **A note on transitional societies**

Kupe (2007) has discussed the continuities and change in Southern African media over the post-colonial decades. He points to discussions around the role of the media in nation-building and development, the survival of many repressive laws on the statute book of newly independent countries and the survival of strong state involvement and control over broadcasting. The

second step, the liberalisation that swept across the region in the 90s, threw up additional dynamics that bear consideration, since they impacted strongly on the form and functioning of councils. It has not been possible to give full consideration to these issues here, but some tentative points can be made.

In most cases, the opening of democratic space led to a flowering of media. Often, far more newspapers are started than the market can sustain, and are produced by people with more enthusiasm than skill. The Article 19 report on self-regulation in five countries in South East Europe - Albania, Bosnia and Herzegovina (BiH), Bulgaria, Romania and Slovenia - has been extensively quoted here. It describes media landscapes that are economically difficult: readerships are fractured and a large number of titles compete fiercely for a small number of readers. This has a direct impact on standards of professionalism. In the context of BiH, the report says: "Economic pressures are passed on to journalists who frequently work without secure contracts and report violations of their employment rights. With no collective agreement in place and the labour syndicates regarded as a dead letter, journalists are vulnerable to exploitation and therefore also to undue pressure and influence on what they write." (Article 19 2005:50). Levels of skill and training among journalists tend to be low, and this also impacts on standards of professionalism.

Although the report does not say so, it is obvious that there will also be little spare money to finance a media council. If media councils are to be built, other sources of funding have to be sought. In the case of Eastern Europe, the Organisation for Security and Co-operation in Europe (OSCE) has played a significant role in supporting the development of media councils. The report finds that this involvement by an outside agency has led to the BiH council – chaired at the time by a member of Britain's PCC - being seen as an outside imposition.

In countries emerging from civil conflict, also, journalists often remain deeply divided, and this makes the development of a consensus on professional values difficult. The ethnic divisions that are such an explosive part of the picture in the Balkans resonate strongly with the divisions between black and white journalists in South Africa.

At the same time, new democracies have not yet seen a culture of tolerance taking root in the public arena. The authorities may be tempted to reintroduce controls. The Article 19 report describes how in Albania, 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," it says (Article 19 2005:43).

An OSCE booklet summarises the challenges to the establishment of a council in new democracies as follows:

- Lack of a tradition of and experience with self-regulation;
- Political cleavages that divide journalism communities: the resulting lack of dialogue and solidarity among the various factions prevents journalists from jointly defending their common interests;

- The small size of media markets and general underdevelopment of national economies: only a few newspapers and broadcasters can survive, the rest having to ally with political forces to get financial support;
- Persisting political pressure on media, especially public service media, to be loyal to those in power and avoid critical journalism;
- Close co-operation and mutual dependence among political elites and business groups with a vested interest in the media industries, exposing journalists to both political and economic dependence. (Haraszti 2008).

Even these few tentative points make it clear that the impact of the media dynamics in new democracies on the shape and form of self-regulation offers rich potential for further study. This report has not been able to explore these issues fully, and they will have to await further exploration.

## 4. Press Councils in Practice: The Southern African Councils

“It is an effort to prevent external regulation and restrictions. Self-regulation really fills that gap. It’s like a pledge to the public to say, ‘we are responsible, you can give us freedom, we are responsible to regulate ourselves, to put our house in order’. – *Baldwin Chiyamwaka, executive director of the Media Council of Malawi*

This section will compare and summarise the findings on the shape and status of the self-regulatory media and press councils of Southern Africa. The discussion will follow the parameters developed at the outset.

### History

Just as communism was crumbling in Eastern Europe in the early nineties, a wave of liberalisation affected Southern Africa, represented most clearly by the end of apartheid in South Africa. But in other countries, too, the political landscape opened up. So in Tanzania, founding president Julius Nyerere retired in 1985, and his successor Ali Mwinyi in 1992 allowed multi-party politics. In Zambia, multi-party politics became possible in 1991, ending the era of founding president Kenneth Kaunda. Botswana has of course been seen as a stable democracy for much longer, and there is considerable irony in the fact that its council has come under such pressure of late. This opening up of the political environment affected the media landscape profoundly. It allowed a flowering of media, and opened the way for the media to move onto a more professional footing. They had to adapt to their new freedoms and responsibilities in a democratising dispensation. The councils of Southern Africa must be seen as children of this historic moment, even if in some cases it took several years for the councils to begin functioning.

The South African council is a partial exception, in that its history goes back much further. In 1962, the industry body, the Newspaper Press Union, set up the Press Board of Reference in an attempt to forestall the apartheid government’s threat to set up a statutory council. There had been years of hostility between the government and the English press. The 1960 Sharpeville massacre, in which the police opened fire on protesters, heightened tension further, as it attracted massively critical international coverage. In the following years, the mandate of the board of reference was tightened as government pressure continued (Hachten & Giffard, 1984: Ch 3). Over the years, the body changed several times in name and structure, largely driven by a desire to keep government interference at bay. Essentially, the press staved off direct government control by increasing levels of self-censorship. But the cost was high: in the later 1980s, the SA Media Council, as it then was, had little credibility as it was seen to be doing the government’s dirty work (Hachten & Giffard, 1984: 99 – 101).

When the political dispensation changed, the dynamics around the council changed, and were

marked by the desire to create a different body with real credibility, suited to the new democratic order. A crucial change in the evolution of the body came in 1997, when it was replaced by the office of a Press Ombudsman, motivated strongly by a desire to signal a sharp change from the discredited concept of a press council (Ntuli, 2008: 22). By 2007, the media felt that enough water had flown under the bridge, and re-established the press council. The office of ombudsman was retained, but the council was given the additional mandate to defend media freedom. In this way, the political twists and turns of the apartheid decades, and the advent of democracy shaped the South African media landscape and its self-regulatory mechanism. In that sense, the history of the South African council parallels that of other councils.

A short timeline shows how the councils of the region were formed in relatively quick succession during the liberalising 1990s:

**1995:** Media Council of Tanzania formed

**1996:** Media Council of Malawi established

**1997:** SA Press Council changes to Press Ombudsman's office

**2001-2002:** Media Council of Malawi stops working

**2002-3:** Press Council of Botswana registered (2002) and launched (2003)

**2003:** Media Council of Zambia founded

**2007:** Media Council of Malawi revived

**2007:** SA council structure changed, with a return to the SA Press Council while retaining the position of ombudsman.

In most cases, the decision to form a council came in response to government pressure, most often in the form of threats to set up a statutory system. In Zambia, for instance, the government talked of setting up a statutory "Press Association of Zambia" even though a constitution review commission had recommended that any regulatory body should be independent and run by the media themselves. The media took the matter to court, and obtained a ruling in 1997 that the media should regulate themselves. The council was set up in 2004, and a secretariat established in 2006 (Bussiek 2008). Similar stories can be told of the other countries, too – and in those countries without councils, government pressure of this kind has forced the media to discuss the issue.

Let's be honest: it is no point of pride that the media need to be prodded into action in this way. Credibility would be enhanced greatly if self-regulation was more strongly self-initiated. But it simply reflects historical reality, and the councils themselves have generally succeeded in building credibility for themselves.

The process has not always been smooth. In Malawi, a council was set up in 1996, but was unable to get going properly. The website of the Media Council of Malawi (MCM) says coyly that the body ceased to function around 2001 – 2002 "due to problems which are well documented" (Media Council of Malawi – Background, nd). According to an organisational profile, however, the factors that led to the death of this first attempt included a lack of legal recognition and a lack of clear benefits for members. "There was no benefit to be derived from such membership. There was no sense of ownership of the council even from institutional members." Another problem was the perceived lack of authority, and a lack of money (cited in Venter, 2008: 21). The MCM was revived in 2007.

In many cases, the Media Institute of Southern Africa (MISA) played an important role in supporting and encouraging the initiatives that led to the councils' establishment. Having taken a strong view in favour of self-regulation, the regional advocacy group supported several initiatives in this area. In Zambia, for instance, MISA first took any complaints that were being lodged, and later hosted the new council (B. Mwale, cited in Dlamini, 2008: 18).

## Mandate

All the self-regulatory councils discussed here have a similar mandate, which falls under two main headings: improving journalistic standards and accountability, primarily by dealing with complaints from the public and defending media freedom. These twin aims come through clearly as the top priorities of the Media Council of Tanzania, for instance, whose objectives include:

- To assist, safeguard and maintain freedom of the media in the United Republic of Tanzania;
- To oversee that journalists, editors, broadcasters, producers, directors, proprietors and all those involved in the media industry in Tanzania adhere to highest professional and ethical standards;
- To consider and adjudicate upon complaints from the public and amongst the media inter se against alleged infringements of the code of ethics;
- To engage development of the media profession in Tanzania by undertaking activities including, but not limited to, training of journalists, overseeing press clubs development, to conduct various media freedom campaigns, seminars, workshops and/or symposia;
- To maintain a register of developments likely to restrict the supply of information of public interest and importance, keep a review of the same, and investigate the conduct and attitude of persons, corporations and governmental bodies at all levels, towards the media, and make public reports on such investigations;
- To involve members of the public in the work of the Council by granting them membership to the Council and constantly and reasonably keeping the public informed of the Council's operations, views and decisions;
- To promote and defend the interests of readers, viewers, and listeners;
- To promote gender sensitivity, equality, equity and balance (MCT – Objectives, nd).

Some councils focus largely on dealing with complaints, while others are very active in pursuit of broader aims, lobbying for media freedom and other activities that aim to improve media professionalism. This will be discussed further under “public profile and public activities” below.

Almost all the Southern African councils cover print and broadcasting. This makes perfect sense since the size of the local industry in most countries does not make the establishment of a separate body for broadcasting feasible. The exception is South Africa, where a separate body, the Broadcasting Complaints Commission of SA (BCCSA), deals with radio and TV. Internationally, the BCCSA is unusual in that it is a self-regulatory body modelled in many respects on the Press Ombudsman's office. It is more typical for the state broadcasting regulator – the body that issues licences – to have some kind of complaints committee.

The growth of the Internet poses a particular problem for the councils, and there was some discussion at a 2008 workshop of the councils about the best way of dealing with this. The discussion paper written at the end of the workshop summarises the discussion as follows:

The promotion of professional standards of on-line publications of media houses whose print or broadcast products fall under the jurisdiction of the Media Council can and should certainly be part of its mandate. Personal websites or blogs are a different matter. Practically, they are impossible to police given the sheer numbers and the fact that most are anonymous. Legally, bloggers should be seen as the 'modern-day version of speakers at Hyde Park' and there are laws in place that deal with people shouting at street corners and, e.g., defaming others. (Bussiek, 2008b)

Another area of some difficulty is advertising. South Africa has a separate, self-regulatory Advertising Standards Authority and so the press council naturally excludes advertising issues. Botswana also has a separate body for advertising. In Tanzania, the council worked with representatives of the advertising industry on developing a specific code, but sees the area as generally outside of its responsibility. In other countries, advertising comes to the councils simply because there is nobody else to deal with it. There were some concerns raised at the 2008 workshop about whether this might not blur the proper lines between the editorial and business sides of the media.

## **Powers**

In line with councils the world over, the Southern African councils' main sanction is moral: in the event of an adverse finding, they can direct the offending newspaper to publish the finding itself, an apology, correction or similar. Pamela Dube, the chair of the Media Council of Botswana's Board of Trustees, points out that this does have financial consequences: a finding may take up two full pages of the newspaper, and the loss in possible advertising income can amount to P20 000 (R20 000) (cited in De Bruin, 2008: 26).

The Tanzanian council has developed a practice of imposing a form of compensation awards, called a solatium, on offending news organisations. These payments go to the complainant, and the amounts involved tend to be smaller than those awarded in court cases. For instance, in 2001 the council's ethics committee heard a case brought by the Regional Commissioner of Lindi Region, Ditopile Mzuzuri, against Alasiri and Nipashe newspapers. At issue was a report that he had refused at the last minute to officiate as guest of honour at a function. The newspapers conceded they had been wrong and apologised. The committee ordered the newspapers "to meet with the complainant and agree on the amount of money to pay him as compensation", and the case notes record that an unspecified amount was agreed and paid (Media Council of Tanzania, 2007: 61 – 62).

In another case, the committee considered a complaint from one Msafiri Warioba that Clouds FM radio station had defamed him by airing a lengthy interview with his domestic servant who accused him of having her jailed for three months for refusing his sexual advances. He asked for compensation of TZS 20 million (around R120 000). The committee found against

the station, and ordered it to apologise on air, and “that the two parties should agree on the amount of solatium to be paid to the complainant within two weeks and that the secretariat assist in the negotiations.” The case notes record that an agreement was reached that Warioba should receive TZS 3 million (around R18 000), but that the money was not paid, and he took the matter to court. The further developments are not recorded (Media Council of Tanzania, 2007: 78 – 79).

These two examples show how the committee deals with these issues, in many cases leaving the amount to be paid to negotiation between the parties. In other instances, the committee fixes the amount to be paid. It is an interesting, unusual approach, which mirrors an approach taken by the Tanzanian legal system. The second example also shows the limits of the council’s authority. Although it is a well-respected body, there are some cases where its rulings have been ignored. Like most councils, it lacks powers of enforcement and relies on voluntary compliance.

Most councils act only if they receive a complaint, even though a criticism heard frequently is that they should be more proactive. There are people within some of the councils, too, who take this view. The argument for waiting for a complaint is simply that it would be inappropriate for a council to be both judge and prosecutor. Pili Mtambalike, the MCT’s projects officer, puts the argument thus: “It is probably the right thing - for the credibility of the council - not to comment on media issues in case people come to complain.” (cited in Makholwa, 2008, 23)

The Zambian council is an exception, and takes up cases without complaint if it regards it as being in the public interest. In one such case, it investigated a report in *The Post* of a controversial remark made by a minister. It appointed a special committee from outside the council to investigate, and in the end found in favour of the paper. *The Post* is not a member – and has been quite scathing in its criticism of the council – but agreed to co-operate in this case (Bussiek 2008b).

The Malawi council is also able to act of its own accord - and even gives the media a pat on the back when they think it is appropriate. In one case, the police uncovered the fact that a truck driver who lost control of his vehicle and crashed into a taxi did so after being shot by police. Baldwin Chiyamwaka, the executive director of the council, said: “Nobody told us, but we looked at the story, analysed it, and we thought the media had done a credible job. We thought it was incredibly good, because they kept following up on the issue and in the review the police said he died of as a result of losing control, but the media went there to take photographs of bullets! So we did a press statement to thank the media for a job well done and then calling on the police to cooperate with the media to provide the public with credible information because this is an issue of public interest.” (cited in Venter, 2008: 34)

The argument that councils should not act as both prosecutor and judge is a valid one. However, it should not be overlooked that there are ways to overcome this obstacle. In Sweden, as we have seen, the Ombudsman becomes like a prosecutor if a hearing has to be held, while the decision is taken by the council itself. Essentially, this creates two offices in the self-regulatory structure which play the different roles.

Another way of taking a more proactive approach is the publication of annual reports on the state of the media, as done in Australia and New Zealand. This mechanism allows the council to comment in a general way on trends and developments, usually once the timeframe for any possible complaints has passed. While a report of this kind will have less immediate impact on the media, it is likely to have long-term influence.

In most cases, councils play no role in accrediting journalists. In fact, they resist moves in this direction. In a country like South Africa, it would be quite unthinkable for anybody to suggest a system of licensing journalists. It would be seen as completely counter to the notion of media freedom. In countries like Zimbabwe, the state insists on licensing journalists – thereby providing a very clear argument for why it is undemocratic.

However, some journalists feel that accreditation would function as a form of quality control – keeping the riff-raff out of a noble profession, as it were. One also sometimes hears calls for other methods, too, to restrict entry to the profession. These include an insistence on formalised training and others, and there are people closely associated with the councils, who take this position. The Media Council of Malawi is in fact due to take over the role of accrediting journalists from the government. Chiyamwaka said: “Of course we all have freedom of expression but this is a profession, it’s different, and it needs to be respected as such.” (cited in Venter, 2008: 35)

On the scale of possible models, a system of media-controlled accreditation is probably easier to stomach than state-controlled accreditation, which the councils all regard as deeply undesirable. In Botswana, the government’s Media Practitioners’ Bill was fiercely resisted by the independent media, MISA and the council. It provided for the establishment of a statutory council, over which the relevant minister would have extensive power, the enforced registration of journalists and other measures inimical to media freedom. The government pushed the bill through parliament and gazetted it in December 2008 (Misa 2009). Ironically, the council officials had been drawn into some very high-level advisory structures of government. At the time of writing, the media have mounted a concerted campaign against the act, including a constitutional challenge. (Bots media go to court, 2009)

## Environment

As the account from Botswana demonstrates, Southern Africa’s media councils work in an environment, where there are frequent skirmishes with government. No country is an exception to this. In South Africa, the system of self-regulation has come under sustained attack by the African National Congress, which in late 2007 adopted a resolution to set up a statutory Media Appeals Tribunal that would be under Parliamentary control (ANC Resolution on ‘Communication and the Battle for Ideas’, 2007). Perhaps because of the party’s extensive internal political difficulties, the proposal did not move forward, and seems to have fallen off the party agenda. However, the media and the council may yet have to fight hard against it, with the option of a constitutional court challenge high on the list of options.

In Zambia, as has been shown, the media had to go to court to have the principle of self-regulation recognised. Even in Tanzania, where the council is very well respected, to the extent that it is regularly used by senior officials, government is given to occasional sabre-rattling.

The sudden three-month suspension of the Swahili newspaper *MwanaHalisi* in October 2008, imposed by the Minister of Information, Sports and Culture, has been mentioned above. It is probably just as well for councils and the media to accept that some ongoing friction with government is inevitable. The best that can be hoped for is that the tension remains at manageable levels. Media freedom needs constant defence.

Of critical importance is the relationship the councils have with the media themselves. In general, this is good, with news organisations seeing the benefit of the self-regulatory system, participating in it and respecting the councils' rulings. Showing their support in late 2008, Print Media South Africa agreed to a large increase in budget, to allow the addition of two extra people to the Press Ombudsman's office (Makholwa 2008b). The Tanzanian council experiences compliance of around 90%, says Mtambalike. A publisher of Tanzanian tabloids, Global Publishers, did leave the council after a string of critical rulings, declaring the council to be unfair. But the stature of the council is such that the move did not harm it, and the company is apparently now considering a return (Makholwa, 2008: 34). In Botswana, on the other hand, two government media refused to publish adverse rulings. Given the overall small volume of issues dealt with by that council, this represents a high proportion of non-compliance. (De Bruin, 2008: 35)

Much more damaging has been the fraught relationship between the Media Council of Zambia (Mecoz) and *The Post*, one of the country's leading titles. *The Post* has been publicly dismissive of the council, and has set up its own internal Press Freedom Committee, funded by deductions from journalists' salaries. A government minister complained against an editorial that used strong language in describing the president and his ministers, but the editor-in-chief of *The Post*, Fred Mmembe, responded: "I have read Mr David Kashweka's stupid complaint to you. Let him take his complaint to court because we are not part of Mecoz." (cited in Dlamini, 2008: 22) On another occasion, the newspaper referred to Mecoz leaders as "empty heads" when they criticised the paper's use of strong language (cited in Dlamini, 2008: 31). This strongly negative, even hostile attitude by a major newspaper has been a large factor in undermining the council's standing, and Mecoz is simply seen as ineffectual as a result.

**The legal environment:** It is difficult in this context to summarise the enormous complexities of law affecting the media in Southern Africa. The African Media Barometer series does an excellent job of unpacking the issues arising in the various countries (all AMB reports can be accessed on [www.fesmedia.org](http://www.fesmedia.org)). The point can simply be made that the SADC countries generally guarantee freedom of expression and the media in their basic constitutions, but that the statute book tends to be full of laws and provisions that are problematical for the media. These include provisions around security, laws on criminal defamation and many others. Legal protection for journalistic confidentiality is uncommon, although ironically, Mozambique's press law does contain such a provision. Some countries have moved towards the introduction of a law around the rights of access to information, while in others media groups are still campaigning for it.

## Organisational details

**Membership:** The core membership in all cases consists of the media themselves. Government media, where they still exist, are slightly more reluctant participants. Space is usually made for interested parties like training bodies, associations and the like to become involved, either through full or associate membership. In Zambia, a new constitution waiting for ratification will do away with individual and association-based membership, and put the emphasis, as elsewhere, on membership by media houses (Dlamini, 2008: 28).

**Governing bodies:** A board or similar structure oversees the work of the councils. It is at this level that public representatives are often brought in. Malawi has a National Governing Council, for instance, with seven members: three are from the media, three are nominated by named non-media institutions like the Law Society, and the chair is a person of high standing with either a media or non-media background. (Venter, 2008: 31 – 32)

**Ethics and appeals committees:** Complaints are handled by separate ethics committees, often chaired by a retired judge. Some councils allow for a separate appeals committee, others lack provisions for appeal. South Africa is different, here, in that it is the office of the Ombudsman that handles complaints, both by arbitration and then, if necessary, hearing and adjudication. There is an appeals panel, which hears cases if either party is unhappy with the Ombudsman's rulings, and he sometimes draws people from that panel to assist in first-level hearings (SA Press Council, nd: 12 – 27).

**Secretariat:** The engine-room of any council, as with other organisations, is an office of full-time officials. The biggest council in the region is Tanzania's, with seven staff, some interns and further expansion on the cards. (Makholwa, 2008: 28). It is a very busy council, with an active ethics committee and involvement in many other activities. It is followed by the Malawi Council, with five staff (Venter, 2008: 32). Although a very busy council, too, South Africa has up until now made do with just an Ombudsman and an assistant. But it will grow to a complement of four in the near future. One of Zambia's many difficulties has been the fact that it has been unable to attract funding for its staff, who have as a result operated on a kind of voluntary basis (Dlamini, 2008: 27).

**Complaints processes:** Councils usually set some conditions that have to be met before a complaint can be entertained. For instance, there is often a time limit. Some councils will accept complaints from people other than those directly affected by a report, others will not. A first attempt is usually made to mediate a solution to avoid a formal hearing. In many cases, this succeeds. Often, complainants are required to waive their right to take legal action. Hearings are generally public, although more could be done to draw public attention to them. They are relatively informal, quasi-legal affairs. There is usually a provision for an appeal.

**Codes:** All councils consider complaints on the basis of a code, and these are available on [www.journalism.co.za](http://www.journalism.co.za) and elsewhere. They take a similar approach to codes around the world, starting with an assertion of the core function of journalism. In the Zambian formulation, for instance: "The purpose of distributing news and informed opinion is to serve the general welfare." (Mecoz, nd) They go on to cover truth, fairness and (to a lesser extent) independence,

and highlight some of the areas where journalists need to take care, including deception, the protection of sources, privacy, race, gender, reporting that affects children and other vulnerable groups.

Some councils, like South Africa, use a single code. Tanzania, on the other hand, has developed a number of codes for various groups: for media owners and publishers; for media managers and editors; broadcasters; photographers and video producers; news agency journalists and even public information and advertisers.

## Financing models

The councils are financed by a mixture of funding from membership and outside donors. State money is not involved, except in Mozambique, where the authority is an organ of state (Keepile, 2008: 21). With the self-regulatory councils, the mix between funding from members and donors differs greatly from case to case. South Africa's council is funded entirely by the local media themselves, through Print Media South Africa, and has deliberately shied away from seeking money from donors (Ntuli, 2008: 32). With its wide range of other activities, Tanzania's council is heavily dependent on donor funding. Still, around 12% of the council's costs are covered by membership fees. There is also some income from consultancy work. The council has recently agreed a "basket fund" – a plan guaranteeing support for four years from four funders, the development arms of the governments of Switzerland, Sweden, Denmark and Norway (Makholwa, 2008: 28).

The 2008 workshop of councils decided that the councils would make a joint effort to seek funding through a fund to be administered by MISA (Bussiek, 2008).

Membership fees are essential for an effective council, not just because of the money itself but also because they signal commitment to the institution. The first attempt at setting up a council in Malawi failed for a number of reasons, but one of them was that members were resistant to paying a fee, according to Chiyamwaka (cited in Venter, 2008: 20). A vicious cycle was set up: the council lacked credibility and was ineffective, and therefore could not obtain income, which in turn made it impossible to function effectively.

The media industry in these countries tends to be small and is unable to afford an expensive institution. Nevertheless, it is critical for there to be some contribution to the council. Wherever possible, funding from the local media should pay at least for the central adjudication function. At present, the volume of complaints is still very low (see below), and it should be possible to handle them with a small office (a director and an assistant) that would still have capacity left over to deal with other issues. When a council's additional activities, like advocacy, training and others, begin to expand, these could be financed by donor funding.

## Public profile and activities

There are some natural obstacles in the way of a council attracting extensive public attention to its adjudication. Firstly, complaints are not always of broader interest, and the outcome of a complaint may not attract much attention. Exceptions are where high-profile people or sensational stories are concerned. Secondly, there is sometimes a professional solidarity that comes into play: newspapers are not very eager to report on adverse findings against colleagues. The offending newspaper will publish the finding, as directed, often with gritted teeth and in the smallest way possible. Other newspapers will ignore the ruling, perhaps for fear they may be next, and would then not want more attention than absolutely necessary.

Councils need to take concrete steps to draw attention to themselves: apart from anything else, people need to be aware of the possibility of laying a complaint. These steps can take many forms, from member news media running a regular notice with the council's contact details, to encouraging public attendance at hearings and the broader publication of findings. It is good for council representatives to be seen to be involved in broader debates around media freedom.

The Media Council of Tanzania has built up considerable credibility, not least because it plays a role in a number of areas besides dealing with complaints. It has played a leading role in lobbying around the government's Freedom of Information Bill, which is seen as a retrogressive step. It runs training programmes for journalists, although it intends to take a step back from this and concentrate on funding training rather than organising it. It has an active programme of publication, with a monthly magazine, *Media Watch*, a website, and plans a journal. It is involved in an initiative to set up a funding mechanism for in-depth reporting projects. It even runs press clubs in regional centres on a consultancy basis, partly as a way of generating income. The council is seen as a leading force among media organisations in the country, to the extent that other groups sometimes criticise it for overstepping its mandate (Makholwa, 2008: 19 – 20, 29 – 31).

No other council seems to have a profile even approaching the Tanzanian one. Many of them are much younger, or are hamstrung by other problems. Although it has been around for much longer, the South African council has only since 2007 begun to explore the possibilities of a broader role, particularly defending media freedom. Previously, it stuck narrowly to the handling of complaints (Ntuli, 2008: 24).

The national media landscape plays a role in shaping the role a council can play. In South Africa, the very active SA National Editors Forum (Sanef) has become the pre-eminent group representing the media. In some other countries, journalists' unions play that role, while Misa is an important player throughout the region. Clearly, where training institutions provide an effective service, for instance, it would make little sense for a council to begin offering courses. Thus, the Tanzanian council has said it took on a number of additional functions by default, because nobody else was attending to them.

The benefits of a broader range of activities are clear, in that they help boost the profile and credibility of a council. Wherever possible, national councils should be encouraged to spread

their wings, and explore additional ways of helping to build strong, credible and independent media in their countries.

## Complaints

Far and away the busiest council is South Africa, probably due to the size of the industry there and a profile that has been built over many years. Press Ombudsman Joe Thloloe told the SA National Editors Forum he had received 126 serious complaints over the course of 2008 (Expect busy 2009, 2009).

Other figures are:

- Tanzania: around 20 cases a year.
- Botswana: total of 23 from inception in 2003 until the end of 2007, eight in 2007 of which three were withdrawn.
- Zambia: in 2007, seven cases adjudicated and an additional five settled by the parties. By August 2008, the total for that year was four. (Bussiek 2008)
- Malawi: unknown

In general, these are not large numbers.

Where do they come from? An analysis of 136 cases dealt with by the SA Ombudsman over several years found that “ordinary members of society” lodged the majority of complaints, with 71 cases. They were followed by “high-profile individuals” (23), NGOs/institutions/interest groups (16), businesses (15) and politicians (11) (Ntuli, 2008: 48).

It seems that it is primarily the urban elite that complains, since the media in this region remain a largely urban pastime. The Tanzanian council has heard complaints from some very prominent government leaders. The first case brought to it in 1997 came from an MP and former minister, Edward Lowasa, who complained that Heko newspaper had incorrectly reported that a corruption report had named him. He won (Media Council of Tanzania, 2007: 13 – 15). The government of Zanzibar, and a former Prime Minister, Frederick Sumaye, were also among complainants. Sumaye’s case had an interesting aftermath: the council’s ethics committee ordered the newspaper Tanzania Leo to apologise to him and retract a series of stories that claimed he had improperly amassed vast sums of money and was hiding them in foreign bank accounts. The newspaper, unusually, ignored the ruling, and Sumaye went to court to sue for defamation. The court agreed with the MCT, ordered the newspaper to apologise and awarded Sumaye damages of 100m shillings (around R750 000) for the defamation (*Newspaper to pay Sumaye 100 million/-, 2008*).

Unsurprisingly, the MCT used the incident as an object lesson to the media that they should respect its authority. An editorial in its magazine Media Watch said: “It is a shame that a politician can have confidence in the Council, which was established by media professionals themselves, and yet a professional against whom a complaint is lodged does not see the importance of the Council’s conciliation efforts.” (Media Watch, June 2008)

The Malawi council was dragged into the middle of the country's complicated broadcasting controversies, which have seen the refusal of parliament to vote funds for the public broadcaster and complaints that the broadcasting regulator, the Malawi Communications Regulatory (Macra), has failed to act on the ownership of Joy Radio by former president Bakili Muluzi, even though this contravenes the Broadcasting Act. The immediate cause of complaint, lodged first by the local chapter of MISA, was that the Malawi Broadcasting Corporation reported that journalists were being used by opposition parties. The council summoned a range of groups to meetings, including Joy FM, the MBC, even the regulator, Macra, and others. Significantly, it was no hearing and no finding was made. In a statement, Chiyamwaka was quoted as saying that an investigation was carried out and a report submitted. The report would not be publicised, however. It is likely that the issues were simply too large for the young council to resolve. (Namangale, 2008).

## 5. Conclusion

What emerges from the discussion of the Southern African media councils is a picture of relatively new institutions, struggling to find their place in a changing, difficult media and political terrain. They share many common challenges, as they contend with hostile governments, poor journalistic practices and a lack of resources. And yet there are significant differences between them. The strongest councils are undoubtedly those of Tanzania and South Africa. The MCT is far and away the biggest, with a large number of staff involved in a wide range of projects. Besides adjudicating complaints against the media, it is actively involved in lobbying on media freedom issues, even having drafted alternative laws to put to government. It has a substantial publication programme, has developed regional Press Clubs and offered training. Its ethics committee seems to be well established and generally respected, as indicated by the fact that several very prominent people have used it. Respect among the media is high: although there have been some cases of rulings being ignored, these are exceptions. The media provide the council's core funding, while an extensive additional programme of activities is funded by donors. In general, the MCT is an excellent example of how a body of this kind can work.

The South African council is by far the busiest, even though it has a much smaller staff. It has chosen to concentrate almost entirely on the adjudication function. Only recently has it added the defence of media freedoms to its aims, but it is still developing a sense of what this might mean in concrete terms. One of the factors restraining the council from leaping too quickly into this arena is the fact that South Africa has several other media groups, which are already active in the area. Sensibly, there is little appetite on the council for duplicating work that the SA National Editors Forum (Sanef), the Freedom of Expression Institute (FXI), MISA and others are already doing. The council and its ombudsman are highly respected among the media, but have come under fire from some political parties and the government for being too pro-media. It is entirely financed by the media themselves.

The Botswana council is small, and has not yet had the chance to establish itself properly. The number of complaints heard so far is small – which is also a function of the comparatively small media landscape. The council is currently under direct attack from government. As we have seen, the Media Practitioners Act intends to replace the Press Council of Botswana with a statutory regulator, which all the country's media would be forced to join and support, and would establish a compulsory register for journalists. At the time of writing, the country's media were challenging the law's constitutionality in court. But it is clear that the struggle for survival has consumed most of the council's energies and attention.

The Media Council of Malawi (MCM) has had a difficult history, and an earlier attempt to establish a council failed. The new MCM has begun work with a great deal of energy, to the extent of involving itself in the country's tangled broadcasting issues. With donor funding, it

has set up shop with substantial staffing and infrastructure. This dependence may make it vulnerable in future: experience in many sectors has shown that donor funding is not a secure basis for long-term planning. Uniquely among the self-regulatory councils of the region, the MCM has embraced the idea of a register of journalists. In my view, this is ill-advised. 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. Taking this direction might turn the MCM into a “journalists’ police”.

The Media Council of Zambia (Mecoz) has had a great deal of difficulty in establishing itself. A lack of funding and full-time staff has undermined the body’s ability to function and its leadership has been frequently criticised. A significant factor undermining the council’s credibility has been the hostility of a crucial player, the private newspaper *The Post*.

In general, the Southern African councils are clearly in line with international models. This study set out to establish the international precedents in some detail, in order to be able to compare the Southern African experience. The discussion has shown that aside from some minor variations, the local councils are in line with international practice under each of the relevant parameters. They are what they claim to be, self-regulatory mechanisms of the media, and this is reflected particularly under the crucial parameters of mandate, powers and organisation.

Where they differ, however, is in the political and media environment they have to contend with. I have argued above that the Southern African councils are children of the liberalising decade of the nineties, with the partial exception of the SA body. Their societies are all new democracies, and the above description has shown very clearly how this fact has affected them in various ways. For one thing, they service media, who are themselves small and underfunded, and have some difficulties in supporting a self-regulatory body. This has created unhealthy dependence on donor funding. The Tanzanian council’s model is probably the best one, where membership fees cover core funding, enough to cover the main function of handling complaints, and donor funding is used for additional activities. It is clear that at this stage, most of the councils are not dealing with large numbers of issues, and it is simply unnecessary to establish a large office to deal with them.

Another feature of new democracies is a growth, sometimes explosive, in available media, produced by journalists, who lack training and professionalism. Prof Mwajabu Possi, director of the Institute of Journalism and Mass Communication at the University of Dar es Salaam, for instance, highlights the growth in the tabloid sector in Tanzania, adding that it has led to a surge in publication of untested allegations, malicious content and unethical behaviour (cited in Makholwa, 2008: 18).

This creates fertile ground for tension between media and state, as discussed above. On the one hand, the media are finding their way in a newly liberalised environment, determined to function as a watchdog on power. Mistakes are inevitable. On the other hand, the state finds the scrutiny uncomfortable, and has recent memories of how much easier life was for previous regimes with fewer pretensions to fitting in with international standards on human rights. Old ethnic and political tensions add an additional source of tension to the mix. Certainly, a feature of the Southern African councils has been ongoing tension with the state. The earlier

description of state/media relations graphically illustrated the point, with the most extreme example probably being Botswana, where the government of Ian Khama has launched a full-frontal attack on the idea of media self-regulation.

At the same time, many of the councils have a very small workload, dealing with a complaint every couple of months or even less. This cannot be taken as evidence that there are no grievances out there, nor should it be taken as an argument that such bodies are a waste of time. Rather, the challenge for councils is to build a profile for themselves, so that those complaints that undoubtedly arise are made to them. In Namibia, an earlier attempt to set up a council failed because it was not used enough: the body simply atrophied. We have seen what measures can be taken to publicise a council, from the advertisements for the SA Press Ombudsman's office that appear in every edition of subscribing newspapers, to annual reviews of the media. A council has to work to earn its place in society, and Bertrand's warning against the fatal dangers of obscurity has been quoted. Once again, the Tanzanian example is a good one. The MCT's extensive involvement in a range of media issues has turned it into a prominent, respected – and above all well-known – player.

This returns us to the fundamental and difficult question of effectiveness. If the test is the councils' ability to resolve specific issues to everybody's satisfaction, then the Southern African councils can be reasonably proud of their record. If it is the ability to protect media freedom, in line with one of their core aims, then the record is rather more mixed. For most critics, though, these are not the most important tests: they prefer to measure self-regulation against the actual behaviour of the media. Every time a tabloid runs excessively shocking images without good reason, for instance, it is held up as a failure of the system of self-regulation. I have argued that it is wrong to lay responsibility for media behaviour at a council's door in this simplistic way. But I have also said that the councils can't wash their hands completely of responsibility. They must, surely, justify themselves by being able to show improved standards of professionalism. But it is a long-term project, and there are many other influences at play. Applying this measure of effectiveness, it is simply too early to tell whether the Southern African councils are effective. Even in South Africa, the environment and the expectations of the media changed so radically in the early 90s that the previous incarnations of the Press Council should really be seen as a kind of pre-history.

In describing the state of the press and media councils on the sub-continent, this report has tried to highlight some of the challenges facing them, considered the factors for success and distilled some ways to strengthen and extend this form of self-regulation. Along the way, the study has briefly looked down a few side-alleys into fascinating areas that deserve further study. One of these relates to the ways in which new democracies impact on the shape and situation of media councils, about which only some very preliminary remarks have been made here. Another area of potential study is the relationship between the councils and the law. Sometimes defined as a quasi-legal process, sometimes as alternative dispute resolution or arbitration mechanisms, the processes used by the councils are strongly influenced by legal practice, not least through the influence of the retired judges that are often asked to officiate. It would be interesting to define more closely how the council processes compare to legal ones, particularly since the nature of ethics differs quite strongly from the law. A third, particularly fascinating avenue of further inquiry would involve looking at similarities and differences

between the “jurisprudence” of various councils, and of councils over time. Questions could be asked like, how is the concept of privacy, or of public interest understood in different places and at different times? For now, these avenues must await attention from others in the future.

In the meantime, indications are that the council movement is spreading through the region. Already, the Namibian Editors’ Forum has “joined the club”. In Zimbabwe, there are some early signs of hope that the state system of media regulation will disappear, leaving the Voluntary Media Council of Zimbabwe to look after journalism. In Mozambique, discussions have begun about replacing the High Authority of the Media with a self-regulatory body. These developments are to be welcomed, since well respected and efficient councils can do much to strengthen the media. At the same time, however, there are attempts in other countries to roll back hard-won gains in this arena, and return to statutory forms of control. The task for old and new councils is the same: earning and retaining trust with audiences, just as journalism itself depends on the trust of readers, listeners and viewers. Otherwise, the pressure for harsher punishments and more stringent controls will become stronger.

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Australian Press Council: <http://www.presscouncil.org.au>

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Press Council of India: <http://presscouncil.nic.in/HOME.HTM>

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World Association of Press Councils: [http://www.wapconline.org/lang\\_eng/](http://www.wapconline.org/lang_eng/)

A site devoted to ethics and Media Accountability Systems:  
<http://www.media-accountability.org/>

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P O Box 23652, Windhoek, Namibia  
Tel: +264 61 237 438  
Email: [fesmedia@fesmedia.org](mailto:fesmedia@fesmedia.org)