

**FREEDOM OF THE PRESS IN THE EYES
OF NIGERIAN LAW**

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ABSTRACT

Section 22 of the 1999 Constitution of the Federal Republic of Nigeria States that the press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people. Thus the 1999 Constitution acknowledges that media, being the watch-dog of the society is the main vehicle by which rulers misdeeds. The developmental function and roles of the media include gathering and dissemination of information, verification of news, education and enlightenment of the people, shaping of public opinion, setting of national agenda, safeguarding of right of individuals, interests, groups, advertisement of good and services etc. saddled with this responsibility, the media cannot function effectively without proper legal backing. Chapter two of the 1999 Constitution on which Section 22 rests is filled with laudable provisions which in Nigeria are non justiceable. Since 1960, Nigeria press cannot be said to have enjoyed unrestricted freedom. Freedom of the press is not clearly spelt out in the 1999 Constitution. The situation was not better under military. Till date, Nigeria is yet to enact a law on freedom of information. A media that is not accurate, factual, detailed and authoritative cannot lay claim to holding public officials accountable, because its own sense of accountability can easily be challenged. These form the focus of this paper. Recommendations will be made on the way forward.

INTRODUCTION:

Nigeria is the most populous country in Africa. It is situated on the gulf of guinea. It gained independence from the Great Britain in 1960. No country of the world can operate effectively without the functions of the press.

Hence, press history in Nigerian cannot be reviewed extensively without mentioning the colonialists roles towards the development of the industry. The first generation newspapers in Nigeria were religious publications of different types, like **Iwe Irohin**, which was founded by Rev. Townsend hit the news stand on Dec. 3, 1859. Some other religious ones that kept close on the heels of **Iwe Irohin** were the newspapers founded by Rev. Hope Waddell: Calabar **Observer** which became the first newspaper east of the Nigeria, **Unwamma Efik** and **Obupong Efik**, all vernacular newspaper like Iwe Irohin also hit the news stand. Due to the fact that those first generation newspapers were published in vernacular prints, they only appealed to their immediate environs. Consequent upon that, they quickly lost readership to other up standing newspapers which came in English language prints. Though they later started producing editions with English subtitles, their readership had already been lost.

Anglo African, a newspaper founded by Robert Campbell (another missionary), was more journalistic in its contents. It bore more stories, criticism and views, the newspapers helped to solve the problem of vernacular which the earlier newspapers were inclined to.

The colonialist religious newspapers however gave way to Nationalist Journalism. The printing school and presses which the colonial missionaries set up in Nigeria helped to equip those early Nigerian Journalists in the art of print technology. The graduation of Nigerian-Trainee print technologists, opened an express way to Nigeria Press. Nigerians who were lettered who had flair for journalism, joined force with their compatriots who were skilled in print technology, and together they created what has often being referred to as “era of the Nationalists press”. It was the collective efforts of the Nationalists press that earned Nigeria her independence. Azikiwe (1964:17) viewed ...”the early history of Nigerian press is identical with the intellectual and material development of the country. With the growth of education, we have been able to produce more people who can read and write...” With the extension of our civilization and the expansion of our economy. We have been able to develop a better press and higher caliber of journalists and printers, so that growth has been the ascent in the recent history of Nigerian press”.

The press could be basically understood as an organization for the collection, transmission and distribution of new to newspapers, periodicals, television, radio and other journalistic and mass communication media.

One may see them as independent companies whose serves are available to anyone who pays a subscription fee. The press come to be following a general need for faster transmission or dissemination of news.

In whichever manner the press is defined, it is important to note that press freedom should be separated from the freedom of the owners of the press.

Further, it is pertinent to note that the law of Nigeria in view of this paper, it made to repress the press and prevent criticisms of the government in power. All the laws, whether it was the colonial seditious offences ordinance of 1909 or the precursor of the notorious public officers (Protection Against False Accusation) Decree No. 4 of 1984 or even the Nigerian Press Council Act recently nullified by a Federal High Court, those laws were enacted to repress the press and prevent criticism of the government in power.

Again, it should not be forgotten that the repressive laws are still being used by the State to harass and intimidate journalists. Under our so called democracy in the fourth republic, journalists were charged with criminal sedition for publishing story indicating that presidential jets were not new but refurbished. Media houses have been shut down by our democratic governments on account of publishing news that embarrassed governments. The closure of Channels Television and insider magazine recently demonstrated the fact that qualitatively, there is little difference between the so-called democratic governments and military regimes. Hence, this paper sets out to examine the freedom of the press in the eyes of Nigerian law.

PRESS FREEDOM AND SECTION 22 OF THE 1999 CONSTITUTION

Section 22 of the 1999 Constitution of Nigeria rests on Chapter 2 of the same constitution. Section 22 compels “the press, radio, television and other agencies of the mass media to, at all time, be free to uphold the responsibility and accountability of the government to the people.

The provisions of Chapter 2 of the Constitution under which we have Section 22 is not justice-able. Journalists or lawyers cannot cite any provisions of that chapter as defence in litigations on matters pertaining publications or broadcasts. Though, it gives the media the responsibility of holding government accountable to the people, it neither empowers nor protects the media to discharge its duty.

The 1999 Constitution is to a considerable degree, bear the same legal character with 1979 and 1989 of the constitutions. The Section 3 (1) recognizes 36 states and the Federal Capital Territory, Abuja 1 Part 11, Section 4, 5 and vest legislative, executive and judiciary powers in the National Assembly, the president, the governors and the Courts respectively. Chapter 11 deals with fundamental objective and directive principles of state policy. While Section 38 of 1999 Constitution just emphasizes on freedom of expression. Although, the 1999 Constitution remains the workable functional legal document for the country, presently. The acceptability, legitimacy and credibility of the constitution are being contested by some Nigerian intellectuals, politicians, ethnic contested and pressure groups. In the words of Ajaegbo (2004:47) “a veritable and lasting constitution is one that derives its authority and legitimacy from the citizenry of a country, not only through consultation with strata of society but also by ensuring that their collective interests, hopes, yearnings and aspirations are firmly entrenched or embodied in the document. Only by faithfully doing this can our leaders and our democratic institutions truly launch this great country on the path of honour and respect, social progress, economic prosperity and political stability”.

Perhaps, the reviewed 1999 Constitution and that of the Nigerian Press Council (NPC) drafted in (1999) are better than the previous constitutions used in this country. A critical look at the two writs reveals that the provision made thereto did not

stipulate any consequences for the violation and infringement of journalist's right to freedom of expression. That is no penalty whatsoever whether in form of fines or jail terms, was encoded in the writs for those who would dare to stop journalism from exercising their right to freedom of expression.

Again, the unpleasant implication of this is that freedom of expression for the press (journalists) is seen as the individual right to freedom of expression for respective journalists and not as a legal entity which had been empowered by the constitution of the land. Section 21 of the 1979 and 22 of 1999 constitution of the Federal Republic of Nigeria, have not in any way, spoken well of freedom of the press in their minds.

Accordingly, Ezeh (2003:90), asserts, the provision relating to the media in the new constitution are a rehash of those of the 1979 Constitution.

They simply imposed duties and responsibilities on media without granting the much touted fourth estate of the realm any right or privilege beyond the general right to freedom of expression guaranteed every person in Nigeria. This is why no government in Nigeria has deemed it necessary to respect the press constitutional right to freedom of expression. In continuation, the constitution of Nigeria, like any other country's like any other's country's is saddled with the responsibilities of making the laws that guide the citizenry's socio-political and religious inter-relations.

According to Chapter 11, Section 22 of the 1999 Constitution also serve as Federal Republic of Nigeria (1999:13) the obligation of mass media is entrenched thus: the press, radio, television and other agencies of the mass media shall at all times be free to uphold the responsibility and accountability of the government of the people. Unfortunately, the Nigerian government does not effectively observe these.

RESTRICTIONS TO FREEDOM OF THE PRESS:

More often than not, press laws are difficult to describe. Hence Agbaje, (1983:64) argues that the reason is because of the complexity of the ever changing society in which they are found. He describes myriad competing influences on how the press constructs legitimacy for the Nigerian people. Agbaje describes it as a "battle field of representation". He goes on to describe the problem being exacerbated by the colonial heritage and non-Africans trying to explain the realities of the nation's complex social structure.

Over the years, the Nigerian government has shown negative attitude and restriction of press freedom. On March 28, 1995, the Information and Culture Minister, Walter Oforogoro told reporters that government is determined to ensure that the private press is "whipped into line". Few days after, during a visit to Vanguard Media Limited, Apapa, he complained of what he described as sensational headlines and warned that "freedom is not synonymous with license". Also the Foreign Affairs Minister, Tom Ikomi warned during an interview on BBC that "any journalist who commits a crime under the guise of practicing his profession will not be spared".

This ongoing battle of ideas can be seen throughout Nigeria's history. In 1984, the Buhari Military junta scored a milestone with the promulgation of the infamous Decree No. 4 designed to clip the wings of the press. The Decree was solely meant to

protect government officials from embarrassing press reports irrespective of the truth of such reports.

Government involvement in the affairs of the press is not limited to obnoxious enactments. It also tries to influence and in fact determines who occupies the leadership position of the National Union of Journalists (NUJ) at all levels. On July, 21, 1993, government churned out the Treason and Treasonable offences Decree and Offensive Publications (prescription) Decree 35 of 1993 with the following seven media houses, National Concord, African Concord, The Punch, Daily Sketch, Observer, Abuja News Day and Ogun State Broadcasting Corporation (which was later re-opened after 24 hours).

On April 6, 1987, the government proscribed News Watch Magazine for six months, for publishing the reports of the cookey-led political Bureau before government's white paper was issued on it. It was immediately backed with Decree No. 6 of 1987 known as "News Watch (proscription and prohibition) Decree. Following this, news watch's account was frozen by the government and the two editors were arrested. On March 8th, 1991 Lagos News Magazine was sealed off by security agents and its editor, Kolawale Alabi detained for a story published on the day's editions of the paper entitled "IBB, Maryan involved in Jennifer Madike's story. It linked the then first couple with drug trafficking.

Abacha's regime was not better off either. Many instances of anti-press posture abound. For instance, on April 7th, 1994, the news watch fell victim of government sledge hammer. Why? It published an interview granted by Major David Mark (rtd) on activities of the government. Also, in 1995, the editor of the Sunday Magazine, Mrs. Chris Anyanwu among others was arrested and imprisoned for an alleged complicity in connection with the so-called aborted coup allegedly organized by Obasanjo against Abacha's regime. She was released sometime in 1998 when General Abubaka succeeded the late dictator Abacha.

Nwanolue, (1998:225) in support of this stated that: A democratic government that is accountable to the people will respect the rule of law and fundamental rights of the citizenry, including the rights of the press together, process and disseminate information without hindrance.

In spite of the framework that has been set in place for press freedom, Nigeria continues not to be able to publish opinions freely. Both during periods of civilian rule and military dictatorship, the nation never experienced a complete assurance of a free press. Government philosophy and document may state that press freedom exist, but in the day to day affairs of life such freedoms fluctuate widely.

In Nigeria, laws, ordinances or Decrees or even Acts are promulgated to restrict the press from expressing certain formation on matters considered inimical to the authority.

PROBLEMS OF NIGERIAN PRESS:

Due to the instability of the various government over the years, the relationship between the state and the press has fluctuated, as a result of number of factors. At times, there have been some moderate considerations given to press freedom, while

other times, journalists disagreement with the government manifest itself in blatant violence.

In reviewing the history of the nation, the long-term trend has been that of the repression of free press. The constitutional privileges that are in writing have simply not been experienced by the real world of daily Nigerian life. On the surface, it appears that there is much diversity of expression due to the large number of media outlets in the nation. However, when a closer observation is made, the complex political and social systems of the nation are the context which these media organizations operate and it is discovered that the “societal watchdog” function of the press does not operate in reality in Nigeria as it does in more free and open society.

The committee to protect journalists, a New York based nonprofit, nonpartisan organization that monitors press freedom globally, reported serious reservations about Nigeria’s government press relations following the election of former president Obasanjo. CPJ noted that “although a new constitution was promulgated on May 5 (1999), it was modeled largely after 1979 Constitution and offered the media no specific protection”.

About 20 anti-media decrees were identified by CPJ in the amended Nigeria Constitution of 1999. One measure was repealed, the one that called for newspapers and magazines to register with the government. Later it was surreptitiously introduced as the Nigeria Press Council (Amendment) Decree Number 60 of 1999.

While press attacks decreased significantly after the transition from military to civilian rule, there remained reported abuses. CPJ reported after the election, police raided the editorial offices of the independent Lagos Newspaper, the News and arrested several employed journalists (NUJ), was arrested. It was politically motivated. Even government owned media employees experienced harassments. Two reporters for the state owned newspaper the observer were suspended for publishing statements considered to be critical of the election process made by international observers.

Media freedom suffered a setback in 2008 when a freedom of information BILL (FOIB) in the parliament, since 1999, failed to scale through the committee stage, despite strong support from domestic and international media groups. Although the 1999 constitution guarantees freedom of expression, of the press, and of assembly, the state often uses arbitrary actions and extralegal measures to suppress political criticism and expression in the media: Criminal prosecution continues to be used against journalists covering sensitive issues such as official case, separatist movements, and communal violence. In addition, Sharia Islamic Law in Northern states impose severe penalties for alleged press offences.

Various security agencies used arbitrary detention and extrajudicial measures in a muffle political activism and restrict press coverage that was perceived as critically related to sensitive issues. Such include official corruption, violence in the oil-rich Nigeria. In January, 2008, security agents in Akwa Ibom State detained some journalist and instituted sedition charges against the local newspaper distributors and a newspaper chairman with a story alleging that the state government had tries to

corrupt individuals. Again, four U.S. film makers and one Nigerian were arrested while shooting a documentary of Niger Delta Region. According to the committee to protect Journalists (CPJ), the spent a week in custody without being charged. In August of the same year, freelance U.S. filmmaker Berends and his Nigerian translator, Samuel George, were detained by state security service in Port Harcourt. Berends was released after three days, but was force to undergo questioning before being deported, George was held for five days and interrogated. The SSS agents, in September of the same year, temporarily close down the Lagos and Abuja officer privately owned channels TV Station and detained at least four staff members who aired a fabricated report that president Umaru Yar'Adua might step down with reason. Later, the SSS detained the publisher of the newspapers leadership Isaiah, and questioned him for two days, regarding a report alleging that the president is critical ill. A presidential directive instructed the police to arrest Nda-Isaiah along with editors and a former associate editor of the paper for "defamation of character and injurious falsehood". The journalists were released on bail pending the determination of suit in 2009.

Some Nigerian journalists were murdered in 2008 for reasons that remained unclear to people. In August 2009, Paul Abayomi Ogundeji, a board member of the private daily This Day was stabbed to death in a sub-office in Lagos. Two Nigeria reporters were shot by police officers, according to the U.S. State Department. In October of the same year, Ephraim Audu, a radio journalist with the Nasarawa State Broadcasting Service, was assassinated by gunmen near his home in Lafia. Investigations into both murders were still pending. Physical violence against journalists remained a common occurrence, particularly those covering public protests, political rallies, or abuses or power by security. For Dave Amusa, the Rivers State correspondent for the National Mirror, was beaten while attempting to enter the independent Electoral Commission offices in Port Harcourt, to get reports of council poll results. Also, security agents assaulted a channels TV, police officers in Lagos reported beat three print journalists who were covering rally by the opposition action congress party in September.

Despite the transition from military to civilian rule in 1999, clampdown, assault, beatings, unfair arrests and police raids against producers of print media have continued. Between June 2002 and September 2003 alone Media Right Agenda (MRA), a Lagos based nongovernmental organization which promotes press freedom and freedom of expression, recorded more than fifty cases of reported abuses against journalists and other violations of freedom of expression.

The media watchdog reporters without borders has just listed Nigeria Police Force as the leading abusers of journalists' right. On Saturday, April 24, 2010, Edo-Ugbagwu, a judicial correspondent of the Nation Newspaper was murdered in Lagos. Also, Godwin Agbroko and Abayomi Ogundeji of This Day Newspaper, Omolu Falabi Bayo Ohu of the Guardian were all brutally killed in Lagos by unknown gun men recently.

CONCLUSION:

An urgent call is hereby made to the senate and House of Representative to pass the freedom of information Bill (FOIB), which when fully implemented, will help to strengthen democracy, ensure transparency, accountability, good governance and the

rule of law in Nigeria. When press freedom is accorded its due position, it will be a good test for democracy, rule of law, due process as well as re-branding.

The abolition of press repression is not just a legal project but also political. It has deviated from a mere reform to a revolutionary reconstitution of the country. We also wish to project that political project will touch on the electoral system to ensure that votes count. It will also have to de-monetise the electoral process so that people would not have to steal public funds to usurp powers.

Lawyers and allied groups would also need to be a lot more proactive to come up with suggestion on law reforms, such that would encourage access to information and freedom of the press. May we clearly state also, that freedom of the press cannot stand or succeed where other fundamental rights are trampled upon. When it stands, it will be fortified when other numerous conflicts are resolved.

Nwanolue (2004:225), said as Nigeria seeks to achieve a true freedom of the press, there is need to terminate the culture of secrecy that has become endemic in government circle. It is only in a democratic atmosphere that press freedom can thrive a democratic government that is accountable to the people will respect the rule of law and fundamental rights of the citizenry including the rights of the press to gather, process and disseminate information without hindrance.

All these killings and the reluctance of the national assembly to pass the freedom of information bill have further raises the question of press freedom once more in Nigerian democracy. The assault on the press is a fundamental breach on democratic norms.

RECOMMENDATIONS:

Based on the above discussion the freedom of the press in Nigeria, we make the following recommendations to better the lots of journalists in Nigeria. They include:

1. For a country's media to be truly free there must be the right mix of the social, political and legal environments. A deficiency of any of these setting will compromise the total and true freedom of the media in the country. The foundation for a free press and a free society is possible when the right laws are in place and there are complaint to the rule of law.
2. Article 19(2) of the international convention on civil and political right (ICCPR) in recognizing of expression and the press states: Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Therefore, Nigeria government is requested to observe the rules of the above article 19(2).
3. A Freedom of information law is necessary and vital tool for fighting corruption in public and private sectors. This, if observed, would ensuring social, economic and political development through the availability of useful information in Nigeria.

4. Finally, the press is requested to embark on a more objective, investigative, informative and educative journalism. This would balance their activities and always speaks for them whenever the government raises to victimize them in Nigeria.

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