

# INTELLECTUAL FREEDOM AND CENSORSHIP IN THE EYES OF NIGERIAN LAW

BY

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## ABSTRACT

Intellectual freedom according to Article 19 of United Nations Universal Declaration of Human Rights is the right to freedom of thought and of expression of thought. Intellectual freedom guarantees everyone the right to freedom of opinion and expression. This right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Thus intellectual freedom encompasses the freedom to hold, receive and disseminate ideas. Whereas censorship is the suppression of ideas and information that individuals, groups or government officials find objectionable or dangerous. Censors usually achieve this through state powers via public institutions such as schools, libraries, information centres among others. Through the instrumentality of the law, such public institutions are prohibited from making censored materials easily accessible to the public or to targeted audience. This paper x-rayed those international and Nigerian laws that encourage or impinge access to information for one and all in Nigeria. It also made recommendations that will enhance easy flow of information to all information seekers in Nigeria.

KEYWORDS: Intellectual Freedom, Censorship, Information, Legislation.

## Overview of Intellectual Freedom and Censorship

Intellectual freedom according to Article 19 of United Nations Universal Declaration of Human Rights is the right to freedom of thought and of expression of thought. Clearly it is stated in this Declaration that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Similarly, the American Library Association describes intellectual freedom as the right of every individual to both seek and receive information from all points of view without restriction. It thus provides for free access to all expressions of ideas through which any and all sides of a question, cause or movement may be explored.

The concept of intellectual freedom involves protecting the rights of all individuals to pursue the types of information they want and to read anything that interests them (Yaya, Achonna & Osisonwo, 2013). Intellectual freedom not only guarantees individuals the right to hold opinion on any subject but also the right to communicate such ideas in any media of one's choice without any restriction. Intellectual freedom can only exist where two essential conditions are met: first that all individuals have the right to hold any belief on any subject and to convey their ideas in any form they deem appropriate and second, that society makes an equal commitment to the right of unrestricted access to information and ideas regardless of the communication medium used, the content of the work and the viewpoints of both author and the receiver of information.

It could be seen from the foregoing that intellectual freedom deals with the right to say, do and think without restriction. In the struggle to ensure that individuals' right to both access and use information in public institutions is guaranteed, IFLA (The International Federation of Library Associations and Institutions) declares as follows:

- That human beings have a fundamental right of access to expressions of knowledge, creative thought and intellectual activity, and to express their views publicly.
- That the right to know and freedom of expression are two aspects of the same principle. The right to know is a requirement for freedom of thought and conscience; freedom of thought and freedom of expression are necessary conditions for freedom of access to information.
- That a commitment to intellectual freedom is a core responsibility for the library and information profession.
- IFLA therefore calls upon libraries and library staff to adhere to the principles of intellectual freedom, uninhibited access to information and freedom of expression and to recognize the privacy of library user. IFLA urges its members to actively promote the acceptance and realization of these principles. In cases of conflict between these responsibilities, the duty towards the user shall take precedence.

The Kampala Declaration on Intellectual Freedom and Social Responsibility is involved in the struggle to promote intellectual freedom among the academic community. In Article 9, it states that the intellectual community shall have the right to express its opinions freely in the media and to establish its own media and means of communication. Again in Article 10,

it further states that:

all members of the intellectual community shall have the freedom of association, including the right to form and join trade unions. The right of association includes the right of peaceful assembly and formation of groups, clubs and national and international associations.

The protection of intellectual freedom was also strengthened by Article 15 which states *inter alia* that the State shall desist from exercising censorship over the works of the intellectual community.

### **Benefits of Intellectual Freedom in Nigeria**

The importance of intellectual freedom in the growth of any society is fundamental. Intellectual freedom is the bedrock for other freedoms- speech, expression, and the press. In a democratic system of government as practiced in Nigeria, the citizenry should form part of the government; for it is believed that power to change any government lies with the electorate. The citizenry should be well informed not only to elect their leaders but to also make meaningful input in governance, join in public debates and criticize the policies of the government where necessary. Access to the right information at the right time will produce the necessary result. Thus intellectual freedom encompasses the freedom to hold, receive and disseminate ideas without restriction.

Intellectual freedom is not only needful for the adult members of the society but also for younger ones especially the adolescents. These teenage groups have varying information needs. Adolescence according to Calkin (2014) is a time of vast neurological, physiological, emotional and social change. Teenage brains are primed for learning and more open to new

experiences. He informed that adolescence is an age group that is more interested in novelty and new sensations than human brains at any other developmental stage of man. They are restive in nature. They have insatiable quest to understand and grapple with the changes in their body mechanism as well as the perplexities they found in their environment. They like to explore and carry out experiment on their own in order to form an independent view of life. They need access to information on a wide range of topics that will depict a wide range of experiences. Such unrestricted access to information can only be guaranteed by intellectual freedom.

Major constraints why Nigerian citizens seem not to bother much about intellectual freedom is simple. They Include:

- Illiteracy
- Ignorance
- Poverty
- Fear of victimization
- Poor ICT skill and infrastructure and
- Lack of political will

### **Censorship**

Censorship is the direct opposite of intellectual freedom. According to Harshrustic (2007), censorship is the act or practice of suppressing the speech or public communication which is considered objectionable, harmful and sensitive, by a government, media outlet or other controlling bodies. Reichman (1988) defines censorship as the removal, suppression or restricted circulation of literary, artistic or educational materials on the grounds that they are morally or otherwise objectionable in the light of standards applied by the censor. He explained that virtually any decision made by school board members concerning what is taught, used and

learned in school can be viewed as censorship. By this he means that when a superior authority prescribes what is to be taught or read censorship occurs. Dafiaghor (2011) summed it thus:

Censorship is based on the fact that every society has customs, taboos or laws by which speech, dress, religious observance and sexual expressions are regulated in order to protect the family, the church and the State. In the light of this, Reichman (1988) gave a more elaborate definition of censorship as the examination of books, plays, films, television and other forms of communication for the purpose of altering or suppressing ideas found to be objectionable, harmful or offensive. Information materials could be censored either prior to publication or after publication. Censorship can also be carried out either by negotiation or through force by the government or its agencies, individuals, organizations, religious groups or other associations. In Nigeria, reasons for censoring an information material may be for the protection of the State or for the protection of the family. Dafiaghor (2011) identified the following types of censorship usually carried out in Nigeria as:

- Moral Censorship
- Military Censorship
- Political Censorship
- Religious Censorship
- Corporate Censorship

These are the major social institutions in Nigeria that censorship is meant to protect. Reason being that effect on any of them would definitely affect the other because they operate as interdependent units of the Nigerian nation.

## **Censorship can be Beneficial**

It is pertinent to note that in as much as censorship appears to have some negative effect on access to information materials, it also has some beneficial effect more especially to the adolescents. Some writers are of the view that censorship has some beneficial effect. Hastings (1990) believes that censorship which promotes good, virtuous character and condemns pervasive thoughts, words and conduct is good and desperately needed in our nation. He is of the view that freedoms which are abused and misused should be taken away. Those acts which impact negatively on people's behaviour should be censored. According to him, those who advertise their products know that it is important to get their message into the minds of others. For instance, pornography encourages violent sexual acts such as rape, child molestation, incest etc.

Other People believe that censorship exist to protect the vulnerable groups like adolescents and children. They believe that growing youths should not gain access to sites with sexual content or inappropriate violent websites that might lead the teenagers the wrong way. Without censorship children and teens would be able to see disgusting things on the television and on the Internet. Such things as porn videos would be turned into TV shows where people could see it. There would be too much violence on TV (2016 Debate .org). Equally without censorship, people would be able to see body parts and things like that on the television. Hence censorship exists to protect large masses of people from damaging content in public media. Some of the advocates of censorship strongly believe public content is censored to control

obscurities, protect young people from pornography, promote or restrict political or religious views and national security.

### **The Protection of Intellectual Freedom in the 1999 Constitution of Federal Republic of Nigeria**

Chapter 4 of the *1999 Constitution of the Federal Republic of Nigeria* dealt extensively on fundamental rights of the citizenry. Specifically in Section 34(1), it states that:

Every individual is entitled to respect for the dignity of his person. No person shall be subjected to torture or to inhuman or degrading treatment. Again no person shall be held in slavery or servitude or required to perform forced labour or compulsory labour except on conviction by order of court.

Similar provision is made in Section 35 where the Constitution provides that every person shall be entitled to his personal liberty and that no person shall be deprived of such liberty save in the execution of a sentence of a court in respect of criminal offence of which he has been found guilty or for health grounds (for infectious or contagious diseases) or for the purposes of education or welfare of minors and to prevent unlawful entry into Nigeria.

Furthermore, section 37 guarantees and protects the privacy of citizens, their homes, correspondence, telephone, conversations and telegraphic communications. Mainly this section deals with the right to private and family life.

It is stated clearly in section 38(1) of the *1999 Constitution of the Federal Republic of Nigeria* that every person shall be entitled to freedom of thoughts, conscience and religion, including freedom to change his religion or belief and freedom either alone or in community with others,



and in public or in private to manifest and propagate his religion or belief in worship, teaching, practice and observance. Going by the provisions of this section, the right to procure abortion is a conscience issue but abortion is a criminal offence in Nigeria. Basically, there are two abortion laws in Nigeria- The *Criminal Code* and *the Penal Code*. These laws are framed along the two major religious groups in the country. The *Criminal Code* applies to Southerners who are predominantly Christians. The *Penal Code* is applied in Northern Nigeria where the Sharia law is practiced. According to Section 228 of the *Criminal Code*,

Any person who, with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

Section 229 spells out the punishment for the woman who procures abortion as follows:

Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.

The punishment extends to the person who aids in the abortion in Section 230 of the *Criminal Code* thus:

Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years.

Lawful abortion can only be procured to save the life of a pregnant woman. Under such condition, two physicians are expected to certify that the life of the woman is in danger. The provision of the *Penal Code* which is applied in Northern Nigeria is similar to the *Criminal Code*.

The Constitutional provision in Section 38(2) forbids censorship on religious grounds. Therein is stated that no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own or a religion not approved by his parent or guardian.

In practice this right has been abused and violated by some religious sects in Nigeria. A case in hand is the abduction of the Chibok girls by members of the Boko Haram in 2014. By the provisions of the entire section 38, censorship of religious beliefs and instruction is prohibited in Nigeria. Section 38(4) is however a form of censorship for persons who desire to be a member of a secret society; although the definition of secret society is somehow silent in the Constitution.

Right to freedom of expression and the press is protected in section 39. In subsection (1) the Constitution states that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. Consequently in section 39(2) the constitutional provision is that every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions.

Intellectual freedom is the bedrock for other freedoms such as freedom of expression, freedom of speech and freedom of the press. A cursory look at the constitutional provision in section 39 would seem that the Nigerian law promotes intellectual freedom. Depending however on the tempo of the government in power, this right is not always exercised in full by

citizens of the country. Successive governments have clamped down on this right- freedom of expression. *Per se* there is no provision in the 1999 Constitution that prohibit freedom of expression but in everyday life, the government has been doing that in a subtle way. Individuals who have publicly expressed their displeasure at government policies have had their rights infringed as a result. The provisions of the *Economic and Financial Crime Commission (EFCC) Act* and other related laws have been invoked on political opponents who publicly criticized the government of the day. Presently a good number of members of the opposition party- The Peoples' Democratic Party have been incarcerated in the past few months for criticizing the government publicly. The leader of Movement for the Creation of the Republic of Biafra has been remanded in prison custody despite the bail which the Court has granted him. Court orders (for the freedom) are not respected by the government in cases of such persons who publicly expressed their displeasure at government policies. Thus human rights of political opponents who criticize the government publicly is infringed.

#### **Same Sex Marriage (Prohibition) Act, 2014**

Right to private and family life was granted to all citizens of Nigeria in section 37 of the 1999 Constitution. Same sex marriage is also recognized and legalized in many countries of the world including South Africa. Although the right to private and family life was protected in the *1999 Constitution of the Federal Republic of Nigeria*, the National Assembly enacted the *Same Sex Marriage (Prohibition) Act, in 2014* which was assented to by the President of the Federal Republic of Nigeria thus becoming an Act of the National Assembly. The provisions of this Act

have some implication for the fundamental rights of Nigerians, who may be homosexual or lesbians in view of their fundamental rights to freedom of private and family life, freedom of thought, conscience and religion, freedom of peaceful assembly and association to freedom from discrimination (Fobur, 2014).

Section 7 of this Act defines marriage as a legal union entered into between persons of opposite sex in accordance with the Marriage Act, Islamic Law or any customary law recognized in Nigeria. Going by the provisions of this Act, any marriage between persons of same sex contracted either in Nigeria or elsewhere is not recognized in Nigeria and such is criminal. It further prohibits the solemnization of such marriages in places of worship including churches and mosques. Section 3 of the Act prohibits the registration, sustenance, meetings, and processions of gay clubs, societies and organizations in Nigeria. The provisions of this section further prohibit direct or indirect public show of same sex amorous relationships.

The Act prescribes penalty for persons who engage in same sex marriage who upon conviction are liable to 14 years imprisonment. Also persons who registers, participates in their organizations, meetings or procession upon conviction are liable to 10 years imprisonment. By the provisions of this Act, any person found guilty of the following even if the person is not a gay or have the orientation is guilty of a criminal offence.

The constitutional provision in section 45 of the 1999 Constitution was invoked by the National Assembly in the enactment of this Law. It was stated in section 45(1) of the Constitution that nothing in sections 37, 38, 39 40 and 41 shall invalidate any law that is reasonably justifiable in

a democratic society in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons.

Be that as it may, the provisions of the *Same Sex Marriage (Prohibition) Act* is not *in tandem* with the tenets of intellectual freedom. It is a form of censorship in the Nigerian law.

**National Film and Video Censor Board Act, 1993 and National Film and Video Censors Board Regulations, 2008.**

This Act was established to empower the *National Film and Video and Censors Board* to regulate the censorship and public exhibition of films and video works and matters connected therewith. The Board was empowered to among other things censor films and video works. Secondly to launch new censorship and classification guidelines to aid film makers and professionalize the operations of the Board. It is stated in section 5(1) of NFVCB Regulations, 2008 that no one shall exhibit, distribute, cause or allow to be exhibited or distributed a musical video unless a censorship certificate has been issued by the Board. In addition, section 5(2) states that each musical video track in a musical video recording shall be considered a short length film to be censored and classified independently. Thus the film and video industry though mainly in the domain of private persons is censored in Nigeria.

### ***The Criminal Code on Obscene Publications***

*The Criminal Code* prohibits the use of obscene publication in public media in Nigeria. It defines obscene articles as anything capable of being or likely to be looked at and read or looked at or read, and includes any film or record of a picture or pictures, and any sound records; which a person circulates, lends, sells, lets on hire or offers for sale or on hire. In Section 233C (1) of the Act, an article shall be deemed to be obscene or the purposes of this Chapter if its effects taken as a whole is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. Subject to the provision of Section 233 D (1) any person who, whether for gain or not, distributes or projects any article deemed to be obscene for the purposes of this Chapter, commits an offence punishable on conviction by a fine not exceeding four hundred naira or by imprisonment for a term not exceeding three years or by both.

A plethora of other Nigerian laws such as the *Official Secrets Acts*, *The Criminal Code Act*, the *Penal Code*, *Evidence Act*, *the Public Complaints Commission Act*, all made provision for penalties for unauthorized disclosure of information in public institutions. Interestingly, salient sections of the *Freedom of Information Act* (which was enacted after prolonged session of debates and struggle which ended in May, 2011) overrides the sanctions in these Acts.

### **Freedom of Information Act, 2011.**

The Freedom of Information Act was enacted by the National Assembly and assented to by President Goodluck Ebele Jonathan in May 2011. It was an Act to make public records and

information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and for related matters.

Section 1(1) made provision for right of any person to access or request information in whatever media which is in the custody or possession of any public official, agency or institution. Under section 1(3) of the Act, an applicant has the right to institute a legal action in the Court to compel any public institution to comply with the provisions of the Act. Under this Act, request for access to such information shall be granted within 7 days as contained in section 4. Where access to such information is denied, reasons for such denial shall be stated in writing as provided in section 7. Grant of access to information requested is free except to cover the processing expenses.

Acceptable reason for the denial of access to information in the Act as contained in sections 11, 12, 14, 15, 16, 17, 18, 19, 20, 21 is for information that bother on international affairs, defence, law enforcement and investigation, personal information, third party information, trade secrets, research materials etc. Information materials exempted from this Act are contained in section 26. They are published materials, library and museum materials meant for exhibition. Public officers who grant access to requested information in their possession are protected from the *Official Secrets Act, Criminal Code, Penal Code* etc in section 27 of the Act.

Notwithstanding the provisions of sections 11-19, access to requested information must be granted if it is for the overriding public interest.

To promote intellectual freedom, this Act made provision in section 4 that a public institution shall ensure that information in its custody or possession is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources and at the offices of such public institutions. Such public institutions are also required to update and review all such information and effect changes whenever they occur. Furthermore, section 13 made provision for every government or public institution to train its officials on the public's right to access information or records in its possession as well as for the effective implementation of this Act.

### **Draft Bill to Prohibit Frivolous Petition and other Matters Connected Therewith**

Recently, the Deputy Senate Leader, Senator Bala Ibn Na'allah sponsored a bill aimed at setting out heavy sanctions for persons who falsely criticize public officials or institutions. This bill seeks to forbid social media operators from slandering members of the public including the lawmakers.

Highlights from the bill Include:

Notwithstanding anything contained in any law, it shall be unlawful to submit any petition, statement intended to report the conduct of any person for the purpose of an investigation, inquiry or inquest without a duly sworn affidavit in the High Court of a State or the Federal High Court confirming the content to be true and correct and in accordance with the Oaths Act.



Similarly, any petition and or complaint not accompanied by a sworn affidavit shall be incompetent and shall not be used by any government institution, agency or bodies established by any law for the time being enforced in Nigeria. The bill further stated that:

Any person who unlawfully uses, publishes or causes to be published, any petition, complaint, not supported by a duly sworn affidavit, shall be deemed to have committed an offence and upon conviction, shall be liable to an imprisonment for six months without an option of fine.

Further sanction for offenders include: any person who acts, uses or causes to be used any petition or complaints not accompanied by duly sworn affidavit shall be deemed to have committed an offence and upon conviction, shall be liable to an imprisonment for a term of two years or a fine of ₦200,000 (two hundred thousand naira) or both.

It also states that where any person in order to circumvent this law makes any allegation and or publish any statement, petition in paper, radio or any medium of whatever description, with malicious intent to discredit or set the public against any person or group of persons, institutions of government, he shall be guilty of an offence and upon conviction, shall be liable to an imprisonment for two years or a fine of ₦4, 000,000.00 (four million naira).

For the social media, the bill states that:

Where any person through text message, tweets, WhatsApp or through any social media, posts any abusive statement knowing same to be false with intent to set the public against any person and group of persons, an institution of government or such other bodies established shall be guilty of an offence and upon conviction shall be liable to an imprisonment for two years or a

fine of ₦2,000,000.00 (two million naira) or both fine and imprisonment.

This bill has gone through second reading at the floor of the Senate. Since the inception of the bill, there has been a public outcry from members of the press, civil society groups and the Nigerian public. All the criticism is based on the fact that the bill is a ploy by the government to undermine freedom of expression, freedom of speech, freedom of the press and public participation in governance and democracy. In the words of Ndukwu (2015), the bill constitutes a threat to democracy because it seeks to repress the social media, the conventional media, the civil society and the citizenry as a whole. If passed into law, it will violate the norms of democratic practice, freedom of expression, press freedom, transparency and accountability as well as open governance.

In Nigeria, this is the most recent move to entrench censorship. If it succeeds it will stifle intellectual freedom in the country. Some civil society groups in Nigeria have petitioned the United Nations about the bill.

### **Recommendation**

Based on issues raised in this discourse, the following recommendations were made:

1. Nigeria is a signatory to many international Conventions that advocate for the entrenchment of fundamental human rights. As such it should review and repeal relevant sections of Nigerian laws that negate intellectual freedom. The fines prescribed in some of these laws like in the *Criminal Code* should be reviewed upward in view of the current economic realities in Nigeria.

2. Most censorship practices in Nigeria are anchored on religious belief, morality and ethics. In view of our cultural practices and heritage, such laws that prohibit abortion, same sex marriage, public display of pornography and obscene materials should be upheld.
3. Current debate on the prohibition of frivolous petition and other matters before the Nigerian senate should be suspended. Concerted effort should be made by the Executive arm of the Government, the civil society groups, members of the press and the entire Nigerian citizens to ensure that that bill is not passed into law. It is an affront to intellectual freedom.
4. Many Nigerians are not aware of what is intellectual freedom as well as the benefit thereof. Public enlightenment both by the government and civil society groups is necessary if not mandatory in this struggle.
5. Intellectual freedom is better appreciated by an educated populace. Free and compulsory education up to senior secondary school level should be made a law in Nigeria. Presently both the educational and political objectives of the Federal Republic of Nigeria as enshrined in chapter two of the 1999 constitution are non justiceable, as such the government cannot be sued for non compliance.
6. The level of ICT skills and infrastructure in the country is still poor. As such some of the information that transpires via the electronic media is missed out by many Nigerian citizens. Many are not aware of some of the debates that tend to infringe on their fundamental human rights before the state and national assemblies until they become a law.
7. The Nigerian libraries, more especially the public libraries should be better resourced through improved funding. The public library by its nature is a library for all and a lay man's

university. Live debates going on at the state and national assemblies can be viewed by users at the library.

8. The enactment of Freedom of Information Act in Nigeria is expected to promote intellectual freedom in principle. A major drawback of that law is in the enforcement. The country should set up a regulatory body to monitor the implementation of the provisions of that Act.

### **Conclusion**

Intellectual freedom deals with the right to say, do, and think without restriction while censorship is the direct opposite. Most laws that encourage censorship in Nigeria are anchored on religious beliefs, morality and ethics. When freedom of expression in one country is affected, it may inhibit access to information in other countries. Thus the defence of intellectual freedom requires a universal effort from various nations of the world through the instrumentality of their local legislation.

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