

PRESS FREEDOM

A TRAINING MANUAL



CJID
CENTRE FOR JOURNALISM INNOVATION & DEVELOPMENT



PRESS FREEDOM

A TRAINING MANUAL



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Press Freedom: A Training Manual

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About CJID

The Centre for Journalism Innovation and Development (CJID) is a media innovation and development think- (and do) tank founded in 2014, to strengthen the West African media to promote democratic accountability, in the service of inclusive and sustainable development. The Centre uses the tools of civic technology, investigative journalism, and research to deepen the discourse on sustainable development and tackle misinformation and disinformation in the media, and society.

PRESS FREEDOM

A TRAINING MANUAL

Edited by Philip Olayoku and
Stephanie O. Adams-Douglas

Centre for Journalism Innovation and
Development – CJID

Contents

Acknowledgement	x
------------------------	----------

Introduction

By Dapo Olorunyomi	xii
--------------------	------------

Setting the Context.....	xvii
---------------------------------	-------------

1.0 The Dialectics of Press (Un)Freedom

By Sola Olorunyomi and Philip Olayoku	1
1.1 Socratic Beginnings of Press Freedom	1
1.2 In Search of Freedom for the Press	3
1.3 Extant Challenges to Freedom of the Press	5
1.3.1 China's Communist Party and the Limitations of Media Practice	5
1.3.2 Saudi Arabia and Qatar: Regional Dynamics of Press Censorship the Middle East	9
1.4 The Fifth (Digital) Estate	11
1.5 Nigeria and the Utopia of Press Freedom	15
1.6 Bringing Freedom to the Nigerian Press	19
1.7 References.....	22

Module One.....	26
------------------------	-----------

2.0 The Press and the Protracted Struggle for Freedom in Nigeria

By Tunde Musibau Akanni	27
2.1 Introduction.....	27
2.2 Background.....	29
2.3 Legal Contraptions Against Press Freedom During the Military Years	31
2.4 Attacks on Journalists.....	32
2.5 Against Civilisational Freedom	35
2.6 Harassment Cases	37
2.7 Resolution Moves/Stakeholders Interventions	38
2.8 Digital Activism and Press Freedom	40
2.9 Activities.....	42
2.10 Revision Questions	42
2.11 Suggestion for Further Readings	43

Module Two44

3.0 International Instruments of Press Freedom and the Context of Domestication in Nigeria

By Jide Jimoh	45
3.1 Introduction.....	45
3.2 Origin of International Instruments.	46
3.3 Some International Instruments	48
3.4 Some Regional Instruments	48
3.5 Country Specific Instruments	49
3.6 Highlights of Relevant Provisions.	50
3.6.1 <i>The Universal Declaration of Human Rights (1948).</i>	51
3.6.2 <i>The International Covenant on Civil and Political Rights.</i>	52
3.6.3. <i>African Charter on Human and Peoples' Rights Article 9</i>	52
3.6.4. <i>Resolution 169 on Repealing Criminal Defamation Law in Africa by the African Commission on Human and Peoples' Rights - 24 November 2010</i>	53
3.6.5. <i>European Convention for the Protection of Human Rights and Fundamental Freedoms Article 10</i>	53
3.6.6. <i>ASEAN Human Rights Declaration</i>	54
3.7 The Challenges of Domestication.....	54
3.8 Specific Provisions on the Freedom of the Press.....	56
3.9 Activities	57
3.10 Revision Questions.....	58
3.11 Suggestions for Further Readings.....	58

Module Three60

4.0 Freedom of Press in Nigeria: Constitutional Provisions, Justiciability and other Constraints

By Saheed Babajide Owonikoko	61
4.1 Introduction.....	61
4.2 Press Freedom: Definition and History	65
4.3 Development of Press Freedom in Nigeria from Colonial Era to The Fourth Republic	69

4.4	Provisions for Press Freedom in 1999 Constitution	73
4.5	Justiciability of the Provisions for Press Freedom in Nigeria	76
4.6	Other Constraints to Press Freedom in Nigeria	86
4.7	Study Session Summary.....	93
4.8	Conclusion and Recommendations	93
4.9	Activities.....	96
4.10	Revision Questions	97
4.11	Suggestion for Further Readings	97

Module Four 100

5.0 The FOI Act and the Challenges of Implementation

	By Ugo Aniga	101
5.1	Introduction.....	101
5.2	Conceptual Clarifications	104
5.3	The Media/Press and Setting the Agenda for Nation building	105
5.4	A Review of the FOI Act Bill	106
5.5	The Benefits of Freedom of Expression and Press Freedom	111
5.6	Study Session Summary.....	113
5.7	Conclusion/Recommendations	115
5.8	Activities.....	116
5.9	Revision Questions	116
5.10	Suggestion for Further Readings	117

Module Five 118

6.0 Investigative Journalism Practice in the Democratic Development of Nigeria

	By Onwuka Okereke	119
6.1	Introduction.....	119
6.2	What does investigative journalism mean?	120
6.3	Constitutional Guarantees of Freedom and Media Responsibility	124
6.4	Some Landmark Investigative Journalism Projects in Nigeria	125
6.5	Framework for Investigative Journalism Practice and Democratic Development in Nigeria	137
6.5.1	<i>An Analytical Framework for Linking Investigative Journalism Practice and Democratic Development</i>	138

6.5.2	<i>Impact of Occupational Constraints and Journalists' Role Perception on Investigative Journalism</i>	140
6.5.3	<i>Parameters That Modify the Degree of Occupational Constraints and Journalists' Role Perception</i>	141
6.5.4	<i>Factors that Modify the Transmission of Intermediate Impacts to Final Outcomes</i>	143
6.6	Impact of Investigative Journalism Practice in the Democratic Development of Nigeria	147
6.7	Study Session Summary.....	151
6.8	Activities.....	151
6.9	Revision Questions	152
6.10	Suggestion for Further Readings	152

Module Six..... 154

7.0 Counter-Terrorism Legislation and Press Freedom in Nigeria

	By Emeka Thaddues Njoku	155
7.1	Introduction.....	155
7.2	Counter-Terrorism Legislation in Nigeria	159
7.2.1	<i>Creation of Ambiguity in the Definition of Terrorism</i>	160
7.2.2	<i>Wide Discretionary Powers</i>	160
7.2.3	<i>Directives to Communication Providers</i>	161
7.3	From Terrorism Prevention Act of 2011 to Terrorism Prevention (Amendment) Act of 2013.....	162
7.4	The Impact of TPA of 2011 (as amended) on Press Freedom	163
7.4.1	<i>Strategic Exclusion</i>	163
7.4.2	<i>Restriction of Access to Information</i>	163
7.4.3	<i>Repression and/or Targeting of Press Freedom</i>	166
7.5	Cases of the Repression of Press Freedom in Nigeria	167
7.6	Conclusion/Recommendations	169
7.7	Activities.....	170
7.8	Revision Questions	171
7.9	Suggestion for Further Readings	171

The Press Attack Tracker 173

Notes on Contributors 180

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Finally we must thank you, the reader, for electing to read this manual. We acknowledge your interest in protecting the freedom of the press and we hope that in the pages of the manual you would find the inspiration as well as the guidance you require to support the free press. The health of democracies around the world depends on your success in this endeavour.

Tobi Oluwatola, PhD

Acting Executive Director (CJID)

Introduction

Either a Government or Newspapers

The twin categories of press freedom and human rights are some of the most critical points of reflection in the discourse on democracy and governance. Whereas both categories represent conditions for the very possibility of democracy in a society, it is through the structure of rights that we express our commitment to the fundamental question of human dignity. Seen in this way, rights represent one major indicator of how we measure the progress of freedom and self-governance in a society. The news media, on the other hand, is how we provide the civic oversight, the measuring rod, the presentation of governance priorities, and the regimes of standardization that give democracy its meaning and human rights their consequence. This is why they both earn significant locations in the making of constitutions, the grundnorm of every democratic state.

CJID's Manual on Press Freedom therefore represents a significant milestone, not just in helping us understand the crucial link between press freedom and human rights better, but also as the first attempt to help lay out a systematic way to study these two divides as one academic experience. For this reason, it is safe to hazard that this manual will become a major influence in the making of a new Nigerian press cadre, as well as a band of fresh legal, human rights, and democracy corps in our country.

If this were all that this Manual on Press Freedom helped to achieve, it's case would have been perfectly made, but it goes further: helping explain why the press deserves a codified freedom in the constitution of states, as an important guarantee on how to make democracies work for the human person and for institutions. This manual, in its excellently packaged six modules, eloquently advances the claim that, by constantly raising awareness of the progress made on accountability to the exercise of power, as well as on the grounds lost in the contention between citizens and states (or violent non-state actors), and on the work that remains regarding the certainties of rights and liberties of citizens, the news

media firmly establishes its stake as a pre-eminent and an inestimable element in democracy-building. Invariably, as Sola Olorunyomi and Philip Olayoku demonstrate in their rich introductory tour de force, we are talking of how the interface of both the press and human rights help foster development, freedom, and how citizens acquire or lose voices in the exercise of political participation and in the articulation of power.

In this important publication, activists and academics will rejoice at possessing one of the most essential tools for implementing their dauntless battles to protect rights in every department of our nation's life. Tunde Akanni sets the game up nicely by historicizing the travails of the nation's press, and its journey to freedom and unfreedom. As a teaching aid, this will represent for journalists, and scholars, a veritable representation of history, but there is a marginal investigatory value beyond serving as an effective documentation of violations of press freedom, and the exertions of defenders of media freedom - this book is also an essential guide on how to develop campaigns against abuses.

The question has always been asked about how the totality of our media assets can become a massive resource for promoting democracy, civic liberties, and the rights of citizens. This Manual on Press Freedom already offers a helpful hint through Jide Jimoh's and Saheed Owonikoko's contributions, on how this might be done. The point of departure, we are encouraged to accept, is not merely an awareness of just how expansive that media system is, but its organic and dynamic location in the bowels of our grundnorm, and other supplemental instruments.

Some of the sensitively rendered promises of CJID's Manual on Press Freedom come by way of deliberately crafted ironies. For instance, against the splash of a rich and pulsating Nigerian media ecosystem, Ugo Anigá's intervention on the value of the Freedom of Information Act, FOIA, is stunning in two important regards. First, the point about the FOIA being a mechanism against the excessive power of a monstrous state that controls information, is balanced by the implications of rupturing the peace of the polity, if we fail to curtail the potential excesses portended, as in our peculiar case, by overarching federal powers.

So, the question confronts us: what is the real definition of what we would call the Nigerian media ecosystem? Data have it as a patchwork of over 200 government-owned TV stations, 43 privately-owned TV stations, 185 government owned radio stations, 97 privately-owned stations, and over 100 private newspapers. Also, 51 multi-channel satellite distribution outlets, 27 campus broadcast stations, hundreds of digital news sites and bloggers, and hundreds of news aggregators, Instagram, and YouTube actors.

The power of this press goes back to history. The print press started in 1859, radio in 1933, television in 1959, national wire services in 1976, and transition to the digital started in 1996. By July 2019, there were 122.7 million active internet users, according to the Nigerian Communications Commission. Mobile phones are often used to access the web. Most Internet users are young, educated, and urban. Around 24 million Nigerians were active on social media by January 2019, comprising 12% of the population. WhatsApp is used by 85% of social media users, followed by Facebook at 78%.

Yet, for this sprawling asset, as a system, to become a power package for democracy, you need a tradition of thriving investigative journalism to serve as the arrowhead for how the news media can transform to become a material force for freedom and accountability. This is how best to welcome Onwuka Okereke's contribution in the Manual, which appropriately promotes the 'statutory value' of investigative journalism, and how, as a mechanism for promoting accountability, it could help foster an understanding of press freedom as a constitutional responsibility.

Nigeria's landscape of freedom and unfreedom is a field of endless contention. Even while data affirms the reality of growing state-imposed restraints against the press, officials are never done in their counterclaims that the country's press enjoys unfettered freedom. However, the easiest resolution of debates like this is to be found in the behaviour of states and leaders.

Thus, in his 2019 National Day address, President Muhammadu Buhari said: "Our attention is increasingly being focused on cyber-crimes and

the abuse of technology through hate speech and other divisive material being propagated on social media. Whilst we uphold the constitutional rights of our people to freedom of expression and association, where the purported exercise of these rights infringes on the rights of other citizens or threatens to undermine our National Security, we will take firm and decisive action.”

Eventually, coming in the environment of that year, we witnessed the dramatic, though not unexpected, re-emergence of a censoring Nigeria Press Council Amendment Act of 2019. That year alone would later highlight the philosophical significance of the administration’s vision towards the press. What happened that year alone, in parliament, was the unrestrained excitement of party leaders, who jumped over each other to brace the already firm grip on press freedom via the introduction of four additional bills (the famous Social Media Bill; another to amend the extant Cyber Crimes Act; and two Hate Speech Bills. These would, the state hopes, join more than a dozen obnoxious laws already in existence and targeted at further restraining the freedom of the press in the country.

Some of the most chilling laws, already in existence, include the Anti-Terrorism Act, the National Broadcasting Commission Act; the vestiges of criminal defamation statutes in the Criminal Crimes Act and the Penal Code Act; the Official Secrets Act; and the Obscene Publications Act. Together, these statutes and the four intending laws, help define a policing ecology that smothers the freedom of the press and fundamental liberties, and here is how to understand the import of Emeka Njoku’s contribution to CJID’s Manual on Press Freedom.

National security has become the tedious shield that state officials bear to repress journalistic freedom, and Emeka Njoku is spot on for zeroing in on the Terrorism Prevention Act of 2011 (as amended) to discuss how certain provisions of the law does nothing but imperil press freedom. In the 163-year history of the Nigerian press, the 15 years from 1984 to 1999 under military dictatorship were perhaps the most ferocious and constraining, from the perspective of press freedom. However, since the return of democratic rule via the Fourth Republic in 1999, the three years between 2018 and 2021 stood out as a sore thumb. In that period, no fewer than

192 verified attacks were carried out against the press, representing an average of 48 attacks per year, and an annual death of at least one person out of every 27 attacks. Transcending the average, Abuja had three times more deaths than any of the 36 other states. Till date, 2019 still had the highest number of attacks at 68, which is 20% of the total recorded attacks.

According to the *pressattack.ng*, which documented these abuses, the top three forms of attacks were physical assaults, arrests, and threats. But bad days do not endure, and on a cheerful note, things appeared to get better between 2019- 2021, as the number of recorded attacks dropped considerably by 55% and arrests declining by 68%, from 22 to 7. For a historical trends, security personnel, unknown assailants and state actors continue to be the worst violators, although security personnel carried out most of the attacks, twice as more as those by unknown assailants.

In all, Philip Olayoku and Stephanie Adams-Douglas deserve accolades for their decent work of bringing these pieces together in a manual that is certain to reshape the way we rethink, understand, and hopefully commit to fighting for press freedom. Coming at a time of expanding knowledge that the deterioration of the political and social orders in Nigeria underpins the important and urgent work needed to rebuild the democratic compact and make citizen's investment worth the while, one can add that rebuilding the Nigerian press ecosystem for value must therefore be the centrepiece of a comprehensive strategy and program of democratic renewal and consolidation.

For a worthy companion on this journey, the remarks of Thomas Jefferson, the main author of the American Declaration of Independence, who later became president of the country in 1787, remains evergreen: "Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter."

Dapo Olorunyomi

Chief Executive Officer, CJID



Setting the Context



The Dialectics of Press (Un)Freedom

by

Sola Olorunyomi and Philip Olayoku

Whereof the execution (of a good book) ends not in the slaying of an elemental life, but strikes at that ethereal and fifth essence, the breath of reason itself; slays an immortality rather than a life. - John Milton, 1644

1.1 Socratic Beginnings of Press Freedom

Perhaps one of the earliest documentations of the freedom of speech in Western literature is contained in Plato's *Apology*, which documents the defence of Socrates before 500 members of the Athenian Jury around 399BC. Having been condemned to death for his redefining approach to thought processes, his 'impious' influence was considered a pollutant of the mind of Greek youths as he went about the streets of Athens midwifing knowledge through dialogue. While Socrates' stance against democracy may have been influential on Alcibiades and the thirty tyrants led by Critias who overthrew Athenian democracy at some point¹, his pre-Cartesian anthropocentric model of self-knowledge as contained in the maxim 'man know thyself' (albeit in violation of deference to the gods) remains relevant in today's epistemological discourses. While scholars have debated on the political and ethico-philosophical leanings of the charges in the trial of Socrates, what is perhaps apt for this discourse is his resilience in trial hinged on the fundamental importance of the freedom of speech – *Isegoria*, an important feature of Athenian Democracy. According to Plato, he defiantly retorted to the jurors' demand - to desist from his teachings - during the trial that '... while I have life and strength I shall never cease from the practice and teaching of philosophy'.

¹ There was another reported revolt preceding the Trial of Socrates in 401 BC, see Linder, Doughlas. The Trials of Socrates. Famous Trials. Archival Blog (1995-2000). <https://www.famous-trials.com/socrates/833-home> Accessed August 10, 2019.

Though Socrates may have come across as more of a university lecturer today trying to establish a mobile liberal private university with a self-devised curriculum criticizing the establishments and revamping established teaching methodologies, the relevance of his speech to the profession of journalism is anchored on its three canonical functions of informing, educating and entertaining. For one, it is arguable that the concept of education is central to this journalistic tripod where the role of informing and entertaining is centred. It is not impossible that one draws a parallel between the method of investigative journalism today, using interviews and observation as key tools to the Socratic approach to imparting knowledge, where the journalists extract information from the loci of events through engagements with relevant actors in generating information, expectedly objective, for the general populace. This derivative knowledge production formula places the journalist as a major source of information for the public who rely on the news generated to relate, interpret and process reported events. During the cause of investigating and relating events, the journalist also engages in the performatives of dialogue which turns the location of an investigation into a theatre, and just as Socrates drew the Athenian Populace to himself, seeks to attract and sustain the attention of the audience using oratorical dexterity in language choice, multimedia representation via photo and video imagery, and sound rendition. The access to the repository of the public intellect granted journalists as its major content developer necessarily incorporates it to the frame of societal governance as endorsed in Britain between the late 18th and early 19th Century as the Fourth Estate of the Realm.² Whether one considers the European connotation of the other three realms of the Lords Temporal (nobles), Lords Spiritual (clergy) and the Commoners, or its American democratic variant of the executive, legislative and judicial arms of government, the importance of the press in advancing public interests within the frame of governance cannot be undermined. Perhaps, the press is at the core of societal introspection

2 There have been various attributions to the origin of the term which references to Edmund Burke in 1787, Henry Brougham in 1823/24 and Thomas Macaulay in 1828. See Fourth Estate. [https://gazetaria2011.webs.com/Fourth%20Estate%20\(1\).pdf](https://gazetaria2011.webs.com/Fourth%20Estate%20(1).pdf) Accessed August 10, 2019

in the earlier referenced Socratic dictum of self-knowledge, where man is considered both subjectively (as individuals that make up the commune) and generically, to represent the commune itself in need of self-knowledge. Central to the role of journalists as custodians of societal self-consciousness is serving as watchdogs for its governance and administrative architecture, using information as a major tool of putting the defaulting arm of government in the docks of the court of public morality. This unenviable role, in spite of its relevance to social engineering in bridging the divide between the leaders and the governed, remains one of the major challenges of the journalism profession today. These challenges, at times, occasioned by arrests, beatings, torture, imprisonment, and ultimately the payment of the supreme price replicating the Socratic choice of the hemlock verdict that resulted in his very end. The hindrances on journalistic practice with attacks on the press is the object of focus of this manual which explores the Nigerian context of unfreedom³ within journalistic practice. Before venturing to discuss the context as explored by the various scholars, we shall attempt to situate the context of unfreedom within the global dynamics in the following sections.

1.2 In Search of Freedom for the Press

As Sir Richard Jebb observed, the censorship of the Press in England dates back to the introduction of the Press itself in 1557 when printing was centralized in London and printing rights limited to 97 stationers and their successors under government supervision, and subsequently, licensing from authorized bodies deferring to the Archbishop and his chaplains (Milton, 1918). The practice was derivative of the 800AD papal ban on 'heretical literature' where books were either burnt or banished, and Milton (1918) specifically referred to Pope Martin V in the 15th Century who began the tradition of excommunicating people for reading heretical literature, a practice that was sustained till the 16th Century by Pope Leo X. Within the European context of the period,

3 Unfreedom herein is used to capture the state of constraints due to officialdom and the abuse of executive power deployed to control the press and restrict its ability to carry out its watchdog role as the Fourth Estate of the Realm.

therefore, John Milton's 17th Century revolutionary speech in the defense of democratizing truth through uncensored literary tradition is foundational regarding shifts in narratives of objective truth to alternative sources beyond the dogmatic inclinations of Church and State (Stocker, 2015). With the title *Areopagitica* initially published in 1644, Milton modelled his arguments for freedom of publication (the press) on the pre-democratic Athenian judicial Court of Areopagus, which guaranteed freedom in circulating literatures that were neither atheistic nor libelous. This argument that the alterity of sources is beneficial to the creation and recreation of objective truth, came as a protest against the 1643 Order of the Lords and Commons for the Regulating of Printing, spearheaded by the Presbyterians. Hitherto, Europe had relied very much on the Catholic church for guidance and truth before the reformation, where deviations from its teachings had resulted in severe punishments such as imprisonment, torture and death by the inquisition (Stocker, 2015). While the text was ignored at its time of publication, it became a later inspiration for the emancipation of the Press with the repealing of the Regulatory Act in 1695, fifty-two years after. About a Century after, precisely on December 15, 1791, the First Amendment was adopted in the United States as part of the Bill of Rights that guarantees the freedoms of speech, assembly and worship amongst several other individual liberties. The Senate approved version of James Madison's draft provides that:

*Congress shall make no law abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and consult for their common good, and to petition the government for a redress of grievances.*⁴

Suffice to state that the interpretation of this portion of the constitution had been subject to evolution over a period of time. Nonetheless, several philosophical bases for guaranteeing the freedom of speech have been adduced to include aiding individual self-fulfillment and

4 See First Amendment: Religion and Free Expression. 1140 -1155 <https://www.congress.gov/content/conan/pdf/GPO-CONAN-2017-10-2.pdf> Accessed August 13, 2019.

promotion of free political speeches within democratic governance. More relevant to the context of this discourse is the freedom of critical engagement to ascertain the truth as championed by John Milton in the *Areopagitica*, and subsequently by John Stuart Mill in his 1859 magnum opus, *On Liberty*. Mill had maintained that the freedom of expression of opinion is important for the mental well-being of mankind to preclude the silencing of opinions which express truth, in part or as a whole. Every doctrine, as such, must be freely professed and discussed without restraint even when it is considered immoral, except when it portends to harm the others.⁵

1.3 Extant Challenges to Freedom of the Press

1.3.1 China's Communist Party and the Limitations of Media Practice

Lee (2005: 107-8) aligned with the proposition that Chinese Journalism began in the 10th Century with the release of the Government's Official Gazette (Di Bao), though it was later subjected to external influence from the West. He subsequently categorized the different phases of the evolution of the Chinese Press to the Confucian Intellectual Model (1900-1940s), the Maoist Model (since 1949) and the Communist Capitalist Model (since the 1990s). According to his submission, the first phase of Confucian Intellectualism was driven with focus on 'education, guidance and enlightenment', which though influenced by a Confucian ideology that was focused on the masses, entailed a robust quest for reform and modernization. However, the intellectual tradition was phased out under Chairman Mao Zedong, who was opposed to Confucianism, with the expulsion of 550,000 intellectuals by the Communist government for opposing the socialist policies of the Chinese Communist Party (CCP) (Lee, 2005: 113). The Maoist tradition utilized the press for mobilization and indoctrination where journalism was influenced by party loyalty focused on building legitimacy with the masses by integrating into them the communist ideals of governance.

⁵ See Freedom of Speech. Stanford Encyclopedia of Philosophy. Revised May 1, 2017. <https://plato.stanford.edu/entries/freedom-speech/>. There is a debate around the caveat of the Harm principle as proposed by Mill, with the subjective definition of harm being invoked by repressive governments a major challenge to the protection of civil liberties till date.

The declaration of Mao in 1979 banning journalists from investigating or the right to independent analysis is reflective of a linear mode of unadulterated information flow between the party and the masses dependent on the party secretary (Lee, 2005: 114, 117). Finally, the communist capitalist model entailed a profit-driven venture which complements the enforcement of ideological conformity in what Lee (2005: 108, 117-118) refers to as Leninist media marketization model with the state as the major employer of journalists, within which Deng Xiaoping's economic liberalization project proved a more tolerant climate for a profit-oriented journalistic practice, though the profession was not still autonomous. The role of the press thus mutated from building legitimacy to the promotion of party image on the global scale, at times with media houses' selective reportage of compromised facts for economic favors (Lee, 2005: 121).

Negriff (2009) maintained that the Chinese Communist Party since its 1949 inception failed to officially admit its censorship of free speech in China, despite controlling news circulation through its Central Propaganda Department (CPD) (See also Xu and Albert, 2017). Consequently, though Article 35 of China's Constitution guarantees the freedoms of speech and publication, along with those of assembly and association, the Communist party remains the determinant of the exercise of this freedom as there have been major crackdowns on professional

“China’s poor record with press freedom was captured by the Committee to Protect Journalists in a report that at least 38 journalists were imprisoned as of February, 2017 with charges ranging from bribery, defamation, leakage of state secrets or spreading rumours, not mind-ing the number of victimized religious and ethnic minorities and bloggers suffering the same fate.”

journalists – detained and imprisoned (with no laws guaranteeing their protection from attacks), and heavy restrictions on the access to and the use of the internet (Freedom Press, 2015). Most visitors to China confirm restrictions of broadcast stations on cable televisions

and censored stations with predominantly mandarin speaking news channels, sports channels projecting Chinese athletes and leagues, and entertainment channels with ‘dated’ Hollywood movies. Not least is the inaccessibility of popular social media platforms including Facebook, Twitter, YouTube among others. A major event that brought the repression of the aforementioned freedom happened in Tiananmen Square between the 3rd and 4th of June, 1989 during which Chinese citizens including students, workers, academics, writers and journalists advocating for anticorruption and a more liberal governance approach were attacked by military and paramilitary forces, with several deaths, imprisonments and disappearances as fallouts of the imbroglio (Human Rights Watch, 2010). The military action was based on the declaration of the 1989 Martial Law on the 20th of May, 1989, following a month-long student protest. David Schweisberg (1989), reporting for the United Press International on this day wrote that:

The order restricting news coverages reflects serious concern over reporting by foreigners and a revolt against censorship among Chinese journalists that has accompanied the growing demonstrations. The government also informed American television networks they would no longer be able to use private satellite transmission stations and forced the Cable News Network to cut live broadcasting. The final moments of CNN’s live broadcast showed network officials negotiating in vain with Chinese officials. However, network spokesmen said they were told networks could still transmit via Chinese government television facilities, subject to the availability of time and space.

On the restriction of foreign journalists post the 1989 Tiananmen clashes, Qinglian (2004: 19) referenced the 1990 promulgation of “Regulations Concerning Foreign Journalists and Permanent Offices of Foreign News Agencies”, which among other things, requires that foreign journalists seek approval from the government before

conducting interviews, receive news items from government sources, defer to the government to employ Chinese citizens and lease office space. China's poor record with press freedom was captured by the Committee to Protect Journalists in a report that at least 38 journalists were imprisoned as of February, 2017 with charges ranging from bribery, defamation, leakage of state secrets or spreading rumours, not minding the number of victimized religious and ethnic minorities and bloggers suffering the same fate. As it were, the legitimate practice of journalism in China requires practitioners to acquire and present government-endorsed press cards for identification (Freedom House, 2015). The Committee to Protect Journalists maintained that China had the worst record for jailing journalists from 2019 to 2021, with casualties recorded in both mainland China and Hong Kong.⁶ In January 2022, the annual report by the Foreign Correspondents Club noted the increased repression of press freedom in China, with the harassment of journalists who were denied visas, physically assaulted and subjected to cyberbullying. There was the suspicion that the government sponsored these acts of aggression by citizens against foreign journalists through the communist party media outlets, while weaponizing the law to target journalists (Hale, 2022). In February, the US led a Media Freedom Coalition with twenty other countries to condemn the repression of press freedom in Hong Kong by state authorities loyal to the government in mainland China. The countries in this coalition also included Australia, Austria, Canada, Czech Republic, Estonia, Finland, Germany, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, the Netherlands, New Zealand, Slovakia, Slovenia, Switzerland and the United Kingdom; who jointly condemned the implementation of 2020 National Security Law imposed by China leading to the closure of several media outlets and arrest of journalists alongside other dissenting voices (see Marlow, 2022).

6 See One Free Press Coalition Spotlights Rising Imprisonment of Journalists in China. <https://www.dw.com/en/journalist-imprisonments/a-60315390> Accessed March 17, 2022

1.3.2 Saudi Arabia and Qatar: Regional Dynamics of Press Censorship the Middle East

Journalism practice is largely controlled by the state in the Middle East with the ruling families and their allies owning media outlets thus influencing the content and timing of reportage in the print media. In Saudi Arabia and Qatar, for instance, the news media is reported to be more influential in setting the agenda among Saudis for international politics and relations with little impact on the domestic front as observed with the Al-Jazeera and Al-Arabiya respectively (Pintak, 2010:

“In another scenery of the regional politics, the allegation that Qatar and Turkey had fabricated the killing of Jamal Khashoggi by Saudi media when the news broke in October 2018 is indicative of the media being micro-level drivers of their respective countries’ agenda in the region (Kinninmont, 2019: 25, 27).”

330, 335). However, with the creation of the Al-Jazeera in 1996, Arab journalism became exposed to more robust engagements on political and social change with the evolution of over 300 Arab Satellite Channels engaged in agenda-setting for public discourses, though the political and social changes desired remain beyond reach with the government maintaining that its strict censorship regime is based on the preservation of morality and cultural values, and political stability; as journalists reporting on sensitive issues such as

corruption are charged with criminal cases and jailed under the libel laws (Pintak, 2010: 331, 335-336, Matt, 2014: 11). For one, governments within the Gulf States perceive criticism and activism by the media as threats to the security of their sovereign states (Kinninmont, 2019: 16, USIP, 2008: 3). The coverage of religious issues remains delicate in this region, especially in Saudi Arabia that retains its status as a Theocracy often reeling out punishment to perceived defaulters accused of defamatory statements as was recorded in the case of Raif Badawi, an activist blogger sentenced to 1,000 lashes (Dunham, 2016: 7). In a submission by Civicus and the Gulf Centre for Human Rights on Qatar to the UN in 2018, they protested the ‘absence of any independent

media outlets in the country and the restrictions that both foreign and local media practitioners are subjected to in the country.

In terms of legal protection for journalists, Article 48 of the Qatari Constitution states that the 'Freedom of press, printing and publication shall be guaranteed in accordance with the law', containing a caveat to subvert them under the discretionary powers of the state; while Saudi Arabia does not have a provision in its constitution that protects the freedom of expression, peaceful assembly and association (see Matt, 2014: 3, 9)⁷. In summarizing the context of press freedom in these two countries, Shishkina and Issaev (2018: 7-8) posited that though Saudi Arabia provides a religio-legal framework for freedom of expression, it also allows for 'complete censorship' of the press under certain circumstances. For Qatar, the Head of the department of publications has discretionary powers to ban any publication for a period of up to three months. In its 2018 country report on Human Rights in Saudi Arabia, the US Department of State observed that all newspapers, blogs and websites in the country are required to be licensed by the government and the Ministry of Information in the country empowered to appoint and remove all senior editors.⁸

It must however be stated that the context of oppositional regional politics of the Middle East also reflects in media practice with media channels purportedly representing the interests of sovereign states. An extant manifestation of the animosity between the new stations of Al-Arabiya and Al-Jazeera came to the fore in the aftermath of the alleged attacks by the Houthi Rebels on the Abha Airport in Saudi Arabia, a spillover of the war between the rebel and Saudi-UAE led coalition. As reported on June 15, 2019, a former Director of the Saudi office of the Al-Arabiya, Al-Matrafi tweeted that Al-Jazeera be targeted for retaliatory attacks by the coalition for giving support to the rebels.⁹ In another

7 See also Country Report on Human Rights Practices for 2018 by the Bureau of Democracy, Human Rights and Labour, United States Department of State. <https://www.state.gov/wp-content/uploads/2019/03/SAUDI-ARABIA-2018.pdf> Accessed August 13, 2019.

8 Ibid

9 This call and several others were reported by Aljazeera. See Twitter deletes Saudi journalist's call for bombing of Al Jazeera. Aljazeera, June 15, 2019 <https://www.aljazeera.com/news/2019/06/twitter-deletes-saudi-journalist-call-bombing-al-jazeera-190614151846071.html> Accessed August 12, 2019

scenery of the regional politics, the allegation that Qatar and Turkey had fabricated the killing of Jamal Khashoggi by Saudi media when the news broke in October 2018 is indicative of the media being micro-level drivers of their respective countries' agenda in the region (Kinninmont, 2019: 25, 27). On the other hand, there has been progressive response with King Abdullah overruling the court in the case of the Qatif girl who was gang-raped (Pintak, 2010: 333) and the freedom given to Saudi women to drive in June, 2018. The Aljazeera news channel, albeit with reservations on its objectivity regarding the Qatari government politics and policies by some media analysts, continues to lead the region in providing competition for established Western media on news stories and documentaries regarding events in the Middle East and globally, expectedly to the displeasure of the leadership of other Gulf States. During the commemoration of its 25th Anniversary in October 2021, the organization reported being targeted through its bureaus around the world that had been subjected to shuttering, hacking, raids, gunshots and bombings, with recent attacks recorded in Yemen, Tunisia, Sudan and Malaysia (Najjar, 2021). The Reporters without Borders' World Press Freedom Ranking showed an improvement on Qatar's 2020 ranking moving one place to 128 out of 180 countries, with no recording of any media personnel fatality so far in 2022. Saudi has retained its position at 170 with the number of journalists in arbitrary detention reportedly tripled since 2017 as dissenting journalists remain vulnerable to victimization under the criminal code, the cybercrime law and terrorism law on allegations of violating religion, the monarchy or national unity. There is also heavy cyber policing with sophisticated spywares, including Pegasus, for monitoring journalists in exile and other dissenting voices.¹⁰

1.4 The Fifth (Digital) Estate

An emerging Fifth Estate that extends from the practice of professional journalism is Citizen Journalism which often complements mainstream reportage with several social media platforms including blog sites,

¹⁰ See Saudi Arabia <https://rsf.org/en/saudi-arabia>

Twitter and YouTube serving as spaces for the dissemination of both individual and public messages (Cooke, 2019). However, the responses to the proliferation of its use in creating alternative narratives have been met with reservations for reasons ranging from lack of professionalism to not meeting up with the reliability tests, rent-seeking and sensationalism. Perhaps, the most virulent criticism against the use of the social media is its viability in the promotion of sensationalism, a practice referred to as Yellow Journalism since the late 19th Century. Paradoxically, the boycott of the conventional media by the former President of the United States, Donald Trump, for his Twitter handle has given momentum to a populist critique of the concepts of fake news and hate speech. While there is the contrast of using the social media to critique certain conventional electronic broadcast platforms such as the Cable News Network, it implicitly validates the overlaps of information between the two estates. Countries leveraged the new rave on fake news to further shrink the media space with Qatar for instance upwardly reviewing the punishment for broadcasting /publishing fake news to five years imprisonment in January 2020. The implication of this is dire for journalists operating in terrains of stringent state censorship of the newsroom.¹¹

“....China is reported to have initiated a major censorship drive on social-media platforms through a White Paper in May 2010 using monitoring systems and firewalls, and specifically restricting netizens to the endorsed Sina Weibo microblogging platform and WeChat, with focus on scrutinizing news and political information...”

Consequently, the operational context of the fifth estate is such that it serves as an extension of the fourth, by complementing the circulation of news reports, while facilitating access to information in real-time. Regarding the former, most media houses use the social

¹¹ See Change to “Fake News” Law Poses New Threat to Qatar’s Journalists. <https://rsf.org/en/news/change-fake-news-law-poses-new-threat-qatars-journalists> Accessed March 17, 2022

media platforms for the transmission of news, to reach varieties of audiences bridging the spatial divide within the shortest possible time. There has also been an increase in the reliance on citizen journalism for news, with conventional broadcast media houses soliciting content from citizen journalists to complement their news stories. In spite of the reservations that have been made regarding the use of the social media platforms in the spread of fake news, it is an inevitable tool for the circulation of information and providing evidence to hold public officials, and even corporate bodies to account. It also remains one of the major tools for engagements in advocacy and activism, especially for mobilization both in virtual and physical spaces. As a consequence of the potential of the new media to drive accountability, and by extension social change, there have been agitations by governments of different countries, Nigeria inclusive, on its usage. One extant manifestation of these agitations is internet filtering with claims by governments of protecting national security, cultural sensitivities, protection of social values and economic monopolies, to mention but a few (see Shishkina and Issaev, 2018). These agitations have further been fueled by the adoption of the social media by terrorist networks, both on the dark web for internal communication and on open sites for radicalization and recruitment, including its use to strike terror through its show of force. The use of such contents for news reportage by media houses have also been enmeshed in controversies with the criticisms of undermining counterinsurgency efforts, and by extension national security; through the promotion of terrorist activities on the one side, and the validation of objective reportage for public enlightenment of the reality regarding terrorists and their activities. While several countries have passed counterterrorism laws, the vague definitions of terrorism acts have been criticized by human rights organizations as deliberately targeting potential dissidents and advocates of governance reforms.

For instance, China is reported to have initiated a major censorship drive on social-media platforms through a White Paper in May 2010 using monitoring systems and firewalls, and specifically restricting netizens to the endorsed Sina Weibo microblogging platform and

WeChat, with focus on scrutinizing news and political information (Freedom House, 2015; Xu and Albert, 2017). In February 2014, the CCP reportedly inaugurated the Central Internet Security and Informatization Leading Group led by President Xi Jinping to manage cybersecurity and internet usage in the country, within the frame of the Golden Shield Project¹². This Censorship practice of the internet is limited to China with Saudi Arabia a viable example in the middle East. It has been reported that as of December 2018, the Saudi Ministry of Information solely authorizes all registered websites that are hosted in the country.¹³ Also, the Public Prosecutor's Office (PPO) announced in June 2017 that the promotion and production of rumours, which disrupt public order were punishable under the anti-cybercrimes law and attracted a punishment of up to five years imprisonment and a three million Riyals fine. The revised law also stipulates one-year imprisonment for defamation of character through information technology devices including social media and social networks.¹⁴ In response to these clampdowns, netizens have remained resolute in the exercise of their freedom by creating and adopting technology for circumventing censorship to facilitate free circulation of, and access to news and information (Freedom House, 2015; Xu and Albert, 2017). The ban on Twitter by the Nigerian government, after bringing down a Tweet by the Nigerian President flagged to have violated its code of usage on June 4 2021, yet highlighted the intolerance by the government against free dissemination of information in the country. While a lot of users, including media houses, resulted in the use of Virtual Private Networks (VPN) to access the app, they were subjected to threats and intimidation from government representatives, who themselves were called out for using the app after the ban. The National Broadcasting Commission, which had been unduly empowered through the draconian Nigerian Broadcasting Code, ordered media outlets to delete their Twitter

12 The Golden Shield Project employs bandwidth throttling, keyword filtering and denial of access to certain websites for carrying out surveillance see (Xu and Albert, 2017).

13 See Country Report on Human Rights Practices for 2018 by the Bureau of Democracy, Human Rights and Labour, United States Department of State. <https://www.state.gov/wp-content/uploads/2019/03/SAUDI-ARABIA-2018.pdf> Accessed August 13, 2019.

14 Ibid

accounts. The meeting with China's cyberspace administrators during the period of the ban led to agitations that the country's government is advancing towards clamping down on both foreign and local media outlets by taking a cue from China.¹⁵ This has been reflected in several attempts including the call made by the Minister of Information and Culture, Alhaji Lai Mohammed, in November 2020 for CNN to be sanctioned for its reportage of the Lekki Tollgate incident (Ujah, 2020)

1.5 Nigeria and the Utopia of Press Freedom

The 1975 centralization of media policies in Nigeria during which the federal military government of Nigeria took over the ownership of its broadcast stations, the *New Nigerian*, and secured 60% of *Daily Times* to ensure constructive criticisms and the promotion of national interests set the tune for the infiltration of military regimes into the practice of journalism under the pretence of propagating national unity at the

“According to the Reporter Without Borders (RSF), Nigeria dropped 5 spots in the World Press Freedom Index rating from 115 in 2020 to 120 in 2021, just above Nicaragua and Afghanistan. Journalists have increasingly protested against muzzling under the incumbent regime in Nigeria, as the freedom of practice in the country remains under threat.”

expense of its roles to inform, educate and entertain the people (Mgbejume, 1991: 49-50). Conceivably, one of the repressions against the media was promulgated under the incumbent president, Muhammadu Buhari, with the promulgation of Decree No. 4 of 1984 empowering the government ‘to prohibit the circulation of erring newspapers or revoke the license of offending television or radio stations’, with an attachment of a two-year jail term without an option of fine as punishment for defaulters ((Mgbejume, 1991: 52). Paradoxically,

while the press was at the forefront of the struggle to end repressive military regimes characterized by the abuse of constitutional rights

15 See Twitter Blocked, Journalism Threatened in Nigeria. <https://rsf.org/en/news/twitter-blocked-journalism-threatened-nigeria> Accessed March 17, 2022

including those of the press, the return to democracy has done little to put an end to the struggle for press freedom. A study by Akinwale (2010: 66) after a decade of Nigeria's return to democracy concluded that the socio-political environment in Nigeria remains a major hindrance to the freedom of the press, despite its enshrinement in Section 39 of the 1999 Constitution.

The Federation of African Journalists in its 2010 report noted that journalists in Africa, Nigeria inclusive, have continuously been targeted by governments for their views as they were subjects of assassinations, imprisonments, kidnappings, intimidation, confiscation of media equipment among other forms of attacks with most attacks perpetrated during the electoral periods. (Hane and Baglo, 2010: 1-2). During the year 2010, three deaths of journalists were recorded in Nigeria namely the assassination of Edo Ugbagwu at his residence by unidentified gunmen, and the macheting of Sunday Bwede and Nathan Dabak on April 24 (Hane and Baglo, 2010: 18). Earlier in 2002, a fatwa was declared based on provocations from a November 16 publication in *Thisday* by Isioma Daniel whose utterance about The Prophet was considered intolerable. Without going into the details of the debate, what became crystal clear was the burden of responsibility that the freedom of speech and publication places on the journalist, who though must be objective in airing opinions, must be cautious in terms of language choice in communicating the message. It is important that the journalist is cautious of the environment of reportage for self-protection and ultimately to ensure that the essentials of the message of communication are not lost to the noise of misinterpretation.

According to the Reporter Without Borders (RSF), Nigeria dropped five spots in the World Press Freedom Index rating from 115 in 2020 to 120 in 2021, just above Nicaragua and Afghanistan. Journalists have increasingly protested against muzzling under the incumbent regime in Nigeria, as the freedom of practice in the country remains under threat. Some relevant cases that reflect the challenges of Press Freedom

in Nigeria include the arrest of Dapo Olorunyomi and Evelyn Okakwu of the *Premium Times* by the Military in January, 2017 for a news story on the Chief of Army Staff after their office was raided by plain-clothed police officers; that of Jones Abiri, an editor of the *Weekly Source* who was detained for two years between 2016 and 2018 without access to his lawyer or family. Samuel Ogundipe (*Premium Times*) and Tony Ezimakor (*Daily Independent*) were also detained for their professional acumen of protecting their sources during the course of 2018. Similarly, the *DailyTrust* Offices in Abuja and Maiduguri were raided by the military shortly before the elections in January, 2019 leading to the arrest of its regional editor, Uthman Abubakar, and reporter Ibrahim Sawab. The omen for journalistic practice in Nigeria does not seem too exciting at present, especially considering that the incumbent government is serving its final term in office. A discourse on Nigeria's context of press freedom cannot be complete without the discussion on the 2011 Freedom of Information Act. The level of compliance by government establishments to release requested information as required by the law is quite very low. For instance, a 2015 study by the Right to Know Nigeria Group showed that there was no response from all of 39 government institutions that were accessed to release information under the provision of the law.¹⁶

Conflict reportage is not without its hazards in Nigeria as was portrayed with the May 2012 Bombing of the *ThisDay* Newspaper offices in Abuja and Kaduna. More recently, there was a public outrage with the death of Precious Owolabi who was undertaking his mandatory national youth service with Channels Television while covering the protests of the Islamic Movement of Nigeria in Abuja, the Federal Capital. Having been hit by a bullet on July 22, 2019 during the unfortunate incident, the debate on the protection of journalists while covering conflict situations in the country gained momentum. Within the global context, Balguy-Gallois (2004: 37) noted the increasing spate

¹⁶ Ibid

of attacks on journalists covering conflicts with specific reference to them recording more casualties than the military coalition during the war in Iraq. Whether as war correspondents embedded with the military or independent practitioners, journalists retain their civilian status in armed conflicts and are thus protected from attacks under the International Humanitarian Law as captured in Article 79, Protocol I of the Geneva Conventions, as long as there is no direct participation in the hostilities (Balguy-Gallois, 2004). The same protection is also guaranteed for their gadgets as civilian objects under Article 52 as long as they are not being used for military objectives.

Perhaps the most difficult aspect of objective reportage is the profitability of the journalism practice in Nigeria today. There have been series of outcries by practitioners of poor remuneration of journalists, not only by mushroom publishing outfits but also certain established broadcast houses on Cable Television. This is not unconnected with the realities of the time, inclusive of the challenges that are being posed by the emergence of the fifth estate especially regarding breaking the dominance of advertising it hitherto enjoyed. It is thus commonplace to read about allegations of inducement of journalists to alter facts or refrain from publishing stories, thereby misleading and disinforming the public. This dilemma remains a major challenge

The manual is designed as a tool-kit for students, scholars and practitioners of journalism as well as the general public on the importance to protect journalists in the discharge of their duties in promoting and ensuring good governance. It is worthy of note that the Centre, with the support of the Free Press Unlimited, had initially developed the Press Attack Tracker as introduced by Stephanie Adams to track, record and report attacks on Nigerian journalists.

that scholars and practitioners in the Nigerian Press space must resolve to keep the relevance of the profession intact. The freedom of netizens also came under threat in Nigeria with a bill proposition at the Nigerian

Senate in December 2015 which contained a two-year prison sentence alongside a 2 million naira fine for postings considered abusive against individuals, groups or government establishments. However, the bill was not passed with the interventions of both local and international civil society organizations.¹⁷ The Board of the World Association of Newspapers and News Publishers (WAN-IFRA) in a 2017 resolution after its meeting in Portugal decried the attempt at criminalizing journalism practice through the cybercrime legislation while citing the case of Timothy Elombah and five other bloggers who were targeted using the nebulous provisions of the law.¹⁸ The RSF as of December 2021 maintains that Nigeria is the most dangerous country in West Africa for journalists who are targeted by both the federal and state governments using draconian laws such as the Cybercrime Law. The media has specifically been targeted during protests as exemplified by attacks on several media outlets in Lagos during the End SARS protests in 2020 after they were hijacked by hoodlums.¹⁹ It is thus imperative to continue the advocacy against the threats to press freedom in Nigeria which is the objective of this manual as shall be espoused in the concluding section of this chapter.

1.6 Bringing Freedom to the Nigerian Press

The award of the 2021 Nobel Peace Prize jointly to Maria Ressa and Dmitry Muratov of the Philippines and Russia respectively, with the former facing uncertainty regarding her safety and future in her country reflects the resilience of media professionals in the face of persecution. Both journalists have been recognized for advancing the frontiers of the struggle for the freedom of expression by calling out authoritarian repression including the controversial war on drugs in the Philippines; and corruption, electoral violence and unlawful

17 See Nigeria: Freedom of the Press 2016. A Report by Freedom House <https://freedomhouse.org/report/freedom-press/2016/nigeria> Accessed August 11, 2019.

18 See WAN-IFRA Board Press Freedom Resolution – Nigeria <https://www.wan-ifra.org/articles/2018/05/31/wan-ifra-board-press-freedom-resolution-nigeria> Accessed August 11, 2019.

19 See Nigeria <https://rsf.org/en/nigeria>

detention in Russia. The struggle for a free press is thus a fulcrum on which the success of democratic practice lies. In response to the challenge of press freedom in Nigeria, therefore, the Centre for Journalism Innovation and Development (CJID) commissioned a group of scholars to complement its work in building the capacity of journalists by developing this manual on press freedom. The manual is designed as a toolkit for students, scholars and practitioners of journalism as well as the general public on the importance to protect journalists in the discharge of their duties towards promoting and ensuring good governance. It is worthy of note that the Centre, with the support of the Free Press Unlimited, had initially developed the Press Attack Tracker as introduced by Stephanie Adams to track, record and report attacks on Nigerian journalists. This database is designed to serve as an advocacy tool in advancing human rights, accountability and governance in the country; and has helped to provide reliable data for several organisations including the African Union and the European Union. The manual consists of six interactive modules that have been sequenced to cover topics including International Instruments of Press Freedom and the Context of Domestication in Nigeria, Legal Dynamics and Press Freedom in Nigeria, The Freedom of Information (FOI) Act and the Challenges of its Implementation, Investigative Journalism Practice in Nigeria, The Press and the Protracted Struggle for Freedom in Nigeria, and Counter-Terrorism Legislation and Press Freedom in Nigeria.

In the first module, Tunde Akanni focused on historicizing the practice of journalism in Nigeria within the context of the long-drawn struggle for press freedom. He highlighted the different decrees promulgated by successive regimes headed by the military while detailing specific cases of the violation of press freedom and subsequent responses by the relevant stakeholders. The second module is on the International Instruments of Press Freedom, where Jide Jimoh discusses the origins of the development of international instruments while highlighting the

basic provisions of these instruments in the protection of press freedom. He then went on to identify challenges of domestication including the criticism of dualist approaches to enacting laws which create a tedious process of domestication in sovereign states and detailing the shortfalls of Section 22 of the Nigerian Constitution where the marginal note on press freedom is contained. Saheed Owonikoko focused on the local contexts of legal provisions of press freedom in Nigeria in the third module. He specifically highlighted the criminal code and cybercrime laws, and their application in Nigeria, while also exploring the debate on the justiciability of the provisions of these instruments in Nigeria. The Freedom of Information Act and the challenges of its implementation constitute the focus of discussion in the fourth module as authored by Ugo Aniga. He highlighted the centrality of the press to the socio-political processes within democratic governance as the harbinger of information generation and dissemination, while touching on how the roles could be harnessed for good governance. Onwuka Okereke's module is the fifth in the series focused on investigative journalism practice in Nigeria, with classical examples of investigative journalism and the framework for creating a nexus between investigative journalism and democratic development. He also highlighted the challenges of the practice of investigative journalism in Nigeria, including discussions on occupational hazards. In the sixth and final module, Emeka Thaddeus Njoku explored how the counterterrorism legislation negatively impacts press freedom in Nigeria with specific discussions around the 2011 Terrorism Prevention Act. The module concludes with the need to revise the existing counterterrorism legislation to guarantee the protection of fundamental human rights.

It is hoped that this manual will advance the protection of press freedom in Nigeria by providing enlightenment for scholars, practitioners and students of journalism. The end goal is that the Nigerian society becomes one in which journalists are given the appropriate climate to carry out their functions knowing fully well, as Pintak (2010:339)

contends, that it is impossible for the media to drive political reforms where the government does not provide a climate that guarantees its freedom and independence.

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Module One



The Press and the Protracted Struggle for Freedom in Nigeria

by

Tunde Musibau Akanni



This module is prepared to run for 2 hours

Broad Learning

- To understand the context of constraints of press freedom in Nigeria under the military;
- To understand the different attempts at restoring the dignity of the press in Nigeria;
- To understand how digital rights have been incorporated into the struggle for press freedom.

2.1 Introduction

“It says a lot about the state of our world that for journalists to become internationally or globally famous and respected, intimidation, harassment, imprisonment and even death is mandatory...”²⁰

Learnings

At the end of the Introduction, training participants are expected to:

- i) have a fair idea of how the media started in Nigeria;
- ii) know the specific legal status of the press in Nigeria.

More than two decades on, after the restoration of democracy in Nigeria, press freedom is yet to enjoy statutory proclamation. There

²⁰ Jeyifo, B (2019) “Was it Adorno, Benjamin or Althusser?” In Onumah, C and Adetiba, F (eds.) Testimony to Courage: Essays in Honour of Dapo Olorunyomi. Abuja. Kappa and Omega

are two provisions of the 1999 Constitution of the Federal Republic of Nigeria as Amended, that readily smack of relevance to the media. The first, Section 22 of the Constitution, charges the press to hold government accountable to the people. It however says nothing about the enablement that government and other stakeholders may support the press with to make it function well. The second provision is Section 39 of the Constitution. It barely guarantees free speech for citizens. It then goes on to add the conditions that anyone interested in establishing a broadcast station will need to fulfil.²¹ No word on the freedom for the broadcast stations to thrive as viable critics. Sadly, fresh encumbrances, widely condemned by stakeholders nationwide, have been contrived by the government of President Muhammadu Buhari²²

But the media in Nigeria have always endured their responsibilities with unmistakable commitment, which has also earned them assorted hardship, including summary arrests and detention, as well as assaults from security operatives. This unwavering commitment has probably encouraged some stakeholders to initiate a reward system in the form of award of prizes. Some of them, like Diamond Awards for Media Excellence, DAME, done annually, under different categories applicable to the two main media genres, gives out awards to deserving journalists after some thorough scrutiny by a panel of assessors. International development organisations not only complement this but offer to support capacity building for journalists as well as media organisations including media advocacy concerns. Indeed, the inception of the digital technology and therefore digital media, has been thriving on the pre-existing tradition of obvious plurality and unmistakable energy of the players. Today, online news websites multiply in Nigeria so rapidly that no one can claim to know them all.

Talking about the quality of the contents is however a completely different matter. However, not all self acclaimed news websites could be ascribed to professional journalists. It is however interesting to

21 1999 Constitution of the Federal Republic of Nigeria

22 Arogundade, L and Akanni, T eds.(2021) Question Marks on the 6th NBC Code Amendments. Lagos. Consortium of Independent Broadcasters and Free Press Advocates.

note that not all news consumers are able to distinguish between news websites run by professionals and those run by sheer enthusiasts and/or charlatans. Equally striking is the fact that even professionals of high standing have, needlessly, fallen for false publications promoted by the non professionals. The Nigerian Union of Journalists, NUJ,

“Like the pre-independence years, like the military era, for the Nigerian press. Indeed, the military era manifested more hurdles to confront, ranging from legal contraptions to varying forms of harassment and attacks. It was particularly worse for the print genre than the broadcast which then was exclusively run by the government.”

has a reasonably clear set of ethical codes of conduct. With the additional plurality enhanced by the digital media has also come additional bodies of practitioners with respectable organisations as members. The new associations include the Guild of Corporate Online Publishers, GOCON, as well as the Online Publishers Association of Nigeria, OPAN. A good number of the members of these are also members of reputable international organisations.²³ The governments in Nigeria therefore know who to

contact for what infraction or collaboration, even as there are relevant laws that may be invoked.

2.2 Background

Nigeria’s pioneer newspaper, *Iwe Irohin fun awon Egba ati Yoruba*, (newspaper for the Egba and Yoruba people), which pioneered newspaper publishing in Abeokuta, was primarily intended to drive the literacy and religious campaigns of the British missionary founder, Henry Townsend. It, however, soon became a political advocacy platform for the locals. The indigenes found it as a very supportive instrument to register their strong aversion for the indulgence of the

²³ Oso, L and Akanni T (2018) “Democracy and Digital Public Sphere”. In Olukotun A (ed.) *Watchdogs or Captured Media. A Study of the Role of the Media in Nigeria’s Emergent Democracy, 1999-2016*. Lagos. Diamond Publications Limited.

British colonial masters to the detriment of the well-being of the locals. Thus was prepared the radical political inclination of newspapers in Nigeria through its different phases in the colonial era, the pre-independence period, the military rule years, as well as the succeeding democratic political phase.

Politics was so much the concern of newspapers in Nigeria in the colonial era that although the early newspaper men in Nigeria were not trained, they established as many as 50 newspapers between 1880 and the outbreak of the Second World War, to give maximum visibility to their sentiment. The main focus of the multiplying newspapers was unmistakable: self governance and clearly all possible accompaniments, including a free press. Omu (1996: 2-3) notes that the phenomenon “...encouraged a sense of political and nationalist awareness and involvement by providing the medium of criticism of the authorities, spreading disaffection with aspects of official policies and programmes and coordinating movements of agitation.”²⁴

Like the pre-independence years, like the military era, for the Nigerian press. Indeed, the military era manifested more hurdles to confront, ranging from legal contraptions to varying forms of harassment and attacks. It was particularly worse for the print genre than the broadcast, which then was exclusively run by the government. Olukotun²⁵ observes that it was the critical press that availed the interested section of the Nigerian populace with access to the world. Like the colonial power, the military government was not comfortable with the role of the critical press. The restoration of democracy in 1999 has not ushered significant respite either. Harassment of journalists, especially operators of news websites has been relentless, even as established media have suffered unjustified, official cruelty from security agencies.

24 Omu, F (1996) “Journalism in Nigeria: A Historical Overview”. In Dare, O and Uyo, A (eds.) *Journalism in Nigeria Issues and Perspectives*. Lagos. Nigeria Union Journalist, NUJ

25 Olukotun, A (2002) *State Repression, Crisis of Democratisation and Democratisation and Media Resistance in Nigeria (1988-1999)*. Ibadan. College Press

2.3 Legal Contraptions Against Press Freedom During the Military Years

The military era was strikingly marked by relentless promulgation of decrees. Between 1966 and 1995, a period of 31 years, no fewer than 21 decrees were rolled out, namely:

- 1) Circulation of Newspapers Decree No 2 of 1966
- 2) The Defamatory and Offensive Publications Decree No 44 of 1966
- 3) Newspaper Prohibition of Circulation Decree No 17 of 1967
- 4) The Sunday Star and Imole Owuro (Prohibition) Edict No 17, 1968
- 5) The Printers and Publishers of the Sunday Star and the Imole Owuro (Declaration as unlawful society) Edict No 19, 1968
- 6) Public Officers (Protection Against False Accusation) Decree No 11 of 1976
- 7) Daily Times of Nigeria (Transfer of Certain Shares) Decree No 1 of 1979
- 8) Newspaper (Prohibition of Circulation) (Validation) Decree No 12 of 1978
- 9) Public Officers (Protection Against False Accusation) Decree No 4 of 1984
- 10) Newswatch (Proscription and Prohibition from Circulation) Decree No 6 of 1987
- 11) The Reporter (Proscription and Prohibition from Circulation) Decree No 23 of 1993
- 12) Offensive Publications (Proscription) Decree No 35 of 1993
- 13) Treason and Treasonable Offences Decree No 29 of 1993
- 14) Newspapers Registration Decree No 43 of 1993
- 15) The News (Proscription and Prohibition from Circulation) Decree of 1993
- 16) Newspapers etc (Proscription and Prohibition from Circulation) Decree 48 of 1993 (Proscribing Concord, Punch, Sketch and Observer Groups of Newspapers)
- 17) The Concord Newspapers and African Concord weekly magazine (Prohibition from Circulation) Decree No. 6 of 1994

- 18) The Punch Newspaper (Proscription and Prohibition from Circulation) Decree No 7 of 1994
- 19) The Guardian Newspapers and Guardian Weekly magazine (Proscription and Prohibition from Circulation) Decree No 9 of 1994
- 20) Concord Newspapers and African Concord Magazine (Proscription and Prohibition from Circulation) (Extension of Time) Order 1994
- 21) The Guardian Newspaper and African Guardian weekly Magazine (Proscription and Prohibition from Circulation)(Extension of Time) Order 1995²⁶ (Akinola, 1998:XI-XII)

In all, as much as half of all these laws were promulgated between 1993 and 1994 when General Abacha desperately stuck to power. The decrees were, in varying degrees, inhibiting and impacted assorted hardship on the citizens. One of the notoriously remarkable ones is the Decree Number 4 of 1984. Two *Guardian* journalists, Tunde Thompson and Nduka Irabor, were adjudged to have violated its provisions and were consequently jailed by the General Muhammadu Buhari-headed military government. The succeeding military government of General Ibrahim Babangida later granted them amnesty, thus freeing them. The same General Babangida government continued with the promulgation of additional obnoxious decrees including those with which newspaper houses were shut down.

2.4 Attacks on Journalists

Beyond the promulgation of the crude laws, both 1992 and 1993 were particularly traumatic for the media as several journalists were detained and printing premises were taken over to halt production of newspapers and magazines, as decreed. The height of these violations under the military government were the gruesome murder of the editor-in-chief of *Newsweek* magazine, Dele Giwa, and the killing of reporter of *The News* magazine, Bagauda Kaltho, in 1986 and 1996 respectively. While the former was bombed to death in his home in the then capital

26 Akinola, R (1998) "Introduction". In Akinola (ed.) *Nigerian Media and Legal Constraints*. Lagos. Centre for Free Speech, CFS

of Nigeria, Lagos, the latter was declared missing in 1996, only to be declared dead two years later in 1998, after some tortuous search.

The restoration of democracy in 1999 did not stop the attacks from government agencies, even as some others compounded the situation. In December 2016, for instance, the Nigerian Army wrote to *Premium Times*. Their reservation was against some reports by *Premium Times* on the army and the Chief of Army Staff, Lt. Gen. T. Y. Buratai. The Army argued that the reports were not only untrue but betrayed lack

“Perhaps to give a most conspicuous expression to President Buhari’s government’s contempt for online freedom, a 7-month or 222-day ban was slammed on Twitter in 2021 beginning June 5, 2021 and ending January 13, 2021. The government, according to media reports, had suspended twitter after Twitter deleted a tweet from the President, in which he threatened to punish secessionists.”

of patriotism on the part of the medium and therefore was capable of demoralizing the troops. It further expressed its exception to the medium’s reports on the illegal acquisition of property by Lt. Gen. Buratai claiming the Code of Conduct Bureau had cleared him. In the same communication, it demanded an apology from the publishers of *Premium Times* and even with a set deadline of December 1, 2016. Apparently, after a long wait without any compliance from *Premium Times*, the Nigerian Army mobilized the police to intervene. On January 19, 2017 therefore, plain-clothed policemen swooped on the premises

of the newspaper and arrested the publisher, Dapo Olorunyomi, as well as the judicial correspondent, Evelyn Okakwu. Refusing to apologise, the editor-in-chief of *Premium Times*, Musikilu Mojeed, insisted that his colleagues and the rest of them would prefer to lose their personal liberties to retracting the truth. Neither the Nigerian Army nor any officer went to court afterwards. No apology was rendered to *Premium Times* Nigeria either.²⁷

27 <https://punchng.com/breaking-police-storm-premium-times-arrest-publisher/> Last accessed, July 20, 2019

Also, on January 6, 2019, armed soldiers, in five vehicles, occupied the Abuja head office of Media Trust Limited, publishers of the *Daily Trust* titles sending away journalists and other staff. The soldiers ransacked the newsroom and carted away dozens of computers. Same day, another detachment of soldiers and plain-clothed security officials went to the Maiduguri regional office of the company and conducted a similar search. The soldiers took away the Regional Bureau Chief, Uthman Abubakar, and a reporter, Ibrahim Sawab. A production staff who was taken away from the Abuja head office, alongside the firm's computers was released after a period of detention at the Mogadishu barracks in Abuja. Also in Lagos, seven vehicles with armed soldiers arrived the offices of the same newspaper at Textile Labour House in Agidingbi at about 9 p.m. After driving out perplexed staff, they sealed the premises.²⁸

Yet, according to Pate and Idris “...at no time had journalists experienced such high level risks and faced dangers to their personal, professional and institutional safety in Nigeria as they did during the period 2009-2015 when the terror group, Boko Haram, launched a war of terror against the Nigerian state”²⁹ Notwithstanding the fact that Nigerian journalists have no insurance cover and also lack adequate training in safety, journalists and media establishments generally were subjected to compound inhibitions from the public, terrorists and the security system. They are often in dilemma in undertaking investigations when confronted by public biases of ethnicity, regionalism, religion, politics, corruption and government ineptitude which are known to colour perception of reality.³⁰

28 <https://www.premiumtimesng.com/news/headlines/304461-why-we-invaded-daily-trust-nigerian-army.html>. Last accessed July 9, 2019

29 Pate, U and Idris, H (2017) “How Journalists Survived to Report”. In (Carlsson, U and Poytari, R eds.) *The Assault on Journalism. Building Knowledge to Protect Freedom of Expression*. Goteburg, Sweden. Nordicom

30 *ibid*

Learnings

At the end of this section, participants are expected to:

- i) Have a fair idea of government's resort to desperate laws against the press;
- ii) Have some knowledge of the forms of past attacks against the press by state actors and non-state actors alike;
- iii) Have knowledge of how conflict reporting compounds the lack of press freedom in Nigeria.

2.5 Against Civilisational Freedom

In the final days of the military era, government was under a lot of pressure as it made efforts to access some benefits from the international community, thus forcing it to agree to some concessions. One of such was the liberalization of the broadcast media sub-sector in 1991; thus freeing it from being the exclusive preserve of government. Interested individuals and groups could, henceforth, aspire to own broadcast stations and were indeed licensed. Thus emerged the pioneer, Africa Independent Television (AIT), soon to be followed by its sister radio station, Raypower Radio, both owned by Daar Communication Company chaired by Dr. Raymond Dokpesi. The restoration of a civilian administration in 1999 therefore came with some enhanced semblance of the rule of law. Newspapers and broadcast stations multiplied and flourished. The apogee of the democratization process in the media sector was the actualization of community broadcasting in 2015, coming on top of the all-pervading technology of internet, with all its radical influence across all the media genres and a magnitude of intensity never experienced before. Even with what is clearly a global manifestation, governments in Nigeria have not restrained from their media freedom curtailment indulgences.

Although there has not been any law enacted to gag citizens online, successive governments have always demonstrated discomfort with

the freedom that the internet appears to avail citizens with. In 2014, the government of President Goodluck Jonathan awarded a USD\$40 million ‘internet spy’ contract to Elbit Systems, an information and communication technology intelligence firm from Israel. The company was commissioned to spy on citizens’ computers and internet communications, under the guise of intelligence gathering and national security.

Earlier, researchers at Munk School for Global Affairs had revealed that Nigeria, Kenya and Egypt were deploying surveillance and censorship technology developed by an American company, Blue Coat, which specializes in online security. The company was to enable the government to invade the privacy of journalists, netizens and their sources. Its censorship devices used Deep Packet Inspection, DPI, utilised by many western Internet Service Providers, to manage network traffic and suppress strange connections. Another USD\$61.9million was reportedly set aside for Wise Intelligence Network Harvest Analyzer System, Open-Source Internet Monitoring System, Personal Internet Surveillance System and Purchase of Encrypted Communication Equipment.³¹ Till date, there is no record of any renunciation of the contract, in spite of the change of government since 2015. Perhaps to give a most conspicuous expression to President Buhari’s government’s contempt for online freedom, a seven-month or 222-day ban was slammed on Twitter in 2021 beginning from June 5, 2021 and ending on January 13, 2022. The government, according to media reports, had suspended Twitter after Twitter deleted a tweet from the President, in which he threatened to punish secessionists. The government argued that the decision was to protect the sovereignty of Nigeria, as a country.

It is important to note, however, that in 2015, Nigerian government enacted the Cybercrime Act of 2015. Its objectives include providing “an effective and unified legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment

31 [Premiumtimesng.com/news/131249-exclusive-jonathan-awards-40million-contract-to-israeli-company-to-monitor-computer-internet-communication-by-nigerians.html?doing_wpccron=1370733480.2585968971252441406250](https://premiumtimesng.com/news/131249-exclusive-jonathan-awards-40million-contract-to-israeli-company-to-monitor-computer-internet-communication-by-nigerians.html?doing_wpccron=1370733480.2585968971252441406250). Last accessed July 10, 2019

of cybercrimes in Nigeria... ensures the protection of critical national information infrastructure... promotes cyber security and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.” The seven-part Act focuses on the Protection of Critical National Information Infrastructure; Offences and Penalties; Duties of Financial Institutions; Administrations and Enforcement. The remaining parts are Arrest, Search, Seizure and Prosecution, as well as Jurisdiction and International Cooperation. It is also significant to note that the Act provides for the setting up of a Cybercrime Advisory Council comprising no fewer than 18 members representing different government ministries, departments and agencies, MDAs. Also included on the council are seven non-state actors namely: Association of Telecommunications Companies of Nigeria, Internet Service Providers Association of Nigeria, Nigeria Bankers Committee and Nigerian Insurance Association. The rest are Nigerian Stock Exchange, NSE, and Non Governmental Organizations with focus on cyber security.³²

Notwithstanding the conspicuous reality that some organisations may be represented twice, using the classification for non-state actors and the obvious relevance of the media industry, it has never been deemed fit to include an organization like the Nigerian Press Organization, NPO, press freedom advocacy groups or any of the online publishing associations.³³

2.6 Harassment Cases

Internet Freedom activists and other stakeholders around the world have rightly asserted that rights offline are hardly any different from rights online. Meanwhile, conspicuously missing from the entire Constitution is the express provision for press freedom. It is only mentioned in the marginal comments which accompany some substantive provisions. In spite of the seeming added advantage of the FOIA, therefore, the

32 Cybercrime Prohibition and Prevention Act (2015). Available at [https://cert.gov.ng/images/uploads/Cybercrime\(Prohibition, Prevention, etc\)_Act 2015.pdf](https://cert.gov.ng/images/uploads/Cybercrime(Prohibition, Prevention, etc)_Act 2015.pdf) Last accessed July 10, 2019

33 Akanni, T (2018) Issues in Frameworks, Freedom of Expression and Internet Rights in Nigeria. Lagos. International Press Centre, IPC.

press, offline and online, have not fared significantly better in spite of the nation's return to civil rule from military dictatorship since 1999. Journalists and bloggers are now routinely arrested and intimidated. This trend is even more prevalent at the state level, where opinions expressed on Facebook, which commands the largest followership among all social media, have led to the arrest and prosecution of many.

Freedom House in its *Freedom of the Press 2017 Report* states that, “journalists risk prosecution under restrictive laws, including the broadly worded Cybercrimes Act...” adding that “journalists face attacks while carrying out their work, sometimes by security officials. Attacks against journalists often go unprosecuted, and an environment of impunity for attackers, combined with the threat of legal prosecution and harassment in connection with critical coverage, encourages self-censorship.”³⁴

Learnings

Here, participants are expected to:

- i) Have appreciated how a negative mindset of undemocratic and pseudo-democratic governments often sabotage otherwise positive innovations;
- ii) Understand a global innovation like the internet as one largely supportive of humanity, if democratically managed;
- iii) Citizens should reckon that respect for the rule of law and order should permeate all sectors of our public lives.

2.7 Resolution Moves/Stakeholders Interventions

While the jackboots exerted maximum pressure on the press, civil rights activists mustered the need to confront the attacks. The pioneer civil rights group in Nigeria, Civil Liberties Organisation, CLO, regularly issued press statements and even updated incidents of press freedom violations periodically and even annually. It later established what it called the Journalists Outreach for Human Rights, JOHR. JOHR served

34 <https://freedomhouse.org/report/freedom-press/2017/nigeria>

to gather and publish otherwise less visible reports on how the media were faring or enduring the hard times. It also updated, from time to time, the list of all journalists, as well as human rights and pro-democracy activists in detention all over Nigeria, as well those in exile. The efforts of CLO were later complemented by those of the Constitutional Rights Projects, CRP. But CLO and CRP were essentially generalist in their

“FOIA 2011 seeks 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....”

approach to reckoning with human rights violations, as press freedom violations constituted only part of this. In 1995 or thereabout, Media Rights Agenda, MRA, as well as the Institute for Media and Society, IMS, were formed, later to be joined by the Centre for Free Speech, CFS (now defunct); and even much later, Journalists for Democratic Rights, JODER, as well as the International Press Centre, IPC, initially fostered by the International

Press Centre, IPC, of Brussels in Belgium.

Defying their own persecution, MRA founders, together with CLO, originated what eventually became the idea of the Freedom of Information Act signed into law in 2011. It has been the most strategic statutory response so far to Decree Number 4 with which Thompson and Irabor were jailed. A most daunting campaign which began under the military compelled the enlistment of civil rights bodies nationwide. It also involved the formation and sustenance of online and offline advocacy and campaigns, including the lobbying of legislators in the National Assembly. A draft of the law was submitted to the 1999-2003 set of National Assembly members but it never made it to realisation as a law. The campaign resumed, although starting afresh since it was a new set of assembly members that had to work on it. Again, the 2003-2007 efforts came to nought. Unrelenting in its resolve, the MRA-led Freedom of Information Coalition continued with the campaign resuming with the 2007-2011 set of lawmakers. President Goodluck Jonathan signed the Freedom of Information Bill into law in 2011.

FOIA 2011 seeks 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 of disclosing certain kinds of official information without authorization, and establish procedures for the achievement of those purposes and; for related matters. Obviously to further the free flow of information across all social spectra of the society, IMS initiated the community broadcasting project to deepen what may have been accelerated by FOIA. This is probably one intervention that stands to register a most enduring impact on development at the grassroots level now that democracy has been restored. Eventually in 2015, four years after the FOIA became a law, President Jonathan again approved community broadcasting for Nigeria. Some community broadcasting stations have since started operating.

2.8 Digital Activism and Press Freedom

Paradigm Initiative Nigeria, PIN, in conjunction with NetRights Coalition, in 2015, formulated the Digital Rights and Freedom Bill. The Bill seeks to provide for the protection of human rights online, including protecting internet users from infringement and to guarantee the application of human rights for users of digital platforms.

The specific objectives of the Bill are:

- to guarantee the fundamental privacy rights of citizens and define the legal framework regarding surveillance;
- to promote the freedoms of expression, assembly and association online;
- to outline the provisions of lawful and authorized interception of communication within the digital environment without sacrificing the freedom and constitutional rights of citizens;
- to guarantee the application of human rights within the digital environment;

- to provide sufficient safeguards against abuse online and provide opportunity for redress;
- to equip the judiciary with the necessary legal framework to protect human rights online.³⁵

How to Support Press Freedom Campaigns

- 1) All media stakeholders, including social media influencers, should endeavour to familiarize themselves with all relevant freedom of expression and, where applicable, free press provisions in all local and international human rights instruments.
- 2) Nigerian Press Organisation should endeavour to forge some bonds with media rights advocacy groups, as well as online publishing associations, to ensure ethical uprightness in news publishing and allied activities. Mutual exclusivity can only work against their common interest.
- 3) Media bodies in Nigeria, including professional associations and media support groups, should integrate the defence of the Internet rights of journalists and other media professionals into their freedom of the press and freedom of expression work.
- 4) Media organisations in Nigeria, including professional associations and media support groups, should urgently constitute advocacy and lobby groups that engage with the state institutions, especially the executive and legislature, for the purpose of seeking the review or where necessary, repeal of any legislation that infringes on the operations of broadcasting houses, internet rights of journalists and other media professionals.
- 5) The freedom of expression community should advocate that the Internet freedom of Nigerians should not be entrusted in the hands of some exclusive organ of government lacking in democratic legitimacy. Boards of relevant regulatory organs like NCC should be truly representative of the major shades of the

³⁵ African Declaration Group (undated) African Declaration on Internet Rights and Freedoms. Available at <http://africaninternetrights.org/wp-content/uploads/2015/11/African-Declaration-English-FINAL.pdf> Last accessed July 12, 2019.

society, including but not limited to the media, the legal profession, women, youths, etc.

- 6) Media professionals and organisations should call for the immediate reworking of Cybercrime Act 2015, with special attention to the “advisory council”, which excludes the vast media sector.

Learnings

In the section above, participants would have been exposed to:

- i) Stakeholders’ moves against press freedom hurdles over the years;
- ii) Stakeholders’ campaign for internet rights;
- iii) How they can support the campaign;
- iv) The need for perseverance in the campaigns for positive change.

2.9 Activities

- Simulate a practical scenario of military repression within the context of legal manipulations;
- Division into working groups to discuss different scenarios of harassment as well as application prevention and management strategies;
- Engage in an online digital campaign addressing a particular issue of Press Freedom in Nigeria.

2.10 Revision Questions

- What is your understanding of press freedom?
- Is press freedom, like free speech, also statutorily guaranteed in Nigeria?
- How will you explain the values that Freedom of Information Act 2011 may add to Nigeria’s emerging democracy?
- How do citizens stand to benefit more from community broadcasting, if press freedom is statutorily guaranteed?
- How do you see yourself, as an individual, contributing to the (actualization) of press freedom in Nigeria?

2.11 Suggestion for Further Readings

African Declaration Group (undated) *African Declaration on Internet Rights and Freedoms*. Available at <http://africaninternetrights.org/wp-content/uploads/2015/11/African-Declaration-English-FINAL.pdf> Last accessed July 12, 2019.

Akanni, T (2018) *Issues in Frameworks, Freedom of Expression and Internet Rights in Nigeria*. Lagos. International Press Centre, IPC

Akinola, R (1998) "Introduction". In Akinola (ed.) *Nigerian Media and Legal Constraints*. Lagos. Centre for Free Speech, CFS

Arogundade, L . and Akanni, T. eds.(2021) *Question Marks on the 6th NBC Code Amendments*. Lagos. Consortium of Independent Broadcasters and Free Press Advocates.

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Olukotun, A (2002) *State Repression, Crisis of Democratisation and Democratisation and Media Resistance in Nigeria (1988-1999)*. Ibadan. College Press

Omu, F (1996) "Journalism in Nigeria: A Historical Overview". In Dare, O and Uyo, A (eds.) *Journalism in Nigeria Issues and Perspectives*. Lagos. Nigeria Union Journalist, NUJ

Onumah, C and Adetiba, F (eds.) 2019 *Testimony to Courage: Essays in Honour of Dapo Olorunyomi*. Abuja. Kappa and Omega

Oso, L and Akanni T (2018) "Democracy and Digital Public Sphere". In Olukotun A (ed.) *Watchdogs or Captured Media. A Study of the Role of the Media in Nigeria's Emergent Democracy, 1999-2016*. Lagos. Diamond Publications Limited

Pate, U and Idris, H (2017) "How Journalists Survived to Report". In (Carlsson, U and Poyhtari, R eds.) *The Assault on Journalism. Building Knowledge to Protect Freedom of Expression*. Goteburg, Sweden. Nordicom

Freedom House. 2017. Nigeria. <https://freedomhouse.org/report/freedom-press/2017/nigeria> 1999 *Constitution of the Federal Republic of Nigeria*



Module Two



International Instruments of Press Freedom and the Context of Domestication in Nigeria

by
Jide Jimoh



This module is prepared to run for 2 hours

Broad Learning Objectives

- To familiarize with a wide range of international instruments on press freedom;
- To highlight pertinent provisions of those instruments;
- To examine the extent of domestication of these instruments in Nigeria;
- To highlight the challenges of full implementation of these provisions.

3.1 Introduction

The concepts of the freedom of expression, of speech, and of the press are themselves not free of controversies. The controversies span nomenclature, boundaries, purport and import, nature or nurture, and nuances thereof. Throughout history, the debate about freedom of speech and of the press has featured varying voices, ranging from those who oppose the slightest leash on freedom of expression and those who argue that freedom cannot, and must not, be absolute in any society, whether democratic or otherwise. There are various usages of the concept of press freedom. David Weaver (1977, P.152), after reviewing the literature on press freedom, identifies three usages of the concept:

1. As the relative absence of governmental restraints on the media;

2. As the relative absence of governmental and all other restraints on the mass media;
3. As not only the absence of all restraints but also the presence of those conditions necessary to ensure the dissemination of diversity of ideas and opinions to a relatively large audience, such as an enforced right of access to newspapers and radio stations.

As Lowenstein observes, the institution of even seemingly minor controls on the press almost always harbingers a diminution of political freedom. Perhaps in fear of being accused of constraining press freedom, no government ever accepts that it imposes restrictions on the press. Even during the civil war in Nigeria, the then Head of State, Major-General Yakubu Gowon remarked of the press: “I cannot tell them what to do since we don’t dictate policy to any press here... they should tell us off when they feel we are wrong and commend when they feel it is worthwhile: we can take it.

Ironically, since the return to democratic rule in Nigeria in 1999, governments have shown increasing hostility to freedom of speech in general and of the press in particular. The administration of President Muhammadu Buhari has been variously accused of high-handedness and hostility to the press, which is interpreted as a sad throw back to his days as a military Head of State (1983- 1985).

These varying positions have led to people coming together not only to guarantee the freedom of expression but also to define the boundaries. This session is concerned with the international instruments that address the freedom of the press and the challenges of domesticating them in Nigeria.

3.2 Origin of International Instruments.

The background to the enactment of international instruments of expression worldwide, can be traced to some political developments

in specific countries and regions. Leaders of thought and other philosophers pushed certain principles and practices that shaped the way society should be organized and administered. Lamble (2002) traced access to information to Chinese state practices dating back to the early seventh and eight centuries. Of course, there must have been similar practices in Africa predating the first formal legislation on freedom of information in Sweden in 1766. As noted by Olorunfemi, Oloworaran and Jimoh (2018:13) on Lamble's claim:

Chinese state practices supported the theory of freedom of information over one thousand, two hundred years before it was first legislated upon in Sweden. However, these practices can only be gleaned from academic references, as there is no historical legislative instrument or conventional rule surviving until modern times from which a chronological proof may be ascertained. That is not to dismiss the notion of the existence of freedom of information in antiquity as conventional fundamental human rights are most often the restatement of customary practices recognised by states.

In modern times, however, the following political developments have shaped modern thoughts on fundamental human rights:

- Magna Carta (1215)
- The Petition of Right (1627)
- The Bill of Rights (1688)
- American Declaration of Independence (1688)
- French Declaration of Rights of Man and Citizen (1789).

The ambitious documents proclaim the inalienable rights of man within the natural law tradition. The French Declaration and the American Bill of Rights were enshrined in the constitutions of these two countries and as noted by Yusuf (1997:3): “became infectious in Western Europe, the Americas, Asia and Africa.”

Learnings

After studying this section, you should be able to:

- i) Know the origin of international instruments;
- ii) List some early codified instruments.

3.3 Some International Instruments

- Universal Declaration of Human Rights, 1948 (Article 19);
- International Covenant on Civil and Political Rights (ICCPR), Article 19.

3.4 Some Regional Instruments

- African Charter on Human and Peoples' Rights, Article 9;
- European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10;
- ASEAN Intergovernmental Commission on Human Rights, 2009, AICHR;
- Resolution 169 on Repealing Criminal Defamation Law in Africa by the African Commission on Human and People's Rights, 2010;
- Treaty of ECOWAS, 1975, Articles 65 and 66;
- African (Banjul) Charter on Human and People's Rights (1981), Article 9;
- Declaration on Information and Communication Technology (ICT), 2001;
- SADC Protocol on Culture, Information and Sport, 2000;
- Declaration of Principles on Freedom of Expression in Africa, 2002;
- African Charter on Democracy, Elections and Governance, 2007, Articles 2, 10 and 17.

3.5 Country Specific Instruments

American Convention on Human Rights, Article 13:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) Respect for the rights or reputations of others; (b) The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offenses punishable by law.

Learnings

After studying this section, you should be able to:

- i) List some universal international instruments;
- ii) Identify the ones that apply at regional levels;
- iii) Identify some that are country-specific.

3.6 Highlights of Relevant Provisions.

1. The First Amendment to the American Constitution. The first of the ten freedoms protected by the American Bill of Rights is the right to free speech as codified in the First Amendment to the United States Constitution. It states that “Congress shall make no law abridging the freedom of speech, or of the press.” Even in the above context, the right to free speech is not absolute. Within the context of the First Amendment, the often-cited exception to the law include ‘fighting words’ and falsely shouting ‘fire’ in a crowded theatre.

Words deliberately uttered to provoke a violent reaction from a particular person are known as fighting words. Examples of these can be found in hate and dangerous speeches. Shouting ‘fire’ in a crowded theatre has the potential to endanger the public as they panic and scamper for safety. While putting the controversy in context, Barbour (2002:12) notes that:

Because the right to free speech is not absolute, a line must be drawn between acceptable and unacceptable forms of speech. Controversy arises when different parties disagree over where to draw that line. Indeed, a perpetual tension exists between free speech absolutists and those who favour restrictions on certain types of speech or expression, including hate speech, pornography, obscene art, sexually explicit library materials, and flag burning (which many people consider symbolic political speech). These and other forms of speech generate heated debate between those who demand completely unfettered expression and those who call for some degree of restriction on the words and images used by Americans.

Speaking specifically about press freedom, English jurist, Blackstone avers:

The liberty of the press is indeed essential to the nature of the free state, but this consists in laying no previous restraints upon publications, and not in freedom from censure from criminal matter when published. Every man has an undoubted right to lay what sentiments he pleases before the public, to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity.

Blackstone is more concerned about **prior restraint** of publication but the journalist must weigh the consequences that may arise from publication of an item, including loss of personal liberty.

Thus, even though freedom of the press is guaranteed, it is not absolute but subject to certain restrictions as determined by the contextual realities of society.

3.6.1 The Universal Declaration of Human Rights (1948).

Emerging from the horrors of the First and Second World Wars, nations of the world came together to find ways to prevent reoccurrence of the horror and to establish institutions and procedures for engendering peace throughout the world. The United Nations was formed in 1945 to ensure peaceful coexistence. At the 183rd session of the UN General Assembly held in Paris on 10th December, 1948, resolution 217A was passed which set out fundamental human rights to be universally protected. The declaration has 30 provisions and has been translated into over 500 languages. The preamble recognises that ‘the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’ It also recognises that, ‘if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.’

But of particular relevance to this chapter is the provision contained in Article 19, to wit,

“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.”

It must be noted, however, that this right to seek, receive and impart information is not legally binding on states but forms a good basis for a dependable and formidable persuasion of states to act in accordance with customary international law.

3.6.2 The International Covenant on Civil and Political Rights.

Unlike the UNDHR discussed above, the ICCPR is a legally binding treaty which contains similar provisions to that found in UNDHR and is also located under Article 19, to wit:

1. Everyone shall have the right to hold opinion without interference.
2. 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;
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

3.6.3. African Charter on Human and Peoples' Rights, Article 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

3.6.4. Resolution 169 on Repealing Criminal Defamation Law in Africa by the African Commission on Human and Peoples' Rights - 24 November 2010

1. Underlines that criminal defamation laws constitute a serious interference with freedom of expression and impedes on the role of the media as a watchdog, preventing journalists and media practitioners to practice their profession without fear and in good faith; 2. Commending States Parties to the African Charter (States Parties) that do not have, or have completely repealed insult and criminal defamation laws; (a) Calls on States Parties to repeal criminal defamation laws or insult laws which impede freedom of speech, and to adhere to the provisions of freedom of expression, articulated in the African Charter, the Declaration, and other regional and international instruments; (b) Also calls on States Parties to refrain from imposing general restrictions that are in violation of the right to freedom of expression;

3.6.5. European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary

3.6.6. ASEAN Human Rights Declaration

There is no established regional human rights body for Asia. However, the ten countries of the Association of Southeast Asian Nations (ASEAN) formally established the ASEAN Intergovernmental Commission on Human Rights (AICHR) on 23 October 2009, during the 15th ASEAN Summit. The group also adopted a Human Rights Declaration, which guarantees freedom of expression as follows:

23. Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.

Learnings

After studying this section, you should be able to:

- i) Know the specific constitutional provision of the American constitution on freedom of the press;
- ii) Know certain legal limitations to freedom of expression;
- iii) Know the specific provisions of some other major instruments.

3.7 The Challenges of Domestication.

With the plethora of instruments highlighted above, it would seem nations are aware of the inalienable rights of man. What is in doubt is the application of that knowledge to the condition of the ordinary man in different societies. One way to ensure universal application is for each country to domesticate these principles and treaties in their municipal laws and to ensure adherence to them. The Nigerian Constitution, for example, requires that treaties ratified by Nigeria must be enacted as domestic legislation for them to be enforceable. Section 12(1) of the 1999 Constitution provides that, “No treaty between the federation and any

other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the national assembly.”

Some judicial activists have criticised this “dualist approach” to legislation in which a treaty entered into will require further local enactment. They advocate that such laws should have automatic application at the municipal level (Egede 2007).

As far as progress in domestication is concerned, African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act was ratified and enacted in 1990, with a commencement date of 17 March, 1983. As noted earlier, the right to seek, receive and impart information, as enunciated by the Universal Declaration of Human Rights, is not legally binding since it is not a treaty like ICCPR. Hence, the need to domesticate it in the municipal laws of the country is essential. The provision of Article 19 has been domesticated in various Nigerian constitutions since independence in 1960. In 1960 it was provided for in section 24, in 1963, section 25 and section 36 in the 1979 Constitution. It features in the 1999 Constitution of Nigeria under section 39:

39(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) without prejudice to the generality of sub-section (1) of this section, every person shall be entitled to own, establish, and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the government of the Federation or of a state or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society.

(a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts

or regulating telephone, wireless broadcasting, television or the exhibition of cinematograph films, or

(b) imposing restrictions upon persons holding office under the government of the Federation or member of the Nigeria Police Force or other Government security services or agencies established by law.

Thus, within certain limitations and restriction, the UNDHR has been domesticated in the Nigerian Constitution.

Learnings

After studying this session you should be able to:

- i) Be aware of the need to domesticate various international instruments;
- ii) Know some obstacles to domestication;
- iii) Note some progress to domestication.

3.8 Specific Provisions on the Freedom of the Press

By virtue of the enormous responsibility vested in the press by section 22 of the 1999 Constitution to hold government accountable to the people, freedom of the press ought to be guaranteed and protected by the Nigerian Constitution. A provision akin to that protection is embedded in that section but it is not as specific as the First Amendment enshrined in the US constitution which states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances.

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.

In the marginal note to this section, freedom of the press is written. But critics of the section have noted that marginal notes are not part of the provisions, as they provide mere expatiation which may not carry the force of law. But beyond that, section 22 is located in Chapter Two which contains the directive principles of state policy, which is not justiciable; that is, it cannot be enforced before the court if the provisions are not implemented by government, since they are principles that government aspires to achieve if conditions are right. Who determines when conditions are right if not the government? It is recommended that the provision in Section 22 provision should be moved to Section 4 of the constitution to make it justiciable and the section should be more explicitly worded to guarantee freedom of the press in the mould of the First Amendment in the US Constitution.

Learnings

After studying this section, you should be able to:

- i) Know that the freedom guaranteed in section 22 of the 1999 Constitution of Nigeria is not as specific to press freedom as that in the First Amendment of the American Constitution;
- ii) That section 22 in chapter two of the Nigerian constitution is not justiciable;
- iii) The need to move section 22 of chapter two to chapter four to make it justiciable.

3.9 Activities

- Create working groups to list some early codified instruments and note their similarities and differences.
- Write a four-paragraph presentation on the similarities between

some universal international instruments and provisions of the Nigerian Constitution (1999).

- Find a colleague or instructor and discuss the influence of The First Amendment of the American Constitution on subsequent legislations in other countries.
- Create working groups to simulate practical obstacles to domestication of international instrument and the progress made so far on domestication.
- Using knowledge gained from this Chapter, write an opinion article on the need to move Section 22 of Chapter Two of the Nigerian Constitution (1999) to Chapter Four in order to make it justiciable.

3.10 Revision Questions

- What conditions led to the origins of the production of international instruments?
- How has the African Commission on Human and Peoples Rights contributed to the protection of press freedom?
- What practical steps can be taken to facilitate the domestication of international instruments in Nigeria?
- Identify what necessary components are missing in the instruments discussed above, if any. State the reason for your position.

3.11 Suggestions for Further Readings:

Barbour, Scott (2000) *Free Speech: Current Controversies*. San Diego: Green Haven Press, INC.

Blackstone's *Commentaries* Book iv. In Elias T.O O. (ed) 1969. *Nigerian Press Law* Lagos: University of Lagos Press and Evans Brothers Limited.

Constitution of the Federal Republic of Nigeria, 1999.

David H. Weaver (1977). *The Press and Government Restriction: A Cross*

National Study Over Time”, *Gazette* vol.23, no.3, 1977.

Lamble, S (2002) Freedom of Information, a Finnish Clergyman’s Gift to Democracy. *Freedom of Information Review* No. 97 pp. 2-8

Mohammed, J.B. (1997) Introduction to Human Rights Journalism. Maiduguri: Friedrich Ebert Foundation.

Olorunfemi, J.F., Oloworaran, B.A. and Jimoh, J. (2018) The Right to Know: An Introduction to the Nigerian Freedom of Information Act. Porthacourt: Institute of Human Capacity Development and Continuing Education.

African (Banjul) Charter on Human and People’s Rights (1981), Article 9.

African Charter on Democracy, Elections and Governance, 2007, Articles 2, 10 and 17.

African Charter on Human and Peoples’ Rights, Article 9.

ASEAN Intergovernmental Commission on Human Rights, 2009, AICHR.

Declaration of Principles on Freedom of Expression in Africa, 2002.

Declaration on Information and Communication Technology (ICT), 2001.

European Convention for the Protection for the Protection of Human Rights and Fundamental Freedoms, Article 10.

International Covenant on Civil and Political Rights (ICCPR), Article 19.

Resolution 169 on Repealing Criminal Defamation Law in Africa by the African Commission on Human and People’s Rights, 2010.

SADC Protocol on Culture, Information and Sport, 2000;

The Constitution of the Federal Republic of Nigeria (1999) as amended. Chapters 2&4.

Treaty of ECOWAS, 1975, Articles 65and 66.

Universal Declaration of Human Rights, 1948. (Article 19).



Module Three



Freedom of Press in Nigeria: Constitutional Provisions, Justiciability and other Constraints

by

Saheed Babajide Owonikoko



This module is prepared to run for 2 hours

Broad Learning Objectives

- To familiarize with the historicity of press freedom in Nigeria from the colonial era to present;
- To understand specific legal provisions of press freedom in Nigeria;
- To understand the justiciability of the provisions of press freedom under the Nigerian Constitution.

4.1 Introduction

The press is a very important aspect of governance. This is why it is regarded as the Fourth Estate of the realm. This means that after the executive, legislature and the judiciary, the next and the most important organ of government is the press. This is because it plays the role of disseminating information and enlightening the populace. Furthermore, it serves as a watchdog, not only by exposing the atrocities of people in government but also by bringing important issues that are necessary for national development for public debate. Unfortunately, however, in spite of the significance of press to governance in the globe, the freedom roles of the press in a society help the people to be able to hold leaders accountable. The 2019 World Press Freedom Index

compiled by Reporters Without Borders (RwB)³⁶ shows that hatred for press and media personnel is rising and has continued to degenerate into violence against journalists. This is contributing to increasing the fear of press and media personnel to operate freely. The report observed that the number of countries that can be regarded to be truly safe and secure for the operation of journalists continues to shrink. Evaluation of Press Freedom in 180 countries in the year 2019 shows that only 8% of the countries can be categorized as “good situation” for press and media personnel. 16% of the countries can be classified as “satisfactory situation” for operations of the press. Meanwhile, a whopping 37%, 29% and 11% are categorized as “problematic situation”, “difficult situation” and “very serious situation” respectively (Reporters without Borders, 2019). A recalibration of the above categorization will show that only between 23-24% of the countries of the world can be said to be conducive for the operations of media and press personnel. On the other hand, between 76-77% of the countries of the world are acidic to freedom of the press and media personnel.

Press freedom in Africa is abysmal. No African country is mentioned among the countries categorized as “good situation”. Meanwhile only five African states - Namibia, Cape Verde, Ghana, South Africa and Burkina Faso are named among countries categorized as “satisfactory situation”. Many African states are categorized between “problematic situation”, “difficult situation” and “very serious situation”. Nigeria is ranked 120th out of 180 countries evaluated and is categorized among the countries with “difficult situation”³⁷. The implication of this is that freedom of the press is very much elusive in Nigeria, in spite of the fact that Nigeria is a democracy that cannot be regarded as nascent any longer after uninterrupted democracy for 20 years. Press freedom suffered a serious setback in Nigeria during colonial and military governments. Under the colonial and military governments, draconian media laws were enacted to restrict freedom of press in colonial Nigeria (Momoh,

36 This organisation is also known as Reporters Sans Frontieres (RSF). It is an NGO that conduct advocacy on freedom of information and press. It is based in Paris, France.

37 <https://rsf.org/en/ranking>.

2002). Between 1966 and 1998, a total of eight (8) military regimes held sway in Nigeria. During this period of military rule, press freedom was highly restricted in an unprecedented manner in the history of Nigeria. Press men were harassed and detained, most times without trial³⁸. Some newspapers were also proscribed³⁹. Several decrees were also made with a view to restricting the freedom of the press in the country. With the coming of democracy in 1999, one would have thought that the press would be freer than what we are witnessing, given the role that the press played in the liberation of Nigeria from the shackles of colonialism and the jackboots of military governments. Unfortunately, press freedom in Nigeria is still largely constrained. Nigeria did not just do well in 2019, it's previous ranking during the Fourth Republic shows that the country did not do better either. Nigeria's ranking on the freedom of the press by Freedom House, between 2002 and 2017, shows that Nigeria is perpetually classified as "partially free"⁴⁰. The average Press Freedom Score for Nigeria for the 16-year period was 52.75%. The highest score Nigeria ever saw was in 2002 when Nigeria was scored 57%.

38 For instance, under Decree No. 4 of 1984, General Mohammadu Buhari led military government arrested two journalists of The Guardian Newspaper, tried them in military tribunal and were convicted for publishing a story on the possibility of the Federal Military Government appointing Rtd General Hannaniya as the head of Nigeria High Commission to United Kingdom.

39 Famous among the proscribed newspapers was the Newswatch Magazine. The newspaper was proscribed for publishing the report of the Political Bureau headed by Justice Cookey.

40 Countries of the world are classified into three. These are: Free (represented with green), Partially Free (Represented with Yellow) and Not Free (Represented with Blue).

Table 1: Nigeria's Freedom of Press Status, 2002-2017

S/N	Year	PF Score (100)	Legal Env. (30)	Political Env. (40)	Economic Env. (30)	Status
1	2002	57	15	24	18	Partly Free
2	2003	53	15	22	16	Partly Free
3	2004	53	15	23	15	Partly Free
4	2005	52	15	21	16	Partly Free
5	2006	54	15	21	18	Partly Free
6	2007	55	14	24	17	Partly Free
7	2008	53	14	22	17	Partly Free
8	2009	54	15	22	17	Partly Free
9	2010	54	15	22	17	Partly Free
10	2011	52	14	21	17	Partly Free
11	2012	50	13	22	15	Partly Free
12	2013	51	13	23	15	Partly Free
13	2014	51	14	22	15	Partly Free
14	2015	53	14	23	16	Partly Free
15	2016	51	14	22	15	Partly Free
16	2017	51	14	22	15	Partly Free
17	2018	52	13	21	14	Partly Free
18	2019	51	14	20	14	Partly Free
19	2020	51	14	22	15	Partly Free
20	2021	43	13	21	15	Partly Free
21	Average	52.75	14.8	21	16.2	Partly Free

Note: Press Freedom Score (0= Best; 100= Worst); Legal and Economic Environment (0= Best; 30=Worst); and Political Environment (0= Best; 40= Worst). Env. means environment

Source: Data for computation by the author were got from Freedom House Website at <https://freedomhouse.org>.

The constitution of the Federal Republic of Nigeria has been blamed as a major constraint to press freedom in Nigeria, but to what extent is this the case? Beyond the constitution, are there other major constraints to press freedom in Nigeria? What can be done to improve the freedom of the press in Nigeria beyond the “partially free” status? These are the questions that this module will interrogate. I will start with an introduction that sets the background for this module, and then attempt to define press freedom and some of its qualities. I will then historicise the development and spread of press freedom. Thereafter, there will be a discussion of the significance of press freedom to good governance and democratic consolidation. And press freedom in Nigeria, especially under the previous constitution before the 1999 constitution. There will subsequently be a discussion on the constitutional provision for press freedom under the 1999 constitution, with a view to identifying the major lacuna and constraints to press freedom. Also, I will discuss the other constraints to press freedom in Nigeria, especially socio-political and economic constraints. Finally, there will be a conclusion and I will offer some recommendations.

Learnings

When you have studied this study session, you should be able to:

- i) Understand and discuss the meaning and history of press freedom;
- ii) Understand the evolution of press freedom from colonial Nigeria till date;
- iii) Understand the different sections of the Nigerian 1999 constitution that entrench press freedom;
- iv) Understand the justiciability of those sections;
- v) Understand other constraints to press freedom in Nigeria.

4.2 Press Freedom: Definition and History

The best way to attempt the definition of press freedom is to disaggregate the words making up the term and get to understand them separately. They can then be conjoined again to generate a working meaning for the term. The two words making up the term are “press” and “freedom”.

The word “press” is a noun that has many meanings. It could be used to describe a crowded condition or a situation when some things are condensed together. It could also mean a situation where something or somebody is put under intense pressure. It could equally mean a condition of smoothening something, especially garment. However, the most important and relevant understanding of the word to this module is press as the act or the process of printing (printing press). It is the process of gathering or publishing newspapers, periodical or even television and news broadcast. Freedom on the other hand simply means the absence of necessity, coercion, restriction, constraints or obstacles from the power of another in the choice of actions. It is associated with having a free will and being without undue and unjust constraints. It simply connotes independence, autonomy and liberty.

Bringing these words together as press freedom can therefore be literally defined as the absence of excessive control of the publishing of newspapers, periodicals, books and all forms of mass media by government, the state or the society. Press freedom is simply defined as the right to publish without excessive control. In other words, it is the right of journalists to write, publish and circulate opinions in print without any form of censorship whatsoever. Lamer (2018:3)) defined press freedom as “any government action that thwarts efforts of the news media to report freely on public affairs, whether they are political, economic, or otherwise”. The fact, however, is that although government are the most dominant figures in interference with the freedom of the press, yet government and the state are not the only figures or stakeholders involved. Owners of media, politicians and even society as a whole can be. Sambe and Ikoni (2004) identified six issues that define press freedom. These are:

1. No censorship
2. Journalists to gather information
3. The right to receive information
4. The right not to be compelled to disclose the source of information
5. Freedom to impart or disseminate
6. Freedom from unreasonable punishment for what is published.

There are many philosophical questions that the discourse on press freedom throws up in scholarship. To what extent should the press be allowed to be free; should it be absolute? When should freedom of the press be restricted? Or to put these two questions together succinctly, how much of freedom is too much for the press? For instance, if media reportage of an incident or any other press activity could jeopardise peace, security and stability of the state, is restriction of press freedom permissible? It would be recalled that a published article in *This Day* newspaper sparked religious riots in Kaduna State on November 16, 2002, when Isioma Daniel wrote in the newspaper that Prophet Mohammed (SWT) would have loved the Miss World contestants. Over 250 people were killed and several properties destroyed in the religious riot caused by the article.

During his address to the Nigerian Bar Association during its 2018 Annual General Conference, President Muhammadu Buhari expressed his opinion surreptitiously, suggesting the overriding influence of national interest over and above human rights, including press freedom. During his address, President Buhari said:

Our apex court has had cause to adopt a position on this issue (supremacy of Nigeria's security and national interests over rule of law) in this regard and it is now a matter of judicial recognition that; where national security and public interest are threatened or there is a likelihood of their being threatened, the individual rights of those allegedly responsible must take second place, in favour of the greater good of society (Azu, 2018).

Whether the president is right or not will still be debated for a long time but the freedom of the press does not foreclose a responsible conflict-sensitive press as well. A responsible and conflict sensitive press organisation will not use the freedom it has to feed the people with falsehood or tainted information that puts the country in jeopardy or even abuse another person's rights. A responsible press will be investigative and uphold the truth at all times. In essence, the point

made here is that the freedom of press also gives it corresponding responsibilities.

The idea of a mechanised printing press began in the 15th Century when Johanne Gutenberg developed a machine by which text and images could be transferred to paper through ink. This resulted in an increase in the number of books, newspapers and other readable publications in circulation. The development of mechanized printing led to the spread of ideas faster and farther. As these ideas were challenging the official power structure, and political and religious authorities started to actively suppress publications which were deemed to be subversive. This was particularly the case in Britain. The first printing press in Britain was established in 1476 in Westminster. There were no laws governing what the printer could or could not print. But shortly after he started publishing, his publication started to reach a large mass of middle class people. It made communication with hundreds of persons easier. Sooner than later, it started to generate ideas that challenged the official power structures and the power of political and religious authorities. At this time, the British government realized that unrestricted press freedom could be disastrous to government, it therefore sought to control and regulate printing presses in England. Between 1476 when Caxton established the first printing press and 1776, the British government attempted to restrict freedom of the press in England (Pember, 2004). Laws were enacted to restrain people from criticizing the government, even when such criticism was constructive. Licensing and prior restraint law was implemented. This law necessitated printers to get prior approval from the state or the church before printing could be carried out. Printers were required to deposit with government large sums of money called bonds, which could be forfeited if it was seen that the content of the press challenged government. Even in colonial America under the control of England, freedom of the press was severely restricted. As early as 1662, statutes in Massachusetts made it a crime in colonial America to publish anything without first getting prior approval from the colonial government. The restriction of the press by the government of England was highly successful but did not go unchallenged.

One major challenge against the restriction of press freedom by the British Government that set the stage for the beginning of press freedom in the world can be traced to the speech made by the popular English poet - John Milton. In his famous pamphlet titled *Areopagitica: A Speech of Mr John Milton for the Liberty of Unlicenc'd Printing, to the Parliament of England*, which was published in 1644, Milton wrote to protest the order issued by the parliament of England to the effect that government must approve and licence all books including newspapers before they are published. This piece served as a noble and powerful plea that ignited the popularity of press freedom in the world. In December 1766, the Swedish Parliament (Riksdag) made the move to pass the first law supporting freedom of the press with the Freedom of Press Act of 1766. The law abolished the power of the Swedish government to censor prints and also allowed for the official activities of the government to be made public through freedom of information. Twenty-five years after the enactment of the Swedish Freedom of the Press Act, freedom of the press became enshrined in the constitution of the United States of America's First Amendment. The enshrinement reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. The adoption of the Universal Declaration of Human Rights by the United Nations in December 1948 as an International Human Rights instrument and the popularity in the practice of democracy as the most preferred system of government have given more popularity to freedom of the press in the contemporary world.

4.3 Development of Press Freedom in Nigeria from Colonial Era to the Fourth Republic

The first port-of-call in the discussion of press freedom in Nigeria should be the colonial era. The establishment of the printing press in Nigeria can be traced to the activities of the Christian missionaries. The

first printing press in Nigeria was established by Rev. Henry Townsend in 1854. By 1859, the printing press published the first newspaper called “Iwe Iroyin Fun Awon Ara Egba ati Yoruba” meaning “Newspaper for the people of Egba and Yoruba”. Although this newspaper was meant to propagate Christianity, it also increased the culture of reading and the habit of seeking information by reading. In 1880, another newspaper known as *Lagos Times* and *Gold Coast Colony Advertiser* was established. At the heart of the nationalist campaign, *West African Pilot* by Nnamdi Azikwe was established to expose the atrocities of the colonial masters and advocate independence from British colonial rule. The corollary was that throughout the colonial period, Nigeria had a very potent press that challenged the excesses of the British colonial government. The activities of these newspapers contributed, in no small measure, to the granting of independence for Nigeria in 1960.

“...in 1962, the parliament also passed an official secret act which made it an offence to transmit any matter designated by the government to be “classified”. This law did not only prevent the press from getting certain information especially those that were restricted by being classified, it also gave the government a broad discretion to classify any information.”

In spite of the robust existence of a virile press in Nigeria, the British colonial masters introduced many restrictions to gag press freedom in Nigeria (Sheng and Hunt, 1986). One of these laws was used to imprison Herbert Macaulay, one of the foremost Nigerian nationalists, for six months for seditious libel. During this period, press freedom was not guaranteed in any constitution.

The beginning of the entrenchment of press freedom in Nigeria started with the drafting of the 1960 Independence Constitution of Nigeria. During this period, the Henry Willink Commission of Inquiry was set up to look into the issue of the agitation of Nigeria’s minorities and make recommendations for curtailing this before independence. The Commission, rather than recommend the creation of states for the minorities, recommended the entrenchment of fundamental human

rights into Nigeria's constitution. Although, no specific mention of press freedom was made, the constitution allowed certain rights such as the right to freedom of expression which to a large extent covered the freedom of the press. In spite of this, several restrictions on the freedom of the press were observable. For instance, in the case between *Director of Public Prosecution Vs Chike Obi* in 1961, the Supreme Court held that it was illegal "to use words expressive of an intention to effect the purpose of exciting a state of ill feeling against the government" (cited in Sheng and Hunt, 1986:88). Chike Obi was convicted by the court for circulating a pamphlet containing seditious information:

"Down with the enemies of the people, the exploiters of the weak and oppressors of the poor! ... The days of those who have enriched themselves at the expense of the poor are numbered. The common man in Nigeria can today no longer be fooled by sweet talk at election time only to be exploited and treated like dirt after the booty of office has been shared among the politicians...." (Ibid:88)

This became a case law for the entire period even till 1983 and was applied in the conviction of Chief Arthur Nwankwo for sedition, for publishing a book criticizing the governor of Anambra State. The court had sentenced Chief Nwankwo to 12 months imprisonment with hard labour, banned his book from circulating in the public and also ordered those who had purchased the book to surrender their copies to the nearest police station. However, this was reversed by the appellate court on the ground that freedom of speech is guaranteed in the 1979 constitution.

Similarly, in 1962, the parliament also passed an Official Secret Act, which made it an offence to transmit any matter designated by the government to be "classified". This law did not only prevent the press from getting certain information, especially those that were restricted by being classified, it also gave the government a broad discretion to classify any information. The 1964 Newspaper (Amendment) Act was also passed to prohibit any person from publishing in any newspaper, a statement, rumour or report, knowing or having any reason to believe

that such statement, rumour or report was false. During this period, a number of local government councils also passed laws banning certain newspapers from circulating within the local government councils before those laws were repealed by the military government which took over in 1966 (ibid).

The 1979 Constitution, like the 1960 and 1963 Constitutions, also entrenched fundamental human rights of the citizens. It provided 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.” (Constitution of the Federal Republic of Nigeria, 36(1), 1979). The Constitution also contained a new Chapter II, which set forth the Fundamental Objectives and Directive Principles of State Policy. Specifically, Chapter II noted that the press, radio, television, and other agencies of the mass media, were to be free to uphold the fundamental objectives of that chapter and to uphold the responsibility and accountability of the government. In *Momoh vs Senate of the National Assembly*, the High Court of Lagos also expressed the importance of the press and the reason for the entrenchment of press freedom in the Second Republic Constitution thus:

It is a matter of common knowledge that those who express their opinions, or impart ideas and information through the medium of a newspaper or any other medium for the dissemination of information enjoy by customary law and convention a degree of confidentiality. How else is a disseminator of information to operate if those who supply him with such information are not assured of protection from identification or disclosure? ... Is there any doubt in anybody's mind, that the 49 wise men who formulated the Constitution of the Country were conscious of the unsavory consequences attendant on any attempt to deafen the public by preventing or hindering the free flow of information, news and/or ideas from them. This perhaps explains the reason why the provision of Section 36(1) gives freedom of expression subject only to the

laws of the Country as to libel, slander, injurious falsehood, etc. Even where such a matter arises it would be a matter for a court of law to determine and not the legislature (N.C.L.R 105 (1981), as quoted in Sheng and Hunt Op. cit. Pg. 91).

In essence, the constitution recognizes the press as one of the primary vehicles for upholding the responsibility and accountability of the government to the people. However, in spite of the role given to the press, the constitution forbade individual ownership of radio or

“While Section 39(1) guarantees freedom of expression as part of the fundamental human rights, Section 39(2) goes ahead to take the press away from exclusive ownership of government. Many of the press organisations in Nigeria today are owned by private individuals. This has helped to contribute to freedom of the press.”

television stations. The constitution provided that no person, other than the state or federal government or any person authorised by the president could own, establish or operate a television or radio station. This gave the monopoly of broadcasting to National Television Authority (NTA) and made it operate more like an arm of the National Party of Nigeria. The corollary from this explanation on press freedom in Nigeria, from the colonial era till the period of the 1979

Constitution, is that the press in Nigeria has always witnessed several constraints, in spite of constitutional provisions, to be removed and that has always affected the freedom that ought to be enjoyed by the press.

4.4 Provisions for Press Freedom in 1999 Constitution

Press freedom in Nigeria is guaranteed by at least three different documents. The first is the United Nations Universal Declaration of Human Rights (UDHR) (1948). The second is the African Charter on Human and People’s Rights (ACHPR) (1981) also called the Banjul

Declaration⁴¹ and the third is the 1999 Constitution of the Federal Republic of Nigeria. While the UDHR and ACHPR are binding on Nigeria because the country is a signatory to these documents, the 1999 Constitution is the grundnorm guiding the administration and management of the Nigerian state. The UDHR, Article 19 states 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 frontiers⁴².

Meanwhile ACHPR, in its Article 9, subsection (1) and (2) states that “Every individual shall have the right to receive information” and that “Every individual shall have the right to express and disseminate his opinions within the law”⁴³. All these international documents serve as the guiding principle for the entrenchment of freedom of the press in the Nigerian constitution. Apart from this, the previous Nigerian constitutions, such as those of 1960, 1963 and 1979, have had neither the freedom of expression nor freedom of the press or both entrenched. These documents also served as a forerunner for the 1999 Nigerian Constitution, is very similar to that of the 1979 Constitution in terms of contents and provisions. Indeed, Decree No. 24, which set up the constitution, states at the preliminary page (first page) that:

“...AND WHEREAS the Federal Military Government in furtherance of its commitment to hand over to a democratically elected civilian administration on 29th May 1999, inaugurated on 11th November 1998, the Constitutional Debate Co-ordinating Committee charged with the responsibility to, among other things, pilot the debate on the new constitution for Nigeria, coordinate and collate views and

41 The Charter is domesticated in Nigeria by virtue of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap. 10, Laws of the Federation of Nigeria, 1990. It is now Cap. A9, Laws of the Federation of Nigeria, 2004.

42 See https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

43 See http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

recommendations canvassed by individuals and groups for a new Constitution for Nigeria;”

It went on to say that:

“AND WHEREAS the Constitutional Debate Co-ordinating Committee benefitted from the receipt of large volumes of memoranda from Nigerians at home and abroad and oral presentations at the public hearings at the debate centres throughout the country and the conclusion arrived thereat and also at various seminars, workshops and conferences organised and was convinced that the general consensus of opinion of Nigerians is the desire to retain the provisions of the 1979 Constitution of the Federal Republic of Nigeria with some amendments;”

So, largely the provision of 1999 Constitution with regards to the freedom of the press is very similar to that of 1979 Constitution with some amendments.

Chapter II of the 1999 Constitution (as amended) is the section that talks about the Fundamental Objectives and Directive Principles of State Policy. This chapter which runs from Section 13-24 spells out the political, economic, social, educational, foreign policy and environmental objectives of Nigeria, as well as outlines the national ethics, obligation of the masses, directive of Nigerian cultures and the duties of the citizen of the state. These objectives merely provide a guide to any government in power in Nigeria and contain essential needs of the people in Nigeria on political, economic, social, educational, foreign policy, environmental, cultural, media, national ethics matters and duties of citizens. This section entrenches the freedom of the press and also gives a huge task to the press (mass media) in the realization of Fundamental Objectives and Directive Principles of State Policy and ensuring that the government is accountable and responsible to the people. The Constitution, under Chapter II, Section 22 provides 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 (referring to Chapter II which is the Fundamental Objective and Direct Principles of State Policy) and uphold the responsibility and accountability of the government to the people.

By this provision, the press is not only made to be free but ensures that in being free by virtue of the provision of the Constitution, it is obligated to help the government and the state realise the attainment of the fundamental objectives and directive principles of the state as contained in Chapter Two. It is also obligated to uphold the responsibility and accountability of the government to the people. Similarly, Section 39(1) also enshrines freedom of the press. It says:

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. In subsection 2, it adds that:

Without prejudice to the generality of subsection (1) of the section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions: provided that no person other than the government of the federation or of the state or any other person or body authorized by the president on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

While Section 39(1) guarantees freedom of the press as part of the fundamental human rights, Section 39(2) goes ahead to take the press away from exclusive ownership of government. Many of the press organisations in Nigeria today are owned by private individuals. This has helped to contribute to freedom of the press.

4.5 Justiciability of the Provisions for Press Freedom in Nigeria

Justiciability of the constitutional provision talks about the liability to trial, of those provisions, in a court of justice. In other words, justiciability talks about the extent to which a provision can be enforced such that its enforcement or otherwise attracts or does not

attract legal repercussions. To put it simply, justiciability talks about the extent to which the courts can entertain complaints of the breach of such provisions or the extent to which anybody can be convicted for breach of the provision. International instruments such as the UDHR and ACHPR are normative and as a result, they are only prescriptive in application. There is no mechanism put in place to ensure that they are enforced at different states of the globe. As a result, they are only supposed to serve as instruments that will ignite the entrenchment of human rights, including freedom of the press in the constitutions. They are therefore explicitly non-justiciable

The entire Chapter Two of the 1999 Constitution of Nigeria, where the freedom of the press is entrenched, has been criticized as being non-justiciable. The non-justiciability of the Chapter is based on Section 6(6)(C) of the 1999 Constitution, which states that the judicial power vested in the courts:

“Freedom of the press only exists in Nigeria theoretically. I keep asking the question that you cannot buy a new tyre and fix it unless you remove the old tyre. You cannot have Official Secrets Act existing and we are talking of freedom of the press. Official Secrets Act and other Acts that government has put in place have not been removed.”

Shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution;

By virtue of this provision of the constitution, justiciability of Chapter Two, including Section 22 which stipulates freedom at “all times” to

the press to “uphold the fundamental objectives” and hold government accountable to the people has been dwarfed. Furthermore, for the press to be able to meet up with the task of upholding the fundamental objectives contained in Chapter II of the 1999 Constitution and also hold government accountable to the people, access to information

is vital. Unfortunately, journalists' access to information, especially information held by government is restricted and limited. The official Secret Code Act continues to limit the extent to which civil public and civil servants who are representing government could divulge information because it is an offence to do so when it is not authorised from above. The law, in its Section 1 (Protection of Official Information, etc) Subsection 1 (a) and (b) states that:

“Subject to subsection (3) of this section, a person who transmits any classified matter to a person to whom he is not authorised on behalf of the government to transmit it; or obtains, reproduces or retains any classified matter which he is not authorized on behalf of the government to obtain, reproduce or retain, as the case may be, is guilty of an offence⁴⁴”.

Section 2 of the same Law adds that:

“A public officer who fails to comply with any instructions given to him on behalf of the government as to the safeguarding of any classified matter which by virtue of his office is obtained by him or under his control is guilty of an offence”.

These criminalise official information disclosure by public officers and also affect the press' unfettered access to information by journalists. During a focus group discussion/interactive session with pressmen of various media organisations in Yola, the significance of this Act as a limitation to journalists' unfettered access to public information was stressed. One of the participants in the session said:

“I have said before and will still repeat it: freedom of the press only exists in Nigeria theoretically. I keep asking the question that you cannot buy a new tyre and fix it unless you remove the old tyre. You cannot have Official Secrets Act existing and we are talking of freedom of the press. Official Secrets Act and other Acts that government has put

44 Official Secrets Act; An Act to make further provision for securing public safety; and for purposes connected therewith, Law of the Federal Republic of Nigeria, 13th September, 1962.

in place have not been removed. So, the so-called freedom of the press is just an academic exercise. Because if I go to a government official for information, he will use the Official Secrets Act to deny me information and he will defend himself in the court of law because the law has not been abolished or removed, it still exists. So the government in Nigeria is only playing politics with the issue of the freedom of the press. It exists only on paper but in reality it does not exist” (interactive session with pressmen held in Yola on 27th April, 2019).

The intention of the Freedom of Information (FoI) Law of 2011 was to make public information accessible. As the preface to the law explains, the FoI Act is:

“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 of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters”. But free access to public information is still a mirage. In some cases, states of the federation use non-domestication of the law to still deny access to information, arguing that the FoI law is a federal law and its provisions are not binding on the jurisdictions of the federating states. Even many of the federal government MDAs are yet to proactively supply information according to a study carried out by the Right to Know group in 2015.⁴⁵

On the other hand, Section 39 (1) and (2) which give every Nigerian the right to “freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference” and “right to own, establish and operate any medium for the dissemination of information and opinions” is justiciable. However, the actualization of the human rights set out in Chapter IV, including

45 See <http://r2knigeria.org/index.php/publication/foi-assessment-report>.

the right to freedom of expression and right to own or establish a medium of dissemination of information, is limited by Section 39 (3). Section 39 (3) states that: “Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society” (Constitution of the Federal Republic of Nigeria, 1999). The implication of this is that although the Constitution makes provisions for the enforcement of freedom of expression, which is very important to press freedom, yet it warns benefactors to be ready to be held responsible for any misdeed that may result from the application of extant laws. There are many laws that may affect criminal liability on any benefactor of Section 39, subsection (1) and (2) in the 1999 Constitution. Some of these laws are the Cybercrime Law of 2015, Criminal and Penal Codes, as well as the Sharia Law operated in the 12 Northern States in Nigeria.

The Cybercrime Law (Prohibition and Prevention, etc) was promulgated in 2015. The essence of the law is to:

“...Provides an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria and ensures the protection of critical national information infrastructure, and promotes cybersecurity and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights”.

However, many journalists have been arrested for cyberstalking, using the Cybercrime law of 2015. Cyberstalking is the crime committed when one repeatedly uses the medium of electronic communication to harass, intimidate and frighten a person. Section 24, 1(A and B); 2(A, B and C i and C ii); 3(A and B), 4, 5 and 6 punishes anyone convicted of knowingly sending an online message that “he knows to be false, for the purpose of causing annoyance, inconvenience danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another”, with penalties ranging from payment of fine and imprisonment or both. Since the promulgation of the law in May, 2015, the accusation of cyberstalking has been used to harass and press

charges against journalists, especially bloggers and online newspaper outfits who criticize politicians and government organisations online. This has raised serious condemnation against the law. Media personnel and organisations have campaigned vigorously against the use of the cybercrime law to harass and intimidate press personnel. The law has been tagged to be “evil, dictatorial and a serious violation of free speech” which is an aspect of the freedom of the press (Nkwanga, 2016) and there is an ongoing campaign for a review of the law (Paradigm Initiative of Nigeria, 2016). The fact remains that the law is very useful, considering the increase in the spate of cybercrimes such as ‘yahoo-yahoo’. This move can also promote responsible press activities in Nigeria. However, abuse by politicians, government officials and others may be inevitable and this will definitely gag press freedom in the country. A typical example of this is the Economic and Financial Crimes Commission’s arrest of Abubakar Sidiq Usman for cyberstalking involving EFCC as an organisation. The question is, does EFCC have the power to arrest and prosecute a cyberstalking case when it is not within its jurisdiction of functions, as contained in the EFCC or Cybercrime Act? This essentially exemplifies the possibility of an abuse of the Cybercrime Act.

Table II: The Application of Cybercrime Law to Arrest Journalist

S/N	Name of Journalist involved	Media Organisation	Year	Case	Status of the case as at 2019
1	Seun Oloketuyi	Naijahottestgist	August, 2015	Accused of cyberstalking and defamation of character over a story covered by the blogger alleging that the chief executive of a bank was having an affair.	Case was struck out by the court on Wednesday 29th June 2016
2	Emmanuel Ojo	Blogger	September, 2015	Was charged over a story alleging that the wife of the governor of Ogun State was involved in money laundering and was arrested by (the) Metropolitan police in London	-
3	Chris Kehinde Nwandu	CKNNigeria & President, GPBN	September, 2016	He was arrested for allegedly sharing Naijahottestgist story (S/N 1 above) on his Facebook page	The case struck out by the court on same day as S/N 1 above.
4	Desmond Ike Chima	Myemag & E-Nigeria	October, 2015	He was alleged to have written an article alleging that the managing director of a bank was having an affair	Charges against him were dropped and released in April, 2016
5	Abubakar Sidiq Usman	Blog Post known as Abusidiqu	2016	Accused of posting (an) offensive publication against EFCC and its staff. He was arrested by EFCC and detained for days	-
6	Musa Babale Azare	Personal Facebook and Twitter page	2016	Accused of criticizing the policies and actions of the governor of Bauchi State, Muhammed Abdullah Abubakar on social media	-

S/N	Name of Journalist involved	Media Organisation	Year	Case	Status of the case as at 2019
7	Unnamed journalist	Watchdog media news	September 2016	Soldiers, mobile policemen and State Security Service agents stormed a hotel in Edo State and arrested 10 reporters from the independent news website Watchdog Media News.	-
8	Omoeye Sowore	Sahara Report	January 2017	Omoeye Sowore, a reporter for online news outlet Sahara Reporters, was harassed by the police in Lagos on the basis of a complaint about a report published on its website.	-
9	Kemi Olunloyo and Samuel Walson	Unnamed	March 2017	Two bloggers, Kemi Olunloyo and Samuel Walson, were detained in prison for one week before being granted bail for publishing an article about an elite pastor in Rivers State.	-
10	Samuel Ogundipe	Premium Times online newspaper	2018	He was accused (of publishing) ---to have published--- an article injurious to the police and Nigeria. The article has to do with former IGP Idris' report on (the) SSS invasion of the National Assembly ---submitted to Acting President Yemi Osibanjo---	-

S/N	Name of Journalist involved	Media Organisation	Year	Case	Status of the case as at 2019
11	Norman Don Obinna	The Realm News	March, 2019	He was accused of using his computer to send a message that could have caused public hatred..	-
12	Chikwere Godfrey	Face book page	October	Governor David Umahi of Ebonyi State, through the commissioner for information, ordered the arrest and detention of Chikwere Godfrey over his Facebook post which purported(ly) said: "They (politicians) can pay a youth to murder a perceived political enemy but they can't give such youth money to start (a) business". Sahara Reporter, Oct. 11, 2021.	-

Source: Compiled by the author from various newspaper reports.

On the other hand, Criminal and Penal Codes Laws are always used to also gag the freedom of the press. Many journalists have been charged with criminal defamation. The case of lawsuits against the press is not entirely bad. What is bad about them is that most of the cases are frivolous and often accompanied by torture meted out to the victim(s). It therefore has the tendency to instil fear in the minds of press personnel.

Table III: Some of the Criminal Prosecution (cases) against (the) Press

S/N	Year	Case	Status
1	2006	Atiku Abubakar and his wife Titi dragged <i>Newswatch</i> magazine and five of its top employees to court for libel.	-
2	2006	Mike Aruleba of AIT and Rotimi Durojaiye of <i>Daily Independent</i> newspapers were arrested and charged with seditious covering and investigation of the cost of the presidential jet of President Olusegun Obasanjo.	-
3	2011	Olajide Fashekun of the <i>National Accord</i> newspaper was arrested and charged for criminal libel after alleging in a series of articles that there was corruption in the Nigerian Football Federation (NFF).	-
4	2012	Ayodele Fayose filed a defamation of character suit against <i>The News</i> newspaper.	-
5	2012	Governor Ibikunle Amosun of Ogun State filed a libel case against <i>The Compass</i> newspaper for an article that accused him of frivolous spending.	-
6	2013	Tukur Mamu of the <i>Desert Herald</i> was charged with dissemination of defamatory stories about the administration of the Federal Capital Territory by Bala Mohammed.	
6	2014	Mr Hir Joseph was arrested and charged for injurious falsehood under the Penal Code for an article on the "Bring Back Our Girls" campaign.	Charges later withdrawn
7	2014	Mr Isiaka Onimisi was arrested for posting photos of a jail break in Abuja on his Twitter account. He would have been prosecuted under the Cybercrime Law but the law was not yet passed as at the time of the arrest. He was working on the publication of a book on the subject matter before he was arrested.	
8	2013	Tony Amokedo and Chibuzor Ukuibe of <i>Leadership</i> newspaper were charged for criminal sedition after the publication of a memo which was alleged to have been written by President Jonathan on a plan to increase fuel price and disrupt the merger of opposition political parties.	Charges were later withdrawn in 2014

Source: Compiled by the author from various newspaper sources.

The corollary of this is that press freedom is not well entrenched in the 1999 Constitution. There are loopholes that are being manipulated against the freedom of the press. However, the courts have also used the provisions of the Constitution, especially the Section 39 which emphasizes fundamental human rights to expand the legal protection and fair ruling on cases involving the press. The case of the High Court ruling against the police's illegal detention of Desmond Utomwen, a correspondent with *The News* magazine and *P.M. News* in 2012 is a case in point. Utomwen had been arrested and assaulted by the police for covering a peaceful protest outside a bank in Abuja in 2009. The court awarded N100 million to Utomwen over the police assault and abuse of his fundamental human rights. Whether this was paid or not cannot be verified but it is good for press freedom.

4.6 Other Constraints to Press Freedom in Nigeria

Beyond the constitutional provision(s), there are many other socio-political and economic constraints to press freedom in Nigeria. These include:

Impunity for Crime against Media Organisations and Media Personnel:

One of the major constraints to press freedom in Nigeria is the increasing attacks against media personnel and organisations. In spite of the entrenchment of press freedom in the constitution, press organisations and personnel continue to be attacked. The nature of their jobs has made them attract more enemies than friends. Some of their 'enemies' include politicians, government security agents, militant and threat-based groups. Many of these attacks often go unprosecuted (Freedom House, 2016). As at November 2, 2021, Nigeria was ranked high in the Global Impunity Index (GII) of the Committee to Protect Journalists (CPJ). The report stated that between 1995 and 2021, 11 pressmen were killed in the country, eight of them were targeted for murder, while seven were murdered with impunity⁴⁶. This statistics does not completely reflect the reality in terms of the total number of

46 This did not include the two journalists that were targeted and killed during 2019 elections in Bayelsa State

press personnel murdered during the period. Many cases of the killing of press personnel are not captured in the statistics. For instance, in August 17, 2017, gunmen killed a journalist in Bayelsa State (Simon, 2017) and by August 19, 2017, it led to a wide protest of broadcasters in the state⁴⁷ but this was not captured in the statistics. Similarly, between 1995 and 2021, 33 journalists were imprisoned in Nigeria for doing their job. This brings the total number of journalists imprisoned and killed to 44, as shown in Table IV.

Beyond murder, there were also many other attacks against press personnel and organisations, all aimed at muzzling their ability to carry out their duties. One of the most popular and very worrisome cases of attack against press organisations and personnel happened in Ibadan when a privately-owned FM station was partially demolished by bulldozers in the early hours of August 19, 2018 on the order of the Oyo State Government, following its critical reporting of the activities of the state government (Committee to Protect Journalists, 2018).

Table IV: No. of journalists killed and imprisoned from 1995-2021

S/N	Year	No. Murdered	No. imprisoned	Total No.
1	1995	0	7	7
2	1996	0	5	5
3	1997	0	13	13
4	1998	1	2	3
5	1999	3	0	3
6	2000	0	0	0
7	2001	0	0	0
8	2002	0	0	0

47 Simon Utebor (2017) Bayelsa Journalists Protest Broadcaster's Murder. Punch, April 19. <https://punchng.com/bayelsa-journalists-protest-broadcasters-murder/>. Accessed April 30, 2019.

S/N	Year	No. Murdered	No. imprisoned	Total No.
9	2003	0	0	0
10	2004	0	0	0
11	2005	0	1	1
12	2006	0	0	0
13	2007	0	0	0
14	2008	0	0	0
15	2009	1	0	1
16	2010	2	0	2
17	2011	1	0	1
18	2012	1	0	1
19	2013	0	0	0
20	2014	0	0	0
21	2015	0	0	0
22	2016	0	2	2
23	2017	0	1	1
24	2018	0	0	0
25	2019	1	1	2
26	2020	1	0	1
27	2021	0	1	1
19	Total	11	33	44

Source: Adapted from <https://cpj.org/africa/nigeria/>.

The effect of this on press freedom is enormous. Consistent attacks against the press with impunity create panic and fear in the minds of press personnel and organizations. This prevents them from giving the required commitment to their duties of holding government accountable or even reporting freely. A press man who works with a major newspaper outlet explained during an interaction that:

“The press in Nigeria is hamstrung. The provision of the 1999 Constitution of Nigeria says that the press should hold government accountable but the press is hamstrung to perform this task within the context of the prevalence or insecurity and deliberate attacks on journalists. You cannot carry your camera and pen to investigate a matter when your life is in danger because if you are killed, your family will suffer for nothing. You did not die for your country; you simply died for yourself and your family. The security condition is simply not favourable for journalists to carry out their duties” (interactive session with pressmen held in Yola on 27th April, 2019).

Another respondent added that:

“Politicians are more dangerous to journalists because you write a report of what they have committed, they think this journalist must be dealt with. The fear of the unknown does not make journalists go the extra mile (Ibid)”.

Interest of the Ownership: The 1999 Constitution of Nigeria allows for private ownership of press organisations. The spirit of this provision is to promote press freedom. This spirit however is gradually becoming very difficult to attain, due largely to the undue influence of owners of media organisations to either whittle down fact-finding investigations, exaggerate or spread fake news and promote their political interests or those of their cronies. This is possible because many of the private media organizations are either owned or sponsored by people who are directly involved in politics.

A respondent during an interaction with press men in Adamawa State said:

“You are talking about press freedom? Every owner of a press organisation has interest in any case their employees are reporting.

“Can you ignore the interest of the owner of your organisation when s/he really has interest in a story you are covering? No matter how good your investigation is, if its report does not reflect the interest of your proprietor, it will be thrown away, pruned down or fantasy added to it”(interaction with pressmen cited op.cit).

This shows that the interest of the owners of media organisations still continues to limit the freedom of press personnel and their right to balanced reportage. The 55-minute documentary entitled “The Real Buhari” aired on television before it went round on the social media is a case in point. It was aired by a private television station to discredit an opposition candidate during the 2015 elections because the owner of the press outfit was a chieftain of the ruling party then. Even government-owned media organisations are also guilty of not carrying out critical and objective investigations involving their pay masters. They would rather be silent about it.

Table V: Some of the Media Outlets Owned by Politicians

S/N	Media Organisation	Place of Operation	Owner	Political Affiliation
S/N	Media Organisation	Place of Operation	Owner	Political Affiliation
1	Television Continental (TVC)	Lagos	Asiwaju Bola Ahmed Tinubu	National Leader of All Progressives Congress (APC)
2	African Independent Television (AIT)	Abuja	Dr Raymond Dokpesi	A Chieftain of People's Democratic Party (PDP)
3	Raypower FM	Abuja	Dr Raymond Dokpesi	A Chieftain of People's Democratic Party (PDP)

S/N	Media Organisation	Place of Operation	Owner	Political Affiliation
4	Silverbird Television	Abuja	Senator Ben Bruce	A member of PDP and a sitting senator in the Eighth National Assembly.
5	GOTEL Communication (GOTEL TV&FM)	Yola, Adamawa State	Alh. Atiku Abubakar	A presidential candidate of the PDP in the 2019 presidential election.
6	Channels Television	Lagos	John Momoh	Although he has said he does not belong to any political party but most people believe that he belongs to APC (in various interviews with journalists).
7	<i>The Sun</i> newspaper	-	Orji Uzo Kalu	Former governor of Abia State and senator-elect in the 2019 election.
8	<i>The Nation</i> newspaper	-	Asiwaju Bola Ahmed Tinubu	Chieftain of APC.
9	<i>The Leadership</i> newspaper	-	Sam Nda-Isaiah	APC Chieftain. He was an aspirant for the position of president under the party in 2015.

Ethno-religious Sentiments of Press Personnel: Another major constraint to press freedom in Nigeria is the ethno-religious affiliations of press personnel. This happens because press personnel are members of the Nigerian society. This always affects their views and reports about events that affect them directly. The influence of ethno-religious sentiments of press personnel on their reporting sometimes aggravates conflict. This played out in the media reports on communal clashes in Numan LGA of Adamawa State and Kajuru LGA in Kaduna in recent times.

Poor Remuneration and Lack of Insurance for Media Personnel: Remuneration of media personnel is still very low. Many media organisations do not even pay their personnel regularly/promptly. This also affects press freedom as it makes them to easily be ‘bought’. This is why there is a high rate of the “Brown Envelope” syndrome among press personnel in Nigeria. A survey of 184 media professionals in Lagos conducted by Freedom House in 2009 found that 61% of them habitually received brown envelopes while on reportorial assignments. However, 74% of the respondents disagreed that the gifts led to biased coverage, perhaps because the practice is so common. The fact however is that the prevalence of ‘Brown Envelope’ affects the freedom with which press personnel write and this stems basically from the poor remuneration that press professionals get as ‘take home’ pay. Added to this also is the problem of the lack of insurance for media personnel and this makes it difficult for them to cover difficult situations that may affect them.

Learnings

This section teaches that:

- i) Difficulty in justiciability of the provisions of the constitution with regards to press freedom makes it difficult for press freedom to be adequately entrenched in the constitution;
- ii) There are both individual and institutional factors leading to constraints of Press Freedom in Nigeria.

4.7 Study Session Summary

Press freedom is important for the consolidation and development of democratic regimes in a modern state. This module examines constitutional provisions for press freedom, as well as justiciability of the provisions. It also interrogates other non-constitutional constraints that may have legal implications for press freedom in Nigeria. It submits that constraints to press freedom in Nigeria are both constitutional and non-constitutional but the constitutional constraints have far-reaching implications for press freedom in Nigeria. In view of the call for a constitutional review to amend aspects of the Nigerian constitution that are constantly used to gag press freedom by political elites, the study suggests that legal cases against press personnel and organisations should not be dropped midway but should be exhausted. This is necessary to test the laws so that they can be used as case laws to further strengthen press freedom in Nigeria.

4.8 Conclusion and Recommendations

The point being made from the diagnosis above is that the major obstacle to press freedom in Nigeria is the legal environment under which journalists operate. From the international instruments to the constitution of Nigeria, the press is not given absolute and unrestricted freedom to flourish. For instance, while Article 19 (1 and 2) of the ICCPR protects the freedom of the press globally, the Article that follows it, Article 19, Section 3 (A and B) of the treaty, provides a restriction to the exercise of press freedom as a human right that is contingent on respect for the rights of others and protection of national security or public order or public health or morals. Similarly, the Constitution of the Federal Republic of Nigeria, Chapter 2, Section 22 and Chapter 4, Section 39 (1 and 2), also ensures freedom of the press. However, while the entire Chapter 2, including Section 22 which talks about the freedom of the press “at all times”, is made non-justiciable by virtue of Section

6(6)(C) of the same constitution. On the other hand, Section 39(1 and 2) is justiciable. This has taken the press away from exclusive government ownership and has led to an increase in private ownership. However, the entire Chapter IV, including the right to freedom of expression and right to own or establish a medium of dissemination of information, is limited by Section 39 (3). This aspect of the Constitution gives the ground for extant and new laws to operate against the press and thus infringe on its freedom. Three statutes have been most used against the freedom of the press in Nigeria. These are the Criminal Code, Penal Code and Cybercrime Law.

While trying press personnel and organisations in court for breaches may not be completely bad as this promotes a responsible press in a democratic setting and further ensures respect for fundamental human rights of others, the problem has to do majorly with frivolity and lack of substance in many cases against the press, either as organisations or individuals. This usually results in dropping the trial midway or settlement out of court. This often frustrates press personnel and organisations. It is advised that truncating trial midway in cases involving the press should be discouraged. Press personnel and organisations should ensure that when they are charged to court, especially when they have a good case, the legal process should be allowed to flow and be exhausted. This is important for three (3) reasons. The first reason is to test the law, especially the extant laws that are often manipulated to gag press freedom. Secondly, the interpretation of the judiciary is also important and thirdly, where the judgment is delivered in favour of the press, it can be used as a case law to further promote press freedom. There are some cases in history that have shown that this is not impossible. One of those cases was the trial of Chief Arthur Nwankwo. In 1961, Dr. Chike Obi, leader of the minority party called Dynamic Party was convicted for the publication of a Pamphlet titled *The People: Facts That You Must Know*. A part of the pamphlet, which read:

“Down with the enemies of the people, the exploiters of the weak and the oppressors of the poor... the days of those who have enriched themselves at the expense of the poor are numbered” was found to have seditious intention. Chief Justice Ademola, while reading the judgment, said:

“A person has a right to discuss any grievance or criticize, canvass and censure the acts of Government and their public policy. He may even do this with a view to effecting a change in the party in power or to call attention to the weakness of a government, so long as he keeps within the limits of fair criticism. It is clearly constitutional by means of fair argument to criticize the Government of the day. What is not permitted is to criticize the Government in a malignant manner as described above, for such attacks by their nature, tend to affect the public peace” (Okonkwo and Naish cited in Ogbondah and Onyedike, 1991:68).

The continuing applicability of the *Chike Obi* case was questioned by the Court of Appeals of Anambra State in 1983 (Fed. Ct. App.: Enugu, 7/27/83). In 1982, Chief Arthur Nwankwo published a book titled *How Jim Nwobodo Ruled Anambra State*. He was arraigned before a court on charges of seditious publication against the governor of Anambra State. The trial judge agreed with the prosecutor and sentenced Nwankwo to 12 months imprisonment with hard labor and banned the publication of the book. The trial judge, while ending his ruling, added that: “The conviction and punishment of the accused, I hope, will help to stem the tempo of vulgar abuse and irresponsibility of both the politicians and media practitioners.” (Nwankwo, 1983).

Furthermore, the court warned persons who had purchased the book to surrender their copies at the nearest police station. The decision was appealed by Nwankwo on July 27, 1983 at the Federal Court of Appeal and he was discharged and acquitted. The appellate court expressed that “Sections 50 and 51 of the Criminal Code were anachronistic in the

light of constitutional changes and the national sovereignty” (Ekwelie quoted in Ogbondah and Onyedike, 1991:69). In essence, the appeal court was concerned that an independent Nigeria still operated under laws that were passed by aliens to serve the purposes of a colonial administration. Nwankwo’s acquittal showed that the sedition law was inconsistent with constitutional guarantees. Similarly, on February 12, 1983, the Chief Justice of Anambra state discharged and acquitted the *Weekly Trumpet* of a sedition charge by the Anambra State Governor for publishing an article, “Just Before the Storm.” In that case, the Chief Justice ruled that the sedition law was inconsistent with section 36 of the 1979 constitution which guaranteed freedom of expression. These judgments killed the sedition law in the Criminal Code. Also recently, a High Court ruled against the illegal police detention of Desmond Utomwen, a correspondent with *The News* magazine and *P.M. News* in 2012. Utomwen had been arrested and assaulted by the police for covering a peaceful protest outside a bank in Abuja in 2009. The court awarded N100 million to Utomwen for the police assault and abuse of his fundamental human rights. This is a major advancement for press freedom in Nigeria. Such cases should be encouraged because they will further improve the weak freedom enjoyed by the press in Nigeria. Lastly, press personnel and organisations should be guided by patriotism to their state and respect for other people’s rights as much as possible. In this era of fake news, their reports should be properly investigated to ensure that the contents are factual.

4.9 Activities

- In view of the fact that provisions of the constitution with respect to press freedom do not give adequate and sufficient freedom to the press, write an article to be published in a newspaper about how press freedom can be better promoted in Nigeria.
- Simulate a legislative session on making the provisions on press freedom justiciable.

- Create a working group on redefining press freedom based on the historical context described above.
- Simulate a policy session that addresses managing the constraint to Press Freedom in Nigeria.

4.10 Revision Questions

- Discuss international documents that provide the basis for constitutional provision for press freedom in Nigeria's constitution.
- Discuss the historical development of the entrenchment of press freedom in the constitution.
- In your own opinion, how do you think Nigeria can ensure press freedom without compromising responsible journalism?
- In the light of the provisions of the constitution with regards to press freedom and the difficulty of justiciability, to what extent can we say the Nigeria's 1999 Constitution guarantees press freedom?
- Beyond non-justiciability of the sections of the Nigeria's 1999 constitution that impinge on press freedom as impediment to enhancement of press freedom in Nigeria, what are other major constraints identified in this module?
- How do these impediments impinge on press freedom in Nigeria?
- Can you think of any other impediment not identified in this module and how to ensure freedom of the press?
- Given the non-justiciability of sections on press freedom in Nigeria's 1999 Constitution do you think that anything can be done to improve on its justiciability?

4.11 Suggestion for Further Readings

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Module Four



The FOI Act and the Challenges of Implementation

By
Ugo Aniga

‘When you cannot access accurate information, you cannot edit democracy.’
⁴⁸ -Dapo Olorunyomi.



This module is prepared to run for 2 hours.

Broad Learning Objectives

- To understand that the full implementation of the FOI Act will help the press and the citizenry edit government policies;
- To understand that non-implementation of the FOI Act is tantamount to a violation of Nigerians’ human rights;
- To understand that the media are both mediators and peacebuilding agents and therefore should take advantage of the FOI Act to the fullest.

5.1 Introduction

Not implementing the FOI Act fully is in itself a conflict. According to Albert,⁴⁹ there are four main factors that cause conflicts. Manipulation of information is one of them. The other three include competition for inadequate resources; contrasting value systems; and the psychological needs of groups and individuals. We are not going to dwell on the four but just on the manipulation of information as it focuses on the

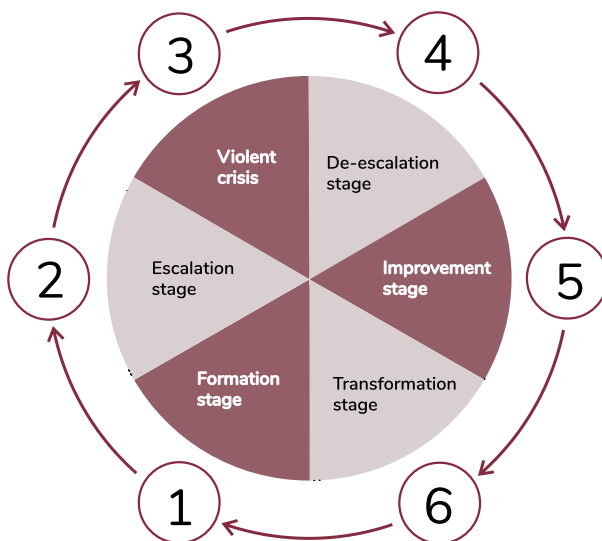
⁴⁸ A declaration made on 4 May, 2019 during the celebration of the year’s Press Freedom Day at Chelsea Hotel, Abuja, Nigeria.

⁴⁹ Albert, I.O. Introduction to Third Party Intervention in Community Conflicts. Ibadan: John Archers Limited, Ibadan. 2001.

FOI Act that is being discussed in this module. Concealment of vital information, no matter how minute, triggers suspicion and conflict that escalates to the detriment of the state and the people. Upon this fact lies the need for the Freedom of Information (FOI) Bill in Nigeria, signed into Law on 28 May, 2011 by President Jonathan Goodluck. In other words, freedom to access information without restriction (except classified information on international relations, security, et al, not meant for public disclosure as stipulated in the FOI Act) from any quarters, is key to good governance, on one hand, and for peace and security, on the other hand.

In conflict theory, there are six stages to a conflict, from formation to escalation, then to violent crisis via the de-escalation stage, before descending after lots of conflict handling must have taken place, to improvement stage, before the last and the most difficult, the transformation stage (the post peacebuilding stage). In each of these six stages, information dissemination or concealment plays a vital role.

Study the pie chart below very carefully. You will find that the media is involved in each of the six stages. In the first and second stages, the media is more or less a mediator and is in danger in stage three, as violence does not recognise who is a journalist and who is a rebel or fighter in the theatre of war. The press also participates in stages four to six, acting as an instrument for peacebuilding (reporting about dialogues and plans to rebuild and forgive and forget).



It is imperative to state that stage one of many conflicts is due to the lack of information or its concealment. In other words, when the press can easily access information, it goes a long way to prevent conflicts, and is seen as little but which when taken for granted escalates to violence, thereby affecting the human and economic growth of a nation. The media works with information. When it is disseminated, the media then perches on the information to feed the citizenry. But when information is withheld, the media is in limbo and the citizenry is suspicious of the government and its agencies. To eliminate this suspicion, the implementation of the FOI Act is very germane to nation-building and positive peace.

Diamond and McDonald⁵⁰ have outlined, in what they call Multi-Track Diplomacy, nine tracts they suggest for peacebuilding to be effective. These include (1) government, (2) non-governmental/professional organisations, (3) business, (4) private citizen, (5) research, training and

50 Diamond, L. and Macdonald, J. Multi-Track Diplomacy. West Hartford.: Kumarian Press Inc. 1996.

education, (6) activism, (7) religion, (8) funding, and (9) communication. In all of these tracts, the media are key to each of them. This is because the press or media are custodians of peacebuilding (be it in a proactive or reactive perspective).

5.2 Conceptual Clarifications

The following terms have been briefly explicated in line with this discourse:

FOI:

The acronym stands for Freedom of Information. It is a global concept that preaches freedom of speech and freedom of the press to access information from government agencies without undue restrictions and harassments.

Challenges:

These are hindrances and legal and political obstacles that could militate against free access to information for easy dissemination to the public.

Implementation:

This entails putting in place all enabling factors by state actors and non-state actors to make positive use of the FOI Act; and allowing no hindrances to the press which is expected to access government's transactions in order to score the government and its policies to the state.

Freedom of Expression:

In democracy, every citizen has the right to free expression; that is, every citizen has the duty to critique the government and proffer solutions to nation-building without being threatened by the state or its security agencies.

Press Freedom in Nigeria:

This implies that the press will not be prevented from accessing information from the government for onward reportage to the masses.

5.3 The Media/Press and Setting the Agenda for Nation building

This is not a rhetorical question. Let me give an answer based on Hymes' theory. Hymes, to be fair to him, did not mention the media in the following analogy of his. But in our contemporary world where the media is in the centre stage of information dissemination, the sentiments of Hymes concern them much more than they do to other professions or vocations that deal with speaking and writing. Hymes identified various contextual variables about language and communicative competence which I believe every journalist should be mindful of. In his SPEAKING theory,⁵¹ Hymes posits that for communication to be effective, there must be the following:

- Setting;
- Participants;
- Ends;
- Acts;
- Key;
- Instrumentality;
- Norms;
- Genre.

Below is my explication of the acronym: SPEAKING:

S. Setting: the place of a speech event;

P. Participants: the actors and their relations with one another;

⁵¹ Hymes, D. On *Communicative Competence*. Pride, J.B. and Holmes Eds. *Sociolinguistics*. Harmondsworth Penguin. 1972.

E. Ends: the general goals and individual aims;

A. Acts: whether an individual asks questions, criticizes, clarifies;

K. Key: the tone, friendly or hostile, humorous or serious;

I. Instrumentality: the medium and the channel-speaking or writing;

N. Norms: behaviour that accompanies language, how loudly should one speak, should there be interruption or not?;

G. Genre: deals with the category of language: riddles, praise poems, proverbs, and idioms.

Media is the I: the **instrumentality**, for without the media, which is at the middle between the information and the masses, no information can be disseminated. No positive nation-building can be realised when information is not well disseminated. The media, be they the print or electronic or even the new media (social media), the internet and all its platforms, the press holds the centre stage to Hymes' position. It then speaks volumes of the indispensability of the media in information dissemination, peacebuilding and nation-building.

The media, being the centre stage of communication in our contemporary world, has a duty to play, especially in Nigeria (having the FOI Act in view). It is expedient that the journalist, through the instrument or channel of information dissemination, must be careful with the setting, participants, ends, acts, key, instrumentality (his own work on ethics and tenets), norms, and genre in the course of discharging his duties. This is because the journalist or the media are the mirror of the society they work in. An investigative media or press reflects the true situation of the state. Without a virile media, the people will remain in the dark of what goes on in the land.

5.4 A Review of the FOI Act Bill⁵²

The ten-page document which was passed by the National Assembly clearly spells out what the *Freedom of Information Act* entails. The

52 Freedom of Information Act 2011: Laws of the Federation of Nigeria

introductory paragraph, *ab initio*, and the last one captioned, *Explanatory Note*, help summarise what the document actually has in detail. The introductory paragraph to the entire document reads in full:

‘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 of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters.’

The 32- section FOI Bill is a testimony of what press freedom in Nigeria should be. No attempt is being made to analyse or summarise each of the 32 sections. Quoting verbatim the *Explanatory Note*, ‘This Act makes 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.’

No doubt, the first and the last paragraphs of the document do agree with each other and to a large extent offers a decent view of the document in question. Let us however discuss just a few sections in order to ascertain what the bill stands for and whether or not the government has heeded to the document. It is important to note that the FOI has some restrictions for security reasons. The following sections of the bill clarify it in clear terms that it is not every request of government documents that is granted.

Part of Section 12 says and I quote, ‘(1) A public institution may deny an application for any information which contains-

- (a) Records compiled by any public institution for administrative enforcement proceedings and by any law enforcement or

correctional agency for law enforcement purposes or for internal matters of a public institution, but only to the extent that disclosure would-

- (i) interfere with pending or actual and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency,
 - (ii) interfere with pending administrative enforcement proceedings conducted by any public institution,
 - (iii) deprive a person of a fair trial or an impartial hearing,
 - (iv) unavoidably disclose the identity of a confidential source,
 - (v) constitute an invasion of personal privacy under Section 15 of this Act, except, where the interest of the public would be better served by having such record being made available, this exemption to disclosure shall not apply, and
 - (vi) obstruct an ongoing criminal investigation
- (b) information the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.'

It must be noted too according to section 10 that a government officer could go to prison for 'willfully destroying any records kept in his custody...':

Section 10 reads in full, 'It is a criminal offence punishable on conviction by the Court with a minimum of 1 year imprisonment for any officer or head of any government or public institution to which this Act applies to willfully destroy any records kept in his custody or attempt to doctor or otherwise alter same before they are released to any person, entity or community applying for it.' According to Patience Yusuf of the Public Affairs Department of Nigerian Communications Commission (NCC), 'FOI Act promises to remove the aura of mystery and exclusion which public servants cloak the ordinary operations of government and public institutions. It seeks to change the manner in which public records and information are managed.'

Section 31 that deals with interpretation is important to this discourse to help explain what Patience Yusuf is implying in her write up.⁵³ The interpretation is very vital because it helps to explicate germane terms and modes of information retrievals. The entire 31 Section is as follows:

‘31. In this Act -

“applicant” refers to any person who applies for information under this Act; “application” refers to any request for information made under this Act;

“Court” means a High Court or Federal High Court respectively.

“Foreign State” means any State other than the Federal Republic of Nigeria;

“Information” includes all records, documents and information stored in whatever form including written, electronic, visual image, sound, audio recording, etc.

“Public institution” means any legislative, executive, judicial, administrative or advisory body of the government, including boards, bureau, committees or commissions of the State, and any subsidiary body of those bodies including but not limited to committees and sub-committees which are supported in whole or in part by public fund or which expends public fund and private bodies providing public services, performing public functions or utilizing public funds;

“Public record or document” means a record in any form having been prepared, or having been or being used, received, possessed or under the control of any public or private bodies relating to matters of public interest and includes any –

(b) information recorded or stored on other devices; and any material subsequently derived from information so recorded or stored;

53 The Freedom of Information Act 2011(FOI) – What it means to you. The Communicator Magazine 2019, Nigerian Communications Commission.

(c) label marking, or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;

(d) book, card, form, map, plan, graph, or drawing (e) photograph, film, negative, microfilm, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“Minister” means the Minister charged with responsibility for information

“Person” include a corporation sole and body of persons whether corporate or incorporate; acting individually or as a group;

“Personal information” means any official information held about an identifiable person, but does not include information that bears on the public duties of public employees and officials.’

From the foregoing, the FOI Act document is so unique that it touches all the ramifications of life, including times when an applicant must pay some money to get information (at least charges for the reproduction of the information being sought),⁵⁴ and of course the legal aspect which includes the opportunity for an applicant to apply to the court for a review of a case of refusal to be granted information within 30 days.⁵⁵

Generally, Sections 11 to 17 basically are on the series of information that cannot be accessed: those that will cause damages in international affairs, health worker privileges, trade secrets and financial information, and of course, personal information.

The implication of this review is the fact that not all information can be accessed as explained above. In other words, the Press should know the kinds of information it should not request, for security reasons. But for all the kinds of information that the public has the right to be in the know, the press should be aware of them and should be bold enough to go for them for the good of the society.

⁵⁴ See section 8 of the FOI Act.

⁵⁵ See sections 20 and 24 of the FOI Act.

5.5 The Benefits of Freedom of Expression and Press Freedom

One of the tenets of fundamental human rights is freedom of speech (or freedom of expression, as the case may be). Nigeria having had unbroken democratic governance since 1999 (more than two solid decades) should imbibe the culture of press freedom. This is because press freedom is like the justice of the masses. When there is freedom of expression and press freedom, democracy thrives in the actual sense of the meaning of democracy. Democracy gives power to the people.

“Press Freedom before 28 May 2011 had been a mirage in Nigeria. Prior to this date, Nigerians had experienced numerous military regimes. In military regimes, Press Freedom is normally an anathema. From 1966 to 1979 (within which the Nigeria-Biafra Civil War was fought for thirty months), the military held sway. From 1984 to 1999, the military were again in power so that press freedom was caged as it were.”

It is the citizenry who own the land and should be accorded the right to make their opinions known via all the aspects of the media that enjoy press freedom. There is nothing bad in the people through the media criticising objectively the policies and inactions of the government of the day. However, whenever the government has done good, it is important that the press should commend it.

It is not true the press only criticises. In fact, the press builds but juxtaposing the actions and inactions of the government for positive improvements that will benefit the masses and create a positive image of

the country to the outside world should be encouraged. For instance, the press could discourage the government from too much borrowing with credible reasons from public opinions conducted by journalists and reported with evidences (in form of pictures and contacts of those whose opinions are sought). It is not true that the press only abuses. Rather, an entrenchment of press freedom is a panacea to constructive criticism towards nation building, without recourse to sentiments, tribalism, nepotism, and ethnicity.

According to the National Orientation Agency (NOA) in its 2018 evaluation of the FOI Act, ‘It is important to the healthy functioning of our society and would directly impact the quality of life of a people residing in Nigeria. It would foster an open and participatory system of governance where the government, public and private institutions contribute to and benefit from a healthier, more transparent collaborative governance.’⁵⁶

The key phrase in the above quote is ‘more transparent collaborative governance’. To support the collaborative power of FOI Act, NOA goes ahead to itemise 23 benefits that can be derived from a fully implemented FOI Act.⁵⁷ I have summarised the entire 23 benefits thus:

- That everyone can have access to information in the hands of public institutions or private ones that enjoy public funds;
- That everyone can monitor the extent at which government delivers its projects in all sectors of the government; and therefore know who are to be held responsible for non-performance;
- That government and public can now assess (not access) the allocation and flow of scarce public resources;
- That the legislators now have a dependable source of information towards enhancing their oversight functions;
- That business organisations and even contractors are better informed on how to go about their businesses and information on award of contracts;
- That journalists and the press now have a verified platform for factual reportage;
- That policy makers, students, and career professionals could have dependable data to facilitate their endeavours;
- That the electorate can have a better stand to vote aright on one

⁵⁶ 23 Reasons For The Freedom Of Information Act (FOIA), March, 14 2018. <https://www.noa.gov.ng/23-reasons-for-the-freedom-of-information-act-foia/>

⁵⁷ Ibid.

hand, and on the other hand, the anti-corruption agencies will have a better background to 'bite' much better, and lastly,

- that the public will become more confident in their judgement of the government in place.

On the above explications by NOA (2018), it becomes crystal clear that the FOI Act benefits everyone in Nigeria. In other words, the FOI Act being fully implemented will be a 'lubrication' for a faster social, political, and economic growth in Nigeria. However, it is evident that the press or media must be in the forefront of this new dispensation in Nigeria. This is because, the media, be it print, electronic or the so called new media/social media is the 'mouthpiece', the eyes, the ear, and the heart of Nigerians when it comes to the issue of information gathering and reportage towards editing and improving Nigeria's democracy or governance in its entirety.

5.6 Study Session Summary

Press freedom before 28 May 2011 had been a mirage in Nigeria. Prior to this date, Nigerians had experienced numerous military regimes. During military regimes, press freedom is normally an anathema. From 1966 to 1979 (within which the Nigeria-Biafra Civil War was fought for thirty months), the military held sway. From 1984 to 1999, the military were again in power so that press freedom was caged as it were. Even between 1960 and 1966, and 1979 to 1983; as well as 1999 to 2011 when one could boast of the presence of civil rule in Nigeria, press freedom was not quite operational for it lacked legal backing. It is on account of this that the signing into law the FOI Bill on 28 May, 2011 was very significant. With this law, freedom of speech and press freedom took a new look, the long awaited legal backing.

The FOI Act and the Challenges of its Implementations as a module in this manual that explicates what freedom of information (FOI) entails. The essence of this module is primarily to emphasise the crucial role that

freedom of expression and freedom of the press play in a given society, Nigeria, to be precise. This manual, therefore, aims to argue that while the government has a share in ensuring the full implementation of the FOI Act, in actual sense, it is journalists, civil society organisations, non-governmental organisations, and of course the masses who must do more in ensuring that the FOI Act is fully operational. This is because the government loses nothing when the FOI Act is not working. The same cannot be said of the press on one hand, and all the above mentioned partners, on the other hand. On the whole, the essence of this module lies squarely on the media themselves to seek information from appropriate government agencies for the good of the people they are meant to serve by disseminating information and interrogating the actions of those in authority. Putting it in Achebe's perspective, it is the media which holds the knife, and arguably the yam in this new dispensation of Nigeria's history. The FOI Act and the challenges of its implementations as it relates to freedom of expression and press freedom in Nigeria, therefore, should be studied with the intention to draw the purpose of its full implementations to the press, on one hand, and to the country at large, on the other hand. In a nutshell, this module presents the full implementation of the FOI Act as a peace mechanism capable of invigorating Nigeria's quest for transparency and justice. In other words, the manual argues that with the press as the 'peacebuilder', the rest of the society keys in, in the business of asking and trying to know what has been and what should be done in the future for a better country. Towards achieving this, it is imperative that there must be freedom of expression and press freedom to the fullest!

5.7 Conclusion/Recommendations:

This module has been able to explicate the synergy between the media and the FOI Act – that the conflict of concealing information from the public over the years can now be revised when all put hands together in support of the full implementation of the FOI Act. The conflict of

withholding information is capable of impacting the state negatively - politically, socially and economically. It is therefore in the interest of the State that the FOI Act is fully implemented by journalists, civil society organisations, non-governmental organisations, and of course the masses, who must do the more in ensuring that FOI Act is fully implemented, as argued at the beginning of this module, since such action creates trust and progress.

The government itself has a serious part to play towards the full implementation of the FOI Act. They should show sincerity by not obstructing in any way the release of information in the hands of their agencies to the press or whoever rightly demands this. Even when the FOI Act has fully been put into practice, it is very important that media owners do not continue as they do at the moment to influence what goes on in their media houses to suit their ethnic, political and religious inclinations. This action over the years has brought about conflicts that escalate to big national security issues. The language of these media houses is normally tailored towards their owners' sentiments so that objectivity is always in the dark as it were.

The media houses should therefore be separated from their owners, as done recently in the banking sector where the so called owners of banks do not have too much influence over the banks; rather the Central Bank of Nigeria does. This brings to the fore the relevance of a virile Nigerian Union of Journalists (NUJ) or any other regulating body that has biting teeth to regulate and discipline any erring media house that violates reportage ethics with foul language and undue sensationalism. It is in the environment of responsible journalism that true freedom of the press can be achieved! It is an objective journalism that can indeed seek information from the government agencies now legally backed by the FOI Act.

5.8 Activities

- Create work groups to critically analyze how the Multi-Track Diplomacy alluded to above could be harmonised in the subject of FOI Act implementation.

- Request two specific pieces of information from a government agency and another from a public liability company. After seven (7) days of the formal request, go back for the collection of the requested information and write a report on the processes you were made to undergo in the two organisations.
- Conduct a survey in your immediate environment and social media groups on the relevance of FOI Act. Give a report of your findings.
- Simulate how media owners impede and support freedom of the media.
- Link the six stages of conflict to the media in the campaign for press freedom in Nigeria through role plays in different working groups.

5.9 Revision Questions

- What are the roles of the media/press in nation building, especially as it concerns the FOI Act?
- What is the significance of FOI Act and its implementation in Nigeria?
- Critique Hymes' acronym of SPEAKING in your own opinion and situate it in relation to effective journalism; you may as well argue against its importance to the media.
- Do you think there are more benefits derivable from the signing of FOI Act apart from the 23 benefits NOA suggested? Itemise them and explain as much as you can.
- Which of these do you think is the best medium for requesting information from government agencies: writing a letter; using the social medium platforms? State the reasons for your position.
- What is your take on the FOI Act signed into law on 28 May, 2011

by President Goodluck Jonathan? You may need to read the entire original document to be able to respond to this question adequately.

- How does the media play the leading role towards the full actualisation of the FOI Act?

5.10 Suggestion for Further Readings

Albert, I.O. *Introduction to Third Party Intervention in Community Conflicts*. Ibadan: John Archers Limited, Ibadan. 2001.

Anderson, D.D. 2002. 'Freedom of the Press' 80 Texas Law Review 429 Google Scholar.

Balkin, J.M. 2006. 'digital speech and democratic Culture: a Theory of Freedom of expression for the information society' in New York University Law Review.

Best, S. G. 2006. *Introduction to Peace and Conflict Studies in West Africa: A reader*. Ibadan, Spectrum Books.

Freedom of Information Act 2011: Laws of the Federation of Nigeria

Nwabara U. 2010. The Nigerian Press, the Public Sphere and Sustainable Development: Engineering the Post Amnesty Deal in the Niger Delta. *Journal of Sustainable development in Africa*; 12(3): pp 11-27.



Module Five



Investigative Journalism Practice in the Democratic Development of Nigeria

by
Onwuka Okereke



This module is prepared to run for 2 hours

Broad Learning Objectives

- To understand and discuss the meaning and nature of investigative journalism;
- To understand the constitutional responsibility and freedom journalists need to practice their profession in Nigeria;
- To discuss the ramifications of some landmark investigative journalism projects carried out in Nigeria.

6.1 Introduction

The idea of freedom of speech underlines the fundamental principles of democracy as a system of government which requires unlimited and free flow of information that the citizens need to take informed decisions. The assumption is that as an open system, democratic politics should be understood as an ever-lasting problem-solving process guaranteeing a deliberative end to the participation of as many individuals as possible.⁵⁸ Freedom of speech gives expression to our liberty as citizens and the superiority of our political community. Freedom of speech is not limited to the free expression of opinions and ideas of individual citizens, but includes media freedom because

⁵⁸ Giannakopoulos, A. 2019. Introduction: Media freedom and democracy. Fundamental aspects retold in Media, freedom of speech and democracy in EU and beyond. Tel Aviv: The S. Daniel Abraham Center for International and Regional Studies.

both of them are inextricably tied together. Media freedom cannot be maintained if freedom of speech is affected, hence the right of media freedom is identical to the right of every citizen to express his opinion and to get information about anything.

The historical trajectory of agitation for freedom of speech can be traced to the era of British and American colonial histories when there were mounting agitations against arbitrary limits placed on communication by the church and state. John Locke and John Stuart Mill, among other scholars, hinged their arguments for freedom of communication on three assumptions. The first was that the media should serve as a forum allowing people to deduce between good and evil. The second was that press freedom is the strongest, if not the only, guarantee of liberty from political elites, while the third was that falsehoods should be countered, ideas must be challenged and tested or they will become dogma.⁵⁹ This concept, they argued, included not only the right to play a personal part in choosing those who would exercise power at the ballot box but also the freedom to speak out, to criticize those in charge when that became necessary and that the media should continually survey the environment and alert the public to problems.

Gradually, muckraking investigations of corruption proved so popular that newspapers specialising in them came to dominate the markets in some large American cities. People accepted the watchdog role as necessary and appropriate for the mass media⁶⁰ Within this formulation, the media was seen as an independent watchdog, charged with the responsibility of ensuring that all other institutions serve the public. The objective is that if people are informed about wrongdoing, incompetence or inefficiency, they will take action against it.

6.2 What does investigative journalism mean?

Investigative journalism is a concept used most widely in the context of an effective media system as a critical element of a country's anti-

⁵⁹ Baran, S. J. and Davis, D. K. 2009. *Mass communication theory*, 5th ed. Boston; Lyn uhl.

⁶⁰ Defleur, M. L. 2010. *Mass Communication theories: Explaining origins, processes and effects*. Boston; Elm Street Publishing Services.

corruption architecture. It has long been considered a vital bulwark of democracy as a check on wrongdoing in politics and public policy.⁶¹ Globally, there seems to be a widespread consensus among journalists in democratic states about the benefits of investigative journalism and its contributions to the quality of public discourse. To investigate wrongdoing is perceived as one of the cornerstones in journalistic practices and as a more or less uncontroversial function of independent media organizations in a free and democratic society.⁶² Hence, majority of the work on the subject has taken place within this conception.

Quite often, people are too familiar with the name ‘investigative journalism’, aligning its meaning with all forms of reporting. Even among journalists in Nigeria and elsewhere, this

“The focus of investigative journalism is on social justice and accountability in public institutions, which is why it is seen as a valuable public service. In other words, investigative journalists go beyond relaying the daily intelligence to the people into playing a critical role in development.”

misconception is not uncommon. It bears restating that although all forms of reporting involve investigation, but all forms of reporting are not investigative journalism. The nature and structure (methodology) of investigation differentiates investigative reporting from ordinary reporting. Apparently, people’s ignorance or misunderstanding of what investigative journalism means, especially in developing countries like Nigeria, is partly because it is an art

that is seldom practised in most of those countries. Unlike in America where the practice of this genre of journalism first began, the history and culture of journalism practice in Nigeria exclude the processes that could collectively be referred to as investigative journalism.

61 Feldsteain, M. 2006. A. Muckracking model: Investigative reporting cycles in American history. The Harvard International Journal of Press /Politics (11) 105

62 Weaver, D. Ed. 1998. The global journalist: News people around the world. Cresskill, NJ: Hampton press

What this means is that unlike the familiar media offerings of disseminating significant events or matters that often happen around us, and even beyond, investigative journalism involves a lot more. It is described as the uncovering of significant matters of public interest which the perpetrators would want hidden. Fact remains that when acts are intentionally kept secret, such acts potentially have negative implications for the health and moral values of the society. They cause harm and are reprehensible. So, the objective of investigative journalism in exposing the act is to conserve the moral fabric of society in order to maintain its social equilibrium. For clarity, the following characteristics will define investigative journalism:

1. It uncovers covert activities or matters that work against the public good.
2. The wrongdoing committed must be concrete and verifiable.
3. There must be an intention to conceal the wrongdoing.
4. The act committed must be capable of causing substantial harm to the victims and society.
5. It must be in the public interest to expose such act and stop its further perpetration.
6. The decision of the reporter to expose the crime must be borne out of a sense of morality for the society and the reporter's personal initiative, not the initiative of others.
7. It involves in-depth, long-term research efforts.

The focus of investigative journalism is on social justice and accountability in public institutions, which is why it is seen as a valuable public service. In other words, investigative journalists go beyond relaying the daily intelligence to the people into playing a critical role in development. They see themselves as citizens and equal stake holders as public officers and with the privilege or platform to right the wrongs

of the society. Dmitry Muratov, 2021 Nobel Laureate and editor-chief of Russia's leading independent newspaper, *Novaya Gazeta* describes investigative journalism as the most important mission of humankind, "because investigative reporters are not letting people steal the future from us."⁶³

Investigative journalism strongly connects with the social responsibility role of the mass media in which journalists are active participants in governance process and development objectives of the society. Of all media roles in a democracy, investigative journalism most

"Journalists in Nigeria have over the years indulged in the practice of investigative journalism to help in the quality control of democratic institutions. Effective investigative journalism has also made public officers accountable and transparent in the discharge of their duties, hence it has become an important variable in the growth of democracy in Nigeria."

approximates the Fourth Estate notion that sees the press as an independent institution that watches over or monitors the activities of the three arms of government – the executive, legislature and judiciary. One of the pre-conditions for the practice of investigative journalism, therefore, is media freedom that guarantees independence to the journalism practitioners, as well as the media institution. But this is often not the case. By the nature of this strand of journalism, the practitioners are often at odds with

the government, business and other powerful institutions that are the targets of investigation, thus creating an unfavourable practice environment for journalists. This is at the heart of several problems that hinder the practice of investigative journalism in most of the developing countries like Nigeria.

⁶³ Philip, R. 2021. Nobel Winner Muratov: Be an investigative reporter, and fight for a better world. Global Investigative Journalism Network Newsletter, December 16 (2-5).

6.3 Constitutional Guarantees of Freedom and Media Responsibility

There are two assumptions which border on the position, as well as the role of media in a democracy. The first is that the primary role of the mass media is to defend democracy, while the second sees mass media as an integral part of what helps bring democracy into being.⁶⁴ In line with this thinking, liberal democracies across the globe have assigned responsibilities, as well as granted the media institution freedom to discharge those responsibilities. The 1999 Constitution of the Federal Republic of Nigeria provides in Chapter IV, Section 39 that:

1. Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
2. Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinion: Provided that no person, other than the government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.
- 3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society.
 - a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television, or the exhibition of cinematography films; or
 - b) imposing restrictions upon persons holding office under the

⁶⁴ Quinn, F, 2013. An examination of the normative basis for journalism in Cambodia. A paper presented at the International Association for Media and Communication Research (IAMCR), Dublin, Ireland, June 25 – 29.

government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force, or other government security services or agencies established by law. Ordinarily, the Nigerian Constitution grants freedom to the press in the country, but its provision is nebulous. While on one hand, the Constitution provides for free speech, including that of the press, on the other hand, it sets difficult conditions that may hinder the exercise of such freedom in subsection 3 (a) and (b).

For instance, laws assumed to be reasonably justifiable in a democratic society can always be made at the whims of the government in power to override the constitutional guarantee of freedom. This will as well incapacitate the responsibility entrusted on the mass media in Chapter two, Section 22 of the Constitution as follows:

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.

6.4 Some Landmark Investigative Journalism Projects in Nigeria

Journalists in Nigeria have over the years indulged in the practice of investigative journalism to help in the quality control of democratic institutions. Effective investigative journalism has also made public officers accountable and transparent in the discharge of their duties, hence it has become an important variable in the growth of democracy in Nigeria. Below are some of the landmark investigative reports and how they have impacted on Nigeria's democratic development.

The Ibrahim Salisu Buhari scandal

A pro-democracy group based in Northern Nigeria, ***The Network for Democracy*** exposed the lies in the bio-data of the Speaker of House of the Representatives, Ibrahim Salisu Buhari. On May 28, 1999, the group

wrote to the then Chairman of the People's Democratic Party (PDP), Chief Solomon Lar, telling him that Salisu Buhari was a compulsive liar. The letter, signed by the organisation's Secretary General, Dr. Ahmed Muktar, alleged that Buhari's claims in the bio-data with which he got elected into the Federal House of Representatives were phoney. The Network expressed concern on the need for credibility in the calibre of people required to preside over the affairs of the House.

The Network for Democracy was worried by Salisu Buhari's aspiration to the speakership of the nation's House of Representatives and ended its revelation by advising the PDP leadership to address the issues with a view to saving the party and the PDP government the likely embarrassment of blessing a fraudulent and unqualified candidate as the Speaker.

As the scandal was mutating into street and beer parlour rumours, Salisu Buhari, conscious of its potent danger to his political career, resorted to refuting the forgery and perjury allegations in newspaper advertisements. In the advertisement published in the Tuesday, May 25, 1999 edition of *This Day* newspaper, Buhari claimed he began his educational pursuit at the Shababul Islamic School in 1969. In 1975, according to him, he left the School and commenced his primary education at St. Louis Primary School, Kano. He further claimed to have left St. Louis in 1981 and in the same year gained admission into Kings College, Lagos. Between 1986 and 1988, he said he studied accounting at the National

“Consequent upon this confirmation, Gusau was said to have contacted Buhari and told him he might be prosecuted for perjury and forgery. When Salisu Buhari, father of the Speaker, heard of the government's intention, he was said to have contacted many retired top military officers in Northern Nigeria to prevail on the NSA to sheath his sword.”

Diploma level at the Ahmadu Bello University, Zaria. Buhari also claimed to have studied business administration at the University of Toronto, Canada from 1988 to 1990, and did his National Youth Service

at Standard Construction Company, Kano. According to *The News* magazine, all these changed on July 12, 1999 when it published the report of an independent investigation the magazine conducted on the Buhari issue. In its July 19, 1999 edition with the portrait of Salisu Buhari and titled: *The face of a liar*, the magazine said that after a thorough probing of the allegations against Buhari, incontrovertible documents showed that Buhari was born on January 3, 1970, contrary to the January 3, 1963 which he claimed. Photostat copies of the admission form which Buhari filled in September 1981, while being admitted into the Kings College, Lagos, as well as his First School Leaving Certificate No 5342 issued on September 24, 1986, after his secondary education were published by the magazine to authenticate the report.

The News also confirmed that Buhari did not attend University of Toronto, Canada, as he claimed in his bio-data and that Toronto University does not offer an undergraduate course in business administration: It said that the only business administration course available was being offered by the Joseph L. Rotman School of Management and it is for MBA students. The magazine also said it discovered that even if Buhari had entered for any programme at the university, it was impossible that he would be awarded a first degree in two years. *The News* finally punctured Buhari's claims with a short, sharp and direct reply from Miss Angie Camardi, the university's records officer: "We have searched our records and are unable to verify attendance or graduation of Mr. Buhari". Miss Camardi, the report also said, added that efforts at trying several variations of his name with a view to eliminating doubts came up with no records. *The News* enquiries in Toronto also generated a response from Carlo Villanueva of the office of statistics, records and convocation. In a reply dated 8th July, 1999, Villaneuva said of the enquiries: "Regarding your request for confirmation of the conferment of the degree on Mr Ibrahim Salisu Buhari, we have searched our records and could not find anybody with the name you are inquiring with."

The magazine also disclosed that its checks at the NYSC secretariat, Abuja could not produce Buhari's name among the 1991 service

members and that the Standard Construction Company, Kano where he claimed to have done his youth service was, in fact, a family concern incorporated on March 8, 1972 with the registration number, 9905. Further investigations by the magazine revealed that the Presidency had been aware of the simmering scandal before *The News* report. It said that the spate of petitions flying about on the speaker was of grave concern to the Presidency, which directed the National Security Adviser (NSA), Lt-Gen. Aliyu Mohammed Gusau (rtd), to get to the root of the matter. Gusau was said to have contacted Mr. S.I Balogun, principal of Kings College, Lagos, as well as conducted an investigation on the website of the University of Toronto and all the results tallied with the allegations made against Buhari.

Consequent upon this confirmation, Gusau was said to have contacted Buhari and told him he might be prosecuted for perjury and forgery. When Salisu Buhari, father of the Speaker, heard of the government's intention, he was said to have contacted many retired top military officers in Northern Nigeria to prevail on the NSA to sheath his sword. The Clerk of the National Assembly, Alhaji Ibrahim Salim, confirmed that there was a conspiracy of silence and helplessness from the Presidency, the security service and the police. Salim stated how at 6.30am on June 2, 1999, the eve of the inauguration of the National Assembly, two deputy directors from the SSS presented a letter to him that contained a security report on Buhari. According to him, "they indicated that the member-elect, contrary to his claims that he was born on January 3, 1963, was actually born on January 3, 1970. He said that "since I had already taken action the previous night, my belief was that members were fully aware of the security report in my possession when they appeared in the chamber for the elections. I, therefore, proceeded to conduct the elections."

Having overcome the threats posed by the government and her security agencies, the Buhari family members sought to intimidate the press by resorting to legal rhetoric. Their first ploy was to hire the services of a Senior Advocate of Nigeria (SAN), Chief Rotimi Williams, to essay a scare into the management of Independent Communications of

Nigeria Limited (ICNL), publishers of *The News* magazine. In July 1999, Chief Williams wrote a letter to the ICNL averring that: considering the gravity of the allegations made against Buhari and the wide circulation of the magazine, “we consider that our client is entitled to aggravated damages as well as apology”. In a suit which was later filed by Chief Williams on behalf of Buhari, the former speaker demanded five hundred million naira (N500m) from ICNL as damages.

However, *The News* held on to its report and probed further for new leads in the whole Buhari affair. With the agenda already set, other newspapers and magazines made the Buhari scandal topical news of their daily and weekly publications. Human rights activists and lawyers like Chief Gani Fawehimi and Mr. Olisa Agbakoba called on Buhari to quit the National Assembly. So also did some party chieftains and fellow legislators like Nduka Irabor, Idris Kuta and Tony Anyanwu who, miffed that the establishment had lost its sense of proportion and decency, stridently counselled Buhari to own up. In the midst of overwhelming evidence and civil pressure, Buhari’s devices hit the brick wall. Ominous signals that the Speaker’s exit was imminent emerged when the Chairman of the Independent National Electoral Commission, INEC, Justice Ephraim Akpata indicted Buhari and recommended police action and trial against him. On July 22, 1999, Buhari resigned as the speaker and member of the House of Representatives in deference to the constitutional provision that stipulates a minimum of 30 years for qualification for the membership of the House. He was 29 years old. The former speaker pleaded guilty to all the allegations levelled against him and begged for pardon from all Nigerians. He was later arrested and tried at a Lagos Magistrate’s court where he was convicted for forgery and perjury. He was sentenced to two years imprisonment with an option of N2,000.00 fine.

The Bola Ahmed Tinubu case

The Kaduna-based weekly newspaper, *Today*, on August 2, 1999, came up with a publication alleging that there were discrepancies in the Lagos State Governor, Bola Ahmed Tinubu’s age, as revealed in his

inauguration pamphlet which had 1952, and the transcript of the school he claimed to have attended, Chicago State University, which had 1954, as his date of birth. The paper also alleged that the governor did not attend Government College, Ibadan as he claimed in the INEC form cfoo1 which he filled before his election, and that he was not a product of the University of Chicago. Similarly, a group called “Concerned Lagosians in the United States of America” wrote a petition to the national chairman of the Alliance for Democracy (AD), alleging that Tinubu was guilty of more crimes.

The group said, among other things, that Governor Tinubu’s Certified Public Accountant (CPA) degree was suspect. The governor had filled in his INEC form cfoo1 that he earned the CPA certificate in 1979. But in the letter signed by Dr. Charles Ademola Ahmed, the “Concerned Lagosians in the US” said that the result was another spurious claim. Attached to the letter was a fax message sent to Dr. Ahmed by one Joanne Vician. The message reads: “We have no record of Bola Ahmed Tinubu holding an Illinois CPA certificate. You should contact AICPA for information about his possible AICPA membership”.

“This Day Newspapers reported that it called the American Institute of Chartered Public Accountants in its Jersey City, New York and Washington offices in the United States and the unanimous response was that nobody called Bola Ahmed Tinubu was one of the over 330,000 members of the association, pointing out that those contacted cautioned that some qualified accountants may choose not to be

This Day newspapers reported that it called the American Institute of Chartered Public Accountants in its Jersey City, New York and Washington offices in the United States and the unanimous response was that nobody called Bola Ahmed Tinubu was one of the over 330,000 members of the association, pointing out that those contacted cautioned that some qualified accountants may choose not to be members. It said Tinubu was also not a member of another voluntary association, Illinois Certified Public Accountants Society. The paper, however,

reported that the Board of Examiners of the University of Illinois, which is responsible for all the records and results of the accountants who qualified in the state, said it did not have any entry with the name Bola Ahmed Tinubu or its variations. *This Day* also said it concluded investigation into one of the claims of Governor Tinubu, contained in the booklet published to mark his inauguration, that he bagged an MBA degree in 1976. The paper said an e-mail sent to it by Larry Arbeiter, the school's director of communication, said the governor was never a student at the University of Chicago: "Dear Sir, I am sorry to say we found no record of Mr. Tinubu having attended the University of Chicago. If you have any other information about him that might help our search, I would be happy to receive it", he was reported to have written *This Day* on August 23, 1999.

After the exposé, the governor did not come up with any concrete answer to the queries about his two ages and academic records. Some of his aides were, however, said to have stated that he audited courses at the University of Chicago. But if that was true, it meant that the governor audited courses for four years, even when he was not a student of any of the schools which he claimed to have attended. That would have raised other questions about his status when he was allegedly auditing those courses. Another of the governor's aides said his INEC forms were filled by Senator Tokunbo Afikuyomi, the governor's lawyer, whose alleged ignorance of the American University system created the whole confusion. Curiously, the Tinubu saga was consciously or unconsciously shunted off the rail of public glare by the press as they suddenly became disinterested in keeping up a steady rhythm on the scandal. It seemed to be headed for a natural death until a Lagos-based lawyer and human rights activist, Chief Gani Fawehimi, addressed a press conference on the issue, issuing seven-day ultimatum to the relevant bodies connected with the dispensation of justice to investigate the allegations and ensure that justice was done to it. He accused the Lagos-based press of bias in trying to kill the matter.

In reaction, the Lagos State House of Assembly set up a five-man committee to investigate the allegations. The committee invited the governor to testify; they invited some legal experts, including Chief Gani Fawehimi, to assist them in the interpretation of some constitutional provisions related to the case. At the end of the exercise, which lasted between September 21 and 27, 1999, the House admitted that some irregularities existed in the governor's records, especially INEC form Cfoo1, but blamed it on Senator Tokunbo Afikuyomi who claimed to have filled the forms on behalf of the governor. The House advised the governor to be more careful in future exercises, and seemed to have taken the submission of the governor's counsel, Femi Falana, in passing a no-guilty verdict on the governor. Falana had argued in his submission to the House that going by section 308 of the 1999 constitution, Tinubu was immune from criminal and civil proceedings until the end of his tenure as governor. He said the immunity clause had been part of previous constitutions, pointing out that its inclusion may have been informed by the need to protect the offices of the president, vice president, governor and deputy governor.

The Orji Uzor Kalu scandal

In *Tell* magazine's cover story of January 10, 2000, allegations of perjury and forgery were made against Governor Orji Uzor Kalu of Abia State by one Johnson Kalu who claimed to be the governor's classmate at Ezianya High School, Aba and Government College, Umuahia. Johnson Kalu said in the report that sometime in 1991, Orji Uzor Kalu approached him to loan him (Orji Uzor) his West African School Certificate Examination (WASCE) statement of result to enable him contest election to the Federal House of Representatives. Johnson said he was initially reluctant, but later agreed when Orji Uzor Kalu agreed to finance his university education overseas, as well as help to secure a job for him in an Asaba-based company, after his overseas trip. Johnson reportedly said that Uzor Kalu did not keep to his promises. Johnson alleged that Uzor Kalu used the same certificate to secure

INEC clearance for the gubernatorial election, which he won in 1999 and did not honour the remaining part of the agreement.

Although *Tell* published a photocopy of the purported WASCE certificate bearing the name, Orji Johnson Uzor, with which Governor Uzor Kalu contested election, it, however, discovered some discrepancies in the claims of both Johnson and Uzor Kalu. The first discrepancy was in the year both claimants said they sat for WASCE. While Johnson said he sat for WASCE in 1980, Uzor Kalu claimed to have sat for his in 1978, whereas the disputed certificate was dated 1979. The report also said

“Tell also investigated some of the claims of Orji Uzor Kalu in his published biography and discovered that contrary to his claim that he had attended Barewa College, Zaria in 1978, no record in the school could confirm that. But the governor was later to claim that he was a beneficiary of a three-month exchange programme.”

that whereas Johnson could lay claim to the certificate, Uzor Kalu would find it difficult to lay similar claim. The reason, according to the report, was that prior to his change of school from Eziamba High School, Aba to Government College, Umuahia, Uzor Kalu was known as Orji Uzor Nsiegbe. The name Orji Uzor Kalu became his when he changed to Government College. *Tell* also discovered that the governor lied when he claimed in his National Republican Convention (NRC) nomination form for the

House of Representatives election in 1991, that he spent four years at the University of Maiduguri, UNIMAID, between 1979 and 1983. The magazine’s investigation revealed that Orji Uzor Kalu actually spent only two years at the university. He was said to have absconded in 1981 after the university authorities indicted him for burglary, arson and fraud, as well as presenting a questionable secondary school certificate.

In the same NRC nomination form, the report said, Orji Uzor Kalu included an affidavit purportedly sworn to by his father, one Uzor Johnson Kalu. *Tell* said its investigation revealed, however, that the signature on the document was exactly the same as the one Orji Uzor

Kalu personally signed on his party's nomination form NRC/RECA/NA/92,2001, and Abia State High Court revenue receipt CR No. AO40483. The report said it was clear that the governor was the one who signed as Uzor Johnson Kalu. By faking his supposed father's signature, said *Tell*, Orji Uzor unwittingly confirmed the allegation that he is not Orji Johnson Uzor. The magazine said further investigations in Abia failed to reveal any relative or father of the governor so called Johnson or Kalu.

Tell also investigated some of the claims of Orji Uzor Kalu in his published biography and discovered that contrary to his claim that he had attended Barewa College, Zaria in 1978, no record in the school could confirm this. But the governor was later to claim that he was a beneficiary of a three-month exchange programme. The magazine also discovered that the governor did not attend Catholic University, Los Angeles, where he was said to have obtained a BSc degree and that he did not obtain an MBA degree from the university. According to the report, before the governorship election on January 9, 1999, over 150 petitions were sent to INEC and the PDP electoral panel against Orji Uzor Kalu's candidacy. The petitions, it said, variously accused Kalu of being a conman, a pathological liar and an artful forger. His opponents forwarded copies of their petitions to the State Security Service, SSS. *Tell* said that after a thorough investigation of the allegations, SSS wrote a report indicting Orji Uzor Kalu. But nothing was done.

After *Tell* published its report, handbills, ostensibly published by the governor's opponents, began circulating in Umuahia, the Abia State capital, confirming and expanding the allegations against the governor, while *This Day* and other newspapers merely reported the allegation as published by *Tell*. Thereafter, the battle to discredit the handbills and *Tell's* report raged daily in Umuahia for the governor and his agents or government officials. The channels for doing this were the state's media outfits – The Broadcasting Corporation of Abia and the *National Ambassador* newspapers. Surprisingly, none of the pro-Orji Uzor broadcasts or publications made any attempt to address

the allegations against the governor. Instead, they tried to whip up sentiments in favour of the governor to the effect that his detractors were bent on stalling his efforts to bring about positive changes in Abia State. Five weeks after *Tell's* expose, the magazine came out with a second report on the scandal. According to the report, a security report on Uzor Kalu by the State Security Service (SSS) on January 1, 1999, ahead of the governorship election, concluded that "it will not be in the public interest for subject (Orji Uzor Kalu) to participate in the ongoing transition programme". The report which originated from SSS, Abia State command was said to have examined almost every aspect of Kalu's background.

According to *Tell*, the report began with the warning: "The security traces on Kalu ... are negative". The legwork on his educational background was said to have taken the security personnel to Christ the King Primary School, Aba, now Aba Road Primary School; Eziamma High School, Aba, Government College, Umuahia; and Barewa College, Zaria, being the schools Kalu claimed to have attended. At the Aba Road Primary School, Aba, revealed the report, "J. U. F. Inebuogu, the headmistress of the school, was contacted on subject's (Kalu's) claim of attendance. She went through the school records, but subject's name could not be traced. The headmistress also disclosed that to the best of her knowledge, subject (Kalu) did not attend the school. She, however, requested that subject should make available any certificate or testimonial issued to him for confirmation and state the circumstances (under which) he left the school, if ever he was a pupil of the school". *Tell* also disclosed that the security report recorded that "Kalu's claim of attendance of Eziamma High School, Aba was cross-checked with the principal of the school, J.O.N Ogbonna, but records again failed to show Kalu's name". Similar search was conducted at the Government College, Umuahia where, according to the report, T.N. Onwumere, the principal of the school, "could not confirm in the affirmative whether Kalu was a student of the school or not." The principal, in his written reply to the SSS enquiries, would not confirm that the disputed certificate

belonged to the governor. In 1992, according to Tell, while seeking election into the Federal House of Representatives, Kalu in Form NRC/RECA.NA 92.001, gave his surname as Kalu. Curiously, the certificate in question from Government College, Umuahia does not bear his surname. More devastating, the magazine report said, was the SSS report on Kalu's character, which it paints in the following words; "Kalu is generally seen and known in the state as one of the 419ners in the state". The report questioned the source of his wealth, describing him as "controversial, self-centred, flippant, dubious and over ambitious". It identified Kalu's chief business and political weapon as blackmail, emphasizing ominously that Kalu could go to any length to do anything to achieve his interest.

According to *Tell*, the security report made reference to Kalu's controversial donation in 1986 to the Borno State Education Development Fund, where he reportedly announced publicly a donation of N250,000 cash, which he immediately redeemed with a carton believed to be stashed with the cash. But government officials who opened the carton saw only pieces of blank paper that filled the carton with a spread of cash of value totalling only N7, 000. The then governor of the state, Lt. Col. Abdulumuni Aminu, subsequently declared him wanted. The report was also said to have fully indicted Kalu for contributing to the distressed position and

subsequent liquidation of Progress Bank Plc. Beyond his business activities, *Tell* added that the report highlighted discrepancies in his age declarations. It pointed out that Kalu had variously recorded his date of birth as April 23, 1963; May 7, 1960; and April 20 1960. According

"The conceptual basis for this work is a holistic view of investigative journalism practice as a function of complex, often overlapping occupational and professional influences of media organisations and institutions, journalists and the society. There are two dimensions of investigative journalism in this framework which derive from Bennet and Serrin (2005), Hughes (2006) and Waisbord (2001) conceptions."

to *Tell*, “he (Kalu) gives or creates his date of birth as the situation demands”. *Tell*’s investigation indeed revealed that in the Independent National Electoral Commission, INEC, Form Cfoo1, which Kalu filled preparatory to his governorship election race, he gave his date of birth as April 24, 1957. *Tell* said the SSS report finally affirmed that “security clearance cannot be given” in respect of Oji Uzor Kalu.

Evidently, because that was the period of military regime, the authorities swept the damning security report under the carpet and encouraged Kalu to run and win the governorship seat of Abia State. Shortly after *Tell*’s second report was published, Kalu embarked on a tour of media establishments in the country to smoothen his relationship with them. Neither the Abia State House of Assembly, the civil society nor the Nigeria Police Force did anything to investigate the matter, hence everything about it was swept under the carpet.

Learning

- The democratic institutions in the country are weak; hence the executive arm of the government appropriates the anti-corruption agencies.

6.5 Framework for Investigative Journalism Practice and Democratic Development in Nigeria

The conceptual basis for this work is a holistic view of investigative journalism practice as a function of complex, often overlapping occupational and professional influences of media organisations and institutions, journalists and the society. There are two dimensions of investigative journalism in this framework which derive from Bennet and Serrin (2005), Hughes (2006) and Waisbord (2001)’s conceptions. The first dimension is autonomy, or what they describe as the degree to which news organisations are free to critically cover powerful actors, while the second is assertiveness, or what they define as the ability of journalists to seek out multiple sources of information and report on topics of their choice. The authors state that autonomy is important because

the watchdog role assumes that journalists have both organizational and institutional independence to investigate and examine activities of government officials, business interests and public institutions in order to publish accurate information in the public interest. They also explained that assertiveness is important because it characterises the discovering, investigating and reporting of information others would want to keep secret. This framework is, therefore, conceptualized with four components: investigative journalism, occupational constraints, journalists' role perception and democratic development. It is depicted in the figure below as a relationship between a set of causal factors and intermediate indicators, which determine the final outcome in terms of the level of democratic development. For example, it is recognized that modifying factors can affect media organizational incentive structures in two different contexts.

6.5.1 An Analytical Framework for Linking Investigative Journalism Practice and Democratic Development

Any assessment of the impact of investigative journalism on democratic development must, therefore, take into account occupational constraints and journalists' role perception which determine how they cause a change in journalists' freedom to practice their profession and their level of professional responsibility. The impact of occupational constraints would greatly limit the application of normative values of media institutions which guide the decision-making process, as well as the cognitive structures that operate at individual levels to guide acceptable understanding of behaviours. For instance, news stories are likely to be slanted in accordance with political expediencies, organisational routines and selfish considerations of individual journalists, where the impact of occupational constraints is strong. These considerations would largely shape journalists' perception of their role in a democracy.

Similarly, it would be expected that dependence on advertising revenue and other indices of economic pressure would impose an overbearing

influence of advertisers on news production and dissemination. These will exert as much strong impact on journalism practitioners as those of political pressures, since sustaining patronage of advertisers is as important to media organisations as maintaining goodwill with government and top politicians. Journalists' role perception will likely push them to accord priority attention to commercial rather than social value of news events in their choice of what to disseminate to the public. Access to the media of mass communication would also be limited to prominent people in the society, as well as advertisers. This suggests

“The conceptual framework places greater emphasis on the diversity of media organisations’ position to investigative journalism practice. This enables the identification of the strengths and weaknesses of the factors in the practise of investigative journalism within a short run and in the longer term.”

that many journalists are not likely to consider investigative journalism practice a very important aspect of their professional obligation, unless in situations where the media owner, organisation or institution has the need to undertake the project. Hence, the journalists may not be assertive or have the ability to seek out multiple sources of information and report on topics of their choice in line with the demands of investigative journalism practice. Similarly, the journalists

will not have the independence to carry out their duties, since the media organisations lack the autonomy to cover powerful actors.

Within this framework also, increase in investigative journalism practice may result from decrease in occupational constraints and journalists' role perception, but may not necessarily affect the level of democratic development in the country, if the benefits associated with increased level of investigative journalism practice, such as openness, transparency, accountability and plurality of opinions, have no direct bearing on the constraints and role perception, or the potential impacts of change in these variables are offset, or swamped

by changes elsewhere in democratic development. Example, if the public accepts the important role of investigative journalism in helping them to play an oversight of government and public officers' activities, but the media is not strongly constrained by internal and external factors to play such a role effectively, there will be limited openness in governance. Since openness guarantees transparency, factors such as government's unwillingness to impartially subject all fraudulent politicians and powerful people to prosecution, as well as playing up ethnic sentiments to evade both legal and public scrutiny of activities of public officers, would retard the growth of transparency and other factors of democratic development. Public perception of media credibility will also be diminished as a result of its inclination to present biased reports sometimes, as well as pander to ethnic interests when the need arises for them to do so.

6.5.2 Impact of Occupational Constraints and Journalists' Role Perception on Investigative Journalism

The framework incorporates some significant components of the development by Hughes which sees mass media as an institution and changes in media performance as institutional change, implying patterns of social behaviour across organisations. This framework, however, differs by adopting an approach that specifically explains the factors that influence the direction and strength of the relationship between these variables. The conceptual framework places greater emphasis on the diversity of media organisations' position to investigative journalism practice.

“The factors that can modify the impact of occupational constraints and journalists' role perception on investigative journalism which are listed as intermediate effects in the figure below are journalistic freedom and professional responsibility. These factors can also modify investigative journalism practice which feed through to democratic development.”

This enables the identification of the strengths and weaknesses of the factors in the practise of investigative journalism within a short run and in the longer term. It allows the determination of individual professional and organisational policy environments that will help to identify factors which modify the impact of occupational constraints and journalists' role perception on investigative journalism practice. For instance, if the need to protect the media outfit's owner or owner's definition of news coverage ranks high on journalists' minds, they will influence what the journalists indulge in during news gathering and writing. These two factors could influence journalists' role perception and would limit their indulgence in rigorous investigative journalism, where it is not explicitly stated in the editorial policy of the organisation. They can also cause a change in media role as they have a direct relationship with changes across normative and cognitive structures within the context of internal and external influences for change. For instance, logics such as correctness, convention or instruments to guide decision making can change as a result of ownership pressure. These changes will occur in favour of media owner's political or economic inclination when there is a conflict between them and journalism professionals or societal demands.

Similarly, if the journalists' perception of getting information to the public quickly and reporting what will sell their medium most have a high impact on how they carry out their duties, the journalists are likely to be overly conscious of competition with other media outfits in their news gathering, production and dissemination, so as to attract the largest possible audience/readership, as well as advertisement patronage to their organisations. They are likely to carry out their duties in line with the editorial policies of their organisations and this will have negative implications for the practice of investigative journalism.

6.5.3 Parameters That Modify the Degree of Occupational Constraints and Journalists' Role Perception

The factors that can modify the impact of occupational constraints

and journalists' role perception on investigative journalism which are listed as intermediate effects in the figure below are journalistic freedom and professional responsibility. These factors can also modify investigative journalism practice, which feed through to democratic development. For instance, if media organisations define boundaries within which journalistic duties may be carried out, the journalists will not have enough freedom to practice their profession, especially in matters that affect the interest of the organisation or the media outfit owner. The journalists are not likely to be free to carry out systematic and independent public scrutiny of those in power, as well as provide adequate and reliable information about their activities. Furthermore, access to the media may be limited, as well as opportunities for people to express their ideas, views and beliefs about the world. It is expected that investigative journalism may be carried out on such issues that do not affect the advertiser, organisation or owner's interest.

Likewise, in a situation where the media owner interferes in news gathering and publication, there will likely be organisational rules and policies that prescribe boundaries of content for the media. The journalists are likely to carry out their duties in such a way as to minimize harm to themselves. Editors are likely to adhere to organisational rules and routines in news gathering and publication and may likely seek clarifications from the media outfit owner on certain materials before publication, suggesting that there are organisational rules that limit the influence of personal beliefs on news content. It is assumed that professionalism is not developed within the media organisations and that employees do not have sufficient autonomy in relation to media owners. For instance, if the journalists are not favourably disposed to professional values of hypotheses formulation and testing, unravelling complicated cases and truthfulness, it is expected that the journalists' ability or willingness to effectively carry out investigative journalism will depend on their disposition to other variables of practice like organisational routines and availability of resources. This can be related to the journalists' educational background which predisposes them to

the core professional values of their professional practice. Again, where no conscious effort is being made to fill the gap created by a deficit in professional infrastructure, such as institutionalised code of ethics, licensing of journalists, effective self-regulatory body and regular workshops/training, journalism practice in the country will be an open affair where practitioners can freely enter and exit as they choose, while the self-regulatory body which should maintain internal discipline within the profession will be weak. Journalists are unlikely to have a strong philosophical foundation for the practice of the profession, as well as a positive perception of the role of investigative journalism in a democracy.

Higher level of freedom to practise journalism and a greater degree of journalists' professional responsibility, which increase the level of investigative journalism practice may be expected to improve the ability of journalists to perform their social role. The impact of these variables can, however, be reduced by a series of factors related to organisational routines and professional practices as well as the context (environment) in which they are practised. To examine the impact of occupational constraints on journalists' role perception, it is, therefore, necessary to investigate the extent of the influence of organisational, institutional and professional environments. Examples of these influences include those associated with reducing or eliminating the activities of organisations by both internal and external factors. A set of regulations that result in a higher level of occupational constraints and reduced level of professionalism will result in a negative perception of factors that facilitate investigative journalism practice. On the other hand, where a higher level of investigative journalism occurs despite an increase in occupational constraints and reduced journalists' role perception, this may be based on personal interest of the journalists which may not be sustainable as a practice strategy.

6.5.4 Factors that Modify the Transmission of Intermediate Impacts to Final Outcomes

When the level of investigative journalism practice and factors influencing it have been established, it will be related to the democratic development to determine its contribution. The link between journalistic freedom and professionalism requires an understanding of their influences on democratic development, media institutional context and media organisational characteristics. For instance, free press and free speech are seen as a cornerstone of democratic development and growth, but when they are limited by the influence of top politicians and powerful people, the level of democratic development is bound to be low. Ideally, it is assumed that the media should engage the citizens in governance by informing, educating and mobilising the public towards the ideals of democratic governance. Furthermore, when journalists' professional responsibility is low, the social responsibility role of the media may, from time to time, be relegated to the background as journalists will be influenced by

“It is, therefore, necessary to describe another modifying factor that relates to the background of journalists of various media organisations. This factor reflects the demographic and media institutional structures that modify the impact of investigative journalism on democratic development.”

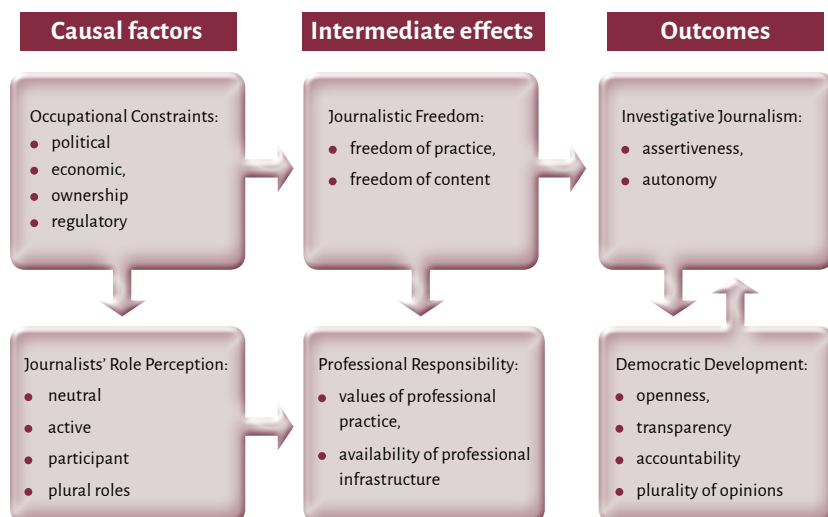
other considerations outside public interest in carrying out their journalistic duties. This might create a situation where government appropriates anti-corruption agencies to fight perceived enemies, thereby weakening the democratic anti-corruption architecture. Public officers may not always be subjected to the same standard of scrutiny of their stewardship, while those subjected to scrutiny of their stewardship may whip up sentiments to win the support of their ethnic cleavages. The important point to note is that even if improvements in the level of investigative journalism occur, they may not translate into an improvement in democratic development. Changes in the

incentives faced by investigative journalists do not occur in isolation; other professional variables can offset, or even negate the impact of any change in democratic development.

It is, therefore, necessary to describe another modifying factor that relates to the background of journalists of various media organisations. This factor reflects the demographic and media institutional structures that modify the impact of investigative journalism on democratic development. It facilitates an understanding of the way this factor determines the characteristics of media organisations within the media institution, and why the strategies employed by different journalists in media organisations will vary in response to changes in incentives available to them.

If journalism practice is not a very rewarding profession in any society, the number of practitioners will reduce with age, since the practitioners will not be able to achieve economic prosperity if they remain in practice in their old age. For those who stay in practice, other media roles will take precedence over social role in journalists' perception of their role in a democracy. The younger journalists, who are more likely to be zealous in carrying out their professional obligations to the society, may incline themselves to organisational rules so as to avoid harm. A similar situation will occur if there is a gap between curricula of journalism training institutions and field practice. The journalists may need time to align themselves with field experience, while those with lower qualifications will need more time to adapt to the work situation and may not be predisposed to carry out investigative journalism over a certain period.

A diagram of factors of investigative journalism practice in democratic development in Nigeria.



Learnings

- This session attempts to answer questions on occupational constraints and journalists' role perception and their effect on investigative journalism practice in Nigeria;
- It also helps to improve our understanding of how complex the link between investigative journalism practice and democratic development is;
- It also provides examples of indicators of democratic development listed as openness, transparency, accountability and plurality of opinions. These indicators will be affected by changes in democratic development driven by investigative journalism practice.

6.6 Impact of Investigative Journalism Practice in the Democratic Development of Nigeria

A survey of journalists (n=237) conducted by this author established that there is a low level of democratic development in Nigeria. The study findings reveal that four parameters employed to explore the role of the media in a democratic development - openness, accountability, transparency and plurality of opinions – are variously bogged down by factors which limit their growth. Hence, it is expected that the contributions of investigative journalism to the country's democratic development would be minimal.

However, when the indices were studied separately, it was observed that the growth of each of them varies from one to another. Journalists' understanding of the importance of investigative journalism has motivated them to undertake the project, even at such a minimal level. A critical factor is the environment of investigative journalism practice in Nigeria, with several constraining factors that include political, economic, ownership and legal pressures. For instance, when journalists write to protect government/top politicians or the media owner, or they practise their profession in such a way as to minimise harm and protect their jobs; or yield to the economic pressure of maximising profits, they abdicate their social role and pander to the base needs of those constraints, while journalistic freedom is hampered and journalists' perception of their role in a democracy is narrowly shaped. As the study shows, journalists' perception of their role in a democracy subordinates the watchdog role (10.7%) to that of getting information to the public quickly (83%), indicating their preference for the disseminator role. A situation such as this does not engender the opening up of the political space and is antithetical to democratic ideals. The journalists' perception has negative implications for democratic development in this country. It does not create an enabling environment for the journalists to develop their cognitive structures to guide their decision making in public interest. They, therefore, yield to the various occupational pressures of their job and are wholly guided

by their organisational policies and routines in doing their duties to the detriment of their professional obligation. The journalists are as well deprived of the opportunity to be assertive, as well as the autonomy to carry out investigative journalism. As Suarez (1996) points out, democratic ideals of accountability and fearless expression correspond with media roles in a democracy and any free media galvanises people around those ideals through fair and objective coverage of events. He supports the assertion with observations of theorists like John Milton and states that the course of democracy is advanced by a free media through their watchdog role over governments, “thereby preventing them from appropriating to themselves excessive power with which to abuse the citizenry and political process”.

When journalists lose their autonomy and assertiveness, it diminishes their capacity to open up the political space and perform another critical role which they are expected to play in a democracy. The role refers to creating a forum for debates, interpretation and analysis of events, as to create a public sphere for participation of people in democratic governance. This is partly the reason why democracy is seen as a unique system of conflict resolution in which consensus and conflict must continuously be built and balanced. Such an open and constantly fluid system necessarily needs the active participation and commitment of its citizens on a platform or meeting point that is accessible to everybody, which is the mass media. Limited plurality of opinions in the media has adverse implications for democratic development, as the media owner, advertisers and powerful people have more access to the media than the ordinary people. The opinion of the journalists in this study is that government-owned media are not free to express opposing views in their reports (61.4%), that the media in Nigeria gives more access to the rich and powerful people than to the ordinary people (57.2%) and that most issues discussed about governance in Nigeria are not based on media reports (96.6%), indicating Nigerian media’s inability to serve as a channel of information between the governors and the governed and as a forum of public debate through which intelligent policy formulations and decisions are made.

Governance will not likely be inclusive, while policies may not be consistent with the needs and aspirations of the ordinary members of the society. Fareed Zakaria points out in Scholtz and Scholtz (2003) that democracy in the West is called liberal democracy because it is characterised not only by free and fair elections, but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion and ownership of property. He also points out that many countries in the world allow elections, but not this latter bundle of freedoms. But what is the fate of investigative journalism in an illiberal democratic environment like Nigeria's? The limited growth of openness and transparency will certainly discourage

“... several reforms such as the Freedom of Information (FoI) Act, whistle-blower policy of the present federal government and other policies of the government that seek to discourage corrupt practices in public institutions can be attributed to the impact of those investigative reports which drew attention to the systemic decay that corruption brings upon the country.”

the growth of accountability. The limiting factors to the growth of accountability, such as leaders' unwillingness to offer themselves for scrutiny of their stewardship and government's unwillingness to prosecute all top politicians and powerful people, derive from the existence of the concept of “the big man”, “the powerful man”, whose over-bearing influence weakens the institutional structures that strengthen democratic governance. Relatedly, the media institution is not accountable insofar as infractions of journalists are neither reprimanded, nor punished. This scenario sustains

the practice of inputting ethnic sentiments into media reports, even if not regularly, as well as not retracting falsehood when it occurs in media reports.

Nobel laureate Sen (1999) has outlined what he described as “transparency guarantees” such as a free press and the free flow of information, explaining that information and critical public discussion are important requirements of good public policy. These guarantees,

he wrote, help to prevent corruption, financial irresponsibility and underhanded dealings. Journalists' rating of the level of development of transparency in Nigeria's democracy is low largely because of limited openness which does not guarantee transparency. Such factor as playing up ethnic sentiments to evade both legal and public scrutiny of activities of public officers retard the growth of transparency in democratic governance. Public perception of media credibility has also been diminished as result of their (media's) inclination to present biased reports sometimes, as well as pander to ethnic interests.

In spite of these shortcomings, journalists in Nigeria have at different times carried out investigative journalism practice. The limited openness in governance shown by the impact of media's exposure of corruption helps people perform an oversight of government activities (84.7%) and expectedly buoys journalists' understanding of the import of exposing corruption, which helps create openness within constraints imposed by internal and external influences, such as political, economic and ownership factors. For instance, the 1999 investigative reports on top politicians like Salisu Buhari, former Speaker of the nation's House of Representatives; former Governors Orji Uzor Kalu and Ahmed Bola Tinubu over certificate forgery, can be said to derive from journalists' understanding of the important role of investigative journalism. Although it can be argued that except in the Salisu Buhari case, the other investigative reports did not go beyond media exposure of the fraudulent credentials of former governors Orji Kalu and Bola Tinubu. The answer can, however, be found in Nobel Laureate Soyinka's observation that the press has a duty, not only to investigate, but to place its findings in the public domain. He explains that once that press duty is done, no matter how long it takes and whatever opinions are expressed on the pages of newspapers, the crucial and ultimate stage is for tribunals, commissions of inquiry or courts of justice to take over and investigate all charges and defences in dispassionate setting (cited in Icheku, 1999).

Similarly, several reforms such as the Freedom of Information (FoI) Act, the whistle-blower policy of the present federal government and

other policies of the government that seek to discourage corrupt practices in public institutions can be attributed to the impact of those investigative reports which drew attention to the systemic decay that corruption brings upon the country. The reforms, though not far reaching in their implementation, have tended to create openness in governance and motivate ordinary Nigerians to be more interested in how they are governed.

6.7 Study Session Summary

The role ascribed to the media as a watchdog has been at the root of various conflicts between the media, powerful individuals, the state and even commercial interests. The conflict of interests has often imposed constraints which hobble the media and limit its capacity to fulfil its obligations to the society. In new democracies, the constraints are many and varied, such as repressive laws, political and economic pressures, ownership pressures, low level of professional development, as well as weak institutional structures that sustain the practice of this strand of journalism. In Nigeria, for instance, the low level of investigative journalism practice can be attributed to all of the aforementioned factors, indicating why many journalists either dread to indulge in its practice or do not perceive it as an important journalistic function. The effect of this is that journalism practitioners have made little contributions to democratic development in the country. It is, therefore, recommended that a comprehensive life insurance for journalists be instituted as a mechanism for enhancing investigative journalism. Similarly, professional training institutions should regularly organise workshops/conferences for practising journalists so as to equip them with modern techniques and tool kits of news reporting, especially of investigative reporting.

6.8 Activities

- Create a workgroup to simulate the practice of investigative journalism by adapting to examine the issues raised in the conceptual framework for investigative journalism practice in Nigeria.

- Write an article to be published in a newspaper about how best the media institution can play its social role and engender democratic development in Nigeria.
- Create a workgroup to simulate steps for investigating a topical issue in the country using available journalistic tools

6.9 Revision Questions

- Why did the legislature and law enforcement agencies fail to investigate and prosecute Ahmed Tinubu and Orji Uzor Kalu for perjury?
- What professional variables that can strengthen the practice of investigative journalism are absent in journalism practice in Nigeria?
- Discuss institutional guarantees that can ensure effective investigative journalism practice in Nigeria.
- State how the various occupational pressures of journalism practice will impinge on investigative journalism over short and long terms.
- Identify and discuss any of the landmark investigative journalism projects that contributed to democratic development most and why.

6.10 Suggestion for Further Readings

Adio, W. 1999. September 91. Has the end come for Tinubu?. *ThisDay*, September 19: A1,624.

Bennet, W. L. and W. Serrin. 2005. The watchdog role. *The press*. G. Overholser and K. Jamieson. Eds. New York, NY: Oxford University Press.

Charles - Obi, B. 2000. The many problems of Kalu," *Tell*, January, 15: 66 – 83.

Constitution of the Federal Republic of Nigeria, 1999. Abuja: Government Printers.

Hughes, S. 2006. *Newsrooms in conflict: Journalism and the democratization of Mexico*. Pittsburg, PA: University of Pittsburg Press.

Icheku, T. 1999. Buharigate: An agenda setter in the dock. *ThisDay*, July, 25: A1554.

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Onwuka, O. 2019. Occupational constraints and journalists’ role perception as factors influencing investigative journalism practice in the democratic development of Nigeria. Ph.D Thesis, University of Ibadan.

Scholt Z, L. and Schooltz, I. 2003. The duty of the independent media in an African contest. *Journal of Democracy*. Vol. 14 No 28: 53.

Sen, A. 1999. *Development as freedom*. Oxford: Oxford University Press.

Suarez, L. 1996. Mass communications and the major challenges. *Media and democracy in Latin America and the Caribbean*. R. M. Gonzalez. Ed. Paris: UNESCO

Waisbord, S. 2001. Family tree of theories, methodologies and strategies in development communication. *A report prepared for the Rockefeller Foundation*.



Module Six



Counter-Terrorism Legislation and Press Freedom in Nigeria

by

Emeka Thaddues Njoku



This module is prepared to run for 2 hours

Broad Learning Objectives

- To understand and analyse why and how some states repress civil society through counter-terrorism laws;
- To learn about and discuss the Terrorism Prevention Act of 2011 (as amended);
- To understand and discuss how certain provisions of the Terrorism Prevention Act jeopardise Nigerian press freedom;
- To discuss cases where the Terrorism Prevention Act was deployed by the state to repress journalists in Nigeria.

7.1 Introduction

The September 11, 2001, terrorist attacks on the United States have been regarded as a watershed moment in history, as they facilitated the restructuring of the global security architecture.⁶⁵ It resulted, in particular, in the establishment of exceptional laws to combat the rise of terrorism. However, the implementation of some of these laws has had a negative impact on democratic institutions and contributed to the closure of civic spaces in the global North and South.⁶⁶ Scholars and

65 Howell, J., Ishkanian, A., Obadare, E., Seckinelgin, H & Glasius, M. (2008). The backlash against civil society in the wake of the Long War on Terror, *Development in Practice*, 18, 82-93

66 Howell, J. & J. Lind. (2009). *Counter-Terrorism, Aid and Civil Society: Before and After the War on Terror*. Brunel: Palgrave Macmillan, 21, 187; Howell, J., & J. Lind. (2010). *Civil Society Under Strain: Counter-terrorism Policy, Civil Society and Aid Post 9/11*. Bloomfield CT: Kumarian Press, 2; Fowler, A. & K. Sen. (2010). *Embedding the War on Terror: State and Civil Society Relations*. Development and Change 41 (1): 16; Sidel, M. (2010). Counter-terrorism and the Regulation of Civil

experts are increasingly paying attention to how counter-terrorism laws, institutions, and practises are frequently used by some state actors to close civic spaces to civil society actors, including the press, contributing to the global democratic recession.⁶⁷ It is critical to emphasise at this point that the press or media, which is the main focus of this module, is an essential component of civil society. According to Wayande, the media are some of the major elements of civil society. They serve as a link between other civil society organisations, the rest of the population, and the government. They accomplish this by relaying messages from society to the government and conversely.⁶⁸ Castels also identified four types of civil society formations. These are some examples:

The first is the local civil society that define local and sectoral interests (grass root organisations) the second are non-governmental organisations with global and international frames of reference in both actions and goals (i.e the so-called global civil society); third are social movements aiming to control the process of globalization that build networks of actions and organisations to induce global social movements for global justice; and the fourth are movements of public opinions that operate within diversified media systems and employ the internet and wireless communication as organizing tools and means for debate, dialogue and collective decision-making.⁶⁹

Society in the USA. *Development and Change* 41(2): 293-312, Njoku, E. T. (2022). The State and the Securitization of Civil Society Organizations in Nigeria. *Nonprofit and Voluntary Sector Quarterly*, 51(1), 190–215; Njoku, E. T. (2020a). Investigating the intersections between counter-terrorism and NGOs in Nigeria: Development practice in conflict-affected areas. *Development in Practice*, 30(4), 501–512; Njoku, E. T. (2020b). Politics of conviviality? State-civil society relations within the context of counter-terrorism in Nigeria. *VOLUNTAS: International Journal of Voluntary and Nonprofit Organisations*, 31, 1063–1076; Njoku, E. T. (2020c). State-oriented service-delivery partnership with civil society organisations in the context of counter-terrorism in Nigeria. *Development Policy Review*, 39(5), 757–772; Watson, S., & Burles, R. (2018). Regulating NGO funding: Securitizing the political. *International Relations*, 32(4), 430–448.

67 Rutzen, D. (2015). “Civil Society Under Assault”. *Journal of Democracy*, 26 (4), 28- 39; , Njoku, “ The State and the Securitization”; Howell, and . Lind, “Counter-Terrorism, Aid and Civil Society”; Howell, and Lind, “Civil Society Under Strain”

68 Wanyande, P. “The Media as Civil Society and its Role in Democratic Transition in Kenya” Michigan State University. African E-journals Archives,

69 Castel, M. 2008. The New Public Sphere: Global Civil Society, Communication Networks and Global Governance, *Annals of the American Academy of Political and Social Science*, 616: 78-93

Thus, the media, as a component of civil society, assists in the areas of information articulation and aggregation of societal views, which are then passed on to the government. The media is also a platform through which the government informs the public about its activities. Therefore, as a part of civil society, the media bears special responsibilities in the public interest. While the media is recognised as a critical stakeholder in the state, it has not been immune to the effects of counter-terrorism laws, policies, and practices that have been used by illiberal governments to target media organisations and journalists who were critical to state actors and their policies.

“The state has a duty to protect its citizens from terrorism, which means that laws must be made. However, there are some negative twists in how these laws were made and enforced. As previously stated, the law provided some illiberal political leaders in advanced, nascent, or hybrid democracies, as well as authoritarian regimes, with an excuse to target and repress critical opposition groups, human rights organisations, and activist and media organisations.”

The root of these challenges confronting the press and various civil society organisations in the context of counter-terrorism can be traced back to the narrative that civil society is complicit in the spread of terrorism. In the late 1990s, there were concerns about issues like lack of transparency, accountability, and representation in civil society operations. After 9/11, there were claims that these issues made civil society groups more vulnerable to terrorist groups which used them as conduits for terrorist funds, ideological grounds for recruiting would-be terrorists, or fronts for terrorist groups.⁷⁰ Consequently, various counter-terrorism measures

have been put in place at the international, regional, and national levels to regulate the activities of civil society organisations. The Financial

⁷⁰ Bloodgood, E.A and Tremblay-Boire J. 2011. “International NGOs and National Regulation in an Age of Terrorism.” *Voluntas: International of Voluntary and Nonprofit Organizations* 22:142–173; Sidel, “Counter-terrorism and the Regulation”; Howell and Lind, “Counter-Terrorism, Aid and Civil Society”; Njoku, “The State and the Securitization of Civil Society”

Action Task Force (FATF) is the international institution in charge of regulating civil society organisations. In collaboration with other United Nations (UN) agencies, the FATF established Recommendation 8, which directs states and private organisations to domesticate international resolutions, specifically regulating the operations of what has been termed civil society organisations. Threats of sanctions have been made against countries that do not set up laws for civil society groups at the state level.⁷¹

FATF's Recommendation 8 was incorporated into UN Resolution 1373, a global legal instrument for counter-terrorism. Many other international financial organisations, such as the World Bank and International Monetary Funds, collaborated with FATF to ensure the successful implementation of Recommendation 8. The FATF directive sparked a global compliance industry as various states in the international community established new laws and institutions, or strengthened existing ones, to regulate civil society organisations, as part of their efforts to combat terrorism. Although Recommendation 8 has been revised to focus on vulnerable organisations, the legal instrument has given some state actors the leverage to enact laws that have impact on key democratic institutions. These laws have become firmly established.⁷² The state has a duty to protect its citizens from terrorism, which means that laws must be made. However, there are some negative twists in how these laws were made and enforced. As previously stated, the law provided some illiberal political leaders in advanced, nascent, or hybrid democracies, as well as authoritarian regimes, with an excuse to target and repress critical opposition groups, human rights organisations, and activist and media organisations.⁷³

71 Hayes, B. (2017). The impact of international counterterrorism on civil society organisations: Understanding the role of the Financial Action Task Force. Berlin: Bread for the World – Protestant Development Service Protestant Agency for Diakonie and Development; Brechenmacher, S (2017). *Civil Society Under Assault: Repression and Responses in Russia, Egypt, and Ethiopia*. Massachusetts: Carnegie Endowment for International Peace

72 Hayes, "The impact of international counterterrorism on civil society organisations"; Watson, and Burles, "Regulating NGO funding"; Njoku, "The State and the Securitization of Civil Society"; Brechenmacher, "Civil Society Under Assault"

73 Njoku, "The State and the Securitization"; Howell and Lind, "Counter-Terrorism, Aid and Civil Society"; Howell, and Lind, "Civil Society Under Strain"; Sidel, "Counter-terrorism and the Regulation of Civil Society"

Therefore, in this module, we will look at how counter-terrorism laws, institutions, policies, and practises in Nigeria have a negative impact on the media or the press. Also, it's important to look into how governments are dealing with terrorism. There are signs that counter-terrorism measures are changing the relationship between the state and civil society or, more specifically, closing the spaces for independent public action on issues of social justice, inequality, and good governance. To proceed, it is necessary to examine the nature and components of some Nigerian counter-terrorism laws, specifically the Terrorism Prevention Act of 2011 (as amended) and the Money Laundering Prohibition Act of 2011 (as amended).

7.2 Counter-Terrorism Legislation in Nigeria

Scholars and experts observed that the introduction of the Terrorism Prevention Bill in 2006 and 2007 polarised the legislative house. Some members of the legislature who supported the bill argued that the rise of terrorism and the lack of appropriate laws to combat it would put the country in jeopardy and create a negative image among the community of nations fighting the rise of terrorism collectively. The legislators that opposed the bill, on the other hand, argued that the nature of the bill gives the executive arm extraordinary powers that could be abused to target credible opposition or violate human rights.⁷⁴ However, legislators who were opposed to the bill were silenced after several terrorist attacks by Boko Haram, an attempted suicide bombing of a United States airline by Abdul Farouk Mutallab in 2009, and a subsequent designation as a “country of interest” by the United States Transportation Security Administration. These factors contributed to influencing the passage of the Terrorism Prevention Act (TPA) of 2011 (as amended) and the Money Laundering Prevention Act (MLPA) of

74 Sampson, I. T., & Onuoha, F. (2011). “Forcing the Horse to Drink or Making it Realise its Thirst”? Understanding the enactment of anti-terrorism legislation (ATL) in Nigeria. *Perspectives of Terrorism*, 5(3–4), 33–49; Njoku, E. T. 2017. “Laws for Sale”: The domestication of counter-terrorism legislations and its impact in Nigeria. In S. N. Romaniuk, F. Grice, D. Irrera, & S. Webb (Eds.), *The Palgrave handbook of global counterterrorism policy* (pp. 1003–1016). Basingstoke: Palgrave Macmillan;

2011 (as amended). However, I will concentrate on the TPA of 2011 and its revised version in 2013.⁷⁵

Certain provisions of the law raise concerns about human rights and civil liberties. These include the creation of ambiguities in the law or the precise definition of what constitutes a terrorist act, the broad discretionary powers granted to security, and the powers granted to the state to request information from communication providers. These provisions have been abused in terms of enforcement, as I will demonstrate in several cases. However, a quick examination of the TPA of 2011 and the TPA of 2011 (as amended)⁷⁶

7.2.1 Creation of Ambiguity in the Definition of Terrorism

Terrorism was defined broadly in Section 2 (III, V, and VII) of the TPA of 2011 by incorporating crimes already addressed in the criminal and penal codes as terrorism. Oil bunkering, arson, illegal possession, use, and sale of a firearm, kidnapping, hostage-taking, and destruction of a public facility are examples of such crimes. Scholars and experts have argued that the broad definition of terrorism complicates legal interpretation, violates the principle of proportionality, and creates confusion in legal processes.⁷⁷

7.2.2 Wide Discretionary Powers

The TPA of 2011 gave security agents involved in the enforcement of these laws broad discretionary powers. Section 9 of the Act states that the National Security Advisor (NSA) and the Inspector General of Police may recommend to the president that a person be declared a terrorist if they have a reasonable suspicion that the person is a terrorist. Furthermore, Section 10 of the Act stated that, with the president's approval, security agents could seize any cash where they

75 Njoku, "The State and the Securitization";

76 Njoku, "Laws for Sale";

77 Ibid; Dasuki, S. (2014). Sambo Dasuki: Nigeria's soft approach to countering terrorism. Retrieved July 4, 2015, from <http://dailypost.ng/2014/03/19/sambo-dasukinigerias-soft-approach-countering-terrorism/>; Guinane, K. (2007) The Shifting Landscape For American Not-For-Profit Organizations: U.S. Counterterrorism Developments Impacting Charities, International Journal Of Not-For-Profit Law, 10, (1), 3; Howell, J. (2006). The global war on terror, development and civil society. Journal of International Development, 18, 121–135; Sidel, "Counter-terrorism and the regulation of civil society"

have a reasonable suspicion that the money is intended to be used for terrorist purposes.⁷⁸ Furthermore, Section 25 of the Act empowered security agents to conduct warrantless searches of any place, vehicle, or person if there were reasonable grounds to believe that an offence was being committed. The Act did not elaborate on the narratives, “if he reasonably suspects,” or “as it may appear to him.” Nigerian security officers were able to act in ways that violated basic human rights and civil liberties because there was a legal loophole.⁷⁹

7.2.3 Directives to Communication Providers

Similarly, Section 26 of the Act states that “for the purposes of the prevention or detection of offences, or the prosecution of offenders under this Act, give such directions to any communication service provider as appear to him to be necessary.”⁸⁰ In particular, I have argued in the past that these provisions in the TPA of 2011, specifically the phrases in these laws such as “if he reasonably suspects,” or “as may appear to him,” were abused by security agencies, as the law sufficiently empowered them to take actions in the enforcement of these laws where they (in their own wisdom) believe that an act of terrorism has been committed without any judicial oversight.” Worryingly, the Act makes no distinction between what constitutes reasonable suspicion and what does not.”⁸¹

Learnings

- The section explains the reasons why the press is targeted in counter-terrorism efforts;
- This section also details why some members of the legislature that opposed the bill argued that the nature of the bill gives the executive arm exceptional powers and could be abused to target credible opposition or abuse human rights.

⁷⁸ Njoku, *Laws for Sale*,

⁷⁹ *Ibid*, p 1008

⁸⁰ Terrorism Prevention and Amendment Act of 2013

⁸¹ *Ibid*. p 1008-1009

7.3 From Terrorism Prevention Act of 2011 to Terrorism Prevention (Amendment) Act of 2013

The Nigerian government amended specific provisions of the law in apparent response to criticisms levelled at the TPA of 2011. As a result, the Terrorism Prevention (Amendment) Act of 2013, also known as the Terrorism Prevention Act of 2011 (As Amended), was enacted to address the shortcomings of the TPA of 2011.⁸² Sections 9, 12, and 26 of the TPA of 2011, which empowered the Nigerian Police and NSA, were explicitly amended. The powers that the police and the NSA had were transferred to the Attorney General of the Federation in Section 2 of the amended Act. Furthermore, Section (1A) empowered the National Security Advisor's Office to coordinate counter-terrorism operations.⁸³ Security agents who are involved in counter-terrorism operations cannot act alone when giving communications providers orders about counter-terrorism operations. This is because Section 29 of the TPA of 2011 (as amended) restricts their ability to do so.⁸⁴ Despite the fact that the TPA of 2011 (as amended) was enacted to correct wrongs in the previous act, the many fundamental human rights concerns raised by legal scholars were not addressed in the law. According to Dakas (2013), "several provisions of the amended Act repose considerable sentencing discretion in the courts, which, in the absence of sentencing guidelines or in the hands of a capricious judge, is susceptible to abuse."⁸⁵

A critical point to note about these laws is that they favour the state. To put it another way, the laws sufficiently empowered the government to take specific actions that glossed over human rights and civil liberties. One might wonder if other groups, such as civil society, were involved in the development or adoption of anti-terrorism laws in Nigeria. As I have argued and will explain more in the following sections, civil society actors were deliberately excluded from fully participating in the development of these laws.⁸⁶

82 Dakas, C. J. (2013). Nigeria's anti-terrorism laws and practices: The imperative of mainstreaming human rights into counter-terrorism administration. A paper presented at an expert workshop organised by the Nigerian Coalition on the International Criminal Court.

83 Ibid; Njoku, *Laws for Sale*"

84 Ibid; Njoku, *Laws for Sale*"

85 Ibid, p 1

86 Njoku, "Strategic Exclusion"

7.4 The Impact of TPA of 2011 (as amended) on Press Freedom

As previously stated, many state actors have abused or weaponized these laws in many parts of the world under the guise of combating terrorism by arresting journalists, closing media houses (even if temporarily), and targeting human rights activists or advocacy organisations. In the preceding section, I discussed how governments have targeted and repressed civil society, including the media, in the context of counter-terrorism.

7.4.1 *Strategic Exclusion*

In one of my research articles, “Strategic Exclusion: The State and the Framing of a Service Delivery Role for Civil Society in the Context of Counter-Terrorism,” I argued that the government believes that involving civil society in the formulation of counter-terrorism measures will be counter-productive. This viewpoint is based on the government’s perception that counter-terrorism legislation is repressive by nature, and rightly so if they want to achieve their goals of combating terrorism. Thus, civil society organisations, due to their advocacy abilities, would want to include human rights components in the formulation of legislation. Hence, the need to exclude them from the process is primarily motivated by national security concerns. However, because civil society was not included, the government had more power to pass laws that made civil society suspects when it came to enforcing anti-terrorism laws.⁸⁷

7.4.2 *Restriction of Access to Information*

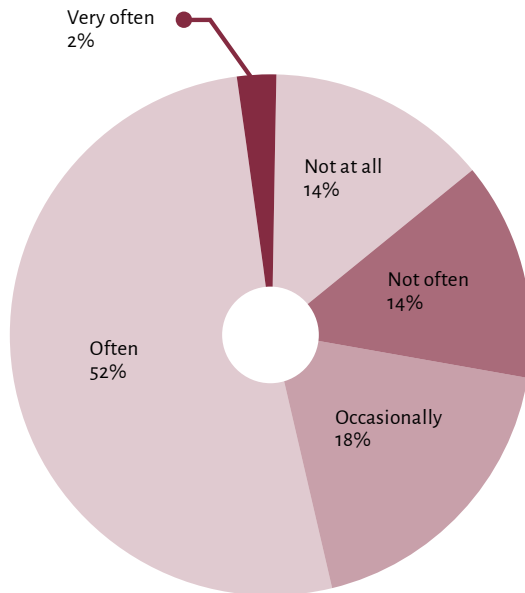
Freedom of information is a critical tool used by journalists and media organisations to act as watchdogs of the government’s activities in the interest of society. However, one significant impact of counter-terrorism legislation enforcement in Nigeria is the restriction of access to information on terrorism and counter-terrorism operations. In my

⁸⁷ Ibid

article, “Politics of conviviality? State-Civil Society Relations within the Context of Counter-Terrorism in Nigeria”, I polled 205 programme officers from civil society organisations to find out what they thought about the difficulties in obtaining information about terrorism and counter-terrorism. Here’s a graphical representation of one of their responses.

Fig. 1 CSO responses on access to information on counter-terrorism attacks (%).

Source: created by the author, based on data gathered from the field in 2015



Source: Njoku, E. T. (2020b). Politics of conviviality? State-civil society relations within the context of counter-terrorism in Nigeria. *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations*, 31, 1063–1076

According to the study, 52% and 2% of respondents, respectively, indicated that the Nigerian government's CTMs had made it impossible for CSOs to access information on terrorist attacks and counter-terrorism operations in Nigeria's north-eastern region. Furthermore, many of the interviewed government officials, including security agents involved in counter-terrorism operations, claim that information on counter-terrorism is classified and that until such information is de-classified, it cannot be made available in response to Freedom of Information Act requests. The security agents also stated that the safety of their troops' and civilians' lives and property is of the utmost importance, as disclosing vital information puts their lives in danger.⁸⁸ While the above appears to be a plausible reason given by the government, civil society has criticised these government practises, claiming that the restriction of information access provides cover for security agents to engage in human rights violations and various forms of corruption in the use of funds meant to combat terrorism.⁸⁹

As a result, it can be argued that the government's restriction of access to information, one of its counter-terrorism practices, makes it difficult for the press, particularly journalists on the frontlines of counter-terrorism operations and other forms of political violence, to carry out their responsibility of checking on the activities of the government and its security agencies to ensure that responsible measures are taken to combat terrorism. In other words, counter-terrorism measures that limit public information also limit the press's ability to investigate and expose cases of human rights violations. In the past, I have argued that these measures frequently impair the capacity of civil society and the press to monitor or report on the security budget and its implementation, exposing the corrupt practises of military elites and politicians involved in corrupt activities or diversion of funds aimed

88 Njoku, "Politics of conviviality?" p 1069-1070. It is important to note that, while the study did not specifically include media organisations, it does demonstrate the Nigerian government's counter-terrorism practises, particularly those of its security agencies.

89 Ibid

at combating terrorism in Nigeria.⁹⁰ I further contend that this has resulted in the emergence of a “diabolic counter-terrorism economy,” which is influencing the expansion of terrorism.⁹¹

7.4.3 Repression and/or Targeting of Press Freedom

The broad discretionary powers enshrined in the TPA of 2011 (as amended) vested in government security agencies have been abused by counter-terrorism security agencies, as evidenced by increasing reports of security agencies going after the press, particularly those reporting on terrorism and counter-terrorism issues. According to studies, groups engaged in political advocacy for the rights of vulnerable and marginalised people in counter-terrorism operations are critical targets for government repression.⁹² There is increasing evidence that the activities of the press have piqued the government’s interest in the context of counter-terrorism. Notably, media outlets and journalists who engaged in investigative reporting or political advocacy by reporting cases of human rights violations and corruption in counter-terrorism operations in the north-east have faced repression from the government. These range from arbitrary and indiscriminate arrests of journalists to Gestapo raids on media offices and the arrest of some journalists on the basis of alleged ties and connections with terrorists.

“...there have been incidents and cases of harassment, intimidation, arrests of journalists, and the closure of media outlets, all of which have hampered the activities of international groups and human rights organisations. The most common incident in the Nigerian Army’s spiral of cases is that involving Ahmed Salkida, a conflict and violence journalist.”

90 Ibid, Njoku, “The State and the Securitization”; Njoku, E. T. (2020). Merchants of Terror: Neo-Patrimonialism, Counterterrorism Economy, and Expansion of Terrorism in Nigeria. *African Conflict and Peacebuilding Review*, 10(2), 83–107.;

91 Njoku, “Merchants of Terror”

92 Hayes, “The impact of international counterterrorism on civil society organisations”; Watson, and Burles, “Regulating NGO funding”; Brechenmacher, “Civil Society Under Assault

In the following sections, I will present cases in which the government has pursued journalists and media organisations for reporting on unfolding events in counter-terrorism operations in the North East. Even journalists working in other parts of the country are not immune to the negative impact of the government's counter-terrorism policies, as laws are frequently invoked to arrest and detain journalists who are critical of state policies or seek to raise public awareness and mobilise people in opposition to unpopular state policies. The state accused them of being involved in terrorist acts or supporting terrorist groups without giving any proof.

7.5 Cases of the Repression of Press Freedom in Nigeria

First, there have been incidents and cases of harassment, intimidation, arrests of journalists, and the closure of media outlets, all of which

“...Jones Abiri, a journalist and publisher of the Weekly Source tabloid based in Yenagoa, Bayelsa state, was arrested in 2016 by officers of the Department of State Security for republishing a story alleging that the military was planning a coup against President Buhari. He was later accused of supporting military activities and illegally detained for two years.”

have hampered the activities of international groups and human rights organisations. The most common incident in the Nigerian Army's spiral of cases is that involving Ahmed Salkida, a conflict and violence journalist. Salkida and two others (Ahmed Bolori and ‘Mama Boko Haram’) were declared wanted by the Nigerian Army in 2016 on suspicion of having access to and ties to Boko Haram. Upon his return to Nigeria, Salkida reported to the Nigerian army. Despite not being convicted or found guilty of any crime, he continued to face operational

constraints, stress, and restrictions as a result of his groundbreaking reporting and access to rare sources within Boko Haram. For example, in June 2018, Salkida's Twitter account was temporarily suspended for

about five days after he challenged the Federal Government of Nigeria to provide full disclosure on the status of the kidnapped Chibok girls. Furthermore, he and his family were threatened with death. The state's and her collaborators' actions are thought to be an attempt to compromise his account and information-dissemination abilities. In the end, his account was restored, and he has kept reporting on the Lake Chad crisis and Boko Haram.⁹³

Second, on February 28, 2018, officials from Nigeria's Department of State Services (DSS) arrested and imprisoned Tony Ezimakor, the Abuja Bureau Chief of the *Daily Independent* newspaper, for publishing a story about how allegedly ransom payments were made for some abductees by Boko Haram. The journalist was questioned about his sources, but he refused to identify them.⁹⁴ An example of how the state often invokes terrorism laws to arrest journalists is the arrest of Daniel Elombah. On January 1, 2018, Elombah and his two brothers, Izuchukwu Elombah and Timothy Elombah, journalists and publishers of the online media platform 'elombah.com', were arrested and detained by men from Nigeria Police's popular Special Anti-Robbery Squad (SARS). Timothy Elombah was detained for 25 days, while Daniel and Izuchukwu were only detained for two days. Their detention and arrest were linked to a story allegedly written by Timothy criticising the Inspector General of Police, which Timothy denied. Later, they were charged with cyberstalking, cyberbullying, and terrorism.⁹⁵

93 Premium Times (2016) "Why who declared Journalist, Salkida others wanted-Nigerian Army" <https://www.premiumtimesng.com/news/headlines/208592-declared-journalist-salkida-others-wanted-nigerian-army.html> (Accessed 16th March 2022); Daily Trust (2006) "Army Declares Salkida, Wakil, Bolori Wanted" <https://dailytrust.com/amp/army-declares-salkida-wakil-bolori-wanted> (Accessed 16th March 2022); Sahara Reporters (2018) Salkida, Journalist With The Deepest Knowledge Of Boko Haram's Workings, Locked Out Of Twitter" <http://saharareporters.com/2018/06/12/salkida-journalist-deepest-knowledge-boko-harams-workings-locked-out-twitter> (Accessed 16th March 2022)

94 Osai Ojigbo, Silence is not an option: Protecting freedom of expression in Nigeria. Oct 21, 2018. Retrieved from <http://saharareporters.com/2018/10/21/silence-not-option-protecting-freedom-expression-nigeria-osai-ojigbo#.XK6WztaF-R4.email>

95 The Cable (2018) "Protecting the Freedom of the Press in Nigeria" <https://www.thecable.ng/protecting-freedom-of-expression-in-nigeria> (Accessed 16th March 2022)

Furthermore, Jones Abiri, a journalist and publisher of the *Weekly Source* tabloid based in Yenagoa, Bayelsa State, was arrested in 2016 by officers of the Department of State Security for republishing a story alleging that the military was planning a coup against President Buhari. He was later accused of supporting military activities and illegally detained for two years. Following a court order, the government released him in 2018. However, on March 30, 2019, the government re-arrested him on treasonable felony and terrorism charges. Following a public outcry from national and international organisations, the government issued a statement.⁹⁶ In the same year, the Nigerian army raided the regional offices of the *Daily Trust* in Maiduguri, Borno state, arresting the regional editor, Uthman Abubakar, and a reporter, Ibrahim Sawab, for publishing a story about the military's offensive operations against Boko Haram. According to the Nigerian Army, the media outlet's story/report violated Sections 1 and 2 of the Official Secrets Act by "divulging classified military information and thus undermining national security." The military claims that the media outlet unintentionally jeopardised national security and military operations against Boko Haram.⁹⁷

7.6 Conclusion/Recommendations

This module has surveyed the manifestations of counter-terrorism legislation's negative influence on Nigeria, with a focus on how it affects the country's press freedom. I contend that, in addition to other categories of civil society organisations, the media sector has been subjected to greater government controls and repression, as some media outlets and journalists have been securitized by the government in the context of counter-terrorism. To put it another way, the state is using counter-terrorism legislation to target and repress journalists and

96 "Jones Abiri regains freedom from DSS". April 01, 2019. Retrieved from <http://saharareporters.com/2019/04/01/jones-abiri-regains-freedom-dss>

97 Olaleye Aluko. "Why we invaded Daily Trust office-Nigerian Army". January 7, 2019. Retrieved from <https://punchng.com/why-we-invaded-daily-trust-offices-nigerian-army/>

media organisations that engage in advocacy by reporting on human rights violations by security agents on the frontlines of terrorism, as well as monitoring and reporting on the use of funds earmarked to combat terrorism in north-east Nigeria. Therefore, the attack on press freedom in Nigeria is contributing to the closure of civic spaces, which has significant consequences for Nigeria's democratic consolidation, good governance, social fairness, and political stability.

Therefore, the research suggests revising existing counter-terrorism legislation, citing accusations that it lacks human rights components and is structured in a way that favours the state over crucial institutions that are critical to the country's democratisation. The law should be revised so that civil society is no longer considered a threat, but rather a partner in solving problems. As I have argued, responsibly combating terrorism is a critical component of preventing its recurrence. In other words, alienating human rights while combating terrorism provides fertile ground for the spread of terrorism by creating grievances that terrorist organisations use to recruit adherents.⁹⁸ Hence, the government should revise counter-terrorism legislation so that human rights are prioritised and civil society, including the media, is included in the redesign of counter-terrorism measures. In addition, the government should ensure that all parties involved in counter-terrorism activities adhere to principles of accountability and openness.

7.7 Activities

- Create a workgroup to discuss similar experiences you or your friends have had with government security agencies that claim you have violated the Terrorism Prevention Act of 2011 (as amended).

⁹⁸ Njoku, E.T (2019) The ligaments of counter-terrorism regime: sexual violence and the vicarious traumatising of female non-governmental organisation workers: evidence from Nigeria, *Small Wars & Insurgencies*, 30:6-7, 1233-1263; Njoku, E.T & Akintayo, J (2021) Sex for survival: Terrorism, poverty and sexual violence in north-eastern Nigeria, *South African Journal of International Affairs*, 28:2, 285-303

- Write a report about your experiences and publish it as an Op-ed in a newspaper.
- Create a workgroup to identify some aspects of counter-terrorism laws, policies, and practises that aren't covered here that have had an impact on the ability of media organisations to function.

7.8 Revision Questions

- Discuss why and how some states use anti-terrorism laws, policies, and practises to suppress civil society organisations.
- Describe the parts of the Terrorism Prevention Act of 2011 (as amended) that affect press freedom in Nigeria.
- State the adverse effects of the Terrorism Prevention Act of 2011 (as amended) on the operational capacity of media organisations and journalists in Nigeria.
- Identify and discuss cases where the Terrorism Prevention Act of 2011 (as amended) was used to repress media organisations or journalists in Nigeria.
- Why were the legislators divided over the 2006 and 2007 Terrorism Prevention Bills?

7.9 Suggestion for Further Readings

Romaniuk, S. and Njoku E.T (2021) *Counter-terrorism and Civil Society: Post-9/11 Progress and Challenges*, Manchester: Manchester University Press

Howell, J., & Lind, J. (2010a). *Civil society under strain: Counter-terrorism policy, civil society and aid post 9/11*. Bloomfield: Kumarian Press.

Romaniuk, S. (2022) *Under Siege: Counter-terrorism and Civil Society in Hungary*. United States: Lexington Books.

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Njoku, E. T. (2020b). Politics of conviviality? State-civil society relations within the context of counter-terrorism in Nigeria. *VOLUNTAS: International Journal of Voluntary and Nonprofit Organisations*, 31, 1063–1076.

Njoku, E. T. (2020c). State-oriented service-delivery partnership with civil society organizations in the context of counter-terrorism in Nigeria. *Development Policy Review*, 39 (5), 757–772.

The Press Attack Tracker

by

Stephanie O. Adams-Douglas

Introduction

The press is otherwise renowned as the Fourth Estate of the Realm (in addition to the statutorily traditional executive, legislature and judiciary). And in serving as watchdog over the statutory arms of governments, as listed above, newspapers in particular, act as a veritable people's parliament. This special role as a governance mechanism is why freedom of the press is an important precondition of any free society and is essential to any democracy. It denotes a situation in which media professionals can work and publish what is true and factual without fear of any retribution or threat. However, governments at both subnational and national levels in Nigeria, as well as some powerful individuals in the country, continue to create obstacles to the freedom of the press because it poses serious challenge to their abuse of power and reign of corruption.

Sadly, many Nigerian media practitioners and the general public do not appear to be keen with the current global debate on press freedom even though, as victims, one would expect them to be reasonably interested, if they won't be the key drivers of this agenda.

Why Nigeria Must Prioritise Press Freedom

It is however important to note that Nigeria is a signatory to Article 19 of both the Universal Declaration of Human Rights, UDHR, and the International Covenant of Civil and Political Rights, ICCPR. These two and other international human rights instruments have been developed to prevent violence against journalists and media workers, to ensure accountability, bring to justice perpetrators of crimes against journalists and media workers, and ensure that victims have access to appropriate remedies. In response to all these, government functionaries, especially those involved in managing the mass media and publicity often downplay cases of harassment of journalists in

Nigeria. One of them even claimed that “in the history of Nigeria from independence to now, I will classify this period as the best for the media and journalists in Nigeria. As we speak now, the last three years has not witnessed the repressive loss, it has not witnessed the closure of media houses, it has not witnessed arrest or detention of journalist on account of their duty; this is a period that has not seen or witnessed the tragedy of journalists being killed authorized by the government, as seen in other places. I think this is the best moment for the media in Nigeria”.

CJID’s Initiative

Nigeria has a highly vibrant and variegated media landscape, with platforms that openly criticize unpopular government policies. Retribution has also come with high cost, and President Muhammadu Buhari’s tenure in Nigeria is a telling example. Under his administration, the country has recorded increasing attacks and harassment on journalists, and impunity has become the norm. A solutionist agenda thus became quite compelling. Thus came the idea of the Press Attack Tracker. This is an initiative of the Centre for Journalism Innovation and Development (CJID), which regularly monitors onslaught on media institutions and journalists alike.

The press attack tracker is an innovative tool created with the support of the Free Press Unlimited to serve as a data hub which can be used for advocacy or research for Press Freedom in Nigeria and recently for other African countries such as Gambia, Ghana, Liberia and Sierra Leone. The platform provides a heat map of threats and outright attacks on the press, thus providing data for periodic review and acting

“In 2020 journalists faced heated crises of disdain by state actors (Army, Police, Task Force) while covering incidences of #COVID19 and during the decentralized social movement against police brutality, #END-SARS. To be sure, the safety of Nigerian journalists may not be the number one priority of newsrooms across Nigeria, nevertheless a nationwide system needs to be in place to monitor and report threats made against journalists.”

as an advocacy tool for press freedom in the wider Nigerian society. It aims to promote a truly independent media landscape that advances fundamental human rights, good governance and accountability throughout Nigeria and across Africa. The Press Attack Tracker also features a ChatBot (AsariTheBot) designed for immediate response and connection to legal help, where needed, for Nigerian journalists. The bot also safely gathers data on the frequency and types of right infringements that journalists encounter and this enhances data-driven advocacy. Since its inception, the Press Attack Tracker has recorded over 450 verified independent cases of attacks on Nigerian journalists since 1985, which was on the rise but worsened in the last twelve years.

The Ugly Trend

Relatedly, the country's 2018 World Press Freedom Index 2018 rating worsened in 2021, pointing to the reality that the Nigerian press, with the highest number of privately owned media outlets in Africa notwithstanding, still has its practitioners attacked, harassed, arrested and detained in the course of their duty. Indeed, family members and friends of journalists are not free from molestation. Also, in almost all instances of such attacks, there is little or no effort to prosecute perpetrators. It is against this backdrop that conversations around this subject matter must remain an agenda.

In an environment of this challenge, a mechanism like the Press Attack Tracker is invaluable.

In the country, journalists remain largely unprotected from rogue elements like Boko Haram, who have listed journalists among its enemies. One consequence of this is the 2012 killing of Channels TV reporter, Enenche Akogwu, who died while covering the conflict in Kano. As the Nigerian Press Attack Tracker indicates, journalists are increasingly becoming targets by state and non-state actors. For instance, between 2010 and 2015, there were 43 violations against journalists, and some ended in death. However, between 2015 and the first quarter of 2019, no fewer than 170 violations had been recorded, which is about a 400% increase in the rate of violent attacks on

journalists, indicating that some action on this was necessary. In July 2016, Jones Abiri, a publisher with *Weekly Source* newspaper was arrested by the Nigerian State Security Service and held for two years without trial. Likewise, in January 2017, the Nigerian military detained, harassed and threatened *Premium Times* reporters with legal action in reaction to articles that scrutinized and critiqued the actions of the military and its leadership. Similarly, in January 2019, the Nigerian military invaded the offices of the *Daily Trust* newspaper in Lagos, Maiduguri, and Abuja, where they arrested the regional editor, accusing the newspaper of breaching national security protocol and providing support for Boko Haram through their coverage of the decade-long crisis.

During the 2019 general elections, the tracker recorded 30 attacks, illegal arrests, harassment and the death of a journalist covering the elections. These cases were recorded mostly in the south, south-east and north-central part of the country. Even after a campaign by CJID, similar attacks were recorded in the re-run elections in Kano State, where journalists from several media organizations were threatened, harassed and locked out of the electoral commission's collation centre, restricting them from performing their duties accurately.

In 2020, journalists faced heated crises of disdain by state actors (Army, Police, Task Force) while covering incidences of #COVID19 and during the decentralized social movement against police brutality, #ENDSARS. To be sure, the safety of Nigerian journalists may not be the number one priority of newsrooms across Nigeria, nevertheless a nationwide system needs to be in place to monitor and report threats made against journalists. The summary of its records today indicates that the death toll of journalists in the country appears to be on the rise. Nevertheless, self-censorship, physical assaults, kidnap and intimidation against journalists remain major concerns.

Need for Stakeholders' Unity

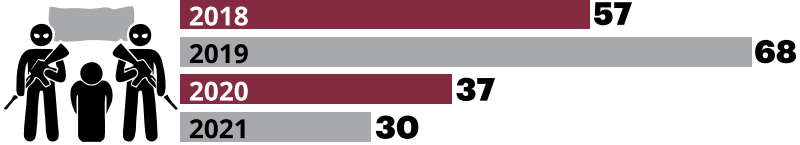
Stakeholders and human rights activists have bemoaned operational laws prohibiting the freedom of the press, while noting the absence of coordinated stakeholder advocacy efforts to lobby the National Assembly to revoke aspects of sedition, defamation and related restrictive laws.

Other issues they believe advocacy should fight against include the “Anti-Social Media Bill”, as they also lobby for the whistleblower protection laws to be passed. In the same vein, journalists and human rights defenders have become targets of digital and physical threats especially in the course of using the internet as a tool for advocacy, citizen mobilization and human rights campaigns.

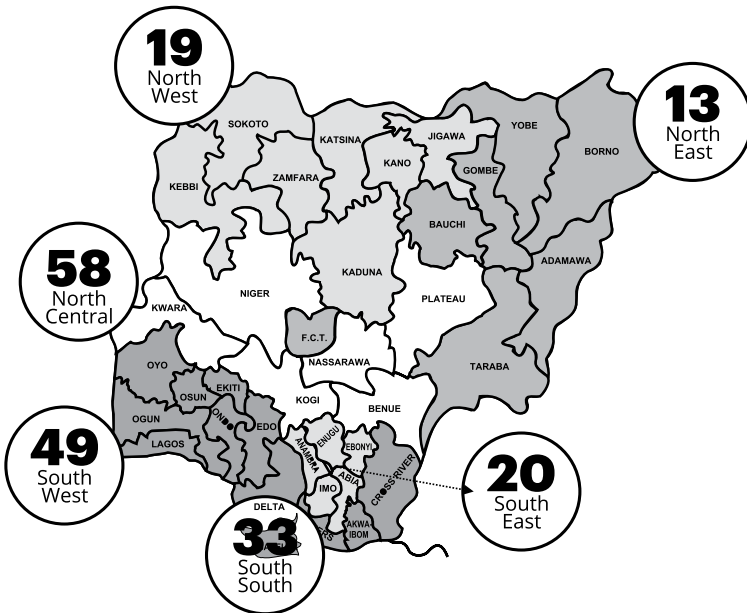
All said, it is a little consoling that the Press Attack Tracker contains records of violations against journalists and media organisations from 1986 till date, including the time/date, type, location and perpetrators of attacks. For no fewer than six years till date, the Press Attack Tracker has recorded over four hundred cases of different forms of attacks. It has also provided helpful data for local and international organizations, including the European Union, African Union and the Canadian High Commission, to track the irregularities of press freedom in Nigeria.



ATTACKS BY YEAR



ATTACKS BY REGION






 www.pressattack.ng

NOTE

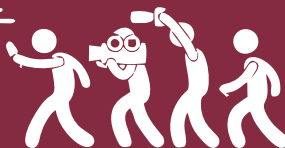
This analysis is based on press attacks tracked and verified on the Press Attack Tracker.

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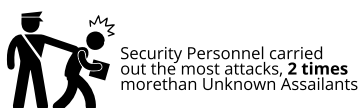
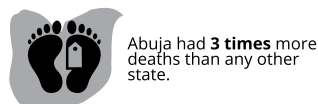
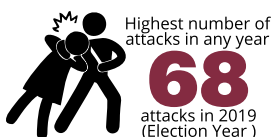
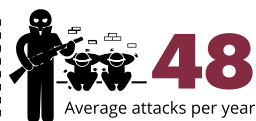
ATTACK ON PRESS

Analysis of attacks on journalists (2018 - 2021)



Records of attacks and harassments of Nigerian journalists

ATTACK TREND



www.pressattack.ng

NOTE

This analysis is based on press attacks tracked and verified on the Press Attack Tracker.

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