

## **MEDIA, DEMOCRACY AND HUMAN RIGHTS IN PLURAL STATES: THE CASE OF NIGERIA**

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### **ABSTRACT**

Throughout the world, there is a vast remapping of media laws and policies. This important movement for building more democratic media is attributable to rapid-fire geo-political changes. These include a growing zest for information, the general move towards democratization, numerous pressures from the international community, and the inexorable impact of new media technologies. Whatever the mix in any specific state, media law and policy is increasingly a subject of intense intellectual debate. The institutionalization of an effective democratic society anchored upon the rule of law and fundamental human rights, especially in plural societies requires many measures of which the formation of media law and institutions is one of the most crucial. Too often, this process of building media that advances democracy is undertaken without a sufficient understanding of the many and varied factors involved. Indeed, laws are frequently looked at in isolation and as interchangeable parts that are separately advocated for the creation of effective and democracy – promoting media. They are also often analyzed and discussed with attention paid merely to their wording. However, each society has a cluster of activities, interactions of laws, and settings in which they exist that makes those laws more or less effective. Different states, at different stages of development, require different strategies for thinking about the role of media and, as a result, for thinking about the design and structure of the environment in which they operate. This paper is an attempt to provide an adequate explanation and understanding of the factors that can shape the building of a media that will properly promote democracy and human rights in Nigeria. In doing this, we seek to identify components of the complex legal process that contribute to an environment that enables media to advance democratic goals, because an understanding of the factors that make rules effective can lead to the specific enhancement of the roles that media might play in strengthening democratic institutions and consequently human rights.

**Keywords:** Media, Democracy, HumanRights, Pluralist, Governance, Information.

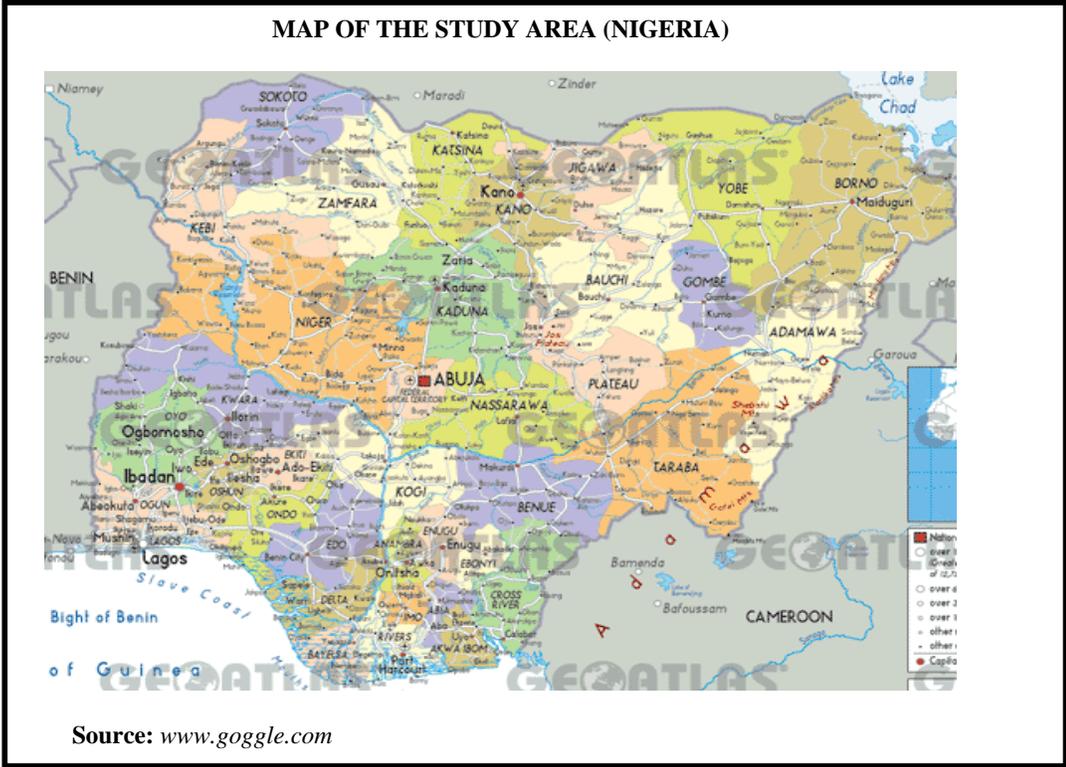
### **INTRODUCTION**

Throughout the world, there is a vast remapping of media laws and policies. This important movement for building more democratic media is attributable to rapid-fire geo-political changes. These include a growing zest for information, the general move towards democratization, numerous pressures from the international community, and the inexorable impact of new media technologies. Whatever the mix in any specific state, media law and policy is increasingly a subject of intense debate. Shaping an effective democratic society requires many steps of which the formation of media law and media institutions is one of the most important. Too often, this process of building media that advances democracy is undertaken without a sufficient understanding of the many factors involved. This study is designed to improve such

understanding, provide guidance for those who participate in the process of constructing such media, and indicate areas for further study. Laws are frequently looked at in isolation and as interchangeable parts that are separately advocated for the creation of effective and democracy-promoting media. They are also often analyzed and discussed with attention paid merely to their wording. However, each society has a cluster of activities, interactions of laws, and settings in which they exist that makes those laws more or less effective (Jacubowicz, 2002). Different states, at different stages of development, require different strategies for thinking about the role of media and, as a result, for thinking about the design and structure of the environment in which they operate.

In this study, we seek to identify components of the complex legal process that contribute to an environment that enables media to advance democratic goals. Understanding the factors that make rules effective can lead to the specific enhancement of the roles that media might play in strengthening democratic institutions and consequently, human rights. Understanding this enabling environment can be helpful to those engaged in building and reinforcing democratic institutions and to those who are advocating free and independent media. This is essentially so because of the importance of a free press for development. Indeed, press freedom, human rights, democracy and other indicators of good governance constitute a *sine qua non* for sustainable development. The above reality underscores the justification for this current study. The map of the specific study area, Nigeria is presented in Figure 1 below.

Figure 1



## **Democracy as a Global Institution**

Democracy is now a fundamental human right recognised by international institutions and laws. In other words, there is now a legally binding principle in international law on the right of every socially and politically organised community on the face of the earth, to democratic rule or governance. In Nigeria, for instance, we have always had a democratic constitution as epitomized by the 1960, 1963, 1979, 1989 and 1999 constitutions. Ironically, that has not saved the country from despotic tendencies. The constitution is usually the first victim of any military intervention in governance. This is particularly so, given the perception and response of governments of most developing states to the challenges posed by the media to national sovereignty. Clearly, media can affect national sovereignty in many ways. It can enthrone new ideology, advance new national identity, weaken traditional value system and challenge subsisting social structure and norms. Moreover, it can shake the fabric of a regime's control over its country. In view of this massive impact of the media, governments try very hard to maintain their sovereignty by exerting their power, both formal and informal to control and intervene in media policies and practices within and outside their national boundaries. At the international level, globalization is seriously changing media practices, institutions and content. Beyond the activities of huge conglomerates, globalization involves competition among countries and private entities to control the world's consciousness (Price, 2004). Significantly, one of the biggest challenges facing the state (especially developing countries) today in the face of technological and institutional changes is how to control the type of information accessible to its citizenry.

However, it is important to reiterate that the fact that domestic circumstances in most developing countries of the world often limit democracy and human rights from thriving, does not change its international status as a fundamental right of every individual in every nation of the world (Uzoigwe, 1989). Since such right is international in nature, no authority can suspend the right or even purport to do so. The reason for this is simple. It is no longer a domestic law but a principle of international law. This explains why a Gaddafi, no matter his claims could not be left on his own to deal unfairly with his people. It is the same reason why the German Nazi officers accused of crimes in international law in 1946 could not rely on the 'act of state doctrine' to defend themselves, for these were crimes in international law and it does not matter whether they were lawful under domestic law of the then Nazi government (Uzoigwe, 1989). Increasingly, governments are beginning to recognise that their legitimacy depends on meeting internationally accepted norms and statutes in the world. Consequently, democracy is on the way to becoming a global entitlement, one that increasingly will be promoted and protected by collective international process.

Thus, the present international status of democracy has far reaching consequences, hence domestic norms and statutes that contradict this will always be frowned at by the international community. Irrespective of the fact that the term sovereignty continues to be referred to in international legal framework, its place in modern international law is quite different. What modern international law tends to protect, however, is the sovereignty of the people and not the sovereignty of the government which in most developing democracies is just a hidden place for few people in power to perpetrate evil (Jakubowicz, 2002).

## **Trends in the Nigerian Media Scene**

At least five major trends have been observed in the Nigerian media scene since the advent of the current political dispensation in 1999: (i) a growing awareness about the links between freedom of speech, free press and democracy; (ii)

reinforcement of independent and pluralistic newspapers; (iii) liberalization of the airwaves; (iv) development and reinforcement of regional organizations of media professionals; and (v) training and human resources development for the media (Ogunbiyi, 1999).

#### **Awareness about the links between Freedom of Speech, Free Press and Democracy**

For several years now, there has been a growing consciousness of the need for free and independent media and of their key role in the democratic process. The creation, maintenance and fostering of an independent, pluralistic and free press are essential to the development and maintenance of democracy in a multi-ethnic nation like Nigeria, and for economic development. The celebration of World Press Freedom Day on 3 May offers the opportunity for media and human rights organizations in Nigeria to carry out activities which highlight the importance of press freedom in democratic governance. Such activities have included open forums; “press freedom” walks; workshops on promoting dialogue between media and the government; feature articles, symposia and broadcast media discussion programmes on the theme of press freedom. Such events have helped to create, or raise, consciousness within the body politic of several nations and their populations about the relationship between freedom of expression and free, independent and pluralistic media, on the one hand, and the democratic process, on the other.

Also contributing to this growing awareness on the media scene is the work of freedom of expression organizations, human rights groups and organizations of media professionals in the form of “alerts” and publications relating to press freedom, freedom of expression and their violations in the country. The work of such groups in sounding the alarm whenever and wherever there is violation of press freedom or freedom of expression has grown tremendously in the country, especially since the second half of the 1990s (Ogunbiyi, 1999).

#### **Development of Autonomous and Pluralistic Newspapers**

The past few years have seen a rapid development in more independent and private-sector newspapers and magazines. Since the 1990s, the political landscape in Nigeria has undergone gradual but profound changes from monolithic to pluralism, from less to greater tolerance of different and at times opposing viewpoints and ideas. These changes have no doubt contributed to the emergence and nourishing of pluralistic and independent media. There have been a number of projects designed to support the development of media independence and pluralism in the country. In 1992, UNESCO launched a regional project on the development of independent press in Africa (Ogunbiyi, 1999). It aimed to promote a pluralistic and independent press and improve the professional level of independent newspapers in media management, professional codes of practice for journalists, news production and distribution. That project, along with many other operational activities supported by UNESCO and other international and regional funding organizations such as the European Union, the international organization of *la Francophonie*, the Friedrich Ebert Foundation and the Ford Foundation, has helped to foster the growth and stability of independent and pluralistic media systems in Nigeria and indeed many African countries (Hanson, 2000).

#### **Liberalization of the Airwaves**

There has also been an improvement in the area of the liberalization of the airwaves and the creation of independent, private, commercial and community-oriented radio stations. Individuals, groups and civil society organizations are now allowed to establish and operate radio and television stations. This trend seems to have been strengthened, or kept in motion, by a number of major regional conferences which focused on broadcast pluralism and deregulation in Africa, notably: the International Conference on Radio Pluralism held in Bamako, Mali (1993); the International Conference on

Deregulation of Broadcasting in Africa, Abuja, Nigeria (1996); the First Conference of the West African Independent Broadcasters Association, Banjul, Gambia (1996); and meetings of the African section of the World Association of Community Radio Broadcasters (AMARC) (Hanson, 2000). Furthermore, the Internet is also now providing a wide spectrum of individuals and groups in Nigeria crucial access to information. This development is particularly important because it promotes democracy. If newspaper and radio have enhanced democracy by promptly disseminating information and creating an informed public, the superior speed of the internet makes it a great contribution to the evolution and development of democracy. Indeed, more than newspaper and radio, the Internet breaks the information monopoly, thereby giving the voice to diverse parties, which is a cardinal feature of a democratic society (Wang, 2007).

### **Media Training and Human Resource Development in Nigeria**

There has been a clear increase in the number of training programmes organized and/or supported by different funding sources to help develop human resources for the media in Nigeria. Hence, we have witnessed an increased focus on projects and activities which deal with media, democracy, human rights and good governance. In general, these projects seek to:

- (a) raise awareness among media professionals about the role of communication media in democracy, human rights and good governance;
- (b) increase the knowledge and skills of media professionals in the use of communication in support of good governance in African countries;
- (c) increase the knowledge and skills and strengthen the capacity of media trainers in the use of communication to support good governance; and
- (d) help strengthen democracy and good governance in African countries through coverage by pluralistic and well-informed media.

Much of the enthusiasm and drive for many of these activities have been locally generated. However, it is worth noting that the greater proportion of the financial and technical support for the drive has come from external sources. Such external support has been beneficial but the continued growth and sustainability of an independent and pluralistic media environment in the country will have to be supported endogenously.

The projects implemented reflect the conceptual premise that improved media professionalism, increased access to communication media and enhanced quality of information gathering and dissemination are vital to the defence of press freedom, democracy and human rights. Democratic governance and respect for human rights are the foundations for political and social stability and economic progress. They are also intrinsic to the goal of human development. Today, the struggle of the Nigerian people for democracy and human rights continues. As in the past, international support remains a crucial factor.

### **The Nigeria Media and Access to Information**

An essential condition of effective and professional journalism is the ability of journalists to gather information in tangible files, often dusty and hard to find, which are held by or controlled by public authorities. A legal enabling environment will include legal guarantees for the conduct of this gathering activity. Often, such guarantees are found in generally applicable legislation that recognizes the rights of public access to documents. Although, these laws often do not expressly cite the rights of journalists, news media representatives share the rights of access with the general public.

An environment in which such guarantees are absent will lack an element essential for journalistic effectiveness, particularly in those legal settings where criminal law prohibits disclosure of government documents and imposes sanctions on public custodians who violate this norm.

Access to information generally requires affirmative legal guarantees. A law protecting a journalist against censorship is not sufficient. Even the presence of constitutional and/or applicable international norms will not normally be sufficient since there is not sufficient development of an international principle providing such access to journalists. Fundamental norms are vague on this score, and may require detailed implementation in the form of legislation that recognizes and supports the access principle and supporting regulations that address the many practical questions that arise in this area.

After almost twelve years of hide and seek game, the Nigerian National Assembly eventually passed the Freedom of Information (FOI) bill in 2011 and president Goodluck Jonathan signed it into law same year. It is expected that the coming on board of the bill will, to a great extent, enable journalists to discharge their duties in the best possible manner.

The fundamental characteristic of the FOI legislation is an expressly articulated presumption of openness. This presumption is grounded in this principle: an item in the control of the public authorities is public unless it is covered by an exception expressly set forth in a legislative act. This places the burden of justification for refusal to disclose on the public custodian. Most legal systems impose some kind of standard on persons who request access to documents, such as a requirement that they demonstrate that the requested information affects their rights and legal interests or that it is of a particular level of importance. However, the effectiveness of the FOI legislation will be significantly reduced if, instead of a presumption of openness, great burdens are imposed on requesters. The problem with such requirements is that they create an opportunity for arbitrary refusals to disclose, grounded in the custodians assessment of the status of the requester or the importance of the document. Regarding the latter, of course, there would be an inclination for a custodian to be more reluctant to disclose documents which might be deemed important and perhaps damaging to governmental or corporate interests, a situation which would be counter-productive for the FOI goals.

### **Freedom of Speech and the Media in Nigeria**

The constitution and law provide for freedom of speech and of the press. However, government sometimes restricts these rights in practice. Security forces often time beat, detain and harass journalists. For example, some journalists were harassed, intimidated, threatened or detained for reporting on sensitive issues such as the late President Yar'Adua's failing health (Nigeria Human Rights Watch, 2008). In Nigeria, there is a large and vibrant private domestic media that courageously criticize the government. Presently in the country, there are more than 14 privately owned major daily newspapers, six weekly news magazines, and several sensationalist evening newspapers and tabloid publications. There are more than 19 independently owned private radio stations, while Federal government owns one radio network with 34 stations.

There are over 14 independently owned private TV stations, and two privately owned direct-to-home satellite network stations. The government owns one television network, the Nigerian Television Authority (NTA), with 96 affiliate stations. Because newspapers and television are relatively expensive and literacy levels low, radio remains the most important medium of mass communication and information in the country. The government controls much of the electronic media through the Nigeria Broadcasting Commission (NBC), which is responsible for monitoring and deregulation of broadcast media.

It should be emphasized that Nigerian media practitioners constantly suffer serious human rights abuse in the discharge of their duties. On August 17, 2008, for instance, unknown assassins killed Paul Abayomi Ogundeji, a reporter for the privately owned This Day Newspaper and member of its editorial board. The August 19, 2008, issues of two other papers, The Punch and The Nigerian Compass, quoted an unidentified source stating that a uniformed police officer shot Ogundeji. Although the NPF began an investigation, there were no further developments till date. On October 15, 2008, six unknown assailants shot and killed the chairman of the Credential Committee of the Nigeria Union of Journalists and Nasarawa State Broadcasting Service radio journalist Eiphraim Audu in Lafia, Nasarawa State, North Central Nigeria. An investigation was launched but provided little or no result till date. Also, till date there has been no developments in the 2006 killing by unknown assailants of Godwin Aybroko, editor and columnist of This Day Newspaper in Lagos. Nigerian journalists frequently face harassment from overzealous security agents. For example, on August 1, 2008, security operatives beat a Channels TV cameraman who attempted to take pictures of a raid on the house of Niger Delta Peoples Volunteer Force leader, Asari Dokubo, in Abuja. On September 4, police officers in Lagos reportedly beat three journalists, Adewole Ajayi from the Nigeria Tribune, Emmanuel Oladesu from The Nation, and Bimbo Ogunnaike with the Nigerian Compass, for attempting to cover an Action Congress (AC) political rally. Joe Igbokwe, the AC Lagos State Chapter Publicity Secretary in the State, offered an apology after the incident and that was all till date (Nigeria Human Rights Watch, 2008).

There has, equally been no developments in the May 2007 case in which journalist Dare Folorunso was taken to a hospital in a coma after several Ondo State policemen, including Deputy Commissioner Joshua Mumbo, beat him up. Folorunso later recovered and was discharged. The local Union of Journalists asked police to pay compensation and offer Folorunso a public apology, however, none of these materialized.

On January 24, 2008, Akwa Ibom State security operatives arrested Essien Asuquo Owoh, a newspaper distributor in Uyo, and on January 27 arrested Sam Asowata, chairman of the editorial board of the weekly newspaper, Fresh Facts. Police allegedly also ransacked local newspaper's office. Both were charged with sedition and "conspiracy to distribute copies of Fresh Facts newspaper with the intent to bring hatred or contempt to the governor of the state" with a story about Akwa Ibom State Governor Akpabio's alleged ties to corrupt persons. Owoh and Asowata were later released (Nigeria Human Rights Watch, 2008).

In March, 2008, the Kano State government arrested Hausa filmmaker, Hamisu Lamido, known as Iyan Tama, for operating his company, Iyan Tama Multimedia without registration and for releasing the film "Tsintsiya," a Hausa adaptation of the film "West Side Story," in Kano without having it first reviewed by the state censorship board. The trial initially was scheduled for May 12, but was moved to a new location without notification to the defendant, resulting in Lamido's arrest for violation of bail by not appearing. Lamido was later released on bail and the trial was rescheduled. On December 30, 2008, a Kano magistrate court found Iyan Tama guilty and sentenced him to 15 months in prison and a 300,000 naira fine. Attorneys for the defendant filed an appeal to the High Court and the case was ongoing at year's end (Nigeria Human Rights Watch, 2008).

On October 18, 2008, SSS operatives arrested Jonathan Elendu, owner of the Elendu Reports, an on-line publication, when he arrived at the airport in Abuja from oversea. Elendu was detained for nearly two weeks without charge, reportedly due to several reports published speculating about the late President Yar'Adua's health, before being released. The authorities even seized his passport to prevent him from travelling outside the country. Equally, the government arbitrarily suspended television and radio stations in 2008. For example, on September 17, the NBC announced the

suspension of operations and revocation of license for Channels TV following its September 16 closure by the SSS. Federal agents, led by former Minister of Information, John Odey, shut down Channels TV in Lagos and Abuja for broadcasting a "false news story...." Channels TV had broadcast a story stating that the late president might resign due to health reasons. The station and many other news outlets apparently received the information from an email address claiming to be News Agency of Nigeria (NAN). NAN denied any involvement and stated that the e-mail address did not belong to it. Five staff members of Channels TV were detained for three days. On September 19, NBC gave Channels TV permission to resume broadcasting and confirmed the release of all journalists without charges (Nigeria Human Rights Watch, 2008).

In April 2007 SSS backed by police forcefully entered into the studio of Africa Independent Television (AIT), a leading private television outfit in the country, and forced the staff to stop transmitting a documentary critical of former President Obasanjo and the ruling PDP. SSS agents seized tapes of all commercially sponsored programs that were scheduled for that day and shut down AIT's sister radio station, Ray Power FM. Press reports quoted an SSS spokesman as saying that the programming had "security implications." The NBC warned the station that it would face "serious sanction" if it aired the program again. Significantly, the law criminalizes libel and requires defendants to prove the truth of opinion or value judgment contained in news reports or commentaries. This limits the circumstances in which media defendants could rely on the defense of "fair comment on matters of public interest" and restricts the right to freedom of expression.

## **CONCLUSION**

Although one cannot deny the fact that the array of international legal protection for freedom of expression has proved far more effective and important than anyone could have imagined years ago when the Universal Declaration on Human Rights (UDHR) was first adopted, a global increase in press freedom violations despite this impressive body of international law, supported by a large number of inter-governmental declarations and documents, has not created an environment in which one can say that the press is free. As the analysis in this paper has shown, the fact that Nigeria has become a 'democracy' has not ensured that everyone got the rights to opinion, which was supposed to include the rights to seek, receive and impart information and ideas through the media. Obviously therefore, the provisions of article 19 of the Universal Declaration of Human Rights is still constantly violated and recently more so in the country as successive 'democratic' governments in the country continue to use the appeal to patriotism and security to muzzle the independent media, deterring journalists from questioning governments policies.

Similarly, article 9 of the same UDHR, which gives protection against arbitrary arrests and detention, has been constantly violated, as more journalists get arrested, detained and even incarcerated without charges for expressing their opinions. This situation is both unfortunate and disturbing, given the symbiotic relationship between press freedom, human rights and democracy on one hand, and good governance on the other. This is particularly so because the aforementioned are necessary conditions for Nigeria, likewise other plural states, to achieve sustainable development and sustainability. Clearly, no credible and sustainable socio-economic development can thrive in an atmosphere of insecurity, official harassment, intimidation, lack of freedom of opinion and expression, as well as other dictatorial tendencies. It becomes obvious therefore that Human Rights Organisations need to constantly monitor events in the country to ensure that governments across the country do not revert back to dictatorial tendencies, especially against the independent media as many are wont to do. Also, more pressure needs to be exerted on the international community to ensure that they do not sacrifice media rights and press freedom on the altar of security and patriotism. Even in a world, where concerns for security has taken needs for "secrecy" to heights, governments of every nation need to be made to realize that freedom of

the press and freedom of opinion may actually be an advantage rather than a handicap in a period of emergency, especially in a democratic setting .

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