



**Media Foundation for  
West Africa**

**THE LAW AND THE MEDIA  
IN NIGERIA**

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Supported by



The Law and the Media in Nigeria

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### **Media Foundation for West Africa**

The Media Foundation for West Africa is a regional independent, non-profit, non-governmental organisation based in Accra, Ghana. It was established in 1997 to defend and promote the rights and freedoms of the media, and generally, to help expand the boundaries of freedom of speech and expression in West Africa.

#### *Our Objectives*

The goals of the *MFWA* are to:

1. Raise public awareness of and to redress violations of media rights and free expression through monitoring abuses and attacks;
2. Promote the development and expansion of media rights and free expression through legislative and policy reform;
3. Seek justice through litigation for journalists, media and citizens persecuted by the states and other actors for exercising their right to free expression;
4. Advance media professional standards to enhance their capacity in supporting democratic governance and culture;
5. Promote knowledge and awareness among citizens of their rights to free expression; and to enhance the media environment through research and publication of data, information and analysis on developments, trends and issues regarding policy, legislation and anything else affecting media and free expression;
6. Support the development or operation of institutions and or projects that promote media development and sustainability.

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## INTRODUCTION

The term “freedom of expression” has been defined in the Black’s Law Dictionary 8th Edition as: “The freedom of speech, press, assembly, or religion ... the prohibition of governmental interference with those freedoms”.

In the same dictionary freedom of speech is stated to be “the right to express one’s thought and opinion without governmental restriction” and freedom of the press as “the right to print and publish materials without governmental intervention”.

From the above definitions, it can be seen that freedom of speech or freedom of the press or press freedom, as it is commonly expressed, is a concomitant of the right to freedom of expression, and freedom of the press is the primary tool for giving effect to freedom of expression. It is proposed to use the terms interchangeably.

Freedom of expression is essential in every civilized society and its guarantee is regarded as a measure of the success of any popular democracy.

In this project, we shall examine the journey of press freedom in Nigeria from the colonial era to the present constitutional democracy, the legislations and regulatory bodies that shape and impact on media freedom and the rights of journalists as well as the legal constraints on press freedom. Key judicial decisions affecting press freedom and freedom of expression as well as constitutional provisions on the right to freedom of expression and media freedom are also examined.

### **Summary of Historical Political Development Evolution — Background to the State of Press Freedom**

Press freedom or freedom of expression has over several decades been provided for in several jurisdictions.

All major international conventions on human rights make provisions for the right to freedom of expression. It is provided for in Article 19 of the Universal Declaration of Human Rights of 1948 and it is contained in a similarly numbered Article of the International Convention on Civil and

Political Rights, 1976 and the African Charter on Human and Peoples' Rights of 1981. That charter was made part of Nigerian Law by *The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983 Cap A9 LFN, 2004*. It has been judicially determined that in the hierarchy of laws in Nigeria the Act has a force of law and is next to the Constitution of the Federal Republic of Nigeria 1999 which in Chapter IV makes provisions for fundamental rights and specifically, in Section 39, provides for freedom of expression and the press.

However, it took a while for the right to freedom of expression and the press to become fully entrenched in Nigerian law. Throughout the period of colonial rule, the British colonial regime deliberately refused to provide expressly for fundamental Rights which include freedom of expression in any of the Constitutions which they enacted to administer the country. It was not until 1960 that the Rights were expressed in the 1960 Constitution and thereafter in the 1963 and all the other constitutions that followed. See:

Section 24, Constitution of the Federation, 1960

Section 25, Constitution of the Federation, 1963

Section 36 Constitution of the Federal Republic of Nigeria, 1979

Section 39 Constitution of the Federal Republic of Nigeria, 1999

### **Media Legislation and Media Freedoms**

The legislations on media can be classified under criminal legislations, broadcast legislations and others.

#### ***Criminal Legislations***

Under this heading we have the legislations which criminalize certain publications and prescribe punishments of monetary fines or terms of imprisonment or both. In this category are the Criminal Code Act Cap C 38 Laws of the Federation of Nigeria (LFN), the Penal Code Act Cap P3 LFN 2004, the Official Secrets Act, Cap 03 LFN, 2004, the Newspapers

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Act and Newspapers Laws of some states of the Federation and the Obscene Publications Act.

(a) *Criminal Code Act*

- (i) *Chapter 7* which runs from sections 50 to 60 deals with sedition and the importation of seditious or undesirable publication.

*Section 51* makes it an offence to, inter-alia, utter seditious words, print, publish, sell, offer for sale, distribute, or reproduce or import any seditious publication and prescribes imprisonment of 2 years or a fine of N200 or both and for a subsequent offence, imprisonment for 3 years and forfeiture of any seditious publication to the state.

It is also an offence to publish false news (s.59) and to publish defamatory matter against any foreign sovereign.

- (ii) *Chapter 33* which is made up of sections 373 to 381 makes it a misdemeanour to publish any defamatory matter and prescribes a term of imprisonment of 1 year. Where the publisher knows the publication to be false he is liable to imprisonment for 2 years (*section 375*).

However, that section is subject to the other provisions in that chapter 33, e.g. publication is not an offence if at the time it is made is for public benefit and the defamatory matter is true. The chapter goes on to make provisions for cases where certain publications may be absolutely or conditionally privileged.

**Note:**

The Criminal Code Act is the major legislation on criminal matters. Although it is a federal legislation, it has been enacted by all the states in southern Nigeria as Criminal Code Law

(b) *Penal Code Act*

This Act also provides for sedition as an offence. Thus, provisions

are made in *sections 416–421* for offences relating to publication either by words, spoken or written, or by mechanical means which are capable of inciting disaffection to the government (*s.416*); inciting hatred between classes (*S.417*); false news with intent to cause offence against public peace (*S.418*) and possession of seditious articles (*S.419*); power to prohibit importation of publications (*S.420*) and punishment for importation of prohibited publication (*S.421*). Various terms of imprisonment extending to 7 years or fine or both are prescribed under the chapter. The Penal Code Act is the equivalent of the Criminal Code Act in the northern states of Nigeria.

(c) *Official Secrets Act*

This Federal Legislation restricts access of journalists and other persons to official information. It makes it an offence on the part of any person to transmit any classified matter to a person to whom it is not authorized on behalf of the government to transmit it or who 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 (see section 1).

*Section 9* of the Act defines “classified matter” as “any information or thing which, under any system of security classification from time to time in use by or by any branch of the government, is not to be disclosed to the public and of which the disclosure to the public would be prejudicial to the security of Nigeria.”

(d) *Newspapers (Amendment) Act/Newspapers Laws*

- (i) This Federal Legislation is meant to be regulatory in nature, but it also makes publication of certain statements in a Newspaper an offence (*section 4(1)*). Some states of the Federation have a similar provision of the offence of publication of false statements in Newspapers. Some of these states are Edo and Delta States created from the old Bendel State (*section 28 of Newspapers Law of Bendel State*); Cross River

and Akwa Ibom states created from the old Cross-River State (*sections 16 & 17 Newspapers Law of Cross River State*); Lagos State (*section 21 Newspaper Law of Lagos State*); The South Eastern States of Nigeria (see Newspaper Law, Laws of the South Eastern States of Nigeria).

*Section 21 (1)* of the Newspapers Law of Lagos State Cap N2 Laws of Lagos State, 2003 states as follows:—

“21(1) Any person who authorizes for publication, publishes, reproduces or circulates for sale in a Newspaper any statement, rumour or report knowing or having reason to believe that such statement, rumour or report is false shall be guilty of an offence and liable on conviction to a fine of N400 or to imprisonment for a term of 1 year.”

- (ii) Aside from creating the offence referred to supra, this Federal Legislation generally sets out to regulate the operation of Newspapers. Thus it makes provision for the establishment by every Nigerian Newspaper of an office in the Federal Capital Territory; Appointment of Editor of a Newspaper to be notified to the Minister; delivery of signed copy of Newspaper to the Minister and publication of name of its editor in the Newspaper.
- (iii) In Lagos State, the Newspapers Law CAP N2 (supra) makes extensive provisions in 27 sections for the Registration of Newspapers and for other purposes in connection with Newspapers.

(e) *Obscene Publications Act*

This is also a Federal Legislation which seeks to prohibit publication or distribution of any article or object deemed to be obscene and provides a fine not exceeding £200 or imprisonment not exceeding 3 years or both (*section 4 (1)*). The test of obscenity is provided in *section 3(1)*.

**Broadcast Legislation*****National Broadcasting Commission Act***

This is a Federal Legislation which sets out amongst other things to regulate and control the Broadcasting Industry and set policies with respect thereto. *Section 1* of the Act establishes the National Broadcasting Commission (NBC), the regulatory authority, and *section 2* lists the extensive powers of the Commission ranging from receiving, processing and considering applications for the establishment or ownership or operation of Radio and Television stations. *Section 2(2)* prohibits transmission by cable, Television, Radio Satellite or any other medium of Broadcast except in accordance with the Act. Furthermore, the Act provides for the procedure for obtaining licenses and the granting of licenses as well as terms of a license and of renewal thereof.

The Commission is imbued with the power to enforce the National Broadcasting Code made pursuant to the Act.

The NBC is viewed by many as lacking in independence as it is directly under the control of the Minister of Information and Communications as well as the President. It has been repeatedly accused of being quick to muzzle privately owned broadcast stations with little or no justification while turning a blind eye when government owned stations violate the provisions of the Broadcasting Code, particularly during electioneering periods.

**Others****(a) *Nigeria Press Council Act***

- (i) This is a Federal Legislation provides for the establishment of the Nigerian Press Council “to promote high professional standards for the Nigerian press, and deal with complaints emanating from members of the public about the conduct of journalists ... and for other matters connected therewith.”
- (ii) The Council is also charged with monitoring the activities of

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the press with a view to ensuring compliance with the code of professional and Ethical Conduct of the Nigerian Union of Journalists (sections 3 and 9)

(b) *Electoral Act*

- (i) Although this legislation is not strictly a one in respect of the press, but to regulate the conduct of federal, state and Area Council elections and for related matters, there are provisions therein for rules and regulations in the conduct of the press (print and electric media) regarding campaigns for elections by political parties and candidates.
- (ii) Thus in sections 100 and 101 of the Act, provisions are made regarding media time and coverage to be allocated among the political parties and candidates, the use of public media, and prohibition of broadcast at certain hours preceding the election and on election day
- (iii) The Act makes a contravention of these provisions an offence, and prescribes monetary fines on conviction.

(c) *Printing Presses Regulation Act/Printing Presses Regulation Law*

- (i) The Printing Presses (Regulations) Act is a Federal Act for the regulation of printing presses and of books and Newspapers printed in Nigeria.
- (ii) There are corresponding Printing Press Regulation Laws in the States of the South-West of Nigeria. In Lagos State, it is the Printing Presses Regulations Law, Cap P12 Laws of Lagos State 2003. it is a short legislation of five (5) sections with S.5 giving the Governor the power to make regulations, inter alia, generally for carrying out the purposes of the law into effect.

The subsidiary legislation made under S.5 contains general provisions relating to the operation of printing presses in the state.

(d) *Freedom of Information Act*

- (i) The Freedom of Information Act which was signed into law in 2011 is one of the most revolutionary pieces of legislation ever made in the area of access to information in Nigeria.
- (ii) It came about after years of constant and persistent but aggressive agitation and campaign by non-governmental organisations and media groups spear-headed by the Media Rights Agenda, a Lagos-based NGO with bias for freedom and rights of the press. In a country where its leaders have an uncanny reputation for keeping public information from its citizenry, it was a famous victory indeed.
- (iii) The Act makes records and information more freely available, provides for public access to public records and information, to protect public records and information to the extent consistent with the public interest and the protection of personal privacy, to protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and for related matters.
- (iv) Perhaps to remove any doubt about its intention to see that the Act achieves its purpose, the Attorney-General has rolled out guidelines to aid in the implementation of the Act.
- (v) However, being still relatively new, the efficacy of the Act to achieve its aim is yet to be tested. It is still a laudable effort on the part of the Government.

**Media Regulatory Body/Bodies and their Mandates**

These are the bodies established under the various legislations examined above to regulate, monitor and carry out the various functions assigned to them under those legislations, and they include:—

- (a) Nigeria Press Council.
- (b) National Broadcasting Commission
- (c) Independent National Electoral Commission

### **The Rights of Journalists**

Although now expressly entrenched in the fundamental law i.e. the Constitution, the right to freedom of expression like the other fundamental rights are not absolute and are therefore subject from time to time to a host of exceptions and qualifications mostly from the government in the interest of defence, public safety, public order, public health or for the purpose of protecting the rights of other persons. See: section 45(1) of the 1999 Constitution, Cap C1 of the LFN, 2004.

It has been argued that the right to freedom of expression is one granted to all citizens and not restricted to be enjoyed only by journalists, as such.

### **Legal Constraints on Press Freedom**

We have examined earlier the legal constraints on press freedom stemming from the restrictions and derogations on the fundamental right to freedom of expression contained in the Constitution itself, as well as the other legislations already mentioned and from the activities of the regulatory bodies.

Other existing legal constraints to press freedom can be found in the *Nigeria Press Council Act Cap N128 LFN, 2004*. This decree established a council most of which members are appointed by the government with a mandate to supervise the conduct, work, administration, registration and deregistration of journalists.

However, with democracy taking deeper root in Nigeria, especially since the commencement of the current experiment in democracy in 1999, there has been a noticeable improvement in the area of respect for the rights of journalists and the right to freedom of expression and the press. There is now less incidence of arbitrary arrests and detentions (in some cases killings) of journalists which characterised the hey-days of military dictatorship in Nigeria.

In addition, the judiciary is becoming more emboldened in its condemnation and punishment of infractions of the right to freedom of expression and the press through their judicial pronouncements. See: *Punch Nigeria Ltd v. A.G. Federation* and *Jimoh v. A.G. Federation*.

### **Key Judicial Decisions Affecting Press Freedom**

As will be seen, the cases were decided before the Constitution of Nigeria 1999 came to force. However they are all still relevant for our purpose here because the provisions relating to the right to free expression and media in the 1999 Constitution are the same or similar to those in the previous 1979 Constitution under which some of those cases were decided.

In addition, most of the criminal legislations interpreted in those cases are still in force.

It is proposed to deal essentially with only the principles of law decided in these cases.

### **Sedition**

#### ***The State v. The Ivory Trumpet Publishing Co. Ltd & 3 Ors.***

The four accused persons were charged under section 51(1)(c) of the Criminal Code in an Information filed in the High Court with publishing in their newspaper an article with intention to bring into hatred or contempt, or to excite disaffection against the person of the Governor of Anambra State of Nigeria.

The first accused was the publisher of *Weekly Trumpet* Newspaper; the 2nd accused was the printer of the newspaper; the 3rd accused was said to be author of the alleged seditious article whilst the 4th accused was the editor of the Newspaper. The article was titled “JUST BEFORE THE BATTLE”.

After full trial, the court, in discharging and acquitting the accused persons, held:

- that the Sedition law does not punish anyone who makes a

publication in the press when such publication merely embarrasses the government;

- that the sedition law prohibits a publication which has a tendency to create disorder, or disturbance of law and order or causes or has a tendency to cause incitement to violence having due regard to the right of free speech guaranteed under the Constitution.

### ***Nwankwo v. The State***

The accused person here was tried in the High Court summarily for the offences of “publishing seditious publications” and “distributing seditious publications”, both counts under section 51(1)(c) of the Criminal Code.

After trial in the High Court, the Judge found the accused person guilty on both counts and sentenced him to 12 months imprisonment. The accused appealed to the Court of Appeal and, in discharging and acquitting the accused person, held as follows, that is:

- that a printer, publisher, seller, offeror for sale, distributor or reproducer of a seditious publication is not guilty of sedition if the intention to bring the government into hatred or contempt or to excite disaffection against the government is not alleged and established; i.e. that there cannot be a Seditious publication without a seditious intention

### **Contempt of Court**

#### ***In re: Ekpu & 5 Ors.***

The accused were cited for contempt under section 12(i)(a) of the Tribunals of Inquiry Act for the 1st accused article titled “A Hollow Ritual” contained in the weekly magazine called “*Newswatch*”

The said article commented on the Tribunal that was trying the case of the former civilian President and Vice President of Nigeria. The

Tribunal discharged the 2nd to 6th respondents but found the 1st accused guilty of contempt and sentenced him to a fine.

In the process, the Tribunal held:

- that for a Journalist to write an article calling a Tribunal of Inquiry a kangaroo court is not a criticism of the Tribunal but a calculated attempt to destroy the very basis of the proceedings at the Tribunal and such article amounts to contempt of the Tribunal

***In re: Onagoruwa***

The appellant was cited for contempt for an article he wrote in a newspaper in respect of a pending case. He appealed and the Court of Appeal the appeal and held as follows:

- that if the hearing of a matter in court will not be grossly affected by the publication of an article in a newspaper, it is not proper to punish the writer and proprietor or the editor for contempt of court.
- contempt committed *ex facie curiae* being words published or acts done outside court which are intended or likely to interfere with or obstruct the fair administration of justice, a newspaper apparently prejudging a trial could clearly be *prima facie* contemptuous, but in deciding whether it actually offends the law, the court should act with caution and restraint and consider whether the hearing will in fact be grossly affected, particularly where the issue concerned is a civil one to be heard without a jury but solely by a judge trained to assess the evidence fairly and to arrive at a conclusion based on that alone.

***Akinrisola v. Attorney-General, Anambra State***

The appellant was the author of an article published in a newspaper in respect of a pending case. The Chief Judge of Anambra State considered

the article contemptuous of his court and he summarily tried and convicted the appellant.

He appealed and the Court of Appeal allowed the appeal and held as follows:

- generally where a publication is made which is likely to prejudice a fair trial or conduct of proceedings, contempt may be committed by any person responsible for the publication of the matter of which complaint is made. Thus, it is said the following persons may be held for contempt: editors, newspaper proprietors, publishers, printers, distributors and, in certain circumstances, reporters.
- that a publication of a general comment on a matter which is related to a court proceedings presided over by a trained judge and without any specific reference to the court of trial cannot be held to be contemptuous of the court

### **Injurious Falsehood**

#### ***Commissioner of Police v. Iweanya***

*Held:* an editor or a publisher of a newspaper cannot be found guilty of the criminal offence of injurious falsehood under the Penal Code if the editor or publisher never intended to harm, or had reason to believe that the publication would harm the reputation of some person.

### **Obscene Publications**

#### ***Commissioner of Police, Midwest State v. Igene & Anor.***

The accused were tried on charges of having in their possession for purposes of exhibition obscene printed matters, to wit: magazines with obscene pictures which tend to corrupt morals and of exhibiting material that contained obscene pictures contrary to section 175(1)(a) and 175(1)(c) of the Criminal Code. They were acquitted by the Chief Magistrate before

whom they were charged and the prosecution appealed to the High Court which held thus:

- a book or magazine or newspaper is not necessarily obscene merely because it is in bad taste or undesirable. An indecent, shocking or disgusting article may not necessarily deprave and corrupt
- the test whether obscene articles tend to deprave and corrupt is an objective test. No matter how obscene a publication is, it is a good defence to the charge if it can be shown that the publication is for the public good on the ground that it is in the interest of science, literature, art or learning.

### **Constitutional Provisions on the Rights of Freedom of Expression and Media Freedom**

#### **(a) *Constitution of the Federal Republic of Nigeria, 1999***

The Constitution of the Federal Republic of Nigeria which came into force on 29th May, 1999 is the supreme law of Nigeria and the *fons et origo* of Nigerian Jurisprudence.

The provisions regarding the press, mass media and the right to freedom of speech and expression are provided in two separate chapters.

#### **Under Chapter II, S.22**

This section deals with obligation of the mass media, and states thus:

*“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”.*

The said Chapter II of the Constitution which contains sections 13 to 24, is headed “*Fundamental objectives and Directive Principles of state policy*”.

The position of Nigerian law as decided in many cases is that the said chapter II is at present non-justiceable, i.e. that it does not confer a right of action on any citizen to enforce in the court of law those provisions contained in sections 13 to 24.

See *Olubunmi Okogie v. A.G., Lagos State*

**Under Chapter IV, s. 39:**

Chapter IV is captioned “*Fundamental Rights*”. Section 39 under that chapter states as follows:

- “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 subsection as 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 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.*
- (3) *Nothing in this section shall invalidate any law that is reasonable 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 Government of the federation or of a state, members of the armed Forces of the Nigeria police force or other Government security services or agencies established by law.*

The importance and sanctity of S.39 as well as the whole of chapter IV which run from Section 33 to Section 46 have been widely recognised under Nigerian law and the courts have demonstrated sufficient inclination, determination and courage to enforce those rights where they have been violated or infringed upon or where there has been threat of violation or infringement.

(b) *The African Charter on Human and Peoples' Rights*

In the area of fundamental rights of citizens which include the right to information and press freedom, the "African Charter on Human and Peoples' Rights" which was adopted by a charter signed by an Assembly of Heads of States and Government in Banjul Gambia in 1981 come second only to the Constitution of Nigeria, 1999.

The charter has been made part of Nigerian law by the **African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983**, Cap A9 Laws of the Federation of Nigeria 2004.

*Section 1* of the Act makes the provisions of the African Charter have force of law in Nigeria.

*Article IX* of the charter deals with of Rights to receive information and to express and to disseminate opinion.

In the hierarchy of laws in Nigeria, the Act is superior to every other law save the Constitution of the Federal Republic of Nigeria. See:—

- i. *Abacha v. Fawehinmi* (2000) 6 NWLR (pt 660) 228
- ii. *Abiodun v. A.G. Fed* (2007) 15 NWLR (pt 1057) 359

### **Conclusion**

It can be stated with some justification that the Right to freedom of expression and the press have come to stay in Nigeria. In spite of continued regulation, the Nigerian press is very robust and vibrant in criticism of public office holders and government actions and there is a perceived general tolerance on the part of government to such criticisms. This is not unconnected with the constitutional democracy that is in place. It is now 13 (thirteen) years that Nigeria returned to this round of civil rule. That is the longest period of uninterrupted civil rule in the history of Nigeria since independence. Hopefully, this will continue especially for the positive outlook that it portends for freedom of expression and press freedom in Nigeria.

Dated this 22<sup>nd</sup> day of May 2012