

Chapter Seventeen

Analysis of the Rights and Responsibilities of the Mass Media under Nigeria's Freedom of Information Act 2011

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Introduction

Although information is appreciated as a central element in the functioning of all societies across the globe, its recognition as a source of power has made it a contentious commodity across the world. Information, according to Edwards and Cromwell (2005:6), is the means by which individuals and organizations interact and act; exchange ideas; develop plans; proposals and policies; make decisions, and manage resources towards the attainment of set goals and objectives. It is also the means through which people are empowered to assume control over their socio-political environment by participating actively in the policy making process. Given the importance of information in the effective functioning of society, it has been declared a universal human right under the United Nations Charter on Human Rights, and freedom of information is often promoted as the foundation for democratic societies. The United Nations Declaration on Human Rights (UDHR) was adopted by the United Nations General Assembly in Geneva on December 10, 1948. The declaration is generally considered to be the flagship statement of international human rights, binding on all States as a matter of customary international law. Article 19 of the Declaration provides:

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.

Under this provision, freedom of expression is consecrated as one of the pillars of individual and societal democratic development. Subsection 2 of the article states that "everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination." Explaining the necessity of Article 19, Henderson (2005:4) says freedom of expression and the right of access to information held by public bodies and private entities will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy.

Being signatory to the charter as a United Nations member State, Nigeria's constitution also recognizes and impliedly guarantees freedom of information as a fundamental right. The recognition of this right is contained in section 39, sub section 1 of the 1999 constitution which states that:

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

Supposedly guaranteeing this right of the Nigerian mass media to freedom of information in the country, Article 22 of the constitution 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.

These provisions are often argued, especially by government and its agencies to be sufficient guarantee of freedom of

expression and of the mass media in Nigeria. Critics however, argue to the contrary that the provisions are implied and not categorical, and do not explicate the right of the mass media to access information held by government or other public agencies. Backing the premise of the critics, Egbon (1996:73) observes abhorrent laws such as the Public Complaints Commission Act of 1975, the Statistics Act of 1987, the Criminal Law of 1990, and the Evidence Act of 1990 which make it extremely difficult to access information held by public organizations. This implies a mockery of the constitutional provisions.

Hiding under these laws, successive governments, even those that emerged on democratic platforms have suppressed freedom of information in Nigeria. It is against this backdrop that the Freedom of Information Bill, hailed as the most explicit guarantee to freedom of information across the world was advocated and initiated by Media Rights Agenda (MRC) in 1993 for Nigeria. The FOI bill according to Denedo (2011:1) was sponsored to the National Assembly in 1999 by the Media Rights Agenda (MRC) in collaboration with Civil Liberties Organization (CLO) and Nigerian Union of Journalists (NUJ). After a tortuous journey of twists, turns and intrigues, the FOI bill finally became law on the 28 of May, 2011. This paper analyses the FOI Act 2011 with regards to rights holders, the beneficiaries, the rights of the mass media under the Act, and the inherent responsibilities or liabilities.

Theoretical Underpinnings of Freedom of Information

Free access to information is believed to enhance and facilitate the input and participation of citizens in the process of governance and development in all societies. Given the vantage position of the mass media in the information matrix of society, the freedom of the mass media to access, process and disseminate information has continuously be emphasized in democratic societies. Though recognized as a universal human right, there are many differing views regarding the

roots of freedom of information and of the mass media (often referred to as freedom of the press). Two of such differing views – the libertarian and social responsibility are the theoretical underpinnings for this discourse. These two views both have different implications for mass media rights and responsibilities in democratic societies, and will enable us analyze the key roles of the mass media in the development of Society.

The Libertarian View

Available literature suggest that the libertarian view which has emerged as one of the key theories underscoring the importance of freedom of information to journalism practice has more to do with the rights of the mass media to be free from government interference, than it does the responsibility of the mass media to the public (Ball-Rokeach 1998, and McQuail 2005). Predicated on the philosophies of Milton, Locke and Mill, the libertarian view according to McQuail (2005:177) is based on the general philosophy of natural rights and rationalization aimed at helping members of society to discover truth and check on government. In its most basic form, libertarian or free press theory prescribes that an individual should be free to publish what he or she likes and to hold and express opinions freely. Ball-Rokeach (1998:13) notes while the libertarian view does not advocate immunity of the mass media to the rule of law and the canons of civilised social conduct, it canvasses that people (including media people) should be seen as rational beings, able to distinguish between truth and falsehood - which renders prior censorship of media fare superfluous. According to her:

- Advocates of the libertarian view espouse the belief that individuals are able to distinguish good from bad information.
- They believe that fair debate leads to good and truthful arguments winning out over lies.

- Libertarians also believe in unleashing the market place, both in terms of ideas and media ownership.

The libertarian view sees the mass media as partners in all strides of society who are in search of truth for social order and stability of society, rather than tools in the hands of government and its officials or agencies for the manipulation of society.

The Social Responsibility View

In contrast to the libertarian perspective, the social responsibility approach interprets freedom of the mass media to extend to the media consumer and the welfare of society. The social responsibility view emerged from the Hutchins Commission on Freedom of the Press, set up in the United States of America in 1947 to re-examine the concept of press freedom as enunciated in the Libertarian ideology. This was because the so-called free market of ideas had failed to guarantee press freedom and to yield the expected benefits to society (McQuail, 2005:178). Rather, the commercial development of the press and the unforeseen developments in media technology had tended to limit access to the media for individuals and groups, and to concentrate media power in the hands of a few businessmen (advertisers) and media professionals who had the means to set up media empires.

The intent of the social responsibility approach according to Mann (2006:3) was therefore not only to guarantee rights but also confer responsibility for the rights. The social responsibility view according to Mann (2006:4) posits that 'the mass media has a social responsibility in meeting the public's right to information and should concern itself with diversity and equality.' The underlying premise is that the centrality of the mass media to democratic expression is an essential commodity that should not be left entirely to the device of the market place. Summarizing the key tenets of the social responsibility view, Mann (2006:5) says "freedom of the press, or, to be precise, benefit of freedom of the press, belongs to everyone. The crux is not the publisher's freedom to print; it is, rather the citizen's right to know". She concludes that social

responsibility essentially sees the public as right holders of mass media freedom.

Roles of the Mass Media in Society's Development

The mass media have been identified as the essential social system within society unifies public opinion (Ndolo, 2011:3). Mass Media supplements the demerits of the public, where cultural differences, socio-economic factors, political and religious interests often creates limitations and barriers for effective societal life. This, the mass media do through the *surveillance or watchdog function; the correlation function; the cultural transmission function; and the entertainment function*. In performing these functions, the mass media plays three key roles in the development of society by serving as channels for information flow; platforms for opinion and debate and therefore public voice, and watchdogs for developments on social, governance and economic issues. These roles are elaborated by Spitzer (1993:20-4) as follows:

- ☞ ***Mass Media as a Channel for Information flow*** - The mass media plays a potentially important role as a channel for information flow. Mass media acts as a bridge for information between those with information to audiences (readers, viewers and listeners). Mass media is particularly important for reaching mass audiences, and therefore scale of outreach, and for reaching groups that are disparate, scattered and remote. In the African context, broadcast media (in many countries specifically radio) is a critical media for giving rural and poorer groups access to mainstream information. Broadcast media effectively cuts across literacy and in many situations geographic barriers. Therefore, guaranteeing freedom of the mass media implies guaranteeing public access to information and participation in the democratic process.
- ☞ ***Mass Media as a Platform to Enhance Public Voice*** - Mass media plays a potentially important role as a platform for public discourse and for bringing diverse opinions into the

public arena. The mass media in Nigeria in spite of immense challenges are playing an increasingly important role in giving voice to the public with the growing diversification of media ownership and the move away from state controlled media that often previously represented primarily the voice of the state. For instance, during the January 2012 Fuel Subsidy removal by the Jonathan administration which gave rise to a national strike and mass protests across the country, the private media played a critical role in ensuring that the key issues are addressed by providing forums for public debate. This was akin to the professional understanding that to be effective in development, the mass media needs to be tempered by professionalism and basic media ethics (by giving the public right to reply and verify facts). These standards can however be attained only when the mass media are free to access information held by government, its officials and agencies. This will shift the Nigerian mass media away from breeding and spreading unsubstantiated rumour towards fostering informed debate and public dialogue.

Mass Media as Society's Watchdogs - While mass media can be the bridge for information flow and be the platform for debate, it can also play an important autonomous role in development by independently investigating and questioning the activities of development actors. In-so-doing, the media potentially represents civil society and provides a check and balance to the power of government and development agents. When undertaken effectively and professionally, this can be a positive role that improves quality in policy and development intervention and increases public confidence in development processes.

These roles as presented by Spitzer (1993) are in tandem with the ideology of the libertarian view. Conversely however, it should be noted that the mass media can also play a

potentially destructive role in the development processes. It can be a channel for misinformation; the preserve of the views of elites; and a tool for undermining development. These negative roles of the mass media have at different times manifested in Nigeria. Nevertheless, even with mass media acting as a negative force in national and local development due to selfish interests of those controlling them, it is important to emphasize that freedom of the mass media will enable the media to be positively factored into development programmes and initiatives. This would maximize its potential as a positive catalyst and actor in development and, in some circumstances, to mitigate its potentially negative impact on development.

Emergence of the Freedom of Information Bill in Nigeria

A degree of mass media freedom as observed by Henderson (2005:3) can exist without other aspects of democracy, as was the case in then Apartheid South Africa, but a democracy cannot thrive without mass media freedom. At its core, mass media freedom is about the limits of state power as regards the mass media as a social institution, and especially about the possibilities of critical journalistic information that bears directly on the exercise of public power. Conversely, democracy provides the environment for basic mass media freedom. In the past decade as Henderson (2005:11) notes, there have been numerous examples of how advanced information flows played a central role in resisting and facilitating the fall of dictatorial regimes. According to him, Fidel Castro once said, "Socialism in Central Europe failed because people received more information than was necessary." This shows that Castro obviously understood very well the power of information.

Over the years, as Momoh (1996:8) observes successive governments in Nigeria have used press laws and draconian decrees to criminalize and punish critical reporting, which helps explain why quality investigative journalism is finding it

difficult to thrive. A number of journalists in Nigeria have been arrested, prosecuted and sentenced in the past, and even in the present democratic dispensation, a lot of journalists are being harassed and assaulted solely on the account of the critical content of their reports. It is these challenges which threaten the Nigerian society, as lack of freedom is believed to undermine democracy that the push for the Freedom of Information Bill (FOIB) began in Nigeria.

Denedo (2011:1) notes that the Freedom of Information Bill which has now been passed into law was initiated in 1993 by the Media Rights Agenda (MRA), and sent to the National Assembly in 1999 in collaboration with Civil Liberties Organization (CLO), and the Nigeria Union of Journalists (NUJ). It was the most debated and scrutinized bill in the history of Nigeria due to the misconceptions and controversies that beclouded it. Despite being one of the first bills to be sent to the National Assembly in 1999, it took the bill 12 years to see the light at the end of the tunnel. The controversies that impeded its early passage and accent according to Denedo (2010: 6) were based on misconceptions that:

- ☞ It was a media law, intended to empower the mass media to the disadvantage of the public and society, particularly politicians and public office holders.
- ☞ The law was misconstrued to be targeted at hounding politicians, public officials and people in high places.
- ☞ The law was misconstrued to counteract national security, by compromising it for parochial social interests of members of the public.

Apart from these concerns which were expressed in various quarters, Behn (2001:45) notes that the FOI Bill in Nigeria was also suspected by leadership of the ruling party to be sponsored by Western interests to empower opposition parties, and to protect Western interests in Nigeria's natural resources. Other concerns hinged on the aberration of citizens' right to privacy by the FOI Bill. Clayton and Tomlinson

(2001:114) observe that the right to freedom of expression as canvassed by freedom of information of the mass media often involves an infringement of the right to privacy of the person whose affairs are being discussed. This creates potential conflict for the two rights considered to be of fundamental importance.

These misconceptions resulted into bitter, acrimonious and malicious debates at the floor of the two chambers of the National Assembly between proponents and opponents of the bill, leading to several behind the scene manipulations and attempts to kill the bill. The global push for democratic values, transparency and accountability in governance, and the push for rule of law however, made it difficult for critics who wanted the bill dead at all costs. Consequently, the bill became law on the 28 of May 2011 after undergoing several amendments. With accent to the Freedom of Information Bill by President Goodluck Jonathan, making it an Act of the National Assembly and a Law of the Federation on May 28, 2011; Nigeria became the second country along with Liberia (2010) to adopt a comprehensive right to information law in West Africa (Denedo, 2011:17).

The eventual emergence of the law after a tortuous journey had being hailed locally and internationally as one of the most remarkable achievements of the current democratic experience in Nigeria. Underscoring why the FOI Act 2011 was hailed, it is pertinent to echo on the observation of Clayton and Tomlinson (2001:115) note too however, that the right to freedom of expression overrides the right to privacy and can only be restrained when the information is of potential risk to the lives of the people involved. Citing Hoffmann (1994), Clayton and Tomlinson (2001:116) say freedom of information "is a trump card which always wins". They underscore this with the view of a Supreme Court ruling in United Kingdom that:

Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does

not provoke violence. Freedom to speak inoffensively is not worth having.

Now that freedom of information has become a law in Nigeria, we may ask who are rights holders? Who are the beneficiaries? Does the right to information belong only to the mass media? Or is it a right that ultimately belongs to the public? What are the rights and responsibilities of the mass media under the Act? Are there liabilities associated with the rights and responsibilities accorded the mass media in the Act? We shall attempt to answer these questions within the context of the social responsibility paradigm.

The Rights

Just like the constitution of Nigeria, the Freedom of Information Act is not explicit regarding rights of the mass media; rather, the rights of the mass media are subsumed in Article 2, Subsection 1 of the FOI Act as follows:

Notwithstanding anything contained in any other Act, law or Regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is hereby enlisted.

In the preceding sentence, the freedom of information Act establishes the "rights of all citizens including the mass media to access information in whatsoever context and format". This provision underscores the suspicions that trailed the Bill as a mass media bill, notwithstanding this provision clearly shows why passage of the Act has been hailed as the only panacea for a transparent, accountable and corrupt free society. Though order sections of the Act provides guidelines for access to information, and the attendant consequences for refusal to tender information, our concern is on the rights guaranteed, as

such Article 2, Subsection 1 and (a) as highlighted underscores the essence of the discourse.

The Responsibilities

Every right on earth confers on the right holders certain responsibilities that they must necessarily fulfill in order to enjoy their rights (Momoh, 1996:64). As such, while the FOI Act guarantees the right of the mass media to access information, it demands responsibility which could become a liability, implying that the mass media must at all times ensue:

- ☞ Accurate and factual reports.
- ☞ Fair and balanced reports.
- ☞ Promote the right of the public to be informed.
- ☞ Build trust between the public and government.
- ☞ Engender participation in the democratic process by serving as a forum for public policy debate.
- ☞ Balance their rights with those of the community and individual members of society.
- ☞ Reflect in their conduct that both freedom of information and regulation are indispensable in secular societies.
- ☞ Promote transparency and accountability in governance.
- ☞ Engender development by covering self-reliant community initiatives and social development activities of society.

Balancing the Rights with the Responsibilities

Mann (2006:11) notes that “liberty means responsibility”. This implies that with the enactment of the FOI Act the mass media and journalists in Nigeria have more responsibilities and obligations to society, more than ever before; they must therefore, balance their rights with the accompanying responsibilities by recognizing:

- ☞ Self-regulation as the best checks for professional conduct remedy for their shortcomings that could lead to liabilities.

- ☞ Ethics of the profession as a compelling obligation and catalyst for responsibility.
- ☞ The right of the public to also demand for information held by the mass media and journalists.
- ☞ That the right to access information is not absolute and requires decorum.
- ☞ Holding themselves accountable before seeking accountability from government and other societal agencies as well as members of the public.

It is our belief that only when the rights are balanced with the accompanying responsibilities that the FOI Act will truly serve as a shield for the public and mass media and expand the frontiers of democratic governance in Nigeria. It is in the inherent realization of responsibility as panacea for professional conduct that even the libertarian perspective which advocates absolute freedom is quick to caution that such freedom should not be misconstrued to mean immunity of the mass media to the rule of law and the canons of civilised social conduct in society. This totally concurs with the social responsibility perspective which recognizes self-regulation as the socially acceptable behaviour of the mass media.

Conclusion

In recognition of the integral role the mass media play in shaping the social context in which policies are developed, it is apparent that the enactment of the FOI Act has strong backing for the Nigerian mass media's role in society. In spite of the passage of the FOI Act however, Nigerians are yet to fully recognize the rights of the mass media to access information. This is evident in the recent assault on the Leadership Newspaper's photojournalists by the security operative of Lagos University Teaching Hospital (LUTH) for attempting to take photographs of the remains of the Dana Air crash victims at the LUTH morgue. This situation reminds us of the

turbulent times the journalism profession and journalists in Nigeria passed through over the decades under repressive regimes that were intolerant to opposing voices irrespective whether they represented truth as aspirations of generality of Nigerians.

In spite of the then constraining environment which discriminated against the mass media and journalists through denial of access, harassments, assaults, arrests and prosecutions as well as proscription and seizures of publications, closing of media houses and withdrawal of broadcast license(s), the media thrived. Even assassination of journalists could not stand in the way of the Nigerian media in their quest for an open society that guarantees citizens right to information and expression. If the media can thrive in such an environment, there is no better opportunity than now. The Nigerian media must therefore utilize their rights to the benefit of society and take maximum responsibility for their professional conduct using the FOI Act as a legal instrument.

Recommendations

The despite enactment of the Freedom of Information Act, repression of freedom of the mass media from having access to certain information particularly those held by government and its agencies is glaring. Also, most journalists are not well vast with the Act and often ignorant of the rules and procedures for seeking access to certain information. This has led to a blame game that in turn has adversely affected the type of information members of the public access with varying implications on sociopolitical and economic stability of Nigeria. While the mass media accuse government for secrecy and lack of transparency, the government accuses the mass media of unethical and irresponsible conduct. The blame game affects the extent to which the FOI Act can be utilized for the sociopolitical and economic development of Nigeria. To consolidate Nigeria's democratic governance and enhance development under the freedom of information Act 2011, therefore, the paper recommends:

1. Advocacy for tolerance to the rights of all citizen and journalistic independence that would empower all sectors of society towards development.
2. NGOs, CLOs and the public should support journalism integrity in Nigeria by assisting journalists through cooperation to enable them serve the public better.
3. CLOs and NGOs should support journalists in their work, and encourage professional solidarity by providing logistics to abused journalists to seek justice.
4. CLOs and NGOs should mediate in fostering understanding about the importance of media freedom in society by educating Nigerians on the benefits.
5. Advocacy for the repeal of the abhorrent laws that may contradict the FOI Act and lead to prolonged litigations regarding access to certain information.
6. Professional associations and statutory bodies such as the Nigerian Union of Journalists (NUJ), the Nigerian Institute of Public Relations (NIPR) , Nigerian Press Council (NPC), Broadcasting Organisation of Nigeria (BON) amongst others should assist journalists and media organisations in sensitizing the public on the gains of the FOI Act as well as the collaboration required to make it work.

References

- Ball-Rokeach, S. J. (1998). "A Theory of Media Power and a Theory of Media Use: Different Stories, Questions and Ways of Thinking" In *Mass Communication and Society*. Vol. 1, No. 2, pp.1 – 40.
- Behn, R. D. (2001). *Rethinking Democratic Accountability*. Washington, D.C.: Brookings Institution Press.
- Clayton, R. & Tomlinson, H. (2001). *Privacy and Freedom of Expression*. Oxford: University Press.
- Denedo, T. (2010). "FOI Agenda and Need for a United Front". In *Freedom of Information and Society*. Vol. 2, No. 1, pp.6 – 9.
- Denedo, T. (2011). *Understanding the Freedom of Information Act 2011: A New Tool for Effective Citizen Engagement*. Lagos: Media Rights Agenda.

[http://www.mediarightsagenda.net/pdf%20files/FOI Act 2011 signed.pdf](http://www.mediarightsagenda.net/pdf%20files/FOI%20Act%202011%20signed.pdf) (Accessed Tuesday, August 2, 2011).

Edwards, D. & Cromwell, D. (2005). *Guardians of power: the myth of the liberal media*. London: Pluto Press.

Egbon, M. (1996). "Press Ownership and Control". *Report of the First Regional Conference of the WAPC*. Held at Abuja - Nigeria, October 7 - 10.

FOI Act 2011. www.fmi.gov.ng/foi.ng (Accessed Thursday, July 28, 2011)

Henderson, K. (2005). *A Regional Strategy for Promoting a Free Media and Freedom of Expression in the Middle East and North Africa: Decriminalizing Defamation and Insult Laws Against Journalists and the Media Through Legislative Reforms, Executive Decrees and Prioritized Law Enforcement Policy Statements*. Washington, DC: International Foundation for Electoral Systems.

Mann, M. M. (2006). "Freedom of the Press: Right holders and Responsibilities Under the Charter". *Report of Canadian Round Table on Freedom of the Press*. Held at Regina-Canada, February 3 - 5.

McQuail, D. (2005). *McQuail's Mass Communication Theory*, Fifth Edition. London: Sage Publications Limited.

Momoh, T. (1996) "Press Freedom and Accountability". *Report of the First Regional Conference of the WAPC*. Held at Abuja - Nigeria, October 7 - 10.

Ndolo, I. S. (2011). "Media as the Fourth Estate of the Realm: Real or Imagined". In Ndolo, I. S. (Ed.) *Contemporary Issues in Communication and Society*. Enugu: Rhyce kerex Publishers.

Spitzer, R. J. (1993). "Introduction: Defining the Media-Policy Link - Media and Public Policy." In Spitzer, R. J. (Ed.), *Media and public policy*. Westport: Praeger.

UDHR (1948). *United Nations Universal Declaration of Human Rights*. Geneva: United Nations

UNCHR. Article 19. www.article19.org (Accessed Thursday, July 28, 2011).

- (1999) *Constitution of the Federal Republic of Nigeria*. Abuja; Federal Ministry of Information.