"PRESS FREEDOM, THE NIGERIAN JOURNALIST AND THE FREEDOM OF INFORMATION (FOI) ACT: WHAT DOES THE LAW SAY?"

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ABSTRACT
The press and government in Nigeria are like two strange bed fellows. Despite global changes in Human Rights issues and efforts by other countries in the world to entrench every aspect of human rights into their nation’s constitution, Nigeria shows no tangible commitment towards freedom of expression as a pivotal aspect of our fundamental human rights. This paper looked at the concept of freedom of expression and its effectiveness in Nigeria. It also viewed the role of the Nigerian journalist and how he has been encouraged to practice his profession, the nature of journalism, its functions and how effective the practice of journalism has been in Nigeria. The problem of this paper is the harsh environment under which Nigerian journalist operate, the repressive press laws trailing him in pursuant of his duties and the risks occasioned by these deplorable work conditions. The crux of this paper, however, is that the expected relief from the recent Freedom of Information Act 2011 turned out to be a placebo. The Act offered the media, no specific protection. It merely imposed duties and responsibilities on the media without explicitly providing the media any right or privilege beyond the general right to freedom of expression guaranteed all other citizens.

KEY WORDS: Press-freedom, Journalist, Information-Act, Immunity, Repressive-laws

INTRODUCTION
Throughout the history of mankind, people have really fought for the freedom of speech. Laws have been passed and wars fought over people's rights to express ideas publicly. Freedom of expression is a fundamental human right which is universally acclaimed and entrenched in the constitutions of most countries of the world, following the Human Rights Declaration of 1948 by the United Nations. Section 39(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) states that:

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

The basic role of the press is to uphold the fundamental objectives contained in the Nigerian Constitution by holding the government responsible for, and accountable to the people. This explains the precarious position the media occupies in the socio-economic and political life of the people. The media ranks next, after the three arms of the government, hence it is termed "The Fourth Estate of the Realm". A run through all the Nigerian Constitutions up to the most recent, which is, that amended in 2011 shows that the media is accorded very prominent position. Many societies owe their social development to the dynamism of freedom of expression.
Press freedom is actually an extension of freedom of expression. The concept of press freedom has been an age long principle of the custodian of information. Hence, everyone in every nation is in favour of it and shall be very glad to protect it. Accordingly, Stevenson (1995:63) rightly observed that:

"everyone is in favour of freedom of press. The problem is a lack of agreement on what it is and who has it..."

This simply means that press freedom is still a rare commodity in the world. This is why Nigerian journalists, like their counterparts in some countries of the world, are still agitating for press freedom today. Press freedom is the journalist's liberty to disseminate information without fear or interference. Blackstone (2001:1) described the concept of liberty or freedom of press thus:

"The liberty of the press is indeed essential to the nature of the free state, but this consists in laying no previous restraint upon publications... Everyman 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 temerity".

Simply put, press freedom will therefore mean "the freedom a journalist has to perform his duties without interference of any kind, while still maintaining ethical standards". Freedom of press is very essential to a democratic state and its denial will lead to grave consequences. For as Kofi Anan (2003:23) rightly posited:

"In every society, freedom of the press is essential to transparency, accountability, good governance and the rule of law. It cannot be suppressed without the consequences for social cohesion and stability. when it is sacrificed, whatever the reason invoked, the chances are that conflict is not far down the road".

Concurring to the above views, Fatai Williams (1981), former Chief Justice of Nigeria opined that:

"When men and women are driven away from public arena where debate is free, they are driven into cellars where revolutions are borne, it is even better to have uproar than whisper"

This further emphasises the consequences of gagging the press or restricting journalists by interfering with their sources and means of acquiring information for dissemination to the public.

LEGAL BASIS FOR PRESS FREEDOM IN NIGERIA
Press freedom and freedom of expression are the same subsets of freedom of information. It is virtual and global. It thus deserves the attention given to it by the world powers such as the United Nations Organisation, the European Union, and the African Union who have incorporated in their conventions and charters, freedom of expression as a fundamental human right. Article 19 of the Universal Declaration of Human Rights, Article 9 of the African Charter on Human and People's Rights and Article 10 of European Convention on Human Rights all contain provisions for ensuring freedom of opinion and expression. Article 19 of the UDHR (1948) succinctly states that:

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

Since Nigeria subscribes to all these conventions, they form the legal basis for press freedom in Nigeria. The scope of press freedom however depends on individual countries of the world, and the extent of the relationship of the media and the government in each country. The question therefore is, do Nigerian
journalists enjoy freedom of press and expression, do they effectively carry out their duties irrespective of the very many laws they have to obey, most of which often infringe their freedoms in the discharge of their duties? Has the metamorphosis of the Freedom of Information Bill to the freedom of information Act brought succour to the Nigerian Journalist? Is he adequately covered by the provisions of this Act? Is there any special immunity covering him in the conduct of some of his sensitive duties such as publishing classified and confidential matters. These are some of the questions this paper seeks answers to.

THE JOURNALIST

Professionally, a journalist is a person who performs journalistic functions. Oftentimes, he is generally referred to as a reporter. Onwubere (2000: 86) lists these journalistic functions to include: gathering, processing and disseminating information to the audience of mass media. According to Lawrence (1988:6), a journalist is:

Any professional person who collects, prepares and edits information for publication or broadcast. Information is taken to mean news, background and commentaries.

He is obviously not a passive or a docile player in the realm of governance. He is rather an active participant who not only gathers information to disseminate to the audience but equally processes information for, easy access, comprehension and for the benefit of the general public. In line with this view, Donsbach, cited in Kunczik (1998:11) defined a journalist as “someone involved in shaping the content of mass media output, be it gathering, evaluating, sighting, processing or disseminating news, comment or entertainment.” To be able to effectively carry out these functions, a journalist must understand the nature of the profession. The question therefore is: what is the nature of the journalistic profession, and especially in Nigeria?

JOURNALISM

There are diverse views and opinions as to what the definition of journalism is. Wikipedia defines journalism as “the discipline of collecting, verifying, reporting and analysing information gathered, regarding current events, including trends, issues and people”. Anola (2005:3) cited in Ogunyombo (2006:13) defined journalism as the “gathering, preparing and communicating of news and current affairs.”

These definitions simply acclaim the fact that journalism, by its nature avails people of necessary information which they require for making meaningful decisions in life. This is rather a privilege, so those who are trained to perform journalistic functions must do so under the observance of certain ethical rules. Hence, the journalist must consider himself as a selfless entity working first and foremost for the people rather than himself. In every democracy, journalists work for the country, city or community. For according to Dardene (2005:6) cited in Ogunyombo, (Ibid) “journalism exists because of people, not the company, nor government nor editors and publishers”.

THE NATURE OF JOURNALISM

Journalism practice differs from one society to another due to the “political philosophies” operating in the different societies. Siebert, Peterson and Schramm in propounding the Four Theories of the press (Authoritarian, Libertarian, Soviet-Communist and Social Responsibility theories) in 1956 rightly stated that the “media of every nation takes the form and colouration of the government under which they operate”. The form and colouration of the government in Nigeria, right from the colonial era to present democracy has been very repressive for journalism practice. The opponents of press freedom claim that the press has gone too far in exercising its freedom to publish under the guise of a freedom of speech provided for in the democratic constitutions. Hence, the concept of press freedom has not actually been sincerely addressed by any known government in Nigeria. The different governments have all only paid “lip service” to it.
Consequently, journalists are faced with all kinds of hazards on their jobs. Ekpu (1996:47) identifies some of these hazards as ranging from mere arrests and torture to maiming and killings. The Nigerian situation is among the very bad cases of media repression worldwide. He remarked that though many journalists were regularly tenants in several prisons, the turning point of the hazards of the profession was the brutal murder of Dele Giwa, former Editor-in-Chief of Newswatch in 1986.

In the wake of all these, the proposal for the Freedom of Information Bill (FOIB) came as a most welcome relief to most Nigerians and particularly the journalists. They have followed its journey from birth, over 12 years ago to actualization on 24th May 20011 with very keen interest. Whether or not the actualization of the Freedom of Information Act (FOI) has and will enhance the nature of journalism and good journalism practice in Nigeria is part of the worries this paper tries to unravel.

Since journalism began in 1859, the profession has witnessed remarkable changes in size and composition. In the views of Omu (1996:1), the profession has metamorphosed from “a place of refuge for frustrated and depressed people in the 19th century and an unprofitable frustrating and soul depressing career of the 1930s to an attractive dignifying and much sought after profession in the 1990s. How really attractive this profession will continue to remain with the enactment of the FOI Acts is another interest of this paper.

GENRES OF JOURNALISM

This refers to the different sequences or categories under which journalistic writings or specialised works of professional journalists can fall. Esiri (2005:25) call them the different scopes of the activities of journalists. There are quite a variety of these journalistic activities but only a few general or commonly used ones are listed below.

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The journalists perform their functions under any of these genres of journalism.

FUNCTIONS OF JOURNALISM

Among other things, journalism as a profession, in the words of Marshal McLuhan, has turned the world into a global village. This is perhaps the most valued function of the profession as this encompasses other functions. In Enahoro’s views, “journalism is a profession meant for only those “who want to help to save the world”. He posits that journalists are hired labourers whose responsibilities are not to their employers but to the human race”. (Enahoro in Akinfeleye (1990:21). Journalism practices the natural law of justice and serves as the people’s court. It helps to ensure that government serves rather than exploit the people. It makes the people better citizens by making their lives better through valuable information they receive from the press. (Dardenne Op.cit) In trying to unite and strengthen both society and individuals, journalism serves democracy. To accomplish these all important tasks, journalists must therefore be given a free to access information rather than, use punitive legislation to intimidate them.

A notable communication scholar, Harold Lasswell classified the functions of communication into four basic items viz: Surveillance, Correlation, Socialization, Entertainment. All these are within the purview of the business of the journalism as each function of communication can be discretely performed by a journalist under the above listed genres of journalism.
The Nigerian journalist is endangered specie as he is bombarded with all kinds of dangers in the pursuit of his duties. He is often harassed, persecuted, detained and sometimes maimed in his search for information and truth. In spite of all these, he still stands by his profession and bears the consequences and pays the price of choosing a noble profession.

Right from the colonial masters, through independence, to the period of neo-colonialism, to the current post-independence democratic era, the Nigerian journalist has suffered different kinds of injustices, repression and humiliations in the line of duty. Way back as 1925, 1928 and 1929, notable Nigerian journalists or co-owners of newspaper were either being sent to jail or fined some huge amounts of money, over the mere expressions of their views or for publishing the truth.

Even after independence, Nigeria still operates some obnoxious press laws which were enacted by the colonial masters. Some of these laws are: the Newspaper Ordinance which was re-baptised in 1964, the Official Secrets Acts (1962), Defamation Act (1961) the Seditious Publication Act (1961). A host of draconian decrees under the various military government such as Decrees 2 (State Security), Decree 4 and decree 11 (Protection Against False Accusation), decree 12 (Prohibition of circulation) just to mention a few.

This anti-press culture equally came in form of prosecutions, arson or closure of some print media houses. The face off between the government and the press climaxed in the killing of Dele Giwa (Chief Executive of Newswatch Communications in 1986 by persons suspected to be agents of the state (Umoru, 2006:10).

It is true to observe that, the return to civil rule may have improved the relationship between government and the press, but then, Nigeria is not yet a free and open society. The signing into law of the FOI Act, not withstanding, several press organisations in Nigeria are still not emancipated from the fear of censorship. Despite the proliferation of rights, the constitutional provisions for the press have not been fully enforced. Both the military regimes and civilian administrations have severely violated the constitutional provisions for press freedom.

The media, fondly called the Fourth Estate of the realm is a powerful tool for shaping and influencing people’s minds and opinions. If not properly handled, could become dysfunctional and portend grave consequences for the entire nation. Perhaps, our future hope for a better Nigerian press lies in the provisions of this almighty Freedom of Information (FOI) Act of 2011. What it says and the provisions it has made for the protection of the journalist in pursuant of his duties is the meat of this paper!

The FOI Act provides for the legal right of every Nigerian to access information, records and documents from the government and private bodies carrying out public functions. The Act sets the limits, within which the government and other private bodies must make information available on request for anyone who needs the information. Where access is denied, there are provisions in the Act for judicial review and legal redress.

The FOI Act applies to all arms of the government – the Executive, Legislative and Judiciary. However, there are certain categories of information that are exempted from the general right of access. These include: information on defence and security matters, conduct of international affairs, law enforcement investigations, trade secrets, financial, commercial, technical and solicitor/client privilege and information on test and examination.
The FOI Act passed through the normal legislative procedures of 3 readings and a public hearing from its proposal 12 years ago until it was signed into law by President Goodluck Jonathan on 24th May, 2011.

The FOI Bill Proper
Has 32 sections including:
1. Commencement
2. Short Title
3. Information about government Institution
4. Request for access to records
5. Time for granting or refusing applications
6. Transfer of application
7. Extension of time limit for granting/refusing application
8. Where access is refused
9. Fees
10. Record keeping/maintenance
11. Destruction or falsification of records
12. Exemption of international affairs and defence
13. Exemption of laws enforcement and investigation
14. Training of officials on the right to information and on the effective implementation of this bill
15. Exemption to personal information
16. Exemption of third party information
17. Exemption of professional or other privileges conferred by law
18. Exemption of course or research material
19. Severability
20. Denial by a public institution to disclose records
21. Judiciary Review
22. Hearing in a summary way
23. Access to information by court
24. Court to take precaution again disclosing information
25. Burden of profession
26. Order to disclose information
27. Exempted materials
28. Protection of Public Officers
29. Documents under classification
30. Submission of reports
31. Complimentary procedures
32. Interpretation.

Title: Freedom of Information Act 2011
An in-depth review of the different sections of the FOI Act clearly shows that no specific consideration was given to the journalist irrespective of the dangers inherent in his job. The Act merely addresses all the Nigerian citizens collectively as though there is no recognition of the precarious nature of the journalistic profession. Apart from S17(a) which merely glosses through the protection of all the professionals and other privileges granted by law, there is really no particular reference to journalists or even the media as a whole. The Act is more or less a re-classification of “the classified documents” as previously contained in the Nigerian constitution.

The lawyers have often argued that the journalists are part of the general society and are ordinary citizens like every other person, and so need not be accorded any preferential treatment because of their job situations. In the same vein however, it must be unequivocally stated that journalists need not be lopsided with the general public. This is neither because they are exceptional citizens or a special breed but because they are an endangered specie who go the very extra mile to serve and save their nation at the very expense of their lives.

Journalists are not unaware of the fact that there is the dire need for them to maintain the confidentiality of their sources of information otherwise, their sources will dry up. Ethically, journalists are professionals who will not for whatever reason divulge their sources of their information. One would therefore, expect
that these two points would have given the government enough confidence to make every information pertaining to public interest open to the journalists, irrespective of government’s own interest. Hence, to say that journalists need not be recognised for a specific grant of right to unlimited access to information is, to say the least, unfortunate.

CONCLUSION
The long wait for the FOI Act, from the time the bill was proposed in 1999 to its actualization as an Act on 24th May 2011 (12 years after) has been like a hope dashed. The expectations of succour from this Act, was not, after all, achieved. This Act which contains more exemptions on the very crucial areas of public interest than the general areas of need is definitely not in favour of public interest. The lack of immunity or any specific right or / and protection for journalists makes the provisions of the Act incomplete. The Act clearly jeopardises the aspirations of the journalists for a free press. The sections on exemption (Sections12, 13-15, 16-18, 28 & 29) are the main areas of press interests, particularly, S29 which further emphases the secrecy of “the classified documents”. Besides, the few cases judged since the inception of this Act has equally shown that the cases are generally under the judges’ mercy. In observing S24 of the Act (Court to take precautions against disclosing information), the judge may, as his spirit directs him, disqualify a request for access to any information being sought by the applicant.

The FOI Act has given a blanket authority (though with some exemption clauses) to every citizen to access information from any public institution without hindrance. While this may be adequate for the general public who may require the information being sought for just one or two single circumstances of public interest, the journalists require some large amounts of information and on regular basis, in pursuance of their duties. This calls for some special coverage or protection. Should there still be documents regarded as classified and confidential to the journalists? If there are, then, it means the government is merely giving powers to the citizens without coverage. Until such a period when our law makers will consider it necessary to compel the government to give the press the free hand they require for the effective performance of their watchdog function, then the social responsibility function of the press will be a wild goose chase!

Both the constitution of the Federal Republic of Nigeria (S22) as amended and the FOI Act of 24th May, 2011, merely imposed duties and responsibilities on the media without explicitly giving the much acclaimed Fourth Estate of the realm any right or privilege beyond the general right to freedom of expression guaranteed all other citizens. The Act offered the media, no specific protection. This situation is not peculiar to Nigeria alone. Journalists should actually be seen as neutral entities whose business is merely to pass across information social development not for any particular bias. Until the current situation changes, our social development will continue to be in the hands of those who genuinely do not have much to offer humanity!
REFERENCES