Public Broadcasting in Africa Series: Nigeria

Akingbulu, Akin

Published by African Minds

Akingbulu, Akin.
Public Broadcasting in Africa Series: Nigeria.
Project MUSE. muse.jhu.edu/book/17531.

For additional information about this book
https://muse.jhu.edu/book/17531

For content related to this chapter
https://muse.jhu.edu/related_content?type=book&id=587289
1 International, continental and regional standards

Nigeria is party to a number of international and regional legal documents relating to freedom of expression. As a member and key player in continental and regional institutions such as the African Union (AU) and the Economic Community of West African States (ECOWAS), the country is expected to be subject to their governing instruments.

1.1 United Nations

The following instruments of the UN are relevant to freedom of expression:

The United Nations Universal Declaration of Human Rights (adopted in 1948)

The Universal Declaration is not a treaty that is ratified by states and thus legally binding. However, scholars now regard it as either having itself become international customary law or as a reflection of such law.19 In either case the inclusion of freedom of expression in the declaration implies that even states that have ratified none of the relevant treaties are bound to respect freedom of expression as a human right.

Article 19 of the Declaration deals with the right to freedom of expression:

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.

---

International Covenant on Civil and Political Rights (enacted by the United Nations in 1976)
The International Covenant on Civil and Political Rights (ICCPR) is a treaty that elaborates on many of the rights outlined in the Declaration. Nigeria acceded to the Covenant in 1993, but has not incorporated its provisions into domestic law. The Covenant’s article 19 declares:

1) Everyone shall have the right to hold opinions without interference;
2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The UN Educational, Scientific and Cultural Organisation’s (UNESCO) Windhoek Declaration, like other non-treaty documents, has moral authority by representing a broad consensus of the international community on the detailed interpretation of the Universal Declaration and other relevant standards as they relate to the press in Africa.

Article 9 of the Windhoek Declaration states:

[We] declare that
1) Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.
2) By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.
3) By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community.
1.2 African Union

Nigeria is a member of the African Union (AU), whose Constitutive Act states that its objectives include the promotion of ‘democratic principles and institutions, popular participation and good governance’ (article 3[g]).

The most important human rights standard adopted by the AU, or its predecessor, the Organisation of African Unity (OAU), is:


Nigeria acceded to the Charter in 1983, and domesticated it in national law the same year.\(^{21}\) Article 9 of the Charter states on freedom of expression:

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

The African Commission on Human and Peoples’ Rights (ACHPR) is the body established under the Charter to monitor and promote compliance with its terms.

**Declaration of Principles on Freedom of Expression in Africa** (adopted by formal resolution by the ACHPR in 2002)

In 2002, the African Commission adopted this Declaration to provide a detailed interpretation for member states of the AU of the rights to freedom of expression outlined in the African Charter, stating in its article I:

> Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

---


\(^{21}\) African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act (no. 2 of 1983). The status if the African Charter in Nigerian law and its relationship to the constitution was the subject of litigation under the military regimes: in the case of *Abacha and Others v. Fawehinmi* (2001) AHRLR 172 (NgSC 2000), heard under military rule, the Nigerian Supreme Court overruled the Court of Appeal to find that the African Charter could not be superior to the Constitution, but had status as just another piece of national legislation.
It goes on to say in article II:

No one shall be subject to arbitrary interference with his or her freedom of expression; and
Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society.

The Declaration details how such freedom of expression should be realised. Of particular relevance to this study is the statement regarding public broadcasting (article VI):

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

The document also states that freedom of expression ‘places an obligation on the authorities to take positive measures to promote diversity’ (article II), that community and private broadcasting should be encouraged (article V) and that broadcasting and telecommunications regulatory authorities should be independent and ‘adequately protected against interference, particularly of a political or economic nature’ (article VII). The Declaration furthermore provides for freedom of access to information and states that ‘the right to information shall be guaranteed by law’ (article IV).

_African Charter on Democracy, Elections and Governance (2007)_

This Charter highlights the importance of access to information in a democracy. It states:
[State parties shall] promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs. (Article 2(10))

State parties shall ... ensure fair and equitable access by contesting parties to state controlled media during elections. (Article 17(3))

Records at the ministry of justice show that Zambia has yet to accede to this Charter.

1.3 Economic Community of West African States

The Treaty Establishing the Economic Community of West African States (1993)

Nigeria is a member of the Economic Community of West African States (ECOWAS). The ECOWAS Treaty, the founding document, was first adopted in 1975 and revised in 1993.

Under article 65 of the Treaty, member states undertake to:

- coordinate their efforts and pool their resources in order to promote the exchange of radio and television programmes at bilateral and regional levels;
- encourage the establishment of programme exchange centres at regional level and strengthen existing programme exchange centres;
- use their broadcasting and television systems to promote the attainment of the objectives of the community.

Under article 66, member states further undertake to:

- maintain within their borders and between one another, freedom of access for professionals of the communication industry and for information sources;
- facilitate exchange of information between their press organs, promote and foster effective dissemination of information within the community;
- ensure respect for the rights of journalists;
- take measures to encourage investment capital, both public and private, in the communication industries in member states;
- modernize the media by introducing training facilities for new information techniques;
- promote and encourage dissemination of information in indigenous languages, strengthening cooperation between national press agencies and developing linkages between them.
ECOWAS Protocol on Democracy and Good Governance (2001)22

In 2001 member states of ECOWAS adopted a protocol to the treaty which established standards on good governance to apply in the West Africa region. Heads of state agreed to respect a range of principles relating to free political activity, the rule of law and respect for human rights. One of these principles, set out in section 1.1(k), is that:

The freedom of the press shall be guaranteed.

1.4 Other documents

African Charter on Broadcasting (2001)

This Charter was adopted by media practitioners and international media and other human rights organisations at a UNESCO conference to celebrate ten years of the Windhoek Declaration. Although it has not been endorsed by any inter-state structures, it represents a consensus of leading African and other international experts on freedom of expression and media.

The Charter specifies, amongst other things, that there should be a three-tier system of broadcasting (public, private and community), demands that ‘[a]ll state and government controlled broadcasters should be transformed into public service broadcasters’, and states that regulatory frameworks should be based on ‘respect for freedom of expression, diversity and the free flow of information and ideas’.

2 The Constitution of Nigeria

Two sections of the 1999 Constitution contain the key provisions on freedom of expression and the media.

The ‘Right to freedom of expression and the press’ is articulated in chapter IV which deals with Fundamental Rights. Section 39(i) 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.

Subsection 2 specifies further:

Without prejudice to the generality of subsection 1 of this section, every person

22 Protocol on Democracy and Good Governance Supplementary To The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security A/Sp1/12/01.
shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions.

With regard to broadcasting, however, the same subsection goes on to make an important exception:

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.

This section thus empowers the president (and not an independent regulator) to license broadcasters.

Subsection (3) sets out a number of limitations on the right to freedom of expression and the press:

Nothing in this section shall invalidate any law that is reasonably justified 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 cinematograph 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 federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

While subsection 3(a), among others, lays the constitutional basis for the regulation of broadcasting and telecommunications in general, subsection 3(b) allows for laws restricting freedom of expression for civil servants, such as the Official Secrets Act.

Chapter II of the Constitution deals with ‘Fundamental Objectives and Directive Principles of State Policy’. These are listed in detail in sections 13 to 21 and range from the overarching goal ‘to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity’, to ensuring that ‘all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment’. The chapter spells out that ‘Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable’ provide
free education at all levels, and also includes the broad environmental goal to ‘protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria’.

Section 22 refers specifically to the role of the media in regard to these objectives and principles of state policy:

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 media and citizens in general are known to cherish and actively exercise their freedom of expression in Nigeria. For example, according to a study conducted in 20 countries across the world in 2008, 91 per cent of Nigerian respondents say it is important to have freedom of the media. Other countries where a large proportion of respondents expressed that opinion are the United States (88 per cent), Great Britain (88 per cent), France (80 per cent), Egypt (96 per cent), South Korea (93 per cent) and India (52 per cent). Nigerians have one of the largest majorities rejecting the argument that the government should have the right to restrict media freedom to ensure stability (supported by just 28 per cent), instead expressing themselves in favour of the media having the right to publish news and ideas without government control (71 per cent).23

Nigeria ranks second (with 70 per cent) among countries where a majority of citizens would like to see more press freedom. The others are Mexico (75 per cent), China (66 per cent), South Korea (65 per cent), Egypt (64 per cent), the Palestinian Territories (62 per cent), Azerbaijan (57 per cent), Jordan (56 per cent), Indonesia (53 per cent) and Peru (51 per cent).24

A series of surveys conducted by Afrobarometer in which Nigerians were asked to assess the present state of fundamental liberties have shown a marked decline in positive perceptions since 2000. While freedom of speech rated a high of about 90 per cent in that year (respondents saying the present system is relatively better), this figure went down to about 85 per cent in 2001, 65 per cent in 2003, and 45 per cent in 2005. Freedom of association and electoral freedom have similar ratings.25

This rating is a reflection of the increase in violations of the rights of journalists and the media in general over the past few years. When the military rulers returned to the barracks in 1999, Nigerians hoped that the era of persecution of media workers

was over and that the new civilian era would be characterised by respect for the constitutional right of freedom of expression as well as a favourable environment for the media to operate. This was not to be.

What looked like sporadic violations in the early period of the present civilian era has gradually grown into a more systematic attack on freedom of expression and the media with diverse manifestations ranging from arrests, detentions and prosecution to closure of media houses and even murder of journalists. Officials of government, including security agencies such as the police and state security service, are responsible for most of these violations, although some proportion is traceable to non-state actors. Types of violations have included the following cases:

- A senior editor of *ThisDay* newspaper, Godwin Agbroko, was murdered by unknown persons in 2006. His killers have never been found.
- Journalists have received death threats from anonymous callers over published or advertised stories (weekly news magazines and weekend issues of newspapers usually advertise major stories of upcoming editions in other newspapers or other titles of the same stable). In one prominent instance, the editors of *Tell*, a leading news magazine, had to petition the head of the police to get protection.
- Denial of accreditation to journalists covering the beat of executive branches of government or legislatures has become common in the past eight years, starting in the Presidential Villa in Abuja in 2002. Government spokespersons cited security and space constraints as reasons, but it was widely known that the affected journalists were from media organisations which had been critical of government. The practice spread to many states, where journalists are declared *persona non grata* in the premises of executive government offices and legislatures. Things got to a point when, in the face of strong industry-wide protests, the National Assembly had to abandon a plan to ‘document’ correspondents covering its activities. The journalists were to be required to provide information on themselves and their media organisations on printed forms to be designed by the Assembly’s administration and used to determine which journalists/media would be allowed to cover its activities.
- Seizures and confiscations of media products and equipment have been reported from many parts of the country. Security operatives have seized consignments of newspapers or news magazines considered offensive by the authorities. In many cases, such raids are carried out on distributors and vendors in various city locations. Photojournalists and TV cameramen have
been victims of the brutality of government officials’ security aides who seize and damage their equipment at state functions.

- There have been a number of arbitrary closures. For example, Freedom Radio, a commercial station based in Kano, in the north-west of the country, was closed down following complaints over broadcast content in March 2006 allegedly after a number of callers on phone-in programmes had criticised the then president’s bid for the extension of his term of office. The regulatory body, the National Broadcasting Commission, said the handling of some programmes by the station lacked professional maturity, allowing audiences to make unguarded statements tending to overheat the polity and violating the Nigeria Broadcasting Code. Africa Independent Television (AIT), a Lagos-based private outfit, was closed down in October 2005 after it had aired scenes at the site of a plane crash. Detectives in May 2006 shut the offices of Insider magazine in the Ogba district of Lagos after the paper had alleged that a state governor was involved in looting state resources and laundering money.

- Arrests, detention and trial of journalists are common. Government continues to charge journalists under the sedition law which has been pronounced unconstitutional by the Court of Appeal in 1983 (see below.). Among the victims of government’s use of this law were journalists from Insider Magazine, the Daily Independent newspaper and Africa Independent Television (AIT). They were charged for reports on alleged corrupt practices in government. Government later dropped the charges.

- Assaults on journalists at public functions have become a frequent occurrence. Intemperate security details seem to enjoy inflicting harm on media professionals on lawful duty.

- Live transmission of foreign news on broadcast stations has been banned.

- Denial of advertising to media houses is a subtle economic weapon used by government agencies and private corporate organisations.

All these incidents have lowered the country’s freedom of expression and media rating by international monitors in the past few years.
Table 1: Nigeria’s international rating on the Press Freedom Index

<table>
<thead>
<tr>
<th>Year</th>
<th>Nigeria’s position</th>
<th>No. of countries ranked</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>49</td>
<td>139</td>
</tr>
<tr>
<td>2003</td>
<td>103</td>
<td>166</td>
</tr>
<tr>
<td>2004</td>
<td>(not ranked)</td>
<td>167</td>
</tr>
<tr>
<td>2005</td>
<td>(not ranked)</td>
<td>167</td>
</tr>
<tr>
<td>2006</td>
<td>120</td>
<td>168</td>
</tr>
<tr>
<td>2007</td>
<td>131</td>
<td>169</td>
</tr>
<tr>
<td>2008</td>
<td>131</td>
<td>173</td>
</tr>
</tbody>
</table>


3 General media laws and regulations

3.1 Laws and statutory regulation

The Printing Presses (Regulation) Act 1933
This law provides for mandatory registration of printing presses, books and papers. Such registration shall be through a declaration before a magistrate. A new declaration has to be made whenever the operational address changes. The law prescribes a sanction of six months imprisonment or a fine, or both, for failure to make the declaration or for making false statements in it.

The law further provides in section 4(1) that every book or paper printed within the federal territory must bear upon the front page or first and last leaf of every copy, in legible characters in the English language, the name and address of the printer, publisher and the place of publication. The penalty for contravention of this section is a fine or six months imprisonment or both.

A 1964 subsidiary law added more stringent provisions such as allowing the visit of a police officer of or above the rank of an assistant superintendent or an administrative officer to the premises of any press between the hours of 08h00 and 17h00, for the purpose of checking that the provisions of the Act have been carried out.

The Newspaper Act and Newspaper (Amendment) Act 1964
Originally a 1917 colonial ordinance, the Newspaper Act later became part of post-independence legislation. A number of states also have similar laws whose provisions are essentially the same.
The Act provides that before a newspaper is published or printed the proprietor, printer and publisher must:

- Each register an affidavit in the office of the Minster of Information. This affidavit must contain the title and name of the newspaper, description of the house or building where it would be printed and the names and places of abode of the persons intended to be proprietor, printer and publisher.
- Execute and register a bond each in the office of the Minister in the sum of N 500 [in 1964, N 500 was a large amount] with sureties.

Signed copies of each edition of a paper must be delivered to the office of the minister.

The Newspaper (Amendment) Act of 1964 sets out additional requirements:

- Every newspaper which is printed/published outside the Federal Capital Territory but circulates there, must establish an office in Abuja within 2 months from the start of circulation, and the publisher or printer must notify the Minister in writing of his compliance.
- Every newspaper has to appoint an editor, who must also swear to an affidavit as is required of the proprietor and publisher in the principal law.
- It is an offence to authorise for circulation any statement, rumour or report knowing or having reason to believe that such was false. It will not be an admissible defense for an accused to declare that he/she did not know or have reason to believe that the statement, rumour or report was false. He/she can escape punishment only if he/she shows not only that the information was believed to be true but that reasonable measures were taken to verify the accuracy of the story before publication.


The law establishes a statutory media regulatory body, the Nigerian Press Council. Its governing body consists of a chairman and sixteen other members, including a secretary. These members are to be drawn from such constituencies as the Nigeria Union of Journalists (NUJ), the Nigerian Guild of Editors (NGE), the Newspapers Proprietors Association of Nigeria (NPAN), the Broadcasting Organisations of Nigeria (BON), educational institutions, the News Agency of Nigeria (NAN), the general public and the federal ministry of information.

While the chairman of this body is to be appointed by the president of the country on the recommendation of the minister after due consideration of the submission
of the Nigerian Press Organisations’ (NUJ, NGE, NPAN), the minister appoints the members ‘after an election by or on the nomination of the union, association or other body concerned’. The Press Council reports to the Council of Ministers through the minister of information.

The Press Council’s funding sources are government grants and ‘such moneys as may be specified by the council to be provided from time to time by the NUJ, NGE, NPAN and BON’ (Section 25[b] of Act 85) as well as other funds it might receive in relation to the exercise of its functions.

The Council’s duties are to adjudicate on complaints about conduct of the press; to undertake research and documentation; to foster high professional standards; to review developments which are likely to restrict public interest information and free access to the press, and to advise on preventive or remedial measures; and to ensure the protection of journalists’ rights and privileges. The Council is vested with powers of sanctions, ranging from a reprimand to ordering the publication of apologies and making recommendations to the NUJ for further disciplinary action.

The law requires registration of all journalists, the procedure being that the NUJ will register and submit a list of registered journalists to the Council. It is an offence to practice journalism without registration.

In order to qualify for registration, a person shall have attended a course of training (in journalism/mass communication) at an institution approved by the NUJ, or shall have acquired not less than five years’ experience in journalism before the law came into effect.

In addition, an applicant for registration must satisfy the Council that he/she is of good character, has attained the age of 18 years, has not been convicted of an offence involving fraud and dishonesty, and has a good knowledge of the politics and socio-economic affairs of the country acquired from an approved institution.

If the 1992 law gave rise to a certain amount of criticism, its subsidiary, the 1999 Amendment Act, attracted strong condemnation from stakeholders.

Its controversial provisions include: (i) the powers of the council to register journalists as well as newspapers and magazines annually; (ii) the imposition of sanctions on journalists who fail to register (fine of between N 3 000 (US$ 25) and N 5 000 (US$ 41) or imprisonment for a term not exceeding two years, or both fine and imprisonment); (iii) the replacement of an industry-wide ethical code by a new version to be approved by the council, and (iv) a series of penalties ranging from a fine of N 30 000 (US$ 250) to six months suspension from practice.

A broad section of media stakeholders rejected the Amendment Act and called for its abrogation. Several industry groups, including the Newspapers Proprietors Association of Nigeria (NPAN) went to the Federal High Court sitting in Lagos to
challenge government’s position and ask for a repeal of the law. In dialogue between the government and stakeholders, it was agreed to re-visit the law and produce a version acceptable to the industry.

As it turned out, a commonly acceptable version could not be produced and the whole process got stalled. The administrative structure of the Council (offices and staff) is in place, but industry groups such as the NPAN, NGE, and NUJ are refusing to participate in its regulatory activities. There has been no further official word on the issue of registration of journalists. The industry still uses the professional code adopted by the Nigerian Press Organisation (NPO), an umbrella body of industry groups, in 1998. The code deals with issues such as editorial independence, accuracy and fairness, respect for privacy, privilege/non-disclosure of confidential sources, decency in dressing/comportment, use of language, presentation of issues, non-discrimination, and non-acceptance of reward or gratification, among others.

The split between government and the media industry further deepened in 2009. The government strengthened its control of the Council by reconstituting the board and appointing a substantive executive secretary, while the NPAN, for its part, appointed an ombudsman, a retired judge of the Federal Court of Appeal. The ombudsman is supposed to handle public complaints about alleged professional infractions by members of the association.

In 2010, the Federal High Court decided that the press council laws are inconsistent with Section 39(1) and (2) of the constitution, which guarantee the right to freedom of expression and the press, and are therefore null and void. It granted perpetual injunctions restraining the National Assembly from treating the laws as acts and the executive branch of government from giving effect to any of the provisions of the laws. But the court refused to grant relief sought by the NPAN to the effect that ‘the Press’ is not one of the matters with respect to which the National Assembly is empowered to make laws. This means that while the present press council laws are unconstitutional and should not be implemented, the National Assembly has constitutional powers to, and could still, enact other laws on press issues.

4 Other laws that impact on media and freedom of expression

4.1 Official Secrets Act (1962)

This law was designed to control access to information held by government. It creates such offences as:
• transmitting classified matter to unauthorised persons;
• obtaining, reproducing and retaining classified official information;
• entering or being in the vicinity of protected places;
• photographing or making sketches or obtaining them of such places; and
• and interfering with persons guarding such places.

The law gives extensive powers to the police – with the consent of the minister of justice – to serve warrants on individuals suspected of having classified official information. It specifies imprisonment of up to 14 years on conviction and a fine or two years imprisonment or both, on summary conviction. Failure to cooperate with a police search order is punishable by imprisonment for up to three months or a fine or both.

4.2 Obscene Publications Act (1961)

The law does not define obscenity but states rather broadly in its section 3(l):

> An article shall be deemed to be obscene for the purpose of this Act if its effect taken as a whole is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

This further complicates issues because the new key words – ‘deprave’ and ‘corrupt’ – are also not defined and, therefore, are open to any kind of interpretation.

The Act specifies penalties for publication of obscene material, namely imprisonment for up to three years or a fine or both. It also provides for the power of search and seizure of publications by the police on the order of a magistrate.

4.3 Sedition

The legislation on sedition, currently provided for in sections 50–52 of the Criminal Code Act (1990), has its roots in the Colonial Criminal Code Act of 1916.

According to section 50(1) a ‘seditious publication’ is one having a seditious intention. Under section 50(2) a ‘seditious intention’ is defined as an intention:

(a) to bring into hatred or contempt or to excite disaffection against the person of the Head of the Federal Military Government, the Governor of a state or the
government or the constitutions of Nigeria or a state as by law established or against the administration of justice in Nigeria;

(b) to excite Nigerians to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established;

c) to raise discontent or disaffection among the inhabitants of Nigeria; or

d) to promote feelings of ill-will and hostility between different classes of the population of Nigeria.

Upon conviction, the penalty for printing, publishing, selling, offering for sale, distributing or reproducing any seditious publication is imprisonment for two years or a fine or both for a first offence, while a subsequent offence attracts imprisonment for three years. Under the Penal Code (in Northern Nigeria) the offence attracts a maximum of seven years imprisonment or a fine or both. (In the Federal Capital Territory and Northern Nigeria the Penal Code applies while in Southern Nigeria the Criminal Code applies.)

Section 60 of the Criminal Code Act creates an offence for publications which tend to expose to hatred or contempt heads of other countries in their own countries. The penalty for this offence is imprisonment for two years.

Section 58 of the Criminal Code Act empowers the minister of justice to prohibit any publication which in his opinion is ‘contrary to public interest’. Importation, sale, distribution or reproduction of any such prohibited publication is punishable on conviction with two years imprisonment or N 200 fine or both for a first conviction, and imprisonment for three years for any subsequent conviction. It is up to the minister’s discretion to define ‘public interest’.

‘Injurious falsehood’ is also an offence provided for in section 59 of the Criminal Code Act. The law states in subsection 1:

Any person who publishes or reproduces any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false, shall be guilty of a misdemeanor.

A person convicted under the law is liable to imprisonment of up to three years.
4.4 Defamation

Civil defamation is covered by the Defamation Act of 1961, some state codes and case law. The Act provides, among other things:

- that reference to words shall be construed as including reference to pictures, visual images, gestures and other methods of signifying meaning.
- that the broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form.
- that justification, fair comment and qualified privilege shall be defences in defamation cases.
- for limitations on privilege such as by forbidding publication of blasphemous or indecent matter. [What constitutes ‘blasphemous’ and ‘indecent’ is not defined.]

Section 373 of the Criminal Code deals with criminal defamation. According to section 375, the punishment for publication of defamatory matter is imprisonment for one year, but any person convicted of publishing defamatory matter knowing it to be false will be imprisoned for two years.

In all these pieces of legislation there is no precise definition of defamation. Some determinations, though, can be found in court decisions and legal studies. For example, the Court of Appeal in *Nigerian Television Authority vs Ebenezer Babatope* (1996) defined a defamatory statement as

>a statement which is published of and concerning a person and calculated to lower him in the estimation of right-thinking persons or cause him to be shunned or avoided, to expose him to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.\(^\text{26}\)

4.5 Access to information

A bill on access to information is before the National Assembly. It seeks to give the public (including the media) access to information held by government agencies. Despite widespread public and media support, the bill is not having an easy ride in the legislature. Opposition by some parliamentarians has slowed its movement in the legislature.

House of Representatives. In the Senate, where it was making progress, controversy has erupted (both within and outside the Senate) over the inclusion in the bill of a provision which stipulates that a court must give the go-ahead before an intending user can demand access to any information from a government agency.

5 Jurisprudence

The attitude of courts towards freedom of expression and media has varied from case to case. This would appear to be due to factors which include the state of the law at the time of decision, the direction of precedents (decided cases) and the philosophical approaches of judges (activist or conservative). It is common for higher courts to overturn decisions of lower courts on various issues. Such decisions are illustrated in many landmark cases.

5.1 Defamation cases

*The Sketch Publishing Co & Anor vs Ajagbemokeferi (1989):* A renowned Islamic preacher was conferred with the chieftaincy title Otun Balogun Oniwasu (meaning: second in rank to the general of Islamic preachers). Sketch published a 1979 almanac titled ‘Voice of Islam’, containing photographs of eminent Muslim leaders in Nigeria, including this particular preacher, Ajagbemokeferi. Under his photograph were inserted words in the Yoruba language which translate into: ‘The second in rank to the General of Muslim preachers is a worthless and valueless chieftaincy just like chieftaincy titles of impostors and contrary to the tenets and teaching of Islam.’

Ajagbemokeferi went to the High Court, complaining of injury to his character and reputation. The court agreed that an ordinary person would regard the words in the circumstances as being capable of defamatory meaning but dismissed the action on the ground of the defence of fair comment.

The cleric appealed. The Court of Appeal found in his favour. Sketch appealed to the Supreme Court and won.

The Supreme Court judgment delivered by Justice Wali said:

... reading the whole words in the context and circumstances they were used, it is my view that they are not defamatory ... The evidence shows that from the time the words were allegedly published of and concerning the Respondent, he was not avoided or shunned. Nor did the evidence show that his status was lowered in the estimation of right-thinking men of his community or that he was exposed to hatred,
contempt or ridicule. There is no reliable evidence showing that the imputation on him is injurious to him in his office, profession, trade or business. He is still being respected as a prominent and respectful Islamic preacher by his local community. This is evidenced by his retention to continue with his weekly Friday sermon.27

Concord Press (Nig) Ltd vs Odutola: A case of plagiarism was made against a university don, against whom the University Council took action. The Weekend Concord published the story and Odutola went to court claiming N 15 million damages for libel. Concord Press put up defences of justification, qualified privilege and fair comment. The court decided in Odutola’s favour and awarded him N 10 million. Concord Press took the case to the Appeal Court and won. The court found, among others:

(a) that a man cannot succeed in libel action where he has no reputation to protect;
(b) that Concord Press successfully pleaded justification, which it held is a complete defence in an action for libel.

5.2 Sedition cases

Director of Public Prosecutions vs Chike Obi (1961): Dr Chike Obi, a mathematician and social critic, was charged with sedition for distributing a pamphlet which attacked corrupt politicians. In the pamphlet, he had stated:

Down with the enemies of the people, the exploiters of the weak and oppressors of the poor ... the days of those who have enriched themselves at the expense of the poor are numbered. The common man in Nigeria can today no longer be fooled by sweet talk at election time, only to be exploited and treated like dirt after the booty of office has been shared among the politicians.28

Despite the argument of Obi’s counsel that sections 50 and 51 of the Criminal Code were inconsistent with section 24 (on freedom of expression) of the Constitution, and that it was not a law which is reasonably justifiable in a democratic society, the High Court found Obi guilty of sedition. However, it referred the case to the Supreme Court for proper interpretation of section 50 and 51 of the Criminal Code vis-à-vis section 24 of the 1960 Constitution of Nigeria. The Court said:

A person has a right to discuss any grievance, or criticize, canvass or censure acts of government and their public policy. He may even do this with a view to effecting a change in the party in power ... What is not permitted is to criticize the government in such a malignant manner for such attacks by their very nature tend to affect the public peace.²⁹

Arthur Nwankwo vs State (1985):³⁰ In his book How Jim Nwobodo Rules Anambra State, published in 1982, Chief Nwankwo accused Chief Nwobodo, the state governor, of corruption and tyranny. The author was found guilty of sedition and sentenced to imprisonment of 12 months.

However, the Court of Appeal ruled that the law of sedition encapsulated in sections 50 and 51 of the Criminal Code was inconsistent with section 36 of the 1979 Constitution which guaranteed freedom of expression.

Justice Olatawura found:

It is my view that the law of sedition which has derogated from the freedom of speech guaranteed under this constitution is inconsistent with the 1979 constitution, more so when this cannot lead to a public disorder as envisaged under Section 41(a) of the 1979 constitution. We are no longer the illiterates or the mob society our colonial masters had in mind when the law was promulgated. The safeguard provided under Section 50(2) is inadequate, more so where the truth of what is published is no defence. To retain Section 51 of the Criminal Code in its present form, that is even if not inconsistent with the freedom of expression guaranteed by our constitution, will be a deadly weapon and to be used at will by a corrupt government or tyrant ... let us not diminish from the freedom gained from our colonial masters by resorting to laws enacted by them to suit their purpose. The decision of the founding fathers of this present constitution which guarantees freedom of speech which must include freedom to criticize should be praised and any attempt to derogate from it except as provided by the constitution must be resisted. Those in public office should not be intolerant of criticism. Where a writer exceeds the bounds, there should be a resort to the law of libel where the plaintiff must of necessity put his character and reputation in issue. Criticism is indispensable in a free society.³¹

---

³¹ See R. Akinnola, op cit., p. 184.
5.3 Cases on disclosure of news sources

Innocent Adikwu & Others vs Federal House of Representatives (1982):\(^{32}\) The editor and journalists of the *Sunday Punch* newspaper were summoned by a committee of the House of Representatives, which demanded that they disclose the sources of an article. The journalists went to the High Court, claiming that the action of the House amounted to interference with their rights under section 36 of the 1979 Constitution. The court said:

... the newspapers are agents so to speak of the public to collect information which it is in the public interest to make known, and to feed the public of it. In support of this constitutional right of press freedom the newspaper cannot be required to disclose its sources of information except in grave or exceptional circumstances, neither by means of discovery before trial nor by questions or cross-examination at the trial. Nor by means of subpoenas from courts or summons by a legislative investigating body. The reason is because if newsmen were compelled to disclose their sources of information which it is not in the public interest to make known, charlatans would not be exposed, unfairness would go unremedied. Misdeeds and serious faults in the corridors of power and elsewhere would never be made known to the public.\(^{33}\)

The case did not go on appeal.

Olusola Oyegbemi vs Attorney-General of the Federation (1982):\(^{34}\) Reacting to a story in the *Daily Sketch* newspaper, police arrested the editor and a senior reporter and demanded the name of the source. When they refused, the police charged them with ‘conspiracy to commit felony to wit: “false report”’. The journalists brought an application to the Lagos High Court for the enforcement of their fundamental human rights under the 1979 constitution. They claimed that the press could not be compelled to disclose its sources of information.

The court said:

No person be he an Editor, Reporter or Publisher of a Newspaper can be compelled to disclose his source of information on any matter published by that person and non-disclosure cannot amount to contempt.

\(^{33}\) Ibid. note 34 at p. 412, cited in Osinbajo and Fogarn, op.cit., p.65.
But the court qualified this decision:

However, this fundamental right is subject to the interest of justice, national security, public safety, public order, public morality, welfare of persons or prevention of disorder or crime. Consequently, the right to withhold information is not absolute.35

*The Senate vs Tony Momoh (1983)*36: The Daily Times published an article titled ‘MPs, Senators and Cards’, on how senators lobbied for contracts from the executive arm of government. The Senate summoned the editor to appear before it and disclose the source of the information. The editor challenged the summons in court on the ground that it infringed on his right of freedom of expression guaranteed in section 36 of the Constitution. He won in the High Court but the Senate appealed. The Court of Appeal, without reversing the editor’s victory at the High Court (he was not forced to disclose the source), stated that there is nothing in section 36 of the Constitution which contemplates any separate treatment of the news media or which confers any express or implied right on a pressman not to disclose the source of his information if he is required to do so.37

6 Conclusions and recommendations

Legislation and regulations constricting media freedom and freedom of expression which date from colonial times have been used extensively by government authorities since then and throughout the period of post-independence governance under military and civilian rulers. Fifty years after political independence, such legislation remains on the statute books and new laws are being enacted which retain the culture of harshness.

Many of these laws are in contravention of the Declaration of Principles on Freedom of Expression, which provides for the right of freedom of expression and information.

---

**Recommendations**

- The following pieces of legislation should be repealed in their entirety:
  - The Nigerian Press Council Act;
  - Legislation on sedition – sections 50–52 of the Criminal Code and section 416 of the Penal Code;
  - The Official Secrets Act;
  - The Offensive Publications Decree 35 of 1993;
  - The Printing Presses Regulation Act;
  - The Newspaper Act and Newspaper Amendment Act.

- Laws to regulate the media should respect the principles of international human rights standards, including the International Covenant on Civil and Political Rights (ICCPR), African Charter on Human and Peoples’ Rights and the Declaration of Principles on Freedom of Expression in Africa.

- The Freedom of Information Bill currently before the National Assembly should be passed into law only after a process of full public consultation to make sure that the final legislation is agreed to by civil society and other stakeholders. The Act should ensure that, among other things, access to information is granted by the state body in possession of the information sought, and that courts of law serve only as appeal mechanisms.

- An independent Press Council should be established to promote media self-regulation, enhance professional journalistic standards and serve as a complaints body for the public.