

Media Freedom in Africa: Myth or Reality?

Nwosu, Uchechukwu Wilson (Ph.D)

Institute of Public Policy and Administration, University of Calabar, Calabar – Nigeria.

uchey2000@yahoo.com; uchey2014@gmail.com

0803-7050009; 0803-7050010; 0805-2555366.

Ata-Agboni, Joy Uyo, (PhD)

Department of Public Administration,

Faculty of Management Sciences, Kogi State University,

Anyigba, Nigeria

joyagboni@gmail.com

Abstract

A free media is invaluable for the establishment of an enabling environment for the achievement of social development objectives. However, a free and independent media can only properly function in an environment where there are rights to freedom of expression and access to information. This dissertation examined the state of media freedom in Africa generally and Nigeria in particular via-a-vis the legal elements of media freedom. Specific instances of repression and violence against the media and individual journalists with impunity were x-rayed against the background of Global, Continental and Regional legal instruments in addition to domestic legislations advocating for media freedom. It was revealed that despite the existence of the United Nations Declaration on Human Rights 1948, the African Charter on Human and Peoples' Rights, 1981, the Windhoek Declaration of 1991, and a plethora of other efforts which have clearly made provision for freedom of expression and of the press, the media across Africa is still far from being free. It was also revealed that this unfortunate state of affairs is a product of factors such as the continued existence of laws of the Colonial era such as criminal defamation, sedition, and insult laws in addition to a sustained culture of government control and regulation of media thereby engendering authoritarian tendencies introduced by the military and internalized by civilian administrations via overt and covert abuse of executive power. It was further revealed that the effect of weak economies which undermine the viability of a media dependent on commercial advertising opened up the media to editorial and programming influences that undermine their independence. It was recommended inter alia that African countries should align their domestic legislations regarding freedom of the press by keying into the model law on access to information adopted by the African Commission on Human and Peoples' Rights in 2013. This would bring them in line with global best practices, while Parliaments both at the domestic and African Union level should intensify efforts towards completely eliminating the continued existence of these anti-press freedom laws in line with international norms.

Keywords: Freedom, Information, Legislation, Media, Press.

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Introduction.

In a world without the media, where we have no verified information about what goes on around us, everything would be hearsay and gossip, with no trusted source of information. It would indisputably be hard to operate in such an environment, especially regarding decision making about the things

that affect our lives. For those in power, they would be able to act as if we, the people did not exist. It would be impossible to hold them to account, to know that they have an inherent duty to keep the election promises they made in their manifestos, and it would be impossible for our voices to be heard (Kachingwe, 2016). A virile press is the conscience and voice of the people, and it plays and optimizes this role only in an atmosphere of complete freedom termed “media freedom” otherwise known as “press freedom” where ideas, information, and opinion are expressed freely without intimidation, fear, or favour. In the absence of press freedom, it would be difficult to know how companies are behaving, how they are treating their employees, and the environment, and whether they are colluding to extract a lot more from our pockets. Presumably in line with this status *quo*, the United Nations Declaration on Human Rights (UDHR) adopted by the General Assembly in 1948 declared: “*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*”.

The role of the media in providing credible information, of giving voice to the people, and holding those in power to account is fundamental to the realization of our freedom and human rights. Whilst there are differences of opinion about whether the media are part of civil society, what is undisputed is the key role that they play in social and economic development, democracy, human rights, and the pursuit of justice. Consequently, organizations and activists that work on social issues and help articulate public opinion need the media to disseminate information about the voices they represent. Without a plurality of voices, ideas are diminished, debate is stifled, and tolerance is weakened.

According to Zubair Sayeed, Head of Communication and Campaigns at CIVICUS World Alliance for Citizen Participation, a global network of civil society organizations and activists working to strengthen citizen action and civil society around the world, media that is accurate, credible, ethical, and impartial is crucial to development, freedom, human rights, and justice in Africa as it is elsewhere. In support of this assertion, a study on freedom of expression and the press across 34 African countries in 2013 showed the link between this most basic right and a range of factors. It states that freedom of expression is also consistently linked to better ratings of government performance, especially with respect to government effectiveness in fighting corruption, and also in other sectors such as maintaining roads and managing the economy.

Background to the study.

When Africa stumbled into independence in the 1960s, the blossoming of newspapers of nearly every political persuasion was widely hailed as a critical stepping stone towards true multi-party democracy. However, rather than marking a clean break with an authoritarian past, the era of multi-party politics in Africa has been a time of increased hardship and repression for journalists who dare criticize powerful incumbents. Media repression continues to rise. After decades of retreat, authoritarian regimes are using social media and other sophisticated systems in a new era of repression to thwart democracy and trample on human rights (Mentan, 2015).

By way of definition, media or press freedom presupposes the relative absence of governmental and other restraints on the media (Weaver, 1977). Thus, a free press is one that is free from government control. According to Siebert et al(1956), “the press is not an instrument of government, but a device for presenting evidence and argument on the basis of which the people can check on government and make up their minds as to its policy”. Therefore, it is imperative that the press be free from government control and influence since the truth can only emerge when all ideas get a fair hearing in a free marketplace of ideas and information. Against this background, it is imperative that the press be free from control and influence to enable the truth emerge.

Press freedom at its inception was based on the notion that individuals should be free to publish in the news or mass media whatever they like without interference from government or from other persons or groups. This freedom was seen as an extension of other freedoms, particularly that of free speech and as a palladium for all civil, political, and religious rights. Being also a concomitant of commercial freedom, having evolved under a capitalist setting, it was closely associated with capitalist social organization. Hence, it also implied property rights i.e the right to profitably own and use media production and facilities (Omwanda, 1990-1991).

Unfortunately, African prisons are crowded with courageous journalists who are not prepared to accept dictation as to what they may or may not print (Sommerlad, 1966). African leaders argue that given the continent's subservient position in the global economic system, a colonial legacy and the fragility of newly independent African countries, a free press in the Western sense can too easily lead to instability of government or to internal chaos (Aggarwala, 1977).

It is noteworthy that most "national" or "state" broadcasters call themselves "public" but are in fact state controlled commercial broadcasters. Consequently, most of them are supervised by boards made up of mainly or exclusively government appointees while their conditions of service and organizational structures closely resemble those in the civil service. The practical reality therefore is that most governments are trying to retain their control while at the same time reducing state funding or discontinuing it altogether.

Even where some of these media organizations are privatized or privately owned *ab initio*, the fact of private ownership has not necessarily guaranteed the expected editorial and programming independence from owners and advertisers. Commercial pressures place constraints on journalists and editors trying to serve the public interest. Part of the problem is that the new owners are often politicians or politically exposed individuals or groups wishing to promote their own interests or curry favour with governments for commercial gain. Cross ownership across many economic sectors by owners can also create taboos on what can be reported. The case of the payment of N2.1 Billion Naira to the management of AIT by the media team of the Peoples Democratic Party during the run up to the 2015 elections in Nigeria is clearly instructive (Sahara Reporters, 2016).

According to Amnesty International's press release ahead of the 3rd May 2015 World Press Freedom Day, media freedom has increasingly come under attack in many countries across Africa with journalists targeted for exposing corruption and human rights violations. To guard against this unfortunate trend, the organization called on all African governments to ensure that journalists are able to carry out their work without fear, free from intimidation and harassment. Indeed, in the words of Alioune Tine, Amnesty International's Regional Director for West Africa:

"It is important to protect the right to freedom of expression of journalists and bloggers while allowing free and independent media to investigate and report global issues without fear, intimidation, or harassment. Media freedom must be fully and effectively guaranteed" (Amnesty International, 2015).

In countries such as South Africa, Zimbabwe, Swaziland, and Angola, there appears to be a disturbing pattern of journalists being targeted simply for doing their work. Journalism is not a crime. It is a profession like any other and it should be seen as such. Indeed, in the words of Deprese Muchena, Amnesty International's Director for South Africa, "State security agents must stop targeting journalists".

Like the right to information, the right to freedom of expression is necessary for the enjoyment of all other human rights. In addition, it enables the media and others to shine a spotlight on corruption, poor administration and service delivery, and mismanagement of public funds.

Unfortunately, journalists who exercise this right sometimes must flee their countries or are harassed, arrested, intimidated, and even murdered.

It is noteworthy that although the Windhoek Declaration in principle calls for a free, independent, and pluralistic media, and is based on a strong belief in the connection between a fully independent press and a successful participatory democracy sector, the reality however is that twenty five years after the declaration, a number of key challenges are still significant. Although progress appears to have been made, there is still a serious expectation that these state owned media outlets should demonstrate impartiality in their vocation to avoid being perceived as merely blowing the trumpets of the administration. This is in addition to independent regulation of broadcasting.

Statement of the problem

It is indisputable that the media has come under clear attack in most African countries with very few exceptions. Media practitioners such as journalists have therefore become targets for exposing corruption, human rights violations, and incompetence of governments. In some of the countries, there appears to be a disturbing pattern of journalists being targeted simply for doing their work. In fact, in most African countries, a number of laws still limit the right to free expression and of the press.

Thus, because of their role in giving voice to the masses by speaking the truth to the authorities, the media are consistently under attack from both governments and corporate interests. Often caught between state repression and corporate influence, the media in many African countries find themselves facing huge challenges. There is no doubt that the major challenge to the enjoyment of media freedom is the continued existence of several colonial era laws in the statute books of most African countries. These laws are aimed at gagging a free press and intimidating whistle-blowers. Another problem that has emasculated the freedom of the media in Africa is the authoritarian tendencies of most African governments and the desperation of leaders to perpetuate themselves in office. Such practices have led to situations in which most State broadcasters have become mouthpieces of governments thereby undermining the independence of the press. This situation has led to incomplete emancipation of the media especially in situations such as that of Nigeria where the President for instance appoints the Chairman of the Nigeria Broadcasting Commission. Their character as military or civilian does not make any significant difference as the said attitude is exhibited by both in most African countries. Thus, the media is often pressured into compromising through regulation and control of their funding in the case of State broadcasters.

Besides, the existing legislative framework within which the media operate in most African countries does not sufficiently provide for realistic freedom of the media and freedom of information. This is the case despite the existence of a plethora of international and domestic instruments that advocate for, as well as provide for press freedom and access to information. Indeed, in most instances, the parliaments are yet to align domestic laws with the provisions of the international instruments to which their countries have subscribed. Besides, institutions and organizations that purport to defend and regulate the media are at variance regarding their goals, targets, and *modus operandi*. This obvious disconnect among these regulatory bodies has led to a lack of consensus not only on legal guarantees of media freedom but also on ethical norms thus engendering poor oversight. Equally worrisome is the culture of impunity which characterizes encounters and relations between media personnel and the military as well as other security personnel in most African countries. This ugly situation is further compounded by the existence of political conflicts in addition to the nefarious activities of extremist sectarian terrorist groups such as the *Boko Haram* insurgency group that have become major threats to Nigeria and its neighbouring countries including Niger, Chad, and Cameroon among others.

With particular reference to Nigeria, the legislature has passed the Freedom of Information Act 2011 specifically to liberalize access to information in the country while protecting whistle-blowers. Despite the existence of this laudable legislation, there are still challenges regarding access to information, including but not limited to: the absence of a regulatory agency; the need to resort to litigation where information is denied by a public institution; the wide latitude of discretion regarding exemptions specifically recognized by law, and the uncertainty as to the necessity or otherwise of domestication of the Act by each state of the federation before the law can apply to state institutions. These limitations appear to have doused the initial euphoria that met the advent of the Act.

Aims / Objectives

The aim of this research therefore is to evaluate the exact state of media freedom in Africa with a view to instigating discussion on the failures and achievements of various regimes in individual countries as well as take stock regarding the way forward on this issue. The objective is to emphasize the need for a complete purging and overhaul of the domestic laws of most African countries specifically with a view to eliminating the archaic and mostly colonial-era legislations that have so far been the bane of the drive towards practical freedom of the press. It is also the aim of this research to draw attention to global, continental, and regional efforts to protect media freedom to which African countries must key in.

Significance of the study.

First, previous studies in this area concentrated on the independent media or broadcasters mostly and did not give any serious attention to the public broadcaster as this study has done. This on its own is clearly a significant paradigm shift as the study examines both the public and the independent broadcaster in the assessment of the situation of the media in Africa presently.

Second, the fact that 2016 marked the 35th anniversary of the African Charter on Human and Peoples' Rights, the 25th anniversary of the Windhoek Declaration on press freedom, and is the African Union's year for Human Rights makes the study particularly significant. There could not have been a better time to take stock and reflect on our achievements while looking at the challenges still ahead with particular reference to freedom of the press and access to information. This is the main aim of this research work as the findings will help all stakeholders to chart a way forward.

Third, this study is significant as it relates to Nigeria in the sense that it goes beyond the traditional reference to the provisions of *Sections 22 and 39* of the 1999 Constitution of the Federal Republic of Nigeria on freedom of the press and of expression to examine the very instructive and novel provisions of the Freedom of Information Act 2011. By virtue of this legislation, any person, corporation, or group can now request for information in the custody or possession of any public official, agency, or institution whether for academic, professional, commercial, or private reasons and the media is top on the list of beneficiaries of the Act.

Research Methodology

The research method adopted for this study is the doctrinal or conceptual legal research approach. This type of research typically provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty, and predicts future developments. It is drawn from the latin word '*doctrina*' which loosely means 'to instruct', 'a lesson', or 'a precept'. This research method involves the review of cases, statutes, rules, incidents, etc. and appears to have a significant influence on modern legal scholarship, thus dominating recent legal research design.

The form of the doctrinal research method is typically that the legal researcher takes one or a series of legal propositions as a starting point and focuses on the research objective around which he structures the work. This conventional legal research therefore usually takes place in the law library wherein the researcher locates authoritative decisions, applicable legislation, and any secondary discussion based on literature. Armed with this foundation, the researcher then reads and analyses the materials, formulates a conclusion, and writes the study results. The doctrinal methodology therefore involves a literature review, a historical analysis using various sources, a content analysis involving policy documents and legislation, and a discourse analysis.

Literature review

A lot of literature exists on media freedom in Africa focusing primarily on the notions of forms of media ownership, government control and influences, municipal and international legal regimes on media freedom and freedom of expression, colonial-era influences on the law, etc. The basis for this section will be to evolve a theoretical and conceptual framework that examines the state of media freedom in African countries. It will argue that most African countries though presumed free for media practitioners are still not safe for practical media activities and practice owing to influences of old colonial-era legislation that still determine the trend of human rights particularly regarding freedom of the press and expression owing to the selfish interests of politicians who have emasculated these liberties.

The situation for media in Africa varies in different countries across the continent. Alongside Eritrea and Ethiopia as two of the most censored countries in the world – in first and fourth places respectively, there are countries like Namibia, Ghana, Cape Verde, and South Africa that score highly when it comes to freedom of information despite the fact that they equally experience some challenges to media freedom. However, in far too many African countries, the media have come under regular attack and freedom of information remains a distant right. There is perhaps no clearer indication of both the importance of the media and the assault it faces than when governments crackdown on journalists and media houses in the run-up to and during elections.

The stark reality therefore is that arrests, temporary closures of media houses, even online media, and harassment of journalists are not yet things of the past. In some countries like Eritrea, the country at the bottom of the index at 180, being a journalist is an occupational hazard of the worst kind. Five bloggers and journalists were held in Jail for a lengthy period in Ethiopia until July, 2015. Licensing regimes are not yet in the hands of independent public-interest bodies as the Charter on Broadcasting recommended. Indeed, according to Freedom House, two African countries were named on what it calls its “worst of the worst” list based on overall performance. Eritrea was ranked fifth from the bottom and Equatorial Guinea came in eighth from the bottom (Grey-Johnson, 2013).

The African Press for long has therefore obviously had constant relations with the law and by extension politics and economics. The media is thus the lifeblood of the democratic process since it plays at least four critical roles therein, to wit; information, analysis, watchdog role, and as an open forum for debate and discussion. It follows consequently that expectations will naturally be high around the media's execution of these roles and the role of the law in protecting the media in so doing or otherwise.

According to Luke (1989), the freedom of the press is the freedom of citizens to know and express their opinions on current affairs. He further states that it is “a freedom from censorship where the paper can say what it likes, about whom it likes, as long as the paper will take responsibility. Media freedom is therefore tantamount to the freedom of the citizens. In other words, there is a symbiotic relationship between autonomy of the press to inform, educate, and entertain on one hand, and the citizen's right to be informed, educated, and entertained. The citizens cannot be said to be

free in a situation whereby the press is gagged, suppressed, and prevented from performing its role as the watchdog of the society.

Theoretical framework

The theoretical framework adopted for this study is the Social Responsibility theory. This theory originated in the United States in the 20th century although it can be regarded as an Anglo-American concept (Siebert, 1956). It was a composite of ideas developed from the writings of W. E. Hocking, the works of the 1947 United States Press Freedom Commission, the ideas of mass communication practitioners, and media codes. It arose in recognition of the fact that the free market forces had failed to deliver the benefits or fulfill the promise of media freedom to public expectations.

The thesis of this theory is that the technological and commercial development of the press evident in the rise of media monopolies have clearly led to lower chances of access for individuals and diverse groups, and lower standard of performance arising from undue influence of advertisers and from media sensationalism for profit motive in meeting the informational, social, and moral needs of society (McQuail, 1987). It was thought that this has increased the power of a single class which is the actual media owners.

At the same time, the rise of the new and seemingly powerful media of radio and film had demonstrated the need for some kinds of public control and means of accountability additional to those appropriate to the long established and professionally organized print media. The theory therefore stipulates that since freedom carries concomitant obligations, the media of mass communication which enjoys a privileged position must assume obligations of social responsibility and if they do not, someone must ensure that they do.

Primarily, it takes the stance that the social roles of the press which include enlightenment of the masses, promoting the democratic process, safeguarding the liberties of the individual, advancement of the culture and values of the citizens, and maintaining its own self-sufficiency so as to be free from the pressures of special interests, etc should take precedence over its role of servicing the economic system. It holds further that the press should furnish the people with good entertainment only. By this is meant, entertainment that does not debase the norms and values of society for profit motive.

The Social Responsibility Theory accepts the need for the press as an institution to remain financially self-supporting and independent, but if and when necessary, it would exempt certain individual media from having to earn their way in the marketplace and allow some form of control on mass media operations in the 'public interest'. The obligations of the mass media under this theory which McQuail talks about here have been spelt out by the Hutchins Commission to include: Providing the public with a truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning; Serving as a forum for the exchange of comments and criticism; Projecting a representative picture of the constituent groups in the society; Being responsible for the presentation and clarification of the goals and values of the society; and Providing full access to the day's intelligence.

This right of press freedom is however subject to regulation by the self-righting process of truth in a free marketplace of ideas and by courts as obtained under the social responsibility concept by community opinion, consumer action, and professional ethics. In this situation, invasion of recognized private rights and vital social interests is clearly forbidden. In essence, the original western concept of press freedom which formed the basic foundation of the freedom of the press advocated and enshrined in the United Nations Declaration and the African Charter on Human and Peoples' Rights is built around three main principles:

- The prohibition of government interference with the press in the form of censorship or similar prior restraint except in carefully limited circumstances (Nam, 1983).
- The principle that any restriction on press freedom must be applied or subject to review by the courts, and that courts alone have the right to impose penalties (Wei, 1970).
- The principle of completely private ownership of the print news media and a largely private ownership of the broadcast media.

The situation of the Media in Africa

The committee to protect Journalist (CPJ) Impunity Index, (2012) listed Nigeria and Somalia among the world's 12 worst countries for impunity. In Nigeria, which boasts of having one of the African continents strongest newspaper industries, the government is said to be responsible for 79% of the cases of impunity against the media. The *Boko Haram* terrorist religious extremist group is reported to be responsible for 16% of the incidence of impunity in the country.

There is no argument about the marginal progress Africa has made generally in media development and media freedom over the past two decades. For example, Eritrea is the only country on the continent where the state wields monopoly over media ownership and operation. In fact, according to the Freedom House Global Freedom of the Press Ratings, (2012) only Equatorial Guinea and Eritrea are among the world's eight worst-rated countries. The Freedom House report found that in Egypt, Libya, and Tunisia, "major steps" were made for media freedom, after the uprisings of the Arab Spring, and that the magnitude of improvements, especially in Tunisia and Libya, represented major breakthroughs in a region that has a long history of media control by autocratic leaders. Obviously, the situation is still young and calls for more push to keep the momentum for progress. Of the 49 countries surveyed by the Freedom House however, only five countries could be rated "Free", 23 "Partly Free", and 21 "Not Free". In population terms, according to the Freedom House, only 5% of the citizens live under conditions where the media are "Free", "Partly Free" (54%), and "Not Free" (41%). And no one region could claim to have improved more than the others. Though Somalia recorded the highest number of murders of journalists (12) in 2012, for instance, the dangers that confront the practice of media work are common around the continent.

According to Reporters Without Borders (2013), South Africa ranked 52nd out of 179 countries in 2012. This assessment reflects the degree of freedom journalists and news organizations enjoy in each country, and the efforts made by each state to respect and ensure respect for this freedom. In Africa however, South Africa was ranked 6th position for the same year. However, their latest index shows two interesting things: Namibia, ranked number 17 has the most improved press freedom environment in the world, while Africa, with the exception of North Africa, came second in rankings on the most improved media environment since 2015 (Reporters Without Borders, 2016).

Namibia's rise in this ranking is obviously stunning. Among the 180 nations that were ranked in 2016, it places the country close to the top-ranked Scandinavian nations including Finland at number one, Netherlands two, Norway three, and Denmark four. These countries also feature in the top five positions on the United Nations Index on Human Development, (2016). In the 1990s, a pluralist politics characterized by multi-party elections took root across the African Continent, a trend developed to license privately owned FM radio stations and television channels. Consequently, privately owned newspapers and magazines emerged. Online media also sprang up as Africa was connected to the internet and there was a hype that the future lay in digital or news media that was not easy for governments to control.

The competition between state and privately controlled media expanded the space for media freedom. In this context, media were better able to strive to become independent sources of information and analysis. They could broaden public debate and dialogue, engage in investigative

journalism as watchdog of the public and give a voice to a wider range of people beyond government elites. Thus, for the first time it felt as though the vision of the Windhoek Declaration and the African Charter on Broadcasting could be realized.

The nascent pluralism and vibrancy with which some media exposed corruption and bad governance gave hope that the African media would now play a vigorous watchdog role that would usher in an era of accountability necessary for democratic governance. As a result, the last 15 years since 2001 have been characterized by a growing trend towards respecting the freedom of the media and expanding spaces for freedom of expression. However, it would appear that the trend hides many contradictions, some of which are identified in the World Press Freedom Indexes. According to Freedom House Report, (2016) steep declines in press freedom which dropped to the lowest level in 12 years were linked to two factors: heightened partisanship and polarization in a country's media environment, and the degree of extralegal intimidation and physical violence faced by journalists.

Another factor that limits media freedom often not discussed much in Africa is the effect of weak economies. Weak economies undermine the viability of a media dependent on commercial advertising. They also open up the media to editorial and programming influences that undermine their independence. In such situations, large companies that dominate or have a monopoly wield power that has a deleterious effect on media content. This leads to a culture of unethical journalism including 'cheque book journalism' where journalists are bought to smear opponents or divert the public from serious issues. Such practices reduce the credibility that media ought to enjoy with the public. Independent regulation of journalistic ethics via legislative action is necessary to arrest this trend (Zoe, 2013).

One of the basic democratic tenets of society is the provision of basic freedoms for the citizens by the constitution. A reasonably responsive democracy can only exist if certain institutional guarantees are present, prominent among which are the freedom of expression and to access alternative sources of information. Since a functional democracy presupposes the existence of at least an independent opposition to those in power in order to restrain them from suppressing the masses or abusing their position, the media therefore has a significant role to play in ensuring that the government in power demonstrates both accountability and responsibility. This it does by bringing the activities and programmes of the administration to the notice of the citizens.

According to the Annual State of Media Freedom in Southern Africa Report, (2011), although no deaths of journalists occurred as a direct result of media freedom violations, the environment across southern Africa remained dangerous for media work because, as elsewhere on the continent, as the strategies of beating journalists to a pulp, kidnapping or killing them or bombing printing presses lose their appeal, the future of media repression will rely greatly on the threat of legal action against a journalist or media house. Thus, never has the need for legislative action been more pertinent.

According to statistics, most countries in Africa have legal regimes which disproportionately sanction speech and journalistic activities with criminal punishment. The legal frameworks take on many different forms. Offences under the laws are punishable with various terms of imprisonment or fines some of which are prohibitive. Criminalization of speech and media content is firmly established as one of the main weapons of choice for political authorities seeking to repress media freedom and freedom of expression. Such laws have been used to suppress criticism of official wrongdoing and corruption, and to prevent scrutiny of government officials. These laws as is obvious undermine the right to freedom of the press and expression which many national constitutions along with International laws seek to protect (Media Foundation for West Africa and WAN-IFRA, 2011). These criminal laws can be summed up as follows: Insult to the President and/or Senior Government Official; Criminal Defamation or Libel; Breach of Peace; Sedition / Seditious Libel; Insult to Symbol and Ideas; Defamation of Foreign Princes or Foreign Sovereigns, False Publication; Damaging a

person's honor or esteem or Exposing a person to public contempt; Insult to a person; Disruption of public order; Contempt of court or of Parliament, and Insult to a religion.

In recent times, just as in Southern Africa, and Nigeria, more and more governments are resorting to the use of such laws to repress media rights and freedom of expression generally, and to induce self-censorship among the media. Virtually every week, media rights monitoring activities by press freedom advocacy groups report cases of arrests and prosecution of journalists or media houses. Examples are now even coming from countries like Benin republic noted for their respect for media freedom.

Another legal instrument of choice as a means of cowing daring media is the simple civil defamation or libel legislation. The hefty compensatory damages sometimes slammed on the media when liable are not only a deterrent against unprofessional practices, but a veritable instrument to send errant media organizations into bankruptcy. In many countries, it is evident that it is the political class and people in high public office that regularly resort to using libel litigation as both a financial gold mine, and a rod to weaken critical media. Even more pernicious is the fact that defamation continues to be taken as a criminal act in most African countries, except South Africa and Ghana. Citing an annex to the Declaration of Table Mountain, 2007, Berger (2007) notes that in the first five months of the same year, 103 African journalists were harassed under insult and criminal defamation laws. The situation does not appear to have improved since then. What makes the legal environment a disturbing obstruction to media freedom is the uncertainty of reforms towards opening up the space for expanding and strengthening freedoms.

Besides the act of constitution making in the early 1990s, there have hardly been any significant reforms in extant laws inherited from previous political regimes. The unwillingness at worst, or the hesitation at best of government to pass legislation to promote citizens' right to information in many African countries, despite the strenuous campaigns to that effect, provides no basis for optimism to expect in the foreseeable future significant reforms if at all, in the inimical laws against press freedom.

There are definitely some push backs by governments. Despite the end of the era of legislated one-party rule, some leaders are reluctant to leave power. In these efforts to retain power against democratic norms, journalists and the media are casualties. Burundi and Equatorial Guinea are recent examples of such situations. There is also a general hostility towards media's attempts to probe and hold public officials to account. Politicians and public officials are often uneasy with regular engagement and requests for information. A culture of secrecy is still dominant and in some cases media legislation restricting access to information is still retained in the statute books from the colonial or apartheid eras. New legislation meant to promote access is often too cumbersome to use by journalists or carries new ways to restrict access.

Both the African Charter and the Windhoek Declaration provide sound framework for the realization of freedom of expression and information as well as press freedom. The Charter grants every individual the right to receive information and the right to express and disseminate his or her opinion within the law. The main thrust of the Windhoek Declaration is to promote an independent and pluralistic media. It stresses that freedom of expression and information are fundamental aspects of human aspiration and recognizes that an independent press is essential for a participatory democracy.

In 2002, the African Commission on Human and Peoples' Rights (ACHPR) adopted the Declaration of Principles on Freedom of Expression in Africa, in collaboration with Civil Society Organizations led by *Article 19*. The Declaration was meant to expand the scope of the right to freedom of expression and access to information in the African Charter. A few years later, the special Rapporteur on Freedom of Expression in Africa was established to monitor its implementation. Over the years, the Declaration of Principles has been used extensively on the African continent and

elsewhere. Its principles serve to promote and protect the right to freedom of expression and access to information. *Principle IV* of the Declaration says: *'Public bodies hold information not for themselves, but as custodians of the public good and everyone has a right to access this information'*. This statement debunks the idea that the right to information is meant only for journalists. It is a right for all of us, playing a vital role in fostering democracy, good governance, transparency, and accountability. It is therefore a prerequisite to the enjoyment of economic and social rights (Tlakula, 2016).

In line with this, the ACHPR has over the years adopted a number of resolutions regarding freedom of expression and press freedom. They include the 2010 Resolution on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa, and the 2011 Resolution on the safety of Journalists and Media Practitioners in Africa. The Commission has also adopted a number of country resolutions condemning violence against journalists including resolutions around freedom of expression and elections in Zimbabwe, one regarding attacks against journalists and Media Practitioners in Somalia, and yet another on freedom of expression in the kingdom of Swaziland.

To assist African States in drafting national legislation, in 2013, the ACHPR adopted the Model Law on Access to Information. It reinforces the principle that the right to information is a right for everyone in the country, not just citizens. It calls for transparency in public administration and with regards to private organizations financed publicly or which perform a public function, such as private water or electricity providers. Currently, 17 countries have adopted access to information laws but this is only a third of the countries in Africa. In any case, the implementation of these laws remains a struggle even in the countries where they have been adopted.

The issue is to get the balance right by protecting legitimate concerns about defamation while ensuring that the media can do its job, which is to report accurately and fairly on issues the public needs to know about. The law in African countries commonly looks at two types of defamation: Civil and Criminal. Civil defamation says a person who has been unlawfully defamed is able to sue for damages. While this is widely accepted and uncontroversial, politicians have abused it by pushing for punitive damage claims, which can bankrupt media outlets. However, criminal defamation is extremely controversial and has fallen out of favour in democratic countries. Here, the state is able to charge a person with defamation under criminal law, which can lead to arrest, detention, bail, a criminal trial, fines, and even jail time. Ironically, the United Kingdom repealed its own criminal defamation laws since 2009 (Index on Censorship Magazine, 2009).

Criminal defamation has been on the statute books or part of the common law of numerous African countries for decades and has had an extremely chilling effect on newsrooms across the continent. In 2010, the African Commission on Human and Peoples' Rights passed a resolution calling on states to repeal their criminal defamation laws. In reality, progress has been slow as to date, only Benin, Ghana, and Niger have done so in full. South Africa's ruling party has announced the intention to repeal the common law crime of defamation while Zimbabwe's Constitutional court has declared its criminal defamation laws unconstitutional (Pen International, 2016).

A related matter is the prohibition against insulting important persons. These are throwbacks to the colonial era when it was prohibited to insult the King or Queen of Great Britain, foreign princes and the like. Sadly, such laws have been retained throughout Africa and now serve African Kings, Presidents, and Prime Ministers. They provide for criminal penalties, which has a chilling effect. In addition, they undermine the key democratic value of equality before the law. Many countries in Africa still have colonial-era statutory provisions that criminalize the publication of untrue statements, reports, or rumours that are likely to alarm the public. These provisions are problematic since it is impossible for journalists and media houses to get every story entirely right and factually correct all of the time. These provisions ought to be repealed and if a story is false, other remedies

such as corrections, apologies, retractions, media council rulings, or civil defamation claims should suffice.

Colonial-era security laws often stifled reporting on matters that may have sparked dissension with colonial rule. Most of these laws were not repealed at independence in many African countries. All too often, independent states simply continued to use the laws to stifle legitimate dissension, criticism, comment, and expression by their citizens. A key feature of the laws is that the definitions are overly broad. They do not focus on clear threats to the country's existence or territorial integrity, but also refer to vague concepts such as “disturbing relations between different sectors of the population” and the like. They are often subjectively framed and what is required is that there is a threat in a Minister's subjective opinion, thereby making oversight difficult.

Very few African countries have made substantive changes to their security laws from the colonial era, and consequently the African media environment is stuck in the past. In addition, the very countries that gave rise to such laws – Britain, France, and Portugal for example have long since amended their laws to fall in line with international norms which guarantee freedom of the media. Twenty five years after the Windhoek Declaration, it is clear that certain promises of media freedom and independence from the colonial era remain unmet. Indeed, according to Limpitlaw (2006) visiting Adjunct Professor at the LINK Centre, University of Witwatersrand, it is time to rid our continent of colonial-era media laws that hold back development and freedom. There are however some rays of hope among the doom and gloom. The East African Court of Justice, a judicial body established by the East African community ruled against a repressive media law in Burundi. Similarly, the Economic Community of West African States Court of Justice is hearing arguments in a case brought by the Federation of African Journalists against Gambia and its libel laws designed to muffle the press. According to Solomon Salem, Journalist and Web producer at VOA's Horn of Africa, the Freedom House's 2016 Annual Report evaluates the status and degree of media freedom in 199 countries and territories across the world. He maintains that:

“These laws are against Charters, African Charters that have been signed by these countries and so that they don't (sic) see it as a Western group that is saying this but that this is an African Court saying that these laws are against the Charters, the African Charters that have been signed” (Freedom House, 2017).

Speaking at the 2016 World Press Freedom Day, the United States director of Reporters Without Borders stated that the many reasons for the obvious decline in freedom of information include the increasingly authoritarian tendencies of governments in countries such as Turkey and Egypt; tighter government control of state owned media even in some European countries, and security situations that have become more and more fraught in Libya and Burundi for example, and completely disastrous as in Yemen (Reporters Without Borders, 2016).

The African Editors' Forum (TAEF) says that it notes the achievements of African governments who have committed themselves to freedom of expression and of the press and media. The forum however notes that there are some African countries that have not removed insult laws and continue to criminalize media activities. The organization has therefore declared the need for African nations to have a free media since a free media is necessary to provide Africans with information that would enable them to take informed decisions about their lives (Wangui, 2016). In a statement, TAEF states that the African Union (AU) must name and shame governments that violate freedom of the media and freedom of expression. It also called on the African Union to force governments to the Table Mountain Declaration of 2007, the 1991 Windhoek Declaration, and the 2002 Declaration of Principles of Freedom of Expression in Africa. The forum asserts that citizens in all African states will not be free until all media on the continent is free.

Conclusion

Media freedom and freedom of expression in Africa is expanding, but we have not yet reached a stage where it is irreversible. Although the role of the media in creating an informed citizenry eager to participate in decision making is increasing, the situation in Africa remains precarious. Rather than marking a clean break with an authoritarian past, the era of multi-party politics in Africa has been a time of increased hardship and repression for journalists who dare criticize powerful incumbents. Regrettably, African journalism has passed from hosanna singers and entertainers of dictatorships to weapons of mass deception in the hands of phony democracies imported from Western aid donors. Besides, it is clear that media freedom in Africa is in dire need of defence from power hungry politicians, overzealous administrators, and regulatory boards seeking reward from their paymasters, incompetent security forces, religious fanatics, and all those with skeletons in their cupboards. The relevance of the matter cannot be gainsaid, and it is up to the press corps and their natural allies to take cognizance of the fact that it is incumbent on them and no one else to stand at the forefront of the battle for media freedom (Fonkem, 2015).

Given the challenges we face on the continent, the current media crackdown is untenable and dangerous, and does nothing to facilitate the progress so many are working hard to achieve. As citizens of Africa, we need to increase our efforts to protect those that give us voice and help us realize the full scope of our rights. While there is no one-size-fits-all solution to these challenges, a key part of the solution must be to support independent media, including citizen-journalism; for regional governance institutions to hold African countries accountable, and for African countries to hold each other accountable; and for education and awareness about rights relating to freedom of information and expression.

With regard to the latter, recent research shows that there is widespread support for media freedom and freedom of expression in Africa but that support for these rights is not universal. In some contexts, journalistic ethics need to be strengthened; media outlets need to invest more in their journalists and support for independent media amongst civil society and the general public needs to be amplified. We need to look towards innovation too, to think of ways to use inexpensive technology to produce people-powered information and data. Although a lot still needs to be done, we have to celebrate our achievements. In 2015, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) General Conference declared September 28 the International Day for Universal Access to Information. Without doubt, African Civil Society Organizations played a crucial role in this major initiative.

Recommendations

In the face of all these challenges faced by the media, the following recommendations are put forth by the researcher:

- African countries should abolish anti-press laws, stop other extra-legal and crippling measures against the media, enact laws that are favourable to the press, and adopt a posture that is conducive to a positive press performance to reduce the powers of authoritarian regimes on the media practitioners. In so doing, African countries should consider the introduction of a system of public service broadcasting as operated in the United Kingdom.
- All African countries should develop new legislation for the independent regulation of the entire broadcasting industry as against state control. The independent regulator must be free from political, commercial and other partisan interests. The new public broadcaster must be supervised by a Board independent from government while their funding should be a mix of appropriations by parliament, license fees, and income from advertisements. The executive

must cease to control the Board of Directors of the public broadcaster and hand that responsibility over to parliament who should have direct oversight of such Boards.

- There is an urgent need to develop a legal framework for the defence of media freedom consistent with the liberal rights set forth in the national constitutions of most African countries and subscribed to in the Universal Declaration of Human Rights and in other African declaration of rights. To that extent, Parliaments in African countries are advised to align their domestic statutes with all regional, continental, and global Instruments to which their countries have subscribed.
- Institutions and organizations monitoring, assessing, evaluating, and defending the exact extent of repression of media freedom must build a coalition with the legal profession, members of the judiciary, parliamentarians, and all other critical stakeholders both at the domestic and continental levels in order to come to a consensus not only on legal guarantees of media freedom but also on ethical norms that can ensure improvement in the policy direction of government and to clearly outline goals.
- Positive effort should be made to eliminate all Colonial-era laws, prescriptions, as well as statutes with military origin, background, or foundation, and in their place, new legislation made in line with international best practice, and in consultation with all critical stakeholders.
- There should be effective monitoring of media practitioners to ensure compliance with professional ethics as well as established machinery for the discipline and sanction of erring members. This may require professional self-regulation to ensure all journalists follow both public and in-house ethics.
- Civil Society organizations in all African countries should champion a crusade on the need for the introduction of a Freedom of Information legislation in line with the Nigerian example while the Pan African Parliament should prioritize the passing of a similar law at the continental level.

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