

TOWARDS A CO-REGULATORY FRAMEWORK FOR THE NIGERIAN PRINT MEDIA

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The study examined the problem of regulation in the Nigerian print media with reference to the standoff between the Nigerian Union of Journalists, the Newspapers Proprietors Association of Nigerian and the Nigerian Guild of Editors over the Nigerian Press Council Act 60 of 1999. The study is grounded on the social responsibility theory of the press which advocates the exercise of press freedom with responsibility. The qualitative study employed in-depth interviews with key stakeholders. The results of the interviews were coded and discussed thematically. The findings in this study generally revealed the contentious and divisive nature of print media regulation in Nigeria. While some stakeholders have rooted for outright internal regulation in colouration and form, others support some level of external regulation. The paper proposes a co-regulatory framework as a way of getting out of the impasse.

Keywords: News media, print media, press, public trust, public interest, regulation

1. INTRODUCTION

The media is often referred as the fourth estate of the realm following Edmund Burke's use of the term in a parliamentary debate in England in 1781 (Journalism Encyclopedia: "Fourth Estate"). In Nigeria, there is a constitutional basis for this. Section 22 of chapter two which deals with Fundamental Objectives and Directive Principles of State Policy, expressly states that:

The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people. (Constitution of the FRN, 1999)

Hence the media is not only the unofficial fourth estate of the realm, that is after the Executive, the Legislature and the Judiciary, it is also called the watch dog of society, because of the enormous powers the press wields in monitoring the government on behalf of the governed. It is also as a result of this unique function of the press that it is granted constitutional protection in most democracies. Section 39 sub-sections 1 and 2 provide press protection in the Nigerian constitution:

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

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions. (Constitution of the FRN, 1999)

However section 39 should be read together with section 45 which states that:

Nothing in sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democracy:

(a) In the interest of defence, public safety, public order, public morality or public health;

(b) For the purpose of protecting the rights and freedom of other persons

Evidently the press particularly the Nigerian press is imbued with vast powers, because the citizens rely on it to be informed and active participants in the democratic process.

However, with such power comes responsibility. The press is supposed to act responsibly at all times in the discharge of its duties. The question is: do they? There is the recurring question of who watches the watch dog? In the United States, press regulation is largely internal; it is the responsibility of individual print media to institute its own codes of conduct for journalists under its employment; although the American Society of Professional Journalists is a credible voice on the subject of safeguarding ethical standards (Society of Professional Journalists). In Britain the responsibility was with the Press Complaints Commission until September 2014 when the responsibility was taken over by the Independent Press Standards Organisation (IPSO). The Organisation currently serves as the voluntary regulatory body for British printed newspapers, magazines and online titles (Independent Press Standards Organisation).

In Nigeria, the first major attempt at developing a structural or institutional framework for print media regulation can be traced to the "Ekineh Committee" on the print media which was set up by the Yakubu Gowon administration in 1968 (Momodu, 2000). Although the work of the Committee was

never made public, it is usually seen as the precursor to the coming into being of the Nigerian Press Council Decree 31 of 1978 and subsequent amendments which eventually coalesced into the Nigerian Press Council Act 60 Of 1999 as amended creating an institution of government for print media regulation.

However desirable, the impasse among the stakeholders have not allowed for the effective institution of a regulatory framework for the Nigerian print media. In line with this, the paper examines grey areas of bone of contention among stakeholders that has led to a stalemate in the quest to amend the Nigerian Press Council Act and offers probable suggestions in addressing the impasse in the overall national interest. To achieve this interview sections were held with key stakeholders in the Nigerian print media industry. These stakeholders represent the group that is usually referred to as the Nigerian Press Organisation (NPO). The Nigerian Press Organisation is made up of the Newspapers Proprietors Association of Nigeria (NPAN), the Nigerian Union of Journalists (NUJ), the Nigerian Guild of Editors (NGE) and the Nigerian Press Council (NPC). The interviews were anchored on the following research questions:

1. Why is the Nigeria Press Council Act 60 of 1999 contentious?
2. Why did NPAN opted for self-regulation through the ombudsman principle in total rejection of the NPC Act?
3. What is the way forward for print media regulation in Nigerian?

2. THE QUALITATIVE STUDY

Interviews were conducted with identified key stakeholders in the print media profession. Those selected for interviews were: the National Secretary of the Nigerian Union of Journalists, the Executive Secretary of the Nigerian Press Council, the Group Managing Director of *Leadership* newspaper, who was delegated by the management of the leadership newspaper to speak on behalf of the owner of the paper and the National News Editor of Daily Trust newspaper.

The interviewees were purposively chosen because they occupied “allocative or operational control” positions (Pahl and Winkler, 1974) and were able to respond knowledgeably and authoritatively about the issue of concern. Their aggregate views therefore represented the position and perspectives of: the Nigerian Union of Journalists, the Nigerian Guild of Editors, the Newspapers Proprietors Association of Nigeria and the Government perspective represented by the Nigerian Press Council. These groups as stated earlier together make up stakeholders in the Nigerian print media industry and are referred to as the Nigeria Press Organisation. The sample size of four was purposively chosen to reflect the positions held by the four stakeholders. Purposive sampling suite this study because the technique entails the researcher deliberately selecting what constitutes his sample based on some predetermined purposes or aims as indicated above. (Easterby et al, 2008).

3. METHODS OF DATA ANALYSIS

The interviews were fully transcribed and analysed following the methods of textual and discuss analysis as propounded by Lindlof and Taylor (2002). This enabled us to extract meaningful patterns and themes for the study. The views and propositions by each of the respondent to print media regulation were then coded in relation to the position of each group within the Nigerian Press Organisation, the contentious areas in the Press Council Act was also noted. The research questions served as a guide in the determination and categorisation of the themes that emerged from the textual analysis. The outcomes of the analysis subsequently formed the basis of the findings, conclusion and recommendations.

4. THEORETICAL FRAMEWORK

The theoretical framework for the study is anchored on the social responsibility theory of the press. The social responsibility theory of the press is associated with the works of the “Hutchins Commission” (1947), the “Royal Commissions on the Press” (1947-49; 1961-62; 1974-77) and the *four theories of Press* by Siebert, Peterson and Schramm (1956). The social responsibility theory of the press succeeded the libertarian theory of the press. It came into being in realisation that absolute libertarianism is counterproductive and in the long run unhealthy in a democracy. The social responsibility theory of the press recognises the social importance of the press and the need for it to operate unfettered but with responsibility, this responsibility is to the people. Consequently, the press is obligated to uphold public interest in all journalistic decision as against individual, group or any parochial consideration. Social responsibility of the press therefore envisages certain form of regulation to ensure adherence to journalistic ethos and accountability.

5. MEDIA REGULATION

Regulations are formal and requisite information about the structure, conduct or content of the media (Feintuck, 1999). Regulation comes in different forms, it can be formal or external regulation or informal or self-regulation. Regulation is all about accountability which McQuail (2005) has defined as "all the voluntary or involuntary processes by which the media answer directly or indirectly to their society for the quality and/or consequences of publication" Regulation in essence is an instrument of control. Feintuck, (1999) differentiates the key concern of regulation along two broad dimensions, those of public concern and those of individual or private concern.

5.1 Issues of Public concern

- The protection of public order and national security.
- Maintaining respect for public mores and morality in matters of taste and decency.
- Achieving benefits for the public sphere in terms of information flow, access, diversity and public participation.
- Respecting human rights of expression and protection from insult and prejudice.
- Participation. Preventing harm to society, especially by way of harm to children and young people from undesirable content.
- Protecting and advancing the national economic interest in media and communication industries.

5.2 Issues of Private or Individual Concerns

- Protecting individual rights to reputation, and privacy.
- Preventing offence to individuals.
- Avoiding harm to individuals from violent or perverted content.
- Protecting property rights in communication and information.

Evidently and indisputably regulation is important for a manifold of reasons as highlighted above because left on its own the press can become an undemocratic force rather than a democratic force which has the capacity to do great damage to the society and the individual in the exercise of its liberty.

5.3 Types of Regulation

Available literature suggests that media regulation takes an ascending order. At the highest point of regulation is government regulation which is followed by other forms of regulation, like NGOs, pressure groups and others. At the lowest level is self-regulation. The legal system provides an important category of formal or external regulation for the news media. Generally the justice system protects itself by law against media activities that might pervert the course of justice, otherwise generally referred to as contempt of court. Sanction can be achieved through fines and in some cases jail terms. Most informal or self-mechanisms of regulation on the other hand, rely on voluntary compliance, and usually achieved through a code of conduct. Sanction carries a lighter weight, does not carry any material penalty and in the print media it is usually through retraction and or apology.

6. THE CONTROVERSY OVER NIGERIAN PRESS COUNCIL ACT

The Nigerian Press Council as earlier noted exists by virtue of the Nigeria Press Council Decree No. 85 of 1992 as amended by Nigerian Press Council (Amendment) Decree No. 60 of 1999. The Council is a Military era heritage. It envisages to create culture of ethical press in Nigeria driven through research and documentation of contemporary press development; training and workshop for journalists; accreditation of programmes in tertiary institutions; enquiring into complaint about the press and monitoring the activities of the press. (Nigeria Press Council, nd)

The Press Council Act has a total of 39 sections and three schedules. The contentious areas of the Act are sections: 4, 9, 19, 20, and section 32. Section 4 deals with appointment of the Executive Secretary of the Council. Subsection (1) provides that, "the Executive Secretary shall be appointed by the President on the recommendation of the Minister". In the views of a section of the stakeholders this places control of the Council with the federal government. Section 9 deals with Code of Conduct for Journalists, some stakeholders are wary of subsection (3) which provides that: "The Council shall, after due consideration, approve the Code of Professional and Ethical Conduct by the Nigeria Union of Journalists and ensure compliance" again this seems to give too much powers to the Council. Section 19 deals with the Registration of Journalists, many stakeholders are not happy with the provisions of section 19 because it makes it mandatory that all journalists operating in the country to be registered with the Council after completing a course of study in an institution accredited by the Council or else barred from practise. Section 20 deals with, Penalties for Unprofessional Conduct, some stakeholders

are dissatisfied with the general provisions of section 20 since the powers to sanction erring journalist is domiciled in the Council. Section 32 which deals with Register of Documented Newspapers is also contentious. It provides that: "The Council shall cause to be established and maintained a register into which shall be entered the names and addresses of every newspaper, magazine or journal documented under this Act" Print media owners absolutely find this provision provocative and unacceptable (Nigeria Press Council Act, 1999).

Generally, stakeholders view the Nigerian Press Council Act as undemocratic especially against the provisions of section 39 of the 1999 constitution which provides copiously for freedom of expression and freedom of the press. However, the disagreement essentially pitched key stakeholders amongst themselves with varying levels of support and disagreement with the provisions of the Act depending on how they are affected. The battle has been between those who are in favour of external regulation as provided for by the Act and those who believe that press freedom has been settled by constitutional provisions and as such the press should be allowed to regulate itself. Consequently, there is the Nigerian Union of Journalists on the one hand who supports external regulation through the instrumentality of the NPC Acts but with necessary amendments and the Newspapers Proprietors Association of Nigeria, together with the Nigerian Guild of Editors who calls for an outright repeal of the Act.

It is interesting to note however, that all the contending stakeholders (the Nigerian Guild of Editors, the Nigerian Union of Journalists and the Newspapers Proprietors of Nigeria) had earlier given their support to the creation of the Press Council prior to the promulgation of the first Act by the Military Administration of General Obasanjo in 1978 (Nigeria Press Council, nd) the sudden repudiation of the Act is a cause for concern.

Over the years, mutual suspicion has grown between stakeholders on the one hand and government's intentions on the other hand. Stakeholders have generally expressed dissatisfaction with the provisions of the Act. They argue that it gives too much power to government. Government on the other hand have expressed concern over the inability of the stakeholders especially the NUJ to act as a proper professional body to register its members and implement a "Council of Registered journalists" backed by law.

Since the Nigerian Press Organisation had seemingly abdicated its responsibility, the government had always felt compelled to proceed in the best interest of the profession and in the national interest by arrogating most powers of the Council since 1978, when decree 31 was promulgated, setting up the Press Council by successive administration. It can be argued that government have shifted a lot of grounds by conceding most powers of the Council to stakeholders. While the NUJ seems to have shifted grounds considerably, in its opposition to the amended NPC Act of 1999, the NPAN remains dissatisfied with the body. They see the Council as an attempt by government to censor the independent press (Nigerian Press Organisation, 2016). The Council however defends its existence on the grounds that they don't place any prior restraint on the press nor control editorial content but only comes in "when you ignite the fire. We cannot close down any newspaper or do anything that will be detrimental to the profession, if the government forms the Press Council it doesn't mean the Council belongs to government"

The Council also believes that its activities should be supported because the Act setting it up draws power from the Code of ethics of the NUJ and not from any other law enacted by parliament. It recalled that the Press Council was never a brain child of government but rather of a former president of the Nigerian Guild of Editors, Alhaji Lateef Jakande, "who brought the idea that there was a need for a regulatory body at a congress in Benin, in 1972 the NUJ ratified it" from this perspective the Council is viewed as a creation of stakeholders rather than government.

6.1 Self-Regulation and NPAN's Ombudsman Principle

However, the NPAN seems to have taken a hard-line position which favours self-regulation in total rejection of the amended NPC Act of 1999. The Association cites sections 39 sub-section (1) of the 1999 constitution which provides for freedom of expression and of the press, as basis of its action. In line with this position the Newspaper Proprietors Association of Nigeria (NPAN), in 1999 challenged the constitutionality of the Act setting up the Nigerian Press Council, by taking its case before a Federal High Court in Lagos. The litigious areas in the amended Act 60 of 1999, are the clauses on: Code of Conduct for journalists; Appointment of the Executive Secretary of the Nigerian Press Council; Documentation and Registration of all Newspapers publications in the country; Registration of Journalists; Penalties for Unprofessional Conduct as earlier highlighted above.

In its suit no., FHC/L/CS/1324/99 filed at a Lagos High Court the NPAN challenged the President, the Attorney General and the Minister of Information on implementation of the law, which the plaintiffs claimed violated its rights as enshrined in section 39 of the 1999 Constitution; and also

contended that the National Assembly was not competent to make laws regarding the operations of the Press.

However, Justice A. M. Liman of the Lagos High court on February 25, 2010, after 11 years of the suit, ruled in favour of NPAN to the effect that some provisions of NPC's Act were in conflict with the 1999 Constitution, and as such "constituted a gross violation of the rights guaranteed under section 39 of the 1999 constitution... and that the Act was oppressive, over bearing and grossly incompatible with civilised standards of society" (Ibuot, 2010). In the ruling the honourable justice Liman granted a perpetual injunction restraining the President, Attorney-General of the Federation and Minister of Justice, Minister of Information whether by themselves, their servants, agents and or representatives from implementing or otherwise giving effect in any manner whatsoever to provisions of the said Nigerian Press Council Decree no 85 of 1992 and the Nigerian Press Council (Amendment Act) Decree no 60 of 1999 (Ibuot, 2010). The judgement of the Lagos High Court was overturned by the Court of Appeal on December 4, 2015, which held that the Press Council Act "is necessary and justifiable law in a democratic government" irrespective of the judgement of the court of appeal the status quo remains as the Nigerian Press Organisation insists it "shall not nominate members into the board of the Press Council until the final determination of the case at the supreme court". (Daily Sun, Thursday January 21, 2016, p.36)

However, while awaiting the final verdict of the suite at the Supreme Court and in response to growing calls for print media regulation, NPAN, instituted the office of the Ombudsman; a self-regulatory mechanism, as a way of addressing and redressing unethical conduct by media practitioners and media organisation (Garba, 2009). NPAN and the Nigerian Guild of Editors generally support the existence of the office of the ombudsman as a self-regulatory mechanism for the Nigerian print media. "The Ombudsman takes complaints from the public against newspaper and magazines. If a member of the public feels aggrieved by the treatment he received from a reporter, editor, newspaper or magazine, he can write the Ombudsman about it. The Ombudsman is a professional man who knows the job, in and out. He receives reports/petitions, evaluates and invites the disputants and thereafter, he writes his report or recommendation to the body that sets it up. If the report is against the newspaper, the editor is sanctioned" Sanctions ranges from retraction to apology since the Ombudsman is not a court of law. "The ombudsman can recommend cost to the petitioner and disciplinary action against the practitioner or newspaper. The ombudsman is an arbiter. In day to day activities, people are offended and the ombudsman comes in". The NPAN is in clear disagreement with external regulation which the Press Council represents "the Press Council was set up by government to regulate the conduct of media practitioners. It is a form of government control over the media, and that is why newspapers and editors disagreed with it."

While the Nigerian Guild of Editors, in concert with NPAN gave full support to the establishment of the office of the Ombudsman, however, the Nigerian Union of Journalists kicked against it. The NUJ based its argument on the premise that the NPAN cannot be a judge in its own case or set up what it described as a "publishers court" you cannot be a judge in your own case it argued. "NPAN cannot set up an ombudsman and appoint a retired judge, who has never practise journalism to head it, and they attach monetary condition to petition, an aggrieved person needs to pay the sum of N10000 to process his petition". On this grounds the NUJ rejected NPAN's intervention and subsequently directed its members not to honour any summon by the Court of the Ombudsman.

7. THE WAY FORWARD FOR PRINT MEDIA REGULATION

The NPC Act in the views of the NUJ with appropriate amendments remains the best option for print media regulation in the country. This is even more so because the Council would be funded by government as it is unlikely that other stakeholders would fund it. The concern about government control of the board of the Council is at best a red herring in the views of the NUJ, this is because the board of the Council has an even spread amongst stakeholders. "This shows that out of the 18 members 90% of them are journalists. The NUJ have 4 representatives, the Nigerian Guild of Editors have 2, the newspaper owners have 2, the general public have 4, the Ministry of Information has just one representative. If you look at it generally a board of 18 members or so and you discover that already you have 90% as journalists, the Executive Secretary is also a seasoned journalist, we can now make a case for the Nigerian Press Council Act". On accusation by newspaper owners that the Press Council is against press freedom, the NUJ refute the allegation and insists that among other things "the Council is to "ensure the protection of the rights and privileges of Journalists in the lawful performance of their professional duties and to hold Journalists accountable to the public in the context of the Professional Code of Ethics of the Nigeria Union of Journalists".

Arguing along this line the Press Council believes that the way forward for media regulation in Nigeria lies in the hands of the NUJ "the NPC does not operate based on any law of the National

Assembly, they operate by the code of ethics of the Nigerian Union of Journalists and since they are the custodian of the register of journalists they should regulate the print media” The Council however believes that the problem with the NUJ is that it is “combining the functions of a trade union and that of a professional body”

8. CONCLUSION

Divisions between the contending parties are deep and reconciling these divisions would be a herculean task. However from, the varying argument by stakeholders we can easily identify areas of agreement and areas of disagreement. The areas of agreement can be highlighted as follows:

- Unethical conduct is prevalent in the Nigerian media
- There is need for regulation to address the trend.

The areas of disagreement can also be summarised as follows:

- The mode of regulation (internal or external)
- Whom the powers of regulation should be vested on.

While the NUJ supports external regulation through the NPC Act the NPAN rejects external regulation and the NPC Act in support of internal regulation through its own Ombudsman mechanism. The Nigerian Press Council believes the NUJ should act as a professional body rather than a trade union, and since it is the custodian of the register of members should regulate the profession.

Evidently, there remains a lot of contention among stakeholders in the Nigerian print media industry, this is however not unexpected. The age long mutual suspicion among all the players is only just rearing its head. The NUJ over the years has been behaving like a trade union rather than a professional body in the mode of the Medical and Dental Council or the Nigerian Bar Association. With the NUJ incapable of playing its role effectively, the NPAN has stepped in to fill the void, through the Ombudsman mechanism. The editors, through the NGE, are only replicating the interest of the owners by their unalloyed support of the Ombudsman mechanism.

In view of the unending squabble for supremacy between key stakeholders in the Nigerian print media industry, the writer hereby recommends co-regulation as the best and workable option for the regulation of the Nigerian print media. This should not be considered as a new proposal. The principle is already there just that stakeholders have refused to work together for its actualisation. The co-regulatory approach the paper is proposing is one that encourages:

- A dialogue process among stakeholders (government, NPAN, NGE, NUJ)
- Is not state controlled (as the NPC Act seems to propose) nor
- Self-regulation in the pure sense of it (like the NPAN Ombudsman)

To make this happen stakeholders must come together in the interest of the Nigerian print media. The Nigerian Union of Journalists must begin to put measures in place to professionalise membership or set up an alternative body to achieve this. The idea of a Council of Registered Journalists, backed by appropriate legislation must be on the table. NPAN, as the most organised and powerful of the stakeholders must become more trusting of government. They should allow government play a role in the proposed co-regulatory regime. Government on its part should be magnanimous enough to finance the structure and reduce its regulatory role to the minimum. This will allow for more flexibility, adaptability and effectiveness than straightforward self-regulation or legislation. It would in effect eliminate the current atmosphere of distrust and mutual suspicion that has bedevilled print media regulation in Nigerian. This inclusiveness would results in greater legitimacy for mediation and helps restore public confidence and trust in the Nigerian print media. To achieve this the present NPC Act should be amended with a view to accommodating the concerns of stakeholders. A total repeal of the Act should equally be on the table to allow for the enactment of a new Act that represents the interests of all stakeholders.

The Nigerian print media cannot remain unregulated. Effective regulation is imperative to restore public confidence in the media. With the phone hacking scandal in the UK few years back, a major fallout was the scrapping of the British press regulator, the Press Complaint Commission (PCC) and its replacement with the Independent Standards Press Organisation (IPSO) because the PCC was not working (Press Complaint Commission). Moreover a key recommendation of the Leveson Inquiry is towards more external regulation of the British press rather than less (Leveson, 2012). The British parliament is even contemplating legislation to regulate the print media since the UK’s self-regulating mechanism has failed to address issues of ethics in the British Media. (“Parliament UK”, 2015) In view of this the best stakeholders can do in Nigeria is to support co-regulation as a way of instituting and enforcing regulation in the Nigerian press. To this end stakeholders should work towards the amendment of the NPC Act to bring about a convergence of the interests of the NUJ the NPAN and the Nigerian Guild of Editors in a co-regulatory regime.

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