

THE MEDIA, GOVERNMENT AND SOCIAL CONTRACT: THE NIGERIAN PERSPECTIVE

Daniel Evans Eshett

*Department of Mass Communication
Akwa Ibom State Polytechnic, Ikot Ekpene, Nigeria
Email: danielevans@yahoo.com*

ABSTRACT

Governments in various parts of the world have always sought to use and control the media as an appendage of government. Of all the institutional linkages with government, government and media relationship or linkage is the most noteworthy. And the nature of the relationship between the media and government varies according to the political system in different nations. The various nature of the relationship gave rise to the classical four theories of the press which explain the varying relationships. The obligation is summed up as upholding the responsibility and accountability of the government to the people. This study aimed at examining the relationship between the media and government in Nigeria in terms of the social contract and functions of the media. It was concluded that instead of trying to suppress the press or hinder access to information, government should follow the path of due process and transparency in carrying out the affairs of the State. Although the recently signed Freedom of Information Act is yet to be tested, Nigeria and Nigerians will definitely come to terms when the freedom of information Act is implemented.

Keywords: *The Media, Government, Social Contract, Freedom of Information Act*

INTRODUCTION

For a nation to exist cohesively, there must necessarily be a government. The government derives its legitimacy from the people through the constitution. This is more applicable to democratic governments. The people through the constitution prescribe duties to be performed by different people and arms of government such as the making of law, the enforcement of law, the interpretation of law and the monitoring of governance, among other duties. As noted by Momoh (1987) with the assignment of duties, a division of labour situation exists and each organ is expected to perform at its post.

The implication of the division of labour and separation of powers is that in the performance of the duties assigned by a system, each organ should perform without interference with its internal workings from any other organ. It is true that the actors in a particular arm or section of government can only be masters at their post through acquisition of skill, but are basically servants in their performance and must necessarily account to the system and the people for all their actions (Momoh, 1987). The media - newspaper, magazine, radio and television - have come to be accepted as integral part of the society.

However, the media have been held with mixed perception by different people in different societies. Some see the media as veritable instruments of development while others see the media as political weapons and instruments of power. Governments in various parts of the world have always sought to use and control the media as an appendage of government. This disposition by government brought about the normative theories of the press and friction between the media and government. Lying between the government and the media are the issues of social contract and the constitutional role of the media. This study therefore seeks to examine the relationship between the media and government in Nigeria in terms of the social contract and the functions of the media.

THE MEDIA

The media in the context of this work refers to the print and electronic media. These are newspapers, magazines, radio, television and the internet. Historically, the evolution of mass media can be traced to the existence of printing presses in China and mechanical means of printing in the Western world in 1450s. At the dawn of the twentieth century radio and television came into being. The emergence and development of the media over the years have contributed immensely to the society. The media perform several functions in the society. These functions as analyzed by Okunna (1999) include information, entertainment, education, advertising, public debate and discussion, promotion of culture, socialization, motivation and mobilization and integration.

The media constitutes a system of communication which according to Bittner (1989) is vital for society's survival and growth. As noted by Okunna (1999) the mass media do not operate in isolation or in a vacuum as they perform their functions in a society. The media operate in conjunction with other arms of the society. Put simply, Okunna states that the society is a system and the mass media are only one of the social institutions which make up this system. Golding (1977) cited in Okunna (1999) describes the interaction of the media with other social institutions thus:

It is meaningless to discuss any social institution such as mass communication as though it operated in isolation, unconnected to other social processes. The media are central in the provision of ideas and images which people use to interpret and understand a great deal of their everyday experience. They therefore relate to other institutions both structurally, and through organizational ties and interaction, and culturally, by conveying information and impressions about the society.

The obligation of the mass media is spelt out in section 22 of the Nigeria Constitution of 1999 (as amended) that the press, radio, television and other

agencies of the mass media shall at all times be free to uphold the fundamental objectives and accountability of the government to the people. The functions of the press as prescribed by the constitution fall within the functions identified by McQuail (1987). These include surveillance, information, correlation and education. There is a notion which sees the media as serving as watchdogs. Regarding this notion, Ogundimu (2003) states:

This watchdog concept is shorthand for a press that performs as a searchlight on the conduct of public affairs, to ensure that the politically powerful are held accountable; because the notion of accountability forms the bedrock of democratic governance. The press serves therefore as the eyes and ears of the public. In doing so, many press scholars believe that it is necessary for the news media to set itself (sic) up as an adversary of authority, a watchdog of society, and an advocate of the public interest.

Apart from the provision of section 22, there is a general provision for freedom of expression in section 39 of the 1999 Nigerian constitution (as amended). Subsection (1) of this section 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. Freedom of the press is derived from the generality of this sub-section.

However, unlike the American situation where it is entrenched in the constitution that congress shall make no law inhibiting the press, the Nigerian constitution specifically states in sub-section (3) of section 39 that nothing in this section shall invalidate any law that is reasonably justifiable 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 film 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.

Obviously, the media in Nigeria operate within a mixture of authoritarian, free press and development media orientations. The media are perceived to be very powerful and thus must be controlled.

GOVERNMENT AND THE SOCIAL CONTRACT

Government represents the state and can be seen as originating out of the way or mode of production, out of objective relations and functioning primarily to provide for the maintenance and integrity of cohesion of the social formation to prevent it from anarchy. The Macmillan English Dictionary defines

government as the people who control a country, region or town and decision about its laws and taxes. Governance is not all about making laws. It is also about some functions and obligations to the governed. Even the laws that a nation is governed by are a collective resolution of the people because the power that the government has is derived from the people. The opening sentence and paragraph of the 1999 constitution (as amended) makes the sovereignty of the people explicitly clear thus:

We the people of the Federal Republic of Nigeria: Having firmly and solemnly resolved: To LIVE in Unity and harmony as one indivisible and Indissoluble sovereign Nation under God AND TO PROVIDE for a constitution for the purpose of Promoting the good government and welfare of all persons in Our country..... DO HEREBY MAKE ENACT AND GIVE TO OURSELVES THE FOLLOWING CONSTITUTION

This opening paragraph sets the background for understanding governance as a social contract. The social contract is further amplified in section 14 of chapter 2 of the constitution; subsection 1 of this section states unequivocally that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice. Subsection 2 states, it is hereby, accordingly declared that:

- (a) Sovereignty belongs to the people of Nigeria from whom government through its constitution derives all its power and authority,
- (b) The security and welfare of the people shall be the primary purpose of government; and
- (c) The participation by the people in their government shall be ensured in accordance with the provisions of this constitution.

The concept of social contract is real in democratic government since this form of government will not be possible without the agreement between the people and the government. It has been posited that at a point in time, men freely surrender their power to a group of their fellow men in exchange for an organized living, protection of lives and property and provision of welfare. The collective power in the hands of a few was to ensure the pulling of the resources of their environment together for a just and fair distribution among them to avoid a phenomenon known as survival of the fittest.

Social contract in a very simplistic form is an agreement in which a few people are saddled with governance and the majority who are the governed have rights and obligations. In this agreement, the power of the majority is supreme. The authority of those governing remains valid and respected so long as they stick to the terms of the contract and their contract tenure has not expired.

THE MEDIA, GOVERNMENT AND THE SOCIAL CONTRACT

Whenever mention is made of the relationship between government and the media, the issue of freedom of the press readily comes to bear. Since the emergence of mass communication following the development of the mechanical means of printing in the Western World in 1450s and the dawn of radio and television in the early part of the twentieth century, the issue of relationship between government and the media has remained a subject of public interest and importance. As noted earlier in this study, the media do not operate in isolation as they perform their functions in a society. The media operate in conjunction with other arms of the society, as Okunna (1999) observes and was earlier posited by UNESCO (1981). Of all the relationships or institutional linkages, government and media relationship or linkage is the most noteworthy. The nature of the relationship between the media and government varies according to the political systems in different nations.

The various nature of the relationship gave rise to the classical four theories of the press which explain the varying relationships. These theories are classified as authoritarian, libertarian, social responsibility and soviet-communist theorists. Lately, the development and democratic participant theories have been added based on the political realities of the developing countries. The authoritarian theory explains that an authoritarian government controls the mass media rigidly, while the libertarian explains that the media are completely free in a libertarian system of government. The soviet-communist theory stipulates government ownership and control of the media. The social responsibility demands that freedom must go with responsibility to the society. These four theories are known as the normative theories of the press or political philosophies of the press. There are different orientations or the way the media are expected to operate in a society. All these theories came up as a result of the perceived power of the mass media. Attesting to the power of the media, Dennis and Merrill (1984) conclude:

We will not return to the point of having uncritical awe of so-called media power, but we will understand better how mass communication works in the context of other social forces without underestimating its importance and influence. Clearly, the media are powerful.

The relationship between government and the media is noted in the social contract. As the people willingly give power to a few in exchange for an organized living and welfare, the government is accountable to the people. This means that the people must as of right know what government is doing, particularly in a democratic setting. If the people must know what the few people entrusted with governance are doing, then the only reasonable means to know remains in the press. The media have the constitutional duty of not only informing, but also holding the government accountable to the people.

At the heart of government/media relationship are press freedom and press laws. The history of government/media relationship has been characterized by conflicts, frictions and disagreements. Since the emergence of mass communication in the early nineteenth century, governments the world over have always wanted to control the media, while the media have always wanted to be free. The situation has not been different in Nigeria. Both parties seem not to agree on the operational definition of press freedom. While government does not want journalists to handle public information as the journalists see fit, the journalists protest unwarranted controls that stifle reporting (Ukonu, 2006).

The concept of press freedom has been defined variously by different societies. Many societies interpret freedom, as it relates to press in their own ways (Ukonu, 2006). For example, while the defunct USSR extolled its press as being the freest, the USA abhorred the soviet press as muzzled. This view of press freedom being relative has been articulated by Udoakah (2001), when he states that the relevance of forms of government to the issue of press freedom may be questioned, yet they are not separate matters. He is of the view that the issue of press freedom is directly related to the question of how a society should be governed, and that the right to decide how a society should be ruled resides with the nation. Consequently, in a society that regards the state as the supreme political authority, the media are assigned definite roles by the state, whereas in societies which see themselves as a conglomerate of competing interests with the state not to dictate but to protect individual rights, the media are free to favour the interest to which they are sympathetic.

However, in most societies, Nigeria inclusive, press freedom is conceived as the guarantee by a government of free public press for its citizens and their associations, extended to members of news gathering organizations. This notion views press freedom as being granted by government. Another view of press freedom according to Western countries' definition is that freedom from restraint which is essential to enable proprietors, editors and journalists to advance the public interest by publishing the facts and opinions without which a democratic electorate cannot make responsible judgement (Udoakah, 2001).

Press freedom presupposes freedom from restraints by the society generally. In reality, there is no absolute press freedom anywhere in the world. Different societies or nations control the media in various ways. While the media want unfettered access to information and freedom to transmit information, government makes several inhibiting laws. In Nigeria, for example, there are the laws of Sedition, Libel and Official Secrets Act among others. Those in power see the media as a threat and seek to minimize the threats posed by the media through these laws.

The frictions between government and the media arise in the course of

the media trying to inform the people about the government as well as in holding the government accountable to the people in the spirit of the social contract. This clash of interest has always resulted in harassment, intimidation and arrest of journalists by government agents. In some cases, media houses have been proscribed and copies of newspapers and magazines seized. These cases were more rampant during military regimes. Since the Nigerian democracy suffers some hangover from military mentality, intimidation and threats by the military, there are cases of harassment, intimidation and threats by government against journalists; even in the present democratic dispensation.

The conflict that characterizes the relationship between government and the media can be understood better by considering the compendium of press laws created in Nigeria since the pre-colonial era to the current democratic dispensation. These laws are chronicled by Ufuophu-Biri (2006, 2007):

Press control under the Colonial Administration (1903 - September 30, 1960).

1903 Newspaper Ordinance

The Basic Provision and Interpretation of Seditious Offence Ordinance of 1909, 1940 and 1942

The Newspaper Ordinance of 1917

The Printing Regulation of 1933

Newspaper Act No 129 of 1958 and two others.

Press Control in the First Republic (October, 1960 to January 14, 1966)

Seditious Meetings Act No 48 of 1961

Defamation Act No. 66 of 1961

Defamation (Amendment) Act No. 1 of 1963

Official Secrets Acts No. 29 of 1962

Official Secrets (Amendment) Act no. 39 of 39 of 1962

Cinematography Act No. 7 of 1963

The Constitution of the Federation: Adaptation of Laws (Miscellaneous News Powers) Order No. 112 of 1964

News (Amendment Act)

The First Military Era (January 15, 1966 - September 30, 1979)

The following press laws were made during the period.

The Circulation of Newspaper Decree No. 2 of 1966

Defamatory and Offensive Publication Decree No. 44 of 1966

Newspaper (Prohibition from circulation) Decree No. 17 of 1967

The Sunday Star and Imole Owuro (Prohibition) Decree No. 17 of 1968

The printers and publishers of Sunday Star and Imole Owuro (Declaration as unlawful society) Decree No 19 of 1968

Public Officers (Protection against false accusation) Decree No 11 of 1978

Trade Dispute Decree No 7 of 1978

Newspaper Prohibition from Circulation (validation) Decree of 1978.

Armed Forces and Police (Special Powers) Decree No 24 of 1967

The Press Council Decree No 1 of 1978

The Daily Times Decree of 1978.

General Buhari's Regime (January, 1 1983 - August 27, 1985)

This period witnessed the promulgation of the two most vicious, draconian and unpopular press laws so far in the country. They were:

Decree No. 2 of 1984

Public Officers (Protection against False Accusation) Decree No 4 of 1984.

The Babangida Era (August 27, 1985 - August 1993)

This regime promulgated the following laws, which affected the mass media: Newswatch (Proscription and prohibition from circulation) Decree No 6 of 1987

The Nigerian Press Council Decree No. 6 of 1988

Concord Group of Newspapers Publication (proscription and prohibition from circulation) Decree No 14 of 1992

The Treason and Treason Offences Decree No. 29 of 1993

The Offensive Publication (Proscription Decree No 35 of 1993)

The Newspaper Registration Decree No 43 of 1993

The Newspaper Proscription from publication Decree No 48 of 1993

The News (Proscription and Prohibition from circulation) Decree 1993

National Broadcasting Commission Decree No. 38 of 1992.

National Communication Commission Decree No. 75, Vol. 2 of 1992.

The Abacha Regime (November 17, 1993 - 1998)

This regime, though very repressive against the press did not promulgate any press law. It carried out its oppressive acts against the press arbitrarily and lawlessly.

Military regime of General Abdusalami Abubakar

The succeeding military regime of General Abdusalami Abubakar did not harm the press in any way either by law or by action. In fact, the regime did not also make any press law.

Regime of Chief Olusegun Obasanjo

The succeeding regime of Chief Olusegun Obasanjo did not make any press law up to 2007. But there have already been cases of infringement such as The temporary close of AIT and Ray Power over their coverage of the Belview plane crash at Lisa village in Ogun State on 22nd October, 2005.

President Umaru Musa Yaradua's Tenure

During the late President Umaru Musa Yaradua's protracted illness Channels Television broadcast the news about his death, and this led to the closure of the media house briefly. Channels Television was reopened after apologies and retractions as the news was found to be false. Channels Television attributed the news to Nigerian Television Authority's (NTA) website.

FREEDOM OF INFORMATION ACT

Precisely on May 28, 2011 President Goodluck Johnathan signed the Freedom of Information Bill into law. It is an Act to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and related purposes thereof, 2011. The opening paragraph of the Act states: Be it enacted by the National Assembly of the Federal Republic of Nigeria as follows:

1. *This Bill may be cited as the freedom of information Bill, 2011. Short title.*
2. (a) *Notwithstanding anything contained in any other Act, Law or Regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is hereby established.*
(b) *An applicant herein need not demonstrate any specific interest in the information being applied for.*
(c) *Any person entitled to the right to information under this Bill, shall have the right to institute proceedings in a Court to compel any public institution to comply with the provisions of this Bill.*

However, there is still a contradiction in the system as the government is yet to come to terms with the reality of the Freedom of Information Act. Government is yet to reconcile itself with the Act as the appointment letters issued by some government ministries and parastatals still contain a declaration that a prospective employee is expected to make. The declaration states thus:

I, do solemnly and sincerely promise that I will not directly or indirectly reveal, except to a person to whom it is in the interest of the Government to communicate any article, etc. document or information which has been or shall be entrusted to me in confidence by any person holding office in the course of the work which I perform, and I will, under all circumstances exercise due diligence to prevent the acknowledgement of any such article, note, or information being communicated to any person against the interest of the Government. I realize that failure on my part to keep these promises renders me liable to imprisonment under the Official Secret Ordinance, 1963, and the obligation of secrecy imposed upon me by that ordinance will continue after I have left the Government Service.

The freedom of information Act is yet to be tested. Whatever the situation, a law is a law, whether tested or not. Sooner or later Nigeria and Nigerians will come to terms with the Freedom of Information Act.

CONCLUSION AND RECOMMENDATIONS

Press freedom is relative depending on the political orientation of the society. As Momoh (1987) has rightly said "the duty of the press in Nigeria is to monitor governance and this study is imposed by the system and by the people of Nigeria through the constitution of the Federal Republic of Nigeria. It is from the same people, through the constitution, that those who make laws and those who interpret laws, derive their powers". It therefore follows that no part of the system should seek to control another, but all parts of the system should function according to the roles assigned them by the people.

Although there is no absolute freedom as Udoakah (2001) has pointed out, there is need for the different arms of the society to function without external interference from other parts of the system. The people through the constitution have spoken and assigned roles to both the government and the media. Government is not therefore justified in seeking to control the press. After all, there are laws accepted universally that guide the operations of the media, and if anybody is offended, such a person can go to court to seek redress.

The freedom of the media is the freedom of the people through whom government derives power and legitimacy. Muzzling the media amounts to muzzling the people and depriving the people the right to know what government does. Freedom of the press is the most important factor in the sustenance of the social contract agreement. Ukonu (2006) cited MacDougall in Hage et al (1976) assert, "it is one of the press, great - if not greatest-responsibilities to provide the essential information ... without which no progress whatever is possible in a democratic society".

Thus, instead of trying to suppress the media through anti-press laws, government, particularly, in Nigeria, should follow the path of due process and transparency in carrying out the affairs of the state. By so doing, government shall fulfill its social contract agreement with the people. The following recommendations are made as a result of the various considerations of this study.

- (1) All obnoxious press laws should be abolished in Nigeria to allow the press to function effectively.
- (2) A clause restraining anybody from making inhibiting press laws should be entrenched in the Nigerian constitution like what the second Amendment of the American Constitution says: "Congress shall make no law ...or abridging the freedom of speech, or of the press..."
- (3) Government should respect the social contract agreement with the people and let the people know what they are doing.

- (4) The media are assigned roles by the people through the constitution just as the government is assigned roles by the same constitution. Therefore government should not interfere with the internal workings of the media.

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