

NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES LAGOS

ROUNDTABLE ON PRESS FREEDOM AND NATIONAL SECURITY

29th June, 2011

COMMUNIQUE

INTRODUCTION

Nigeria adopted a seminal piece of legislation to promote openness and transparency when it passed its Freedom of Information Act (FoIA) in May 2011. The Act, like its predecessors from around the world, makes a lion's share of information on publicly-funded projects available to any person who requests it. It places on the State an affirmative duty to disclose information and a negative duty to not obstruct the free flow of information to the public. In a post 9/11 era, however, the realization of freedom of information in any country is complicated by the realities of many newly heightened national security interests. On one hand, we have the public's interest in information, which this must be balanced against constantly evolving security interests.

Press freedom is a corollary of freedom of expression, which in itself is a fundamental right in the world without which genuine democracy and national security cannot thrive. National security in Nigeria is questionable and Nigerians are aware of the fact. Like the motto of Boy's Scout, every Nigerian is prepared for any calamity and /or spark of violence. The state of national security is seen in the number of barbed-wire fences erected by political office holders, the large number of thugs in the convoy of elected political office holders and the number of bullet proof cars in the fleet of the country's political office holders. Indeed, the right of a people to freely express themselves and comment on the affairs of state and conduct of government is an intrinsic part of democracy that demands accountability of rulers and public officials to the citizenry. There is a thin line between press freedom and national security which must be navigated with skill. Many Nigerians think there is a lot of freedom of the press in Nigeria. However, the press freedom index for 2010 puts Nigeria at No. 146 out of 178 countries polled by Reporters without borders.

In furtherance of its determination to bring contemporary issues to public discuss and arrive at practical recommendations that will move the nation forward, the Nigerian Institute of Advanced Legal Studies, held a one day Roundtable on Press Freedom and National Security to discuss these issues bothering our nation at this critical time when national security has come to the fore of national discuss with a view to finding solutions that will strengthen our democracy.

Perspectives for the Roundtable include:

- Press Freedom and Good Governance
- The Limits of Press Freedom
- Freedom of Information in Nigeria's Political Space: Implications for National Security
- Freedom of Information Law and Good Governance
- Wikileaks, Press Freedom and Global Security
- Media Rights and Constitutional Democracy

OBSERVATIONS

The Roundtable made the following observations:

1. There are three ingredients for a successful democracy, viz:
 - i. An informed citizenry
 - ii. The ability of the people to participate effectively in the way they are governed
 - iii. The ability of the people to hold those who exercise power on their behalf accountable to them.
2. The word 'security' is a vague generality whose contours should not be invoked as a matter of course to undermine the thrust of an open, informed and democratic society; hence, the right of the people to know should override any perceived national security concerns.
3. Open, robust and constructive debate is critical to the entronement of transparency and accountability in government. Access to information is therefore vital to realization of the goal.
4. The citizens cannot participate effectively in governance by holding those who exercise power on their behalf accountable without being fully, accurately and truthfully informed by the media since the media are the only institution that has the ability to reach a large number of people at once.
5. Some of the benefits of Freedom of Information for the Nigerian populace, the journalists and other media practitioners include:
 - i. The Journalists, reporters and other practitioners have their dignity and human rights protected in the course of performing their duties. Journalist and reporters will no more suffer from harassment, brutalization and humiliation while discharging their duties. With the Freedom of Information Act, Journalists and media practitioners can now perform their duties without fear and favour;
 - ii. It gives people and journalists due access to some classified information and 'top secrets'. This will reduce the level of secrecy attached to public administration.
 - iii. It promotes accountability and probity in governance. The political office holders will be more conscious of the fact that their official impunity has limit because the electorate have access to query whatever they might have done in office.
 - iv. It promotes security in the country by Act allaying the fear of information givers. With the Freedom of Information Act, Nigerian people now have chance to report criminals and criminality within their neighbourhood to the security agents without fear of indictment nor incarceration. Most Nigerians in the past were not always willing to give tip off to the police because of indictment or false allegations.
6. In various parts of the world, the issue of invasion of privacy by the press is a hot button issue. The Code of Ethics for Nigerian journalists approved on March 20, 1998 frowns at the invasion of privacy except under certain conditions, such as if:
 - a. It impinged on public interest
 - b. It is aimed at exposing crime or serious misconduct
 - c. It is aimed at producing public health, morality and safety
 - d. It is aimed at preventing the public from being misled by some statement or action of the individual concerned.

7. Despite what media regulators and operators may do to curtail privacy invasion, there are three factors arising from the emergence of the new media and are threats to privacy. They are: Globalization, Convergence and Multi-Media.
8. The media act as a channel between the people and the government, conveying to the government their feelings, fears, desires and grievances. They also bring government's plans as well as its responses to the people's feelings to the people thus helping to bridge the information gap between the government and the people.
9. The media cannot perform their watchdog role as prescribed by the Constitution because they are weighed down by various problems, such as the limping economy, multiple taxation, falling value of the naira, the growth of the internet, cable and satellite television and the burgeoning home video market, and globalization
10. Section 14 of the Constitution lays sovereignty squarely in the hands of "the people". Sections 38, 39, and 42 further support the adoption of a FoIA as a political and developmental right. Section 38, grants every Nigerian citizen freedom of thought, and as a compliment, section 39 grants freedom of expression and the press. If these rights are to be taken seriously in a democratic society, the free flow of information must exist. Without this foundation, the rights of Sections 38 and 39 are virtually meaningless
11. Good governance must be a product of the efficient functioning of the three arms of government: Executive, Legislature and the Judiciary as well as the ability of the fourth and unofficial arm, the Press, to hold them accountable to the people as the 1999 Constitution prescribes in section 22: "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 (Chapter 2) and uphold the responsibility and accountability of the government to the people".
12. By implication, if there is no good governance in the country, not only must the three arms of government be directly held responsible, the press, civil society organizations and the public generally must have a case to answer for their acts of omission or commission.
13. Government is responsible for the bomb explosions and national insecurity because of bad governance at the state and national levels of public administration, mismanagement and corruption. Successive Nigerian governments lack political will to tackle the problems of national security and national question. Bad governance is a threat to national security because the political office holders bend the laws of the land to their favour with impunity.
14. Bad governance and mismanagement of information and resources pose security threat as seen in the following ways:
 - i. Poor data base for Nigerians- There is no adequate statutory database for all births and deaths in Nigeria. The records for migration (immigration and emigration) in the country are nothing to write home about. Realizing this situation, most Nigerians with criminal intent engage in crimes without being caught. This poses serious security threat to the existence of Nigeria.
 - ii. The porousness of Nigerians borders- Nigerian borders are too porous. Foreigners of neighbouring African countries always have undue opportunities to enter and leave Nigeria at will without proper security checks. This poses a serious threat to national security.

iii. Fear of marginalization- Some parts of Nigeria have become trouble spots because of the fear of marginalization. South-South geo-political zone (Niger-Delta) is notorious for some nefarious activities that may pose threat to national security. The Niger-Delta felt that they have been marginalized politically and economically until recently.

iv. Monetization of political office and appointments- Many Nigeria politicians have seen their election or appointment into public offices as quick avenues for them to make themselves rich. For this reason, they employ all the means they know, including violence to get to the public office. This is why there are rampant cases of assassination and kidnapping within Nigeria's political space.

v. Nigerian foreign diplomacy- The relationship of Nigerian government with other nations of the world (implicitly or explicitly) affects the country's national security. The country's external relationship affects our economic and political strength to tackle some problems that are peculiarly ours.

15. Bad governance and national insecurity have some impacts on national development.

The insecurity in the country has led to closing down of some businesses especially in the South-South geo-political zone.

16. The national insecurity in Nigeria also affects the international legitimacy of the government. The current state of national insecurity in Nigeria portrays the government as incapable of protecting lives and properties of innocent masses. Of what use is the peace keeping project that Nigerian government is embarking upon in other nations in the world when peace is a mirage at home?

17. National security threat or insecurity has caused decimation of Nigerian population. The most disheartening of this situation is how Nigeria is losing promising youths to the state of violence emanating in the country almost every time.

18. Section 39 of the 1999 Constitution of Nigeria provides 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". However, the same Constitution turns around in section 45 to take away the freedom that is conferred on the press and the citizens. This amounts to taking away with the left hand what it gave with the right hand.

19. During the military junta and subsequent civilian administrations in Nigeria, there has been subjective reporting owing to the personal biases, exigencies of the moment and national interest. The press is fettered and free flow of information for sustainable governance is hindered through various decrees and acts. Among these are Defamation Act, 1961; Official Secret Act, 1962; Defamation Act, 1961; Seditious Meeting Act, 1961; Official Secret Act, 1962; Public Officers (Protection Against False Accusation) Decree No 11, 1976; Newspaper (Prohibition of Circulation) Decree no 12, 1978, Nigerian Press Council Decree No 31, 1987, News Watch (Proscription and Prohibition from Circulation) Decree no 6 of 1987 and The News (Proscription and Prohibition from Circulation) Decree of 1993. All these decrees and promulgations did not permit press freedom and Freedom of Information in Nigeria.

20. As things are now, there are several legal, administrative and bureaucratic road blocks to the full realization of even the freedom that is available. However, the new Freedom of Information Act (FoIA), imperfect as it is, is a starting point in the battle to make available to Nigerians, non-security information, which is being hoarded by officialdom but which, if released, can improve public understanding of how government works or doesn't work.

22. Within the text of the FoIA are self-imposed limitations on the public's right to know. The right, like all others, is not absolute and important exceptions must be made when the disclosure of public information becomes detrimental to the public good. To this end, Sections 12, 15, 16, 17, and 18 enumerate the limitations of the public's right to know.
23. In addition to the limitations enumerated in the Freedom of Information Act itself, two other federal Acts limit access to public information and complicate immunity provisions. The first is the National Security Agencies Act (NSAA), which is entrenched in Nigeria's constitution and cannot be repealed. The Act creates three agencies tasked with the security of the state: a State Security Services, National Intelligence Agency, and a Defence Intelligence Agency. Section 2 of the Act delegates responsibility for the protection and preservation of all military classified matters to the Defence Intelligence Agency.
24. In addition to the NSAA, the federal Evidence Act provides for the exclusion of court evidence when it is in the public interest. Specifically, Section 220 allows a Minister to object to the production of documents (if he believes that doing so is in the public interest) by providing the court with a certificate stating the same.
21. It is not only legislation that is the hindrance, the mind set of officials, especially security officials who consider nearly every piece of paper as security information.
22. Equally, our security personnel have a twisted view of national security, which derives from their inability to appreciate what is national interest. Our security personnel mistake government interest for national interest because they are regime maintenance officers. Government interest is not necessarily coterminous with national interest.
23. The problem of security in our country is not so much the fact that the press reveals too much as the fact that the authorities conceal too much. For example, no ordinary, well educated Nigerian can say with any measure of accuracy, how many Nigerian soldiers lost their lives during the Liberian crisis. Even the level of financial commitment is treated as a trade secret.
24. As of now, security matters are not handled by the officials in any orderly and consistent fashion. Whoever gets a story that affects security discusses it with his editors and decides whether or not to publish it.
25. According to the United Nations, good governance has eight characteristics, which if applied can lead to sustainable development and a good society. It must be:
- i. Consensus oriented
 - ii. Participatory
 - iii. Effective and efficient
 - iv. Accountable
 - v. Transparent
 - vi. Responsive
 - vii. Rule of law driven
 - viii. Equitable and inclusive
26. The press, have a role to play in good governance and national security. For it to be able to play its role effectively it must have a certain measure of freedom, the ability to convey information to the public without prior restraint by or fear of reprisal from the authorities.

RECOMMENDATIONS:

At the end of the Roundtable, the following recommendations were made:

1. Despite the problems confronting the press, we must support the press to utilize the rights available to it for the work that it has to do. Such rights include:
 - a. The right to publish reinforced by the citizen's right to know and vice versa.
 - b. The right not to disclose source of information
 - c. Right to access to information, reinforced by the passage of the Freedom of Information Act.
 - d. The right of conscience. No journalist should be directed by an employer, (private or public) to commit any act that the journalist believes would breach his or her professional ethics.
2. Nigerian security forces should borrow a leaf from Britain, where security matters that may be published by the press are often discussed by a committee made up of defence officials and press and broadcast journalists. If they come to the conclusion that the publication of information on particular topics would be detrimental to the national interest, Defence Notices (D Notices) are circulated to the media requesting them not to publish the information. Compliance is expected but the directive has no legal force.
3. The Media Code of Ethics has articulated some fundamental principles for conduct in journalism. Such principles include truth, fairness, justice etc. We have to work on monitoring its implementation.
4. Internal criticism- There must be a robust internal criticism mechanism and self-censorship, maybe an ombudsman who evaluates news coverage and attends to the concerns of readers and the affected journalist as New York Times urges, only "all the news that fits to print". That is the hallmark of responsible journalism.
5. External criticism- The Columbia Journalism review inaugurated in 1961 in the United States set for itself the task of assessing "the performance of journalism in all its forms, to help define or redefine standards of honest, responsible service to help stimulate continuing improvement in the profession and to speak out for what is right, fair and decent. Such publications must be able to ask and answer such questions as: was the coverage fair, accurate, complete and balanced? How was the information gathered? What were the consequences of the coverage if any? There is Media Review in Nigeria, but its performance needs to be improved.
6. In addressing the interface of press freedom and national security, there should be a presumption in favour of the right to know, pursuant to which a government that seeks prior restraint of publication of classified information must discharge the heavy burden of demonstrating that the publication would cause "grave and irreparable "danger.
7. The judiciary has a vital role to play in striking a balance between press freedom and national security given current realities, it is imperative to build the capacity of Nigerian judges to enable them treat press freedom and national security not necessarily as trade off, but mutually reinforcing concerns. Our judges can draw inspiration from the constructive manner in which the U.S Supreme Court resolved the issues arising from the publication of the Pentagon Papers and how it could impact on the Wikileaks saga.
8. The National Film and Video Censors Board (NFVCB) has to be pro-active in the scrutinization of

the video films produced in the country in order to remove the immoral, amoral and criminal contents. Consciously or unconsciously, children learn some immoral, amoral or criminal lessons from every video film watched and this may pose a national security threat. Besides, the government through its specified agencies should institute a proper check on the importation, distribution and marketing of foreign films with violent and immoral contents.

8. There must be continuing education by way of seminars, conferences, meetings, and discussions. They must emphasize media responsibility and morality.
9. Organizations must help the award granting bodies NMMA and Diamond Awards to establish more awards in various fields so as to help the journalists to cover as much as possible.

Lagos, Nigeria
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Signed:

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Director General.