

JURISPRUDENTIAL ANALYSIS OF THE CONFLICT OF INTEREST BETWEEN NATIONAL SECURITY AND THE MEDIA: EXPLORING ALTERNATE APPROACHES FOR NATIONAL INTEREST

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ABSTRACT

The media is under going unprecedented revolution. Both the conventional and new media, in the exercise of their acclaimed freedom draws serious concern for, and threat to national interest. This also have posed challenges to the law. The paper highlighted the old and current doctrinal boundaries of the media and the trending aspects of negative impact such as news framing, hate speeches and other bias which if left unchecked poses serious threat to national interest and public policy. The paper concluded that new stiffer boundaries to media freedom be upheld through a system of balance that flavours national interest and public policy. National interest should also be flavoured with relative national element not so called objectivity of global regime.

1.1 Introduction:

Nigeria, like many new nation states, is bedeviled with its own share of wars and crises of nation building. "In war" as the famous phrase of Senator Johnson, is often quoted, "Truth is the first casualty".¹ Information, disinformation and misinformation have direct impact on these situations. There lies the Power of the Media. Fragile states like Nigeria, with its multiple fault lines, ethnic and religious diversity fall prey to its tentacles. Hence, National security is often brought down to its knees at the mercy of powerful media especially as seen in

¹ Senator Iliam Johnson. "The First Casualty when War Comes is Truth" – La Stampa
<http://www.lastampa.it> (last visit 8:10 2021)

years of Arab uprising and crisis in Tunisia, Egypt, Syria, Libya, Lebanon and so on.

The jurisprudence of “Rights”, “Duty”, “Ethics” and “Responsibility” combine to strike a relative balance between:

- a- The State;
- b- The Media; and
- c- The Law

Where the trio is well regulated, national security is enhanced and maintained. The balance is scaled on mutual check and balance in an environment of rule of law. Where this fails issues of insecurity are escalated.

This paper aims at throwing some light into issues of insecurity and the media, looking at the Nigerian scenario within the global trends. The paper proffers jurisprudential analysis of the underlying issues.

The discourse, is intended to enrich, with jurisprudential highlights, the ongoing debate on further legislation to enhance Media regulation as well as strong resistance of media practitioners and human right activists against high handed executive intrusion or further legislative incursion.

1.2 National Security: Theoretical and Conceptual Clarification

1.2.1 National Security:

Giving a fixed definition to this term is difficult because it is fluid and dynamic. Over the decades, nay centuries, the concept of national security varies with pervading set of world order. Its history and context is a reflection of adaptability of a nation to Threats and issues emerging out of an unfolding international order.

According to Holmes, “modern concept of national security arose in the 17th century during the Thirty years war in Europe and the civil war in England”.²

The peace of Westphalia emphasized therefore sovereignty of nations over their domestic (national) affairs such as religion and external threat.

Growing further out of this is what Holmes captured as the post Westphalia notion: “The new idea of the nation state took a different approach. Peace and

² Holmes, K I, (2015) What is National Security?, 2015 Index of U.S Military Strength, The Foundation U.S P. I

stability could be better served if people were not slaughtering each other over some universal principle – in that case, religion”.³ This developed into two competing world views that define today the notion of a dual framework of national security.

On the one hand is the philosophical evolution through Kantian secular theory of perpetual peace, in collaboration with other nations, that paved way for the neo-Kantian subjectivity theory that eventually led to the American liberalist Internationalism. Nigeria woke up to this reality since the Jonathan “war without arms” against Boko Haram, until diplomatic interventions in Buhari government, which seems to relapse into old subjectivity. That is to say a country is subjected to international order and institutions even in its resistance to threat of national security.

On the other hand is the phasing realist theory of aggressive national security framework rooted in the Hobbessian notion of a strong nation, as entrenched by Hugo Grotius (the Father of International Law), where the supremacy of nation-state (and by extension national security) are espoused. This has been eschewed by the unfolding international legal order (International Humanitarian Law, International Human Right Law and International Criminal Law etc.). This has given way to the world order of liberal internationalism. Hence, Saudi government is forced to justify before the international community its role in Kasshogi Killing; Nigeria unlike in the Abacha days is held back in anti-insurgencies and even its response to ‘Anti-SARS uprising’, On and On.

1.2.1.1. *Common threshold of national security:*

In spite of the shifting sand of national security, the following underlines its common thresholds:

- a) Human Security
- b) Environmental Security
- c) State Security (although this is being eschewed for human security)

The essence in summary is to preserve, maintain, guarantee and assert protective strategy around these core thresholds and their incidentals – because they are, first of all fluid and, after all not exhaustive.

³ op.cit

Hence national security is seen as “The safe keeping of the nation as a whole. Its order of business is the protection of the nation and its people from attack and other dangers by maintaining armed forces and guarding state secrets”.⁴ [Emphasis added] From the last sentence emphasized above it stands clear that guarding strategic information or fact may be within the national framework of national security but the challenge is that freedom of the press (or information) is sacrosanct beyond the local/national limit, but stemming from the upper framework of International Human Right Law and the prevailing world order.

The capacity to protect within this limitation and inhibitions defines the fortress of national security. In conclusion national security has been described as “the ability of a state to cater for the protection and defense of its citizenry”.⁵

1.3 Nigeria’s National Security and the Media

Nigeria operates under a constitutional system of Rule of Law. All men and authorities are subject to Law. The core value and purpose of law, as in the wordings of S.11 of the Constitution of the Federal Republic of Nigeria (as amended), is “with respect to the maintenance and securing of public safety and public order” (National Security) and “providing, maintaining and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services” (Human Security).

As part of Fundamental Objectives and Directive Principles of State Policy S.14 (2) (b) went forth to enunciate thus: “(b) The security and welfare of the people shall be the primary purpose of government.” Other sections within the chapter enunciated further, the human, environmental and other objectives within the core of national interest.

The implementation, safeguard and responsibility of national security is reposed on the security agencies by the Nigeria Police Act, the National Security Act, The Nigeria Security and Civil Defense Act and the Armed Forces Act. The powers provided in these Acts often turn out in the process of enforcement to be the focal point of conflict or entanglement with the media. However, the problem is not the constancy nor the absence of these conflicts but rather the process and lack of well-defined limits to be observed by players in the both sides of the

⁴ op.cit

⁵ Ezcja V. and Adoyi J., *Nigeria’s insecurity and the Owo Massacre*, Prime Business, www.primebusiness.africa visited 15th Sept.2023

game [i.e. the upholders of national security, through these powers, on the one hand and, on the other hand, the assertors of freedom of the Media].

1.4 Media Freedom in Nigeria

S.39 of the CFRN (as amended) has entrenched in clear terms Freedom of the Media including sets of treaties and conventions ratified by Nigeria under the International law. It is within this libertarian spirit that the National Assembly in the fourth Republic went forth to enact the Freedom of Information Act.

The problem, however, is that the Media is a double edged sword. Beyond the freedom, it is potent to bring about or escalate conflicts and threats to national security. This is not common to mainstream media but exacerbated with the recent introduction of the new media (Social media). Recent efforts to introduce legislative interventions to cage the media were seriously resisted with public outcry. This point is succinctly explained, by prof. Ladan, in the following words:

The internet and social media as excellent mechanisms to enable and facilitate democratic engagement, knowledge for all and business to thrive, in the wrong hands or misuse can also be instruments for propagation of extremism and violence, political manipulations, spread of false information to discredit or cause physical or psychological harm to other individuals and group. A lot of citizens and societies or national economies, today around the globe, are threatened by the effect of fake news, cyber bullying and hate speech.⁶

1.4.1 The Mass Media and National Security

The theoretical background on the role of mass-media is propounded by Maxwell McCombs and Shaw in the year 1972.⁷ The media news framing entails agenda setting which inform or influence public perception.⁸ According to Folarin, the elements of this influence are felt through:

- (a) The quality & frequency of reporting a given issue
- (b) The prominence given to the reports through loud headlines, pictures, display etc.

⁶ Ladan, M. T., *Fake News, Cyber Bullying and hate speech on Social Media: What is it and how Do we Deal with it ?*, The N.B.A. Annual General Conference, Held on 28th August 2023, MKO Abiola Stadium Abuja, P1.

⁷ Ibrahim, M., *News framing of Boko Haram Crisis in the Nigerian Press: An analysis of Daily Trust and The Guardian Reports in the year 2011*, proceedings of the A B U at fifty Humanities International Conference, Held at A B U Zaria 2012. pp.226-236

⁸ op.cit

- (c) The degree of conflict generated in the reports
 - (d) Cumulative media-specific effect over time
- Such effects may be for instance by
- (a) Terrorism Framing (Islam and Muslims are often the victims of this);
 - (b) Condemnation Framing (This involves ethnic profiling and tribal militancy);
 - (c) Dialogue Frame (based on social responsibility theory); and sometimes
 - (d) Use of force Frame.

A thorough research and data analysis by Maryam Ibrahim have driven home the conclusion that the Media were very cautious in the reporting of Boko Haram Insurgency rather than the pro-active agenda setting required for a lasting solution, achieving dialogue in the use of J.T.F (Join Task Force) and its incidental issues as well as employing investigative journalism to unravel extra-judicial killing by security or military officers – supposedly employed to protect.⁹ These are by way of omissions.

Generally the role of the media is observed as beset with the following problems.

1. Stereotyping
2. Divisive tendencies
3. Selective Focus/Neglect
4. Lack of patriotic zeal to be wary of insecurity challenges
5. Providing avenue for hate speech
6. Distractions from critical main national issues and interest

1.4.2 Mechanisms for Regulating the Media

It has been made quite clear in the forgoing discourse that freedom of the media has both positive and negative strains. The question is how do you regulate the media while maintaining the delicate balance? The following mechanisms are therefore crucial:

- a. Constitutional Provisions
- b. Statutes
- c. Ethical guidelines
- d. Informal Restraints

⁹ *ibid*

Section 39 of the Constitution has balanced the provisions for freedom of expression with reasonable limitation or restriction for public cum national interest in the following words:

- (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:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

- (3) 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 films; or
 - (b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.¹⁰

In *Archbishop Okogie v A.G Lagos State*¹¹, and in *Adewole and Ors v Jaka* the courts held that, the word 'media' is not limited to information :

¹⁰ S.39(1-3) CFRN1999 (as amended).

¹¹ (1981) 1NCLR 218

¹² (1981) 1NCLR 262

includes schools and that the right to freedom of expression and the press includes the right to own a private school to receive and impart ideas and information without interference. The Right to liberty of expression and the press means two broad things;

1. Right to freedom from prior censorship or restraint of publication
2. But not freedom from the legal consequences of an unlawful, criminal, mischievous or defamatory publication.

In the words of Blackstone, the eminent British Jurist, [1723-1780]

The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publication, everyman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press ; but if he publishes what is improper, mischievous, or illegal, he must face the consequences of his temerity. ¹³

It may be observed that there seems to be no difference in the position of the law as regards freedom of the press in the United States, United Kingdom and in Nigeria. In Nigeria, the constitution on the other hand permits restriction of press freedom for instance;

1. for the purpose of preventing the disclosure of information received in confidence , that is, classified matters or official secrets
2. for the purpose of maintaining the authority and independence of the courts, that is, the law of contempt of court
3. for the purpose of preventing former or present former or present public office holders under the government of the federation or of a state or local government or members of the armed forces or other security services from divulging classified information or official secret, they received in the course of services to the nation.

It may be emphasized here that the provisions of the right to freedom of expression and the press, do not invalidate any law that is reasonably justifiable in a democratic society in the interest of;

- a. defence,
- b. public safety,

¹³ Blackstone, w., Commentaries on the Laws of England, 1st Edition, University of Chicago Press, 1979, Chicago, pp1769-1780.

- c. public order,
- d. public morality; such as, by laws prohibiting obscenity and harmful publication,
- e. public health; or
- f. for the purpose of protecting the right and freedoms of other persons, for instance, against defamation and other harmful publications, and so forth.¹⁴

1.5 Exploring Pragmatic Options

The paper, here, has, so far, looked into the theoretical and conceptual challenges in the entanglement or in the clash of interest between national security on the one hand and the media on the other hand. The media is shown to be seen as a double edged sword capable of being a tool of nation building or a weapon of destruction. There are tendencies, as highlighted above, of the media in Nigeria playing to international gallery and recklessly leading the way to anarchy. This poses a serious threat to the Nigerian fragile evolution and nation building. The Libyan example provides a good warning. There are lessons also to be learnt by the role of the media in the Rwandan crisis. Somalia, Sudan and Syria also provide good example of "Experiment in Disintegration."¹⁵ The point is that the reality of survival of this fragile nation should prevail over all other considerations.¹⁶

The Nigeria media needs to rise above these tendencies if they are to meet the expectations of nation building. These expectations are in line with the social responsibility theory. This theory "seeks to enlist the media in the strength for national integration and security. It seeks to open the media space up for rich and lively debate and alternative viewpoints, no matter how unpopular such views may be".¹⁷

1.6 Peace Journalism:

Another alternative approach proffered by scholars is Peace Journalism. Accordingly, peace journalism o have emerged in the 1970s (in favour of peace) as an idea for journalists to follow to show how a value bias towards

¹⁴ Malami F.,(2006), *The Nigerian Constitutional Law*, Princeton Publishing Co. Ikeja, Lagos, p233.

¹⁵ For insights into this, see the late Tony Momoh's "*Experiment in Disintegration*" written after June 12 crisis

¹⁶ Momoh T., *Experiment with Disintegration*, EFFUA Media Association Ltd. , 1993, pp120-130.

¹⁷ KUR, J.T., *Peace journalism: A pathway to unity in Nigeria for Sustainable Development*, Isaac Olawale et al (ed) *Peace Security and Development in Nigeria*, institute of African Studies, university of Ibadan, Ibadan (2012) p207

violence can be avoided when covering war and conflict¹⁸. This promotes peace from all quarters.

Peace journalism is a form of journalism that aims to promote peace and understanding by providing balanced and unbiased coverage of conflicts and other issues. In contrast to traditional journalism, which often focuses on sensationalism and conflict, peace journalism seeks to highlight commonalities and areas of agreement, while also offering space for the voices of those who are often marginalized or silenced in mainstream media.

At its core, peace journalism is based on the idea that the media can play an important role in reducing the potential for violence and promoting peaceful resolution of conflicts. By providing accurate and neutral reporting that avoids inflammatory language and stereotypes, peace journalism can help to create a climate in which dialogue and negotiation are more likely to occur.

One of the key principles of peace journalism is the importance of context. Rather than focusing solely on the immediate events or actions that are taking place, peace journalists seek to provide a broader perspective that takes into account the histories, cultures, and values of the parties involved. This helps to create a more nuanced and accurate understanding of the roots of conflict and the potential for resolution.

Another important aspect of peace journalism is the emphasis on solutions. While traditional journalism often focuses on the negative and the problems, peace journalism seeks to highlight the steps that are being taken to address issues and create positive change. This can include coverage of grassroots movements, community-based initiatives, or international efforts to promote peace and reconciliation.

Ultimately, the goal of peace journalism is to foster understanding and empathy among different groups, and to create a more informed and engaged public that is capable of supporting peaceful solutions to conflicts. While traditional journalism will always have a role to play, peace journalism offers a valuable alternative that can help to bridge divides and promote a more peaceful and just world.

¹⁸ Wikipedia 2011

1.7 Exploring the evolving polemics of Right to Peace:

One of the latest developments is the evolving trend to uphold right to peace: To this end peace journalism still remain relevant. The Islamic jurisprudence has a lot to contribute here, for its framework of 'Right to Peace' and 'Duty to Maintain Peace' is ethically, philosophic ally and legally reinforced beyond mere moral rhetoric. This is clearly evident in the ongoing universal civilizational dialogue on peace.

Another development is the idea of deconstructing stereotype and news framing:

- a. from subjective victims to proactive engagements; and
- b. rather than sit and wait for the media to change, thought leaders and stereotyped ambassadors can lead the way with positive engagements.

1.8 Conclusion

It stands clear from the discussions above that recent trends, both in conventional media, have pushed the limit of freedom beyond the old balance of freedom, responsibility and national security. The libertarian world order of international law which blew liberty and freedom into national order through the international human right and national constitutions tend to tie down law and its enforcement in the face of aggressive trending challenges to national security and public policy. There is however the need to uphold public and individual responsibility to promote national security and public policy. The Nigerian judiciary must develop a proactive jurisprudence that protects national security and public policy from aggressive modern tendencies enhanced by evolving high tech media especially the social media. The Law, in its making enforcement and interpretation, must beyond the old libertarian concept, by placing limits to be determined by, stiffer sense of responsibility to protect, not in the notion of international law, but defined by national interest.