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BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University

VOLUME 15, NUMBER 4 (2022)

ISSN 2029-0454

Cit.: *Baltic Journal of Law & Politics* 15:4 (2022):1443-1460

DOI: 10.2478/bjlp-2022-004120

The Nigerian Press Council Act 2004: An Appraisal

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Abstract

The Nigerian Press Council Act 2004 establishes the Nigerian Press Council for the promotion of high professional standards for the Nigerian press and deal with complaints emanating from members of the public concerning the conduct of journalists in their professional capacity or complaints emanating from the press regarding the conduct of persons or organisations toward the press. This article appraises the Nigerian Press Council Act 2004. The research methodology used by the authors is mainly doctrinal analysis of applicable secondary and primary sources. The article finds that there are numerous challenges of the Nigerian Press Council militating against the effective discharge of its duties under the Nigerian Press Council Act 2004, including a lack of faithful implementation of the provisions of the Act above and the failure of the 1999 Nigerian Constitution to specifically guarantee the right to freedom of the press or media, as a fundamental and enforceable right in Nigeria. The article recommends that the Nigerian Press Council should rise to the challenge of faithful implementation of the provisions of the Nigerian Press Council Act 2004 and the 1999 Nigerian Constitution should be altered to specifically guarantee a fundamental right to freedom of the press or media in alignment with the practice of other countries like Zimbabwe and Kenya.

Keywords: Freedom of expression, Fundamental rights, Journalist, Photojournalist, Press, Newspaper, Radio and Television, Freedom of the press or media

1. INTRODUCTION

In 1978, the Nigerian Press Council Decree¹ 1978 was enacted into law by the military regime of General Olusegun Obasanjo. The name 'Nigerian Press Council' was replaced with the name 'Nigerian Media Council' under the Nigerian Media Council Decree² 1988, enacted into law in 1988 under the military regime of General Ibrahim Badamosi Babangida (IBB). The Decree later became known as the Nigerian Media Council Act³ 1990. In 1992, the Nigerian Press Council Decree⁴1992 was enacted into Law by the military regime of General IBB. It repealed the Nigerian Media Council Act 1990. Also, it changed the name 'Nigerian Media Council' back to its original name 'Nigerian Press Council'. This Decree was amended in 1999 by the Nigerian Press Council (Amendment) Decree⁵ 1999 under the military regime of General Abdulsalami Abubakar. This enactment subsequently became the Nigerian Press Council Act⁶ 2004. Section 1 of the Act above establishes the Nigerian Press Council (the Council) as a corporate body with perpetual succession and a common seal which may sue and be sued in its corporate name.

¹ Decree No 31 of 1978.

² Decree No 59 of 1998.

³ Cap 316 Laws of the Federation of Nigeria (LFN) 1990.

⁴ Decree No 85 of 1992.

⁵ Decree No 60 of 1999.

⁶ Cap N 128 LFN 2004.

Members of the Newspapers Proprietors Association of Nigeria (NPAN) frown at the provisions of sections 3, 9, 11, 12, 16, 17, 19, 20, 21, 22, 25, 30, 31, 32, 33 and 36, among other provisions of the Act above. In their view, the impugned provisions are manifestly inconsistent with section 39(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (1999 Constitution)⁷ which guarantees to all Nigerians, including Journalists the freedom of expression and the press.⁸ Consequently, soon after the commencement of Nigeria's fourth Republic on 29 May 1999, members of the NPAN instituted a suit, that is *Mallam Ismaila Isa and Five Others (for themselves and on behalf of other members of the NPAN v President of the Federal Republic of Nigeria and Three Others*⁹ at the Federal High Court, Lagos challenging the powers of the National Assembly of Nigeria (NAN) to promulgate the Act above. In the case, the Nigerian Court of Appeal (per Chinwe Eugenia Iyizoba, JCA) in its judgment delivered on 4 December 2015 set aside the judgment of Liman J of the trial Federal High Court (per Liman, J) given on 25 February 2010, declaring that the Act above, especially the sections specified above constituted a gross violation of the right to freedom of expression and the press, guaranteed to the plaintiffs/respondents under section 39(1) above¹⁰ which said judgment was considered by the Appeal Court to be in contravention of section 45(1) of the 1999 Constitution,¹¹ as the defendants/appellants Act above met the laid-down conditions stipulated in the section above and, therefore, the same was reasonably justifiable in a democratic society in the interest of public order and so on. Thus, it can be argued that the Act above is constitutional. Needless to say that in *Pharmabase Nigeria Limited v Illegbusi Olatokunbe*,¹² the Appeal Court above held that fundamental rights, including the right to freedom of expression and the press guaranteed to all Nigerians are not absolute, as they can be derogated from under section 45(1) above. It is worth re-calling that section 45(1) of the Constitution above states that nothing in sections 37, 38, 39, 40 and 41 of the Constitution shall make invalid any law that is reasonably justifiable in a society considered to be democratic (a) in the interest of morality of the public, safety of the public, defence, public order or public health and (b) for the aim of protecting the rights and freedom other people.

Needless to emphasise that the plaintiffs/respondents are totally-dis-satisfied with the decision of the Appeal Court.¹³ They maintain that the Act above has not satisfied the conditions laid-down in section 45 (1) above and, therefore, it is not reasonably justifiable in a society considered to be democratic in the interest of public order and for the protection of the freedom and rights of other people.

The NAN is largely blameworthy for allowing this problem to emerge, as its legislation, that is the 1999 Constitution does not in any provision of the Constitution define the elastic terms of 'defence', 'public safety', 'public health', 'public morality' and 'public order', as utilised in section 45 (1) above. It is the argument of the authors that these terms are nebulous. Indeed, the

⁷Cap C 23 LFN 2004.

⁸See B Ezeamalu, 'Nigerian Media Practitioners to challenge military era law at the Supreme Court' <<https://www.premiumtimesng.com/news/more-news/196984-nigerian-media-practitioners-to-challenge-military-era-law-at-supreme-court.html?tztc=1>> accessed 17 March 2023.

⁹[2017] 3 NWLR (Pt 1553) 347, 352-364, Court of Appeal (CA), Nigeria.

¹⁰The section is in tune with the provisions of the Constitution of other countries like South Africa and Congo as well as international instruments, including the African Union (AU) African Charter on Human and Peoples' Rights (ACHPR) 1981 which guarantee the right to freedom of expression and the press. See, for example, s 16 of the Constitution of the Republic of South Africa 1996 and art 9(1) & (2) of the AU ACHPR 1981.

¹¹The section which is, also, called the derogation clause is in consonance with the provisions of the constitution of other countries, including Tanzania, South Africa and Ghana as well as international instruments like UN ICCPR 1966 and AU ACHPR 1981. See, for example, arts 19(3) & 21(4) of the Constitution of Ghana 1992 and art 19(3) of the UN ICCPR 1966. As a member of the UN as well as State-Party to the international instruments above, Nigeria is obligated to apply the provisions of the same, as enjoined by s 19(d) of the 1999 Constitution.

¹²[2020] 10 NWLR (part 1732) 379, CA, Nigeria.

¹³Consequently, they have appealed the judgment to the Supreme Court of Nigeria whose judgment on the matter is still being awaited.

provisions of the 1999 Constitution cannot be of support in determining whether a law made pursuant to section 45 (1) above is reasonably justifiable in a democratic society in the interest of defence and so on.¹⁴ The view can be safely put-forth that sub-section (1) of section 45 above is tantamount to the bestowment of dictatorial and wide discretionary powers on the Nigerian law-making bodies, as the definition of what is in the 'interest of defence' and so on can only be provided by the Legislature and Executive which are the potential defendants in an action alleging violation of the right envisaged in section 45(1) above,¹⁵ as exemplified in the *Isa* case.

Also, the 1999 Constitution fails to guarantee in explicit terms or specifically the right to freedom of the press to all journalists, as it can be seen from section 39 of the 1999 Constitution. Of course, this contrasts with the practice of other countries like Zimbabwe and Kenya where the constitution specifically or in explicit terms guarantees or provides for the right to freedom of the press or media in Article 61(2) to (5) of the Zimbabwean Constitution 2013 and section 34(1) to (5) of the Kenyan Constitution 2010. These are the gaps this article or study desires to address. Put differently, the gaps above constitute the rationale behind conducting this study. A point to note is that these *lacunae* in the laws of Nigeria would not augur well for the system of protection of fundamental rights of Nigerians, including press rights of journalists, as they are susceptible to misuse as has been the case since the coming into effect of the 1999 Constitution. A classic example is the enactment of the Trade Disputes (Essential Services) Act¹⁶ 2004 whose section 1(1) empowers the President of Nigeria to proscribe any trade union whose members are engaged in essential services, if the president is satisfied that the union, among other things, is or has been engaged in acts designed to disrupt the economy or acts calculated to obstruct or disrupt the smooth running of any essential service or has, where applicable, willfully failed to comply with the procedure stipulated in the Trade Disputes Act¹⁷ 2004 or the Act above in connection with the reporting and settlement of trade disputes. Without doubt, this is a wide discretionary power bestowed on the President of Nigeria. Contrary to the decision of the Supreme Court of Nigeria in *National Union of Electricity Employees and Another v Bureau of Public Enterprises*,¹⁸ it is argued that the Trade Disputes (Essential Services) Act 2004 is not a law which is reasonably justifiable in a democratic society in the interest of public order and so on. To be sure, acts planned to disrupt the smooth running of any essential services could be anything which the President in his own opinion considers to be acts calculated to disrupt the smooth running of any essential services.¹⁹

The misuse of section 45 (1) above, as exemplified in the case above has adverse effect on some victims of fundamental rights abuse. For instance, it has engendered the denial of the fundamental right of some Nigerians to associate and assemble peacefully, guaranteed by section 40 of the 1999 Constitution, Articles 10 and 11 of the AU ACHPR 1981, and Articles 21 and 22 of the UN ICCPR 1966 and Article 21(1) of the UN Universal Declaration of Human Rights (UDHR) 1948.

It is an open secret that a lot of persons are really upset by this ugly situation. To make matters worse, the Government officials or leaders who exercise the constitutional power contained in section 45 (1) above wrongly are not being dealt with or removed from office by the Nigerian Government, to the best of the knowledge of the authors.

A relevant question to pose is: is the behaviour of the law-making authorities in making a law under section 45(1) above for their selfish or vested interest or other interest other than in the interest of defence, public order and so on unconstitutional? Another relevant question is: should the elastic terms of 'defence' and so on be defined by the Constitution? Finally, are there

¹⁴AE Abuza, 'Derogation from fundamental Rights in Nigeria: A Contemporary Discourse' (2017) *East African Journal of Science and Technology* 113.

¹⁵See *Ibid.*

¹⁶Cap T9 LFN 2004.

¹⁷Cap T8 LFN 2004.

¹⁸[2010] 7 NWLR (Pt. 194) 539, 546-575.

¹⁹For details on criticism of the Act above, see AE Abuza, 'A reflection on the regulation of strikes in Nigeria' (2016) 42(1) *Commonwealth Law Bulletin* 42-43.

challenges militating against the effective discharge of the duties of the Council under the Nigerian Press Council Act 2004? These questions constitute the foundation or basis of this article.

This article appraises the Nigerian Press Council Act 2004. It gives the meaning of fundamental right, freedom of expression, newspaper, television and radio, press, photojournalist, freedom of the press, media regulation, media self-regulation and media co-regulation. It analyses applicable laws, including the Constitution and case-law on the right to freedom of expression and the press. It shows what obtains in other countries. It takes the stance that the Act above is a law which is reasonably justifiable in a democratic society like Nigeria in the interest of public order, defence and so on. It puts forth solutions which, if carried-out could engender an end to the challenges of the Council in discharging its mandate or duties under the Act above.

2. Conceptual framework

The words 'fundamental right' constitute key-words in this article. They are the enforceable rights guaranteed to all citizens in a country's fundamental law, which is the constitution. In Nigeria, the rights which are fundamental are enunciated under Chapter Four of the 1999 Constitution. These fundamental rights, include the right to freedom of the Press and expression.

'Freedom of expression', also, constitute key-words in this article. They mean the right of citizens to express their views or hold opinions and to receive and impart ideas and information within the law.

The word 'newspaper' is a key-word in this article. Section 37 of the Nigerian Press Council Act 2004 defines a 'newspaper' thus: "'newspaper" includes a magazine, journal and any paper containing public news, intelligence or occurrences or any remarks, observations or comments printed therein for sale and published periodically or in parts or numbers'. Notable newspapers in Nigeria, include: *The Guardian; Vanguard; This Day; The Pointer; Daily Times; New Nigerian; Nigerian Tribune; and Newswatch Magazine.*

'Radio and Television' constitute other key-words in this article. 'Radio and Television', include electronic means of mass communication which share in the formation of public opinion'.²⁰ A typical example of a radio station is the Quest FM Radio. Others include: Delta Rainbow Radio and Federal Radio Corporation of Nigeria (FRCN). While notable television stations, include Nigerian Television Authority (NTA).

Another key-word in this article is 'press'. Statute in Nigeria defines 'press' thus: "Press" includes radio, television, wireless services, newspapers, magazines and such other channels of communication involved in the collection and dissemination of information'.²¹ This definition is broad enough, to include, as part of the press, Internet Service Providers (ISP) or social media platforms, including Twitter, YouTube, Google, Facebook and WhatsApp. It should be noted that another name for the 'press' is 'media'.²²

'Journalist' is another key-word in this article. The term 'journalist' means 'any person (not being less than eighteen years) engaged in the collection, processing and dissemination of information for use in the press and who has been accredited by the Council'.²³ This implicates that for a person to be considered a journalist in Nigeria properly so-called, he must not be less than 18 years old. In this way, a child who is a person that is below 18 years²⁴ cannot be a journalist. Besides this, the person to be considered a journalist in Nigeria must be a person who must have been accredited by the Council to practise the profession of journalism in Nigeria.

²⁰ See the Nigerian Press Council Act 2004, s 37.

²¹ *Ibid.*

²² See the Nigerian Media Council Act 1990, s 27.

²³ See (n 20).

²⁴ See the Nigerian Child's Rights Act 2003, s 277.

It is noteworthy that the definition of journalist above is encompassing enough to, include a freelance journalist, photojournalist and a freelance photojournalist, provided they are not less than 18 years of age and have been accredited by the Council. Their meanings are fairly well-known. In the first instance, a freelance journalist is a journalist who is not in any kind of employment relationship with any media organisation.²⁵ He gathers and writes news stories which he submits to any of the media organisations for a fee.²⁶

In the second instance, photojournalism is news photography.²⁷ In short, it is the specialised application of photographs in journalistic processes.²⁸ A photojournalist is therefore a journalist who tells news stories with photos or photographs.²⁹ While a freelance photojournalist is a journalist who is, also, not in any kind of employment relationship with any media organisation.³⁰ He takes and gathers photographs that are news worthy and submits the same to any of the media organisations for a fee.³¹ It should be noted that the employment of journalists, including photojournalists is no longer confined to the traditional media organisations such as newspapers, magazines, radio and television. Nowadays, journalists, including photojournalists are employed by ISP or the social media, including the Google to collect, write and report news stories for the same.

'Freedom of the Press' constitute other keywords in this article. Their meanings are also fairly well-known. They include the right of members of the press to receive or collect and disseminate information, ideas and opinions within the law.

'Media regulation', 'Media self-regulation' and 'media co-regulation' are other key-words in this paper. Media regulation refers to the specific instruments that are deployed on media organisations in order to realise specified policy goals.³² It embraces the deliberate State influence of media systems at the local, regional and transnational levels by regulation of public service or net neutrality, subsidies for the promotion of independent production as well as public information campaigns like media literacy programmes.³³ The enormous powers of the media of mass communication to influence public opinion make it significant that they be regulated to prevent abuse.³⁴ Media regulation has been warmly-embraced by many countries, including Nigeria to promote high professional standards for the press and much more. This can be discerned in Nigeria, for instance, from the Nigerian Press Council Act 2004. The enactment actually signifies statutory regulation of the media from the State. 'Media self-regulation', on the other side of the spectrum, implies that an industry-level organisation sets the rules and standards, regarding the behaviour of firms in the media industry or landscape.³⁵ Indeed, it is

²⁵ D Alao, *News Reporting* (Unique Publications of Nigeria Ltd., 1992) 20.

²⁶ *Ibid.*

²⁷ See 'Photojournalism', Optional Modules 7B, National Institute of Open Schooling 57 <<https://nios.ac.in/media/documents/>> accessed 30 October 2022.

²⁸ P N Ijeh, 'An appraisal of photojournalism practices in Government Newspapers in Nigeria-insights from the Observer and the Pointer' (2015) 3 (2) *Global Journal of Arts, Humanities and Social Science* 58-69.

²⁹ See (n 27).

³⁰ *Ibid.*, 60.

³¹ *Ibid.*

³² Van den Bulck et al, quoted in A V Montiel and E L Boberg, 'Briefing Note on Regulation, Self-Regulation and Co-Regulation in Media and Gender Equality' <<https://www.mediasupport.org/wp-content/uploads/2021/06/Regulation-selfregulation-and-co-regulation-in-media-and-gender-equality>> accessed 30 October 2022.

³³ *Ibid.*

³⁴ P N Ijeh, 'Mass Communication and Society- The Symbiotic link' (2011) 2 (1) *West African Social and Management Sciences Review* 117-140.

³⁵ See (n 32).

putting media regulation in the hands of media professionals.³⁶ This involves all journalists in the internet, print, radio and television.³⁷

It is noteworthy that media self-regulation has emerged as the main tool for world and commercial media as a new means of governance. In actuality, it has two basic characteristics, that is independence of governmental control and the participation of members of media organisations in the regulation process.³⁸ Media self-regulation tools, include the Code of Ethics for Journalists and other codes of conduct as well as editorial guidelines formulated by the media in different nations.³⁹ The argument has been put-forth that media self-regulation is a valuable model in pursuit of freedom of the press, professionalism and healthy interaction between journalists and news or information consumers.⁴⁰ On the other hand, 'media co-regulation' entails a combination of self-regulation by media professionals and regulation from the State and requires a communication governance model that is more inclusive.⁴¹ This approach involves civil society groups and citizens, government and independent regulatory agencies.⁴² To cut matters short, media co-regulation has been considered as the best way forward to make sure that the media helps to promote and improve women's human rights and over-all increased inclusivity, in media and through media.⁴³

3. The Nigerian Press Council Act 2004

What is of concern in this section is the issue of appraisal of the Nigerian Press Council Act 2004. The relevant parts of the Act above are appraised below:

(a) Nature of the Nigerian Press Council

The Council is a statutory body created for the regulation of the Press and the conduct as well as discipline of Journalists in Nigeria. As disclosed before, it is a corporate body with perpetual succession and a common seal which may sue and be sued in its corporate name. This is in alignment with what obtains in other countries, including Kenya, Sri Lanka and India.⁴⁴ Although the Council is partly-funded by the Federal Government of Nigeria (FGN),⁴⁵ like its counter-parts in India⁴⁶ and Kenya,⁴⁷ it is established as an autonomous institution and shall not be subject to the direction or control of any other body or person, except as provided by the Nigerian Press Council Act 2004.⁴⁸ This is certainly commendable, as it is geared towards freeing the Council from governmental control and direction for the benefit of journalists and the aim of protecting the freedom of expression and the press constitutionally-guaranteed to all Nigerians, including journalists.

(b) Composition and appointment of members of the Nigerian Press Council

The Council consists of the following members:

(a) a Chairman;

³⁶See J Masuku, 'Total Media self-regulation in Africa still to be achieved'
<<https://www.redtech.pro/total-media-self-regulation-in-africa-still-to-be-achieved/>>
accessed 30 October 2022.

³⁷*Ibid.*

³⁸Montiel and Boberg (n 32).

³⁹*Ibid.*

⁴⁰Masuku (n 36).

⁴¹Montiel and Boberg (n 32).

⁴²See Cisheck, quoted in *Ibid.*

⁴³*Ibid.* Note that the establishment of a Press Council in Nigeria is in line with the practice in other countries, including the UK where there is in place the United Kingdom Press Complaints Commission.

⁴⁴See Sri Lanka Press Council Law No. 13 of 2002, art 2(1), (2) & (3); the Indian Press Council Act No 37 of 1978, s 4(1) & (2); and the Kenyan Media Council Act No 46 of 2013, s 5(1) & (2).

⁴⁵See s 28(1) of the Nigerian Press Council Act 2004.

⁴⁶See the Indian Press Council Act 1978, s 17.

⁴⁷See the Kenyan Media Council Act 2013, s 23.

⁴⁸See (n 45), s 8.

- (b) four persons representing the NUJ;
- (c) two persons representing of the Nigerian Guild of Editors (NGE);
- (d) two persons representing the NPAN who shall be practising journalists;
- (e) four persons representing the general public, one of whom shall be a legal practitioner and a woman;
- (f) one person representing educational institutions involved in the training of journalists;
- (g) one person representing the Federal Ministry of Information and Culture who shall be a practising journalist;
- (h) two persons representing the Broadcasting Organisation of Nigeria (BON);
- (i) one person representing News Agency of Nigeria (NAN) who shall be a practising journalist; and
- (j) the Executive Secretary of the Council.⁴⁹

The Council Chairman who must be a person of high intellectual and moral qualities and knowledgeable about public affairs and the press with not less than 20 years' experience as a journalist is appointed by the President of Nigeria, on the recommendation of the Minister of Information and Culture. This is after due consideration of the submission of the Nigerian Press Organisation (NPO),⁵⁰ made up of the NGE, NPAN and NUJ.

The members of the Council, as indicated under paragraphs (e) and (g) above are appointed by the Minister of Information and Culture.⁵¹ While members of the Council, as shown under paragraphs (b), (c), (d) (f), (h) and (i) above are appointed by the Minister of Information and Culture, after an election by or on the nomination of the union, association or other body concerned.⁵² No doubt, the union, association or other body concerned, include the NUJ, NGE, NPAN, BON and NAN.⁵³ Lastly, the Executive Secretary of the Council who shall, be a journalist with at least 15 years post-qualification experience, have held high journalistic positions, Chief Executive of the Council and in charge of the day to day administration of the Council shall be appointed by the President of the Federal Republic of Nigeria on the recommendation of the Minister above.⁵⁴ It is disappointing that the provisions of section 2(1), (2), and (3) of the Nigerian Press Council Act 2004 do not contain any yardstick for the appointment of the four representatives of the general public. In this way, the Minister above could appoint four persons, as representatives of the general public who are staunch supporters of the ruling All Progressives Congress (APC) or FGN or people from his village, provided one of them is a woman and one other person is a legal practitioner. This is unacceptable, as the Council ought to be an autonomous body, free from governmental control or influence. It is recommended that the Act above should be altered to require that the legal practitioner must be a person nominated by the Nigerian Bar Association (NBA), the woman must be a person nominated by the National Council of Women Society (NCWS), the third person must be a person nominated by the Nigeria Labour Congress (NLC) and the fourth person must be a person nominated by the Nigeria Union of Pensioners (NUP).

It is noteworthy that NPO is not satisfied that their representatives are to be appointed by the Minister above. Consequently, it has refused to nominate any of its members into the Board of the Council.⁵⁵ Another reason for the refusal to nominate any member of the NPO into the Board of the Council is the resolve of the NPO not to nominate any of its members into the Board of the Council, until after the final determination of the appeal of the NPAN against the judgment of the Court of Appeal in the *Isa* case.⁵⁶

⁴⁹ *Ibid.*, s 2(1).

⁵⁰ *Ibid.*, s 2(2).

⁵¹ *Ibid.*, s 2(3).

⁵² *Ibid.*

⁵³ *Ibid.*, s 4(1) & (2)(a) (b)&(c).

⁵⁴ *Ibid.*, s 4(1) & (2)(a) (b)&(c)

⁵⁵ See Ezeamalu (n 8).

⁵⁶ *Ibid.*

The truth of the matter is that the NPO is championing the inauguration of media self-regulation or peer regulation of the journalism profession in Nigeria, as opposed to the current statutory regulation of the profession from the Nigerian State.⁵⁷ This is consistent with the global trend or international behaviour nowadays. It should be recalled that in 1991 there was the Windhoek Declaration which called on governments to guarantee 'the practise of journalism, free of governmental interference, whether formal or informal'.⁵⁸

Also, Principle 16 of the 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa, formulated by the African Commission on Human and Peoples' Rights, established pursuant to the AU ACHPR 1981 declares that: 'States shall encourage media self-regulation which shall be impartial, expeditious, cost-effective, and promote high standards in the media'.⁵⁹ Arguably, this Declaration, being a soft-law agreement, is not binding-legally on member-nations of the AU, including Nigeria.

A noteworthy point is that media self-regulation which also entails the transfer of crucial media regulating powers from the State to media professionals has not worked in a few African countries which had tried to experiment with the same. Historically, Southern African countries, including Zambia, Tanzania, Botswana and South Africa had functioning self-regulatory media councils.⁶⁰ In Tanzania, the Media Council of Tanzania which once described itself as a 'court of honor' with no coercive powers observed things changing in 2016, with the enactment of the Media Services Act 2016. This enactment, not only granted excessive ministerial powers that threatened critical media houses with closure but, also, restricts social media platforms through licensing processes and forces freelance journalists and correspondents to be nationally-accredited.⁶¹ It should be pointed out that the requirement of accreditation with the Media Council always gives authorities the power to bully journalists by issuing threats to pull their credentials.⁶²

South Africa first instituted a media self-regulatory system in 2007.⁶³ But due to the collapse of the system, it adopted the independent co-regulation as an approach to press regulation in 2012.⁶⁴ Also, it should be re-called that in August 2013, the Rwanda Media Commission (RMC) was established as a self-regulatory body in-charge of protecting journalists, regulating conduct of journalists, monitoring the way and manner the media operates and advocating for freedom of the media .⁶⁵ It was created by government enactment, which is the Rwandan Media Commission (RMC) Law⁶⁶ 2013. The Commission, which was established by all-Rwanda journalists in their General Assembly of 27 August 2013⁶⁷ and whose members were sworn-in on 26 September 2017, had Rwanda Journalist, Fred Muvunyi as its first head or Chairman.⁶⁸

The inauguration of the seven-member RMC marked a shift from statutory regulation by the government to media self-regulation. But soon after the take-off of the Commission, things started falling apart. Media practitioners in the country were abusing the new regulatory system,

⁵⁷ *Ibid.*

⁵⁸ See United Nations Education, Scientific and Cultural Organisation (UNESCO), 1991 Declaration of Windhoek on Promoting an Independent and Pluralistic African Press <<https://unesdoc.unesco.org/ark:/48223/pf0000090759qf4ec/0d>> accessed 23 June 2021, quoted in Mashingaide and S Buchanan-Clarke, 'Challenges and Opportunities: Media Independence and Press Freedom in Zimbabwe' - Africa Portal 6 <<https://www.africaportal.org/challe...>> accessed 15 October 2022.

⁵⁹ See Preamble to the Constitution of the Press Council of South Africa 2020.

⁶⁰ See Masuku (n 36).

⁶¹ *Ibid.*, 1-2.

⁶² <<https://ipl.media,ipl.blog-self-regu...>> accessed 29 September 2022.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ See Preamble to the Rwandan Media Commission Law 2013 and <<https://iwpr.net>impact>rwanda-b...>> accessed 29 September 2022.

⁶⁶ No 02/2013 of 8 February 2013.

⁶⁷ See *Ibid.*, art 2.

⁶⁸ See (n 62).

as some were disseminating false or fake news without any sanction imposed on the same by the Commission. It was, therefore, not a surprise that the Rwandan State subsequently tightened its grip on the media, compelling seasoned journalists like Muvunyi to relocate their base to other nations.⁶⁹

Media self-regulation, as it is currently being practiced in some countries, has a number of drawbacks. First, giving media practitioners the power to regulate them may engender bias in decision-making of the Media Council, as they may not impose appropriate sanctions on erring journalists. This is contrary to the natural justice rule of 'nemo iudex in causa sua', meaning a person should not be a judge in his own cause which is embedded in the right to a fair hearing, embedded in sub-section (1) of section 36 of the 1999 Constitution.⁷⁰

Second, it is doubtful if media practitioners and houses would be able to fund such an independent self-regulatory institution. Most news agencies actually lack the resources to finance an independent Media Council.⁷¹ In Rwanda, for instance, media houses and journalists are not contributing to the financial sustainability of the RMC, forcing the Commission to rely heavily on the Institute of War and Peace Reporting (IWPR) a major financier of the RMC.⁷² It is the same problem with the Nigerian Press Council, as media houses and journalists are not paying royalties or relevant fees that ought to be paid to the Council.⁷³

Third, some of the statutes that establish self-regulatory media councils in Africa, including the Rwandan Media Commission Law 2013 like non-self-regulatory media councils such as the Nigerian Press Council,⁷⁴ require reporters and editors to be accredited by the Council.⁷⁵

Fourth, many of the media practitioners are against the coercive power of the Council or against imposition of heavy sanctions on journalists who have committed professional misconduct. This is a major reason why the NPO is opposed to the Press Council Act 2004 of Nigeria and the proposed-Nigerian Press Council (Amendment) Bill 2021.

Lanre Arogundade, Executive Director of International Press Centre (IPC) states that while regulations are needed, especially in this era of fake news and hate speech, such regulations should not be unduly punitive.⁷⁶ He maintains that the penalties stipulated in section 3(3)(1) and (2) of the Nigerian Press Council (Amendment) Bill 2021, including a fine of ₦5 million or three years imprisonment are too punitive and will constitute a threat to media freedom and independence.⁷⁷ It is important to bear in mind that just like the journalists are expected to hold governmental leaders accountable to the people,⁷⁸ so also journalists must be held accountable to the profession and the public for their professional and non-professional misdeeds. Arguably, only stiff penalty for an offence can induce compliance with the law.⁷⁹

⁶⁹ See (n 36) 2.

⁷⁰ Note that the *nemo iudex in causa sua* rule was upheld in *Garba v University of Maiduguri* [1986] 1 NWLR (Pt. 18) 550, SC, Nigeria; *Alakija v Medical and Dental Practitioners Disciplinary Tribunal* [1959] 4 FSC 38, SC, Nigeria; *Sofekun v Akinyemi and Three Others* [1980] All NLR 153, 165, SC, Nigeria; and *Gani Fawehinmi v Legal Practitioners Disciplinary Committee* [1985] 2 NWLR (Pt.7) 300, SC, Nigeria.

⁷¹ See n (36) 2.

⁷² <[https:// iwpr.net](https://iwpr.net)>impact>Rwanda-b...> accessed 29 September 2022.

⁷³ See <premiumtimes.ng.com> accessed 30 October 2022.

⁷⁴ See s 18 of the Nigerian Press Council Act 2004.

⁷⁵ See art 3 of the Rwandan Media Commission Law 2013 and <<https://ipl.media>, ipl-blog-self-regu...> (n 62).

⁷⁶ <<https://thenationonlineng.net/will-press-council-bill-enhance-or-kill-the-media/>> accessed 30 October 2022.

⁷⁷ *Ibid.*

⁷⁸ See the 1999 Constitution, s 22.

⁷⁹ See Andrew Ejovwo Abuza, 'The Problem of Vandalization of Oil Pipelines and Installations: A Sociological Approach' (2007) 2(2) *Delsu Law Review- Environmental Law Edition* 277.

Fifth, many media practitioners are not prepared to play by the rules of the game and practise responsible journalism. It is an open secret that some journalists disseminate false or fake news, contrary to Journalistic code of ethics and the extant laws of the land. Franz Kruger rightly observes that media self-regulation commences with individuals and editors who have the freedom to decide for them the limits they desire to observe and dovetails to industry-wide arrangements.⁸⁰

Lastly, the elected president and NAN members, for instance, have the mandate of the Nigerian people to regulate all citizens, including media professionals through the enactment of laws which are reasonably justifiable in a society considered to be democratic for the peace, order and good government of Nigeria, as encapsulated under sections 4 and 45(1) of the 1999 Constitution. It is argued that media self-regulation, as it is being advocated by the NPO, is certainly anti-thetical to the mandate above and against principles of democracy which Nigeria has warmly-embraced under section 14 of the 1999 Nigerian Constitution. Why should some media practitioners insist that there should be no governmental control over their conducts so that they can practise the profession of journalism in a rascally or irresponsible way or in any other way they like, contrary to Journalistic code of ethics and the extant laws of Nigeria, without being punished appropriately? The authors do not think it should be so. Indeed, there must be a governmental system in place to ensure or guarantee public order, public safety and so on in the society as well as the protection of the citizens' rights; otherwise the conducts of some citizens, including journalists could lead to a lawless or chaotic society which may lead to its eventual capitulation. Needless to recall that in the Hobbesian state of nature, life was short, nasty and brutish and there was war of every one against everyone. According to the Social Contract theorists, including John Locke, Thomas Hobbes and Jean Jacques Rousseau men were not comfortable with the situation and therefore decided to enter into a social contract under which their rights were surrendered to a group of persons, that is governmental leaders, so that they could be ruled or have their conducts regulated, provided their fundamental rights were protected.⁸¹

In closing on the issue of composition and appointment of members of the Council, the authors wish to state that there is nothing fundamentally-wrong with the Minister above appointing representatives of the NPO. It should be emphasised that the Press Council Act 2004 of Nigeria insists that the representatives of the relevant unions or associations shall be appointed by the Minister above, after an election by or on the nomination of the union and so on. Of course, only persons elected or nominated by the union and so on can be appointed by the Minister above. Thus, the persons appointed by the Minister above are the chosen persons or representatives of the union and so on.

(c) Functions of the Nigerian Press Council

The functions of the Council, as can be discerned from section 3 of the Nigerian Press Council Act 2004 include: (a) enquiring into complaints about the conduct of the press and the conduct of any person or organisation towards the press and exercising in respect of the complaints the powers bestowed on the Council under the Act above, and (b) monitoring the activities of the press with a view to ensuring compliance with the Code of Professional Conduct of the NUJ, as approved by the Council.

In tune with its functions above, section 16(1) of the Act above accords the right to make a written complaint, addressed to the Council, to any person aggrieved by: (1) anything published in respect of him in any medium of information, including a newspaper; or (2) anything done in respect of him by any journalist in his capacity as a journalist; or (3) anything done against the journalist that is capable of inhibiting the freedom of the press, embedded in section 39 of the 1999 Constitution. Where the Council is satisfied that the performance of the press is not in consonance with the provisions of the Code of Professional and Ethical Conduct, the Executive

⁸⁰ See Masuku (n 36) 3.

⁸¹ See Andrew Ejovwo Abuza, 'A Reflection on issues involved in the Exercise of the Power of the Attorney-General to enter a *Nolle Prosequi* under the 1999 Constitution of Nigeria' (2020) *Africa Journal of Comparative Constitutional Law* 104.

Secretary of the Council shall, in line with such general directions given by the Council, bring before the Council all complaints made pursuant to section 16(1) above.⁸²

The Council shall have the powers to:

- (a) inquire into and examine all such witnesses as the Council may consider just;
- (b) without prejudice to the Code of Professional and Ethical Conduct, summon any person in the country to attend any Council meeting so as to give evidence and to examine him as a witness in the case of journalists; and
- (c) appoint any individual to act as an interpreter in any issue that is before the Council and translate any books and so on before the Council.⁸³

The Council may, where appropriate, direct the medium of information or cause the person involved to publish a suitable apology or correction and in addition reprimand the journalist or person involved in the issue where, after inquiring into a complaint under section 16(1) above, it is convinced that:

- (a) the subject matter in connection of which the complaint was lodged, was not in tune with the Code of Professional and Ethical Conduct;
- (b) the conduct of the journalist in connection of whom the complaint was lodged, was not in consonance with the Code of Professional and Ethical Conduct;
- (c) the conduct of a journalist or individual is, in the circumstances of the case, worthy of blame.⁸⁴

Sub-section (5) of section 17 of the Act above is significant. It bestows on the Council the power to publish, in the Press Journal the name of any journalist or person reprimanded by the Council.⁸⁵ Also, it is noteworthy that every medium of information in connection with whose publication the Council has given a decision, as disclosed above, shall publish the decision as well as comply with the Council's direction in respect of the same.⁸⁶ Where the medium of information or the journalist so sanctioned does not comply with the Council's decision, the medium of information or journalist is guilty of an offence and is liable upon conviction- (a) in the case of a body corporate, to a fine of ₦30, 000.00 and (b) in the case of a journalist, to a fine of ₦2,000.00. In addition to this, the Council shall order the suspension of the journalist from practise for a period not more than six months.⁸⁷

It is, also, cardinal to mention that where there is persistent refusal to comply with the directives of the Council, the medium of information or journalist so sanctioned commits an offence and upon conviction is liable-(a) in the case of a body corporate, to a fine of ₦100, 000.00; and (b) in the case of a journalist, to a fine of ₦15,000.00. Needless to point out that in the extreme case, the Council shall order the striking out of the name of the journalist from the Register of Journalists in Nigeria, as an alternative punishment to a fine of ₦15,000.00, as disclosed above. The NPAN, and, indeed, the NPO frown against sections 3, 11, 12, 16 and 17 of the Act above, as too draconian.⁸⁸ They consider them to be capable of militating against the freedom of expression and the press constitutionally-guaranteed to all Nigerians, including journalists.⁸⁹ The objection above is misplaced. It must be wise to contend that just as the press must uphold the accountability of governmental leaders to the Nigerian people, so also the members of the press must be held accountable to the journalism profession and the public, as expressed already. Two objectives of the Council, as can be discerned from the Preamble to the Act above are: (a) the promotion of high professional standards for the Nigerian press; and (b) addressing complaints emanating from members of the public about the conduct of journalists in their professional capacity. The Council rightly insists that media organisations and journalists must practise the

⁸² See (n 74), s 16(2).

⁸³ For details, see *Ibid.*, s 11(1).

⁸⁴ *Ibid.*, s 17.

⁸⁵ *Ibid.*, s 25.

⁸⁶ *Ibid.*, s 17(2).

⁸⁷ *Ibid.*, s 17(3).

⁸⁸ See the *Isa case* (n 9).

⁸⁹ *Ibid.*

profession of journalism with high professional standards. Where a media organisation or journalist has transgressed the rules on professional conduct or misconducted itself or himself in a professional respect, the Council should be able to enquire into complaints lodged before the same concerning the conduct of the press or a particular journalist and order an apology to be made by or reprimand an erring media organisation or journalist in alignment with the powers bestowed on the Council under the Act above. This is in consonance with the practice in other countries, including India and Sri Lanka.⁹⁰

The approach adopted by the Act above is, also, consistent with the practice of other professions in Nigeria, including teaching, law and medicine where the Disciplinary Committee set-up under an Act of the NAN could conduct enquiry into complaints lodged by any person against a professional and sanction any professional, including striking out the name of the professional from the Register of professionals where the same is satisfied that there has been a breach of the Code of Professional Ethics or the professional has misconducted himself in a professional respect.⁹¹

Again, it's significant to bear in mind that sections 3, 11, 12, 16 and 17 above, also, enure for the benefit of the press and journalists, as an enquiry could, also, be conducted by the Council upon complaints about the conduct of any person or organisation towards the press and a particular journalist and the Council is, also, empowered to sanction any erring person or organisation under the Act above.

It is really sad and bizarre that the NPAN and, indeed, the NPO are against the provisions of the Act above empowering the Council to monitor the activities of the press with a view to ensuring that the same comply with the Code of Professional and Ethical Conduct of the NUJ. Why should members of the Nigerian Press think that they should be allowed to practise their profession without being monitored by any authority? The authors do not think it should be so. In order for Nigeria's practice of democracy to become triumphant, the activities of the press must be monitored by the Council, not only to ensure compliance with the Code above, but also to make sure that such activities are in consonance with the extant laws of the country as well as not inimical to public interest.

Be that as it may, the authors consider the fines prescribed by the Act above upon conviction for the offences above as not being stiff. It is only when the punishment prescribed for a crime is stiff that it can deter non-compliance with the law, as disclosed before. In this respect, it is suggested that the Act above should be amended to increase the fine imposed upon conviction for any of the offences above to ₦5,000,000.00 in the case of a corporate body while in the case of a journalist, the fine should be increased to ₦500,000.00 in order to deter non-compliance with the Council's decisions and directives of the same, as the case may be.

(d) Documentation of Newspapers, Magazines or Journals in Nigeria

The Nigeria Press Council Act 2004 requires newspapers, magazines or journals to be documented with the Council upon an application by the newspapers and so on. Where the Council is satisfied that the requirements contained in section 30(2) of the Act above, including submission of a brief mission statement and objectives of the newspaper, magazine or journal have been met, it shall document the newspaper, magazine or journal.⁹² The Council shall maintain a Register into which shall be entered the names and addresses of every magazine, newspaper or journal documented under the Act above.⁹³ It should be noted that the documentation of a magazine, newspaper or journal under the Act above shall be renewed every

⁹⁰ See, for example, the Indian Press Council Act 1978, s 14 and the Sri Lanka Press Council Law 2002, s 9(1).

⁹¹ See, for example, s 9(1) of the Teachers Registration Council of Nigeria (TRCN) Act Cap T3 LFN 2004 which establishes the Teachers' Disciplinary Committee to try cases of professional misconduct or breach of the Code of Ethics of the Teaching profession.

⁹² See Nigerian Press Council Act 2004, s 31(1).

⁹³ *Ibid.*, s 32.

year.⁹⁴ The Council is bestowed with the power to charge administrative fees for the documentation of a magazine and so on.⁹⁵

A person who, without documentation with the Council, owns, publishes or prints a magazine, newspaper or journal commits a crime and is liable upon conviction to a fine of ₦250,000.00 or to imprisonment for not more than three years or to both such fine and imprisonment as well as an additional fine of ₦5,000.00 for every day the crime continues.⁹⁶

Vendors of magazines, newspapers or journals are not left out, as they are prohibited from circulating any such undocumented magazines, newspapers or journals. To be specific, the Act above stipulates that any news agent who circulates for sale any copy of a newspaper, magazine or journal which is not documented with the Council commits a crime and upon conviction is liable to a fine of ₦50,000.00 or to imprisonment for not more than one year or to both such imprisonment and fine.⁹⁷

The provisions above are commendable. They are certainly aimed at ensuring that the Council is able to monitor the performance of the print media, so as to make sure that publishers and owners of the same comply with the terms of their mission statements and objectives. It should be mentioned that the duties of the Council, as can be seen in section 3 of the Press Council Act 2004 of Nigeria, include: receiving application from, and documenting the Print Media as well as monitoring their performance to make sure that their publishers and owners adhere to the terms of their mission statements and objectives in liaison with the NPAN. Also, it is aimed at generating revenue for the Council through the payment of such administrative fees charged by the Council for the documentation of newspapers and so on as well as such administrative fees charged by the Council for the renewal of documentation of a newspaper and so on each year. The approach of the Act above, as can be discerned from its section 30, is consistent with the practice in other countries, including Sri Lanka.⁹⁸

Be that as it may, an objection can be raised in connection with the penalties provided in the Act above, regarding the offence of owning, publishing or printing a newspaper and so on without documentation with the Council and the offence of circulating for sale a newspaper and so on which is not documented with the Council. It is argued that the penalties are not stiff to deter non-compliance with the provisions of the Act above on documentation of newspapers and so on. In order to tackle the concerns raised above, it is recommended that the Act above, should be altered to provide for a fine of ₦2,000,000.00 or imprisonment for six years or to both such fine and imprisonment as well as an additional fine of ₦100,000.00 for every day the offence continues with respect to a person who owns, publishes or prints a newspaper and so on without documentation with the Council. While in connection with a news agent who circulates for sale any copy of a newspaper and so on which are not documented with the Council, the Act above should be amended to provide for a fine of ₦200,000.00 or imprisonment for three years or to both such fine and imprisonment.⁹⁹

⁹⁴ *Ibid.*, s 31(2).

⁹⁵ *Ibid.*, s 30(3).

⁹⁶ *Ibid.*, s 33(1).

⁹⁷ *Ibid.*, s 33(2).

⁹⁸ See s 26(1) of the Sri Lankan Press Law 2002.

⁹⁹ Other parts of the Nigerian Press Council Act 2004 to be appraised are: (a) approval of the Code of Professional and Ethical Conduct by the Council. Section 9(3) of the Nigerian Press Council Act 2004 confers on the Council the power to approve a Code of Professional and Ethical Conduct formulated by the NUJ to guide the Nigerian press and journalists in the performance of their duties. NUJ says that a professional code is designed by members of that profession and not by a third party. <<https://thenationonlineeng.net/civil-press-council-bill-enhance-or-kill-the-media/amp/>> (n 76). It maintains that the Ethical code that should be operationalised by the Council and utilised to regulate the print media in Nigeria is the Code of Ethics of Journalists in Nigeria, as adopted by NPO in 1998 at Ilorin. Contrary to the postulation of the Union that a political and non-journalism office like the Minister above is bestowed with the power to approve the Code of Conduct for journalists, it is argued that it is the Council

comprised of many experienced journalists, as can be discerned from its composition, which is conferred with the power to approve the Code of Professional and Ethical Conduct under s 9(3) above. See <<https://thenationonlineeng.net/civil-press-council-bill-enhance-or-kill-the-media/amp/>> above. This is in line with the practice of other countries like Sri Lanka and India. See art 10(2) of the Sri Lanka Press Council 2002 and s 13(2)(b) of the Indian Press Council 1978; (b) register of accredited Journalists. In line with the practice in other countries like Rwanda, as disclosed before, section 18(1) of the Act above enjoins the Executive Secretary of the Council to maintain a Register of accredited journalists, compiled by the Council in collaboration with the NUJ and NGE. This is commendable, as it is geared towards discouraging quacks or quackery and other unqualified persons from practising the profession of journalism in Nigeria; (c) registration as Journalist. In line with the practice of other professions in Nigeria, including teaching and engineering, section 19(1) of the Act above requires a person to be fully-registered by the Council to be able to practise the profession of journalism. A person shall be fully-registered under the Act above if, among other conditions, he has attended a course of training recognised by the Council and he holds a qualification approved by the Council. It is a crime punishable with a fine ranging from ₦3,000 to ₦5,000 and imprisonment of not more than 2 years for a person, not being a registered journalist with the Council to practise or hold himself out to practise as a registered journalist with the Council or without cause reasonable, takes or utilises any name, title, addition or description which have the implication that he is authorised by law to practise as a registered journalist with the Council under s. 21(1) of the Act. This is, also, commendable, as it is aimed at discouraging quacks or quackery, as disclosed above; (d) approval of qualifications and institutions of mass communication. In tune with the practice in other professions in Nigeria, including medicine and law, s 22(1) & (2) of the Act above confers on the Council the power to approve a course of training for persons seeking to become journalists, institutions undertaking training in the course of training so approved and list of qualifications in the journalism profession. This is, also, commendable, as it gives the Council effective powers to determine persons who are qualified to practise the journalism profession in Nigeria; (e) penalties for unprofessional conduct. The Council is empowered under section 20(1) & (2) of the Act above to reprimand a registered journalist or suspend the same from practise as a registered journalist for not more than three months where; (i) he is convicted of any crime by a court or tribunal empowered to punish with imprisonment which the Council considers to be incompatible with the status of a journalist; or (ii) the Council is convinced that his name has been fraudulently registered; or (iii) the Council is of the opinion, based on complaints under s 16 of the Act above, that he has been found wanton of persistent breach of the Code of Professional and Ethical Conduct. The Act should be amended to provide for suspension for life, as three months' suspension, as disclosed above is not stiff to deter persistent breach of the Code above; (iv) funding of the Nigerian Press Council. Under s 28 of the Act above, sources of funding the Council, include grant by the FGN, such monies as may be received by the Council in relation to the exercise of its functions, including registration as journalists under the Act above; and such monies to be specified by the Council to be provided from time to time by the NUJ, NGE, NPAN and BON. The latter provisions on sources of funding the Council are unsatisfactory, as the Council may misuse the power to impose whatever amount it deems fit to be paid by the professional bodies above. The Act should be amended to provide that such bodies shall pay to the Council each year a minimum of 10 percent of their annual financial returns; and (v) submission of Annual Performance Returns by newspapers, magazines or journals. Under ss 35 & 36 of the Act above, newspapers, magazines or journals must submit to the Council not more than 60 days after the end of each year, a return on the performance of newspapers and so on to enable the Council determine if the newspaper and so on have adhered to their mission statements and objectives as well as kept to the Code of Professional and Ethical Conduct in the discourse of issues of public concern. It is a crime punishable with ₦100,000.00 for any owner or publisher of a newspaper and so on not to comply with the requirement above. Also, it is a crime for any publisher or owner of a newspaper and so on to fail to comply with the requirement above upon service of a notice to comply with the same, punishable with a fine of ₦10,000.00 for every day the crime continues. The provisions are commendable, as they will enable the Council effectively monitor the activities of the Nigerian press to ensure that the press adhere to the Code above and the mission statements as well as objectives of the newspapers and so on. But ss 35 & 36 above should be

4. Practices on Press Council in other nations

What is of concern in this section is the issue of the practices on Press Council in other nations. The relevant nations with regards to the practices on Press Council are discussed below:

South Africa

In South Africa a nation practicing the common law, there is in place a system of voluntary independent co-regulation of the media, involving exclusively representatives of the press and the public.¹⁰⁰

The South African Press, represented by the Constituent Associations established the Press Council of South Africa (PCSA) in 2020, pursuant to section 1 of the Constitution of the Press Council of South Africa 2020. The Constituent Associations are: (a) the Association of Independent Publishers (AIP); (b) the Forum of Community Journalists (FCJ); (c) the South African National Editors' Forum (SANEB); and (d) the Interactive Advertising Bureau of South Africa (IABSA), representing the online media.¹⁰¹

The Constituent Associations above and the subscriber publications as well as subscriber members referred to in section 4 of the Constitution above explicitly guarantee the independence of the PCSA so that it can act without fear or favour in the interest of a free and ethical media as well as in realisation of its aims and objectives.¹⁰² It is noteworthy that the PCSA is made-up of a Chairman and 12 individual councilors, six representing the public and six representing the press.¹⁰³ The aims and objectives of the PCSA, include: (a) to uphold and promote the Constitution of the Republic of South Africa 1996 by preserving the right to freedom of expression and the press; (b) to promote and develop ethical practice in journalism and to promote the adoption of and adherence to these standards by the South African Press; and (c) to adopt 'the Press Code of Ethics and Conduct for South African Print and Online Media'.

The powers and functions of the PCSA, include: (a) perform all such acts that are reasonably necessary for the promotion of the objects and principles contained in the Constitution of the PCSA, the Press Code above, Complaints Procedures or any function deemed necessary by the PCSA; and (b) endeavour to collaborate with similar organisations in South Africa to ensure that a cost-effective voluntary independent mediation and arbitration process is available to tackle quickly complaints from members of the public about journalistic ethics and conduct.¹⁰⁴

It is noteworthy that the PCSA shall establish and maintain certain structures and offices, including 'the Complaints Procedures'.¹⁰⁵ These involve the procedure to deal with complaints against the subscriber publications and members.¹⁰⁶ It actually provides a non-statutory avenue for mediation and arbitration of complaints.¹⁰⁷ A point to note is that subscriber publications and members are subject to the Press Code and to the jurisdiction of the PCSA's Complaints Procedures.¹⁰⁸

amended to increase the fine of ₦100,000.00 above to ₦500,000.00 and the fine of ₦10,000.00 above to ₦50,000.00, as the fines provided by the Act are not stiff to deter non-compliance with the provisions of ss 35 & 36 above.

¹⁰⁰ See Preamble to the Constitution of the Press Council of South Africa 2020. Note that recently Lai Mohammed, Nigeria's Minister of Information and Culture welcomed renewed efforts of the NPO to revamp a co-regulatory framework measure to boast integrity and professionalism of the media industry in Nigeria. See 'Lai Mohammed charges NPAN to develop Code of Conduct for...' <<https://www.thisdaylive.com>> accessed 1 November 2022.

¹⁰¹ See (n 100), s 1(2).

¹⁰² *Ibid.*, s 1(4).

¹⁰³ *Ibid.*, s 5(a).

¹⁰⁴ *Ibid.*, s 3.

¹⁰⁵ *Ibid.*, s 6.

¹⁰⁶ *Ibid.*, s 6.1(a).

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, s 6.1(b).

It is important to bear in mind that the structure and offices administering the Complaints Procedures, that is the Public Advocate, the Press Ombud, the Panel of Adjudicators and the Chair of Appeals shall act independently of the Council and the Constituent Associations.¹⁰⁹ Where a complaint is lodged against a non-subscribing publication or a non-subscribing journalist producing editorial content for a non-subscribing publication, the Public Advocate who helps members of the public to formulate their complaints or Press Ombud may approach the publication or individual to establish whether the same is in agreement with the principles of the Press Code and invite the same to subject itself or himself to the jurisdiction of the PCSA for the purpose of adjudicating the complaint.¹¹⁰ In the event that the publication or individual refuses to join the PCSA or submit to its jurisdiction, the Public Advocate or Press Ombud shall advise the complainant and, where appropriate refer him to an alternative dispute resolution machinery or process.¹¹¹

Needless to emphasise that the Press Ombud is the main body involved in adjudicating complaints over journalistic ethics and conduct of subscriber publications and by subscriber members that cannot be resolved at the earlier level of media.¹¹² It is empowered to decide matters by virtue of the Complaints Procedures on the written representations and submissions of both parties, without hearing evidence.¹¹³

The Press Ombud may, also, conduct a hearing of which he may be joined by one press representative and up to two public representatives from the Panel of Adjudicators.¹¹⁴ It may decide to co-opt a suitably qualified assessor, without voting rights, to assist the Adjudication Panel with complex issues.¹¹⁵ Any party dissatisfied with a ruling of the Press Ombud, may file an application for leave to appeal to the Chair of Appeals.¹¹⁶ Where leave is granted, the Chair of Appeals must convene an Appeals Panel, where he is joined by one press representative and, at his sole discretion, up to three public members of the Panel of Adjudicators.¹¹⁷ The Appeals Panel may consider the matter with or without hearing oral argument or evidence and its decision shall be by majority votes.¹¹⁸

It is noteworthy that the PCSA relies, for its funding, on media owners and constituent funders.¹¹⁹ In actuality, subscriber publications and members cover in advance the annual cost of the key activities of the PCSA by way of an annual subscription fee. This is in accordance with a formula approved by the Finance Committee of the PCSA and ratified by the PCSA.¹²⁰ The Finance Committee shall, with the approval of the PCSA, also, establish a 'sustainability fund' to sustain the operations of the PCSA in the event of default by a funder or sponsor or any other emergency at the sole discretion of the PCSA.¹²¹

¹⁰⁹ *Ibid.*, s 6.1(c).

¹¹⁰ *Ibid.*, s 6.1(d).

¹¹¹ *Ibid.*, s 6.1(e).

¹¹² *Ibid.*, s 6.4(a).

¹¹³ *Ibid.*, s 6.4(b).

¹¹⁴ *Ibid.*, s 6.4(c).

¹¹⁵ *Ibid.*, s 6.4(d).

¹¹⁶ *Ibid.*, s 6.6.1(a).

¹¹⁷ *Ibid.*, s 6.6.1(d).

¹¹⁸ *Ibid.*, s 6.6.1(f).

¹¹⁹ *Ibid.*, s 9.

¹²⁰ *Ibid.*

¹²¹ *Ibid.* Note that in India, Sri Lanka and Kenya -countries practicing the common law, the legislature has, also, intervened to establish a National Press Council to regulate the media and discipline journalists. See the Indian Press Council Act No 37 of 1978 and the Sri Lanka Press Council Law 2002. See, also, the Kenyan Media Council Act No 20 of 2013 which has, also, adopted co-regulation media approach. There are certain challenges of the Council. They, include: (a) the 1999 Constitution does not specifically or in explicit terms guarantee the right to freedom of the Press which the Council is mandated to protect, as disclosed earlier. For instance, s 34(1), (2) & (3) of the Constitution of Kenya 2010 provides that the freedom and independence of electronic, print and all other types of media is guaranteed;

5. Findings/observations

In this segment, the authors give a summary of findings/observations during the research as can be seen in the sections preceding this segment.

It is pellucid from the foregoing appraisal of the Nigerian Press Council Act 2004 that section 1 of the Act above establishes for Nigeria a country practising the common law, the Council as an autonomous body to promote high professional standards for the Nigerian press and tackle with complaints emanating from members of the public over the conduct of journalists in their professional capacity or complaints emanating from the press over the conduct of persons or organisations toward the press. This is in tune with what obtains in other countries practicing the common law, including Kenya, India and the UK.

It is observable that the fundamental right to freedom of expression and the press constitutionally-guaranteed to all Nigerians, including journalists in section 39(1) and (2) above is not absolute, as it can be derogated from by a law which is reasonably justifiable in a society considered to be democratic in the interest of public order and so on in tune with section 45(1) of the 1999 Constitution which is known as the derogation clause. This is in consonance with what obtains in other countries practicing the common law, including Tanzania, Ghana and South Africa as well as the position under international law, as exemplified in the UN ICCPR 1966.

It is observable that the enactment of the Act above is constitutional, being in tune with section 45(1) above, as exemplified in the *Isa* case. The provisions of Chapter Four of the 1999

the State shall not penalise any person for any opinion or view or content of any broadcast, publication and so on; (b) section 6 (6)(c) of the 1999 Constitution above, renders s 22 of the Constitution above which guarantees the right of the press to uphold the responsibility and accountability of the Nigerian Government to the people, among other Chapter Two provisions, non-justiciable. See *Bishop Anthony Olubunmi Okojie, Trustee of Roman Catholic Schools and Others v Attorney General of Lagos State* [1981] 2 NCLR 337, CA, Nigeria, quoted in AE Abuza, 'The law and Policy of Curbing Desertification in Nigeria: A contemporary discourse' (2017) 42(2) *Journal for Juridical Science* 79; (c) inadequate sanctions in Nigerian Press Council Act 2004 which are not stiff to deter non-compliance with its provisions. For example, s 21(5)(b) of the Act above prescribes, with respect to a person convicted by a Magistrate Court for the offence of practising as a registered journalist with the Council when the same is not a registered journalist with the Council, a fine of ₦3,000.00 and an additional fine of ₦100.00 for each day during which the offence continues; (d) the Council does not have powers to arrest press offenders, and investigate cases of press offenders as well as prosecute press offenders as can be seen in the Act above, unlike other governmental agencies, including the Independent National Electoral Commission (INEC). For example, s 145(2) of the Electoral Act No 13 of 2022 provides that a prosecution under the Act shall be undertaken by legal officers of the INEC or any legal practitioner appointed by the same; (e) corruption and abuse of power among key officials of the Council, contrary to s 15(5) of the 1999 Constitution and art 3(5) of the African Union (AU) Convention on Preventing and Combating Corruption (AUCPCC) 2003. Recently, the Council was accused of fraudulently spending ₦8.301 million for renovating its building in Abuja as well as engaging an insurance broker for ₦5.118 million without following the due process. See 'Reps tackle Press Council over alleged ₦8.301 million contract irregularities' <<https://guardian.ng/features/media/>> accessed 1 November 2022; (f) a lack of independence of the Council, contrary to s 8 of the of the Act above. The President and Minister above are bound to influence the selection of particular candidates of the NUJ and so on to be appointed into the Council, despite the fact that appointments of representatives of the NUJ and so on into membership of the Council by the same are subject to the nomination or election by the NUJ and so on; (g) there is the problem of inadequate funding of the Council. To be sure, there is poor budgetary allocation to the Ministry of Information and Culture as well as its agencies, including the Council; and (h) there is the problem of a lack of enthusiastic or faithful enforcement or implementation of the Act above and other Nigeria laws or regulations on professional misconduct among journalists and unregistered journalists with the Council practising as registered journalists with the Council. This has given room for quacks and other unregistered journalists with the Council to tarnish the good image of the noble profession of journalism in Nigeria.

Constitution, dealing with 'Fundamental Rights of which section 45(1) is an integral aspect are sacrosanct. Should any of the provisions require alteration section 9(3) of the 1999 Constitution prescribes a tedious and challenging procedure. Besides this, the 1999 Constitution is supreme and its provisions are binding on all persons and authorities throughout the Federation of Nigeria. The country, in this connection, must respect and apply the provisions of its Constitution.

It is observable that the major problem with sub-section (1) of section 45 above is that the 1999 Constitution does not define the elastic terms of 'defence' and so on in order to guarantee reasonable restrictions of the fundamental rights of Nigerians, including journalists, guaranteed by the sections mentioned in the section above, as disclosed before.

Lastly, it is observable that the Council, in carrying-out its mandate to protect the interest and rights of journalists and so on is faced with manifold challenges, as disclosed before. These challenges must be tackled by the civilian regime of President Muhammadu Buhari so that the Council's roles in promoting high professional standards for the Nigerian Press and so on - all in the interest of sustaining Nigeria's practice of democracy which President Buhari recently acknowledges that Nigerians love¹²² can yield the desired results.

6. Recommendations

Arising from the above appraisal, the authors strongly recommend the following with a view to surmounting these challenges:

- * The Nigerian Press Council Act 2004 should be amended to confer on the Council the powers of arrest, investigation as well as prosecution of offenders under the Act.
- * The Nigerian Press Council should rise to the challenge of faithful implementation of the provisions of the Act above or its subsequent amendment.
- * The 1999 Nigerian Constitution should be amended to specifically guarantee a fundamental right to freedom of the Press or media in alignment with the practice of other countries.¹²³

7. Concluding Remarks

This article has appraised the Nigerian Press Council Act 2004. It identified gaps in the numerous applicable laws and highlighted the challenges of the Council in regulating the Nigerian press and Journalists. This article, also, exhibited the practice in other nations and put-forth solutions, which, if carried-out could effectively tackle the challenges of the Council in its role of promoting high professional standards of the Nigerian press and dealing with complaints emanating from members of the public over the conduct of journalists in their professional capacity and so on in Nigeria.

¹²² See 'We will stabilise Nigeria's Democracy with Next Year's Election - Buhari' <<https://www.leadership.ng>> accessed 1 November 2022.

¹²³ Other recommendations of the authors, include: (a) the Act above should be amended to impose stiff penalties for offences committed under the Act above; (b) any Council official involved in corrupt practices and abuse of power should be made to face criminal prosecution for official corruption; (c) the 1999 Constitution should be altered to provide for the right contained in s 22 of the Constitution above as a fundamental and enforceable right; (d) the Act above should be altered to confer on the National Council of State the power to appoint members of the Council on the recommendation of relevant bodies, including the NUJ and so on, subject to confirmation by the Senate of the NAN; and (e) the Act above should be amended to establish a special court for the trial of press offenders under the Act, as the ordinary courts, including the High Courts are over-congested with too many cases which suffer from a lack of speedy trial and are bogged down by reliance on undue technicalities. A noteworthy Latin legal maxim is: *Justicia cunctator est Justicia denigo*, meaning 'Justice delayed is Justice denied'. Actual, this recommendation is a new strategy and method aimed at addressing the challenges of the Council in the current situation in Nigeria which is not contained in existing literature consulted by the authors and, therefore, addresses a gap in the same.