



University of Uyo

JOURNAL OF HUMANITIES

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Editor-in Chief, UUJH

chief-editor@uujh.org

www.uujh.org

UNIUYO JOURNAL OF HUMANITIES (UUJH), VOL. 26, NO. 1, MAY 2022

Muffled Broadcast Drums and the Withering Voices of Dialogues in Nigeria

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Abstract

Nigeria's broadcasting space has been enriched with lively and robust political discourse since 1993 when the National Broadcasting Commission (NBC) rolled out the first set of broadcast licenses to private investors. Broadcasters have leveraged on the widened broadcast space and the media-friendly policies of the government, particularly since the return of civil rule in 1999, to enrich political dialogue on the airwaves – which ultimately affects discussions off the air. And with broad-

cast media's potentials for social control, the dialogue on the air has affected the hearts and minds of the audience in one direction or another. However, recent actions and rhetoric by the broadcast regulator, NBC, have seemingly threatened the freedom of robust discussions on the airwaves. Broadcast stations are being fined; some are queried while others are threatened with withdrawal of licenses and closure. This, in a way, is akin to muffling the drums of dialogue. This article examines the recent posture of the NBC towards political dialoguing on the airwaves, the possible effects of the new NBC attitude to political conversations and what it portends for the operations of the media in a Nigeria that is still grappling with the vestiges of a long military dictatorship. The article holds that for the broadcast media to truly serve the cause of democracy in Nigeria, they should be free from the systemic attempts by the government and its agents to whittle the broadcast stations as platforms for robust exchange of ideas. The article should also touch on what should be done to these broadcast stations who engaged in unethical broadcasting.

Keywords: Broadcast drum, Political communication, Broadcasters, Political dialogue, Government.

Introduction

Political communication is the pivot of democratic governance the world over. An important and near indispensable point in the chain of political communication is

the mass media in all their forms – print, broadcasting and online channels. The news media report, aggregate and/or comment on political issues, while social networking sites, such as Facebook and Twitter, allow Internet users to share information rapidly. The media, by their professional calling, are supposed to be neutral, impartial and objective in the handling of issues around them, particularly political issues loosely defined to include all matters that are related to governance in a polity. McNair (2015, p.11) aptly notes that: “In democratic political systems the media function both as transmitters of political communication which originates outside the media organisation itself, and as senders of political messages constructed by journalists and other producers such as bloggers”.

To achieve the above, the media’s account of political events may be laden with value judgments which manifest in subjectivities and biases which Kaid, Gerstle and Sanders (1991) describe as political reality and give three categories: objective

political reality comprising political events as they unfold; subjective reality as perceived by actors and citizens, and constructed reality – events as covered by the media. In the process of functioning as transmitters of political communication and senders of political messages, the mass media, particularly the broadcast media, perform five functions in a democratic society. McNair (2015, pp.18-20) list these functions as follows:

1. First, they must inform citizens of what is happening around them (what we may call the ‘surveillance’ or ‘monitoring’ functions of the media).
2. Second, they must educate as to the meaning and significance of ‘facts’.
3. Third, the media must provide a platform for public political discourse, ‘public opinion’ and feeding that opinion back to the public from whence it came. This must include the provision of space for the expression of dissent, without which the notion of democratic consensus would be meaningless.
4. The media’s fourth function is to give publicity to governmental and political institutions – the ‘watchdog’ role of journalism.
5. Finally, the media in democratic societies serve as a channel for the advocacy of political viewpoints. Parties require an outlet for the articulation of their policies and programmes to a mass audience, and thus the media must open to them.

In the course of informing and educating the citizens and providing publicity to governmental institutions, the broadcast media provide a veritable platform for

public discourse and advocacy that may lead to the formation of public opinion – the aggregate of private opinions of individuals – in what German sociologist Jürgen Habermas calls the “public sphere”. The facilitators and sustainers of the public sphere, without doubt, are the mass media – and in the context of this article, the broadcast media. They function as a forum for the enlightened, rational, critical and unbiased public discussion of issues of common interest. It is in this discursive space that journalists, political actors and others who have something to say make their advocacies and canvas their opinions.

It is also in this discursive space that advocacies assume the level of a dialogue where there are vociferous exchanges among participants in the dialoguing process. Of truth, it is dialogue – arising from freedom of speech and of the press, that sustains the public sphere. Freedom of speech and of the press is a natural and inalienable right, and rests on the assumptions that men desire to know and be guided by the truth, and that men invariably differ in their opinion. Therefore, each

man should be allowed to urge his own opinion freely and accord others the right to do so. This implies that for the public sphere to be open for dialogue, there must be mutual toleration of one another in the advocacy of opinions.

For the broadcast media in Nigeria, the platform for dialogue was highly restricted before 24th August, 1992, when the National Broadcasting Commission Act (1992, No. 38) came into existence. The Act had since been amended by Act No. 55 of 1999. The Act opened up the frontiers of broadcasting in Nigeria through the admission of private broadcasters into the broadcasting space. Private broadcast stations, driven by creativity in content and diversity of ownership and voices on the air, expanded the platform for dialogues. This motivated the personalities on the air while the audience enjoyed to the fullest the robust and lively discussions that added value to their daily living, including meeting their information needs.

Although dialogues can still be located on the airwaves, participants in the dialogues appear stifled and on the edge, apparently because of the utterances and actions of the regulator of broadcasting in Nigeria – the National Broadcasting Commission (NBC). There seems to be a growing descent to the pre-1992 era when discussions on the broadcast stations were highly regimented because of (government) ownership of the stations. Increasingly, therefore, the broadcast drums, which alert and sensitize the audience to the day’s intelligence and help the audience to understand same, are being muffled such that the sounds from the

broadcast drums are becoming faint, unconvincing, aloof and distant, more for the reason of filling the airwaves than in engaging in useful and functioning dialogues that provide perspectives to the issue(s) at hand. This mini-censorship is what William Hachten called the Muffled Drums in his classic: *Muffled Drums – the News Media in Africa*, to describe the authoritarian approach to the mass media in Africa as a whole. As a muffled drum does not send out signals with utmost freedom, so are the broadcast stations that have been muffled. Discussions (dialogues) and even the report of the day's intelligence are done with fear because of the possibility of crossing the limits imposed by the National Broadcasting Commission.

By muffled broadcast drums is meant the systematic attempts by the government and the National Broadcasting Commission to gag or restrain the free-flow of news, discussions and interactions on radio and television stations. Dialogue refers to the interactions and analyses on the broadcast stations while withering voices of dialogue refers to the reduced robust discussions on the airwaves.

Theoretical Framework

This work is founded on one of the normative theories of the press – the authoritarian theory. The authoritarian theory is a theory under which the press as an institution is controlled in its functions and operation by the organised society through another institution: government. The authoritarian theory was articulated by Fred Siebert in 1956. It came into being in the authoritarian climate of the late Renaissance, soon after the invention of printing, out of the philosophy of the absolute power of the monarch, his government or both, and blossomed in the 16th and 17th century-England.

Under the theory, ownership of the media is either private or public. The chief purpose of the media is to support and advance the policies of the government in power and to service the state. The media must get a royal patent or similar permission in order to operate. What is forbidden is the criticism of the political machinery and officials in power. Though the media are not necessarily owned by government, they are to serve as an instrument for effecting government policy. Dissent by the media may be regarded as treason. The theory maintains that “the power to establish and maintain order and peace is sovereign. It is not subject to private opinions on whether or not its specific actions are reasonable, since its establishment with competence to decide disputes is the prime dictate of reason” (Siebert, 1963, p.13).

Under the theory, the mass media are assigned a specific role and are subjected to controls to prevent the media from interfering with the achievement of the ultimate ends of the state. Hence, the units of communication should support and advance the policies of the government in power so that the government can achieve its objectives.

In order to curb the desire of the media to criticise the government, treason, sedition, hate speech and so on, are brought in for the prosecutions of persons accused or suspected of disseminating information or opinions inimical to the authorities. To attempt to overturn the state is treason; to engage in activities which might lead to the overthrow of established government is also treason.

Control of the media is in the form of censorship, licensing system, prosecution before the courts for treason, libel or sedition. Writing on the operation of authoritarianism in the 16th and 17th centuries, Siebert (1963) states that: “In that society, truth was concerned to be, not the product of the great mass of people, but of a few wise men who were in a position to guide and direct their followers. Thus, truth

was thought to be centred near the centre of power. The press therefore functioned from the top down”.

The relevance of the above theory to this work lies in the point that the policies, actions and body language of the broadcast regulator in Nigeria – the National Broadcasting Commission – though ostensibly meant to advance and promote quality broadcast services to the audience - relies on the principles of the 16th and 17th centuries regarding the media; chiefly, the media should be controlled and made to advance and support the policies and desires of government and its officials. Any erring media are slammed with similar sanctions as it was in the 16th and 17th centuries – heavy fines, withdrawal of license and closure of the media, as well as arbitrary arrests, detention and prosecution.

The Muffling of Broadcast Drums

Nigeria is not new to attempts to gag, restrict and guide discussions in the broadcasting media. As early as 1953, the Colonial Government had prevailed on the Nigerian Broadcasting Service (NBS), then the only broadcast station in Nigeria, to deny Chief Obafemi Awolowo, the leader of the Action Group, the opportunity to defend himself over the allegations of disloyalty levelled against him by then

Governor-General Macpherson (Uche, 1989). That singular act exposed the NBS not only as the mouthpiece of the government but also as a station that was not ready to tolerate dissenting opinions which might strongly challenge the established order. It was only after Obafemi Awolowo had, in reaction to that denial for a rejoinder on NBS, established the Western Nigeria Television on October 31, 1959, that the established order was challenged.

When, however, the military took over power in the 6th year of Independence, the ensuing unitary arrangement in the country ensured that all radio and television stations were whipped into line, culminating in the takeover by the Federal Government in 1976 of all television stations and in 1978 of some radio stations in the country. With the ownership structure of broadcast stations in Nigeria firmly in the grip of government, the freedom of the press and individual rights were regimented to protect those who manned the structures of power in the country. At that time, the regimentation was regarded as normal because the country was used to it over the years, particularly in the years of military rule when power flowed from the Centre only.

Ceaseless agitations for the de-regulation of the airwaves finally led to the

admission of private investors into the business of broadcasting through the promulgation of Decree 38 of 1992 which brought into being the National Broadcasting Commission to superintend over the deregulation of the broadcast industry. With the first set of licenses to private persons rolled out in 1993, the nation's airwaves suddenly came alive with different operators from differing backgrounds that manifested in a variety of creative contents, including dialogues as never before. The public sphere came alive too. Fresh perspectives were given to issues. Citizens now had a voice – or rather, the stations went for the citizens' voice. For the first time, broadcast stations held government at all levels in the country accountable for its actions, utterances and inactions. Expectedly, the citizens were happy; the audience base of the stations kept expanding; advertisers increased their patronage of the stations.

However, government became increasingly uncomfortable with the growing boldness of the citizens through the broadcast stations. In short, the broadcast drums were becoming very loud and bold, uncomfortably so, to the government, particularly that at the Centre. Therefore, sounds from the drums had to be tamed; some muffling had to be placed over the broadcast drums to reduce the decibels of

the sounds emanating from the drums. The muffling is being provided by and through the regulator of broadcasting in Nigeria, the National Broadcasting Commission, which uses its flagship product – the Nigeria Broadcasting Code – as a tool to shape and guide interactions on the airwaves.

NBC and the Muffling of Broadcast Drums

By the law establishing it (the NBC Act 1992 No 38 and NBC Act 1999 No 55), the National Broadcasting Commission is saddled with the responsibility, among others, of:

Regulating and controlling the broadcast industry; establishing and disseminating a national broadcasting code and setting standards with regard to the contents and quality of materials for broadcast; guaranteeing and ensuring the liberty and protection of the broadcast industry with due respect to the law; and determining and applying sanctions including the revocation of licenses of defaulting stations which do not operate in accordance with the Broadcast Code and in the public interest (NBC Code, 2019, pp. 196-199).

In addition, the Addendum to the 6th Edition of the Nigeria Broadcasting Code (Section 5.6.2) states that “The Broadcaster shall approach with restraints, the use of materials from user-generated source, in order not to embarrass individuals, organisations, government or cause disaffection, incite to panic or rift in the society at large”. Section 5.6.9 tightens the noose on the neck of the Broadcaster: “The Broadcaster shall be held liable for any breach of the Code emanating from the use of materials from user-generated sources”.

The above planks and others as contained in the NBC Act 1992 No 38 (as amended), the Nigeria Broadcasting Code 2019 and the Addendum to the 6th Edition of the Nigeria Broadcasting Code give legal and lethal teeth to the NBC to, solely and without consultation with any one or institution, determine issues on broadcasting in Nigeria.

To firm up the powers of the NBC, Section 6 of the NBC Act 1992 No. 38 (as amended) subjugates the Commission to the whims of the Minister of Information in a sweeping manner: “Subject to the provisions of this Act, the Minister may give the Commission directives of a general character relating generally to particular matters with regard to the exercise by the Commission of its functions under this Act and it shall be the duty of the Commission to comply with such directives”.

The implication of the above section is that in the minister resides the final authority in the regulation of broadcasting – “And it shall be the duty of the Commission to comply with such directives!”, so says the NBC Act 1992 No. 38 (as amended). Taking the point further, it implies that the NBC should seek counsel from the Minister before taking any decision, to avoid such decision from being set aside through the “directives” of the Minister.

Of recent, the NBC, in the exercise of its arbitrary powers, and in conjunction with the Minister, has equally been arbitrary in the use of its powers:

1. In August 2020, NBC fined Nigeria Info 99.3 the sum of ₦5million over an interview with Obadiah Mailafia, a former Governor of the Central Bank of Nigeria (CBN).
2. On October 25, 2020, the NBC sanctioned Africa Independent Television (AIT), Arise TV and Channels Television for what it called a gross violation of the Broadcast Code, top of which was the use of unverifiable online video footages on the social media. The Acting Director-General of NBC, Prof. Armstrong Idachaba, who announced the sanction at a press conference in Abuja, accused the three TV stations of unprofessional coverage of the

#EndSARS protests, and slammed a fine of ₦3million on each of the stations.

3. On April 26, 2021, the NBC through its Director-General, Prof. Armstrong Idachaba, announced the suspension of the broadcast license of Channels Television and a fine of ₦5million for an alleged breach of the Broadcast Code on its live programme entitled, “Politics Today”. Prof. Idachaba, in a letter to the Managing Director of Channels Television, accused the TV station of allowing the spokesperson of the Indigenous People of Biafra, IPOB, Emma Powerful, to speak on television even when Channels TV knew that IPOB was outlawed in Nigeria. The Commission’s letter read in part: “We refer to the broadcast of your program on Sunday, 25th April, 2021, at 7pm. In the programme, a so-called new leader of IPOB made several secessionist and inciting declarations on air without caution or reprimand by your station. He also made derogatory, false and misleading statements about the Nigerian Army. This is reprehensible, especially that IPOB remains a proscribed organisation as pronounced by the courts of the land. This much, Channels TV ought to know and respect. The programme was clearly in

violation of the provisions of the Code, and extant provisions of the Broadcasting Act”. The Commission referred Channels Television to sections 3.11.1 (b) and 5.4.3 of the Code and for which violations are punished: “Your station remains liable to sanctions provided in section 15 of the Code which prescribes among others – suspension of broadcast license and a fine of ₦5million”.

4. The NBC through its Director-General, Prof. Armstrong Idachaba, accused Inspiration FM, Lagos, of infractions on the Broadcast Code. It said on May 21, 2021, in its World Report, Inspiration FM, Lagos, aired a broadcast of the Indigenous People of Biafra (IPOB) making secessionist claims in breach of sections 3.11.1 (b) and 5.4.3 of the Broadcast Code and other extant laws. The Commission therefore announced the suspension of broadcast license and a fine of ₦5million only on Inspiration FM “to serve as deterrent”. The suspension of license was, however, withdrawn because the NBC said it “had reviewed the appeals and apologies from both stations (Channels Television and Inspiration FM)”.
5. In July 2021, the NBC directed broadcast stations not to review contents of newspapers that reported acts of insecurity in Nigeria. The outrage that

greeted that directive forced the NBC to deny that it ever gave such a directive. However, Nigerian newspapers on Monday, July 13, 2021 collectively devoted their front pages to protest the attack on press freedom and drive home the right of the people to know, under the instructive banner – Information Blackout.

6. On August 27, 2021, the NBC queried Channels TV for interviewing the Governor of Benue State, Samuel Ortom. The query read in part: “The National Broadcasting Commission monitored the broadcast of your programme Sunrise Daily between 7am and 9am on Tuesday, August 24, 2021. The programme which has (sic) as guest the Executive Governor of Benue State, Governor Samuel Ortom, was observed to contain inciting, divisive and unfair comments which were not thoroughly interrogated by the anchors. Consequently, Channels TV is required to explain why appropriate sanctions should not be applied for these infractions of the Nigeria Broadcasting Code. Your response should reach the Commission within 24 hours of receipt of this letter”.

The above instances (and the many unreported) are a pointer to the steps that the National Broadcasting Commission has taken to shrink dialogue on the airwaves. Through its utterances, actions and body language, the NBC seems to set the boundaries of what is permissible or otherwise on the airwaves. The limits, unfortunately, are not a product of stakeholder discussions but a product of an organization that is becoming increasingly authoritarian. While those limits have not been clearly defined, a glimpse at the utterances of NBC gives an indication of such boundaries. This may include, but not limited to:

1. the use of unverifiable online video footages on the social media;
2. unprofessional coverage;
3. derogatory, false and misleading statements; and
4. hate speech.

The above concepts and constructs are vague and their values are only to the extent of the meaning assigned to them by those who canvass them. In effect, the NBC is the only organisation that can tell when a discussion is reprehensible; when a statement is derogatory, false and misleading; when coverage is unprofessional; when a video footage on social media is unverifiable; when a broadcast is irrespon-

sible, inaccurate and biased; and when it is hate speech. Therefore, the NBC, a judge in its own case, accuses, prosecutes and judges. Ogun (2020) underscores this when he states that: “The NBC, being a regulatory body, is not empowered by law to act as a prosecutor and the judge because this violates the principle of fair hearing enshrined under section 36 of the 1999 Constitution (as amended). For NBC to impose fine on the TV station means it is unconstitutionally acting as a judge in his own case. The stations are still deemed innocent until proven otherwise by a court of competent jurisdiction under section 36 (5) of the Constitution”.

The Socio-Economic Rights and Accountability Project (SERAP) (2020) has also weighed in by stating that: “It can be averred without doubt that the NBC is out to weaken national dialogue on issues that tend to question the sincerity and/or capacity of the Federal Government by intimidating and harassing independent media houses”. The strategy is simple: strike the top, bold broadcasters in the country and the others will scamper for their survival (and safety).

The above strategy appears to be working. Anchors on radio and TV stations

are wont to remind their guests and audience members that they are on public radio or TV and that certain topics or certain phrases, words and sentences cannot be condoned. And many would remind both guests and audience that the NBC has a list of prohibitions on the air. This is to avoid the sanctions that NBC dangles over stations adjudged by it to have run foul of its Code or the wishes of the Minister of Information. It is more a survival strategy than a conviction to abide by the directives of the NBC.

In these circumstances, discussants on the airwaves are intimidated to be economical with their views on issues of national concern. This also imposes a prior restraint on usually vocal commentators on public issues. Some would rather turn down invitations to participate in discussion programmes than to censor themselves and speak “half-truths” on the air. The same could be said of audience members who are bold and expressive. Rather than get the stations in trouble or have their lines disconnected half-way on the air, some audience members prefer to keep their informed opinions to themselves and move on.

There are still dialogues on the air, though. The dialogues seem to have been drained of the very ingredients that make dialogues robust – freedom to canvas an opinion, freedom from intimidation and harassment and independence in the expression of opinion. In the circumstances, the discussions appear barren of true dialogue, and are carried out with the sub-consciousness that the discussions are

not without lethal constraints.

Stakeholders’ Reactions to Muffled Broadcast Drums

The attempts to stifle robust dialogues on the airwaves have drawn differing reactions from stakeholders in the broadcast industry. The reactions have been less than flattering to government. They range from sharp and acidic criticisms of the NBC and the government to a melancholic assessment of the current state of the broadcast industry and a pessimistic forecast of the future. Okuhu (2020) in a seemingly brutal assessment of the 6th Code of the NBC states that:

The impression one gets from interacting with the recently released 6th Code of the National Broadcasting Commission (NBC) is that someone just might be introducing communist-style management in the country’s broadcasting landscape. Otherwise, it is almost impossible to understand what the Nigerian broadcast regulator targets to accomplish by this dangerous victory,

anti-enterprise policy that certainly will constrain innovation and organic competition in the industry.

The apparent onslaught on the broadcast media by the NBC has drawn words of advice from Treasure (2020) to the broadcast regulator:

The NBC should rather get ready for the digital future and align itself with the new normal. It should re-engineer itself by re-inventing its duties in the broadcast industry to reflect the realities and demands of this digital age. It should re-direct its efforts at ensuring quality content and sanity on Nigerian airwaves. It should invest in skilled manpower and state-of-the-art equipment to effectively monitor. It should mandate local broadcasters to produce relatable and competing content with the offerings on cable TV stations operating in the country. It should save the nation the embarrassment of turning to cable TV operators to enjoy clear signals from our terrestrial TV and popular radio stations as well as compelling programmes with national cult followership.

Expectedly, one of the leading and loudest voices on the recent actions of NBC – the Socio-Economic Rights and Accountability Project (SERAP) – has consistently spoken against the arm-twisting actions of the National Broadcasting Commission. SERAP (2020) condemns what it calls “the unconstitutional and illegal fines

of ₦9m reportedly imposed by the National Broadcasting Commission (NBC) on Channels TV, AIT and Arise TV (₦3m each) purportedly over their coverage of the #ENDSARS protests”. According to SERAP’s Deputy Director, Kolawole Oluwadare, “this action by the NBC is yet another example of Nigerian authorities’ push to silence independent media and voices. NBC should drop the fines and uphold international obligations to respect and protect freedom of expression and media freedom. We will sue the NBC if the unconstitutional fines are not rescinded within 48 hours”. SERAP further said:

This is a new low in Nigeria’s protection of freedom of expression, and the ability of independent media to function in the country. The fines are detrimental to media freedom, and access to information and the NBC must immediately withdraw the decisions...The media has (sic) a vital role to play as ‘public watchdog’ in imparting information of serious public concern and

should not be inhibited or intimidated from playing that role. The NBC should stop targeting and intimidating independent media and voices.

Ogun (2020), in an analysis of the fines on Arise TV, AIT and Channels TV, states that “there can be no democracy without a free press. The NBC should not continue to weaponize its regulatory powers against media freedom. Making critical reports and exposing the failures of the government should earn the broadcast stations some accolades, not illegal fines”.

Drawing from decided cases in court, Ogun (2020) says NBC lacks the power to impose a fine, since, according to him, NBC is not a court:

The NBC, being a regulatory body is not empowered by law to act as a prosecutor and the judge, all at the same time. This violates the principle of fair hearing enshrined in section 36 of the 1999 Constitution. For NBC to impose fine on the TV stations means it is unconstitutionally acting as a judge in his own case. The stations are deemed innocent until proven otherwise by a court of competent jurisdiction...NBC is not and cannot be deemed a court; so it lacks the power to declare any broadcast station guilty of contravening the Code...Therefore, the imposition of fine by the NBC on the stations, usurping the power of a properly constituted court, shall be deemed illegal, unconstitutional, null and void and of no effect whatsoever. Flagrantly abusing the law by authorities to achieve desperate political gains cannot be tolerated.

Beside rhetoric, SERAP has taken legal steps to challenge the “new order” in the broadcast industry. On October 30, 2020, SERAP filed a suit at the Federal High Court, Abuja, to challenge the legality and constitutionality of imposition of fines on media houses by the NBC and the Minister of Information. The suit (FH-C/ABJ/CS/1436/2020) has as co-plaintiffs 255 Concerned Nigerians, including Premium Times Services Limited; Centre for Journalism Innovation and Development; HEDA Resource Centre; International Centre for Investigative Reporting; African Centre for Media and Information Literacy and Media Rights Agenda. The plaintiffs are seeking the following reliefs:

1. A DECLARATION that section 2 (n) of the NBC Act and Broadcasting Code used by the NBC and Mr. Lai Mohammed to impose fines, sanctions and any other penalties on television, radio and online broadcast stations and media

- houses are draconian, inconsistent, and incompatible with the right to freedom of expression, access to information and media freedom guaranteed under sections 22 and 39 of the Constitution of Nigeria 1999 (as amended), Article 9 of the African Charter of Human and Peoples' Rights and Article 19 of the International Covenant on Civil and Political Rights;
2. A DECLARATION that the action of the NBC and Mr. Lai Mohammed in relying on section 2 (n) of the NBC Act and Broadcasting Code to unilaterally impose punishments such as fines and other sanctions on television, radio and online broadcast stations and media houses without recourse to the court violates sections 5 (1) & (6) (b) and 36 (1) of the Constitution of Nigeria 1999;
 3. A DECLARATION that section 2 (n) of the NBC Act and the Broadcasting Code, being inconsistent and incompatible with sections 22, 36 (1), and 39 of the Constitution of Nigeria, Article 9 of the African Charter on Human and Peoples' Rights and Article 19 of the International Covenant on Civil and Political Rights, are null and void to the extent of their inconsistency and incompatibility;
 4. A DECLARATION that the fine of ₦3m each imposed on Channels, AIT and Arise TV by the NBC and Mr. Lai Mohammed for their coverage of the #ENDSARS protests violates the right to freedom of expression, access to information and media freedom guaranteed under sections 22 and 39 of the Constitution of Nigeria 1999, Article 9 of the African Charter on Human and Peoples' Rights and Article 19 of the International Covenant on Civil and

- Political Rights and therefore null and void;
5. A DECLARATION that the fine of ₦3m each imposed by NBC and Mr. Lai Mohammed on Channels, AIT and Arise TV for their coverage of the #ENDSARS protests without giving the affected media houses the opportunity to respond to the allegations levelled against them and recourse to the court violates section 6 (1) & (6) (b) and 36 (1) of the Nigerian Constitution 1999 and therefore null and void;
 6. A DECLARATION that the action by the NBC and Mr. Lai Mohammed to unilaterally impose the fine of ₦5m on Nigeria Info 99.3 FM without giving the radio station the opportunity to respond to the allegations levelled against it violates the right to fair hearing, enshrined in section 36 of the Nigeria

Constitution 1999, and therefore null and void;

7. AN ORDER OF PERPETUAL INJUNCTION restraining the NBC and Mr. Lai Mohammed from imposing fines or doing anything whatsoever to harass Channels, AIT and Arise TV and any other radio and television broadcast stations, in violation of section 6 (1) & 6 (b), 22, 36 (1) and 39 of Nigerian Constitution, Article 9 of the Article Charter of the Human and Peoples' Rights and Article 19 of the International Covenant on Civil and Political Rights.

The plaintiffs are arguing that:

It is the duty of the government to allow the legal and judicial powers of the state to function properly. Imposing any fine whatsoever without due process of law is arbitrary, as it contravenes the principles of *nemo judex in causa sua* which literally means one cannot be a judge in his own cause and *audi alteram partem* which literally means no one should be condemned unheard...The NBC, being a regulatory body, is not empowered by law to act as a prosecutor and the judge, all at the same time...The constitution is the grundnorm and the fundamental law of the land. All other laws including the NBC Act and any associated codes take their hierarchy from the provisions of the Constitution.

The outcome of the case will sure determine the extent that the doors of freedom of speech and freedom of the media can be further opened or closed in Nigeria. It will sure affect the quality of dialogue on the air and the quality of the sound from the broadcast drums (Premium Times, November 01, 2020).

The Nigerian Guild of Editors, another set of stakeholders in the mass media industry, is also critical of the National Broadcasting Commission in its effort to muzzle and muffle broadcast stations. The Guild strongly condemned the NBC for its punishment on Channels Television and Inspiration FM for broadcasting materials from the Indigenous People of Biafra, IPOB. While Channels Television was punished for interviewing the spokesman of IPOB, Inspiration FM was sanctioned for broadcasting a statement of the IPOB declaring a sit-at-home order. This was in May 2021.

The Guild of Editors, in its statement, described the NBC as playing the role of an accuser, the prosecutor and the judge, and insisted that, “In a democratic country like ours, a panel should have been set up to investigate the alleged infractions, with both stations given the opportunity to defend themselves. The National Broadcasting Code is clearly at variance with the tenets of democracy anchored on freedom of expression and a free press. Every accused person or organization deserves a fair hearing before punishment is pronounced. Obtaining letters of apology from the affected stations under duress can’t justify the action of the NBC”. In the same vein, Sule (2021), while reviewing the onslaught on broadcast stations by the NBC, states that it is in the nature and character of the present government to see any differing viewpoint as an affront that deserves some punishment.

Broadcasting and the Public Sphere

One of the functions embedded in the day-to-day operations of the mass media is serving as a platform for the exchange of ideas on issues in the polity. Apart from providing the day’s intelligence to the populace, the mass media offer themselves, wittingly or unwittingly, as a market place where ideas are exchanged; where issues are critically dissected from differing perspectives and where, possibly, public opinion could be formed on a particular issue. Since its advent and entry into the world of mass communication, broadcasting – perhaps more than any other medium as a result of its unique characteristics – has afforded the citizens the platform of not only discussing but also interrogating the government and demanding accountability in governance. In this wise, the broadcast stations have become “an arena where citizens come together, exchange opinions regarding public affairs, discuss, deliberate, and eventually form public opinion” (The World Bank, 2008, p.1). Thus, the broadcast stations and all other channels of mass communication have become a public sphere where citizens can send and receive information and

opinions. The plethora of information and communication technologies which have almost eliminated delay in feedback has elevated radio and television stations to a leading public sphere, perhaps above all other mass media.

The contemporary understanding of “public sphere” is derived from the work of Jürgen Habermas, a German sociologist. He sees public sphere as a society engaged in critical debate and as “network of communicating information and points of view...the streams of communication are, in the process, filtered and synthesized in such a way that they coalesce into bundles of topically specified public opinions” (Habermas, 1997).

Public sphere is as old as modern society. Originally, it was a specific meeting place. But, as Splichal (1999, p.23) notes, the character of the public sphere changed from a (physical) location to a communication network. He says that public sphere existed in Ancient Greek city-states where citizens directly participated in political decisions through exchange of opinions and discussions of ideas. In the days of the European monarchies, the Royal Court was the public sphere, and only the king determined what was public. Price (1992) states that in the 17th and early 18th centuries, the coffee houses in England, salons in France and table societies in Germany were places that the aristocrats and the middle class met and discussed art and politics and where “authority of argument supplanted the authority of title”. And as the mass media (newspapers then) came onto the scene, discussion of public affairs shifted to the media for those who were able to access same. Given the indispensability of the media, Bentivegna (2002, p.52) states that public sphere is now “defined in relation to the mass media because the mass media permit the circulation of opinion and offer the conditions in which the forum can function”. Bentivegna’s argument is cogent. Broadcast stations not only permit the circulation of opinions, but they prescribe the conditions for participation in the discourses on the air. Quite interestingly, these are the same conditions that the Nigerian Government through the National Broadcasting Commission (NBC) seeks to shape, ostensibly to either muffle opinion or skew the discussion.

Taking public sphere further, Hauser (1999, p.61) describes it as “a discursive space in which individuals and groups associate to discuss matters of mutual interest and, where possible, to reach a common judgment about them”. Fraser (1990) sees it as a theatre in modern societies in which political participation is enacted through the medium of talk. To Odugbemi (2008, p.17), public sphere is a space “where free and equal citizens come together to share information to debate, to

discuss or to deliberate on common concerns”.

From the definition above, a few points can be noted:

1. Public sphere is a place common to all, where ideas and information can be exchanged.
2. Such exchanges are otherwise called public debate – the expression of views on matters that are of concerned to the public – often but not always with opposing or divergent views by participants in the discussion.
3. Public debate in the public sphere can lead to the formation of public opinion.
4. All citizens should have access to the public sphere.

The above can be seen as conditions for the existence, functioning and effectiveness of the public sphere. The broadcast stations, unconsciously or consciously, provide these infrastructural conditions for the public sphere to exist – their platform is to a greater extent, common to all; they provide a forum for public debate; such public debates do lead to the formation of public opinion; and citizens now have access to stations.

Broadcast stations, having assumed the role of public sphere, are for the state what the market is for the economy (Splichal, 1999). The World Bank (2008, pp.2-3) notes that: “In the public sphere, the goods that are exchanged and the currency that is traded are not of economic, but of political nature. The main productivity of the public sphere is public opinion, and ideas are the ‘goods’ that are exchanged. This view equates the public sphere with a ‘free market place of ideas’, a libertarian ideal where everyone is able to propose ideas and where the best idea will win”.

Public sphere thrives on the principle of liberty of expression of ideas for which radio and television stations do provide. If government were to limit the extent of liberty of expression, it would be muffling the public sphere from where differing ideas and opinion emanate. John Stuart Mill, in his classic, *On Liberty*, had articulated that:

First, if we silence an opinion, for all we know, we are silencing truth. Secondly, a wrong opinion may contain a grain of truth necessary for finding the whole truth. Third, even if the commonly accepted opinion is the whole truth, the public tends to hold it not on rational grounds but as a prejudice unless it is forced to defend it. Last, unless the commonly held opinion is contested from time to time, it loses its vitality and its effect on

conduct and character. (Siebert, 1963).

Herein lies the indispensability of the public sphere which broadcast stations act as platforms for its functioning.

The above agrees with the position of Immanuel Kant, a philosopher, who stated that all publications should be open to public scrutiny, and that the public sphere should be the space for public use of reason; that is to say, the use of public space should be based on the ethical principles of communication such as respect for opposing speakers and viewpoint, the ability to compromise, and other principles of public debate (Kant, 1983). If the broadcast stations are stifled and the exchanges on their platforms are skewed, then the five constitutive elements in a functioning public sphere would have been compromised. Odugbemi (2008, pp.15-37) states that a functioning democratic public sphere rests on these pillars:

1. Constitutionally guaranteed civil liberties, freedom of expression, opinion and assembly.
2. Free, plural and independent media system not under state control. The media system is often seen as the main institution of the public sphere.
3. Access to public information: This includes freedom of legislation and a culture of transparency and openness.
4. Civil society: A vibrant civil society supports citizens' demands for accountability and participation in the public sphere.
5. Sites of everyday talk about public affairs: Everyday talk is an important factor in the formation of public opinion.

It is inherent in the media to probe, find out what is going on and disseminate quality information and opinions to the public. They want scoops in order to establish their reputation and push up their credibility through the scrutiny of politicians and their activities (Akpan, 2009). In doing this, however, the mass media sometimes arrive from a direction opposite that of the politician, a situation which leads to frequent collisions between the politician and the mass media. Such situations give rise to "media capture" which (Akpan, 2009, p.311) explains as:

The control of the media by external forces such that the media are ingratiated or give favourable coverage where they would ordinarily not have given. It is the act of buying off a particular medium or the entire mass media institution. The politician, the businessman or corporate

organisation that is at the receiving end of perceived unfavourable coverage has the proclivity to attempt to capture the “offensive” media in order to influence their contents and policies.

A medium that has been captured is less likely to provide a platform for a robust, objective discourse, and may not be in a position to encourage a critical reflection on what is brought to the public sphere (Watson and Hill, 2015). If information on which political behaviour is based comes from a captured medium, then such information is not objective truth, and the integrity of the public space is inevitably diminished (McNair, 2002; Akpan, 2012). Akpan (2012, p.230) has emphasized that: “If much of the information is manipulated to gain the consent of the governed, it means that within the public sphere, there is the absence of genuine choice. Some, if not all the voices within the media, tend to hum and sing the same tune – all geared towards legitimising the position of those in power”.

Conclusion

Freedom of expression is an alienable right of every citizen, with the mass media, particularly radio and television and now the internet, providing the platform for not just the expression of thoughts but exchange of ideas in a seeming dialogue that interrogates officials of the state, seeks the best for the society and prevents the deterioration of the society into possible chaos. If there is an unfettered dialogue on the airwaves, then the drums of the broadcast media would be unfettered; if there is no muffling of dialogue, the broadcast stations would serve as an effective public sphere which requisites include free flow of information, free expression, free debates and participation by the citizens. It is only when the airwaves are not muffled that a democratic public sphere can truly functional. According to The World Bank (2008, p.6):,

A properly functioning public sphere that allows for free information flows and for equal participation in deliberation will provide real opportunities for successful and good governance. Government’s legitimacy rests on the support of the people...Citizens’ genuine support for government programmes and reforms is a prerequisite for their success. Active and informed citizens provide valuable input into the process of governance, helping to improve the quality and effectiveness of public service delivery In short, governance is only good and democratic if citizens are able to form considered opinions within an open public sphere.

The above is what the broadcast media provide. As an open and truly

democratic society depends on many freedoms – of expression, of opinion, of assembly and of access of the citizens to necessary information - the broadcast media would truly serve the cause of democracy if public officials were committed to the people’s right to know and to communicate, and not government’s right to secrecy. This is partly guaranteed if the mass media, broadcast stations inclusive, are not muffled, so that their sounds could advance the good of the larger society.

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