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Challenges and Complexities of Media Regulation: A Comparative Study of Media Practices in Emerging Democracies

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Abstract
Media regulation and accountability have continued to be a global issue that is confronting policymakers, media practitioners and media regulators in contemporary societies, as there is a struggle of balance between 'effective media regulation and the democratic right to freedom of expression' (Sarpong, 2010:17). The 'Leveson Inquire' in the United Kingdom over the phone hacking scandal involving News International has raised questions about media practices and conduct all over the world thereby reaffirming the continuous relevant of one question constantly asked in the media sphere i.e. who watches the watchdog? From a comparative study of Ghana and Nigeria using interviews and policy analysis, this paper shall examine how the regulatory mechanism impact on common media practices of both countries. This paper shall argue that the democratisation processes of 1992 and 1999 in Ghana and Nigeria respectively have transformed the media environments, as the mass media have gone beyond the milieu of being the mouthpiece of government to the watchdog of society. However, certain media practices such as phone-ins, localisation of broadcasting content i.e. broadcast in local languages; live shows coupled with other institutional mechanism have made media accountability difficult. The critical question is whether the media in emerging democracies of Ghana and Nigeria can work within their professional ethics.
Key Words: Media Practices, Regulation, Emerging Democracies

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Introduction

The media environment in the twenty-first century is revolutionising to cope with global trends of 24 hours news broadcast, instant access to information and the need to satisfy the raising information quest of the public. This revolution in the media environment facilitated by global communication policies that seek to facilitate free flow of information irrespective of boarders has consequently led to changing media practices that has questioned the media's ability to live up to their professional ethos while carrying out their traditional functions of information, education and entertainment. For instance in the United Kingdom, the changing media practices led to the institution of the 'Leveson Inquire' that investigated the culture, practices and ethics of the British Press, consequently producing a detailed report that recommended how the media can be effectively regulated in order to sure that their practices are in accordance with the law (http://www.levesoninquiry.org.uk/).

In emerging democracies like Ghana and Nigeria that started their re-democratisation processes in 1992 and 1999 respectively, there is the challenge of balancing the freedom of the media to engage in various media practices that will help promote and consolidate democracy and ensuring that such media practices are within the law. According to Hasty (2005), media accountability is one central problem confronting emerging democracies as society has witnessed major controversies involving media activities of sensationalism, manipulation of facts, false reports, criticisms of bias, and the abuse of media freedom within government media, as well as private media. This is often reflected in the large numbers of complaints that regulatory agencies receive from the public with regard to media practices.

This scenario is unhealthy for the media environment especially in these developing countries, and most stakeholders in the media industry are concerned about who watches the watchdog (i.e. the media) to ensure that their activities are in accordance with the laws and socio-political aspirations of the land as well as the ethos of the profession. Such cases of irresponsibility have furthered the debate by governments on the need to curb the excesses within the media sphere. For example elsewhere, the South African government is considering a media tribunal and the protection of information bill in order to suppress the freedom of information presently enjoyed by the country's media (Callamard, 2010:1231). Likewise, there have been extensive debates within the British media about the Leveson Inquire recommendations that suggested strict measures in guiding the activities of the press. Therefore, this paper shall examine common media practices in Ghana and Nigeria, how the regulatory mechanism impact on common media practices of both countries.

Defining Media Regulation

McKenzie's (2011) has provided broad and narrow senses in which media 'regulation' may be understood and applied generally. From that, we define media regulation in this paper as any influences over media operations and

content from governments, statutory agencies, industry associations or civil society groups, etc. This definition would underpin the discussion and application of the term within the context of the two countries.

Conceptualisation of Media Regulation and Accountability in Emerging Democracies

Media regulation and accountability are vital aspects of media freedom that has generated huge debate within the African continent. The idea of the media being accountable for their actions expounds the concept of media freedom and helps build the public trust in the mass media (Nyamnjoh, 2005:81). The philosophical foundation to the debate of media regulation and accountability is centred on John Stuart Mill's work On Liberty, as it tries to address salient questions that surround the debate of media freedom. Critical questions in this regard include what kind of regulation will support the media in fulfilling their rudimentary functions to society? Who should regulate the media devoid of associated interest? These questions are still relevant in our contemporary society because the potentials of the media have necessitated its regulation (Lichtenberg, 1990:8; McQuail, 2003:6).

Mill argues that everyone has the right to an opinion, and that such opinion should not be suppressed but expressed freely because it is valuable to the society (Radcliff, 1966:3). To Mill, the suppression of an opinion will rob society of development and posterity (Mill, 1869 [1974]:33; Benn & Peters, 1966:82, 84), as open discussion will lead to the discovery of truth, as 'truth is more likely to emerge from uninhibited discussion than from the exercise of freedom subject to occasional government restraint or regulation' (Mill cited in Barendt, 1985:8, 13). Nevertheless, for the benefit of society everyone should endeavour to give truthful opinion, as it is evil to give a wrong or false opinion (Mill, 1869 [1974]:34, 36).

However, Mill argued further that the rights of free speech should be withdrawn when it poses a threat to the public, because human activities can affect society (Mill, 1869 [1974]:23, 100; Berlin, 1966:75). To Mill, the only freedom from restraint is that which does not affect others and since the individual lives in a society, his conduct should lie in the interest of others (1869 [1974]:27, 134; Riley, 1998:91). As the democratic nature of society confers freedom of speech to individuals, thereby exposing society to danger if this free speech from individuals are not regulated (Mill, 1869 [1974]:101; Lichtenberg, 1990:12, Holmes, 1990:37). Therefore, based on Mill's and Lichtenberg arguments, this paper shall 'argue that regulation of views is pertinent in any democratic society in order to protect that society from autocracy' (Akpojivi, 2012:197), as such regulation will lead to media accountability since the mass media will be answerable to society for its publications and publication quality both directly and indirectly (McQuail, 2005:207). Karikari opines that this idea makes the mass media a public institution, and is germane for public institutions like the media to be accountable to the general public (1994:11, 124). This structure also allows for

increasing accountability and avoiding complexities between freedom and accountability in a democratic society. Hence, we shall discuss media accountability as the relationship between the media and other stakeholders in the media sphere (Andrea & Shaw, 2009:4). This definition recognises that the media are institutions whose activities impact on other variable in the society, hence the need for these other variables to be satisfied with the activities of the mass media (Akpojivi, 2012).

Media Practices in Nigeria and the Need for Accountability: A Discussion

The Nigerian mass media are widely segmented into print and broadcasting industries. The print industry which is regarded as the most developed in Africa (Committee of Inter-African Relations, 1960: iv) dated 1859 when the first daily called Iwe Ihorin was published. The paper was produced in Abeokuta by a missionary called Reverend Townsend and was first written in Yoruba, and later written in English and it was basically meant to educate and entertain the public (Bourgault, 1995:154). Over the years, the press industry has grown vibrant and being in the forefront for the democratic struggle in Nigeria. For instance, the struggle for independence was fought using the press as early nationalist like Nnamdi Azikiwe used his chains of newspapers to advocate for independence. Likewise, Obafemi Awolowo used his newspaper 'the tribune' to fight for independence, consequently scholars like Nyamnjoh (2005) have argued that the struggle for independence in Nigeria was fought and won in the media sphere.

Broadcasting was introduced in Nigeria by the colonial master in 1932 to serve their interests and aid in the administration of the colony (Mackay, 1964:1). It first started as the 'Posts and Telegraphs Department' and it distributed programmes mainly from the British Broadcasting Corporation (BBC) to Lagos, Ibadan, and Kano which were the main populated centres (ibid: 2). The political and economic changes in Nigeria from 1960 to 1993 facilitated the growth and development of the broadcasting industry in Nigeria (see Bourgault, 1995). To this end, the mass media (print and broadcasting) have been regarded as a cornerstone to Nigeria democracies, as they provide a platform for rationale debate. The key factor to this is Section 39 of the Nigerian constitution, which provides for human rights of free speech, and Section 22 which makes the media a non-state actor in building Nigeria's democracy. This provision (Section 22) entrusted the watchdog role to the media in order to facilitate and advance democratic cultures and principles of accountability and transparency. This according to Ojo (2003:822) will enable the mass media to give the necessary information required for democratic consolidation to the public.

In accordance, with the constitutional provisions, the mass media have realised their centrality in the management of the new democracy (Embu & Galadima, 2001:27), thereby engaging in media practices like investigative journalism, live phone in, talk shows etc. which have enabled them to assert themselves in Nigeria's politics, hence the vibrancy which most scholars have observed in

promoting accountability and transparency during the 2001-2012. According to Olutokun and Seteolu (2001), the ability of the media to exercise their watchdog role resulted in the exposure of fraud and corrupt practices in the National Assembly early in the democratization process. Through the efforts of the mass media, the certificate scandal of Speaker Salisu Buhari was exposed; the misappropriation of funds and corruption of Senate President Chuba Okadigo was also exposed amongst others. Similarly, in 2012, the mass media played a significant role in the "fuel subsidy" scandal, by exposing the corrupt activities of those involved. For instance, Channels Television consistently played a recorded purported telephone conversation between the Chairman of the House of Representative probe panel on fuel subsidy mismanagement Honourable Farouk Lawal and businessman Femi Otedela. This brought to limelight not only the corruption within the fuel subsidy but corruption within the National Assembly.

To this end, many media houses have engaged in interactive programming like daily live talk show programmes in the mornings and evenings. For example, Channels Television's 'Sunrise Daily', shown from 7am-9am, Africa Independent Television (AIT) 'Kakaki', shown from 7am-10am and 'Focus Nigeria' shown from 10am-11:30am, amongst others. This has created a platform for citizens' participation, as the citizens can contribute to the debates taking place on the programmes and seek answers from government representatives or civil societies in the programme panels through phone calls, emails or text messages. As one media practitioner described: 'these programmes provide the platform for diversity of views, and the opportunity for people to discuss government policies... and along that line one begins to see that the mass media have really stabilized or deepened the democracy in the country'(Interview, 27 July 2010). One such forum that has helped in advancing the democratic process is the 'Presidential Media Chat' of Nigerian Television Authority (NTA), which afford the public the opportunity to interact with elected representatives (Embu & Galadima, 2001:32). These practices, though it has helped in strengthening the democratic process raises fundamental questions about how the media can maintain a high level of responsibility and accountability whilst exercising their non-state actor role, as failure to balance this could endanger the democratic process as Ette (2000) argued.

Regulatory Mechanism

The Nigerian Union of Journalists (NUJ) Code of Ethics ratified in 1998 at Ilorin presently serves as the only policy framework for enforcing media accountability in Nigeria. It is an independent guideline by which responsibility and accountability among media practitioners can be achieved in the media industry. Although the NBC's Nigeria Broadcasting Code acts as a general guideline for monitoring media (broadcast) content, it relates more to standard of broadcast content rather than promoting accountability. However, within the framework of the NUJ code of ethics, it is difficult to promote

accountability. As one Senior News Editor, puts it 'accountability can be hardly achieved because the ideas in the NUJ Code are different from the realities in the media environment' (Interview, 20 August 2010). The ideas of the Code called for self-regulation. The rationale for self-regulation is to protect the media from external influences thereby improving professionalism. Nonetheless, this idea is flawed because the code failed to address the issue of non-compliance and the likely consequence. Only practising journalists registered with the NUJ are expected to adhere to the principles of the code, so it is not compulsory for all practising journalists to adopt the code, since not all practicing journalists are members of the NUJ. In addition, the exact number of practicing journalists in Nigeria is unknown because there are no figures available to indicate the number of practicing journalists (Okwori & Adeyanju, 2006:9).

Therefore, it is difficult to enforce accountability in the media industry given such circumstances. According to a Senior media practitioner, 'the problem with enforcing accountability in Nigeria is that we have so many journalists that are not part of NUJ, and majority of these journalists are not aware of the journalists code i.e. NUJ Code of Ethics, not to talk of knowing what is expected of them' (Interview, 26 July, 2010).

In addition, there is no Ombudsman to oversee complaints that may arise from enforcing the code. The Nigeria press (print) presently is less regulated, as the Nigeria Press Council (NPC) established by government in 1992 to oversee the activities of the press has been declared void by an High Court in 2010. The court held that the objectives of NPC hamper the freedom of the press (Vanguard Newspaper, 2010). This scenario is not good for the media industry as practitioners may begin to assume that freedom within the print industry is absolute and this might give room for irresponsible journalism. As a Senior Officer in the Ministry of Information described, 'we cannot move from a dispensation where the media are afraid of dictators to one in which the media is the dictator, because of their rejection of regulation. This is not a reasonable prescription for any society and might give room for irresponsibility within the media sphere' (Interview, 22 July, 2010).

Nevertheless, the broadcasting industry on the other hand is tightly regulated by the NBC which enforce accountability by monitoring broadcast content using the Nigeria Broadcasting Code and the NUJ code. The NBC approach of using content regulation have led to criticisms from media practitioners, as this approach have facilitated the revocation of broadcast licences for not adhering to the broadcast guidelines or professional standards in regard to content. Although, this has to a large extent ensured that broadcast content are within the framework of the laws, this however may lead to self-censorship of the broadcast media. As one Senior media practitioner described, 'the content regulation approach of the NBC will gradually lead to censorship, as media houses will become cautious and more attention will be paid to what is being said and how it is said; this will not necessarily improve professionalism in the media industry but to pleasing the Ombudsman' (Interview, 26 July, 2010).

Media Practices in Ghana and the Need for Accountability: A Discussion

The history and development of the mass media in Ghana follow almost similar trends as Nigeria's. The developments that have resulted in a very vibrant mass media scene as we have it today have been well documented (see Bourgault, 1995). The media industry began with the print media in 1822 when the British colonialists established the Royal Gold Coast Gazette to serve the communication interests of the colonialists. The first indigenous and privately-owned newspaper, the West African Herald, was established in 1857 to begin the liberation struggle for independence in the country. The indigenous newspapers were mostly established and used by the early Ghanaian elites, such as Kwame Nkrumah, to champion the independence agenda. From Ghana's independence to 1992, the fortunes of the Ghanaian press varied between oppression and relative freedom. The authoritarian regimes, beginning with Nkrumah's post-independence government and other military juntas, often in the name of national unity and focused development, while liberal or civilian regimes had more favourable press environments. Unfortunately, the civilian regimes had short periods (altogether about five years) in office, implying that the press in Ghana lived for the greater part of the period in antagonism with the state. This historical background is significant to the understanding of aspects of the regulation situation in the country today.

Broadcasting in Ghana also began under the British colonialists. In 1935, the Radio ZOY was established to relay information from the BBC Empire Service to the Gold Coast (now Ghana). With independence, this station later became the Ghana Broadcasting Corporation (GBC) which has since broadcast to the whole country. Indigenous participation in broadcasting, and in fact, private (radio) broadcasting never happened in Ghana until the late 1990s. Television transmission began in 1965 as a state initiative and the station is now Ghana Television (GTV), which today is one of the few free-to-air TV station with nationwide coverage.

The growth of the mass media in Ghana as we have it today could hence be traced to 1992 with the promulgation of the Forth Republican Constitution that began the current democratic dispensation. The Constitution of Ghana (1992) devoted a chapter (Chapter Twelve) entitled 'Freedom and Independence of the Media' which stipulates in detail almost uninhibited freedom for the media in terms of its establishment and functions. The Constitution also provides for the establishment of the Ghana National Media Commission (NMC) to further insulate the state press against control and ensure responsible practices. Consequently, the media scene has progressively blossomed in Ghana to reflect the democratic credentials of the country.

The newspaper industry has been particularly dynamic; Kafewo (2006) reports that 106 newspapers existed in Ghana by 2006 with 11 of them being national dailies. It is estimated that the number could be more in current times, although it has been difficult to know the exact number of newspapers in current times due to the ease with which newspapers are established and fade out. There are currently over 220 and 12 authorised FM and (free to air) Television stations

respectively operating almost everywhere in Ghana. (National Communication Authority, 2011). This media scene has, therefore, supported the circulation of different perspectives and shades of opinions on issues of local and national interest in the social and political spheres of Ghana.

One of the main roles of the mass media in any democracy has been to act as the watchdog of society. This task has been central to Ghana's democracy where the media is expected to watch over especially political authority and ensure accountability and transparency in governance. To this end, the media is said to have played key roles in sustaining the country's democratisation process as well as exposing corruption in high (Karikari, 1994). This is not to assume that the mass media have been a perfect institution; on the contrary, there have been instances where the media have been prone to excesses and ethically questionable practices such as carrying false news, hateful speech, obscenities, among others. The dynamism of the media industry with the increased impact of technology has led to innovative practices especially involving talk shows in newsrooms as a way of staying competitive just like the Nigeria situation discussed earlier. These talk shows, which are now popular all over the country, are broadening access to information and participation in the public space than was the case hitherto. Apart from the regular people in the studios who debate issues, other audiences take part by sending their comments through new media platforms such as Facebook and email as part of the production and are read to listeners. These programmes further expose the media to unethical and irresponsible practices, which demand a second look at the regulatory regime of the country.

Regulatory mechanism

Media regulation in Ghana falls in line with worldwide perception that media content and operations have potential impact on the social, economic and political life of a society and should therefore be regulated. Thus, steps have been taken toward the regulation of the media, the idea behind being to protect the public from harm and ensure that the Ghanaian 'culture' and education for the people are projected. The regulation comes from the current Constitution of Ghana and parliament. The Constitutional provision that guarantees freedom of the press (mentioned earlier) also indicates the roles and responsibilities of the media, thereby setting the boundaries for media activities. Other regulatory provisions are passed by parliament and administered by the government through its agencies. It has to be stated that Parliament and other regulatory agencies have been extra cautious in dealing with regulatory matters because of fresh memories of the hardships the mass media went through in times past.

The practical aspect of media regulation in Ghana may be discussed from two perspectives. These are institutional or legal regulation and self-regulation. In the first case, there are two institutions legally mandated to regulate the media. These are the NMC and the National Communication Authority (NCA). The NMC, which derives its mandate from the Constitution, is an independent body established to promote and ensure the freedom and independence of the media.

The Commission provides guidelines for broadcasting standards, political reporting, publication of rejoinders, among others. The NCA, however, was established by an act of Parliament, i.e. NCA Act No. 524 of 1996, to regulate communications by wire, cable, radio, television, satellite and other means of communication. This agency is responsible to the Minister of Communications, and its Board and Director General are appointed by the President of the country. While the NMC registers and oversees the print media, the NCA also grants licences to broadcasting organisations as well as telecommunications service providers.

Generally, these bodies have been largely inefficient in regulating the content and operations of the media mainly due to lack of mandate, institutional inadequacies and willpower. The two bodies do not make regulations though they may initiate and forward regulations to Parliament which may or may not pass or use such regulation. Additionally, there are contradictions in the enforcement of regulations. For instance, the two agencies do not have definite media monitoring functions although the NMC occasionally does some ad-hoc monitoring of the print media. Meanwhile in terms of enforcement, the NCA may suspend or withdraw the license of offending broadcast media houses, but how can this be when it does not monitor media content? The NMC handles complaints from the general public about media abuses through arbitration, but it could only ask offending organisations to publish rejoinders or face disciplinary actions, although it cannot enforce any disciplinary action by itself. A secretary to the chairman of the Commission expressed the lack of clarity and workability of the mandate of the two regulatory institutions and also laments how the NMC is under resourced financially to effectively carry out its mandate (Interview, August 2012). Moreover, the ability of these agencies to take regulatory action against specific media organisations has often been hampered by political and other considerations.

Regarding self-regulation, the Ghana Journalist Association (GJA), has provided an industry-based regulatory mechanism in the form of a code of ethics to help ensure accountable and responsible journalism. The Association comprises trained journalists in the state owned, private and local freelance journalism. The code contains 17 Articles, ranging from the respect for people's right to true information, through professional integrity, respect for privacy, etc., to headlines and sensationalism. Although the code of ethics is a step to help keep journalists in check, it is also hampered in many ways. For instance, the Associations' main aim appears to be welfare oriented, that is, to protect the interests of members. The only penalty a recalcitrant member could face is being withdrawn from the association. But this is a weak deterrent of bad conduct since membership to the Association is not compulsory, so there are many professional and practising journalists in Ghana who are not members and there are many other practising journalists who are not professionals (that is, without formal training in journalism). A senior news reporter sums up the situation that 'But we have a few ones (i.e. journalists) who still don't want to abide by their ethics of the profession'. All the above

factors make media regulation in Ghana a thing on paper but not really effective in practice to ensure professionalism and accountability of the media.

Conclusion

Media accountability in emerging democracies has been challenging because of the difficulty in balancing media responsibility with accountability. This is due to institutional factors like incomprehensive regulatory framework that has made it difficult to enforce accountability. There is, therefore, the need for policymakers and media practitioners to examine and identify ways of addressing the inadequacies. The mass media are vital instruments in the consolidation of democracy in Ghana and Nigeria, to this end their current practices could be hijacked by those with political and economic interests to promote their selfish interests if the media are not regulated effectively. The recent events in the United Kingdom that has resulted in the Leveson Inquire and the production of 4 volumes report shows that unregulated press could abuse their freedom and cause harm to individuals and society. Thus, emerging democracies of Ghana and Nigeria should learn from the United Kingdom experiences by ensuring that media practices are within the framework of the laws.

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