

Statement of Media Rights Agenda and Africa Freedom of Information Centre (AFIC) on Nigeria's 5th State Report

Madam Chairperson
Hon Commissioners,
State delegates,
Ladies and Gentlemen,

Africa Freedom of Information Centre, a pan African civil society membership organization and resource centre together with Media Rights Agenda, the leading free expression and right to information organization in Nigeria appreciates the opportunity to address the 56th session of the African Commission on Human and People's Rights.

Chairperson;

We would like to commend the Federal Republic of Nigeria for its commitment to its obligations under to State Reporting under Article 62 of the Charter.

The Nigerian State has taken a number of positive steps in ensuring the right of freedom of expression, press freedom and access to information. She signed the African Charter on Human and Peoples' Rights on August 31, 1982 and ratified it on July 22, 1983. It has subsequently been domesticated and now forms part of Nigerian Laws.

Additionally, Nigeria signed the African Convention on Preventing and Combating Corruption on December 16, 2003 and ratified it on September 26, 2006. It also signed the African Youth Charter on July 2, 2007 and later ratified it on April 21, 2009.

Section 39 of the 1999 Constitution guarantees her citizens the right to freedom of expression.

It is also refreshing that as the report notes, the Freedom of Information (FOI) Act passed in May 2011 contains reaching provisions capable of transforming the clandestine system of governance that had been the norm of Nigeria's public institutions. The FOI Act supersedes the Official Secrets Act (OSA) and some other laws; response to information request should be given within 7

days; there are penalties for destruction of records; public institutions must keep proper records; and whistleblowers will be protected.

However, it is still a matter of concern that global media freedom organisations still rate Nigeria as partially free on protection of freedom of expression as a result of a number of insidious factors which hinder this and associated rights.

Section 39 of the 1999 Constitution guarantees a general right of freedom of expression to citizens and not any specific right to the media. Section 22 of the same Constitution places an obligation/duty on the media to hold government accountable to the people, not guarantee any right.

In fact, an Appeal Court in a judgment delivered by Justice Philip Nnaemeka-Agu asserted that “The right to freedom of expression under Section 36 [of the 1979 Constitution] [now Section 39 of the operating 1999 Constitution] is one which belongs to all who have to hold opinion, receive and impart ideas, or disseminate information and contemplates no separate treatment to the mass media. He also held that “Section 21 [Section 22 of the 1999 Constitution] is only one of the fundamental objectives and directive principles of state policy which are not justifiable.” This is a subsisting judgment as the Supreme Court has not vacated it.

Nigerian statutes still contain criminal libel and defamation laws which aim to censor the media contrary to Principle XII of African Commission on Human and Peoples right’s ‘Declaration of Principles on Freedom of Expression in Africa’¹ and numerous other international freedom of expression instruments.’

Independence of the media still problematic also contrary to Principle VII African Commission on Human and Peoples right’s ‘Declaration of Principles on Freedom of Expression in Africa. The State-owned media do not perform the roles of public service media but are used as propaganda organs of government and sometimes used to dis-inform and misinform the people.

Nigeria’s FOI Act contains a number of flaws which makes it fall short of international standards and practices. The oversight responsibility of the FOI Act is placed on the Federal Attorney-General and not an independent information commissioner. Nigeria’s Federal Attorney-General is also the Minister of Justice and is a political appointee. He/she is overburdened being

¹ <http://www.achpr.org/sessions/32nd/resolutions/62/>

saddled with the oversight responsibility for the implementation of the FOI Act. Additionally, the Nigerian FOI Act does not provide for administrative redress mechanism for requests that are denied. The law says requesters who are denied access to information may go to court to seek redress.

Implementation of the FOI Act has also remained a major challenge with different institutions including the Presidency, Ministry of Finance etc. routinely failing to grant information to citizens who make requests.

Recommendations

In order to ensure a conducive access to information, media freedom and freedom of expression environment in Nigeria, it is recommended as follows:

Section 22 of the Constitution should be relocated to Chapter Four of the Constitution, strengthened to guarantee media freedom, and be made justiciable.

We also recommended the repeal of all laws that impede press freedom including the Offensive Publications (Proscription) Decree, No. 35 of 1993; the Official Secrets Act of 1962 and the Newspapers (repeal) Decree of 1999 among others.

In order to strengthen the FOI Act and ensure that public institutions implement it, we recommend that:

1. Nigeria should urgently undertake legislative and administrative reforms to address freedom of expression and access to information with a target of being considered totally free in the protection and promotion of free expression.
2. The Freedom of Information Act should be amended to bring it in line with Africa Model o Access to Information with special emphasis on establishing an independent oversight mechanism to ensure effective implementation and enforcement
3. The Federal Government should ensure effective implementation across the board with key agencies like the presidency, legislature, judiciary and Ministry of Finance leading by example.

Thank you for your kind attention