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### The Press and Politics in Nigeria: A Case Study of Developmental Journalism, 6 B.C. Third World L.J. 85 (1986)

Michael P. Seng  
*John Marshall Law School*

Gary T. Hunt

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# THE PRESS AND POLITICS IN NIGERIA: A CASE STUDY OF DEVELOPMENTAL JOURNALISM

MICHAEL P. SENG\*  
 GARY T. HUNT\*\*

I. INTRODUCTION .....	85
II. PRESS FREEDOM IN NIGERIA 1850–1983 .....	86
A. <i>The Colonial Period: 1850–1959</i> .....	86
B. <i>The First Republic: 1960–1965</i> .....	87
C. <i>Military Rule: 1966–1979</i> .....	89
D. <i>The Second Republic: 1979–1983</i> .....	90
III. THE THEORETICAL FOUNDATION FOR NIGERIAN PRESS FREEDOM: 1850–1983 .....	92
IV. TOWARD A NEW ROLE FOR THE PRESS IN NIGERIA?.....	94
V. THE THIRD WORLD CRITIQUE OF THE WESTERN VIEW OF THE ROLE OF THE PRESS .....	98
VI. DEVELOPMENTAL JOURNALISM: AN ALTERNATIVE TO THE WESTERN VIEW OF THE ROLE OF THE PRESS.....	100
VII. THE NECESSITY FOR A NEW ROLE FOR THE PRESS IN NIGERIA?.....	102
VIII. THE JUDICIARY AS A CHECK ON THE GOVERNMENT'S ABILITY TO REDEFINE THE ROLE OF NIGERIAN JOURNALISM.....	105
IX. CONCLUSION.....	109

## I. INTRODUCTION

In the past decade many nations in the Third World have challenged the Western democratic notion of a free press. Critics have argued that rather than act as a negative check on government, the press should act as a positive reinforcement of development. Nigeria, which through decades has been said to have one of the freest presses in the Third World, provides an interesting example of the critical issues facing journalists and legal scholars in non-Western nations. Throughout its experiences under colonial, democratic, and military rule, the press in this West African country has acted as a critic of the existing regime in the tradition of Western media. Although this did not mean that the press was unchecked and that the existing government did not tamper with press freedom, the basic definition or role of the Nigerian press, nevertheless, was never directly challenged. From December 31, 1983 through August 27, 1985, however, Nigeria was ruled by a military junta headed by Major General Muhammadu Buhari. Faced with serious economic woes and social unrest which threatened the stability of the

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\* Professor, The John Marshall Law School, Chicago. Fulbright Professor at the University of Maidugari in Maidugari, Nigeria, 1983–84.

\*\* Professor, Department of Communication Studies, California State University, Los Angeles. Fulbright Professor at Bayero University in Kano, Nigeria, 1983–84.

country, General Buhari and his ruling Supreme Military Council (SMC) attempted to exercise heavy handed control over numerous aspects of the Nigerian society including the heretofore free press. Among the SMC's decrees, Decree No. 4 was intended to stifle the traditionally vigorous criticism by the press of the government. Along with Decree No. 4, there was also an effort by the Buhari regime to change the Western orientation of the press to one reflecting a "developmental journalism" perspective.

This paper will focus on the role of the press in a free society vis-a-vis a government controlled or developmental press. Our immediate case study will be Nigeria where the Buhari regime made serious efforts to completely redefine the purpose of the press. Inherent in our discussion will be the consideration of the issue of whether or not Western models of a free press should be imposed on developing or Third World societies.

## II. PRESS FREEDOM IN NIGERIA: 1850-1983

There is a long standing history of press freedom in Nigeria. This freedom has been manifested in two important ways. First, the print press in the country has been diversified and generally privately owned.<sup>1</sup> Second, reporters for Nigerian newspapers and magazines have been relatively free to comment on the affairs of government even to the point of negative criticism.<sup>2</sup> In fact, before 1983 one long-term African observer suggested that the press in Nigeria was probably Africa's freest.<sup>3</sup>

### A. *The Colonial Period: 1850-1959*

The British first arrived in what is now modern Nigeria in the mid-nineteenth century. In 1914, when the British consolidated the various regions under a central authority, a system of indirect rule was introduced under which the British governed through so-called "traditional rulers," many of whom were "traditional" only because the British designated them to be so. From then until independence in 1960, the British had considerable difficulty in deciding whether Nigeria should really be treated as one country or three separate regions. These tensions were aggravated with independence and eventually produced the bloody Biafran War which lasted from 1967 to 1969. The war seems to have settled once and for all that Nigeria will henceforth be governed as one nation and since that time the various regions and ethnic groups have made a genuine effort to co-exist peaceably. Differences, however, still exist.

Each of the successive constitutions imposed upon Nigeria during the colonial period by Britain introduced greater participation by native blacks in the government. This level of participation, however, was never allowed to approach even remotely the self-governance enjoyed by the American colonies at the time of their struggle for independence in 1776.<sup>4</sup>

Throughout the colonial period, Nigeria, at least in Lagos and the cities of the south, had an extremely active and critical press.<sup>5</sup> The role of and the limits on the press were

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<sup>1</sup> F.I.A. Omu, *PRESS AND POLITICS IN NIGERIA* 171 (1978).

<sup>2</sup> D. Lamb, *THE AFRICANS* 246 (1982).

<sup>3</sup> *Id.* at 254.

<sup>4</sup> Nigeria's experiences with democracy are chronicled in Seng, *Democracy in Nigeria*, 9 *BLACK L. REV. (UCLA)* 113 (1985).

<sup>5</sup> See F. Omu, *supra* note 1.

largely defined by British precedents — although it would be a mistake to assume that Nigerians enjoyed the same freedom to comment as was enjoyed in Britain.<sup>6</sup> Perhaps the chief restraint on the press was the British common law of libel. Indeed the payment of fines for libelous publications seems to have been a regular expenditure for most publishers.<sup>7</sup> In 1903, an ordinance was enacted in Lagos to require all newspapers to register with the government and to post a bond for 250 pounds as surety against any penalties imposed for publishing any blasphemous, seditious or other libel.<sup>8</sup> Today libel actions are still a major check on the excesses of the Nigerian press.<sup>9</sup> For instance, in 1984, a high court judge in Lagos found that the novel *The Man Died* by Wole Soyinka libeled a commissioner of the former military government and ordered the book to be banned.<sup>10</sup>

In 1909, the government passed a seditious offenses ordinance which made it a crime to publish any statement bringing or attempting to bring the government into hatred or contempt or which incited or tried to incite dissatisfaction, disloyalty or feelings of enmity towards the government or different classes of the population in southern Nigeria.<sup>11</sup> There were three prosecutions under this ordinance in the first quarter-century following its passage.<sup>12</sup> In what was perhaps the most sensational press case during the colonial era, Herbert Macaulay, the leading black political leader of his day, was sentenced to six months imprisonment for seditious libel. Macaulay was found to have published a rumor that there was a plot to assassinate one of the deposed and banished traditional rulers.<sup>13</sup>

One of the final contributions of the British to civil liberties in Nigeria was a bill of rights which went into effect in 1959 and which has remained in effect with minor modifications to the present.<sup>14</sup> While not expressly mentioning the word "press," the document did guarantee freedom of conscience,<sup>15</sup> freedom of expression,<sup>16</sup> and the right to peaceful assembly and association.<sup>17</sup> These rights were qualified by the specific limitation that they did not "invalidate any law that is reasonably justifiable in a democratic society in the interest of defense, public safety, public order, public morality or public health."<sup>18</sup>

#### B. *The First Republic: 1960–1965*

Independence in 1960 brought with it all the trappings of a British-style parliamentary democracy.<sup>19</sup> The period of this First Republic was marked by considerable tension

<sup>6</sup> F. Omu, *supra* note 1, at 12–13.

<sup>7</sup> F. Omu, *supra* note 1, at 79–80.

<sup>8</sup> Newspaper Ordinance No. 10 of 1903; reenacted as Ordinance No. 40 (1917). See F. Omu, *supra* note 1, at 180.

<sup>9</sup> See T.O. ELIAS, *NIGERIAN PRESS LAW 16–35* (1969).

<sup>10</sup> National Concord, Feb. 2, 1984, at 9, col. 5.

<sup>11</sup> F. Omu, *supra* note 1, at 184; see also T.O. ELIAS, *supra* note 9, at 67–87.

<sup>12</sup> F. Omu, *supra* note 1, at 188.

<sup>13</sup> *Id.* at 195–96.

<sup>14</sup> Sixth Schedule, inserted to Nigeria (Constitution) Order in Council 1954 (1959).

<sup>15</sup> *Id.* at § 7.

<sup>16</sup> *Id.* at § 8.

<sup>17</sup> *Id.* at § 9.

<sup>18</sup> *Id.* at §§ 7(4)(a), 8(2)(a), and 9(2)(a).

<sup>19</sup> Constitution of the Federation of Nigeria §§ 33, 36, and 78 (1960).

between the various regions and ethnic groups who were jockeying for power. Although the Constitution explicitly gave the courts jurisdiction to redress the deprivation of fundamental rights protected by the Constitution,<sup>20</sup> the judiciary proceeded cautiously.<sup>21</sup>

The Supreme Court gave an extremely restrictive interpretation to press freedom in its 1961 decision in *Director of Public Prosecution v. Chike Obi*.<sup>22</sup> Chike Obi was convicted for distributing a pamphlet containing the following exhortations:

Down with the enemies of the people, the exploiters of the weak and oppressors of the poor! . . . The days of those who have enriched themselves at the expense of the poor are numbered. The common man in Nigeria can today no longer be fooled by sweet talk at election time only to be exploited and treated like dirt after the booty of office has been shared among the politicians . . . .<sup>23</sup>

A colonial statute passed during World War II had made it unlawful to publish any statements which contained a seditious intent.<sup>24</sup> The Supreme Court sustained Chike Obi's conviction. The opinion of Chief Justice Ademola stated that the statute made it illegal "to use words expressive of an intention to effect the purpose of exciting a state of ill feeling against the Government."<sup>25</sup> The Justice emphasized that a statement was not seditious if it only pointed out errors or defects in the government. But a statement could be unlawful even though it did not incite the public to violence: "What is not permitted is to criticize the government in a malignant manner . . . , for such attacks by their nature tend to affect the public peace."<sup>26</sup>

The continuing applicability of the *Chike Obi* reasoning was questioned by the Court of Appeals of Anambra State in 1983.<sup>27</sup> Chief Arthur Nwankwo was convicted of sedition for publishing a book critical of the Governor of Anambra State. The trial court sentenced him to twelve months imprisonment with hard labor and banned the publication of the book. Furthermore, the court warned persons who had purchased the book to

<sup>20</sup> Constitution § 31 (1960); Constitution § 32 (1963).

<sup>21</sup> See A.B. KASUNMU, *THE SUPREME COURT OF NIGERIA* 107-32 (1977).

<sup>22</sup> [1961] 1 All N.L.R. 186.

<sup>23</sup> *Id.* at 189.

<sup>24</sup> Criminal Code § 41(1)(c) (Laws of Nigeria, 1958, vol. II, col. 42).

A "seditious intent" was defined as an intention:

(a) to bring into hatred or contempt or to excite dissatisfaction against the person of Her Majesty, her heirs or successors, or the person of the Governor-General or the Governor of a Region, or the Government or Constitution of the United Kingdom, or of Nigeria, or of any region thereof, as by an established or against the administration of justice in Nigeria; or

(b) to excite Her Majesty's subjects or inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established; or

(c) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of Nigeria; or

(d) to promote feelings of ill-will and hostility between different classes of the population of Nigeria.

<sup>25</sup> *Chike Obi*, 1 All N.L.R. at 192.

<sup>26</sup> *Id.* at 194. It should also be noted that in 1962 three men were convicted for writing articles about political corruption in the Western Region. B.O. NWABUEZE, *CONSTITUTIONALISM IN THE EMERGENT STATES* 62 (1973).

<sup>27</sup> Chief Arthur Nwankwo v. The State, FCA/E/111/83 (Fed. Ct. App.: Enugu, 7/27/83), reprinted in A. NWANKWO, *JUSTICE* 160 (1983).

surrender their copies at the nearest police station. A unanimous court of appeals reversed the conviction. The justices were of the view that the law of sedition as applied to Chike Obi derogated from the freedom of speech guaranteed in the 1979 Constitution.<sup>28</sup>

In 1962, parliament passed an official secrets act making it an offense to transmit any matter designated by the government to be "classified." The law gave extremely broad discretion to the government in classifying information.<sup>29</sup>

However, perhaps the most controversial law passed during the First Republic relating to free speech was the Newspapers (Amendment) Act of 1964.<sup>30</sup> This act, *inter alia*, prohibited any person from publishing in any newspaper a statement, rumor, or report, knowing or having reason to believe that the statement, rumor or report was false.<sup>31</sup> The law provided that it was no defense for the person to assert that he did not know or did not have reason to know that the statement was false unless he proved that prior to publication he took reasonable measures to verify the accuracy of the statement.<sup>32</sup> The law, however, was apparently never enforced directly against any journalist.<sup>33</sup>

During the period between the general election of 1964 and the military coup in January 1966, a number of local governments passed laws banning designated newspapers because of their criticism of the local governments.<sup>34</sup> One of the first acts of the military following the 1966 coup was to invalidate these restrictions and allow the free distribution of newspapers throughout the country.<sup>35</sup>

### C. Military Rule: 1966-1979

The military took over the government of Nigeria in 1966 and ruled until 1979 when it voluntarily handed the government back to the civilians pursuant to an American-style democracy. During the military period, Nigeria experienced the bloody Biafran War. The war was followed by a boom in the price of oil, of which Nigeria had a plentiful supply. In the 1970's, Nigeria embarked on a building and modernization program unprecedented in the country's history. Although there were several counter-coups and corruption and mismanagement flourished, the general perception of Nigerians today is that the decade of the 1970's was in many ways a golden age.

The military government continued to recognize the fundamental rights provisions of the 1963 Constitution<sup>36</sup> and affirmatively protected the press by lifting the ban on newspapers imposed by many of the civilian governments during the First Republic. Further, the government made it a criminal offense for anyone to prevent or restrict

<sup>28</sup> *Id.*

<sup>29</sup> Official Secrets Act, 1962, No. 29, § 1. See T.O. ELIAS, *supra* note 9, at 39-45.

<sup>30</sup> Newspaper (Amendments) Act, 1964, No. V.

<sup>31</sup> *Id.* at § 4(1).

<sup>32</sup> *Id.* at § 4(2).

<sup>33</sup> The Democrat Weekly, May 6, 1984, at 5, col. 1. It has been argued that the Newspaper (Amendments) Act cowed the press sufficiently so as to prevent reporters from giving effective coverage to the rigging of the 1964 election. B.O. NWABUEZE, *CONSTITUTIONALISM IN THE EMERGENT STATES* 152 (1973).

<sup>34</sup> T.O. ELIAS, *supra* note 9, at 133. It should also be noted that most newspapers were either owned by or financed by various governments or political parties. B.O. NWABUEZE, *supra* note 33.

<sup>35</sup> Decree No. 2 (The Circulation of Newspapers Decree) (1966).

<sup>36</sup> Decree No. 1 (Constitutional Suspension and Modification) (1966).

the sale or distribution of newspapers.<sup>37</sup> In June 1966, however, the Supreme Military Council promulgated Decree No. 44 which made it an offense for anyone to provoke a breach of the peace by a defamatory or offensive publication.<sup>38</sup> In an interview in 1967, Major-General Yakubu Gowon, the Head of the Federal Military Government, commented that:

I cannot tell them what to do since we do not dictate policy to any press here; they have been independent as they ought to be. The press has to tell the truth, to be objective and honest so that the people can rely on what they print. They should tell us off when they feel we are wrong and commend when they feel it is worthwhile: We can take it.<sup>39</sup>

Despite these comments, Gowon signed Decree No. 17 of 1967, which gave the head of the military government power to prohibit the circulation of any newspaper it felt was detrimental to the interests of the Federation or of any State.<sup>40</sup>

Perhaps the most celebrated free press issue arose in the so-called Amakiri Affair.<sup>41</sup> Amakiri, a newspaper reporter who was arrested by one of the state governors, was beaten and had his head shaved with a dull knife. A high court awarded Amakiri a total of 10,000 naira for the beating, the detention, and the pain inflicted upon him.

In 1978, the military government announced its intention to create a press council to supervise and control news reporting. The decree was never implemented because of opposition from the press and public.<sup>42</sup> It was during this military rule that the federal government purchased controlling interest in the Daily Times, black Africa's highest circulation daily, and the New Nigerian, the leading newspaper in the north.<sup>43</sup> During the thirteen years of military rule, it was said that the arbitrary detention of journalists became a standard occupational hazard.<sup>44</sup>

#### D. *The Second Republic: 1979–1983*

The 1979 Constitution which ushered in the Second Republic provided that "every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and import ideas and information without interference."<sup>45</sup> The Constitution also contained a new Chapter II which was patterned on the Indian Constitution.<sup>46</sup> This chapter set forth the fundamental objectives and directive principles of state policy. Specifically, Chapter II noted that the press, radio, television, and other agencies of the mass media were to be free to uphold the fundamental objectives of that chapter and

<sup>37</sup> Decree No. 2 (The Circulation of Newspapers Decree) (1966).

<sup>38</sup> Decree No. 44 (The Defamatory and Offensive Publications Decree) (1966).

<sup>39</sup> Reprinted in T.O. ELIAS, *supra* note 9, at 129.

<sup>40</sup> Decree No. 17 (Newspapers-Prohibition of Circulation Decree) (1967).

<sup>41</sup> See JAKANDE, *THE PRESS AND MILITARY RULE, IN NIGERIAN GOVERNMENT & POLITICS UNDER MILITARY RULE 110–23* (O. Oyediran ed. 1979).

<sup>42</sup> See T.O. ELIAS, *supra* note 9, at 130–32; O. ODETOLA, *MILITARY REGIMES AND DEVELOPMENT 154* (1982).

<sup>43</sup> See D. WILCOX, *BLACK AFRICAN STATES IN PRESS CONTROL AROUND THE WORLD 210* (Curry & Dassen ed. 1982); *NIGERIA: A COUNTRY STUDY 222* (4th ed. 1982).

<sup>44</sup> D. WILCOX, *supra* note 43, at 223.

<sup>45</sup> Const. Fed. Rep. Nig. § 36(1) (1979).

<sup>46</sup> India Const. p. IV (1949); D. BASU, *INTRODUCTION TO THE CONSTITUTION OF INDIA 132–40* (8th ed. 1980).

to uphold the responsibility and accountability of the Government to the people.<sup>47</sup> While the Constitution explicitly provided that no court could declare any executive or legislative act illegal because it did not conform to the principles set out in Chapter II,<sup>48</sup> the courts did hold that Chapter II could be used as a guide when interpreting the policy objectives of legislative enactments and other provisions of the Constitution.<sup>49</sup>

When the civilians took over in 1979, however, the majority parties quickly sought to consolidate their power by stifling their opposition. Shortly after the elections, the federal government quietly suggested a change of editor and staff for the government owned Daily Times, which had published stories commenting on the salaries of the new government officials.<sup>50</sup> The detention of journalists continued, although most of the abuses seem to have been on the state level.<sup>51</sup> The offices of the Nigeria Standard were ransacked by police looking for "vital documents," and the editor of the Sunday Standard was beaten by a state legislator.<sup>52</sup>

Nonetheless, during this period, the courts seemed to have become more comfortable with their role as a check on government excesses. In *Momoh v. Senate of the National Assembly*,<sup>53</sup> the High Court of Lagos State upheld the claim of a newsman that he was privileged from testifying before a Senate investigating committee. A reporter wrote an editorial on corruption and influence peddling in the legislature, and a committee was convened by the Senate to investigate the matter. The High Court noted:

It is a matter of common knowledge that those who express their opinions, or impart ideas and information through the medium of a newspaper or any other medium for the dissemination of information enjoy by customary law and convention a degree of confidentiality. How else is a disseminator of information to operate if those who supply him with such information are not assured of protection from identification or disclosure? . . . Is there any doubt in anybody's mind, that the 49 wise men who formulated the Constitution of the Country were conscious of the unsavory consequences attendant on any attempt to deafen the public by preventing or hindering the free flow of information, news and/or ideas from them. This perhaps explains the reason why the provision of Section 36(1) gives freedom of expression subject only to the laws of the Country as to libel, slander, injurious falsehood, etc. Even where such a matter arises it would be a matter for a court of law to determine and not the legislature.<sup>54</sup>

The 1979 Constitution specifically provided that no person, other than the state or federal government or any other person authorized by the President, could own, establish or operate a television or radio station.<sup>55</sup> As a result of this arrangement, it often seemed

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<sup>47</sup> Const. Fed. Rep. Nig. § 21 (1979).

<sup>48</sup> Const. Fed. Rep. Nig. § 6(b)(c) (1979).

<sup>49</sup> *Archbishop Okogie v. Attorney Gen. of Lagos State*, [1981] 2 N.C.L.R. 337, 350 (Fed. Ct. App. Lagos).

<sup>50</sup> D. WILCOX, *supra* note 43, at 221.

<sup>51</sup> *Id.* at 224.

<sup>52</sup> *Id.* at 225.

<sup>53</sup> [1981] 1 N.C.L.R. 105 (High Ct.: Lagos) (1981).

<sup>54</sup> *Id.* at 113-14. In a similar situation, another High Court ruled that the police could not compel a reporter to disclose the source of his information. *Oluhola Oyegbemi v. Attorney General*, [1982] 3 N.C.L.R. 895 (High Ct.: Ikeja).

<sup>55</sup> Const. Fed. Rep. Nig. § 36(s) (1979).



that the National Television Authority operated primarily as a propaganda organ of the NPN, the ruling party on the national level, and that the state networks promulgated the views of the party in control of the state. At one point, a television newscaster in Anambra State walked out in the middle of a newscast. He announced to the audience, "I am sorry. I cannot with my conscience continue to read this news full of falsehood. I hereby resign my appointment with immediate effect." Confusion reigned for five minutes, until someone from the station took over and apologized to the viewers.<sup>56</sup>

### III. THE THEORETICAL FOUNDATION FOR NIGERIAN PRESS FREEDOM: 1850-1983

In terms of freedom of the press, some of the press gag measures employed by the post-colonial Nigerian governments would have clearly been unconstitutional under standards enunciated by the United States Supreme Court. However, none of these measures seemed to question the fundamental role of the press as developed in Western democratic societies. During the Colonial period it was at least officially recognized that the colonial governments had to act in accordance with the law and the traditional notions of British justice.<sup>57</sup> The Bill of Rights inserted into the Nigerian Constitution in 1959 was patterned after the European Convention on Human Rights. Similarly, the law of libel was directly imported from the English common law. The Nigerian Official Secrets Act was actually drafted more precisely than its English counterpart.<sup>58</sup> The law of seditious libel was well known at common law and was not a totally foreign issue in the early history of the United States.<sup>59</sup> Even today the United States Supreme Court has recognized that the first amendment does not prevent the government from acting to prevent serious breaches of the peace.<sup>60</sup> Nigeria has thus seemed to embrace without serious questioning the Western democratic view of a free press. This Western view of a "free press" accepts at least five roles for the press.<sup>61</sup>

1) *The Press as a Medium of Information and Enlightenment.* A primary role of the press is to provide information, entertainment, and education to its readers, listeners, or viewers. The concept of "news," to actually publish information, is the function that unites all media. The standard by which each representative medium is judged often involves its credibility in publishing information in a timely and accurate fashion.

2) *The Press as an Example of Private Ownership in Capitalistic Societies.* In the United States the media, both the print and the electronic, are organized for profit. Further, large conglomerates with properties that cross media (e.g., magazines, radio stations, television networks, and book publishing houses) are readily discernible in most parts of the country. In other Western democracies, private ownership of the print media is also widespread. However, outside of the United States only twenty percent of the electronic

<sup>56</sup> Chicago Tribune, July 31, 1983, at 6, col. 3.

<sup>57</sup> Eshugbayi Eleko v. The Officer Administering the Government of Nigeria [1931] A.C. 662.

<sup>58</sup> English Official Secrets Acts, 1911, § 2(1). See T.O. ELIAS, *supra* note 9, at 41.

<sup>59</sup> See L.W. LEVY, *EMERGENCE OF A FREE PRESS* (1985); J.M. SMITH, *FREEDOM'S FETTERS* (1956).

<sup>60</sup> *NÁACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916, 927 (1982); *Dennis v. United States*, 341 U.S. 494 (1951).

<sup>61</sup> See, e.g., W.K. AGEE, *THE PRESS AND PUBLIC INTEREST* (1968); H.J. ALTSCHULL, *AGENTS OF POWER: THE ROLE OF THE NEWS MEDIA IN HUMAN AFFAIRS* (1984); E. EMERY, *THE PRESS AND AMERICA: AN INTERPRETATIVE HISTORY OF THE MASS MEDIA* (3d ed. 1972); J.L. HULTENG, *THE FOURTH ESTATE: AN INFORMAL APPRAISAL OF THE NEWS AND OPINION MEDIA* (2d ed. 1983).

media organizations are privately owned.<sup>62</sup> Because of this private ownership, the assumption is that media can be free from governmental influences and control. In Nigeria, while the government owned the electronic media and the two major newspapers, there still existed a large number of privately owned newspapers. More notably, both the privately and the publicly owned newspapers represented a broad spectrum of opinion.<sup>63</sup>

3) *The Press as a "Watchdog."* Embedded in the democratic ideal is the inherent conflict between the "people's right to know" and government's tendency to protect information from public scrutiny.<sup>64</sup> The debate involving such issues as the Freedom of Information Act and reporters' shield laws continually redefines the parameters of this conflict. The watchdog role of the press is based on the assumption that, in a democracy, there must be a full and vigorous debate of public issues. Justice William O. Douglas's dissent in *Dennis v. United States* makes the point that:

When ideas compete in the market for acceptance, full and free discussion exposes the false and they gain few adherents. Full and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart.<sup>65</sup>

Thus, democracies charge the mass media with the responsibility of ferreting out previously controlled information and projecting it into the public arena for discussion. While this watchdog role often causes an uneasy truce between the media and government, the democratic ideal assumes that both are part of the system, each having a separate but vital role to fulfill.

The "watchdog" role of the press was specifically recognized in the 1979 Constitution of the Federal Republic of Nigeria. Chapter II noted that the press was one of the primary vehicles for upholding the responsibility and accountability of the government to the people.<sup>66</sup>

4) *The Press as a Diversified Entity.* Because each medium must be audience-oriented to be able to market its product, in democratic societies a highly diversified media develops, each one aiming at a slightly different share of the market than its competitor. The ideal would be such diversification that all viewpoints, regardless of how extreme or unpopular, have an outlet. In theory, the United States has the widest ranging media, in terms of news content and editorial position, of any country in the world. Yet, because of the influence of media giants such as Capital Cities Communications, Times-Mirror, the Washington Post Co., and Rupert Murdoch, such diversity might be somewhat less than ideally conceived. Despite some government ownership in Nigeria the press remained diversified.<sup>67</sup>

5) *The Press as Profit Motivated.* Ultimately, all media must compete in the economic marketplace. Therefore, audited circulation rates and television ratings play an important role in determining the financial success of a media organization. In the United States, the history has been that the government plays no role in financing the media. Newspapers are allowed to fail, even in communities with only one surviving

<sup>62</sup> Machado, *Is Development News?*, in INTERNATIONAL PERSPECTIVES ON NEWS 15 (L. Atwood, S.J. Bulion, & S.M. Murphy ed. 1982).

<sup>63</sup> NIGERIA: A COUNTRY STUDY, *supra* note 43, at 222-23.

<sup>64</sup> S.M. CUTLIP & A.H. CENTER, EFFECTIVE PUBLIC RELATIONS 500 (5th ed. 1982).

<sup>65</sup> 341 U.S. 494 (1951).

<sup>66</sup> Const. Fed. Rep. Nig. § 21 (1979).

<sup>67</sup> See *supra* note 63.

editorial voice. In other Western democracies, Sweden and France, for example, newspapers often receive large subsidies from the government.<sup>68</sup> In Paris, the French government underwrites a huge operating loss to keep the leftist LeMonde in business. The difficulty with these subsidies is that in these countries it clouds the issue of what "privately owned" means. The press' role as watchdog and its ability to survive economically could create conflicts.

The traditional view of the profit nature of the press holds that a compromise can usually be negotiated between the desire to develop revenue through advertising and the need to retain editorial integrity. The assumption is that managers can be free to make decisions without interference from those with financial concerns. The system creates mixed results, often functioning well, other times performing below expectations.

Thus, the Nigerian press generally fell within the mainstream of these five considerations. The threat of a libel suit or of detention may have checked some media excesses, but, for the most part, the Western ideal was not seriously challenged by the post-colonial governments. Reporting was robust and sometimes resembled the morbid sensationalism so prevalent in the journalism which flourished in the United States in the nineteenth and early twentieth centuries.

#### IV. TOWARDS A NEW ROLE FOR THE PRESS IN NIGERIA?

Whether the Nigerian press should follow the Western model for the media was seriously questioned in late 1983 when the military overthrew the Second Republic. In his maiden broadcast to the nation on January 2, 1984, the new head of state, General Muhammadu Buhari, cited the country's continuing economic ills, as well as the unprecedented corruption which was allowed to occur during the civilian rule as the major reasons for the coup.<sup>69</sup> As when the military took over in 1966, it promptly suspended important aspects of the Constitution but retained those provisions which protected fundamental rights and defined the basic objectives of the government.<sup>70</sup>

In a speech on January 5, 1984, General Buhari appealed to the press to report the activities of the Federal Military Government with accuracy. He noted that "we cannot stop you from publishing, but please anything you publish about us let it be accurate."<sup>71</sup> Nonetheless, statements of officials in the new military regime showed that the government was groping to redefine the nature of the press to conform with development needs. On January 21, 1984, Chief of Staff Tunde Idiagbon criticized the press for not giving "positive guidance to the nation."<sup>72</sup> He suggested that recent stories had demonstrated "a lack of understanding, even lack of sympathy for the objectives of the government which you hailed only two weeks ago."<sup>73</sup> Statements of various state military governors also evidenced a "developmental" journalism perspective. The governor of Oyo State noted that the governments and journalists should work hand in hand because "they are partners in progress,"<sup>74</sup> and the governor of Imo State declared that "all media

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<sup>68</sup> Kelly, *Access Denied the Politics of Press Censorship*, THE WASHINGTON PAPER (Washington, D.C.: The Center for Strategic and International Studies, Georgetown University, 1978).

<sup>69</sup> The Nigerian Standard, Jan. 2, 1984, at 1, col. 2.

<sup>70</sup> Decree No. 1 — Constitution (Suspension and Modification) Decree (1984).

<sup>71</sup> New Nigerian, Jan. 5, 1984, at 1, col. 3.

<sup>72</sup> Daily Times, Jan. 21, 1984, at 1, col. 3.

<sup>73</sup> *Id.*

<sup>74</sup> The National Concord, Jan. 23, 1984, at 9, col. 5.

should now join hands and assist the government in creating and sustaining the new order of purpose and productive living."<sup>75</sup> The governor of Lagos State also suggested that new reporters be re-orientated to the dissemination of information to build an improved image of Nigeria.<sup>76</sup> At a press conference in February, General Buhari lashed out at the press and said that he was going to "tamper" with the press freedoms enshrined in the 1979 Constitution. He referred with anger to articles in the press which had claimed that 2.8 million naira had been found missing in the oil ministry while he headed that agency in the late 1970's.<sup>77</sup>

On March 29, 1984, the Federal Military Government promulgated Decree No. 4, which punished any person who published

in any form, whether written or otherwise, any message, rumor, report or statement which is false in any material particular or which brings or is calculated to bring the Federal Military Government or the Government of a state or a public officer to ridicule or disrepute.<sup>78</sup>

The burden of proving whether "the message, rumor, report or statement which is the subject matter of the charge is true, in every material particular" was placed on the person charged.<sup>79</sup> Offenses were to be tried by a special tribunal, the chairman of which would be a judge, while the three other members were to be officers of the armed forces not below the rank of a major.<sup>80</sup> A person convicted under the decree could be imprisoned for up to four years and a corporation could be fined not less than 10,000 naira. The equipment used to commit the offense could be forfeited to the Federal Military Government.<sup>81</sup> Judicial review was prohibited.<sup>82</sup>

On June 2, 1984, the *Guardian*, a privately owned newspaper published in Lagos, and two of its reporters were summoned to appear before the tribunal established pursuant to Decree No. 4. The reporters were alleged to have published false information concerning certain embassy assignments about to be made by the Federal Military Government.<sup>83</sup> The *Guardian*, through its reporters, had reported that eleven missions were to be closed, that eight military chiefs had been picked as ambassadors, and that Haruna was to replace Hannanuya as envoy to the United Kingdom. The reporters were detained and the tribunal ruled that it had no power to release them on bail.<sup>84</sup> Counsel for the defense argued that the decree required that the statement had not only to be untrue, but also to bring the government or officer to ridicule and disrepute. The tribunal, however, ruled that the decree created two separate offenses. A person could be punished either if he published an untrue statement or if he published a true statement which brought the government or officer to ridicule and disrepute.<sup>85</sup> The paper and its re-

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<sup>75</sup> *Daily Times*, Jan. 31, 1984, at 18, col. 1.

<sup>76</sup> *National Concord*, Mar. 22, 1984, at 1, col. 2.

<sup>77</sup> *National Concord*, Feb. 16, 1984, at 1, col. 1. Articles had also appeared in various newspapers which disclosed the value of Buhari's residence and other financial interests.

<sup>78</sup> Decree No. 4 — Public Officers (Protection Against False Accusations) Decree (1984), § 1.

<sup>79</sup> *Id.* at § 3(1).

<sup>80</sup> *Id.* at § 3(4).

<sup>81</sup> *Id.* at § 8(1) and (3).

<sup>82</sup> *Id.* at § 8(4).

<sup>83</sup> *The Guardian*, June 6, 1984, at 2, col. 3.

<sup>84</sup> *Id.* at 1, col. 3.

<sup>85</sup> *The Guardian*, June 16, 1984, at 1, col. 1.

porters were later convicted on one of the three charges alleged against them. The tribunal found only the third statement concerning the identity of the envoy to the United Kingdom to be inaccurate, but it sentenced the reporters to one year each in prison and fined the Guardian 50,000 naira.<sup>86</sup>

Generally, however, the Nigerian press was able to freely criticize Decree No. 4 and the other actions taken by the government to curb press excesses. Indeed, in an interview in July, 1985, Professor Wole Soyinka commented on how the news media continued to print stories on a daily basis "about the injustice of keeping people in prison without their being tried. You will read everyday about double, triple, and multiple standards of justice which are so blatantly evident."<sup>87</sup> His criticism of the government was not that it was suppressing such stories but that it was deaf to this criticism.

Still, Decree No. 4 was not the only means the government used to curtail the press. The detention of journalists continued,<sup>88</sup> and a number of journalists lost their jobs.<sup>89</sup> The government established measures to bar the free flow of information to the press<sup>90</sup> and put curbs on interviews between public officers and reporters.<sup>91</sup> The idea of a government sponsored press council was also reintroduced.<sup>92</sup>

Some of the measures taken by the military government appeared to be at odds with one another. For instance, the government constantly stressed the need for reporters to strive for accuracy in their reporting, but then closed the doors to reporters when they tried to verify stories.<sup>93</sup> Nonetheless, these measures alone did not signal a new role for the press. Decree No. 4, although it provided for a trial by a tribunal, was otherwise within the tradition of the older sedition laws and the Newspaper (Amendment) Act of

<sup>86</sup> *New Nigerian*, July 5, 1984, at 1, col. 2; *West Africa*, July 9, 1984, at 1415, col. 1.

<sup>87</sup> *The Punch*, July 24, 1985, at 1, col. 2.

<sup>88</sup> The Guardian noted the detention without charges of the editorial consultant of *The Punch*, the visit (in the middle of the night) of nine military police to the home of the editor of *Nigerian Tribune*, and the beating of a cameraman of the *Punch* by soldiers. *The Guardian*, Apr. 15, 1984, at 4, col. 1. On June 25, 1984, the *Daily Times* reported the arrest of one of its photographers who photographed a military band which was playing at a privately owned university in Imo State. *Daily Times*, June 25, 1984, at 32, col. 4. Two days later the paper reported that the photographer had been set free. *Daily Times*, June 27, 1984, at 32, col. 1.

<sup>89</sup> Three journalists were terminated by the Imo State government for alleged anti-government bias. *National Concord*, Mar. 19, 1984, at 17, col. 1. The National Television Authority removed reporters whose faces were too closely associated with the prior regime. *National Concord*, Mar. 10, 1984, at 13, col. 5. The *Statesman* was closed for two months and two reporters were dismissed who wrote a story questioning the differences in the conditions of detention of the former president and vice-president. *International Herald Tribune*, May 3, 1984, at 2, col. 1.

<sup>90</sup> *National Concord*, July 3, 1984, at 1, col. 1; *The Guardian*, Apr. 1, 1984, at 1, col. 3.

<sup>91</sup> The Guardian reported that two state information officers were jailed over a report which originated in their office that teachers had won a bigger pay packet. *The Guardian*, Jan. 27, 1984, at 14, col. 1. In May of 1984, the federal military government issued a circular to public servants forbidding them from talking to the press without clearance from their bosses. *National Concord*, May 5, 1984, at 24, col. 2. However, in an interview reported on July 26, 1984, the Chief Secretary for the Federal Military Council denied that the government had forbidden university teachers from talking to newsmen. *The Punch*, July 26, 1985, at 16, col. 6. The same newspaper contained a story concerning twenty-four inmates who had died in the Abeokuta prisons in the past four months. The article ended by noting that the controller of the prison declined comment saying "you should be aware that public officers have been banned from granting interviews." *The Punch*, July 26, 1985, at 16, col. 3.

<sup>92</sup> *National Concord*, June 12, 1984, at 9, col. 2.

<sup>93</sup> *National Concord*, July 3, 1984, at 1, col. 1; *The Guardian*, Apr. 1, 1984, at 1, col. 3.

1964.<sup>94</sup> Journalists had also been subjected to detention and removal under the previous military and civilian regimes.<sup>95</sup>

The federal Minister of Information, while emphasizing that the military government did not intend to interfere with the right of the press to publish the truth, stated in a speech to the new board of directors of the New Nigerian that Nigerian newspapers have:

a basic duty to perform in ensuring the peace, unity, progress and stability of this country. All other interests, serious, business, or mundane, must be subordinated to this basic duty. To accomplish this goal, it is the primary duty of your newspapers to strain all nerves in interpreting, explaining, analyzing, debating, assessing and offering suitable alternatives to government policies and objectives. Our nation is too young for her newspapers to indulge in destructive sensationalism, deliberate mischief and purposeless slants which will only set us back from the path of progress and development.<sup>96</sup>

Furthermore, the Attorney General, Mr. Chike Ofodile, in the course of a spirited defense of Decree No. 4, commented that while American journalists could be free to speculate as they did in the course of the Watergate scandal, Nigeria was not yet ripe for such reporting. He noted that Nigerian journalists did not have the right to speculate to the extent of damaging the character of public officers.<sup>97</sup> These comments by public officers were not without effect. When the Federal Military Government announced a War Against Indiscipline (WAI) in Nigerian society, the press immediately accepted an important role in creating awareness of and mobilizing support for the WAI.<sup>98</sup>

In July 1985, General Buhari announced that there would be no talk of returning the country to civilian rule until the country was on a strong economic footing and law and order had been restored.<sup>99</sup> The government also issued a strong warning that it would not tolerate any political debate in the country and that any violation of this ban would be dealt with under Decree No. 2 of 1984, which allowed the Chief of Staff to detain violators for an indefinite period without legal proceedings.<sup>100</sup>

The continued existence of the remaining privately owned newspapers in Nigeria was also put in jeopardy. General Buhari warned that if any private newspapers overstepped their bounds they would be shut down. He noted that the government would not allow private newspapers to publish news and views not in the public interest and asserted that "we will not allow irresponsible views capable of creating trouble or instability in whatever form to be published by these private newspapers."<sup>101</sup> Just one day later the Federal Military Government announced, as an economic measure, the restriction of its newspaper advertising to its two federally owned newspapers.<sup>102</sup>

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<sup>94</sup> See *supra* notes 24, 30.

<sup>95</sup> The Guardian, Apr. 15, 1984, at 5, col. 1.

<sup>96</sup> New Nigerian, Aug. 8, 1984, at 7, col. 1.

<sup>97</sup> National Concord, May 15, 1984, at 2, col. 2.

<sup>98</sup> Daily Times, May 16, 1984, at 2, col. 2.

<sup>99</sup> The Punch, July 25, 1985, at 1, col. 1; New Nigerian, July 25, 1985, at 1, col. 3.

<sup>100</sup> New Nigerian, July 24, 1985, at 1, col. 2; The Punch, July 24, 1985, at 1, col. 3.

<sup>101</sup> New Nigerian, July 25, 1985, at 1, col. 1.

<sup>102</sup> The Punch, July 26, 1985, at 16, col. 6. It did note that once its debts were settled, the government might reconsider placing advertisements in private newspapers.

## V. THE THIRD WORLD CRITIQUE OF THE WESTERN VIEW OF THE ROLE OF THE PRESS

The Buhari regime's criticism of the press, and its emphasis on the role of the press in assisting in development, reflected much of the criticism leveled against the Western ideal by Third World countries. The Western media, as well as the Western democratic view of the role of the media, has permeated much of the Third World. Because of the effectiveness of the Western media in saturating the world and influencing thought within certain developing societies, a growing series of criticisms have been expressed in recent years. These criticisms can be briefly summarized in the statements below.

First, the Western media project a cultural bias which completely distorts their ability to be objective in dealing with the Third World.<sup>103</sup> Ideally, the Western view of the press would be one in which reporters maintain great objectivity in their observations of events. Many critics in the Third World hold a very different position. To them, Western reporters bring much ideological baggage with them when covering the Third World. This baggage includes: a built-in bias toward democracy, a requirement to produce stories that "sell well" to a Western audience, a need to focus on "newsworthy" events such as coups, famine, or disaster, and a culturally created abhorrence of authoritarian regimes. This situation has become so pronounced that many Third World countries, who feel that they have been hurt by stories appearing in the Western media, have banned Western reporters completely.<sup>104</sup> In fact, one American reporter who had covered Africa for ten years found himself persona non grata in so many African countries that his newspaper had to transfer him to Europe because he could no longer cover Africa effectively.

The second criticism states that the Western media are insensitive to the concerns of the Third World.<sup>105</sup> The general approach of the Western media in covering a large continent, such as Africa, is to place a reporter in one of the more "livable" cities and then to have that person travel the continent, perhaps visiting important countries once a year and unimportant countries rarely if ever. Over a period of two years, a reporter might spend three days in a country such as Zambia, yet, his dispatches might represent all of the information that his readers may receive on Zambia during the two years. Critics claim that with only three days in a country, and with much of that time spent only talking with Western diplomats in the capital city, the Western reporter could not possibly understand such complex issues as regionalism, tribalism, one party versus two party politics, development, and aspirations for economic independence. Unless the reporter makes an extraordinary effort to get outside the capital to speak with natives, he could not possibly become sensitive to genuine issues affecting the country and to the feelings of residents about those issues. In Zambia, with its importance as a moderating force in helping to achieve peaceful change in South Africa, reporters are likely to appear on a semi-regular, if short-term basis. For a nation such as the Central African Republic or Guinea, the Western reporter will rarely even come to the country, depriving the Western audience of any information about these small, yet interesting countries.

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<sup>103</sup> VOICES OF FREEDOM: A WORLD CONFERENCE OF INDEPENDENT NEWS MEDIA 19 (D. Bullen & H. Ryan ed. 1981).

<sup>104</sup> O. GANLEY and G. GANLEY, TO INFORM OR TO CONTROL: THE NEW COMMUNICATION NETWORKS 171 (1982).

<sup>105</sup> D. Sussman, *Mass News Media and the Third World Challenge*, in INTERNATIONAL NEWS FREEDOM UNDER ATTACK 113. (D. Fascell ed. 1979).

When this occurs, the informational ministers and political leaders of these nations never have access to the Western audience.

Third, the Western media control all of the important distribution networks for information. More importantly, the distribution leads from the First World to the Third World and rarely back from the Third World to the First.<sup>106</sup> Western news agencies, such as Associated Press (AP), Agence France-Presse (AFP), and Reuters distribute the Western view of the Third World back to the Third World. For example, newspapers in Togo must depend on AFP reports, written and edited in Paris, for coverage of its neighbor Ivory Coast. American news magazines are readily available throughout the Third World. Both the Voice Of America (VOA) and the British Broadcasting Corporation's World Service (BBC) broadcast news throughout the world by shortwave. All of these channels arguably reflect a Western cultural bias.<sup>107</sup>

Perhaps the biggest purveyor of First World culture is American television. One can sit in a hotel room in Lagos and watch old American television programs being broadcast by the official Nigerian television service. Such programming is a "good buy" for the service because it cannot afford to produce a sufficient quantity of original programming to fill its broadcasting hours. The inherent difficulty is summarized by Sarah L. B. Amunugama, an African critic of Western media:

What is significant about this fact is the potential impact of the values implied by this material on the developing world. Although the West produces excellent television and radio programs, for example, alternative news sources and feature services are available to Third World media that can provide media products much closer to the immediate concerns of the developing countries. The giant information conglomerates are geared to satisfy a market that they themselves have created, and countries that find it difficult to provide even primary education fritter away their meager resources on television imports depicting violence and sex. Once audiences have been hooked on this type of programming, with its technical superiority, their preferences are nearly unshakable, and local media industry are forced to cater to Western cultivated tastes.<sup>108</sup>

In their analysis of the outflow of American television programming, Ganley and Ganley point out that the United States is by far the largest exporter of programming of any country in the world. In terms of the amount of foreign programming imported, the United States is at the bottom of the list, surpassed only by Communist China.<sup>109</sup>

Critics of this situation argue that the flow of the news coming into the Third World is basically one-way. Because of their vast economic and technical superiority, Western news organizations are able to dominate coverage. Further, the argument is made that an organization such as the BBC or *Newsweek* actually defines the news by deciding what to cover. Even a country openly opposing Western democracies, such as Ethiopia, has little ability to eradicate such cultural footprints because it does not have the resources to block transmission of the BBC or the VOA. This developing sense of impotency in

<sup>106</sup> O. GANLEY, *supra* note 104, at 176.

<sup>107</sup> *Developmental Journalism the Ideological Factor, THE THIRD WORLD AND PRESS FREEDOM* 75 (P. Horton ed. 1978).

<sup>108</sup> Amunugama, *Communication Issues Confronting the Developing Nations* in *A HANDBOOK OF WORLD COMMUNICATIONS* 59 (M. Siefer ed. 1984).

<sup>109</sup> O. GANLEY, *supra* note 104, at 170.



controlling or at least influencing the channels of communication has given rise to another view of the function of the media: developmental journalism. Development journalism is gaining a great following throughout the Third World.

#### VI. DEVELOPMENTAL JOURNALISM: AN ALTERNATIVE TO THE WESTERN VIEW OF THE ROLE OF THE PRESS

Those who have been frustrated over the years with the inability of Third World countries to tell their story to Western audiences have suggested a rethinking of the role of the press and the function of journalism. A collection of wide ranging ideas and policies have been grouped under the label developmental journalism. Sean Kelly has offered this definition:

... [T]hose Third World leaders who call for a new international economic and social order have also become increasingly aware of the value of news media in promoting national development. They want to use mass communications as an instrument for bringing about social change. Freedom of the press thus becomes, not freedom from government control, but rather the freedom to assist government in carrying out programs for improving economic and social change. In societies where development is paramount among national priorities, the press is frequently expected to join the team along with everyone else.<sup>110</sup>

Emerging from several international conferences aimed at helping nations develop a "communication policy," was a call for a "new world information order" (NWIO) including most of the principles of developmental journalism. Often these conferences had the aid of consultants from the United Nation's Economic, Social and Cultural Organization (UNESCO). An international meeting called in 1980 under the auspices of UNESCO and chaired by the former Irish diplomat Sean MacBride echoed the calls for a NWIO. The document produced at the 1980 meeting was cited by the United States as one of the reasons why it withdrew from UNESCO in 1984.<sup>111</sup> Using the NWIO as a theoretical foundation, Third World countries have begun a series of actions aimed at exercising greater control of communication within their own boundaries. Among the actions taken are the following: (1) limiting access of Western reporters through the denial of visas, (2) requiring Western reporters to apply for licenses or work permits to report from the country, (3) limiting reentry of reporters who have written what the government considers negative reports, (4) forming "news agencies" for the purpose of distributing "official" news concerning the country, (5) preventing the publication of privately owned newspapers and magazines, (6) preventing Western books, magazines, and newspapers from entering the country, (7) developing very specific guidelines about what is reported in the country's own media, and (8) exercising complete editorial control over news broadcasts within the country as well as on the "external" services broadcast by shortwave to its neighbors. In several countries each script for a television or radio broadcast must have the approval of a Ministry of Information official.

The Western reaction to these steps has been harsh and critical. One Western critic has called developmental journalism "official flackery and government-say-so journal-

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<sup>110</sup> Kelly, *supra* note 68, at 27.

<sup>111</sup> S. MACBRIDE, *MANY VOICES, ONE WORLD* (1980).

ism."<sup>112</sup> The rebuttal of leaders in the Third World has often centered on the idea that development of the country must take precedence over any foreign cries for a free press. One argument offered against developmental journalism is that it is almost in total concert with the communist view of the press. Western analysts have been quick to point out that it is the Soviet Union that has been the greatest supporter of a call for a NWIO. Further, while developmental journalism advocates have heavily criticized the "cultural imperialism" of AP, UPI, and Reuters, they have been silent on the Russian news service, TASS.<sup>113</sup> In fact, at the Nairobi UNESCO meeting in 1976, which was the first call for a news communication order, Radio Moscow took credit for the original document which was later to be modified as the NWIO.<sup>114</sup> Third World leaders, however, have been quick to refute the suggestion that the NWIO represents a Soviet concept of communication. Rather, they contend that the press and government both have a mutual responsibility to help the country achieve its developmental goals. If this means control of the press, so be it.<sup>115</sup> Thus, while the degree of Soviet influence in the NWIO remains a vital concern,<sup>116</sup> it should not cloud the NWIO's very real contributions. The NWIO aims to increase the capabilities for people to communicate with one another as well as the abilities of those in the developing world to influence news content. Both of these goals are laudable.

The most critical distinction between those nations which accept the aims of the NWIO and the Western nations, especially the United States, which do not generally accept developmental journalism, is the degree of government involvement in defining the content of news stories. From either a Western or a Third World perspective, editors and journalists may decide on their own that the policy of their publication is to promote positive development. What is offensive to the American notion of the media is the idea that the government should dictate to the press what viewpoint it must reflect. It is basic to press freedom in the United States that the government may not discriminate in the regulation of expression on the basis of the content of that expression: government regulations must be viewpoint neutral.<sup>117</sup> Developmental journalism is thus anathema under the basic first amendment principles developed in the United States because developmental journalism attacks the basic premise that the press must be free to define its own goals.

In Nigeria, much of the rhetoric used by the Buhari regime reflected the criticisms mouthed by proponents of the NWIO. While it is true that the regime did not focus on the reporting done by Western journalists in Nigeria, the continued emphasis on the press' role as a partner with the government in promoting development reflected a new view in Nigeria. The full implication of these developments for the Nigerian media are still unclear because on August 27, 1985, a military coup overthrew General Buhari. The new head of state, General Babangida, had also participated in the coup which

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<sup>112</sup> Kelly, *supra* note 68, at 28.

<sup>113</sup> Bullen, *supra* note 103, at 14.

<sup>114</sup> Sussman, *supra* note 105, at 127.

<sup>115</sup> Domatob & Hall, *Developmental Journalism in Black Africa*, 31 GAZETTE 10 (1983).

<sup>116</sup> FREIDHEIM, *We Can't Afford a World of Regulated News*, THE MEDIA CRISIS . . . A CONTINUING CHALLENGE 21 (1982).

<sup>117</sup> See, e.g., *Cornelius v. NAACP Legal Defense Fund*, 105 S.Ct. 3439 (1985); *Heffron v. Int. Soc. for Krishna Consciousness*, 452 U.S. 640 (1981); *Hudgens v. NLRB*, 424 U.S. 507, 520 (1976); *Virginia Pharmacies Bd. v. Virginia Consumer Council*, 425 U.S. 748, 771 (1976).

unseated the civilians in 1983 and installed General Buhari, so initial indications did not evidence a radical shift in leadership or in policy.<sup>118</sup>

In the first announcement of the coup, General Joshua Dongonyaro cited Buhari's rigidity and announced the release of journalists who had been arrested because the government wished to "uphold human rights."<sup>119</sup> In its first official act, the new regime repealed the notorious Decree No. 4 and created a twenty-six person commission to study the status of human rights in Nigeria.<sup>120</sup> On his first day in office, the new leader acknowledged that Decree No. 4 "generated a lot of controversies" and that his regime would "welcome constructive criticism."<sup>121</sup> Later, when the government was considering whether to accept a new loan from the International Monetary Fund, General Babangida invited public discussion. Newspaper reaction was against the loan and thus the government deferred to that sentiment rather than adhering to the advice of its economists.<sup>122</sup> On January 17, 1986, Babangida stated that the government would be returned to some type of civilian rule by October 1, 1990 and would continue in the interim to seek approval for its decisions from the country's citizenry.<sup>123</sup>

Whether future regimes in Nigeria, either military or civilian, will continue to follow the traditional Western view of the press or will expect the press to act in partnership with the government is still undetermined. Each of the military rulers who assumed power in Nigeria's five previous coups also promised to respect human rights. For instance, Gowan's statements on press freedom were followed by restrictive decrees.<sup>124</sup> General Buhari when he first assumed office announced that the military would respect the basic freedoms of all citizens.<sup>125</sup> The pressures on the government to better the standard of living for Nigerians will continue to be severe and the concerns with which the Buhari regime wrestled will not evaporate overnight.<sup>126</sup> On December 20, 1985, the Babangida government announced the arrest of a number of high ranking military officers who tried unsuccessfully to overthrow the government.<sup>127</sup> Thus temptations to force the press to present a united front with the government will continue to be strong.

#### VII. THE NECESSITY FOR A NEW ROLE FOR THE PRESS IN NIGERIA?

On the eve of Buhari's military coup in 1983, Nigerian novelist Chinua Achebe in a small book, *The Trouble with Nigeria*, argued that the country was being destroyed by bad leadership, corruption, and inequality. On the question of leadership, Achebe noted the "poverty of thought" exhibited by Nigeria's two most important post-independence politicians, Dr. Nnamdi Azikwe and Chief Obafemi Awolowo.<sup>128</sup> The nation's leaders

<sup>118</sup> Again, the stated reason for the coup was corruption and a failure to correct the ailing economy. *New York Times*, Aug. 28, 1985, at 1, col. 4.

<sup>119</sup> *Chicago Tribune*, Aug. 28, 1984, at 8, col. 1.

<sup>120</sup> *New York Times*, Sept. 4, 1985, at 6, col. 4.

<sup>121</sup> *National Concord*, Aug. 28, 1985, at 1, col. 1.

<sup>122</sup> *New York Times*, Jan. 20, 1986, at 7, col. 4.

<sup>123</sup> *Id.* Babangida did emphasize that the call to debate did not mean that the ban on political parties had been lifted.

<sup>124</sup> See *supra* note 39.

<sup>125</sup> *Daily Times*, Jan. 7, 1984, at 24, col. 3.

<sup>126</sup> *New York Times*, Oct. 2, 1985, at 1, col. 3.

<sup>127</sup> *New York Times*, Dec. 21, 1985, at 3, col. 4.

<sup>128</sup> C. ACHEBE, *THE TROUBLE WITH NIGERIA* 11 (1983). He argued that their biographies showed that money making was their most important goal.

continually inflated Nigeria's position in the world with a "flamboyant, imaginary self-concept."<sup>129</sup> Achebe also criticized the false patriotism of most Nigerians. He argued that the country was run on the basis of patriotic slogans and that true patriotism could happen only "if the nation is ruled justly, if the welfare of all the people rather than the advantage of the few becomes the cornerstone of public policy."<sup>130</sup>

The issue of corruption has plagued every government in Nigeria.<sup>131</sup> Corruption in Nigeria is not the taking of an occasional bribe. Estimates show that during the Second Republic the average contract was inflated as much as thirty percent due to corruption<sup>132</sup> and that about forty percent of the country's revenues were embezzled or diverted for corrupt political purposes.<sup>133</sup> Today Nigeria, which is a leading oil producer and potentially one of the wealthiest nations in Africa, is burdened with heavy debts and has considered a 2.4 billion dollar loan from the International Monetary Fund just to stay afloat.<sup>134</sup>

Tribalism has been the curse of Nigeria since the nation's consolidation by the British in 1914. Nigeria has over 300 different ethnic groups and languages.<sup>135</sup> It was tribalism that led to the fall of the First Republic and to the disastrous Biafran War between 1967–1969. While Nigerians have put the war behind them and have tried to mitigate the effects of tribalism, it would be unrealistic to say that no vestiges remain today. Achebe argued that intelligent and useful discussion of tribalism is often thwarted by vagueness.<sup>136</sup> He noted the continuing discrimination against the Igbos, the tribe which lost the war, especially in development projects which were not being placed in the Igbo region.<sup>137</sup>

In addition to the tribalism problem, Nigeria is also sharply divided on the lines of wealth, class and, most noticeably, religion. Some forty-seven percent of the population is Muslim, thirty-five percent Christian, and eighteen percent animist.<sup>138</sup> One of the reasons stated for the attempted coup discovered on December 20, 1985 was the discontentment of Moslem officers from the North who felt that the government was dominated by Southerners who are mostly Christian.<sup>139</sup>

In addition to the problems of leadership, corruption, and inequality, Nigeria has a rapidly expanding population which now equals nearly 100 million, and it is likely to reach 148 million in another fifteen years.<sup>140</sup> Barely one quarter of the population can read.<sup>141</sup> Like in all Third World countries, simply providing for food, shelter, and medical care for the population is a major concern. At the time of independence, Nigeria was a

<sup>129</sup> *Id.* at 9.

<sup>130</sup> *Id.* at 16.

<sup>131</sup> See generally Seng, *supra* note 4.

<sup>132</sup> The Wall Street Journal, Aug. 12, 1983, at 20, col. 2.

<sup>133</sup> *Nigeria: A Test for Democracy*, NEWSWEEK, Aug. 8, 1983, at 44.

<sup>134</sup> New York Times, Oct. 2, 1985, at 1, col. 2. One of the stated causes of the aborted coup on Dec. 20, 1985, was the announcement of the government that it was no longer pursuing an IMF loan and was cutting military salaries as a consequence. New York Times, Dec. 21, 1985, at 3, col. 4.

<sup>135</sup> See NIGERIA: A COUNTRY STUDY, *supra* note 43, at 90.

<sup>136</sup> C. ACHEBE, *supra* note 128, at 7.

<sup>137</sup> *Id.* at 49–50.

<sup>138</sup> See NIGERIA: A COUNTRY STUDY, *supra* note 43, at 123.

<sup>139</sup> New York Times, Dec. 21, 1981, at 3, col. 4.

<sup>140</sup> New York Times, Oct. 2, 1985, at 1, col. 2.

<sup>141</sup> *Id.*

major exporter of food. Today, largely due to governmental policies, Nigeria imports large amounts of its food.<sup>142</sup>

Achebe describes the condition *par excellence* of Nigerian society as indiscipline: "a failure or refusal to submit one's desires and actions to the restraints of orderly social conduct in recognition of the rights and desires of others. The goal of indiscipline is self-interest; its action, the abandonment of self-restraint in pursuit of the goal."<sup>143</sup> Shortly after the Buhari government took control in 1984, the regime declared a "War Against Indiscipline." The war was fought with the newspaper articles, posters, WAI buttons, the so-called national pledges, and pious admonitions which are deprecated by Achebe.<sup>144</sup>

Given the problems in Nigeria, it is easy to justify governmental policies which promote developmental journalism. The diversity of Nigeria, the self-seeking tendencies of the populace, and the history of ethnic, cultural and religious antagonism could easily split the country apart. The country continually has to promote coherence and unity to prevent anarchy. A factious press is counterproductive. It can only aggravate Nigeria's problems and prevent the country from pursuing those policies necessary to move forward into the twenty-first century. The alternative is the dissension and violence which prevailed during the First Republic.<sup>145</sup>

On the other hand, under a government which has a policy of developmental journalism a critical work such as that produced by Achebe probably could not have been published. The book clearly portrayed Nigeria and its leaders in a bad light. If the plague of Nigeria, however, is indiscipline and corruption, one of the best ways to ferret out abuses, indeed, maybe the only way, is through such independent investigative journalism. It was the press that continuously complained about the appointments made by and the corruption in the Shagari government during the Second Republic. If the press did not directly contribute to the military takeover on December 31, 1983, it at least prepared the country for acceptance of the coup. Thus, while a free press may well have contributed to the instability of the civilian regime, it may have helped to put an end to a corrupt government. It is also difficult to imagine, at least by someone who is nurtured on the Western view of the press, how a democracy can function if the press is not free to play watchdog and if a diversity of opinion is not allowed to be represented in the press. The irony is, of course, that a free press may have underscored the weaknesses of that democracy.<sup>146</sup> In turn, it can be argued that the overthrow of the Buhari regime was in part due to the restrictions it placed on the press. The lack of a diversified and critical press may have actually produced instability. The government which overthrew Buhari cited the inflexibility and isolation of his rule.<sup>147</sup>

Scholars of military rule have stressed that military regimes need a free and robust press as much as a civilian regime.<sup>148</sup> Because of the lack of elections and civilian input

<sup>142</sup> NIGERIA: A COUNTRY STUDY, *supra* note 43, at 144.

<sup>143</sup> C. ACHEBE, *supra* note 128, at 27.

<sup>144</sup> *Id.* at 16.

<sup>145</sup> R. ANIFOWASE, VIOLENCE AND POLITICS IN NIGERIA, THE TIV AND YORUBA EXPERIENCE (1982); O. BALOGUN, THE TRAGIC YEARS: NIGERIA IN CRISIS 1966-70 (1973); Oyediran, *Background to Military Rule*, in NIGERIAN GOVERNMENT AND POLITICS UNDER MILITARY RULE 1969-71 (O. Oyediran ed. 1979); Seng, *supra* note 4, at 136-37.

<sup>146</sup> See *infra* note 191.

<sup>147</sup> See *supra* notes 119-21.

<sup>148</sup> See *infra* note 190.

into the decision-making process, the only way the government can effectively gauge the public mood and the practical effect of its policies is through the press. Also because corruption and self-interest can exist in a military government as well as in a civilian government,<sup>149</sup> the only way that these abuses can be exposed short of another military coup is by the press. Thus a military regime which closes off all criticism may actually undermine its own stability by isolating itself from the problems that really concern the populous and by making a future coup staged by disgruntled underlings all but inevitable.

Hence the superficial view that the NWIO will promote development and stability may be overstated. Indeed it is not clear that the traditional restrictions imposed by Western democratic systems, prohibitions against false and libelous publications and prohibitions against publications which present a "clear and present danger" to legitimate governmental ends are not sufficient to insure stability and development. If the truth hurts, perhaps that is an indication the government needs to reexamine its positions. Publications that incite the violent overthrow of democratic regimes can be circumscribed,<sup>150</sup> and no one would argue that military regimes do not have at least a similar power if not a similar right to protect themselves. The international community recognizes that publications that incite racial discrimination can be circumscribed,<sup>151</sup> and from this one could argue that publications which incite ethnic or religious antagonisms can likewise be curtailed.<sup>152</sup>

On balance, a press free from government control of viewpoint has served Nigeria well in the past. The dangers inherent in totalitarianism should warn against a radical restructuring of the Nigerian press at this time.

#### VIII. THE JUDICIARY AS A CHECK ON THE GOVERNMENT'S ABILITY TO REDEFINE THE ROLE OF NIGERIAN JOURNALISM

In the United States, although all government officers take an oath to support the Constitution,<sup>153</sup> it is the judiciary which has the final say on its interpretation.<sup>154</sup> Hence, when it comes to protecting the press, it is the judiciary which stands between either executive or legislative attempts to curtail press freedoms. Consequently, it is normal, if not necessarily accurate, to equate the degree of freedom enjoyed by the press with how active the courts are in protecting that freedom. This is to be distinguished from the British legal system where, although the judiciary can check acts of the executive which conflict with acts of parliament or the common law, it has no power to review legislative acts. The role of the courts in Nigeria more closely resembles that of the United States than that of Britain.<sup>155</sup> Therefore, it is appropriate to consider the degree to which the

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<sup>149</sup> E. NORDLINGER, *SOLDIERS IN POLITICS: MILITARY COUPS AND GOVERNMENTS* 127 (1977); O. ODETOLA, *MILITARY REGIMES AND DEVELOPMENT: A COMPARATIVE ANALYSIS IN AFRICAN SOCIETIES* 32, 34 (1982).

<sup>150</sup> See, e.g., *Dennis v. United States*, 341 U.S. 494 (1951).

<sup>151</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Art. 4, adopted Dec. 21, 1965, entered into force January 4, 1969, 660 U.N.T.S. 195. See Jones, *Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and the First Amendment*, 23 How. L.J. 429 (1980).

<sup>152</sup> Cf. *Beauharnais v. Illinois*, 343 U.S. 250 (1952).

<sup>153</sup> U.S. CONST. art. IV § 1.

<sup>154</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

<sup>155</sup> *Lakanmi v. Attorney-General*, [1971] 1 U.I.L.R. 201, 218.

judiciary in Nigeria has historically acted as a check on either the legislative or executive action towards the press and what effect its decisions would have in the future should attempts be made to redefine the role of the press.

The earliest courts established by the British in Nigeria were informal, but by 1863 a Supreme Court was established in the Colony of Lagos to administer the English common law. The jurisdiction of this court was extended in 1900 to the Southern Protectorate.<sup>156</sup> When Lord Lugard became governor in 1912, however, he sharply curtailed the jurisdiction of the Supreme Court. This was done at least partly because he saw the courts as a threat to the colonial authority.<sup>157</sup> Nonetheless, subsequent judiciary acts, beginning with the Judiciary Act of 1933, extended the jurisdiction of the common law courts throughout the country.<sup>158</sup>

As a matter of law, Lord Lugard's fears were not groundless. In 1931, the British Privy Council held that the Nigerian Supreme Court possessed the power to review the actions of the colonial governors to see that they accorded with the law and the traditional notions of British justice.<sup>159</sup> In fact, however, the courts never seriously exercised this power. Nonetheless, as already noted,<sup>160</sup> the colonial governments' restraints on the press were those which were generally recognized under British law: civil libel actions, criminal prosecutions for seditious libel, and the registration and licensing of newspapers.

The 1960 Constitution, which ushered in independence, while adopting the British model of a parliamentary democracy also adopted the American model of the separation of powers between the legislature, the executive and the judiciary.<sup>161</sup> The Constitution provided that any person who alleged that his fundamental rights as granted by that document were contravened could apply for redress to the High Court of the territory where the infraction occurred.<sup>162</sup> The courts, however, did not initially assume an activist role in protecting fundamental rights. As already noted, the Nigerian Supreme Court broadly applied a criminal law prohibiting the publication of seditious statements.<sup>163</sup> It also held that the Constitution did not invalidate a provision of the Criminal Code making it illegal to publish false news likely to cause fear and alarm to the public.<sup>164</sup> Contrary to the practice in the United States, the Nigerian courts presumed that legislative acts which abridged fundamental rights were constitutional, were necessary, and reasonably justifiable.<sup>165</sup> The burden was thus placed on the individual to show that the law was unnecessary to the public interest and excessive to the object sought.<sup>166</sup>

<sup>156</sup> See Seng, *supra* note 4, at 123-25. The Southern Protectorate covered most of what is now southeastern Nigeria and Lagos.

<sup>157</sup> O. ADEWAGE, *THE JUDICIAL SYSTEM IN SOUTHERN NIGERIA 1854-1954* 120-121, 142 (1977).

<sup>158</sup> See Seng, *supra* note 4, at 123-25.

<sup>159</sup> *Eshugbayi Eleko v. The Officer of Administering the Government of Nigeria*, [1931] A.C. 662.

<sup>160</sup> See *supra* notes 7, 8, and 11.

<sup>161</sup> See *Lakanmi v. Attorney-General*, [1971] 1 U.I.L.R. 201.

<sup>162</sup> Const. Fed. Rep. Nig. § 32(1) (1963); Const. Fed. Rep. Nig. § 31 (1960).

<sup>163</sup> See *supra* note 22.

<sup>164</sup> *The Queen v. The Amalgamated Press of (Nigeria) Ltd. & Fatogun*, [1967] 1 All N.L.R. 199.

<sup>165</sup> See *Cheranci v. Cheranci* [1960] L.Rep. N.Reg. Fed'n Reg. 24, 29; B.O. NWABUEZE, *supra* note 26.

<sup>166</sup> *Id.*

When the military took over in 1966, it reaffirmed by Decree the basic provisions in the 1963 Constitution concerning the judiciary and fundamental rights.<sup>167</sup> In *Lakanmi v. Attorney General*,<sup>168</sup> the Supreme Court considered the nature of the military coup and its effect upon the judiciary's role as a protector of fundamental liberties. The Court rejected the argument that the military coup had destroyed the existing legal order. Rather, the Court found that the civilian government had handed power over to the military under the doctrine of necessity.<sup>169</sup> The Court held that the military was required to respect the fundamental liberties of Nigerians and that the judiciary retained the power to see that those liberties were secured. It also invalidated Decree No. 45 which had purported to prohibit the courts from assuming jurisdiction over the *Lakanmi* matter. The military responded to this decision by decreeing that the coup did abrogate the existing legal order and that any judicial decision which purported to invalidate any decree or edict was null and void.<sup>170</sup>

The 1979 Constitution attempted to codify the *Lakanmi* exposition of the judiciary's role as a protector of fundamental rights. It explicitly recognized the power of judicial review and prohibited the legislature from enacting any law that ousted or purported to oust the courts of jurisdiction.<sup>171</sup> The Constitution also purported to prohibit anyone from assuming power in Nigeria except in accordance with the provisions of the Constitution.<sup>172</sup>

During the period of the Second Republic the courts generally did not shirk their responsibility of declaring laws in violation of the Constitution void.<sup>173</sup> In the press area, the courts upheld broad privileges for reporters<sup>174</sup> and indicated that the strict law of seditious libel as formerly applied did not conform to constitutional requirements.<sup>175</sup> Perhaps most importantly, there was some indication that the courts would not apply the strict standing requirements imposed by American courts to defeat the ability of citizens to litigate constitutional questions.<sup>176</sup> The courts also held that compensatory and

<sup>167</sup> Decree No. 1 (Constitutional Suspension and Modification) (1966).

<sup>168</sup> [1971] 1 U.I.L.R. 201. The case involved the legality of a decree which divested persons of their property without a judicial hearing.

<sup>169</sup> The military assumed power following an unsuccessful coup by a group of junior military officers. The country was in disarray and the acting president, following a meeting with a number of politicians and military leaders, went on the radio and announced that he was handing the country over to the military. The court noted that this handover was an "interim" measure designed to protect "lives and property and maintain law and order." *Lakanmi*, 1 U.I.L.R. at 217.

<sup>170</sup> Decree No. 28 (1970).

<sup>171</sup> Const. Fed. Rep. Nig. § 4(8) (1979). As such the Constitution provides greater protection to the courts than does the Constitution of the United States. *See Ex Parte McCordle*, 74 U.S. (7 Wall.) 506 (1868).

<sup>172</sup> Const. Fed. Rep. Nig. § 1(2) (1979).

<sup>173</sup> *See, e.g., Bendel State v. The Federation*, [1982] 3 N.C.L.R. 1; *Archbishop Okogie v. Attorney General Lagos State*, [1981] 1 N.C.L.R. 218, *aff'd* [1981] 2 N.C.L.R. 337 (Fed. Ct. App.: Lagos).

<sup>174</sup> *Monoh v. Senate of the National Assembly*, [1981] 1 N.C.L.R. 105 (High Ct.: Lagos).

<sup>175</sup> *Chief Arthur Nwanko v. The State FCA/E/111/83* (Fed. Ct. App.: Enugu, 7/27/83).

<sup>176</sup> *See Adesanya v. President of the Republic*, [1981] 2 N.C.L.R. 358, where the Supreme Court held that a Senator had no standing to challenge a presidential appointment which had also been confirmed by the Senate. In the course of his opinion, Chief Justice Fatayi-Williams noted:

With these observations in mind, I take significant cognizance of the fact that Nigeria is a developing country with a multi-ethnic society and a written Federal Constitution, where rumour-mongering is the pastime of the market places and the construction



punitive damages could be awarded against officials who violated constitutional rights.<sup>177</sup> However, a lower court did find that governmental agencies themselves were protected from damages, although not from declaratory judgments, by the doctrine of sovereign immunity and that supervisors could not be held liable for damages on a doctrine of *respondeat superior* for the acts of their subordinates.<sup>178</sup>

When the military reassumed power in Nigeria in 1984, it did so despite the clear prohibition against such a maneuver in the 1979 Constitution.<sup>179</sup> Thus, unlike the 1966 coup, no one could seriously question whether the edicts and decrees of the military authorities were superior to the 1979 Constitution. A suit contesting the detention of some of the former politicians was summarily dismissed,<sup>180</sup> and Decree No. 4 specifically prohibited judicial review of the special tribunal instituted to try journalists who printed false matters or who ridiculed any public officer.<sup>181</sup>

sites. To deny any member of such a society who is aware or believes, or is led to believe, that there has been an infraction of any of the provisions of our Constitution, or that any law passed by any of our Legislative Houses, whether Federal or State, is unconstitutional, access to a Court of Law to air his grievance on the flimsy excuse of lack of sufficient interest is to provide a ready recipe for organized disenchantment with the judicial process.

The framers of our 1979 Constitution had all these factors in mind by providing for the many checks and balances which appear therein. In fact, a close scrutiny of its very detailed provisions will convince anyone that reliance on the decisions, whether British, Canadian, Australian, or American, given in a different social and political context will only lead to restrictive rules of *locus standi* which, in the interest of the need for total compliance with the provisions of our Constitution, I find it difficult to accept or countenance. As a matter of fact, what can be discerned from the cases to which we are referred and, indeed, to other cases, is this. The Canadian Supreme Court now takes a liberal view of *locus standi*; so do the Australian High Court and the Court of Appeal in England presided over by Lord Denning. The House of Lords, on the other hand, takes a more restrictive view. Of course, England does not have a written Constitution.

In view of the scantiness of the language of the American Constitution when compared with ours, and the great opportunities thereby offered to use the American courts for expounding the intentions of the founding fathers through its interpretation one is not surprised that the American courts were so inundated with legal proceedings that access to court had to be restricted through the use of the rules, formulated by the courts themselves, as to the *locus standi* of a plaintiff.

In the Nigerian context, it is better to allow a party to go to court and to be heard than to refuse him access to our courts. Non-access, to my mind, will stimulate the *free-for-all in the media* as to which law is constitutional and which law is not! In any case, our courts have inherent powers to deal with vexatious litigants or frivolous claims. To re-echo the words of Learned Hand, if we are to keep our democracy, there must be one commandment — thou shall not ration justice.

*Id.* at 373.

<sup>177</sup> Shugaba Abdulrahman Darman v. Minister of Internal Affairs, [1981] 2 N.C.L.R. 459 (High Ct.: Maidugari), *aff'd* [1982] 3 N.C.L.R. 915 (Fed. Ct. App.: Kaduna). The Court held that damages could be recovered against the President and various federal ministers who arranged to have a Nigerian citizen deported in violation of the Constitution.

<sup>178</sup> Alhaja Abibatu Magaji v. Board of Customs and Excise, [1981] 3 N.C.L.R. 552 (High Ct.: Lagos).

<sup>179</sup> Const. Fed. Rep. Nig. § 1(20) (1979).

<sup>180</sup> New Nigerian, May 29, 1984, at 1, col. 5.

<sup>181</sup> Decree No. 4 — Public Officers (Protection Against False Accusation) Decree § 8(4) (1984).

The provisions of the 1979 Constitution guaranteeing the freedom of the press<sup>182</sup> and enunciating the fundamental objective that the press should be free so as to hold the government responsible and accountable to the people<sup>183</sup> were retained.<sup>184</sup> However, the provisions that laws inconsistent with the Constitution were void<sup>185</sup> and that the courts could not be ousted of jurisdiction to decide constitutional questions<sup>186</sup> were suspended.<sup>187</sup> Thus it would appear that even though the Constitution continues to protect a free press in Nigeria, the military does not have to worry about any judicial opposition should it decide to proceed to redefine the press's role.

#### IX. CONCLUSION

In many ways the view of the Buhari regime on the role of a free press was schizophrenic. It stressed the role of the press in providing positive reinforcement for development and for government policies. At the same time, it also noted the role of the press as a watchdog against government excesses, so long as it printed the truth, and the role of the press in apprising the government of public opinion.<sup>188</sup> The rhetoric made some sense if the government were trying to rid the press of unbridled sensationalism and inaccuracies. However, the freeze on government information which prevented the press from investigating its stories seemed to conflict with that theory. Furthermore, the draconian way the government implemented Decree No. 4 seemed to belie any benevolent purpose. The government's chief aim appeared to be to shield thin-skinned military men from criticism, which undercut the watchdog role for the press.

Previous governments had tried on occasion to restrict the access of foreign correspondents to Nigeria,<sup>189</sup> but this was not an immediate concern during the Buhari regime because so little Western coverage was given to Nigeria. Nigerians themselves had access to VOA and BBC and to some Western magazines, although currency exchange problems limited the supply of Western magazines. For a time after the 1983 coup, *Time* and *Newsweek* were virtually unavailable for that reason. Thus, the real threat was to the indigenous media. If private newspapers could have been eliminated, then the government-owned media would have been more easily brought under control.

This process appears to have been checked by the overthrow of the Buhari government and the installation of General Babangida as head of state. Despite the good intentions of the new government, Nigeria's economic problems will not be easy to solve and pressures will remain to utilize every means at the government's disposal — including the press — to aid in the positive development of the country.

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<sup>182</sup> Const. Fed. Rep. Nig. § 36 (1979).

<sup>183</sup> *Id.* at § 21.

<sup>184</sup> Decree No. 1 — Constitution (Suspension and Modification) Decree (1984).

<sup>185</sup> Const. Fed. Rep. Nig. § 1(3) (1979).

<sup>186</sup> *Id.* at § 4(8).

<sup>187</sup> Decree No. 1 — Constitution (Suspension and Modification) Decree (1984).

<sup>188</sup> *New Nigerian*, July 25, 1985, at 1, col. 1 (Head of State commenting that newspapers should engage in "Constructive" criticism); *New Nigerian*, July 14, 1984, at 7, col. 2 (Minister of Information commenting that press should focus attention on problems and initiate debate on alternative solutions); *New Nigerian*, June 12, 1981, at 1, col. 3 (Minister of Information commenting that press should "enlighten public services").

<sup>189</sup> D. LAMB, *supra* note 2, at 250–51.

In many ways a military government needs a free press as much as a civilian government does. A free press is one of the few channels under a military regime whereby the government receives feedback from the nation on the popularity of its policies and the civilian perspective.<sup>190</sup> In fact, one of the main reasons for the overthrow of the Buhari government may have been because of its failure to allow for criticism of its policies.

At the present time the outcome of the struggle for a free press in Nigeria is still unresolved, but the prospects do appear more promising under the new regime. Nonetheless, the pressure on the press to provide positive reinforcement for governmental policies will continue to be great in countries, like Nigeria, still struggling to achieve a national identity.<sup>191</sup> In a country sharply divided along tribal or religious lines, an irresponsible press can greatly aggravate tensions and contribute to instability. The question therefore becomes whether the positive goals of developmental journalism can be implemented in a way that still respects the traditional freedom enjoyed by Western journalists from government viewpoint censorship. The strong history and basic values favoring press freedom in Nigeria may still enable that country to be a model for the rest of the Third World. One can hope that the basic tension between a libertarian and a developmental perspective will eventually create a balance that negates some of the more divisive aspects of Nigerian journalism while positively preserving the press' role as a watchdog and an independent conveyor of news and information.

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<sup>190</sup> See Jakande, *The Press and Military Rule*, in NIGERIAN GOVERNMENT & POLITICS UNDER MILITARY RULE 113 (O. Oyediran ed. 1979). Cf. E. NORDLINGER, *supra* note 149. This lesson has been learned by General Babangida. Before rejecting an IMF loan, he called for full public debate and has promised to do likewise on other major issues. This has not only insured the popularity of his decisions but has called one newspaper to dub the regime a "military democracy." New York Times, Jan. 20, 1986, at 7, col. 4.

<sup>191</sup> For instance, in December, 1983, twenty-one years of military dictatorship was ended in Brazil and a new democratic government installed. The press, which had been curtailed during the military era, immediately started to portray the newly established Congress "as crowded with lazy, overpaid and even corrupt politicians." Congressional leaders immediately countered that the journalists were "promoting a new coup by undermining democracy." New York Times, Sept. 29, 1985, at 2E, col. 3.