MEMORANDUM

Submitted to:
THE HOUSE OF REPRESENTATIVES COMMITTEE ON INFORMATION, NATIONAL ORIENTATION, ETHICS AND VALUES

On The Proposed Bill For An Act to Amend The Nigerian Press Council Act

TITLE: FOR A TRULY INDEPENDENT & MEDIA FREEDOM FRIENDLY NIGERIA PRESS COUNCIL

By:
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A. INTRODUCTION

In 2021, the year of the 30th anniversary of the Windhoek Declaration on an Independent and Pluralistic African Media, the expectation is that Nigeria will embark on legislative paths that help to expand the frontiers of press freedom through frameworks that strengthen the freedom and independence of the media to enhance its role in democracy.

Independent regulation free of political encumbrances is one of the channels to the process of such strengthening and it is in this regard that we are worried that the proposed amendment to the Nigeria Press Council Decree falls far short of these expectations and standards.
It is not that regulation is not necessary especially in this age of fake news and hate speech, but the point to stress is that regulations must be such that do nor erode media independence or freedom and are not unduly punitive. The regulator must also be free of the stranglehold of the powers that be, political or other interests, so that it can judiciously adjudicate in matters bothering on the infringement of the code of ethics of the profession of journalism.

Our observations and recommendations are based on our respective mandates but are informed by well-established norms and standards based on regional and international instruments and frameworks that are applicable to Nigeria.

The **International Press Centre** (IPC) is an independent, not-for-profit, and non-governmental media resource center established to facilitate the active role of the media in the development of Africa and particularly Nigeria.

The **Media Rights Agenda** (MRA) is established to promote a conducive environment for the exercise of the right to freedom of expression, press freedom and access to information by citizens including journalists.

The **Centre for Media Law and Advocacy**, is a non-governmental organisation, anchored on championing the right to Freedom of Expression, with a special focus on Media law training and advocacy.

The **Premium Times Centre for Investigative Journalism** (PTCIJ) builds journalists capacity to expose corruption and various abuse of power to give meaning to the constitutional obligation on the media to monitor governance and hold government accountable to the people.

B. KEY OBSERVATIONS ON PROPOSED AMENDMENTS

1. First, we like to say that the international behaviour towards media regulation is peer regulation, constitutionally guaranteed freedom of the press, and the expunging from statute all laws that criminalizes freedom of expression. This is the line the Committee should tow like Ghana has done and like South Africa has done; and with regards to throwing off defamation statute from the books, the way Sierra Leone has done.

2. A consideration is that the amendment seeks an unabashed focus to restrict freedom of expression while masking the toga of something else. It attempts to do what other laws have done like the Cybercrimes Acts which Sections 24 and 38, which in no fewer than ten instances have been used to clampdown on bloggers or journalists for expressing opinion antagonistic to politically or economically powerful elites. Bodies like the Amnesty International has documented 50 cases where the law had targeted, not cybercrime suspects, but bloggers and journalists for writing on what they "know to be false, for the purpose of causing annoyance, inconvenience danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another."

3. Section 2 (Establishment of the Board for the Council) in sub-section 1 (i) makes the board a mere advisory one without any real power to moderate the conduct of the Executive Secretary.

4. By virtue of the provision of Section 2 1(iii) which includes in the composition of the Board two representatives of the public, one representative of the Federal Ministry of Information, the Executive Secretary and the Chairman, government nominees will have a majority of five in the nine-member board.

5. The provisions of section 2 (3) give exclusive power on the composition of the Board of such sensitive body whose independence is of paramount importance, to the President and the Minister without provision for the conformation of the National Assembly unlike what obtains with other regulatory bodies like the National Communications Commission.

6. Section 3 of the amendment seeks to empower the Council to ensure truth and genuineness in reporting. What is significant about this is the impossible task of establishing truth by a government agency. Truth as a category, as we know is transient and a matter of moment by moment and that is the standard the press uses in its definition of truth. Something may be false today but upon fresh evidence they can become true. The world was flat yesterday, today we know it is true. If the press announces a truth today, is the government the arbiter of truth?

7. The amendment to the Act in Section 3 (Functions of the Council) in 3 (c) therefore has additional the effect of making the Nigerian media a department of the Federal Ministry of Information by stating as follows: "with the approval of the Minister in charge of Information establish and disseminate a national Press Code and standards to guide conduct of print media, related media houses and media practitioners. The attempt to subject the entire media sector to the control of the Minister is further reinforced by Section 9 (Code of Conduct) which further provides in 9 (1) that: "The Council shall establish a National Press and Ethical Code of conduct for media houses and media practitioners, which shall come into effect and be disseminated after the approval by the Minister. A professional code of professional conduct for the media should never be subject to the approval of the Minister or any other political authority.

8. The provision of 3 (d) constitutes a potential threat to press freedom and media survival as it does not provide for judicial intervention before highly punitive measures are handed down by the council and indeed could be used as a political weapon against

the media. The section provides as follows: "approve penalties and fines against violation of the Press Code by print media houses and media practitioners, including revocation of license".

9. The provision of 3 (e) that the council will "receive, process and consider applications for the establishment, ownership, and operation of print media and other related media houses" violates section 39 of the constitution. Section 39 of the Constitution makes it clear that everyone shall be entitled to freedom of expression….[and] that under its subsection [2] "…everyone shall be entitled to own, establish and operate any medium…"

10. The penalties for offences as stipulated in 3 (3) i & ii including fine of five million Naira or three years imprisonment are too punitive and will constitute threat to media independence and freedom.

11. Section 17 3 a & b provides that a journalist could be held liable for the offence committed by his or her organisation and can be made to pay a fine of two hundred and fifty thousand Naira (N250,000). This is also punitive.

12. The provision of 21 subsection 5 (a) as proposed for amendment is such that a journalist can be punished by the Council even after he/she might have been found guilty by a court of law and without the Council going back to the court to report continued infringement. It provides as follows: (5) "Where any person has been convicted of an offence under this section of the Act in a High Court:
    (a) "he shall be liable to a fine of two hundred and fifty thousand Naira only or imprisonment for a term of two years or both and to an additional fine of five thousand naira for each day during which the offence continues".

13. Section 33 (3) and (4) does not give room for retraction or apology where a fake news is mistakenly published but recommends a blanket sanction of up to ten million naira or closure for a period of one year or both.

C. OUR RECOMMENDATIONS:

Based on the foregoing observations, we recommend as follows:

1. This honorurable committee should take a cue from the Ghanaian constitution by recommending the inclusion of the provision for press freedom in the constitution while it should also recommend that government shall not appoint managers of the public (state) media.

2. The board should have management control over the Commission including the Executive Secretary and the appointment should be made by the President through the confirmation of the National Assembly.

3. The composition and functions of the Council and the philosophy of the bill all run counter to international best practice and we urge the committee to treat it by rejection.

4. The composition of the board must be such that representatives of media professional groups and associations are in the majority. To this end we present for your kind consideration the composition adopted by media and other relevant stakeholders way back in 2009 when a similar amendment was proposed as follows:

The Council shall consist of a Chairman and the following other members, that is:

(a) four representatives of the Nigeria Union of Journalists;
(b) three representatives of the Nigerian Guild of Editors
(c) three representatives of the Newspaper Proprietors Association of Nigeria;
(d) four representatives of the public one who shall be a legal practitioner and another a woman;
(e) one representative of the Nigerian Communication Commission;
(f) two representatives of educational institutions involved in training of Journalists;
(g) one representative of the Federal Ministry of Information who shall be a practising Journalist;

(h) three representatives of the Broadcasting Organisations of Nigeria;
(i) one representative of the News Agency of Nigeria who shall be a practising Journalist; and
(j) the Executive Secretary to the Council.

5. The ethical code that should be operationalised by the Council is the Code of Ethics of Journalists in Nigeria as adopted by the Nigerian Press Organisation (NPO) comprising the Nigeria Union of Journalists (NUJ), the Nigerian Guild of Editors (NGE) and the Newspapers Proprietors Association of Nigeria (NPAN) in Ilorin in 1998 and as may be regularly updated. This has been the practice. A political and non-journalism office like that of the Minister of Information should not been given the power of approval over the code of conduct of journalists.

6. The power to determine sanctions relating to hefty fines should be vested in the courts and not the Council. The Court of Appeal has clearly established this legal principle in NOSDRA v Mobil Producing Nigeria Unlimited (2018) LPELR-44210 (CA) where it held that "the imposition of fines by NOSDRA was contrary to its powers on the basis that penalties or fines are imposed as punishment for an offence or violation of the law and the power as well as competence to establish that an offence has been committed belongs to the courts and not a regulatory agency."

7. The provision relating to revocation of license for alleged publication of fake news should be removed from the Act. Decisions for appropriate sanctions in relation to such offences should be vested in the law courts.

SGD:

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