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A Critical Examination of Hate Speech in Nigeria

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ABSTRACT

Hate speech touches on contested issues of dignity, free expression, liberty and democracy. It can thus be argued that there is a conflict between the right to freely advocate however distasteful the idea may be and the right to be free from prejudice and discrimination. In some circumstances, speech is restrained and the right to non-discrimination is preferred over free speech. Hate speech has been used invariably to mean expression which is abusive, insulting, intimidating, harassing or which incites violence, hatred, discrimination against group identified by characteristics such as race, religion, place of birth, residence, region, language, caste, community, sexual orientation or personal convictions. The methodology adopted in this paper was doctrinal. Both primary and secondary sources were employed in carrying out this paper. The finding of the paper is that besides Nigeria, various countries of the world have adopted some measures to deal with hate speech and other related issues. While some countries have clearly defined laws, some others find it quite unnecessary to create laws that seek to regulate hate speech as it is perceived as an infringement to the fundamental human rights of freedom of expression. This paper recommended that the existing Cyber Crimes Act and the Anti-Terrorism Act, among other pre-existing regulations cover many of the offences the new bill seek to address rather than waste valuable resources on the enactment of fresh laws to enable effective implementation and avoid a situation of plurality of laws. Perhaps one of the most effective ways of combating hate speech would be to marginalize purveyors of such speeches. In the U.K., while far-right, fascist parties like the British National Party and the racist ideas they support are not banned, mainstream British politician avoid associating openly with members of such parties. In Nigeria, on the other hand, offensive and hate speech mongers are often seen as regional and ethnic heroes.

INTRODUCTION

In any given democratic society, one unavoidable and permanent concept is the concept of fundamental human rights. The enjoyment of these rights are generally non derogable; they cannot be interfered with. These rights cut across civil, political, economic, sociocultural areas and are often protected and guaranteed by the grundnorm of any given democratic society. What is a democratic society without fundamental human rights? One of such rights is the freedom of speech.

Freedom of speech is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction. The term 'freedom of expression' is sometimes used synonymously but includes any act of seeking, receiving, and imparting information or ideas, regardless of the medium used.

Freedom of speech or freedom of expression is guaranteed as a fundamental human right under regional, domestic and international laws and is provided for in many conventions, constitutions and charters across the world. Freedom of expression is recognized as a human right under Article 19 of the Universal Declaration of Human Rights (UDHR) and recognized in international human rights law in the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the UDHR states that 'everyone shall have the right to hold opinions without interference' and 'everyone shall have the right to freedom of expression; this right shall include freedom

to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'.

In Nigeria, the Constitution provides for freedom of speech under Chapter 4, section 39 and is titled; 'Right to freedom of expression and the press'

The version of Article 19 in the ICCPR later amends this by stating that the exercise of these rights carries special duties and responsibilities' and may 'therefore be subject to certain restrictions' when necessary 'for respect of the rights or reputation of others' or 'for the protection of national security or of public order (order public), or of public health or morals'. Section 45 of the 1999 Constitution of the Federal Republic of Nigeria equally provides for restrictions and derogation from fundamental human rights in the instance where the exercise of such right is prejudicial to defence, public safety, public order, public morality or public health.

Freedom of speech and expression, therefore, may not be recognized as being absolute, and common limitations or boundaries to freedom of speech relate to libel, slander, obscenity, pornography, sedition, incitement, fighting words, classified information, copyright violation, trade secrets, food labeling, non-disclosure agreements, the right to privacy, dignity, the right to be forgotten, public security, and perjury, and hate speech. Justifications for such include the harm principle, proposed by John Stuart Mill in *On Liberty*, which suggests that: 'the only purpose

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for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. The idea of the ‘offense principle’ is also used in the justification of speech limitations, describing the restriction on forms of expression deemed offensive to society, considering factors such as extent, duration, motives of the speaker, and ease with which it could be avoided.

The former UN Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, Frank La Rue, outlined this in a 2012 report;

“The right to freedom of expression implies that it should be possible to scrutinize, openly debate and criticize, even harshly and unreasonably, ideas, opinions, belief systems and institutions including religious ones, as long as this does not advocate hatred that incites hostilities, discrimination or violence against an individual or a group of individuals.”

Taking into cognizance the fact that freedom of speech and expression is not absolute, the provisions for laws that regulate this right, in order to avoid infringement of one's right due to the exercise of another's. Enter all the instances where freedom of expression will be restricted. The main focus of this research work however, is hate speech.

Analysis of the Constitutive Elements of Hate Speech

The philosopher Jeremy Waldron argues that, while purely offensive speech may not justify restrictions, there is a class of injury, amounting to more than hurt sentiments but to less than harm, in the sense of physical injury, that demands restriction in democratic frameworks, hate speech falls within such class of injury. It lies in a complex nexus with freedom of expression, individual, group and minority rights, as well as concepts of dignity, liberty and equality. Its definition is often contested. There is no general definition as to the elements that constitute hate speech, for the apprehension that laying down a definite standard might lead to the curtailment of free speech. There have however been attempts to define and describe what will amount to hate speech.

Hate speech employs discriminatory epithets to insult and stigmatize others on the basis of their race, sexual orientation or other forms of group membership. It is any speech, gesture, conduct, writing or display which could incite people to violence or prejudicial action. As aptly posited hate speech is also seen as any communication that denigrates a particular person or a group on the basis of race, color, ethnicity, gender, disability, sexual orientation, nationality, religion, or other characteristic. It can be in the form of any speech, gesture or conduct, writing, or display and usually marks incitement, violence or prejudice against an individual or a group.

To grasp a better understanding of the elements that constitutes hate speech in Nigeria it is expedient that hate speech as it is understood in other national and international legal frameworks are considered, thus;

The Law Commission of India describes hate speech as:

“Hate speech is an expression which is likely to cause distress or offend other individuals on the basis of their association with a particular group or incite hostility towards them. There is no general legal definition of hate speech, perhaps for the apprehension that setting a standard for determining unwarranted speech may lead to suppression of this liberty.”

The United Nations Committee on the Elimination of Racial Discrimination “CERD” noted that hate speech includes:

- a. All dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means;
- b. Incitement to hatred, contempt or discrimination against members of a group on grounds of their race, color, descent, or national or ethnic origin;
- c. Threats or incitement to violence against persons or groups on the grounds in (b) above;
- d. Expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination;
- e. Participation in organizations and activities which promote and incite racial discrimination.

The Council of Europe (Council of Europe report 1997) defines hate speech as;

Covering all forms of expression which spread, incite, promote or justify forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

According to Neisser, hate speech includes all communications (whether verbal, written, symbolic) that insults a racial, ethnic and political group, whether by suggesting that they are inferior in some respect or by indicating that they are despised or not welcome for any other reasons.

It has been stated that the question regarding hate speech in the case of Nigeria is the undergrowth which structures the representation of the falling of the tree in the forest, the tree in this case being Nigerians and the Nigerian State. In the Nigerian context, no formal definition of hate speech exists. However, its meaning can be derived from the context of legal instrument that have an impact of hate speech such as the Constitution of the Federal Republic of Nigeria, the Criminal and Penal Code, the electoral act and so on. Hate speech in Nigeria is associated with politics, electioneering, religious organizations and ethnicity movements and groups. The situation is worsened by the advent of social media. Politically motivated hate speech is historically a precursor to election related harassment and violence in Nigeria. A recent report by the Centre for Information Technology (CITAD) shows 618 items conveying religious insensitivity, followed by 507 items on ethnicity, 192 items relating to Biafran agitation. Another report showed that 70% of the people disseminating hate speech in Nigerian social media space use their identity and can be reached for follow up action. This shows that, on and off the internet, many Nigerians have no inhibitions in

using words with intention to insult, offend or convey maximum contempt for some other Nigerians, either along ethnic, religious or spatial lines.

In determining what constitute hate speech there are several considerations to be examined before abusive language or innuendo can be considered hate speech. Any list of such considerations should include the following. First, hate speech can be identified by the severity of what is said, the severity of the harm advocated and the intensity of the communication. Another way is to look at the intention of the author of the statement. Content of the speech is also relevant and connotes specifics of the speech including its tone and if it requires listeners to respond with certain actions or inactions are important. The inciters themselves should be considered, specifically their standing in the context of the audience to whom the speech is directed. The level of their authority or influence over the audience is relevant as is the degree to which the audience is already primed or conditioned, to take their lead from the inciter. Again, for speech to qualify as hate speech, it must have occurred in public. This also means that communication has to be directed at a non-specific audience (general public) or to a number of individuals in a public space.

The Hate Speech Bill and Its Criticisms

Offensive and hateful speech has been a challenge in Nigeria. If it has to do with the Nigerian Civil War, Igbo nationalists take offense with the rest of the country; if it is about Boko Haram and its alleged sponsors, self-appointed defenders of the North are up in arms with equally self-appointed defenders of the South; if it has to do with resource control and oil politics, the North squares off against the South. The Igbos and the Yoruba, rival major ethnic groups, frequently pick on each other. Hate and offensive speech profiling reached a pinnacle in the country in June 2017, when a coalition of Northern youth groups issued a Kaduna Declaration which, apart from calling the Igbos unprintable names, gave all Igbos in the North three months (until October 1, 2017) to leave. The reaction stemmed from harsh pro-Biafra rhetoric of NnamdiKanu, leader of the Indigenous People of Biafra. While it is true that NnamdiKanu had engaged in a form of rhetoric offensive to many people, the quit notice given to the Igbos in the North triggered competitive quit notices to vacate.

Though the notices were later withdrawn, they led to palpable fears that the situation could degenerate to a Rwanda-like genocide unless the tide of free-flowing offensive and hate speech in the country was stemmed.

In a heterogeneous and polarized country like Nigeria, hate speech threatens the nation-building process by widening the social distance among Nigerians, cementing existing distrust, and undermining national support. Hate speech can also negatively affect the economy. For instance, in the face of the quit notice given to the Igbos in northern Nigeria, some Igbo businessmen refused to entertain any credit request from customers, Igbos

and non-Igbos alike, until after the October 1 deadline. Further, deposit money banks, already risk averse from high non-performing loans, became even more unwilling to lend during the quit notice period. The competitive quit notice, respectively given to the Igbos living in the North and the Northerners and Yorubas living in the Niger Delta, could curtail the willingness of Nigerians to invest in the regions other than their own because of the risk of future quit notices.

It is therefore not surprising that on the 5th of November, 2019 the National Commission for the Prohibition of Hate Speech bill was introduced by the Senate of the Federal Republic of Nigeria sponsored by Senator, Abdullahi Sabi to promote national cohesion and integration by outlawing unfair discrimination, hate speeches and the establishment of an Independent National Commission for the prohibition of hate speeches and connected matters. The Bill specifically prohibits the commission of ethnic discrimination, hate speech, harassment on the basis of ethnicity, ethnic or racial contempt and discrimination by way of victimization by individuals or corporate bodies. On the hill of the introduction of the bill, it has come under huge criticism and attacks from Nigerians home and abroad. These criticisms are considered hereunder.

Poor Definition of Terms

One of the criticisms is that the bill poorly defines hate speech, especially when differentiating between hate speech and offensive speech. Though hurtful, offensive speech is believed to be a protected freedom of expression, a critical component of a functioning democracy. Instead, the bill essentially regards even insulting or abusive speeches as hate speech, a vague and dangerous categorization. Defining hate speech in a way that delineates it from offensive speech has been a tall task for policymakers and academics around the world—including Susan Benesch at Harvard, former U.S. Supreme Court Justice Oliver Wendell Holmes, and many others. Some believe that the term “hate speech” should only be used for extreme cases such as speeches that explicitly call for the physical injury or extermination of certain people.

Attack on Freedom of Speech, Expression and the Press

Another criticism of the bill is that it could provide a cover for the government to attack free speech, which in a democracy, is important both for prevalence of truth and for citizens to effectively participate in the democratic process. Hate speech laws have been used to suppress and punish left-wing viewpoints in Europe. Similarly, South Africa’s hate crimes bill has been criticized for being vulnerable to abuses that would undermine free speech.

Imposition of Capital Punishment

One of the major criticisms of the hate speech bill in Nigeria is the prescription of death by hanging for any

person found guilty of any form of hate speech that results in the death of another person. This provision is seen not only as absurd but one that contradicts various international best practices and it is to no surprise that the prescription of death by the proposed bill has come under unfathomable criticism and attacks.

Pre-Existing Regulations and Laws on Hate Speech And Related Issues

The major gist of this research work is to point out the necessity or otherwise of enacting a new law that specifically criminalizes hate speech. In determining the superfluousness or otherwise of enacting a new law, recourse must be made to preexisting regulations and laws that may make the argument valid. It is in the light of the foregoing that below are listed, preexisting laws regulating hate speech and other related issues. The domestic framework, that is, the legal framework in Nigeria, which is the focal point of this research work would be discussed below and thereafter the international framework. These hate speech regulations contained in treaties to which Nigeria is signatory, have a binding effect on Nigeria by virtue of the principle of *pacta sunt servanda*. Hence, they will also be looked at and considered in the foregoing paragraphs.

Domestic Legal Framework

While freedom of expression is clearly protected by a considerable body of treaty law, it can also be regarded as a principle of customary international law, so frequently is the principle enunciated in treaties, as well as other soft law instruments. Most human rights treaties, including those dedicated to the protection of the rights of specific groups – such as women, children and people with disabilities - make explicit mention of freedom of expression. Perhaps, the most significant international legal source of the right to freedom of expression is set out in Article 19 of the International Covenant on Civil and Political Rights. The ICCPR also provides for the limitation of the right to freedom of expression. Although the ICCPR makes no mention of hate speech, in principle speech that express or incite hatred is not only potentially subject to limitation under Article 19(3) but it also conflicts directly with an explicit obligation in Article 20 of the ICCPR to prohibit incitement to hatred. Nigeria acceded into the treaty on July 29, 1993. Nigeria has also ratified the African (Banjul) Charter on Human and People's Right which it ratified on July 22, 1983. Also Nigeria has also ratified the International Convention on the Elimination of all Forms of Racial Discrimination on October 16, 1967. As stated earlier, these instruments impose certain obligations on states to fulfill, respect, promote and protect these rights. States are also obliged to ensure that their domestic laws are brought in consistency with their international obligations.

Hate speech has not been defined in any law in Nigeria. However, legal principles and provisions in certain legislations prohibit selected forms of speech as an

exception to freedom of speech;

Defamation

Defamation is the oral or written communication of a false statement about another that unjustly harms or injures a third party's reputation. It usually constitutes a tort and a crime. The tort of defamation includes both libel (written statements) and slander (spoken statements). Under common law, a claim must have been made to someone other than the person defamed and must generally be false. In some jurisdictions, defamation is treated also as a crime. Sections 373-381 of the Criminal Code in Nigeria considers defamation as a crime in Nigeria, especially where the acts in issue tend to breach public peace and order. Under Nigerian criminal jurisprudence, there is no distinction between libel and slander as in tort.

Libel and Slander

Civil defamation: In Nigeria, defamation is both a tort and a crime. The tort of defamation (civil defamation) is regulated by the rules of common law, with few statutory interventions aimed at reforming certain aspects of the law. It seeks to protect a person's reputation from unjustified attack either by the written or spoken words of others. In *Benue Printing and Publishing Corp. v. Gwagwada*, the Supreme Court defined defamation as any imputation which may tend to lower the plaintiff in the estimation of right-thinking members of the society generally, cut him off from society or expose him to hatred, contempt or ridicule. On the other hand, freedom of expression is a fundamental right of every citizen, which is guaranteed and protected under the Constitution.

In the light of the foregoing, the court is saddled with the onerous task of striking an acceptable balance between the interest in protecting a person's reputation and the interest in freedom of expression. The position of the law is firmly established that in an action for defamation the plaintiff will only succeed if he is able to prove the essential ingredients of the tort, which are (1) that the words complained of are defamatory, (2) that the words referred to the plaintiff, (3) that the words were published. And in the case of slander, the plaintiff must also prove special/actual damage, unless he can come under the exceptional cases where slander is actionable *per se*. Though, all these ingredients of defamation must be proved by the plaintiff in order to succeed, it has been held that the essential part of the cause of action in defamation is the publication of the defamatory statements complained of.

Publication is the communication of the alleged defamatory statement or matter to at least one person other than the plaintiff; which is effectively the exercise of right to freedom of expression. Thus, it is trite law that an action for defamation cannot be sustained, without proof of publication. If the alleged defamatory statements were communicated to the plaintiff only, then no action for defamation would be maintained. The success of the plaintiff in action for defamation also depends on the

absence of an acceptable defense from the defendant. When successfully raised, the defenses of justification, absolute privilege, qualified privilege, and fair comment would completely exonerate the defendant from liability in an action for defamation. The availability of these defenses clearly confirms that the right to freedom of expression would not be denied easily and the restriction provided by the law of defamation is by itself not absolute. The entrenchment of the right to freedom of expression in the Constitution underscores its importance and the need for its protection and promotion.

Criminal defamation: Criminal defamation is provided for in the Criminal Code for the Southern Nigeria and the Penal Code for Northern Nigeria. Thus section 375 of the Criminal Code criminalizes defamation in the following terms:

Subject to the provisions of this chapter, any person who publishes any defamatory matter is guilty of a misdemeanor and is liable to imprisonment for one year and any person who publishes any defamatory matter knowing it to be false is liable to imprisonment for two years.

By section 373 of the Criminal Code, a defamatory matter is one which is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule or likely to damage any person in his profession or trade by an injury to his reputation.

The bringing of the defamatory matter to the notice of the person defamed will be enough evidence of publication and the posting of a letter to the person defamed is publication. Just as in civil defamation, the defenses for criminal defamation include justification, absolute privilege and qualified privilege, amongst others. However, unlike in civil defamation, those accused of criminal defamation must establish not only that the words were true, but also that they were published for the public benefit.

It is difficult to appreciate the continued retention of criminal defamation in its present form in our statute books. Obviously, an attack on a person's reputation is a civil matter, which is adequately addressed and redressed by the tort of defamation.

Criminal defamation should be restricted to those situations where defamatory matters are published with intent to extort or commit other crimes. In such cases, the basis for the offence is not in the bare publication of defamatory matter but in the criminal intent to extort money or other property from the person against whom the publication is made.

Akin to criminal defamation is the offence of sedition. A seditious publication has the intention to bring into hatred or contempt or to excite disaffection against the person of the President or Governor or Government of the Federation; or to excite the citizens or other 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 to raise discontent or disaffection amongst the citizens or other inhabitants of Nigeria;

or to promote feelings of ill-will and hostility between different classes of the population of Nigeria. Under the Criminal Code, sedition is punishable with a sentence of two years or a fine, and three years for a subsequent offence. Under the Penal Code, the sentences are longer. The situation in Nigeria regarding the offence of sedition is rather disturbing and unfortunate. In *Arthur Nwankwo v. The State*, the Court of Appeal struck down on the offence of sedition and held that sections 51 and 52 of the Criminal Code dealing with sedition are inconsistent with section 36 of the 1979 Constitution (now section 39 of the 1999 Constitution), nevertheless, the law remains in the statute book and several Nigerians have been charged for sedition. The Supreme Court is yet to pronounce on the matter. However, it has been contended that not all the subsections of section 50(2) relating to seditious intention are unconstitutional. Thus, section 50(2)(c) and (d) which define seditious intention as an intention (c) to raise discontent or disaffection among the citizens or other inhabitants of Nigeria, or (d) to promote feelings of ill will and hostility between different classes of the population, are reasonably justifiable in a democratic society. The blanket pronouncement of the Court of Appeal in so far as it affects section 50 in its entirety, is with the greatest respect, *per incuriam*.

Electoral Act

The Electoral Act spells out detailed provisions specifically barring politically inspired hateful speech. Political speeches often assume a divisive tone in order to exploit social prejudices for political gain. Hate speech is a precursor to violence and in every electioneering especially in a volatile society like Nigeria with different levels such as Ethno Religious, Internal Communal and Ethnic Stereotypes.

The Act largely passes the three part test as the provisions of the law are sufficiently precise, the aim being pursued is the maintenance of public order. The restriction is also proportionate to the aim sought to be achieved save the use of criminal sanctions, the appropriateness of which will be considered in the next section. On the other hand, the Act does not satisfy the six part threshold for hate speech as it makes no distinction between the tendency and intention. The provisions of Section 95 places focus on the tendency that such abusive language is likely to promote violent reaction or emotion rather than an actual intention to do so. As already discussed, for a proper restriction, such statement must have been calculated to have incited imminent lawless action, the potentiality of the act to cause harm should rather than its mere offensive nature be considered.

Furthermore, there is a need for a greater level of enforcement. The 2015 General Elections were replete with various occurrences of the use of politically motivated hate speech and yet no prosecution arose from their use. The framework should be used to hold the various political actors responsible for their hateful actions.

The provisions of the Act are however largely commendable for meeting with international best practices. The Act gives room for the regulation of political hate speech by non-state actors such as the Media and Civil Societies through various code of conducts and regulations.

Cybercrime (Prohibition, Prevention) Act, 2015

The Cybercrimes Act criminalizes the online distribution of racist and xenophobic materials. The Act falls within the permissible grounds for limitation under section 45 of the constitution as it can be said to be reasonably justifiable law. Hitherto the act, internet or online activities were sparsely regulated in Nigeria and was used to perpetrate numerous crimes such as cyber stalking, cyber bullying, credit card frauds and so on. The provision of Section 26 targets the distribution of materials which advocates, promotes or incites hatred, discrimination or violence, against any individual group of individuals, based on race, color, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors. The Act is thus justified on the basis that it seeks to protect the rights of others as well as public order and the collective security and integration of the country per the decision in DPP v Chike Obi .

There is however a degree of vagueness in the provisions of the law. Precision of the law is one of the grounds under the three part test on the restriction of the right to freedom of expression. The Act does not establish any proximate relationship between the restriction and the act, in construing a similar provision of its own law, the Indian Supreme Court held that Section 66A of its Information Technology Act was invalid as it did not establish the nexus between such (hateful) message and the actions resulting from such message.

Furthermore, the Act does not conform to some of the criteria for identifying hate speech. There is no ingredient in the offence of inciting anybody to do anything which a reasonable man would then say would have the immediate threat to public safety or tranquility. This is a fatal flaw in the law as the courts in other jurisdictions have always distinguished between mere discussion and advocacy from incitement. In Shreya Singhal v. Union of India , the court held that discussion and advocacy was the essence of free speech and that such discussion or advocacy could only be limited where it amounts to incitement or led to imminent violence. The provision of Section 26 can however be defended on the basis that it seeks to regulate the distribution of such hateful materials online. It has been argued that incitement to violence cannot be the sole test for determining whether a speech is hate speech or not where such speech is made online. In the age of technology, the anonymity of the internet allows a miscreant to easily spread false and offensive ideas. These ideas need not incite violence but they might perpetuate the discriminatory attitudes prevalent in the society.

The provision of the Cybercrimes Act gives no consideration to the context in which the statements were

made. It automatically prescribes offences for insulting or threatening persons for the reason that they belong to a group distinguished by race, color, descent, national or ethnic origin, as well as, religion, if used as a pretext for any of these factors. As already stated, the context of a speech plays an important role in determining its legitimacy. In State of Maharashtra v. Sangharaj Damodar Rupawate , the court observed that the effect of that words used in the offending material must be judged from the standards of reasonable, strong minded, firm and courageous men and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.

Section 24(1) of the Act also criminalizes the intentional sending of messages which are grossly offensive, pornographic or of indecent or menacing character. It will be recalled that the right to freedom of expression extends to unpopular ideas and statements which “shock, offend or disturb”.

The question of whether such laws prohibiting obscenity can be said to be at variance with the constitutionally guaranteed right to free speech has often been discussed. Such restriction must pass the three part test. It is argued that the provisions of Section 24(1) are vague as the law does not define sufficiently the terms “grossly offensive”, “indecent” or “of menacing character” leaving them for wide scope of interpretation. In some jurisdictions such as the United States and South Africa, such terms have been described as being excessively vague where they do not contain further definition as was held in ACLU v. Reno . Thus, states are required to go further by defining such terms.

In restricting the distribution of obscene, indecent and pornographic materials, it is important to make a distinction between materials which are merely offensive and materials which cause harm as it is only restrictions which have as their objective the prevention of harm that can be said to have met the requirement of being legitimate. As it is, the provision of Section 24(1) is paternalistic and offends the international standards of freedom of expression. Thus, there is a need to move from what is merely offensive.

Section 24(2) criminalizes the intentional spreading of false news for the purpose of causing annoyance, inconvenience, hatred, anonymity, insult, injury. The dissemination of false news is also prohibited by other laws in Nigeria. In R v. Amalgamated Press , the court defended the prohibition on spreading false news and held that freedom of expression cannot be employed to spread false news likely to cause fear and alarm to the public. This section has formed the basis for the arrest of public figures and bloggers alike.

The basic problem with criminalizing false news is that they have chilling effect on the right to freedom of expression as it may not be possible to determine whether a statement is false or true before publication, thus people will be deterred from publishing anything they cannot prove to be true. The Nigerian courts have yet to rule on the validity of this section. However,

the Zimbabwe Supreme Court considered a similar provision in *Chavundunka v. Minister of Home Affairs*. The provisions were held as too vague and unduly exerting a chilling effect on freedom of expression. The court further held that words used like “fear, calm and despondency” were overboard as anything newsworthy may cause such subjective emotions in a section of the public or in a single person.

The permissibility of the use of criminal sanctions to restrict expression will be discussed under the analysis of the provisions of the criminal code.

International Legal Framework

As earlier stated, the international legal framework for the regulation of hate speech and other related offences would be considered given that Nigeria is party to these treaties and the laws contained therein has a binding effect on the country. Considered below are the provisions of the International Covenant on Civil and Political Right, the African Charter on Human and Peoples Rights, the International Covenant on the Elimination of all forms of Racial Discrimination and lastly, the European Convention on Human Rights.

International Covenant on Civil and Political Rights

The ICCPR is the most significant international legal source for the protection of the right to freedom of expression. It provides the principal legal standard for a vast majority of cases relating to freedom of expression. Many regional human rights instruments have relied on the interpretation of the ICCPR especially with regards the restriction of the right. Thus, the ICCPR will largely form the basis for the writer’s analysis and criticism of the Nigerian legal framework for the restriction of the right to freedom of expression.

According to Article 19(3) of the ICCPR

The freedom of expression carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputation of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

The provision of Article 19(3) has been interpreted as meaning that only restrictions which meet a strict three-part test are considered to be legitimate. This three-part test is common in most international and much national jurisprudence pertaining to freedom of expression. The three part test provides that:

- a. The limitation must be provided by law.
- b. The limitation must serve a legitimate aim pursuant to Article 19(3).
- c. The limitation must be necessary to protect the aim identified under the second part of the test.

The state actor or entity imposing a limitation on free expression bears the burden of satisfying each of the three requirements. The requirements will now be

considered independently.

Provided by law

The first part of the three part test is that the restriction must be provided by law. The mere fact that there is a law prescribing a limitation does not satisfy this requirement. The Siracusa Principles provide that such law must be a law of general application in force at the time of its application and must be consistent with the covenant. It further states that the law imposing such restriction must be clear and accessible to everyone with adequate safeguards and effective remedies provided. It is clear that the term ‘law’ encompasses different types of laws, including administrative, civil and criminal laws, as well as a constitution.

It is also required that any law prescribing the limitation of freedom of expression be sufficiently clear and precise. To do so, the law must be formulated so as to enable a person to regulate his conduct and reasonably foresee the consequences of a given action. The courts have emphasized that the law must give adequate notice to those subject to it of exactly what is prohibited. Otherwise, these laws will exert an unacceptable “chilling effect” on freedom of expression as individuals stay well clear of the potential zone of application in order to avoid censure. In *Gooding v. Wilson*, the court stated that the right to freedom of expression needed breathing space to survive and as such any regulation must be with narrow specificity. However, it is not reasonable to expect laws to be perfectly precise as they need sufficient flexibility to be applied in different circumstances as well as to be relevant overtime. This view was recognized by the European Court in *Feldek v Slovakia*.

Legitimate Aim

The second part of the restriction of freedom of expression is that the restriction must be for the protection of a legitimate and overriding interest. The list of interests in Article 19(3) is exclusive in the sense that are the only interests whose protection might justify a restriction of freedom of expression as was held in the case of *Mukong v Cameroun*. In addressing whether this requirement has been satisfied, the court will usually take into consideration both the effect and the purpose of such law, so that where the original purpose was to achieve an aim other than those listed, the restriction cannot be upheld. Furthermore, the law must be exclusively and not tangentially directed towards the legitimate aim. The various interests shall now be considered.

A limitation to human rights based on the rights, freedoms and reputation of others cannot be used to shield the state and its officials from criticism. The expression “public order (ordre public)” as used in the Covenant is defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. State organs or agents responsible for the maintenance of public order (ordre public) should also subject to controls in the

exercise of their power through the parliament, courts, or other competent independent bodies. A state which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, is required to demonstrate that the limitation on in question is essential to the maintenance of respect for fundamental values of the community. Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured. National security is perhaps the most notorious interest protected by the article, in terms of potential abuse as a restriction of freedom of expression. The problem is that on the one hand, national security is a social value of highest order, upon which the protection of all human rights, indeed our whole way of life depends. On the other hand, it is very difficult for non-experts including judges, to understand and assess what constitutes a threat to security undermining oversight mechanism. There have however been attempts to construe it. The Sirucusa Principles states that national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force. A claim of national security cannot be used as a pretext for invoking vague or arbitrary limitation or for local or positively isolated threats of law and order. Principle 2 of the Johannesburg Principles: National Security, Freedom of Expression and Access to Information drawing inspiration from the siracusa principles provides that a restriction is not legitimate unless its purpose and effect is to “protect a country’s existence or its territorial integrity against the use of force or its capacity to respond to use or threat of force” from either internal or external threat. Lastly, even when justified, the law must be accompanied by adequate safeguards to ensure against interpretative abuse or disproportionate application.

Necessity

The third part of the test is that the restriction of freedom of expression must be necessary to protect the interest identified under the second part of the test. The restriction must be necessary and proportionate to achieving one of the grounds outlined as a legitimate ground of restriction. This means that the restriction must be no more than absolutely required to achieving that aim, and proportionate to that goal. This part presents a high standard to be overcome by a state seeking to justify its restriction as the state must convincingly establish the necessity of the restriction.

“Necessary” is a complicated notion but it has been interpreted to include a number of elements:

Firstly, there must be a pressing or substantial need for the restriction. This is similar to the question of whether

the restriction serves a legitimate aim.

Secondly, the measures taken to protect the right must be rationally connected to the objective of protecting the interest, in the sense that they are carefully designed so as to be the least intrusive measures which would effectively protect it. In *R v Oakes*, the court held that:

The measures adopted must be carefully designed to adhere to the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Finally, the restriction must meet some form of proportionality test, whereby the benefit in terms of protecting the interest must be greater than the harm caused to freedom of expression. Otherwise, the restriction cannot be justified on the basis of such public interest.

The African Charter on Human and Peoples Rights

Article 9 of the African Charter protects the right to express and disseminate opinions within the law. The only other ground of limitation is contained in Article 27(2) of the African Charter which provides that the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, and common interest. However, the African Commission created a “Declaration of Principles on Freedom of Expression in Africa” which reaffirms and elaborates on the right described in Article 9. Principle II of the Declaration states that:

a. No one shall be subject to arbitrary interference with his or her freedom of expression.

b. Any restriction on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society.

In the case of *Article 19 v Eritrea*, the African Commission made pronouncement on the so called claw back clauses. The court’s jurisprudence interpreted such clauses as constituting a reference to international law, meaning that only restrictions on rights which are consistent with the state parties’ international obligation should be enacted by the relevant national authorities. The Commission also held that national law cannot be used to negate obligations under the charter as it would render the charter meaningless and as such to allow national law to have precedence over international law of the charter would defeat the purpose of the rights and freedoms enshrined in the charter. International human rights standards must always prevail over contradictory national law and as such any limitation must be in conformity with the provisions of the charter. The Commission also held in the case of *Media Rights Agenda and Anor v. Nigeria* that the African Charter does not contain a derogation clause and therefore limitations on the rights and freedoms enshrined in the charter cannot be justified by emergencies or special circumstances. The Commission further stated that the only legitimate reason for limitation is contained in Article 27(2) and as such any limitation of rights must be strictly proportionate

with and absolutely necessary for the advantages which are to be obtained. Very importantly, any limitation must never have the consequence that the right itself becomes illusory.

The African Commission has also given decisions which construe the various grounds of limitation provided in the Nigerian constitution. In *Scanlen and Holderness v Zimbabwe* held that the concept of “public order” in a democratic society demands the highest possible amount of information. It is the widest circulation of news, ideas and opinion as well as the widest access to information as a whole that ensures this public order. The commission also noted that for a restriction to be “within the law”, the domestic legislation must be in conformity with the African Charter and other international human rights instruments and practices. The commission usually adopts a broad interpretation in construing the phrase. In *Constitutional Rights Project and Anor v. Nigeria*, the commission stated that it was sympathetic to all genuine attempts to maintain public peace, it noted that where extreme measures are used to curtail rights, it leads to greater unrest and that the judiciary should be empowered to check such excesses.

The onus of establishing the justification of any of the fundamental rights guaranteed by the protection of the law must be on the party alleging such justification to derogate from constitutional guarantees. Thus, the state or the relevant national authority will usually have to justify any limitation placed on the constitutionally guaranteed right to freedom of expression. The competent authorities should not enact provisions which would unduly limit the exercise of this freedom. States should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.

The International Covenant on the Elimination of all forms of Racial Discrimination

The ICERD recognizes the inherent tension between freedom of expression and prohibition of speech that incites to discrimination, hatred and violence. It has implications for construing forms of hate speech as it calls upon states to ban a much broader range of speech and action than the ICCPR.

Article 4(a) provides that State Parties

Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.

The ICERD however differs from the ICCPR in certain respects. Firstly, its conceptualization of hate speech is specifically limited to speeches that refer to race and ethnicity. Secondly, it also imposes an obligation to criminalize racist ideas which may not necessarily be

inciting discrimination, hostility or violence. The third and the most important difference is the issue of intent. The ICCPR requires that intent to incite hatred needs to be proved. However, under the ICERD, the mere dissemination of racial superiority or hatred, or even incitement to racial discrimination or violence, shall be punishable in accordance with the ICERD.

Furthermore, the Committee on the Elimination of Racial Discrimination has actively addressed hate speech in its General Recommendation 29, in which the Committee recommends state parties to:

a) Take measures against any dissemination of ideas of caste superiority and inferiority or which attempt to justify violence, hatred or discrimination against descent-based communities;

b) Take strict measures against any incitement to discrimination or violence against the communities, including through the Internet;

c) Take measures to raise awareness among media professionals of the nature and incidence of descent-based discrimination.

European Convention on Human Rights

European Court of Human Rights has contributed immensely in developing jurisprudence on hate speech. Article 10 of the European Convention of Human Right guarantees right to freedom of expression, subject to certain formalities, conditions, restrictions or penalties stipulated in clause 2 of this article which reads:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Legal Implications and Effect of the Passing of the ‘Hate Speech Bill’ Into Law

Asides from considering the preexisting legal framework, the Hate Speech Bill as earlier stated, has received plenty criticisms from various stakeholders. It is therefore pertinent to examine and discuss the effects that the passing of the Bill into law might have of some sections of the Nigerian society.

Proposed Bill and the Nigerian Government

It will be helpful to state that in Nigeria and as obtainable in other democracies, there exists a kind of relationship between free speech and hate speech, thus, striking a balance between the conflicting interests that exist between them is of utmost importance for any government. Free Speech derives its legitimacy from the Constitution which vests legitimacy on the political authority. Guarantees of free speech allow citizens to readily accept governmental authority.

It may be interesting to note that the United States does not have hate speech laws, since American courts have repeatedly ruled that laws criminalizing hate speech violate the guarantee to freedom of speech contained in the First amendment to the United State Constitution. By necessary implication, hate speech enjoys substantial protection under the first amendment; this is premised upon the presumption that freedom of speech requires the government to strictly protect robust debate on matters of public concern notwithstanding that such debate degenerates into distasteful, offensive, or hateful speech that causes others to feel grief, anger or fear.

While freedom of expression is clearly protected by a considerable body of treaty law, it can also be regarded as a principle of customary international law, so frequently is the principle enunciated in treaties, as well as other soft law instruments. Most human rights treaties, including those dedicated to the protection of the rights of specific groups – such as women, children and people with disabilities - make explicit mention of freedom of expression.

Perhaps, the most significant international legal source of the right to freedom of expression is set out in Article 19 of the International Covenant on Civil and Political Rights Nigeria acceded into the treaty on July 29, 1993. Nigeria has also ratified that African (Banjul) Charter on Human and People's Right which it ratified on July 22, 1983. Also Nigeria has also ratified the International Convention on the Elimination of all Forms of Racial Discrimination on October 16, 1967. These instruments impose certain obligations on states to fulfill, respect, promote and protect these rights. States are also obliged to ensure that their domestic laws are brought in consistency with their international obligations.

In this light, it is opined and submitted that even in the consideration of the hate speech bill by the Nigerian government, it should bear in mind its obligations and duties under the various international, regional and sub-regional treaties that it has acceded to. In giving such consideration, it will align itself with best global practices.

Proposed Bill and Fundamental Human Rights

Freedom of expression has always been a vital feature of any society. In modern times, it has assumed even greater importance. Freedom of expression is an important fundamental right because the right to speak one's mind freely on important issues in society, access information and hold the powers to account; plays a vital role in the healthy development process of any society. Expression in this context includes the right to hold views or opinions, speech, publish articles or books or leaflets, television or radio broadcasting, producing works of art, communication through the internet, some forms of commercial information and many other activities. Simply construed, the right to freedom of expression can be defined as the right to right to communicate or express one's opinions. It is universally acknowledged that the right to freedom of expression is a foundational

human right of great importance. At the same time, it is also recognized that it is not an absolute right, and every democracy has developed some system of limitations on freedom of expression. At the top of such restrictions are speeches which incite violence, expressions which are hateful, offensive and obscene or any expression which is legally prohibited. Such restrictions are usually borne out of the need to protect the rights of others as well as the obligation of the state to preserve public peace, public morality and public order.

The hate speech bill when juxtaposed with the tenets of fundamental human rights, the freedom of expression in particular a vicious circle of affront is seen. The bill is a heinous attack on freedoms guaranteed under the umbrella of rights that are fundamental to human beings; an attack that should be seen in all its glorified wrongs and so vehemently rejected. For an attack on the freedom of expression is an attack to the very essence of living.

Proposed Bill and the Constitution

The preamble to the 1999 Constitution of the Federal Republic dedicates itself to “promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people.” Chapter IV of the Nigerian Constitution provides for a number of rights amongst which is the right to Freedom of Expression.

Section 39(1) provides that:

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

Also, Section 45(1) provides that:

Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society

(a) In the interest of defense, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedom or other persons

Furthermore, Section 42 which provides for the right to freedom from discrimination states that a Nigerian shall not as a reason of his political opinion (one of the grounds listed) be subject to any disability or restrictions either expressly, or in the practical application of, any law in force in Nigeria or any executive or administrative action.

The constitution makes no provision for the prohibition of hate speech and other offensive remarks. And so the debate as to the subsequent constitutionality of the hate speech bill if it ever sees the light of the day is a viable one. It should be noted however, laws have relied on the limitation of rights provided for in Section 45 to do so.

Proposed Bill and the Citizens of Nigeria

Nigeria's political history reveals that there have been consistent and persistent threats to the exercise of free speech by citizens. It is quite appalling that despite these

experiences during the military era where suppression of free speech and a general violation of human rights were the order of the day, the Nigerian Senate considers it a national priority to prohibit what it terms hate speech. This is reflective and symptomatic of the shallow minded leadership that we currently have at the Senate.

The hate speech bill as stated earlier can inadvertently become an anti-free speech bill, this appears to be the legitimate fears of the citizens.

Nigeria is facing an emergency in terms of insecurity, poor infrastructure and a weak economy, these areas are begging for legislative interventions. The Senate should be alive to its legislative responsibilities, its oversight functions have become more of sight-seeing lately.

The Constitution and other relevant statutes as stated time over in the course of this research have placed the freedom of speech within certain legal restraints. The ample provisions contained to check abuse of free speech makes this proposed hate speech bill utterly irrelevant and unnecessary, the attempt of the legislature to avert certain occurrences from happening may not only amount to a wild goose chase but it could bring to reality the worst state of governance that leaves the citizens with no choice than to find other unlawful ways through which their opinions may be expressed.

Nigerians need respite from the highhandedness and insolence of the ruling class, the national mood suggests that there is a deep-seated anger against the political class which has a strong penchant for riding roughshod on the masses. It can be safely assumed that the proverbial last straw that will break the camel's back may be the unfortunate passage of this proposed bill into law.

Hate Speech Bill remains one of the most controversial bills currently making rounds in the National Assembly. Stakeholders have clamored that the Bill be thrown out for various reasons ranging from its imposition of capital punitive measures, it's poor definition of terms, or the fact that it is unnecessary and superfluous, which happens to be the basis of this paper. The view of this paper, and very much that of civil society organizations in Nigeria, is that the Government does not have any patriotic or nationalistic reason for amending the existing broadcasting laws or laws existing that regulate hate speech in Nigeria. The existing Cyber Crimes Act and the Anti-Terrorism Act, among other pre-existing regulations discussed paper, which already cover many of the offences the new bills seek to address should be given more attention and effect to rather than waste valuable resources on the enactment of fresh laws to enable effective implementation and avoid a situation of plurality of laws.

Flowing from this, a starting point is to recognize that the line between offensive and hate speech is often blurred. While proper hate speech—what I define as presenting “clear and imminent danger” of triggering violence — should be criminalized (but certainly not with death penalty), non-legal instruments would be more effective in a polarized society like Nigeria to deal with offensive and

other hurtful speech forms. In this respect, a taxonomy of what constitutes hate and offensive speeches would be good foundation. Media organizations through their unions should then be urged to incorporate these as part of good journalistic practice and impose sanctions on erring members.

Perhaps one of the most effective ways of combating hate speech would be to marginalize purveyors of such speeches. In the U.K., while far-right, fascist parties like the British National Party and the racist ideas they support are not banned, mainstream British politician avoid associating openly with members of such parties. In Nigeria, on the other hand, offensive and hate speech mongers are often seen as regional and ethnic heroes.

Nigerians should also learn to laugh at themselves. This is already happening in some ways with the country's comedians who dish out jokes breaking down the lines of ethnic and regional profiling, showing that every ethnic group is both a victim and a victimizer.

The National Orientation Agency—responsible for communicating government policy and promoting patriotism—in concert with civil society groups and community leaders, should also embark on a campaign against the use of hate speech. In the same vein, internet service providers should be encouraged to bring down blogs and websites they host which publish, promote, or provide unfettered space for the expression of hate and offensive speeches. Put simply, more than just changing the law, it will take efforts from all sections of society—government, media, business, community leaders, civil society, and more—to curb the influence of hate speech in Nigeria.

Also, international law and standards require States to prohibit in law advocacy of hatred that constitutes incitement to discrimination, hostility or violence (commonly known as “hate speech”). This research work recommends that such prohibitions need to be set forth in law and formulated precisely. The law and its application must also comply with the required guarantees on the right to freedom of expression, and in particular must meet the requirements of necessity and proportionality, in compliance with Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR).

This is not an attempt to support the promotion of hate speeches. Hate Speech in itself is wrong, it threatens the country's unity, peace and efforts of the government in nation building, and it similarly widens the social gap between Nigerians. However, it is the recommendation of this research work that its regulation should be traded with caution, the extremely punitive capital punishments proposed in the Bill should be reviewed and the wordings of the Bill should be redrafted to avoid falling into a slippery slope with precarious consequences. Legislators should engage the services of experienced and knowledgeable draftsmen or lawyers in drafting such sensitive laws because at the bottom of it all, the aim is to build a unified and peaceful Nigeria.

CONCLUSION

Hate speech exists both in Nigeria and other jurisdictions. On the other hand, freedom of expression is one of the basic fundamental human rights in the constitution of most nation states. Freedom of expression is widely accepted as being necessary in a democracy as it facilitates the exchange of diverse opinions. Democracy guarantees and protects civil and political rights. Freedom of expression is essential for vibrant, robust and rigorous debate, disagreement and contention. The right to free speech is not unlimited, while few consider this freedom to be absolute, most would require compelling reason before considering the abridgement of freedom of expression to be justified. From the foregoing, hate speech depicts any utterance whether verbal or virtual which can endanger public safety, unity and national security. Anything short of this deserves to be curtailed so as not to lead to anarchy and violence. It is pertinent to note that for speech to qualify as hate speech, it must have occurred in the public.

With the expansion of the internet and the social media, new regulatory challenges more frequently arise because of the global reach of hate speech once transmitted. From the foregoing it is pertinent that limitations should and must be placed on hate speech. However, caution must be exercised to ensure that the rights of citizens to express themselves are not suppressed

There is no point overemphasizing that hate speech and similar forms of expressions can contribute substantially to the deterioration of societal stability and drive a country to armed confrontation. However, given the plethora of international treaties, laws and legal principles that are operative in Nigeria that seeks not only to prohibit hateful and offensive speeches but also to punish same it will be deemed superfluous to enact yet another under the designatum “The Independent National Commission for the Prohibition of Hate Speeches”.

Such an effort coming at a time when the nation is faced with numerous challenges such as a growing rate of insecurity, kidnapping, armed robbery, police brutality, abject poverty, gross under-development, only to mention but a few, it would seem that the government is directionless and lack the political will to tackle problems that are true to Nigerians.

If the government’s intention is true as to the prohibition of hateful and offensive speeches so as to curb the menace it leaves at its wake, efforts should be geared towards giving effect to laws that have already made such provisions. Rather than wasting the nation’s time, energy and resources in the pursuit of such pointless venture.

Nigerians need some sort of succor from the highhandedness and insolence of the ruling class, the promulgation of such a bill at a time like this when there is a deep-seated anger against the political class which has a strong penchant for riding roughshod on the masses will be like the proverbial last straw that will break the camel’s back and the aftermath of such will be left to wild imaginations. The #ENDSARS movement will only be

but a tip of the iceberg.

REFERENCE

- A Jideofor (2018). Should the Law be Used to Curb Hate Speech in Nigeria? Nassarawa State University, Keffi.
- African (Banjul) Charter on Human and People’s Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM. 58 (1982). Hereinafter referred to as “African Charter”
- All India Reports SC 775. See also R v. Butler (1992). 1 SCR 452.
- Arup Bhuyan v. State of Assam (2011). 3 SCC 377.
- All Nigeria Law Report (NLR) (1962). 324. ACLU v. Reno (1996). 929 F. Supp 824.
- Also criminalised by Criminal Code, s393; Penal Code, s59 and Newspaper Amendment Act, s4.
- A.Adepegba, (2017). *AduMaikori to face Trial*. Retrieved on June 19, 2017. <http://punchng.com/maikori-released-by-police-to-face-trial/>
- American Association for the International Commission of Jurists, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1985). U.N. Doc. E/ CN.4/1985/4.
- A. Razaq, P. Udende, A. Ibrahim and L. Oba, (2017). Media, Politics and Hate Speech: A Critical Discourse Analysis. *E Academia Journal*, 243.
- Article 19 v. Eritrea (2007). AHRLR 73 ACHPR
- Adopted by a group of experts convened by the international human rights NGO, ARTICLE 19. (London: 1996)
- African (Banjul)(June 27, 1981). Charter on Human and People’s Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM. 58 (1982).
- Brandenburg v. Ohio (1969). 395 US 444
- B. Adetokunbo, “Impact of Military Rule on Fundamental Human Rights in Nigeria” in Okpara Okpara ed. Op. Cit. at 365.
- Constitutional Rights Project v. Nigeria (2000). AHRLR 233 ACHPR 1999
- Committee on the Elimination of Racial Discrimination, General Recommendation 29, Discrimination Based on Descent (Sixty-first session, 2002), U.N. Doc. A/57/18 at 111 (2002). Reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.6 at 223 (2003), paras. r, s and t
- Criminal Code Act (1985). Cap. C 38 LFN 2004 s. 377. 6 Nigerian Commerical Law Report (NCLR) 228.
- Constitution of the Federal Republic of Nigeria.(CFRN) (1999). (as amended) Section 39
- Cybercrimes Act, s26(1) (b) and (c)
- Cybercrimes Act, s26.
- Chavundunka v. Minister of Home Affairs (1985). WCLR 228, 6.
- Constitutional Rights and Anor v. Nigeria (2000). AHRLR 227 ACHPR 1999
- DPP v.Chike Obi (1961). *ANLR*, 1

- Electoral Act, s95 and s102
- Edward N (ed) *The Stanford Encyclopaedia of Philosophy* (Fall 2016 ed.)
- Examples include the cases of *The Sunday Times v. United Kingdom*, (26 April 1979). Application No. 6538/74, para. 45; *Mukong v. Cameroon* 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).
- E P Guiro, (2017). *Hate Speech on Social Media, Philosophia*, 45(3) 957-971.
- European Convention on Human Rights, adopted November 4, 1950, entered into force September 3, (1953). Hereinafter "ECHR". There is no need for a Hate Speech Law" available @ <https://www.thisdaylive.com/index.php/2019/11/22/there-is-no-need-for-a-hate-speech-law/> Retrieved 8th January 2021
- E. Neisser, 'Hate Speech in New South Africa: Constitutional Consideration for a Land Recovering from Decades of National Repression and Violence (1994). 10, *South African Journal of Human Rights*, 337
- Feldek v. Slovakia* (12 July 2001). Application No. 29032/95, para. 56.
- Guidelines for Political Rallies, Code of Conduct for Political Parties and the Nigerian Media Code of Conduct for Political Parties
- Gooding v. Wilson* (1972). 405 US 518 p. 522 *Handyside v. United Kingdom* (1976). EHRR 737 at Para 49, 1.
- H.Kukah 'Hate Speech, Social Media and the (2015). *Election*. Retrieved on on 3rd January, 2021. pointblanknews.com/pbn/.../hate-speech-social-media-2015-election
- International Covenant on Civil and Political Rights(1996). UNGAR2200A (XXI) 1996 Article 19.
- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) (October 16, 1967).
- I. Gigilardone, D. Gil, T. Alves and G. Martinez, (2015) *Countering Online Hate Speech*, UNESCO: Paris, 10
- I. Gigilardone, D. Gil, T. Alves and G. Martinez, *Countering Online Hate Speech*(2015). UNESCO: Paris, 2015.
- International Covenant on Civil and Political Rights March 23, (1976). 993 UNTS
- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) October 16, 1967
- Juma and Ors v. Attorney General* (2003). AHRLR 179 KeHC 2003
- International Covenant on Civil and Political Rights (March 23, 1976). 993 UNTS. Hereinafter referred to as "ICCPR".
- J. Adibe, *Fayose's Advert: Offensive or Hate Speech?* adapted from conference paper presented at a roundtable on hate speech organised by the Kukah Centre and the MacArthur Foundation, Abuja, on January 27, 2015.
- J. Waldron, *The Harm in Hate Speech* (2012). *Harvard University Press: Cambridge*, 87.
- K.O Mrabure, 'Counteracting Hate Speech and the Right to Freedom of Expression in Selected Jurisdiction'(2016), 7, *Nnamdi Azikwe University Journal of International Law and Jurisprudence*, 160
- Law of the Federation of Nigeria (LFN)* (1990). Cap. 77. now Cap. C. 38 *Laws of the Federation of Nigeria* 2004.
- Law of the Federation of Nigeria (LFN)*(1990). Cap 345 now Cap. P. 3 Vol. 13 *Laws of the Federation of Nigeria* 2004.
- Law Commission of India, *Hate Speech March* (2017). Report 267, 15.
- Law Commission of India, *Hate Speech*, (March 2017). Report 267, 37.
- M. L.Nnabuike, *Media Law and Policy in Nigeria* (2016). Malthouse Press: Lagos, 2016, 163.
- M. Nowak, *UN Covenant on Civil and Political Right: CCPR* , (2005). Kehl Ltd: Engel Cop.
- Media Rights and Anor v. Nigeria* (2000). AHRLR 200 ACHPR at para 67
- Mukong v. Cameroun* (21 July 1994). Communication No. 458/1991, para. 9.7 (UN Human Rights Committee)
- Nigerian Weekly Law Report (NWLR)* (1989). Pt. 116, 439.
- Nigeria's Human Rights Commission denounces Hate speech in political rallies and social media (2021). Retrieved on 3rd January, 2021 newsdiaryonline.com/nigerias-rights-commission-denounces-hate-speech-political-rallies-social-media/
- OMrabure *Counteracting Hate Speech and the Right to Freedom of Expression*, (2016). *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 17.
- Pursuant to Article 45(1) of the African Charter (2002). Signed at the 32nd Session of the African Commission on Human and People's Rights in Banjul, Gambia. October 2002.
- Rex v AdemaArubi* (1935). 11 *Nigeria Law Report (NLR)* 27, *Ogbuagu v Police* (1953) 2 *Nigeria Law Reports NLR* 139.
- Ramesh v. Union of India* (1988).
- Red Alert on Hate Speech Prevalence in Nigeria, (2021). Retrived on 3rd January 2021. <http://intervention.ng/6220/>
- R v. Butler* (1992). SCR 452, 1
- R v. Amalgamated Press* (1965). All NLR 199
- RefahPartisi (The Welfare Party) and Others v. Turkey*, (13 February 2003). Application Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (European Court of Human Rights), para. 58
- R v. Big M. Drug Mart Ltd* (1985). 1 SCR 295. 331
- R v. Oakes* (1986). SCR 103, 1, 138-139.
- See, for example, *Tolstoy Miloslavsky v. United Kingdom*, (13 July 1995), Application No. 18139/91 (European Court of Human Rights).
- Social and Economic Rights Action Centre (SERAC) and *Another v Nigeria* (2001). 60 AHRLR (ACHPR 2001)

- SALC Litigation Manual Series (2021). *Freedom of Expression: Litigating cases of limitations of the exercise of freedom of speech and opinion*. Retrieved on 5th January 2021. <http://www.southernafricalitigationcentre.org/1/wp-content/uploads/2016/09/Freedom-of-Expression-Manual.pdf>
- See C. Oko, (1978 - 1988). Constitutionality of Nigerian Sedition Law Arthur Nwankwo v The State. *NJR*, 3, 186 - 187.
- Sunday Times v. UK (26 April 1979). Application No. 6538/74, para. 45.
- Shreya Singhal v. Union of India (2015). All India Reports 1523
- State of Maharashtra v.SangharajDamodarRupawate (2010). SCC 398, 7.
- Section 45(1)(a) Constitution of the Federal Republic of Nigeria (1999), as amended Article 19.
- Siracusa Principles (n 21) at 47. Principle 43.
- S. Rodney, Free Speech in an Open Society (New York: Knopf, 1992), 319
- Siracusa Principles (n 21) at 47. Principle 29.
- See, for example, Lingens v. Austria, (8 July 1986). Application No. 9815/82, para. 39 (European Court of Human Rights).
- Scanlen and Others v. Zimbabwe (2009). AHRLR 289 ACHPR 2009
- Sahara Reporters, (2021). *Police arrest Kemi Olunloyo over Blogpost accusing Pastor of Adultery*. Retrieved on 8th January, 2021. <http://saharareporters.com/2017/03/17/police-arrest-kemi-olunloyo-over-blog-post-accusing-pastor-adultery>
- See Declaration of the Principles of Freedom of Expression in Africa note 207 at 45
- See Defining Defamation, Principles on Freedom of Expression and Protection of Reputation (2021). Retrieved on 8th January, 2021. <http://www.ipu.org/splz-e/sfe/definition.pdf>
- Sunday Times v. United Kingdom(n 21) at 46.
- SERAC v. Nigeria (2001). 60 AHRLR (ACHPR 2001).
- T. Mendel, (2021). Restricting Freedom of Expression: Standards and Principles. Being paper for meeting hosted by the UN Special Rapporteur on freedom of opinion ad expression. Retrieved on 8th January, 2021. <http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf>
- The rights and reputation of others and the protection of national security, public order, public health and public morality.
- Thappar v. State of Madias (1950). SCR 594. 603
- Toby Mendel (n 21) at 47.
- The Centre of Information Technology report of the occurrence of the use of Hate Speech in Nigeria. (July 2016). Retrieved on 2021 from <http://intervention.ng/4100>
- The Increasing Problem of Hate Speech in Nigeria (2020). Retrieved 8th January 2020 <https://www.brookings.edu/blog/africa-in-focus/2018/10/02/should-the-law-be-used-to-curb-hate-speech-in-nigeria/>The Declaration of the Rights of Man and the Citizen, as approved by the National Assembly of France. (August 26, 1789) Article 16 '*any society in which no provision is made for guaranteeing of rights..... has no Constitution*'.
- The United Nations Committee on the Elimination of Racial Discrimination – General Recommendations on Combatting Racist Hate Speech (2013). CERD/C/GC/35. Council of Europe Committee of Ministers Recommendation No. (1997). 20 on Hate Speech (Adopted by the Committee of Ministers on 30 October 1997at the 607th meeting of the Ministers' Deputies
- Universal Declaration of Human Rights (1948). Article 19
- Unlike in civil defamation where communication of the defamatory matter to the plaintiff alone will not constitute publication. The defendant must have communicated it to a third party.