

DELIMITING THE BOUNDARY BETWEEN HATE SPEECH AND THE FUNDAMENTAL RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS IN NIGERIA

MARK Y. DANUNG* PAUL M. DAWAP**

Abstract

From time immemorial, human rights have remained a dominant topic on the front burner of local, national and international discourse. This is undoubtedly attributed majorly to their universality and evolving nature. It is germane to state that even with the emergence of digital technology, the position has not changed. On daily basis, there are always emerging issues that appear to be at cross purposes with the dictates of all inalienable rights, and it is for this purpose that this paper sets out to analyze the boundaries that exist between hate speech and the right to freedom of expression and the press provided for in Section 39(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, taking cognizance of the proposed National Commission for the Prohibition of Hate Speech Bill, pending before the

National Assembly. As it is consistent with most law researches, this work has employed the doctrinal research approach in x-raying the meaning, existing laws, and the boundary line between free speech and hate speech, as well as their implications for Nigerians on the cyberspace and the challenges associated with same. The work notes that the current corpus of our legal jurisprudence sufficiently covers both the criminal and civil aspects of hate speech. Therefore, it is absolutely needless to enact an entirely new law to govern the subject, as that will be tantamount to duplication. Recommendations have also been proffered.

Keywords: Hate Speech, Freedom of Expression, the Press, and Delimiting.

Introduction

Freedom of expression and the press is one of the fundamental rights recognized by the Constitution of the Federal Republic of Nigeria, 1999, as amended. It allows citizens to express their views and opinions about the performance or non-performance of the government of the day. Therefore, making laws that are tantamount to breaching this very essential right is undeniably challenging the fulcrum upon which a just society rests as provided for by the Constitution and in line with international best practices.¹ However, unfolding developments reveal that the Nigerian government, in a bid to regulate the growing activities on the various social media platforms, via the Senate, is currently considering two harsh bills relating to freedom of expression and the press online, including one which proposes death penalty

for hate speech.² These bills, supported by the Nigerian Government, represent an alarming escalation in the authorities' attempt to censor and punish social media users for freely expressing their opinions.³

It is needless to say that social media is one of the last remaining places where Nigerians can express their opinions freely. The harassment of journalists, bloggers and the introduction of the Cybercrime Act have already shrunk the civic space and created a climate of fear.⁴ The said bills are set to criminalize those who breach the law with punitive measures like fines and imprisonment of up to three years, solely for exercising their rights to freedom of expression. The situation will be worse if the hate speech bill is passed as people could face death penalty.⁵

In justifying their position, the government has contended that social media technologies have played a very significant role in the over bearing effect of hate speech on the Nigeria's polity. On 21st

G. S. Pwul, SAN and Partners, L. PP, No.34, West of Mines, Jos, Plateau State. danungmark@yahoo.com, Public Law Department, Faculty of Law, University of Jos, Jos, Nigeria. pauldawap83@gmail.com

Corresponding Author

MARK Y. DANUNG

E-mail: danungmark@yahoo.com

1. Section 39 CFRN, 1999 (as amended).

2. < www.amnesty.org/en/latest/news/2019/12/nigeria > accessed on the 11 March 2020.

3. Ibid.

4. Bakare Seun, 'Programs Manager Amnesty International Nigeria' < www.amnesty.org > accessed on the 11th March, 2020.

5. Ibid.

day of August 2017, Buhari expressed distress over-growing amount of hate speech, 'especially on social media'⁶, saying it had 'crossed our red lines by daring to question our collective existence as a nation and Nigeria's unity is settled and not negotiable.'⁷ In a related development, Osibanjo recently warned that 'Hate Speech precedes genocide, the greatest tragedy in human history.'⁸ On another platform, he had opined that Hate Speech is a specie of terrorism.⁹

We clearly understood the fact that Nigerian political landscape has suffered series of political instability and endless internal conflicts. However, it is opined that it is due, primarily, to the multi-diverse nature of the Nigerian political space, which is characterized by multi-ethnicity, multi-religiosity and multi-political culture.¹⁰ The truth still remains that since the amalgamation of the Northern and Southern protectorates in 1914, the diverse ethnic groups that constitute the federating units that became Nigeria never really appreciated the colonial union that was hurriedly contracted on their behalf, without their consent first sought for and obtained. Politicians started questioning Nigeria's nationhood even before the ink with which Nigeria's independence was signed in 1960 was dry.¹¹ This disputes culminated in a 30-month civil war that led to the deaths of tens of thousands and millions of pounds' worth of property losses from 1967 - 1970. Even though the country survived many crises, inciting speech did not stop, despite efforts at forgiveness and reconciliation.¹²

Can there ever be stability in a political system, where the political space is anchored on the major differences that easily separate them, rather than the things that bind them? Nigerians are not united in fighting their common enemies, which include injustice, poverty, corruption, underdevelopment, amongst others. It is sad that their allegiance is first to their respective ethnic groups, with only little left for the unity and security of the country. This

national disintegration is manifested more in stereotyping and the deployment of derogatory remarks when addressing Nigerians from other ethnic groups.

While it can be argued that there exist stereotypes about every ethnic group in Nigeria, the vitriol and violence that pervade its manifestation between the Northern and Southern Nigeria is unequalled.¹³ Nnamdi Kanu, leader of the Indigenous People of Biafra (IPOB), had threatened the Nigerian government, as well as the nation's unity in his quest for Biafra.¹⁴ The Arewa Youths also made a hate speech, when they ordered all the Igbo out of their region and same with the Niger Delta militants who asked the Hausa and Yoruba out of their regions as well. Each occasion has their peculiar reasons.¹⁵

One would expect that, in the light of the express provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), especially the provision of Section 39, which guarantees freedom of expressions and the press and those of other existing laws that expressly limit and/or define the clear acceptable standards in exercising one's right to freedom of speech, there is no need to dissipate serious energies and resources in midwifing the birth of another law, whose provisions are already elegantly captured in the Penal and Criminal Codes, Terrorism (Prevention) (Amendment) Act, 2013, Cybercrime Act, just to mention a few.

It is against this backdrop that this paper sets out to: x-ray the meaning of Hate Speech and freedom of expression and the press; examine the provisions of other laws on the subject; determine the dividing lines and/or parameters between Hate Speech and freedom of expression and the press' vis-à-vis the provision of the Constitution of the Federal Republic of Nigeria, 1999, as amended; analyze the major concerns associated with the passage of the hate speech bill; identify the challenges associated with this development and proffer recommendations incidental thereto.

6. Ibid

7. Audu Bulama Bukati, 'Counter-Extremism, Hate Speech Threatens Co-Existence in Nigeria' September 4, 2017.

8. Daniel Agbese, 'Hate Speech' Vanguard news online December 6, 2018 <<https://www.vanguardngr.com>> Accessed on the 10th March 2020.

9. Vanguardngr.com, 'Minding your Language in today's Nigeria September 25, 2017. <<https://www.vanguardngr.com>> accessed on the 10 March 2020.

10. Yahaya Yakubu, 'Hate Speech and the Challenges of Nation Building in Nigeria' *International Journal of Research and Innovation in Social Science (IJRISS)* Vol.3 No. 5., 2019.

11. Ibid.

12. Ibid.

13. Jeneper Joel, 'Ethnopolism and Ethno-Religious Hate Speech in Nigeria' <<https://www.researchgate.net>> accessed on the 4th April, 2020.

14. Mohammed A., 'Tackling Hate Speech in Nigeria' Blueprints December 7, 2018 <www.blueprintsnews.ng/hate-speech-in-nigeria> accessed on the 5th April 2020.

15. Ibid.

CONCEPTUAL FOUNDATION

Hate Speech

Like most subject matters of discourse, hate speech is a very complicated concept. There is no internationally accepted definition or a unified understanding of the concept. However, gradually through legislation, courts' pronouncements and academic publications, the damage and danger a certain form of expression entails, has been recognized internationally as constituting hate speech.¹⁶

Neisser, in his well considered position, describes hate speech to refer to all communications (whether verbal, written or symbolic) that insult a racial, ethnic or 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.¹⁷ Similarly, Ezeibe defines Hate Speech as a speech, gesture, conduct, writing or display which could incite people to violence or prejudicial action. Essentially, such speeches rob others of their dignity.¹⁸

The United Nations Committee on the Elimination of Racial Discrimination describes hate speech as:

All dissemination of ideas based on racial, or ethnic superiority or hatred, by whatever means; incitement of members of a group on grounds of their race, color descent or national or ethnic origin, threat or incitement to violence against persons or groups on the grounds in above; expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in above, when it clearly amounts to incitements to hatred or discrimination, participation in organization and activities which promote and incite racial discrimination.¹⁹

In a related development hate speech is defined by the Committee of Ministers of the Council of

Europe as the:

covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-semitism or other forms of hatred based on intolerance, including, in tolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants, and people of immigrant origin.²⁰

Flowing from the foregoing, it is imperative to deduce that hate speech is the manifest expression of public disdain against the beliefs and things a person or group holds as sacred, basically on the account of their race, ethnicity, religion or other forms of primordial sentiments.

Freedom of Expression and the Press

What other way can one describe freedom of expression and the press other than as aptly captured by Blackstone who states as follows:

The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publication, and not in freedom from censure for criminal matter when published. Everyman has undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press...²¹

Related to the foregoing, Nwabueze,²² defines the press 'as simply a vehicle, an organ for the dissemination of ideas or opinions to the public through the medium of printed words.' Similarly, Olunloyo has opined that liberty of the press connotes a right to publish without obtaining permission, without censorship or public control, threat of punishment, intimidation or molestation, but modified by laws that protect the fundamental

16 Alexander Brown, 'What is Hate Speech?' <www.researchgate.net/publication/315473313> accessed on the 23 April, 2020.

17 Neisser E., 'Hate Speech in the New South Africa: Constitution Consideration for a Land Recovering from Decades of Rational Repression and Violence' *South African Journal of Human Rights* Vol. 10 33- 356., 2015.

18 Christian Chukwuebuka Ezeibe, 'Hate Speech and Electoral Violence in Nigeria' <<https://www.inecnigeria.org>> accessed on the 6th April, 2020.

19 United Nations Strategy and Plan of Action on Hate Speech <<https://www.un.org/en/genocideprevention>> accessed on the 5th April,

2020.

20 Council of Europe, 'Hate Speech Conference Report' <<http://www.coe.int/en/web/freedom>> accessed on the 6th April, 2020.

21 Blackstone W, *Commentaries on Laws of England* (Vol. 4 University of Chicago Press 1765 - 1769) 151-152.

22 Nwabueze B, 'The Presidential Constitution of Nigeria' (Churst 1982) 460, cited in Obina Johnkennedy Chukwu's 'The Press and Freedom of information in Nigeria and the United State of America: An Analysis' *International Journal of Law and Society* Vol. 1 No.1., 2018.

rights of fellow individual members of the society.²³

Flowing from the foregoing, it is imperative to infer that that freedom of expression and the press is not a bundle of privileged gift, but an inalienable right of members of a democratic and just society. Thus, to deny same is to challenge their common humanity. In the light of the above, the need for citizens to enjoy the requisite freedom of expression and the press cannot be overemphasized.

It is against this backdrop that Nigeria, being a democratic state, has provided for the freedom of expression and the press in the Constitution. Specifically, it provides:

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.²⁴

Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions.

Provided that no persons other than the government of the Federation or of a state or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.²⁵

This right of freedom of expression and the press is equally provided for by the United Nations Declaration of Human Rights,²⁶ as well as the African Charter on Human and Peoples' Rights.²⁷

Relativity of Hate Speech in Nigeria

An interesting fact about Hate Speech in Nigeria is the absence of the set of aggressor and victims in

different frontiers; these roles shift depending on the part of the country an individual hails from and resides in. As earlier noted, owing to the unwilling union of the Northern and Southern protectorates, the various federating units of what is referred today as Nigeria, have continued to hurt their continual survival. For someone from the South-Western part of Nigeria, it is easy to demean a fellow Nigerian from the Eastern part of the country, as can be seen from Femi Kayode's views of the Igbo when he remarked that 'the Igbos are collectively unlettered, uncouth, uncultured, unrestrained and crude in all their ways. Money and acquisition of wealth is their sole objective and purpose in life.'²⁸

In a related development, some Igbos and Yorubas always adopt the term 'Aboki' which actually means 'a friend' in Hausa. However, it is used in a derogatory manner by the people in the South, to refer to people in the North, especially Hausa or Fulani people, characterizing them as 'illiterate, unintelligent and foolish.'²⁹ Similarly, some Hausas have equally adopted the term 'Inyammiri' to denigrate the Igbos and 'Bayarbe' to refer to Yourba people of the South-Western part of Nigeria.³⁰ Again, the term 'Arne' is often used by some Muslim Hausa speakers to describe Christians, especially those who espouse Christianity in the North, as 'arne', meaning 'infidels' or 'unbelievers.' In a related development, Christians, especially in the South, use the term 'Malo' to describe Muslims as simple and uncivilized.³¹

On a comparative note, the passage of the proposed bill is not peculiar to the Nigerian political space alone, as this proposed bill is *in pari materia* with the law passed by the parliament of Singapore earlier in May, 2019. However, the difference is that while the Singaporean Bill explicitly defines some terms, the Nigerian Bill leaves a lot in the air with frightening ambiguity.³² In Africa, apart from Nigeria, other countries have also been making

23 Olunloyo V., *The Great Debates* (Times Publishers, 1977) 44, cited in Obina Johnkennedy Chukwu's 'The Press and Freedom of information in Nigeria and the United State of America: An Analysis' *International Journal of Law and Society* Vol. 1 No. 1., 2018.

24 Section 39 CFRN 1999 (as amended).

25 Section 39 (2) CFRN 1999, (as amended).

26 Article 19 UDHR.

27 Article 9 ACHPR.

28 Femi Kayode, 'National Question and his View of the Igbos' Vanguardngr.com (August 8, 2013) <<https://www.vanguardngr.com>> accessed on the 5th April 2020.

29 'Social Media and Conflict in Nigeria: A Lexicon of Hate Speech Terms' <<https://www.peacetechlab.org>nigeria>> accessed on the 5 April, 2020.

30 Ibid.

31 Ibid.

32 Emmanuel Paul, 'Everything You Need to Know About Nigeria is Social Media Bill, and What You Can Do About It' <www.techpoint.africa/2029> accessed on the 5 April, 2020.

moves to clamp down on social media and internet activities in the country.³³ Cases in point are the Tanzania's \$930 annual blogger's license fee, the Ugandan government's introduction of the social media tax, the internet shutdown and Egypt's internet censorship, and from the East African Nation of Ethiopia, about two cases of internet shutdown occurred in the month of June, 2019.³⁴

Beyond the African Continent, the story is not different, even though with a different focus and certainly not as a bar for the enjoyment of the right to freedom of expression. In Australia, hate speech laws seek to prevent victimization on account of race. In Belgium, it is targeted at making acts of racism and xenophobia illegal. In Brazil, on the other hand, it is targeted at Racism as well, with no right of bail for the defendant, while in Chile, South Africa and Britain, the emphasis of hate speech, is on racism.³⁵

However, in a country like Nigeria where the harassment and intimidation of journalist is allowed to flourish, hate speech bill is immaterial. Journalists are precluded from criticizing governmental policies that have no direct bearing on the lives of the generality of the masses, except of course for the various social media platforms that now serve as the only veritable tools that can be employed by citizens to speak against such ill-informed policies. It is sad that government is now making frantic efforts to take away the right of social media users for criticizing its unwholesome policies as well.

Review of Relevant Provisions of Existing Laws that Cover Hate Speech

It is settled that Nigeria already has a torrent of existing laws which aptly capture all that the proposed bill seeks to achieve. These laws clearly define limits and standards that are acceptable and just, in accordance with the constitutionally guaranteed right to freedom of expression and the press.

a. Cyber Crime (Prohibition, Prevention Etc.)

Act: This is one of the most recent Acts of the National Assembly. Section Sections 24(1)(a) of the Act provides:

(1) Any person who knowingly or intentionally sends a message or other matter by means of computer systems or network that:-

- a) is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be sent; or
- b) he knows to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, will or needless anxiety to another or causes such a message to be sent: commits an offence under this Act and shall be liable on conviction to fine of not more than 7,000,000.00 or imprisonment for a term of not more than 3 years or both such fine and imprisonment.

26 (1) Any person who with intent:-

- a) Distributes or otherwise makes available, any racist or xenophobic material to the public through a computer system or network;
- b) Threatens through a computer system or work:
 - i. persons for the reasons that they belong to a group distinguished by race, colour, descent, national or ethnic origin, as well as, religion, if used as a pretext for any of these factors.
 - ii. a group of persons which is distinguished by these characteristics...³⁶
- b. Terrorism (Prevention) Act: This Act equally provides for the offence of incitements,³⁷ any person who knowingly incites or promotes the commission of a terrorist act, commits an offence and is liable on conviction to imprisonment for a term of not less than twenty-years.
- c. Criminal Code:³⁸ Defamation is both a criminal

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ CPPA 2015.

³⁷ Section 11 TPAA 2013.

³⁸ Sections 373, 374, 375, and 376 CC.

offence in Nigeria and a civil wrong under law of tort. The publication of words that can cause hatred, contempt, ridicule or damage to reputation or profession of a person(s) to the hearing of such person(s) or a third party without justification is a criminal offence, so also breach of peace, inciting statements and assaults are provided for in the Criminal Code which is meant to operate in the Southern part of Nigeria.

- d. Penal Code:³⁹ Defamation is equally provided for in Penal Code which operates mainly in the northern part of Nigeria. It is equally actionable as either a criminal offence or a civil wrong under law of tort. The Penal Code equally provides for inciting statements and breach of price.
- e. **Libel Act:**⁴⁰ The Court of Appeal, in the case of *Arthur Nwankwo v State*,⁴¹ unanimously held that the public officer who feels disturbed by any publication should sue for libel in civil court, in view of the freedom of expression.
- f. **Electoral Act:** Under section 95 of the Electoral Act,⁴² no political campaign or slogan shall be tainted with abusive language, directly or indirectly, likely to injure religious, ethnic, tribal or sectional feelings.

Consequent upon the foregoing, it is imperative for us to align ourselves with the considered views of various scholars, who have aptly opined that there are enough existing laws which adequately capture the various concerns raised in the proposed bill. The continuous default of government in enforcing existing laws cannot be cured by passing new laws.

Drawing The Dividing Line Between Freedom of Expression and Hate Speech in Nigeria

Just as it is obtainable in other democratic nations across the globe, press freedom in Nigeria is not an absolute right, in the light of the rights accruable to others. The Constitution, in itself, set limits for the

enjoyment of the right to freedom of expression and the press, when it provides in section 45,⁴³ as follows:

45(1) Nothing in section 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justified in a democratic society:

- a) in the interest of defence, public safety, public order, public morality or public health; or
- b) for the purpose of protecting the rights and freedoms of other persons."

A clear understanding of the above cited provision of the Constitution reveals that even the limits in this regard is not equally absolute, as the wording of the said Constitution is quite instructive: '*any law that is not reasonably justified in a democratic society.*' To the best of our understanding, the provisions of the Penal and Criminal Codes, Cyber Crime Act and a host of other legislation, are handy for setting such restrictions. Therefore, the clamours for passage of the obnoxious bill to curtail hate speech is not only needless, but also a step in the wrong direction. This is more so that, in recent times, the low level political tolerance for views critical to the government and actions under democratic rule in Nigeria, means that the press has continued to be subject of subjugation and intimidation,⁴⁴ especially with the passage of the Cyber Crime Act in 2015. Limiting freedom of speech is reminiscent of the inglorious days of military era.

The motion of the hate speech bill sounds palatable and favourable, but it must be considered a slippery issue that is pregnant with lots of intricacies like other bills. They have got implication for the rulers and the ruled.⁴⁵ The country with the largest battery of laws prohibiting advocacy of racial hostility was apartheid South Africa. Invariably the victims of these laws were blacks.⁴⁶

39 Sections 391,392, 394 and 395 PC.

40 Section 6 LA.

41 (1985) 4 NCLR 228.

42 EA 2010 (as amended).

43 CFRN 1999 (as amended).

44 Raymond Adibe, Cyril Chinedu Ike and Celestine Uchechukwu Udeogu, 'Press Freedom and Nigeria's Cybercrime Act of 2015: An Assessment' <<https://www.researchgate.net/publication/319179694>> accessed on the 6 April, 2020.

45 Francis Idowu, 'Hate Speech Social Bills Misplaced Priority' <www.today.ng/news/nigeria> accessed on the 5 April, 2020

46 Ibid

While it is conceded that some peoples' utterances or speeches carry venom and inflammatory tendencies of inflicting hurt to the ideas or beliefs others hold as sacred, what then is the parameter to be used in measuring the dividing line between free speech and hate speech, that the already existing laws on libel, slander, criminal defamation, inciting statements, breach of peace, and assaults, cannot address, and require the passage of new bill such as the one under consideration?

The above position finds friendship with the position of Falana who has opined that Nigeria has enough laws to deal with hate speech, but the political will to arrest and prosecute those who contravene the law is lacking.⁴⁷ In a country like Nigeria, where the government gets provoked at constructive criticisms and the slightest provocation, it becomes very difficult to determine what amounts to hate speech or free speech.⁴⁸

The truth is that challenging hate speech through the proposed legal regime is quite a cumbersome task, especially where the Constitution and other international human rights treaties, of which Nigeria is signatory to, freely guarantee freedom of expression to all its citizens and the press. The proposed passage of hate speech bill is much more than just a legal robbery. This position was aptly captured by Seru, when he opined that social media is one of the last remaining places where Nigerians can freely express their opinion freely. The harassments of journalists and bloggers and the introduction of the Cyber Crimes Act have already shrunk the civil space and created a climate of fear.⁴⁹

To the best of our understanding, the bill for the National Commission for the Prohibition of Hate Speech holds more promises for the government than for its citizens. It is needless to say that the proposed bill is manifestly an avenue that the government is employing to abort the freedom of expression that the Constitution of the Federal Republic of Nigeria 1999 (as amended) has freely

donated to its citizens.⁵⁰ The fact will always remain that what amounts to hate speech will always be construed as a matter of point of view. What might be termed as hate speech to a particular person or class might not be viewed in the same light by another. In other words, the worrisome aspect of the anti-free speech bill is that the term 'hate speech' is subject to multiple arbitrary interpretations, especially in Nigeria.

According to Shehu Sani, any law aimed at limiting the rights and freedoms of citizens to express their views is aimed at building a tower of tyranny. However, he urged the parliament not aid and abet the executive desire to emasculate freedom of speech.⁵¹ He further added that silencing dissent endangers democracy; combating Hate Speech is a smokescreen to annihilating free speech.⁵² In a related development, Gyang opines that to deprive citizens of the right to freedom of speech and expression is tantamount to endorsing and introducing a regime of tyranny. This becomes even more draconian when death sentence has been prescribed as penalty in the Hate Speech Bill.⁵³ More so, there are extant laws in our jurisprudence that address the concerns raised by this Bill.⁵⁴

The foregoing positions corroborate the view of Idowu who posits that one would expect the legislation to direct the arrow heads of their discredited bill on more productive ventures like enacting laws to tackle the dilapidated health infrastructure, collapsed education system, poverty, crimes, unemployment, corruption and terrorism in the country.⁵⁵

In the light of the foregoing, we have no difficulties in aligning ourselves with the aforementioned positions. More so that even without the passage of such a law to empower the overzealous law enforcement agencies in Nigeria. With the already existing laws, they have proven that they cannot be trusted with little powers, how much more for laws with stiffer punishments, like death penalty.

50 See Section 40 CFRN 1999 (as amended).

51 Shehu Sani, 'Regulation of Social Media Threat to Freedom of Speech' <www.todayng.com/news/nigeria> accessed on the 5 April, 2020.

52 Ibid.

53 Istifanus S. Gyang, 'We will Stand against Hate Speech Bill' *Today News, Abuja* November, 24 2019 <www.todayng.com/news/polities> accessed on the 5 April, 2020.

54 Ibid.

55 Francis Idowu, 'Hate Speech Social Bills Misplaced Priority' <www.todayng.com/news/nigeria> accessed on the 5th April, 2020.

47 Falana Femi, 'Nigeria has Enough Laws to Curb Hate Speeches' <<https://www.vanguardngr.com/2017/08/nigeria-laws-enough-to-curb-hate-speeches>> accessed on the 25 April 2020.

48 'Hope Eghagha, 'Free Speech, Hate Speech' <<https://www.guarddian.ng/opinion/18/november/2019>> accessed on the 27 April, 2020.

49 Seun Bakare, 'Programmes Managers Amnesty International Nigeria' <www.amnestyinternational.com> accessed on the 11 March, 2020.

Major Concerns Associated with the Proposed Hate Speech Bill

i. **Anti-digital Activism:** The re-emergence of the hate speech bill at the floor of the National Assembly is aimed at silencing dissenting views online. In the face of government pressure, citizens are using online platforms to advocate for better governance,⁵⁶ which the government are not down with. As active social media Nigerians have become prolific digital campaigners innovatively using social media and communication apps to call for social and political change,⁵⁷ such as the harsh tag; #bringbackourgirls online campaign, following the kidnap of Dapchin School girls and challenging government's unpopular decisions.

Study has shown that since the introduction of the Cybercrime Act in 2015, the Nigeria's online press freedom index has consistently worsened. The Nigerian leadership has continually adopted the wrongful application of the said Act to undermine the independence of the press.⁵⁸ With the passage of the Cybercrime Act, there has been massive arrest and intimidation of numerous bloggers, journalists, and individuals for the alleged offences of 'Cyberstalking' (for their activities on line) under Section 24 of the Act. The same Act that once appears promising now is being used to gag press freedom within the cyberspace. On 8th August 2015, Abubakar Sadiq Usman was arrested by armed operatives of the Economic and Financial Crime Commission for criticizing the Commission on his blog.⁵⁹

Similarly, on the 20th August 2015, one Musa Babale Azare was arrested in Abuja by the police from Bauchi State for criticizing the policies and actions of the state government on social media platforms.⁶⁰ The Nigerian Cyber Crime Act is being used as the basis for arresting bloggers.⁶¹ This explains the anxiety associated with the proposed hate speech bill.

ii. **Lack of Political Will:** The Nigerian problem has never been in making laws, but the political will to implement such laws. Whatever the Hate Speech Bill seeks to achieve is clearly set out and adequately captured in the existing laws both criminal and civil legislations. Whether we are looking at the Defamatory speeches, libel, assault, disturbance of public peace, inciting statements and host of speech that characterized hate speech, these are already contained in the array of our existing laws, such as Penal Code, Criminal Code, Cyber Crimes Act, except for the prescribed penalties of death sentence in the proposed Bill.

iii. **Poverty:** This socio-economic disease appears incurable in this part of the world. This is so because government, in its usual nature of running away from their responsibilities, has made the socio-economic rights in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as non-justiceable. The incurable widespread poverty across the country should be a major source of concern for people-oriented government. The wide gap between the rich and poor in Nigeria is mostly responsible for violence that is tearing the nation apart,⁶² unequal distribution of national resources and not necessarily Hate Speech.

iv. **State Evading Responsibilities:** The Responsibility for protecting the rights of citizens falls squarely at the doorsteps of the state.⁶³ The state, being bodies exercising legislative, executive and judicial powers in Nigeria, evades this responsibility. The obligations of each arm of government in the promotion and protection of human rights were appraised, particularly the extent to which these obligations are realized in the actual exercise of their powers, laws, decision of the courts and executive administration. The outcome reveals that the government has not lived up to expectation, in the protection of the rights of citizens.⁶⁴ The legislators no longer

56 Peter Nkanga, 'How Nigeria's Cybercrime Law is Being Used to Try to Muzzle the Press' <<https://www.cpj.org>> accessed on the 6th April 2020.

57 Ibid.

58 Ibid.

59 Ibid.

60 Ibid.

61 Ibid.

62 Mohammed A, 'Tackling Hate Speech in Nigeria. Blueprint', Abuja December 7, 2018 <www.blueprintnews.ng/hate-speech-in-nigeria> accessed on the 5 April, 2020.

63 Ibid.

64 Ibid

make people-oriented laws; courts no longer offer the much-needed hope to the common man. This is more so that the executive are in the forefront of disregarding express orders of the courts. As seen in the case of former National Security Adviser, Sambo Dasuki, Sowore and Elzazaky, the current reality of which has further dampened the hope of the common man in Nigeria.

Furthermore, it is like extra judicial killing have been added to the functions of the Nigerian police.⁶⁵ Most recently, in Jos, the Plateau State Capital, a 300L student of the University of Jos was shot dead by a member of the Special Task Force Operating in Jos, the Plateau Capital.⁶⁶ The killing of Kayode Johnson by the personnel of the Nigeria Police attached to the Special Anti-Bribery Squads (SARS) in Lagos is another sad example of extra-judicial killings without any provocation.⁶⁷ These manifest unprovoked acts of security personnel using the apparatus of the state to harm law abiding citizens are more detrimental to the society than free speech.

- v. **Illiteracy: Illiteracy remains one of the greatest challenges to human rights development in Nigeria.** Freedom of speech and freedom of the press do not mean much for a largely illiterate rural community completely absorbed in the daily rigors of struggle for survival.⁶⁸ This forbids them from expressing their opinions or participating in conversation on neither national issues that concern them, as they can neither read nor write.

- vii. **Lack of Physical Security:** Just recently, the Global Terrorism Index 2018 Report has placed Nigeria as the third most terrorized nation worldwide. The Index placed Nigeria after war

torn countries like Iraq, Afghanistan and ahead of Syria and Pakistan.⁶⁹ Insecurity has become a hydra-headed monster which the security agents in Nigeria appeared incapable of handling vis-à-vis its multifaceted manifestations in hostage-taking, bombings, destruction of lives and properties, human trafficking, creation of fears, to mention but a few.⁷⁰

Conclusion/Recommendations

This paper has discussed Hate Speech and Freedom of Expression and the Press and analyzed the boundaries between the two, taking cognizance of the National Commission for the Prohibition of Hate Speech Bill, pending before the National Assembly. It has also x-rayed the relevant provisions of the existing laws which, in the opinion of the authors, sufficiently cover the bill sought to be passed, as the extant laws will only need to be updated to meet up with the realities of the current technological advancement in the world.

Therefore, in the light of this discourse, the following recommendations are pertinent:

- i. Rather than enact a totally new legislation on hate speech, our existing laws should be improved upon by ensuring that appropriate regulations regarding opening of Facebook, twitter, skype, etc. accounts are put in place.
- ii. Our existing laws should be amended by prescribing stiffer penalties for perpetrators of hate speech. This will be sufficient. Enacting an entirely new law to tackle hate speech will only amount to duplication, as the extant laws already have provisions that sufficiently cover hate speech.

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