

# **“Issues in Frameworks, Freedom of Expression and Internet Rights in Nigeria: A Baseline Research by the Nigerian Journalists Internet Rights Initiative (NJIRI)”**

*A research report on existing frameworks on freedom of expression and internet rights issues in Nigeria*

*Produced by:*



*With the support of:*



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*The project - Nigerian Journalists Internet Rights Initiative (NJIRI) - is implemented by the International Press Centre (IPC), Lagos, with the support of IFEX. The initiative aims to advance the right to freedom of expression for online journalists in Nigeria and ensuring that online platforms are safe and free of institutional limitations for journalists and other media practitioners to use as mediums of information and engagement.*

## **Foreword**

This study on “Issues in frameworks, freedom of expression and Internet rights in Nigeria: A baseline research by the Nigerian Journalists Internet Rights Initiative (NJIRI);, has been published by the International Press Centre (IPC), Lagos-Nigeria with the support of International Freedom of Exchange (IFEX) to provide useful insight into the complex challenge of defending the Internet rights of journalists and other media professionals in Nigeria.

The findings and the recommendations are expected to complement the works of other freedom of expression and media freedom advocates who have regularly stood up to demand that undue barriers should not be erected against citizens’ fundamental rights online.

It should be noted that in an increasingly conflictual Nigerian society where the security agencies have for some time been fighting insurgencies by extremist groups, these rights have often been breached under the guise of safeguarding national security or protection of information that could compromise intelligence gathering in the course of fighting terrorist groups.

The findings and recommendations of the research therefore represent a form of clarion call for more concerted efforts on the part of concerned Internet stakeholders towards expanding the frontiers of the defence of Internet rights in general and the rights of journalists online.

### **Lanre Arogundade**

Director, IPC

*The International Press Centre (IPC) Lagos, Nigeria is officially registered, through trusteeship, as a media based NGO.*  
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## **Acknowledgement**

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## **Executive Summary**

This research has been undertaken pursuant to the need to enrich the volume of knowledge and information on the state of the Internet rights in Nigeria in general and that of journalists in Nigeria in particular. The research is published under Nigerian Journalists Internet Rights Initiative (NJIRI) as supported by the International Freedom of Expression Exchange (IFEX).

The Research outcome as presented here is divided into ten chapters.

The first chapter, the introduction, provides a background to the issue of Internet Freedom in Nigeria by explaining that it is yet to be fully integrated into democratic practice in the country. The second chapter provides an overview of press freedom in Nigeria and enumerates how a number of legislations tend to undermine Freedom of expression, access to information and journalists' right despite the existence of the Freedom of Information (FoI) Act. Among these legislations are;

- ❖ The Newspaper Act, 1917
- ❖ Press Registration Act, 1933
- ❖ Children and Young Persons (Harmful Publications) Act, 1961
- ❖ Defamation Act, 1961
- ❖ Emergency Powers Act, 1961
- ❖ Seditious Meeting Act, 1961
- ❖ Official Secrets Act, 1962
- ❖ Newspaper Amendments Act, 1964

The third chapter examines a number of international and regional Instruments, which guarantee free speech. One of them is the treaty of the Economic Community of West African States to which Nigeria is a signatory. Chapter four dwells on the state of Internet access regime in Nigeria, while chapter five dwells on the existing frameworks guiding Internet rights and online communications in Nigeria. Chapter six focuses on the inhibitions and limitations in the frameworks identified in chapter five and highlights a number of instances when the rights to freedom of expression have been violated. Chapter seven states the imperative of forging ahead with advocacy for internet rights despite the obvious challenges. Chapter eight thereafter identifies the various issues for engagement in the process of advancing the frontiers of Internet rights in Nigeria. Chapter nine contains six major recommendations for taking forward the issue of Internet rights in Nigeria.

The recommendations are;

*For journalists and media bodies*

- Journalists should recognize that they have a stake in the promotion of Internet rights and freedom of expression online. They should keep abreast of various frameworks that promote Internet rights and report on such from time to time.

- Media bodies in Nigeria including professional associations and media support groups should integrate the defense of the Internet rights of journalists and other media professionals into their freedom of the press and freedom of expression work.
- Media bodies in Nigeria including professional associations and media support groups should urgently constitute advocacy and lobby groups that engage with the state institutions especially the executive and legislature for the purpose of seeking the review or where necessary repeal of any legislation that infringes on the Internet rights of journalists and other media professionals
- Media professionals and organizations should call for immediate reworking of Cybercrime Act 2015 with special attention to the “advisory council” which excludes the vast media sector.

*For Freedom of expression community*

- The freedom of expression community should advocate that the Internet freedom of Nigerians should not be entrusted in the hands of some exclusive organ of government lacking in democratic legitimacy. Boards of relevant regulatory organs like NCC should be truly representative of the major shades of the society including but not limited to the media, the legal profession, women, youths, etc.

*For Human rights community*

- Human rights campaigners in Nigeria should subscribe to the global proclamation that internet is the most open or accessible technology in the world and act accordingly.
- Human rights campaigners in Nigeria (including women’s rights advocates) should begin to reckon that internet freedom is fundamental to human development in this age. They should therefore endorse the position of the African Declaration Group especially as it affects free speech as well as the conduct or operations of the media.

*For government*

- Government should abide with the spirit and letters of treaties to which it is a signatory that protects the right to freedom of expression including Internet rights
- The legislature should review and or repeal any legislation that violates the fundamental right to freedom of expression online
- The President should give a speedy presidential assent to the Digital Rights and Freedom Bill

Chapter 10 concludes that Nigeria has witnessed its own fair share of the current substantial radicalization of freedom of expression and medial development by the advent of the Internet.

## CHAPTER 1

### **Introduction**

Nigeria, despite close to two decades of civil rule, remains a fledgling democracy although it readily cuts the image of a place where basic rights, including free speech, are protected. The sources of this rights' protection range from international to national human rights instruments. While in some respects, they echo each other, in some others, they complement and even advance the provisions in the pre-existing ones by filling duly noted gaps. This is not to say that there is full compliance with the instruments. The battle to make government (across the three tiers of the Federal, State and Local Government) as well as organizations and even in some cases, individuals, accord appropriate respect to fundamental human rights has been a protracted, ongoing one.

The inception of the Internet which automatically extends the frontiers of communication of the citizens has endured the pre-existing regime of free speech. Expectedly, the Federal Government, at different times under different leadership, has shown some concern and even made some unpopular moves against the growing use of internet technology. Citizens, especially media professionals, who use the Internet as a platform for information dissemination, have been largely affected especially with high pricing and protracted delay in the provision of broadband. This has, however, hardly triggered any organized reaction premised on relevant knowledge. After the tumultuous reaction by the civil society activists against the anti-free speech bill popularly called anti-social media bill in 2015 for instance, there has not been any noticeable, formal concern from the Nigerian Press Organisation (comprising the Newspapers Proprietors Association, Nigeria Union of Journalists and the Nigerian Guild of Editors) as a whole, on issues related to internet freedom, internet governance and the likes. It is therefore not surprising that while the National Communications Commission, NCC, has organized stakeholders' forums all over Nigeria, journalists, as represented by the NPO, have never registered any visible position so far on internet access and related issues. This is strikingly strange as NCC currently has a former journalist, Sunday Dare, currently serving as an executive commissioner.

## CHAPTER 2

### Overview of Press Freedom in Nigeria

In spite of the widely acknowledged efforts of the press in the nation's political maturation process, Ekpu (2000) notes that the Nigerian bureaucracy and government do not believe that they owe the press or public any explanation for anything done or not done even after democracy was restored in 1999. This perhaps explains the retention in the nation's law books no fewer than 11 bad laws.

These include:

- a) The Newspaper Act 1917
- b) Press Registration Act, 1933
- c) Children and Young Persons (Harmful Publications) Act, 1961
- d) Defamation Act, 1961
- e) Emergency Powers Act, 1961
- f) Seditious Meeting Act 1961
- g) Official Secrets Act, 1962
- h) Newspaper Amendments Act, 1964

Generally, the laws, in their varying capacities, undermine journalists' and even ordinary citizens' crave for transparency and accountability. They prescribe assorted penalties for information adventurists notwithstanding the inception of internet.

Ekpu (2000) argues that this situation presents Nigeria as a primitive entity, given that the practice of journalism in Nigeria cohabits with various regulatory institutions, some official some unofficial. Backed by the law but deemed ineffectual is the Nigerian Press Council, NPC. Complementing NPC but not backed by the law is the Nigerian Press Organisation (NPO), comprising the Nigerian Union of Journalists, NUJ, Nigerian Guild of Editors, NGE, and the Newspaper Proprietors Association of Nigeria, NPAN. The unofficial entities are the editor's conscience and the market forces.

In today's Nigeria of 36 states, radio broadcasting has three distinct tiers namely the government owned broadcasters, commercial broadcasters (which may also include internet based broadcasters) as well as community broadcasters largely exemplified by the campus broadcasters. The National Broadcasting Commission, NBC, established to regulate broadcasting nationwide is largely run by government appointees who hardly reflect different shades of stakeholders of the broadcast media sub-sector. As if to ensure maximum hold on NBC, government appointees to the NBC board include representatives the State Security Service, SSS, as well as those of the Information and Culture Ministry. Even at that, though NBC is the sole regulator for broadcasters, unlike its contemporary, the National Communication Commission, NCC, it does not have the power to approve license. At best, it can only receive applications and pass them on to the president. Yet, contrary to the philosophy of media pluralism supportive of democracy, Section 9 (1) of the NBC Act compels



operators to ensure their stations uphold and advocate “national interest, unity and cohesion. (Kadiri, 2000).

The inhibitions above notwithstanding, the broadcast media sub-sector in Nigeria has been trendy in performance with a substantial measure of broadcasting being done on the internet complemented, interestingly by the multimedia presence of several Nigerian newspapers.

## CHAPTER 3

### **International Instruments and Free Speech Guarantees.**

As a sovereign nation, Nigeria is a member of some international bodies with clear commitment to fundamental human rights encompassing freedom of expression. The international bodies include the United Nations, UN; African Union, AU, as well as the Economic Community of West African States, ECOWAS.

The UN alone birthed two renowned instruments focusing on basic rights namely, the Universal Declaration of Human Rights, UDHR; as well as the International Covenant on Civil and Political Rights, ICCPR.

UDHR has been described as a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages.

Article 19 of UDHR specifically focuses on freedom of expression. It states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” (UN, 1948: <http://www.un.org/en/universal-declaration-human-rights/index.html>)

Eighteen years later, in 1966, a more expressive and stronger reinforcement came for UDHR in the form of ICCPR. The preamble, among others, asserts that given that the States should promote universal respect for, and observance of, human rights and freedoms in addition to the fact that the individual should be similarly responsible, the instrument has become imperative. Like UDHR, also in Article 19 it states that:

1. Everyone shall have the right to hold opinions without interference.
  2. 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.
  3. The exercise of the rights provided for in paragraph 2 of this article 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 reputations of others;
    - (b) For the protection of national security or of public order, or of public health or morals.
- (<http://www.hrweb.org/legal/cpr.html>).

At the level of African Continent, the African Charter on Human and Peoples’ Rights further reinforces the provisions of the UN instruments. Article 9 of this continental instrument states

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that: “every individual shall have the right to receive information” as well as the right to “express and disseminate his opinions within the law” (African Commission on Human and Peoples’ Rights, 2005: <http://www.achpr.org/instruments/achpr/#a9>).

Added to all the above international instruments is the *Treaty of the Economic Community of West African States, ECOWAS*. Article 65 and 66 of the treaty focus on the importance of free flow of information across the region including the performance of the mass media and the relevant professionals. They state:

- In order to involve more closely the citizens of the Community in the regional integration process, Member States agree to cooperate in the area of information:
- ...to maintain within their borders and between one another, freedom of access for professionals of the communication industry and for information sources. To facilitate exchange of information between their press organs; to promote and foster effective dissemination of information within the Community
- To ensure respect for the rights of journalists ;
- To promote and encourage dissemination of information in indigenous languages and strengthening cooperation between national press agencies and developing linkages between them

(ECOWAS Commission, 2010:39-40)

Being a member of the UN, AU and ECOWAS, Nigeria is one of those countries that endorsed all the instruments above, holistically. It is interesting to note that throughout the protracted period of military rule spanning three decades, these instruments constituted the strongest basis for the human rights community as reference points for the indispensability and legality of the protection of fundamental rights by the government irrespective of the status of the local statute books.

## CHAPTER 4

### **Internet Access Regime in Nigeria**

As at June 2017, Nigeria had 143,064,490 active telephone lines amounting to 102.19 per cent of the 140 million population of the 2006 Census figure. For the same period, internet subscription stood at 91,598,757 provided mainly by the four GSM companies of MTN, Airtel, Globacom and Etisalat all of which are multinationals except Globacom (NCC, 2017).

Meanwhile, based on the population of 182,201,960, Nigeria is said to have 47.44 internet penetration even as the same country recorded as many as 12 digital rights violation in 2016 alone (PIN,2017). Of all internet users in Nigeria, 36% of them are women (Web Foundation, 2015). Nigeria also ranks 13<sup>th</sup> out of 58 countries surveyed on the 2017 Affordability Drivers Index (ADI) showing a decline from the previous year's rating.

Also a study by Chair C. (2017) further noted that affordability and hidden tariffs are the two main factors that have hindered the spread of Internet access in Nigeria adding women are also confronted by the challenge of being exposed to inappropriate content online and its consequences in their intimate relationships and family responsibilities. Not the least among the issues was the fact that many people in rural communities don't even have access to the best-subsidized offerings and have to spend largely disproportionate amounts of their already low income on mobile access, and that's assuming they can even find electricity to charge their devices.

For now, Whatsapp seems to have caught up more readily with most social media users over time. Facebook is credited with a whopping share of 93.72% of social media users (Statsmonkey.com, 2015).

The first Nigerian newspaper online is the defunct *Post express* which pioneered media internet presence in Nigeria in 1997. It was later joined by *The Guardian*, *The Punch* and *The Comet*. The three most visible news magazines then namely, *The News*, *Newswatch* and *Tell* came on board much later and even mounted a few of their headlines. Today, there is hardly any news organization without a website. It is important to note that although the websites avail these news organizations global reach, most of the leading news websites commendably have websites reflective of their Nigerian identity even as they are private initiatives. On the contrary, some parastatals of the Federal Government are yet to comply with the directive that they should subscribe to domain names reflective of their entities not only as Nigerian organizations but as organizations wholly owned by Nigerian government. In spite of the patriotic stance of the leading Nigerian media in this regard, there is no known collaboration between the Nigeria Internet Registration Agency, NIRA or the Nigerian Communications Commission, NCC for the common interest in the development of Nigeria yet.

Media institutions have been required to upscale their newsrooms in order to reap maximally from their existing personnel of reporters and editors who have had to acquire new skills. In

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recent years, the responsibility for re-skilling has shifted from media institutions to individual journalists who are expected to hone their technology skills to enable them cope with new, emerging roles.

NGOs have played a key role in training journalists in this regard: for example, the International Press Center (IPC) provided free hands-on training sessions on the use of the internet and computer-assisted reporting. In 2000, the IPC established an internet café that offered journalists subsidized access to the internet. The new technology has placed the burden of responsibility for the entire news production process on journalists, leading to a convergence of roles and functions in the newsroom and an expansion of the scope of journalists' jobs.

In addition to all the above, media establishments are continuously being made to disseminate their contents through social media platforms as the popularity of the latter grows relentlessly. Today, Facebook and Twitter are regularly used by Nigerian news organizations to disseminate their reports apparently to earn the desired mileage as well to buoy the confidence of their audiences on their speedy delivery. *Premium Times* has even pioneered the regular use of a whatsapp platform it established, *Premium Times Opinion*, for the dissemination of opinion articles originally published on its website, premiumtimesng. These articles, until the inception of the whatsapp platform, never enjoyed the same rating with the news stories in the past as they only got published and retained on the website without being mailed out. The flexibility of this platform is also interactivity-friendly and therefore allows for casual comments from patrons whose population seems to be growing by the day and clearly cuts across all socio-economic classes. A few other news media have since adopted whatsapp platform as an additional avenue to let out their entire contents by providing the relevant links.

With this competition for the audiences' attention without any obvious financial gain, the recurring question now is: how will the news organizations be able to survive let alone grow? This same concern bothered *Columbia Journalism Review* when it noted: The influence of social media platforms and technology companies is having a greater effect on American journalism than even the shift from print to digital. There is a rapid takeover of traditional publishers' roles by companies including Facebook, Snapchat, Google, and Twitter that shows no sign of slowing, and which raises serious questions over how the costs of journalism will be supported. These companies have evolved beyond their role as distribution channels, and now control what audiences see and who gets paid for their attention, and even what format and type of journalism flourishes.

Publishers are continuing to push more of their journalism to third-party platforms despite no guarantee of consistent return on investment. Publishing is no longer the core activity of certain journalism organizations. This trend will continue as news companies give up more of the traditional functions of publishers (Bell and Owen, 2017).

## CHAPTER 5

### **Existing Frameworks and/or Regulations Guiding Internet Rights and Online Communications in Nigeria**

The 1999 Constitution of the Federal Republic of Nigeria as amended as well as the Freedom of Information Act of 2011 are the relevant instruments in this regard.

Section 22, Chapter 2 of the *Constitution* clearly states that the press, radio, television and other agencies of the mass media shall be free to hold the Government accountable to the people. Focusing more emphatically on free speech, the Constitution, in Chapter 4 Section 39 goes further to state 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. With regards to mass media, it asserts that “...every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions”. The ownership of broadcast media is however subject to the approval of the president or anyone that the president formally mandates to act on his behalf.

Perhaps more than any other intervention, the enactment of FOIA in 2011 has helped to make the inception of internet reasonably meaningful to Nigerians. Among others, the Act provides in Section 3 that public institutions should provide for public scrutiny a detailed description of their corporate profiles, programmes and functions of each division, lists of all classes of records under their control, and related manuals used in administering the institution’s programmes.

It goes on to provide for the right of public access to government organisations’ official information of varying classification. These include final opinions including concurring and dissenting ones and orders made in the adjudication of cases, and those covering policies, contracts, reports and studies conducted by the institutions, receipts or expenditure of public or other funds of the institutions. (<http://www.nigeria-law.org/Legislation/LFN/2011/Freedom%20of%20Information%20Act.pdf>)

It has become imperative to explicate the relevant legal architecture of free speech including the provisions relevant to the establishment of broadcast media because popular opinion around the world stipulate that offline rights should be essentially the same with online rights.

## Chapter 6

### *The Inhibitions and Limitations on Freedom*

Internet Freedom activists and other stakeholders around the world have rightly asserted that rights offline are hardly any different from rights online. Meanwhile, conspicuously missing from the entire Constitution is the express provision for press freedom. This is only mentioned in the marginal comments which accompany some substantive provision, which lawyers, have repeatedly argued, falls short of proper provision.

In spite of the seeming added advantage of FOIA therefore, the press, offline and online have not fared significantly better in spite of the nation's return to civil rule from military dictatorship since 1999. Journalists and bloggers are now routinely arrested and intimidated. This trend is even more prevalent at the state level, where opinions expressed on Facebook, which commands the largest followership among all social media, have led to the arrest and prosecution of many.

Only recently in July 2017, Danjuma Katsina was detained for an alleged "injurious comments" posted on Facebook against a newly elected member of Nigeria's House of Representative, Mansur Mashi. Earlier, Mr. Charles Otu, the Ebonyi State Correspondent of The Guardian newspaper was on June 3, 2017 abducted from his office in Abakaliki by thugs suspected to have been sent by the State Governor. His offence: In a Facebook post, he called on the State Governor, David Nweze Umahi, to honour his campaign promises by providing social amenities and meaningful infrastructures instead of spending the state money on things that have no direct benefits to the people of the State (MRA, 2017).

Generally speaking, Freedom House in its *Freedom of the Press 2017 Report* states that "journalists risk prosecution under restrictive laws, including the broadly worded Cybercrimes Act..." adding that, "journalists face attacks while carrying out their work, sometimes by security officials. Attacks against journalists often go unprosecuted, and an environment of impunity for attackers, combined with the threat of legal prosecution and harassment in connection with critical coverage, encourages self-censorship" (<https://freedomhouse.org/report/freedom-press/2017/nigeria>)



## CHAPTER 7

### **Threats but Forging Ahead**

The Department of State Security, DSS, intensified its surveillance of the media and began to take action in response to media contents with this new global reach of multiplying media. In June 2009, the Federal Government of Nigeria announced a USD 5 million plan to support government-friendly websites and prevent those critical of the government from influencing Nigerians. Approximately 50 patriotic websites were scheduled to be launched before the 2011 elections (Open Net Initiative, 2009). The extent of their success could, however, not be ascertained.

However, professionals seeming to be genuinely committed to journalism but not funded by government have registered ample presence on the internet. The height of this was the winning of the Pulitzer Prize for journalism won in 2017 by the nation's foremost online medium, *Premium Times*. It is equally significant to note that such is the plethora of online publishers that they now have two distinct associations. One of them, The Guild of Corporate Online Publishers, GOCOP, describes itself as "a Nigerian, non governmental, non-partisan, non profit making organization, borne out of the growing need to ensure that online publishers uphold the tenets of journalism in doing their jobs" (<https://www.linkedin.com/company/gocop-guild-of-corporate-online-publishers->).

*Premium Times* and *The Cable* are members of GOCOP. The second, Online Publishers Association of Nigeria, OPA Nigeria, founded in May 2010 assert that "...These discerning group of trustees and founders recognised the shift in the mode and means of social engagement; and understood the shifts, disruptions and changes that may occur which would overlap with current laws and rules guiding conduct and practice and therefore sought to create a self regulatory body that would provide the means-tested standards for users and practitioners to operate by" ([http://onlinepublishersng.com/about\\_association.php](http://onlinepublishersng.com/about_association.php)).

Neither of the two groups is known to be active in the campaign for internet freedom. Their relationship with the age old Nigeria Union of Journalist, NUJ, which has been championing the cause of journalists nationwide, is also not given any visibility on their LinkedIn page. The two organisations therefore seem to be indifferent to internet governance issues in the same manner NUJ appears to be. It is therefore not surprising that although the regulatory body for telecommunication and allied services in Nigeria, Nigerian Communications Commission, NCC, has been engaging with different groups of stakeholders, it is yet to do so with any of such media groups like NUJ, GOCOP, OPA Nigeria and even NAWOJ.

Meanwhile, way back in 2014, the government of President Goodluck Jonathan allegedly awarded a USD 40 million 'internet spy' contract to Elbit Systems, an information and communication technology intelligence firm from Israel. The company was commissioned to spy on citizens' computers and internet communications under the guise of intelligence gathering and national security. Earlier, researchers at Munk School for Global Affairs had

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hinted that Nigeria, Kenya and Egypt were deploying surveillance and censorship technology developed by an American company, Blue Coat, which specialises in online security. The company was to enable the government to invade the privacy of journalists, netizens and their sources. Its censorship devices used Deep Packet Inspection, DPI, used by many western Internet Service Providers, to manage network traffic and suppress strange connections.

Another USD61.9million was reportedly set aside for ‘Wise Intelligence Network Harvest Analyzer System’, Open Source Internet Monitoring System, Personal Internet Surveillance System and Purchase of Encrypted Communication Equipment (Emmanuel, 2013). Till date, there is no record of any renunciation of the contract in spite of the change of government since 2015.

In 2015, government went further to enact what is now known as the Cybercrime Act of 2015. Its objectives include providing “an effective and unified legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria... ensures the protection of critical national information infrastructure... promotes cyber security and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights”. The seven-part Act focuses on the Protection of Critical National Information Infrastructure; Offences and Penalties; Duties of Financial Institutions; Administrations and Enforcement. The remaining parts are Arrest, Search, Seizure and Prosecution as well as Jurisdiction and International Cooperation.

It is also significant to note that the Act provides for the setting up of Cybercrime Advisory Council comprising no fewer than 18 members representing different government ministries, departments and agencies, MDAS. Also included on the council are seven non state actors namely, Association of Telecommunications Companies of Nigeria, Internet Service Providers Association of Nigeria, Nigeria Bankers Committee and Nigerian Insurance Association. The rest are Nigerian Stock Exchange, NSE, and Non Governmental Organization with Focus on Cyber Security. Notwithstanding the conspicuous reality that some organizations may be represented twice using the classification for non state actors and the obvious relevance of the media industry, it has never been deemed fit to include an organization like the Nigerian Press Organization, NPO, press freedom advocacy groups or any of the online publishing associations.

Analysing the Act, AFEX notes: “The most unfavourable framework for human rights so far is the Cybercrime Act 2015. The Act charges the offices of the National Security Advisor (NSA) and the Attorney-General of the Federation (AGF) with coordinating its enforcement and creates the multi-agency Cybercrime Advisory Council (the Council) and the National Cyber Security Fund (the Fund) to be overseen by the NSA. Unfortunately, it seems this Act is now being vigorously used to target citizen journalists and social media critics of the government. The Act has already led to the arrest of several bloggers and online journalists on charges of

‘cyberstalking’ for online writings that criticised government officials and powerful or influential individuals”.

The Cybercrime Act 2015 notwithstanding, the Senate of the Federal Republic of Nigeria, again in 2015, still attempted to enact an “Act to Prohibit Frivolous Petitions and Other Matters Connected Therewith” otherwise known as anti-social media bill. It actually sought to undermine the basic freedom of expression. It was therefore roundly condemned by several civil society groups and trade unions including the International Press Centre, IPC, Nigeria Union of Journalists, NUJ, and a host of others that even staged a public protest.

## CHAPTER 8

### Issues for engagement

Nigeria statutorily provides robustly for freedom of expression going by all the officially recognised international and local laws as well as the UN declaration. The Constitution is however silent on the subject of free press. Incidentally, government at both the Federal and State levels have not been particularly tolerant of media's criticism and are not usually seen to be critical of attacks on the press by both the non state and state actors like security operatives.

Described as the most open technology, internet literally occupies the centre-stage of the operations of the media industry today wreaking so much disruption whose magnitude may still take some time to adequately fathom. Its impact cuts across the three phases of information production, information dissemination and information consumption with the recurrent effect of radicalization as never experienced before. All the three phases are now free for all with the added dimension of real-time interactivity made possible with social media websites and mobile applications. The liberalized information production and dissemination, unfortunately, now constitutes unprecedented task for information consumers with the emergence and even proliferation of counterfeit websites of established news media brands like *Premium Times*, *The Punch* and *Vanguard newspapers*. Also counterfeited at a time was SaharaReporters.

Added to this challenge was the serious depletion of the sales of the conventional newspapers as several information consumers are now able to access substantial media contents from the websites of assorted news media, social media platforms as well as mobile applications like whatsapp and instagram. Although this has led to colossal revenue losses in the media industry, government, which is always the ultimate buffer provider, has been largely indifferent.

Consequent upon the above, there are suggestions from concerned stake holders that the media industry may indispensably have to combine business and social enterprise operations if they want to genuinely endure the challenging periods ushered in by the internet technology.

However, heralding the need for a regulation that ensures free expression online is the Digital Rights and Freedom Bill, which was recently passed by the senate. The bill, which was passed by the House of Representatives on December 19, 2017 and similarly passed by the Senate on March 13, 2018, was first conceived by Paradigm Initiative (PIN) working with NetRights Coalition in 2015.

The bill, which was introduced to parliament in April 2016 and titled, "an act to provide for the protection of human rights online, protect internet users in Nigeria from infringement of

their fundamental freedom and to guarantee application of human rights for users of digital platforms or digital media and related matters”, was sponsored by Hon. Chukwuemeka Ujam.

The Bill which “provides for the protection of human rights online, to protect Internet users in Nigeria from infringement of their fundamental freedoms and to guarantee application of human rights for users of digital platforms and/or digital media”, has undergone the required legislative process and is now awaiting the assent of the Nigerian President, Muhammadu Buhari, to become a law.

### **Objective of the bill**

The objectives of the bill are: -

- To guarantee the fundamental privacy rights of citizens and define the legal framework regarding surveillance;
- To promote the freedoms of expression, assembly and association online;
- To outline the provisions of lawful and authorized interception of communication within the digital environment without sacrificing the freedom and constitutional rights of citizens;
- To guarantee the application of human rights within the digital environment;
- To provide sufficient safeguards against abuse online and provide opportunity for redress;
- To equip the judiciary with the necessary legal framework to protect human rights online

### **Number of clauses/parts**

The Bill has 7 parts and 22 clauses including a miscellaneous and an explanatory memo

### **Contents**

**The Bill has the following contents: -**

- **Fundamental Rights and Freedom:** - Rights to digital privacy; protection of identity of internet user; privacy of personal data and information; freedom of opinion online; freedom of online association/assembly; access to online education and financial transparency.
- Offences and Penalties:
- Administration and Enforcement
- Jurisdiction and International Cooperation
- Enforcement of Victims’ Rights
- Miscellaneous

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## **IMPLICATIONS OF THE BILL**

The Policy and Legal Advocacy Centre (PLAC) in analyzing the key highlights of the bill gave the following highlights (<http://placbillstrack.org/view.php?getid=1801>):

### **1. Online Fundamental Rights and Freedoms**

The Bill provides under Clause 12(1) for the right to freedom of expression on the Internet subject to any restrictions in the 1999 Constitution (as amended), the Freedom of Information Act 2011 and other relevant legislations. The Clause further expands the freedom of Internet users to include ‘ideas or views that may shock, offend or disturb’ or ideas that may be controversial to the Authorities or majority of the population.

The “other relevant legislations” could include as many Acts as are relevant to the issue or matter including the Cyber Crimes Act 2015. This means that the freedom of an Internet user under this Bill is subject to the limitations to freedom of expression as provided in these other Acts.

1.1 Right to Digital Privacy: - Clause 3(1) prohibits the unlawful interference of anyone’s online privacy. This provision makes it an offence to gain access to anyone’s online information or data without permission. The Bill provides that the Rule of Confidentiality shall apply to the entire provisions. In effect, personal information or details about an individual that they do not wish to share, shall remain confidential and any unpermitted access to it is prohibited under this Clause.

1.2 Right to Anonymity: - Every person shall have the right to communicate anonymously without fear of interference with the correspondence under the Bill. This places a duty on Internet Service Providers to protect the identity of the Internet user who chooses to post materials anonymously. Internet users cannot also be compelled to adopt real name identity systems.

1.3 Confidentiality of Individual’s Personal Data: - The integrity and confidentiality of personal data and information of citizens is inviolable and therefore guaranteed under Clause 6(2) of the Bill. Any requests for private data shall follow legally stipulated procedures and may require a Court warrant to request for private data. The Bill therefore requires that due process be followed in the process of accessing another’s private data. Even though a person’s private data is confidential, it can be accessed legally when due process is followed (as provided under Clause 6(4) of the Bill).

This further provides in 6 (5) that every private entity holding citizen data shall publish in 2 (two) national dailies biannual periodic reports detailing the nature and frequency of government requests for access to individuals’ private data. This disclosure clause is for transparency in the release of individuals’ private information.

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1.4 Right to Freedom of Expression: - Clause 13(17) and (18) provide examples of situations where the government violates the freedom of expression of citizens. Censorship on the internet or banning of certain web pages or isolating an entire region from the rest of the world by the State is a violation of the freedom of expression.

Also jamming of wireless signals and other means of censorship which deprives individuals of their right to freedom of opinion and expression is prohibited under the Bill.

Censorship of extraneous posts on the internet a usual practice employed to protect certain audiences (for instance Kids), but isolating a whole region from the rest of the country or the world at large is extreme.

2. Seven-Day Notice Before Bankruptcy: A service provider storing individuals' details in "the cloud" should before declaring bankruptcy, provide notice to the data owner at least 7 (seven) days before in order to afford them ample time to get their data off that server. This notice is necessary to exempt the service provider of any liability regarding the status or condition of a user's data after the service provider goes out of business.

3. Communication Surveillance: - The Bill under Clause 7(d) communication surveillance shall be based on the principle of necessity and as a last resort. The onus of establishing justification shall always be on the government and or the entity requesting surveillance. The surveillance is conducted only when it is the only means of achieving a legitimate aim or it is the means least likely to infringe upon human rights. The implication of this Clause is that should a lawsuit emanate from communication surveillance, the government or entity requesting access would have the duty to prove that it was relevant and it was the least measure that could infringe on the rights of the data owner.

The Clause further provides that user notification shall be issued to anyone whose communications are put under surveillance with enough notice and information to enable them challenge the decision or seek other remedies. This means that there is a possibility that a request for surveillance may be denied or delayed, should the data owner seek a remedy to challenge it.

However, a data owner may not be provided with user notification if it would seriously jeopardize the purpose for which it was authorized or it can cause imminent danger to human life. Authorization to delay notification is granted by a Court of competent jurisdiction. The obligation to give notice rests with the State.

4. Whistleblower Protection: - The Bill seeks to protect whistleblowers from any form of sanction, attack, arrest or prosecution under Clause 10(17). Any person who has knowledge of any information regarding a crime or offence can, under the protection of this Clause, report to the relevant authorities

5. Compensation for Illegal Surveillance: - Clause 10(18) requires that adequate compensation be paid to any victim of illegal surveillance. The term “adequate compensation” was not defined by the Bill, which leaves it open for various interpretations. This also constitutes a gap in the Bill.

6. Protection of National Security: - The Bill prohibits the abuse of freedom of expression under the guise of ‘Protection of National Security’ under Clause 12(9). Furthermore the Bill provides that freedom of expression online shall not be subject to any restrictions, except those provided by the law and consistent with human rights standards. This Clause reiterates the protection provided for under Clause 12(1).

However protection of national security can be triggered if it can be demonstrated that the expression is intended to incite imminent violence. There should therefore be an established link or connection between the expression and occurrence of violence.

7. Prohibition of ‘Hate Speech’: - The Bill defines a ‘hate speech’ under Clause 13(13) as any speech, gesture or conduct capable of inciting violence or prejudicial action against any individual or group, by disparaging or intimidating an individual or group on the basis of attributes such as gender, ethnic origin, religion, race, disability or sexual orientation. Anyone who posts material that fall under the definition of ‘hate speech’ under the Bill violates this Clause and can be prosecuted when it becomes law.

The Bill forbids hate speech on social media and provides that it shall be the duty of the Courts to make a distinction between genuine incitement to extremism and the right of individuals to express themselves. In effect, the duty to determine what online material constitutes a hate speech shall be that of the Courts.

8. Freedom of Information Online: - Clause 14 provides that the use and re-use of government held data and information shall be available free of charge. If a fee is to be collected, it shall be done in a transparent manner for all users. This Clause ensures the right of citizens to access information shared by the government for various purposes without prohibition of any sort, except a fee is charged for such information. It shall be illegal for any entity to deny the public this right.

Clause 14(11) lists the types of information that may be restricted to include child pornography, hate speech, defamation, direct and public incitement to discrimination, hostility and violence

9. Peaceful Freedom of Assembly and Association Online: - Every citizen shall have the right to freedom of assembly and association online as guaranteed by Section 40 of the 1999 Constitution. This Clause guarantees citizens the right to associate or assemble as a group online on social media platforms or networks. Citizens engaging in peaceful assemblies shall



have the right to access the internet and other new technologies at all times without interference except when restricted under the law.

10. Compulsory Internet Literacy: - it shall be the fundamental principle and practice of government agencies responsible for educational policymaking to include compulsory Internet literacy skills in school curricula, and support similar learning modules outside of schools. This Clause therefore requires that government schools amend their existing curricula to include Internet literacy skills.

11. Jurisdiction: - The Federal High Court shall have original jurisdiction to hear matters covered under the Bill (when it becomes an Act). All matters relating to the non-compliance of the provisions of this Bill, when passed into Law shall be heard at the Federal High Court.

12. Administration and Enforcement: - The Bill, when passed into law shall be administered by the National Human Rights Commission (NHRC) in consultation with other relevant agencies of government, relevant civil society actors and relevant private sector members. The Act setting up the National Human Rights Commission would require an amendment to include this role, when this Bill is passed into Law.

13. Digital Assets Devolution: The digital assets or data sets of an owner such as passwords, digital contracts, pictures, bank accounts, writings, social interactions etc., can be inherited to be inherited by his next of kin or heir under Clause 8(2)

14. Data Protection: - It shall be the duty of the service providers to strictly protect the privacy rights of owners against violation by anyone; the occurrence of which shall give rise to compensation as shall be determined by the Court having due regard to the extent of the damage under Clause 8(3).

In the same vein, where a provider loses data of an owner, he shall be liable for damages commensurate to the value of data lost, plus interest at prevailing rate.

15. Electronic Communications Freedom: The Bill provides that citizens and lawful residents of Nigeria shall be at liberty to send electronic communications to one another free from the fear of surveillance, monitoring, interception or any other violation of privacy. Unless the communication is illegal or could cause harm in anyway, no one is precluded from communicating electronically and within their rights to digital privacy.

16. Transfer of Data to a Foreign Party: - A person may not transfer, transmit or cause to be transferred or transmitted by any means whatsoever to a third party who is in a foreign country unless the recipient is subject to legally binding corporate rules or agreements that provide adequate level of protection to the data and its owner.



17. Enforcement of Victims' Rights: - A data owner under Clause 18(1) may institute a civil action against a responsible party for damages in a Court of competent jurisdiction. The Court may award an amount that is just and equitable, including payment of damages, interest and cost of lawsuit.

18. Penalty for Non-Compliance: - Any person who undertakes illegal communications surveillance and interference of another's digital communication, upon conviction shall be liable to a term of imprisonment not less than 10 years or a payment of compensation not less than 7 million Naira (N7,000,000) or both. As the Bill expressly termed the payment "compensation", it is not be a fine to the State; it is the payment to the data owner.

## CHAPTER 9

### **Recommendations**

#### *For journalists and media bodies*

- Journalists should recognize that they have a stake in the promotion of Internet rights and freedom of expression online. They should keep abreast of various frameworks that promote Internet rights and report on such from time to time.
- Media bodies in Nigeria including professional associations and media support groups should integrate the defense of the Internet rights of journalists and other media professionals into their freedom of the press and freedom of expression work.
- Media bodies in Nigeria including professional associations and media support groups should urgently constitute advocacy and lobby groups that engage with the state institutions especially the executive and legislature for the purpose of seeking the review or where necessary repeal of any legislation that infringes on the Internet rights of journalists and other media professionals
- Media professionals and organizations should call for immediate reworking of Cybercrime Act 2015 with special attention to the “advisory council” which excludes the vast media sector.

#### *For Freedom of expression community*

- The freedom of expression community should advocate that the Internet freedom of Nigerians should not be entrusted in the hands of some exclusive organ of government lacking in democratic legitimacy. Boards of relevant regulatory organs like NCC should be truly representative of the major shades of the society including but not limited to the media, the legal profession, women, youths, etc.

#### *For Human rights community*

- Human rights campaigners in Nigeria should subscribe to the global proclamation that internet is the most open or accessible technology in the world and act accordingly.
- Human rights campaigners in Nigeria (including women’s rights advocates) should begin to reckon that internet freedom is fundamental to human development in this age. They should therefore endorse the position of the African Declaration Group especially as it affects free speech as well as the conduct or operations of the media.

#### *For government*

- Government should abide with the spirit and letters of treaties to which it is a signatory that protects the right to freedom of expression including Internet rights.
- The legislature should review and or repeal any legislation that violates the fundamental right to freedom of expression online.
- The President should give a speedy presidential assent to the Digital Rights and Freedom Bill.

## CHAPTER 10

### **Conclusion**

Freedom of expression and the operations of the mass media in the internet age have been substantially radicalized and this transformation may continue for a long time especially with the increase in social media platforms. The traditional suspicion for the mass media by the government has been sustained and extended to the contents of internet which is a universal platform. Concerned groups and individuals around the world, including Nigeria, have risen to the challenge of not just the content but also the governance of the global platform. This, however, is yet to receive serious consideration from the nation's media industry.

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