LEGAL FRAMEWORK REGULATING FREEDOM OF EXPRESSION AND PRESS IN NIGERIA AND PATHWAYS TO NEUTRALIZING THREATS
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About CJID
The Centre for Journalism Innovation and Development (CJID), formerly the Premium Times Centre for Investigative Journalism (PTCJ), is a West African media innovation and development think (and do) tank. Founded in 2014 as a non-governmental organisation in Nigeria, the Centre has been a leader in investigative journalism, civic technology, open data, verification, safety of journalists, elections and freedom of information and expression. The organisation has offices in Nigeria, Ghana, Sierra Leone, Liberia and The Gambia.
INTRODUCTION

Freedom of expression is a human right. It refers to the rights of citizens in a country to freely express themselves, give information, and impart ideas and opinions without hindrance. The right to freedom of expression equally extends to the principle of expression and communication through the media. No doubt, the exercise of this right is essential for democracy and the rule of law. Worryingly, the Nigerian experience has been one of brutal violation and gross repression of the right to freedom of expression, particularly by the authorities. This paper, therefore, carefully examines the legal and regulatory framework for the exercise of the right to freedom of expression, the limitation and inhabitation posed by some of the laws and make a case for the review of the laws in a manner that will further strengthen the enjoyment of this right.

EXISTING LEGAL FRAMEWORK REGULATING FREEDOM OF EXPRESSION IN NIGERIA

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) (1999 CFRN) recognizes and guarantees the right to freedom of expression. Particularly, Section 39 of the Constitution states that:

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

2. 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...”

Under Article IX of the African Charter on Human and Peoples’ Rights (AFCHPR), the right to freedom of expression is guaranteed as follows:

“(1) Every individual shall have the right to receive information

(2) Every individual shall have the right to express and disseminate his opinion within the law.” (Emphasis added)
Similarly, Article 19 of the Universal Declaration on Human Rights (UDHR) provides that:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information, and ideas through any media and regardless of frontiers.”

Finally, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) provides for the right to freedom of expression as follows:

“(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 print in the form of art or through any other medium of his choice.”

The above legal provisions are clear, direct and succinct. They generally protect the Nigerian citizenry, including journalists and civil rights campaigners, to freely exercise the fundamental right to freedom of expression without inhibition. However, despite the clear provisions of Section 39 of the 1999 Constitution guaranteeing the right to freedom of expression, Section 45 of the same Constitution empowers the legislature to make further laws that could derogate, limit or inhibit free speech.

Section 45 of the Constitution provides, in part, thus:

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

- In the interest of defence, public safety, public order, public morality or public health; or

- For the purpose of protecting the rights and freedom of other persons”

The interpretation of the above is that while the right to freedom of expression is guaranteed by the Constitution, the legislature has the power to enact laws that are reasonably justifiable in a democratic society and that such laws shall not be declared invalid merely because they appear to be in conflict with the rights and freedom extended to citizens under the Constitution. In the case of SOLOMON OKEDARA V ATTORNEY GENERAL OF THE FEDERATION (2019) LCN/12768(CA), the Court of Appeal in interpreting section 39 vis-à-vis section 45 of the Constitution held that the right to freedom of expression under Section 39 cannot be taken away “except for the
purpose of preserving the interest of defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons”.

By and large, Section 45 of the Constitution has now empowered Nigerian lawmakers to make laws that clearly set out to derogate freedom of expression; even though the question whether any law that attempts to inhibit freedom of expression could be “reasonably justifiable in a democratic society” remains unanswered. These laws will be discussed below:

OFFICIAL SECRET ACT

On August 14 2018, Samuel Ogundipe, then a reporter with Premium Times, was detained at the police headquarters in Abuja, Nigeria’s capital. He was later brought before a magistrate court in the city for obtaining leaked documents containing the preliminary report of the former Inspector General of Police, Ibrahim Idris, to the Vice President Yemi Osinbajo (who was then acting as President) on the siege laid on the National Assembly by the State Security Service a week earlier.

Ogundipe was charged with stealing and unlawfully possessing restricted and classified documents inimical to Nigeria’s national security, according to Frank Mba, the immediate past spokesperson of the Nigeria Police Force. Mba claimed the reporter’s story could breach the peace and cause a breakdown of law and order in the country.

In court, the Journalist was accused of violating some sections of the Official Secret Act. Enacted in 1962, the official secret act is a law prohibiting the publication of any document or publishable material the government considers confidential. Such documents are usually said to contain sensitive information that may pose threats to national security when they are made public and therefore, the government considers them “secret”, “classified” or “restricted”.

Section 9 of the Official Secret Act describes a “classified” matter as “any information or thing which, under any system of security classification, from time to time, in use by or by any branch of the government, is not just to be undisclosed to the public but also of which the disclosure to the public would be prejudicial to the security of Nigeria”.

The outcry of media experts, lawyers and rights activists on the matter was that Ogundipe’s story posed no threat to national security. They noted that the police had no legal justification to charge the reporter and his medium under the official secret act.
Apparently, the ideal job of a journalist is the disclosure of information that puts government officials on their toes and holds them accountable to the people. But legislation such as the official secret act is often misused to limit journalists and the media to reporting only what the government wants the public to know — even when the interest of the people they govern is at stake.

If Ogundipe was found guilty — despite exercising his constitutional duty — he would have been jailed for 14 years, according to the provision of the law under which he was charged. Although the journalist and his medium believed they were wrongly scapegoated, we have seen several cases of reporters and their media houses being attacked — especially by the military — pretentiously acting in accordance with the official secret act.

In 2014, for example, copies of the Daily Trust and the Leadership newspapers were seized by gun-wielding military men who said they were acting on “orders from above”, according to TheCable. The army, however, claimed the attack was necessary because of an “intelligence report indicating movement of materials with grave security implications across the country using the channel of newsprint-related consignments”.

Before the coordinated attack, Daily Trust had published a story indicting top generals who shared military land properties among themselves in Abuja while Leadership exclusively reported how 10 generals and five other senior army officers were court-martialed and found guilty of supplying arms to Boko Haram.

**OBSCENE AND HARMFUL PUBLICATION ACT**

Before the enactment of the cybercrime law and the subsequent proposal of the social media bill, there was the Obscene and Harmful Publication Act. This law has similar characteristics to the Cybercrime Act but it was enacted before the advent of the use of the internet and social media.

Section 3 (1) of the Obscenity Act of 1961 states that “an article shall be deemed obscene if its general effect tends to deprave and corrupt the audience or readers who might have either read or heard the matter”.

The argument of some critics of this section of the law is that morality is subjective and thus the act might be used maliciously to sue journalists reporting in the public interest.
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.

This piece of legislation is the most dangerous law in the history of Nigeria that exposes the right to freedom of expression to utter abuses. The law is prone to abuse and has been used in a plethora of situations to improperly breach the right to freedom of expression. Section 24(1)(a) of the Act states that “any person who knowingly or intentionally sends a message or other matter by means of a computer system or network that is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be so sent has committed an offence under the Act and shall be liable for punishment”.

However, Section 24(1)(b) makes it an offence to similarly send messages or other matter “for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another”. The scope of the above section is overly broad, and it constitutes a breach of Section 36 of the Constitution to penalise any message that “causes annoyance”, “insults” or even causes “needless anxiety” – when the meaning of those words are left undefined.

This provision has been used to quash freedom of expression since it was enacted. Its imprecise language makes it easy to target citizens, Journalists, bloggers and media practitioners with contrary or inconvenient views. Many Nigerians have been harassed, intimidated, arbitrarily arrested and detained, unfairly prosecuted for expressing views perceived to be critical of the government, whether at the federal or state level. The Act has already led to the arrest of several bloggers and online journalists on charges of ‘cyberstalking’ for expressing themselves with writings that criticised government officials and powerful or influential individuals.
In 2018, Ja'afar Ja'afar, the publisher of DailyNigerian, an online newspaper based in Abuja, released a series of videos showing Kano State Governor Abdullahi Ganduje receiving parcels of dollars believed to be kickbacks from a contractor in the state.

Despite obvious evidence in the viral videos, Governor Ganduje filed a N300 Billion defamation suit against the journalist, asking the Kano High Court to declare that “the act of publishing and circulating libellous statements, false and doctored video clips attacking and impugning the character and integrity of the plaintiff amount to defamation of character of the plaintiff by the defendants and thus wrongful”.

Section 373 of the Criminal Code Act describes defamation — the legislation with which Ja'afar was charged — as “a matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by injuring to his reputation”.

After several attempts to unleash physical attack on the Journalist allegedly failed, the Governor would later withdraw his suits, following public outcry. The Kano court later ordered Governor Ganduje to pay N800,000 to the Journalist as cost for expenses incurred during the dollar bribery video case. The Journalist has since fled the country and is currently seeking asylum abroad to avoid being attacked by political thugs working for the governor, this researcher has gathered.

However, defamation, sedition and libel are common legislations tooled by powerful individuals to harass Journalists doing critical reporting in the interest of the public. Ja'afar is just one of the dozens of Journalists who have had to be sued to defend such suits because they performed their constitutional duties.

The repressive nature of this legislation became clearer in the case of Arthur Nwankwo and the State in 1985 when Justice Olajide Olatawura voided the sedition suit filed against the Journalist. The publisher had been charged with section 51 of the Criminal Code before an Onitsha High Court for publishing a pamphlet which indicted the then Governor of Anambra state for corrupt practices.

“We are no longer the illiterates of the mob society our colonial masters had in mind when the law was promulgated,” the judge ruled, according to TheCable.
“To retain S. 51 of the Criminal Code, in its present form, that is even if not inconsistent with the freedom of expression guaranteed by our Constitution will be a deadly weapon to be used at will by a corrupt government or a tyrant...Let us not diminish from the freedom gained from our colonial masters by resorting to laws enacted by them to suit their purpose,” the judge added.

The Government is yet to act on the recommendation by the judge for that section of the Criminal Code to be expunged.
In 2018, Justice Okon Abang, a presiding judge in the trial of Olisa Metuh, former national publicity secretary of the Peoples Democratic Party (PDP), ordered the arraignment of some television presenters for their prejudicial statements while anchoring a programme on the case.

The judge had directed that the presenters be detained along with Ben-Chuks Nwosu, their guest on the programme who is also an attorney in Metuh’s case. The Journalists and their guest were asked to be probed under section 133(4) of the Criminal Code to determine whether the conversation held on the programme was prejudicial or not.

The legislation under which the court asked that the Journalists be probed states that anyone who “makes use of any speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any party to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken” while a court proceeding is ongoing is liable. Subsection 5 of the same statute also prohibits anyone from publishing a report of the evidence taken in any judicial proceeding which has been directed to be held in private.

While exercising their right to freedom of expression, individuals and government bodies accused Journalists of revealing the details of an ongoing court proceeding even when the reports had exposed foul play.

When Premium Times published comprehensive details of how Sylvester Oromoni, a Dowen College pupil in Lagos, died, parents of the deceased and other sympathisers accused the newspaper of violating the aforementioned sections of the criminal code because a corona inquest into the death of the boy was ongoing at the time the story was published.

“What they did not know, however, is that we had started our investigation long before the inquest started,” said Ibrahim Adeyemi, the Journalist who reported the details.
SECTION 29 OF THE CORRECTIONAL SERVICE ACT- RECORDING OR FILMING CRIMINAL ACTIVITIES IN THE PRISON A CRIME

In 2019 — a year after the Ogundipe/Premium Times versus the Nigerian Police case — investigative Journalist Fisayo Soyombo went undercover to obtain photo and video pieces of evidence in a bid to expose the corruption and ineptitude in the Nigerian prison system. Using a pseudonym, he got himself arrested and detained at a police cell in Lagos. He was later moved to the Ikoyi Prison in the state.

But after publishing his three-part articles exposing the overwhelming bribery, extortion and human rights violation in the police and prison facilities respectively, the Correctional Service authorities allegedly threatened to get the Journalist arrested and charged under section 29 of the Nigeria Correctional Service Act.

Subsection 1 (c) of the said correctional service statute used to indict the Journalist states that a “person is deemed to have committed an offence if he procures or facilitates the procurement of communication devices for an inmate or makes conversation or aids the making of conversation through a mobile phone or other devices to an inmate other than as provided in the Correctional Standing Orders and other related correctional policies”.

Hearing that he could be charged with espionage, Soyombo went into hiding for several weeks until the coast was clear. Save for the public outcry and intervention, especially on social media, the Journalist could have been charged with the said offence. He would have been liable on conviction to a fine not exceeding N3,000,000 or imprisonment for a term not exceeding three years or both, by virtue of subsection 2 (b) of the act.

On several occasions, however, police and prison officials have hidden under the above law to harass Journalists legitimately doing their work by limiting their constitutional freedom of operation. In August 2021, for example, Damilola Adeyera and Emmanuel Uti, two reporters with the Foundation for Investigative Journalism (FIJ), were harassed by officials of the Ikoyi Prison. The Journalists went to Yaba magistrate court in Lagos to cover the proceedings on the case of a Danish man who allegedly killed his Nigerian wife and daughter out of anger.

Just before the proceeding started, the Journalists said they wanted to film the arrival of the accused person at the court premises. But they were stopped and their phones were seized by prison officials who threatened to jail them even after identifying themselves as Journalists.
“The officers refused to return our phones even after court proceedings, saying we should visit their office in Ikoyi to retrieve them,” the victims said in a reporter’s diary. “At about 5:20 pm, Uti and I arrived at the Ikoyi Prison. An official told us to either unlock our phones and delete whatever videos we might have taken or forget about them. We told him we would not unlock them.”

Similarly, at the same court in Lagos, Ibrahim Adeyemi, a former Journalist with FIJ, was forced by the Ikoyi Prison officials to pay N5000 to bail his seized phone in another instance. The Journalist was to cover proceedings in the case of Nicholas Mbah, an up-and-coming artist detained over #EndSARS protest at the Ikoyi prison. Adeyemi said he witnessed how prison officials fleeced relatives of Mbah at the court premises just before the commencement of the court proceeding. He was secretly filming the extortion when one of the officials caught him and threatened to throw him behind bars, using the correctional service statute. The lawyer who accompanied Adeyemi to the court said he paid the N5000 levy on behalf of the Journalist to avoid the reporter being detained under the correctional law.

**FREEDOM OF INFORMATION ACT (FOIA 2011)**

Although the Nigerian constitution accords the freedom of information to Journalists and media persons, it doesn’t give them absolute right to it. The Freedom of Information Act (FOI), which gives the media the right to seek information from government agencies, puts limitations that cripple the activities of Journalists exercising the right.

The FOI, for instance, does not guarantee a Journalist access to documents the government considers “classified”. These restrictive rules give limitations on how much a Journalist monitors the activities of government agencies, especially when the Official Secret Act comes to play.

Enacted by the National Assembly of Nigeria, the act, as defined by the lawmakers, sets obvious restrictions on the law that was supposed to promote freedom of the press. One of the functions of the legislation is to “protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and for related matters”.

These clear restrictions, among others, are key challenges hampering the implementation of the act in the country. Also, the poor compliance of government agency officials is a big barrier for media practitioners. The ICIR, for instance, documented how government agencies sabotage the implementation of the FOI Act in the name of defence and national security.
Another major restriction of the FOI is its inability to endow journalists with the freedom to have access to information of individuals or private organisations who have an influence on others in the interest of the public. This binding restriction has made it difficult for journalists to get details of individuals for public service profiling, especially in investigative reporting.

A good instance is the case of the Dowen College pupil story. The journalist that investigated the matter for Premium Times needed to profile the deceased pupil's health history to help the public understand the misery behind the death of the boy. But the deceased father declined the request to get his son's health history, citing a breach of privacy law.

Understandably, the privacy law is one of the fundamental human rights contained in the Nigerian Constitution. According to section 37 of the 1999 Constitution, “the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is guaranteed and protected”.

Therefore, while government institutions hide under the secrecy act, individuals and private organisations take solace in the privacy law to deny journalists access to information that serves the public interest.

**TERRORISM (PREVENTION & PROHIBITION) ACT**

This Act provides a legal framework for addressing acts of terrorism and related crimes. The wide powers given to state agents under the Act are prone to abuse, particularly in declaring anyone a terrorist. This Act also threatens fundamental human rights, giving “broad and sweeping powers” to security agencies to arrest and detain a suspect without “any judicial oversight,” according to A. T. Akujobi, a Nigerian legal scholar. Anyone prosecuted under the Terrorism Act runs the risk of fines, imprisonment and death sentence, making the expression of views and opinions through print, electronic or social media in Nigeria a dangerous task.

**THE NIGERIAN COMMUNICATION COMMISSION ACT 2003**

This Act empowers security agencies such as the police and the State Security Service (SSS) to lawfully intercept communication. The legislation also gives the agencies the authority to collect and disclose the intercepted communication of individuals for the purpose of an ongoing investigation or for a matter threatening national security.

But unfortunately, the sections of this act have been abused by security agencies to constantly hunt down journalists exercising their constitutional rights. In the name of
national security, the Nigerian government has violated the privacy rights of Journalists seen to be too critical or holding government officials accountable.

Although section 3 (a) of this law states that a warrant is required for any interception of communication where it is in the interest of national security, authorised agencies in several cases do not obtain the warrant before going ahead to spy on Journalists.

Azeezat Adedigba, then a Journalist with Premium Times, was tactically used as bait to get Samuel Ogundipe, her colleague. Adedigba, who used to constantly converse with Ogundipe on the phone, had been put on heavy surveillance. Believing that she must be a close relative with the main target, Adedigba's telephone calls were intercepted — in a clear breach of her digital privacy right. She would later be detained after the police invited her ostensibly over a robbery case. She was only released after the target was provided.

Sadly, these tactics have been used by security agencies to punish or jail Journalists who have one way or the other stepped on the toes of powerful individuals in government.

In another instance, investigative Journalist Fisayo Soyombo was invited by the police headquarters over a story published on the alleged corruption of a police chief. Before honouring the invitation, Soyombo said the police had extracted the phone numbers of everyone connected to his organisation. They had texted them all to be present at the headquarters for an investigation.

“I do know from experience that if the authorities are interested in you, they will track your phone and get to your location,” he told TheICIR in an interview after he was released following public outcry. “They have the equipment; it is just a question of how high you are on their priority list.”
PROPOSED TOXIC BILLS THAT VIOLATE FREEDOM OF EXPRESSION IN NIGERIA

SOCIAL MEDIA BILL

The social media bill, otherwise known as Nigeria’s Protection from Online Falsehood and Manipulation Act 2019, is one of the government’s attempts to gag the media. The bill, proposed to the National Assembly by Senator Sani Musa of Niger State, is considered a “guerilla” legislation targeted at silencing critical journalists in the country — just like the cybercrime act.

According to some sections of the said legislation, anyone caught transmitting information or details that authorities consider “false” and likely to “influence the outcome of an election” or “prejudicial to the security of Nigeria,” may be imprisoned for up to three years or fined up to N300,000 or both, according to CPJ’s review of the act.

Even though the bill has not been adopted, we have seen in different instances how power-mongering individuals detained Journalists and activists for posting critical comments on social media.

In June 2017, Charles Otu, a Journalist and publisher of Conscience, a local online newspaper in Ebonyi State, was assaulted in Abakaliki, the state capital, over his critical comments on Facebook against the government of the state.

As reported by International Centre for Investigative Reporting (ICIR), the Journalist had used his newspaper’s Facebook account to “expose the failures of the state government in many sectors and critically analyse its programmes and projects.”

“They accused me of being a threat to a state government and threatened to silence me unless I signed a written undertaking never to write anything against the state government,” Otu said. “I collapsed at the police station, having lost consciousness due to the severe beating they gave me, but I was revived at the emergency ward of the Federal Teaching Hospital, Abakaliki.”

In Katsina State, despite efforts by the Katsina state branch of the Nigerian Union of Journalists (NUJ) and officials of the Nigeria Guild of Editors (NGE), Danjuma Katsina, a citizen Journalist, was detained for questioning the legitimacy of Mansur Mashi’s
election as a member of the House of Representatives from the state. The journalist had posted a comment on his Facebook account, analysing the outcome of the Mashi/Dutsi bye-election conducted in May 2017, wondering why the alleged corrupt politician was allowed to participate in the poll, TheCIR reported. Yet another journalist in the state, Gambo Saeed, was sentenced to nine months imprisonment by a Chief Magistrate Court for allegedly abusing and calling Governor Aminu Masari names on social media.

Therefore, in 2019, when the Niger state’s lawmaker proposed the social media bill, Nigerian journalists and human rights activists condemned the act, saying it was an attempt to gag the media. One such activist and lawyer, Festus Ogun, said he believes the rising cases of abuse of digital rights and press freedom are a result of intolerance of criticism.

“It now takes the authorities little or nothing to victimise journalists and critics using the instrumentality of the law,” he told NewsWireNGR.

**HATE SPEECH BILL**

In 2019, Senate Deputy Chief Whip, Senator Sabi Abdullahi, introduced the National Commission for the Prohibition of Hate Speech (Establishment) Bill 2019 to criminalise “hate speech”. It prescribes harsh punishment, ranging from five years’ imprisonment to execution, for alleged speech offences, and leaves room for state officials to abridge constitutionally guaranteed fundamental freedoms.

The bill gave a controversial and nebulous definition of hate speech thereby giving room for gross abuse and repression of the rights of Nigerians to freedom of speech. It said a crime is committed when: “A person publishes, presents, produces plays, provides, distributes and/or directs the performance of any material, written and/or visual, which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour, commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up against any person or persons from such an ethnic group in Nigeria.”

Worryingly, despite public outrage, the hate speech bill still exists at the Senate – it has not been withdrawn and the courier has insisted it will not be pulled out, according to media reports. Ditto the social media bill.
NIGERIA PRESS COUNCIL (NPC AMENDMENT BILL AND NIGERIA BROADCASTING COMMISSION (NBC AMENDMENT BILL

The proposed amendments seek to give inordinate powers to the President and the Minister of Information and Culture in the appointment of members of the Nigeria Press Council who, among other roles, will be responsible for developing a ‘Code of Conduct’ for media outlets and journalists. The amendments also introduce punitive measures against media houses and journalists, including hefty fines or imprisonment for up to three years for alleged violations of the proposed code of conduct without judicial arbitration.

Similarly, amendments to the National Broadcasting Commission Act seek to grant the body sweeping regulatory authority over all online media in the same way as broadcast media. The bills simply sought to subject the right to free speech and the media under undue and arbitrary control. Thankfully, the bills were suspended by the sponsor after public outcry and backlash. However, the suspension is not enough. The bills should be withdrawn, cancelled and revoked and the sponsor should tender apologies for the callous audacity to restrict free speech.

ABIKE DABIRI’S JOURNALISM PRACTICE BILL

Abike Dabiri, a renowned Nigerian broadcaster, now politician and one-time legislator in the House of Representatives, sponsored a bill that many media practitioners and veteran journalists considered censoring and oppressive. The proposed statute, titled: “The Journalism Practice Bill,” sought to establish a Media Practitioners Complaints Commission (MPCC) saddled with the responsibility of taking disciplinary actions against defaulting journalists, according to a report by the ifex.

Section 37 of the draft bill states that “where a Journalist is found liable by the commission for professional and/or ethical misconduct, it shall have the power to reprimand, or suspend him for a period not exceeding twelve (12) months or impose any other appropriate punishment”.

Although some sections of the bill catered for the welfare of journalists, media leaders criticised the bill for its tendency to undermine freedom of the press. Therefore, Dabiri asked the parliament to suspend its consideration given that the Nigerian Union of Journalists (NUJ) and other media practitioners had questioned its motives.

It remains unclear whether the law will ever be reintroduced.
After several attempts to cage media operations with the NBC and National Press Council bills failed, the Nigerian government introduced another code of practice through the National Information Technology Development Agency (NITDA). Charged with developing and regulating Information Technology in Nigeria, NITDA has now issued new directives and conditions for online platforms operating in the country under the statute titled: “Code Of Practice For Interactive Computer Service Platforms/Internet Intermediaries”.

But the NITDA’s spokesperson, Hadiza Umar, said in a statement that the new code was designed to protect the “fundamental human rights of Nigerians and non-Nigerians living in the country as well as define guidelines for interacting in the digital ecosystem.”

During the Twitter ban, media houses in Nigeria were denied access to their audience on social networking platforms, limiting the dissemination of information — the primary duty of the press. The Twitter ban was however lifted following public outrage while the government came up with terms and conditions for the reinstatement of the platform in Nigeria.

Consequently, the new NITDA Code of Practice has mandated internet platforms, including Facebook and Twitter, to “register with the Corporate Affairs Commission (CAC) and appoint a designated country representative to interface with Nigerian authorities”. It also requires the social networking services to comply with all regulatory demands, including payment of tax as applicable under the Nigerian law.

But the NITDA’s spokesperson, Hadiza Umar, said in a statement that the new code was designed to protect the “fundamental human rights of Nigerians and non-Nigerians living in the country as well as define guidelines for interacting in the digital ecosystem.”

However, experts said the NITDA’s Code of Practice has established suffocating rules and regulations to cage free speech and gag the new media space. Media Rights Agenda, a non-governmental organisation in Nigeria, described the new legislation as an attempt to bring back the social media bill through the back door.
“In today’s globalised world, is it possible or realistic to expect global Internet platforms like Facebook, Twitter, and others to register with the government of every country in the world where they have users and set up offices in all those countries, which is the implication of the Federal Government’s demand? Conversely, Nigeria’s external broadcaster, Voice of Nigeria, broadcasts its signal and content to dozens of countries around the world and runs a website that is accessible globally. Is it registered and does it have offices in all the countries where its signals are received as Nigeria is now demanding of platforms registered in other countries?” Ayode Longe, MRA’s Programme Director, wondered.

Mr. Longe described many of the provisions of the document as arbitrary and draconian, saying the requirement that platforms take down “unlawful content” within 24 hours after receiving a notice or complaint from any authorised government agency constitutes an attempt by government to control content published on social media and other online platforms while bypassing the judicial process and usurping the functions of the courts which should legitimately determine what content that is illegal or unlawful.
The right to freedom of expression online is sacrosanct and remains an extension of the right to freedom of expression guaranteed under the Nigerian Constitution. Sadly, there have been recent moves to regulate the use of social media in Nigeria. It includes the express prohibition of the use of intermediaries to undertake censorship on its behalf or to remove access to content without the leave of court. According to Google’s Transparency Report, between 2018 and June 2020, the Nigerian government requested content takedown six times. This is in addition to the seemingly endless arrest, prosecution and intimidation of citizens including journalists, bloggers, activists and social critics who express themselves online.

Thankfully, the Digital Rights and Freedom Bill (DRFB) 2019 is pending at the National Assembly. This bill is a bold attempt to legislate, among others, the right to freedom of expression and opinion online and the freedom of information online. The bill is critical to the preservation of the rights to freedom of expression on the digital space which is recommended for assent by the Nigerian president.
LIMITATIONS ON THE RIGHT TO FREEDOM OF EXPRESSION IN NIGERIA

The civic space continues to shrink and freedom of expression is under serious attack in Nigeria. Nigerians are punished and persecuted for merely exercising their rights to freedom of expression. The ugly narrative got worse since the emergence of President Muhammadu Buhari in 2015.

In addition to the two separate cases of Katsina and Otu earlier highlighted, there is also the case of Olamilekan Bashiru, founder of a privately owned news website Eagleforesight, whom the SSS detained on May 13, 2022, for republishing a report about the “alleged criminal records” of Dapo Abiodun, governor of Ogun State, Nigeria. For close to four months, Bashiru was in detention following a charge against him under Section 24(1) of the Cybercrimes Act, 2022.

These are just a few of the numerous cases of attacks and backlashes citizens have suffered in the hands of authorities while lawfully exercising their fundamental right to free speech, especially in the digital space.

In 2021, President Buhari’s administration suspended the operations of Twitter in Nigeria after a controversial tweet by him was deleted by the microblogging site. With this act generating global condemnation and the ranking of the country in the same category with North Korea, China, Iran and Turkmenistan, which all engage in draconian restrictions of the freedom of expression in their territories.

The arbitrary suspension of Twitter clearly violates the right to freedom of expression online. However, seven months later, the government announced the lifting of the suspension on January 12, 2022, after allegedly reaching some agreements with Twitter. The interference with the right to freedom of expression by the Nigerian authorities when it banned Twiiter was described as illegal and unlawful by the ECOWAS Court of Justice.

On July 7, 2022, Nigeria’s broadcasting regulator, the National Broadcasting Commission (NBC), in a worrying case of interference with the independence of the press, wrote a letter to broadcast stations instructing them to limit reporting and commentary on the rising insecurity in the country, including that media houses withhold details of incidents and victims. Limiting commentary of citizens and public affairs analysts is an attempt to muzzle freedom of expression. And the letter appears to be censorship taken too far.
In October 2020, the Nigerian authorities also arbitrarily blocked websites associated with the #EndSARS protest movement, and the central bank suspended bank accounts of individuals and groups singled out as supporters of the protests, ostensibly on suspicion of financing terrorism. Those targeted had been raising funds to help families of those killed during the protests, settling legal fees for those arrested, medical costs for those injured and providing grants to Journalists to enable them to cover military and police abuses during the protests. The blockage of websites associated with #ENDSARS movement demonstrates a clear case of repression of freedom of expression, considering the fact that the websites were deployed to air opinions and disseminate information, amongst others.
LEGISLATIVE AND JUDICIAL PATHWAYS TO SAFEGUARD FREEDOM OF EXPRESSION IN NIGERIA

JUDICIAL PATHWAYS

 Strategic litigation: There are two aspects of strategic litigation within the context of defence of freedom of expression. One is preventive or proactive; while the other is remedial or reactive. While the former is intended to tackle and prevent measures that threaten freedom of expression, the latter is aimed at addressing infringements. One of the most effective ways of guaranteeing freedom of expression is through the institution of strategic litigation. Given the constant attacks on free speech in the country, concerted efforts should be made to challenge violations committed against citizens and organisations while exercising their constitutional right to freedom of expression as guaranteed by Section 39 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Persons who are arrested for expressing views online or offline should have easy access to legal representation. Strategic lawsuits should be filed to challenge the constitutionality of laws and executive actions that negates freedom of expression.

 Legal Defence Fund: There is a need to establish more easily accessible legal defence fund(s) to give financial support to causes, individuals and organisations that promote freedom of expression in Nigeria. This will enhance access to court and the ability of persons who are prosecuted for criminal defamation and cyberstalking or sued for libel for expressing critical views in the public interest against the government and public office holders.

 Training of lawyers and judicial officers: It is important to regularly train lawyers who are involved in human rights advocacy on the best ways to pursue cases that promote freedom of expression in Nigeria. Human right lawyers should be exposed to current and available legal mechanisms, comparative cases and precedents, both local and foreign, which will equip them to engage in strategic litigation. Similarly, judges and justices should be invited to
symposiums, workshops and conferences that are geared towards entrenching and defending the constitutional right to freedom of expression.

**Case Review:** As part of the judicial pathways to safeguard freedom of expression in Nigeria, there is a need for periodic case review of judicial decisions that impact on freedom of expression. Legal experts should undertake, be commissioned and encouraged to review judgments of superior courts of record that touch on freedom of expression with the aim of shedding light on the consequences of such cases. Such reviews should be published in law journals, newspapers and online and discussed on radio and television.

**LEGISLATIVE PATHWAYS**

**Legislative advocacy:** Given the growing attack on freedom of expression in Nigeria, there is need for a sustained and coordinated searchlight on the legislature and legislative efforts aimed at curtailing or regulating the media and cyberspace. Through legislative advocacy. Lawmakers should be constantly reminded of the need to respect the fundamental right of the citizens to freedom of expression which is an integral part of democracy. Executive and Private Member Bills that will curtail freedom of expression should be strongly resisted through direct and indirect engagements and civic actions. CSOs and human right advocates should attend public hearings where such Bills are scheduled for deliberation and offer a unified opposition to the passage of such restrictive Bills.

**Justiciability of Section 22 of the 1999 Constitution:** The right to freedom of expression is connected with freedom of the press. If the media space is censored, the ability of citizens to exercise their fundamental right to freedom of expression as guaranteed by Section 39 of the Constitution will be significantly curtailed. Regrettably, Section 22 of the 1999 Constitution which stipulates the constitutional role and independence of the media in Nigeria is under Chapter II of the Constitution and therefore non-justiciable by virtue of Section 6(6)(b) of the Constitution. This implies that the provisions of Section 22 cannot ordinarily be enforced in court. There is need for strategic advocacy to draw attention to this anomaly, with a demand for the said provision to be made one of the fundamental rights under Chapter IV of the Constitution.
RECOMMENDATIONS

Nigeria is a state party to the International Convention on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples’ Rights (ACHPR) and a member of the Economic Community of West African States (ECOWAS). Nigeria has an international responsibility to uphold the state’s human rights obligations, including protection of the right to freedom of expression. Unfortunately, these obligations have only been observed in breach by the recurrent clampdown on freedom of expression. According to the Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019, adopted by the African Commission on Human and Peoples’ Right, states should ensure that safeguards are provided for the rights to freedom of expression.

A major implication of such attempts at censorship of freedom of expression is that the same portends evil for other freedoms and the enjoyment of other rights. Indeed, human rights are interrelated. The rights to freedom of expression affects the rights to propagate your religion and the right to impart education.

To establish an effective regulatory framework that can promote the right to freedom of expression and create a system of adherence to the rule of law to ensure, among other things, that the objects of freedom of expression are not threatened or hindered, the following recommendations are made:

- The Cybercrime Act 2015 should be repealed and re-enacted after a careful review of the sections that have been used to stifle the rights of Nigerian citizens to free speech

- The Digital Rights and Freedom Bill 2019 should be passed into law

- Given the poor public awareness of the potency of the rights to freedom of expression, especially in a constitutional democracy, public education must be intensified to build a community of self-aware citizens who understand their human and digital rights and can demand respect, recognition and enforcement from institutions
The pending bills at the National Assembly and State Houses of Assembly that have the potential of hindering freedom of expression should be withdrawn, revoked and cancelled immediately, while existing laws that expose freedom of expression to dangerous abuse should be amended.

Advocacies on freedom of expression by civil society groups, pro-democracy campaigners and activists should be intensified, and avenues must be created for policy dialogue, consultation, and research.

Nigerian authorities should be encouraged to issue clear directives to state agents to refrain from effecting arrests, detention, and prosecution of citizens in a manner that unduly interferes with rights to freedom of expression and information.

Journalists should understand media laws to avoid being inhibited by individuals who might be unfavoured by their reporting.

Media executives and rights activists must rise against statutes limiting the operations of journalists in Nigeria.

Build trusted sources in government parastatals as an alternative way of seeking information/documents to avoid the lack of compliance in the implementation of the FOI.

Civil Society Organisations and the Nigerian media must strengthen their campaigns against restrictive media laws and must continue to engage lawmakers on why they should not enact oppressive laws.

Journalists must periodically be trained and retrained on media laws, ethics as well as digital and physical safety.