

THE POLITICS OF HATE SPEECH AND FUNDAMENTAL HUMAN RIGHT IN NIGERIA, 2015-2020.

Eyikorogha Queen

Department of Political Science

Federal University Otuoke, Bayelsa State

Abstract

One of the cardinal pillars of democracy is the right to free speech. This right is universally recognizes and protected in several statutory instruments of states, albeit its limitations. In Nigeria, however, the protection and promotion of freedom of speech appears to be problematic due to governmental policies and actions targeted at curbing alleged incidences of hate speech. This paper interrogated the politics of hate speech and fundamental human rights with specific reference to efforts by the current administration in Nigeria to censor hate speech; an action that has brought about public outcry, mass criticism, protests and agitations that marred government proposal concerning hate speech law. The paper adopts the social Responsibilities Media Theory originated from Robert Hutchins Commission on the freedom of press of 1947 that explain the rights of the press to criticize any institutions and even government. The paper adopted a qualitative approach, addressed three objectives, which were tested by content analysis by relying on extant literature and other documented evidences. Findings of the study show that hate speech in Nigeria is largely promoted by the political class. Findings further show that hate speech law poses serious challenges to fundamental human rights of freedom of expression in Nigeria. It also found that existing laws that seek to address hate speech in Nigeria, such as the Electoral Act, have implementation gaps. Besides, it revealed that hate speeches are catalysts of disintegration among the different religious and tribal groups in Nigeria. The paper insists on a clear and objective understanding of what constitute hate speech and the parameters for delineating it as necessary pre-condition for mitigating its abuses and therefore guaranteeing the rights to freedom of expression by political opposition and ordinary citizens. The study recommends that the guarantee of freedom of expression requires that hate speech laws are carefully drafted, and that the implementation gaps associated with laws that address hate speech and rights violation should be strengthened.

Keywords: Politics, Hate Speech, Fundamental Human Right, Freedom of Expression.

Introduction

Fundamental human right is a universal declaration which makes the right to freedom of expression explicit, inalienable, universally recognized and protected under statutory instruments of State. The 1999 Constitution of the Federal Republic of Nigeria, like those of other countries, have explicitly provided for the protection of this right because of its fundamental imperative and significance to the sustainability of personal liberty of the citizens and democratic practices. Section 39(1) of the constitution guarantees freedom of expression as a fundamental right. In addition, the right to freedom of expression is also protected under the Universal Declaration of Human Rights, and the various Regional Instruments and Conventions on human and people's rights, including the African Charter on

Human and Peoples Rights (1986). In these statutory rights instruments, obligations and duties are imposed on the State or its agencies and on individuals to protect and promote human rights and fundamental freedoms.

The right to freedom of expression, like most other rights, is far from been sacrosanct or immutable as there are recognized restrictions and exceptions to this right. Thus, such restrictions or exceptions are to be found in the law of defamation; hence, the enjoyment of the right to freedom of expression must as well take into cognizance the right of other citizens and groups to protect their reputation (Udofa, 2011). Evidently, a number of nations have introduced laws that seemingly impact negatively on human rights, following rising incidences of global terrorism and other forms of speech induced violence and warfare. For instance, the events of 11 September, 2001, and the subsequent so-called war on terror, triggered a number of human rights setbacks. The UN Special Rapporteur on Freedom of Expression noted that several states responded to the events of 11 September, 2001, by adopting laws which have negative implications for certain rights, including freedom of expression (Callamard, 2005). Consequently, a human rights organization named ARTICLE 19, in its global campaign for free expression, has monitored worldwide the growth in anti-terrorist legislation and state secrecy laws, increasing use of defamation laws, media censorship, self-censorship, and media biases.

In practice, freedom of expression can be limited in the name of prohibiting the incitement of hatred only if there is a close nexus between the expression in question and the risk of harm, and when the risk is imminent. Intent must be shown and the anticipated danger should not be remote or conjectural and the expression concerned should be intrinsically dangerous to the public interest. Furthermore, the state should ensure that the restriction imposed is the least restrictive means possible for protecting the interest threatened. In other words, international law calls for a careful balance to be struck between protecting the right to freedom of expression on the one hand, and prohibiting advocacy for hatred on grounds of nationality, race and religion on the other (Udofa, 2011).

Therefore the likelihood that hate speech will spark violence in any given situation can be estimated using just these five criteria: the speaker, the audience, the speech itself, the social and historical context, and the means of dissemination. In each case, one or more of these criteria may be especially important. A speaker can have great influence over a particular audience, and certain audiences may be especially vulnerable because of economic hardship, fear, or existing grievances. Certain language-related events, defined broadly to include such acts of expression as burning a holy book can be particularly powerful. In some cases, it is the last criterion, the mode of dissemination, which is of paramount importance, especially when it is a form of new media. Text messaging is used increasingly to organize riots and massacres in many countries. For youths in developing nations whose cell phones link them to the wider world and give them a sense of agency and power, a message may pop up on their screens like this one from the 2007, when ethnic violence broke out in Kenya, (Callamard, 2005).

In Nigeria, there are serious concerns over proposals for hate speech laws given the country's fragility in terms of democratic practices. This is particularly so given the high level of political intolerance and the rising incidences of executive impunity in the country; a situation that has put Nigeria on the spot on matters of human rights abuse. Also, there are equally growing concerns over abuse of freedom of speech among groups, particularly the political class in Nigeria. Therefore hate speech has transcended social-cultural and religious boundaries to politics in Nigeria. It is in this context that an interrogation of the politics of hate speech becomes imperative to the study. Doing this also entails establishing the link between politics of hate speech and fundamental human rights in Nigeria, identifying challenges and making concrete recommendations.

Conceptual and theoretical Issues

Hate Speech

There is no international legal definition of what constitutes hate speech, and the characterization of what is 'hateful' is controversial and disputed (Gutteres, 2019). In the Social sciences, the concept of hate speech is still evolving in literature. Notwithstanding, however, there are attempts by scholars and other relevant authorities at giving meaning to the concept. Neisser (1994), defines hate speech as all communications (whether verbal, written, symbolic) that insults a racial, ethnic and political group, whether by suggesting that they are inferior in some respect or by indicating that they are despised or not welcome for any other reasons. Gutteres (2019) notes that hate speech is any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor. The UN Committee on the Elimination of Racial Discrimination, (2013), notes that hate speech includes: (a) all dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means; (b) incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin; (c) threats or incitement to violence against persons or groups on the grounds in (b) above; (d) expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination; and (e) participation in organizations and activities, which promote and incite racial discrimination.

The Encyclopedia Britannica (2015) describes hate speech as a statement intended to demean and brutalize another or the use of cruel and derogatory language on the basis of real or alleged membership in a social group. Hate speech is speech that attacks a person or a group on the basis of protected attributes such as race, religion, ethnic origin, national origin, sex, disability, sexual orientation, or gender identity (Nockleby, 2000). Vice President of the Federal Government of Nigeria, Professor Yemi Osinbanjo refers to hate speech as specie of terrorism (Mamah, Akinferon, Agbakwuru, & Afer, 2017)). To him, hate speech is the unlawful use of violence or intimidation against individuals or groups especially for political aims. The law on hate speech terrorism 2011 in Nigeria defines hate speech as an act

deliberately done with malice and which may seriously harm or damage a country or a population (Ndah-Isaiah, 2017). Nockleby (2000) defines hate speech as that speech which attacks a person or group on the basis of attributes such as race, religion, ethnic origin, sexual orientation, disability or gender. Enahoro (2017) sees hate speech as polluted statements, especially by Nigerians, attacking each other on the basis of ethnicity or religion. Nadim and Fledmoe (2016) describe hate speech as any persecuting, degrading or discriminating speech on ground of the recipient's minority group identity; and that such speech that will be regarded as hate speech must be conveyed publicly or in the presence of others and be directed at a certain group or on individuals' assumed group identity.

According to Leets (2002), hate speech has serious consequences; it violates the individual's dignity, resulting in humiliation, distress and psychological or emotional pain. On the other hand, Nemes (2002), opines that hate speech can provoke pain, distress, fear, embarrassment and isolation to individuals. While hate speech towards groups of people can bring inequality problems and isolation, it creates the feeling of fear and discourages them from participating in the community and expressing their opinions. The Danish Penal Code, (266 B) prohibits hate speech, and legal regime in Denmark defines it as publicly making statements by which a group is threatened (trues), insulted (forhånes) or degraded (nedværdiges) due to race, skin colour, national or ethnic origin, faith or sexual orientation. However, there has been considerable debate over the definition of hate speech (vihapuhe) in the Finnish language. According to Finnish Penal Code, (Chapter 11, Section 10), if "hate speech" is taken to mean ethnic agitation, it is prohibited in Finland and defined in the section 11 of the penal code, as war crimes and crimes against humanity, as published information or as an opinion or other statement that threatens or insults a group because of race, nationality, ethnicity, religion or conviction, sexual orientation, disability, or a comparable basis. Ethnic agitation is punishable with a fine or up to 2 years in prison, or 4 months to 4 years if aggravated (such as incitement to genocide). Critics claim that, in political contexts, labeling certain opinions and statements hate speech can be used to silence unfavorable or critical opinions and suppress debate. Certain politicians, including Member of Parliament and the leader of the Finns Party Jussi Halla-aho, consider the term "hate speech" problematic because of the disagreement over its definition. Notwithstanding, hate speech is a menace to democratic values, social stability and peace (Gutteres, 2019)

There has been much debate over freedom of expression or speech, hate speech and hate speech legislation (Herz & Molnar, 2012). The laws of some countries describe hate speech as speech, gestures, conduct, writing, or displays that incite violence or prejudicial actions against a group or individuals on the basis of their membership in the group, or which disparage or intimidate a group or individuals on the basis of their membership in the group. The law may identify a group based on certain characteristics (Criminal Justice Act, 2003; Terry, 2008). It is instructive to assert that in some countries, hate speech is not a legal term, while in some countries, including the United States, hate speech is constitutionally protected. In some countries, a victim of hate speech may seek redress under civil law, criminal law, or both (Stone, 1994; Volokh, 2015; Volokh, 2017). Nevertheless, the right to freedom of expression is well established in international law, which also requires that

states refrain from interfering with this right, unless the interference is necessary to protect a legitimate interest, and is provided by law. Notwithstanding, international law equally requires states to prohibit the advocacy of any national, racial or religious hatred. Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) stipulates that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Theoretical Framework

This study is anchored on Social Responsibility Media Theory. The theory originated from Robert Hutchins Commission on the freedom of press of 1947. It propagates the right of the press to criticize any institutions and even government, but it must be responsible enough to maintain the stability of the society. The Commission talks about a free and responsible press as being the cornerstone of any society. The guiding principle of the press at all times must and should be in Public Interest.

The theory came about as a result of the gross abuse observed in the libertarian era. It assumed rather erroneously that all human beings are necessarily responsible and could be trusted to use good judgment in carrying out their task and responsibility of keeping the public informed, but giving the press unbridled freedom is dangerous. According to Okunna (1994), no nation will indefinitely tolerate a freedom of the expression that serves to divide the country and to open up the floodgates of criticism against the freely chosen government that leads it. Ajibefun & Daramola (2003), noted that the Social Responsibility Theory advocates that:

- The media should accept and fulfill certain obligations to the society.
- The obligations are mainly to be met by setting high professional standards of informativeness, truth, accuracy, objectivity and balance.
- In accepting and applying these obligations, media should be self-regulating within the frame of laws of the land.
- The media must avoid whatever could lead to crime, violence, or civil disorder or give offence to minority groups.
- The media should be pluralistic and reflect the diversity of the society, giving access to various points of view and to right of reply.
- Journalists and media professionals should be accountable to the society as a whole.

Empirical Review of Hate Speech Cases/Laws

Hate speech laws have come to stay in several countries across different climes. However, there are a number of minimum standards and parameters that need to be adhered to in ensuring a balance between fundamental human rights of freedom of expression and effective hate speech mitigation. Udofa, (2011) argued that any restriction to fundamental human rights implies that:

- it should be clearly and narrowly defined;
- it should be applied by a body which is independent of political, commercial or other unwarranted influences, and in a manner which is neither arbitrary nor discriminatory, and which is subject to adequate safeguards against abuse, including the right of access to an independent court or tribunal;
- no one should be penalized for statements which are true;
- no one should be criminally penalized for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence;
- the right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;
- prior censorship should not be used as a tool against hate speech;
- care should be taken to apply the least intrusive and restrictive measures in recognition of the fact that there are various available measures, some of which exert less of a chilling effect on freedom of expression than others; and
- any imposition of sanctions should be in strict conformity with the principle of proportionality and criminal sanctions. In particular, imprisonment should be applied only as a last resort.

Bell (2009) opines that laws against hate speech can be divided into two types: those intended to preserve public order and those intended to protect human dignity. Furthermore, those designed to protect public order require a higher threshold to be violated, so they are not specifically enforced frequently, and those meant to protect human dignity have a much lower threshold for violation, so those in Canada, Denmark, France, Germany and the Netherlands tend to be more frequently enforced.

As a basis and justification for hate speech laws, the International Covenant on Civil and Political Rights, (ICCPR, Article 20), states that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". Similarly, the Convention on the Elimination of All Forms of Racial Discrimination, (ICERD, article 4) prohibits all incitement of racism. Concerning the debate over how freedom of speech applies to the Internet, the United Nations High Commissioner for Refugees has sponsored conferences concerning such sites under the auspices of Preparatory Committee for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, (United Nations, 27 April 2001).

In the Canadian context, any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation and disability, is an indictable offence under the Criminal Code and it carries a maximum sentence of five years' imprisonment.

There is no minimum sentence (Revised Statutes of Canada, 1985). Publicly inciting hatred against any identifiable group is also an offence. It can be prosecuted either as an indictable offence with a maximum sentence of two years' imprisonment, or as a summary conviction offence with a maximum sentence of six months' imprisonment. There are no minimum sentences in either case (RSC, *ibid.*). In Canada, the offence of publicly inciting hatred makes exceptions for cases of statements of truth, and subjects of public debate and religious doctrine. The landmark judicial decision on the constitutionality of this law was *R vs. Keegstra* (1990).

Furthermore, the Council of Europe in its sponsored No Hate Speech movement actively raised awareness about hate speech in order to help combat its associated problems. While Article 10 of the European Convention on Human Rights does not prohibit criminal laws against revisionism such as denial or minimization of genocides or crimes against humanity, as interpreted by the European Court of Human Rights (ECHR), the Committee of Ministers of the Council of Europe went further and recommended in 1997 that member governments take appropriate steps to combat hate speech under its Recommendation R (97) 20 (Council of Europe, Committee of Ministers, 1997). The ECHR does not offer an accepted definition for hate speech but instead offers only parameters by which prosecutors can decide if the hate speech is entitled to the protection of freedom of speech (Sharon, 2013).

In Germany, *Volksverhetzung* (incitement to hatred) is a punishable offense under Section 130 of the *Strafgesetzbuch* (Germany's criminal code) and can lead to five years' imprisonment. Section 130 of the German Criminal Code makes it a crime to publicly incite hatred against parts of the population or to call for violent or arbitrary measures against them or to insult, maliciously slur or defame them in a manner violating their (constitutionally protected) human dignity. For instance, it is illegal to publicly call certain ethnic groups maggots or freeloaders (St GB §130 (2) 1. c). Incitement to hatred therefore is punishable in Germany even if committed abroad and even if committed by non-German citizens, if only the incitement of hatred takes effect within German territory, e.g., the seditious sentiment was expressed in German writing or speech and made accessible in Germany, (German Criminal Code's Principle of Ubiquity, Section 9 §1 Alt. 3 and 4 of the *Strafgesetzbuch*). On June 30, 2017, Germany approved a bill criminalizing hate speech on social media sites. Aside criminalizing hate speech, the law states that social networking sites may be fined up to €50 million (US\$56 million) if they persistently fail to remove illegal content within a week, including defamatory fake news (Jordans, 2017).

In India, freedom of speech and expression is protected by article 19 (1) of the constitution of India, but under article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence (The Constitution of India, 2014).

In Japan, the Japanese law covers threats and slander, but does not apply to hate speech against general groups of people. Japan became a member of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination in 1995. Article 4 of

the convention sets forth provisions calling for the criminalization of hate speech, but the Japanese government suspended the provisions, saying actions to spread or promote the idea of racial discrimination have not been taken in Japan to such an extent that legal action is necessary. The Foreign Ministry says that this assessment remains unchanged, (Wikipedia, 2019). However, in May 2013, the United Nations Committee on Economic, Social and Cultural Rights (CESCR, 2013) warned the Japanese government that it needs to take measures to curb hate speech against so-called comfort women. The committee's recommendation called for the Japanese government to better educate Japanese society on the plight of women who were forced into sexual slavery to prevent stigmatization and to take necessary measures to repair the lasting effects of exploitation, including addressing their right to compensation.

In 2013, following demonstrations, parades, and comments posted on the Internet threatening violence against foreign residents of Japan, especially Koreans, there were concerns that hate speech is a growing problem in Japan, (*Japan Times*, 5 June 2013). It further reported that Prime Minister Shinzō Abe and Justice Minister Sadakazu Tanigaki have expressed concerns about the increase in hate speech, saying that it "goes completely against the nation's dignity", but so far have stopped short of proposing any legal action against protesters.

On 22 September 2013, about 2,000 people participated in the "March on Tokyo for Freedom" campaigning against hate speech marches. Participants called on the Japanese government to sincerely adhere to the International Convention on the Elimination of All Forms of Racial Discrimination. Sexual minorities and the disabled also participated in the march. Again on 25 September, 2013, a new organization, An international network overcoming hate speech and racism (Norikoenet) that is opposed to hate speech against ethnic Koreans and other minorities in Japan was launched (Wikipedia, 2019). Lending its voice, a United Nations panel urged Japan to ban hate speech. Thus, in May 2016, Japan passed a law dealing with hate speech. However, it does not ban hate speech and sets no penalty for committing it (Osaki, 2016).

In addition, the Dutch penal code prohibits both insulting a group (article 137c) and inciting hatred, discrimination or violence (Article 137d). The definition of the offences as outlined in the penal code is as follows: Article 137c: He who publicly, orally, in writing or graphically, intentionally expresses himself insultingly regarding a group of people because of their race, their religion or their life philosophy, their heterosexual or homosexual orientation or their physical, psychological or mental disability, shall be punished by imprisonment of no more than a year or a monetary penalty of the third category. Article 137d: He who publicly, orally, in writing or graphically, incites hatred against, discrimination of or violent action against person or belongings of people because of their race, their religion or their life philosophy, their gender, their heterosexual or homosexual orientation or their physical, psychological or mental disability, shall be punished by imprisonment of no more than a year or a monetary penalty of the third category (Wikipedia, 2021).

In January 2009, a court in Amsterdam ordered the prosecution of Geert Wilders, a Dutch Member of Parliament, for breaching articles 137c and 137d. On 23 June 2011, Wilders was

acquitted of all charges (BBC Report, 2009). In 2016, in a separate case, Wilders was found guilty of both insulting a group and inciting discrimination for promising an audience that he would deliver on their demand for fewer Moroccans (*Chicago Tribune*, 2016.)

With respect to Norway, hate speech is prohibited and it is defined as publicly making statements that threaten or ridicule someone or that incite hatred, persecution or contempt for someone due to their skin colour, ethnic origin, homosexual orientation, religion or philosophy of life, (The Norwegian Penal Code). At the same time, the Norwegian Constitution guarantees the right to free speech, and there has been an ongoing public and judicial debate over where the right balance between the ban against hate speech and the right to freedom of expression or speech lies. Norwegian courts have been restrictive in the use of the hate speech law and only a few persons have been sentenced for violating the law since its implementation in 1970. However, a public Free Speech Committee (1996–1999), recommended abolishing the hate speech law but the Norwegian Parliament instead voted to slightly strengthen it.

In the United Kingdom, several statutes criminalize hate speech against several categories of people. The statutes forbid communication that is hateful, threatening, or abusive, and targets a person on account, of disability, ethnic or national origin, nationality (including citizenship), race, religion, sexual orientation, or skin colour. The penalties for hate speech include fines, imprisonment, or both, (Public Order Act, 1986). The United States does not have hate speech laws, since American courts have repeatedly ruled that laws criminalizing hate speech violate the guarantee to freedom of speech contained in the First Amendment to the U.S. Constitution.[10] There are several categories of speech that are not protected by the First Amendment, such as speech that calls for imminent violence upon a person or group. However, the U.S. Supreme Court has ruled that hate speech is not one of these categories, (Brandenburg v. Ohio, 395 U.S. 444 (1969); *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992); *Snyder v. Phelps*, 562 U.S. 443 (2011); *Matal v. Tam*, 582 U.S., (2017)). Proponents of hate speech legislation in the United States have argued that freedom of speech undermines the 14th Amendment by bolstering an oppressive narrative which demeans equality and the Reconstructive Amendment's purpose of guaranteeing equal protection under the law, (Downs & Cowan, 2012).

In South Africa, hate speech (along with incitement to violence and propaganda for war) is specifically excluded from protection of freedom of expression or speech in the South African Constitution. The Promotion of Equality and Prevention of Unfair Discrimination Act, (2000) contains the following clause:...No person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be hurtful; be harmful or to incite harm; promote or propagate hatred. The prohibited grounds include race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. The crime of *crimen injuria* (unlawfully, intentionally and seriously impairing the dignity of another (Clark, 2003) may also be used to prosecute hate speech (Hanti, 2006).

It is reported that in 2011, a South African court banned Dubula iBhunu (Shoot the Boer), a derogatory song that degraded Afrikaners, on the basis that it violated a South African law prohibiting speech that demonstrates a clear intention to be hurtful, to incite harm, or to promote hatred (Benesch, 2012). Accordingly, in October 2016, the draft Hate Crimes Bill was introduced. It aims to address racism, racial discrimination, xenophobia and discrimination based on gender, sex, sexual orientation and other issues, by providing an offence of hate crime. It includes controversial provisions that criminalize hate speech in ways that could be used to impermissibly restrict the right to freedom of expression (Amnesty International Report, 2017). The Foundation of Economic Education views this bill as a repetition of a mistake during the apartheid era, some maintaining that it constitutes the gravest threat to freedom of expression which South Africans have ever faced (Van Staden, 2017).

In the preceding section, we have explored country case studies with reference to hate speech legislations. In the overall context, it is worthy of note that countries abiding by international or regional standards (namely- Europe, Africa, and the Americas), may interpret them differently. Nowhere is it clearer than in the European Union, where countries have approached and dealt with hate groups and hate speech in very different ways. For instance, France and Germany have taken a much more prohibitive approach to hate speech (for instance with regard to Holocaust denial, or incitement to religious hatred) than the United Kingdom. The American approach, on the other hand, protects hate speech unless the speech actually incites to violence and the speech is likely to give rise to imminent violence. This is a very stringent standard; as a general matter at least, even the most virulent racist speech, even speech advocating violence and filled with racial insult and slurs, will be protected unless it can be shown that violence is likely to occur virtually immediately.

Hate Speech Politics and Fundamental Human Rights in Nigeria

As contained in Chapter IV, Section 39 of the 1999 Constitution of Nigeria, the right to freedom of expression is guaranteed and protected. The provision of the law states that:

- a) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
- b) Without prejudice to the generality of sub section (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions provided that no person, other than the government of the federation or a state, or any other person or body authorized by the president on fulfillment of a condition laid down by Act of National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

The right to freedom of expression is also guaranteed under the various international instruments on human rights and fundamental freedoms, to which Nigeria is signatory. Article 19 of the Universal Declaration on Human Rights provides as that everyone has the right to freedom of opinion and expression; and that 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. Similarly, Article 19 of the International Covenant on Civil and Political Rights expressly provides for the right to freedom of expression. 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 print in the form of art or through any other medium of his choice.

Article 9 of the African Charter on Human and Peoples Rights also provides for the protection of the right to freedom of expression in the following terms:

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.

But an appraisal of the provisions of the above laws would show a thin line between fundamental human rights of freedom of expression and hate speech law. Perhaps, this may have informed Callamard's (2005) submissions that the right to freedom of expression implies that it should be possible to scrutinize, openly debate and criticize, even harshly and unreasonably, belief systems, opinions, and institutions, as long as this does not amount to advocating hatred against an individual.

In Nigeria, policy matters relating to freedom of expression on one hand, and hate speech on the other, have become contentious to experts and delicate to governments owing to its socio-political implications on national security and stability. Attempt at establishing clear-cut boundaries between the two led to proposals for hate speech laws. The bill to this effect was first presented by Senator Aliyu Sabi Abdullahi in March 2018. The bill defines hate speech as when a person uses, 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 behavior 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 person from such an ethnic group in Nigeria (Draft of Proposed Anti Hate Speech Bill, 2019). The bill proposed that any person found guilty of any form of hate speech offence shall be liable to life imprisonment, and where that results in the death of another person the penalty shall be death by hanging, upon conviction. It is instructive to note that the bill prescribed death penalty for hate speech only if such speech has deadly consequences. It is also instructive to note that capital punishment exists in Nigeria for offences like murder, armed robbery and treason. Offenders were killed by hanging until 2015, when lethal injection was also introduced in the Administration of Criminal Justice Act. According to Amnesty International, Benin Prison in Edo state carried out the last executions in Nigeria in 2016.

Notwithstanding, this bill faced heavy criticism and was abandoned in June 2019 after it failed to make it to the final reading. It was reintroduced in November 2019, as the National Commission for the Prohibition of Hate Speeches Bill, 2019 (SB. 154). Most Nigerians saw the bill as an attempt to gag the press and citizens. Human rights lawyer, Femi Falana even doubted that the national assembly had the power to pass such a bill into law. Nobel laureate Wole Soyinka also said the bill seeks to silence the voice of criticism.

However, Omirhobo in an interview with Onyekwere (*The Guardian Newspapers*, 2019) asserted that jurisprudentially, law is not static; it is dynamic and evolving with society to meet with social needs. He maintained that most laws in Nigeria are obsolete, more so that there are emerging social challenges that are new to the country that need to be regulated by laws, thus making it proper, lawful and constitutional for the National Assembly to make laws regulating social media, with respect to hate speech, provided it is in line with the demands of the constitution; the grand-norm and the supreme law of the land which binds all authorities, and persons throughout the Federation, and which gives validity to every other law in force in Nigeria. But the caveat to this is that any law passed by the National Assembly, which is inconsistent with the Nigerian constitution shall be to the extent of such inconsistency null and void.

Nevertheless, Nigerians are apprehensive that hate law in the country is intended to be used to gag free speech by a government that is perceived as being highly intolerant of the opposition and other dissenting views. These criticisms came amidst the insistence of the ruling All Progressive Congress Party that they would not go back on the bill, a stand which was later to be amplified by Nigeria's Minister of Information and culture, Lai Mohammed, who insisted that the bill's aim at regulating social media was to curb fake news and hate speech (*The Sun Newspapers*, 2019).

But Amnesty International (2019) observed that the proposed National Commission for the Prohibition of Hate Speech bill, and the Protection from Internet Falsehood and Manipulation and other Related Offences bill, give authorities arbitrary powers to shut down the internet and limit access to social media, and make criticizing the government punishable with penalties. Furthermore, most Nigerians are of the view that with incessant harassment of the press, politicization of the judiciary, internal use of the military for political objectives, public repression and suppression of political opponents as well as religious and ethnic persecution, any form of hate speech law would be suspect and amount to reign of terror in Nigeria.

Hate speech politics has adversely impacted on the fundamental human right of free speech, social stability and the democratization process in Nigeria. Findings of studies show a correlation between hate speeches, fundamental right to free speech and social stability in Nigeria. A study conducted by Adedokun, (2020) on the effect of hate speech on citizens in Ibadan metropolis show that hate speech permeates the Nigerian society and has the potential of disrupting the progress and development of the nation as its tenets are against tolerance and respect for human dignity. Abiodun, et-al. (2017) observed that during the 2015 general election in Nigeria, the political environment was intensified with the proliferation of adverts, political innuendos and propaganda messages. Media organizations in Nigeria, as always, became vehicles and channels of expressions and propaganda. A significant number of these

messages had elements of hate speeches which were targeted at ridiculing opponents and opposition parties.

Though there have been other instances of hate speech politics in Nigeria, it manifested more during the 2015 general elections. A few instances which were recorded during campaigns for the 2015 general elections, according to Mrabure (2016), were identified to include when:

“Katsina State Gov. Shema reportedly urged his supporters to attack opponents and referred to his political opponents as cockroaches urging his supporters to kill them as they kill cockroaches. The Ekiti State Governor, Peter Ayodele Fayose in January repeatedly took out front page newspaper advertorials warning voters not to vote for the APC presidential candidate Muhamadu Buhari. These adverts, now widely known as “death wish advertorials,” insinuated that the Presidential candidate was likely to die in office if elected, like the late President, Yar adua. Speaking during the PDP Women Presidential Campaign Rally in Kogi State, the then Nation’s First Lady, reportedly described Gen. Buhari unfit to be the country’s president, calling him old and brain dead. Patience Jonathan is also recorded as having urged the members of the Peoples Democratic Party (PDP) to stone anyone that promises them change. Change is the slogan of the All Progressives Congress (APC). In the same campaign speech given at a rally which held on Monday, March 2, in Calabar, Mrs. Jonathan is quoted as saying “Our people no dey born shildren wey dem no dey fit count. Our men no dey born shildren throway for street. We no dey like the people for that side,” thus making derogatory statements obviously referring to the Northern parts of the country where the awful practice of child abandonment known as ‘Almajiri’ still occurs” (Mrabure, 2016, pp.162).

Ezeibe (2015) also observed that hate speech has been elevated to the status of political campaign strategy and it accounts for the escalation of pre, during and post election violence in Nigeria. An examination of these therefore shows how hate speech politics violates and equally undermines fundamental human right to freedom of expression. This agrees with the submissions of Mrabure (2016) that hate speech does exist and freedom of expression may sometimes be curtailed whenever there is an occurrence of the uttering of hate speech whether verbally or in print that might endanger public safety, unity and national security.

Although the Electoral Act contains detailed provisions specifically prohibiting politically motivated hateful speech, as contained in Section 95 and 102 of the Act (Mrabure, 2016), the 1999 Nigerian constitution does not expressly stipulates what constitutes hate speech, nor does it provide sanctions for offenders-apparently in protection of the freedom of speech. Adedokun (2019) had stated that there had been no legal laws on hate speech. This appears to be the gap that has paved way for the politicization of hate speech, abuse of freedom of speech, and the clamour for hate speech laws.

Discussion of Findings

The study examined the politics of hate speech and fundamental human rights in Nigeria, from 2015-2020. Findings of the study show that hate speech in Nigeria is largely promoted

by the political class. It also found that whereas hate speech laws in other claims have further strengthened and safeguarded the right of groups, in Nigeria the study found that existing laws that seek to address hate speech, such as the Electoral Act, have implementation gaps. Evidences of the study show that there is a significant relationship between hate speech and other fundamental human rights. This is particularly manifest in the abuse of the right to free speech through the use of hateful language against divergent groups and opinions, and suppression of political opposition by ruling governments. It has also manifested in violent destruction of lives and property.

Furthermore, the study found that hate speeches are catalysts of disintegration among the different religious and tribal groups in Nigeria. This further explains the lack of trust and confidence among the various groups and leadership in the country.

Recommendations

As a corollary to the findings of this study, the following recommendations are hereby suggested:

1. The need to make legislation on hate speech should be anchored on honesty, transparency and trust, devoid of political considerations.
2. There is the need for government and the civil society to partner towards enlightening the citizens on their fundamental rights and their limits within the ambit of the law.
3. The law courts have a duty to ensure that the fundamental rights of all citizens are upheld and protected especially as it relates to hate speech conflicts.
4. The extant laws that appear to address hate speech in all its ramifications should be reviewed with the view to adequately capture changing realities in terms of evidence and sentence in Nigeria.
5. The implementation gaps associated with laws that address issues of hate speech and rights violation should be strengthened.

Conclusion

The right to freedom of expression is a fundamental right which safeguards the exercise of all other rights as well as a catalyst for deepening democracy. However, safeguarding this all-important right has been problematic in Nigeria because of hate speech and Nigeria's other fault lines. The guarantee of this right therefore requires that hate speech laws be carefully drafted to protect vulnerable groups in society. This need is highlighted by the fact that the laws are sometimes used by the state against the very citizens it seeks to protect. This is premised on the grounds that hate speech laws can be used to restrict minorities from promoting their views, culture and identity. Hate speech legislation in such cases constitutes a blunt instrument, a double-edged sword that too often amounts to political expediency rather than well thought-through strategies to tackle discrimination, prevent violence and protect the right to life and to equality.

And bearing in mind that there is no denying that certain forms of hateful expression can threaten the dignity of targeted individuals and create an environment in which the enjoyment of equality is not possible, this study found that an effective response to vilifying expression

requires a sustained commitment on the part of governments to promote equality of opportunity, to protect and promote linguistic, ethnic, cultural and religious rights, and to implement public education programmes about tolerance and pluralism. All these would go a long way in mitigating the challenges associated with the politics of hate speech and fundamental human rights in Nigeria.

REFERENCES

- Abiodun, F., Olusola, O., Kehinde, O., Okorie, N. (2017).” Hate speech and the 2015 general elections in Nigeria”. *IJASOS- International E-Journal of Advances in Social Sciences*, Vol. III, Issue 9, December 2017, pp. 948-953.
- Adedokun, M. O. (2020). “Hate Speech and Its Effects on the Nigerian Communities: A Case Study of Ibadan Metropolis, Oyo State”. Retrieved from https://www.researchgate.net/publication/343722446_Hate_Speech_and_Its_Effects_on_the_Nigerian_Communities_A_Case_Study_of_Ibadan_Metropolis_Oyo_State/references
- African Charter on Human and Peoples Rights (1986).
- Amnesty International (2017), Report 2016/2017, p. 333.
- Amnesty International (2019). “Bills on Hate Speech and Social Media are Dangerous Attacks on Freedom of Expression”. Retrieved from <https://www.amnesty.org/en/latest/news/2019/12/nigeria-bills-on-hate-speech-and-social-media-are-dangerous-attacks-on-freedom-of-expression/>
- Guterres, A. (2019). “The UN Strategy and Plan of Action on Hate Speech”. Available at <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%20June%20SYNOPSIS.pdf>
- BBC (2011). “Geert Wilders cleared of hate charges by Dutch court”. BBC News. 23 June. Retrieved 28 June 2019.
- BBC,(2009). Report on Geert Wilders". 21 January. Retrieved 10 October 2019.
- Bell, J. (2009). "Restraining the Heartless: Racist Speech and Minority Rights". *Indiana Law Journal*. 84: 963–79. Retrieved 9 October 2018.
- Benesch, S. (2012). "Words as weapons". *World Policy Journal* (Spring). 3 (1): 20-22.
- Brant, D.O. (2008). “Freedom of Expression and Hate Speech”. *Millian Principles, Legal Theory*. Vol. 24.
- Callamard, A. (2005). “Striking the Right Balance in Words & deeds: Incitement, Hate Speech & the Right to Free Expression”, London: Index on Censorship for the EU NGO Forum.

- Chicago Tribune (2016). "Wilders guilty in Dutch Court over Moroccan Comments, not Fined". December 9. Retrieved 15 December 2019.
- Clark, D. M. (2003). South African Law Reform Commission Issue Paper 22 Project 130: Stalking. *South African Law Commission*.
- United Nations, (2013). "Principal subjects of concern and recommendations", Concluding observations on the third periodic report of Japan, adopted by the Committee on Economic, Social and Cultural Rights at its fiftieth session, 29 April – 17 May (E/C.12/JPN/CO/3).
- Constitution of India, (2014). lawmin.nic.in. Retrieved 22 October 2019.
- Convention on the Elimination of All Forms of Racial Discrimination, Article 4.
- Council of Europe, (1997). Recommendation R (97) 20 of the Committee of Ministers to Member States on "Hate Speech", adopted on 30 October 1997, accessed 10 March 2017
- Dictionary.com. Definitions of "hate speech", Retrieved 25 June 2019.
- Downs, D M. and Cowan, G. (2012). "Predicting the importance of freedom of speech and the perceived harm of hate speech." *Journal of Applied Social Psychology*, 42 (6): 1353-1375.
- Enahoro,E. (2017). Hate speeches and good governance. Retrieved on 18/2/2018 from <https://dailytrust.com.ng/news/opinion/hate-speeches-and-good-governance/211055.html>
- Encyclopedia Britannica, (2015). "Hate speech." academic-eb-com.ezproxy.scottsdalecc.edu/levels/collegiate/article/hate-speech/602988. Accessed 30 Mar. 2019.
- Eze, O. (1999). "Dissent in a democratic polity: Options in a Presidential system", in Y.,Osinbajo & A. Kalu (eds.) *Democracy and the Law*. Lagos: Federal Ministry of Justice.
- Ezeibe, C. (2015). "Hate Speech and Electoral Violence in Nigeria". A paper Presented at the Two-Day National Conference on the 2015 General Elections in Nigeria: The Real Issues at the Electoral Institute Complex, Independent National Electoral Commission Annex, Central Business District, Abuja. Retrieved from https://www.researchgate.net/publication/325258444_hate_speech_and_electoral_violence_in_nigeria
- Federal Republic of Nigeria (1999). *Chapter IV of the 1999 Constitution of Nigeria*. Abuja: Government Press.
- Hanti, O. (2006). "Man fined after racial slur to top judge". Retrieved 10 July 2019.

- Herz, M. & Molnar, P. (2012). *The Content and Context of Hate Speech* (eds.) London: Cambridge University Press.
- Jordans, F. (2017). "Germany passes law against online hate speech". *ABC News*. Associated Press. Archived from the original on 1 July 2017.
- Mamah E, Akinferon, D, Agbakwuru, J & Afer S. (2017). FG. Declares hate speech as terrorism. <https://www.vanguardngr.com/2017/08/fg-declares-hate-speech-terrorism/>
- Mrabure, K. O. (2016). "Counteracting Hate Speech and the Right to Freedom of Expression in Selected Jurisdictions", *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, Retrieved from <https://www.ajol.info/index.php/aujilj/article/view/136264>
- Nadim, M & Fladmoe, A. (2016). *Hate speech, Report/Research on the nature and extent of hate speech*. Norway, Norwegian institute for Social Research
- Nda – Isaiah, J. (2017). "Hate speech to be treated as terrorism-Osinbajo". Retrieved from <https://leadership.ng/2017/08/18/hate-speech-treated-terrorism-osinbajo/>
- Nockleby, J. T. (2000). "Hate speech" in *Encyclopedia of the American Constitution*, W. L. Leonard & L. K. Kenneth vol. 3. (2nd ed.), Detroit: Macmillan Reference US, pp. 1277–79.
- Nockleyby, J (2000). "*Hate speech in Encyclopedia of the American Constitution*", (ed) Leonard, W.L. and Kenneth N.K. Vol 3(2nd edition) Detroit: Macmillan Reference.
- Odike, E. (2005). "Right to freedom of expression and the press", in O., Okpara. *Human Right Law and Practice*, Enugu: Chenglo Ltd.
- Ogbu, O. (1999). *Human rights law and practice in Nigeria: An introduction*. Enugu: CIDJAP Press.
- Onyekwere, J. (2019). 'Hate speech bill is unlawful, illegal, unconstitutional and undemocratic', *The Guardian Newspapers*, 03 December.
- Osaki, T. (2016). Diet passes Japan's first law to curb hate speech, *Japan Times*. Retrieved May 27, 2019.
- United Nations (2001). *Report of the High Commissioner for Human Rights on the Use of the Internet for Purposes of Incitement to Racial Hatred, Racist Propaganda and Xenophobia, and on Ways of Promoting International Cooperation in This Area*. United Nations Publication.
- Public Order Act (1986)". www.statutelaw.gov.uk
- Sharon, A. D. (2013). "A web of hate: European, U.S. laws clash on defining and policing online anti-semitism". *Algemeiner Journal*. 3 (2), 22.

- Stone, G. R. (1994). "Hate speech and the U.S. constitution." *East European Constitutional Review*, 3 (4), 78-82.
- Terry, A. (2008). "Hate speech and Ethnophaulisms". *The International Encyclopedia of Communication*. London: Cambridge University Press.
- Udofa, I. J. (2011). "Right to freedom of expression and the law of defamation in Nigeria". *International Journal of Advanced Legal Studies and Governance*, .2 (1), 75.
- Van-Staden, M. (2017). "South Africa is repeating the mistakes of apartheid", Foundation for Economic Education, June 21, 2017.
- Volokh, E. (2017). "Supreme Court Unanimously Reaffirms: There is no Hate Speech Exception to the First Amendment.", 19 June. Washington post.com. Retrieved 1 September 2018.
- Volokh, E. (2015). "No, there's no "hate speech" exception to the First Amendment". The Washington Post. Retrieved 25 June 2017.
- Wikipedia (2021) "Hate Speech Laws by Country", Retrieved from https://en.wikipedia.org/wiki/Hate_speech_laws_by_country#Netherlands, 8 April 2021.