



Democratic Solutions to Fake News and Hate Speech in Nigeria

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TABLE OF CONTENT

FAKE NEWS

MEMO ON DEMOCRATIC SOLUTIONS TO FAKE NEWS

INTRODUCTION

DEMOCRACY AND FREEDOM OF EXPRESSION

DIGITAL FREEDOM AND DIGITAL RIGHTS

HOW DEMOCRATIC NATIONS AROUND THE WORLD ARE
DEALING WITH THE PROBLEM OF FAKE NEWS

LESSONS AND STRATEGIES THAT NIGERIA CAN LEARN
AND ADOPT FROM THESE COUNTRIES

CONCLUSION

REFERENCES

HATE SPEECH

MEMO ON DEMOCRATIC SOLUTIONS TO HATE SPEECH

INTRODUCTION

THE CYBERSPACE

FREEDOM AND LIBERTY

THE BUHARI EFFECT

FREEDOM OF EXPRESSION AND HATE SPEECH

PROHIBITION OF HATE SPEECH

DEMOCRATIC SOLUTIONS TO HATE SPEECH IN NIGERIA

REFERENCES



DEMOCRATIC SOLUTIONS TO FAKE NEWS





MEMO ON FAKE NEWS

The '*Protection from Internet Falsehoods and Manipulation and Other Related Matters Bill, 2019*' also known as Social Media Bill is one of the two anti-democratic Bills before the Nigerian Senate seeking to delimit freedom of expression. Sponsored by Sen. Muhammad Sani Musa and first introduced on the floor of the Nigerian Senate in November 2019, the 'Social Media Bill' has elicited widespread condemnation from the Nigerian Public, especially the youth, media and women, who consider themselves the primary target of the proposed Bill.

In its organizational assessment of the Bill, CFL believes that the proposed Bill should be withdrawn because it is unfit for a democratic country like Nigeria, and while it agrees that Fake News is indeed a problem in the country, it equally believes that there are democratic solutions that Nigeria can create or adopt from other democratic nations around the world, to tackle the problem of Fake News without violating citizens' rights to Freedom of Expression as guaranteed by the Constitution of the Federal Republic of Nigeria.

On Thursday August 13, 2020, Center for Liberty in collaboration with other human rights organizations, activists and lawyers held a strategy review meeting to review a document titled 'Democratic Solutions to Fake News In Nigeria.' The document was presented by Ms. Chieme Ogbeyialu Chukwu Esq. – a Democratic Strategy Consultant for Center for Liberty.

The document emphasizes how we now live in a digital world, surrounded by a deluge of information and how the internet has made the world more connected than ever, thus a threat anywhere is a threat everywhere. Fake news has in recent times raised a lot of concerns about democratic freedoms and the abuse of those freedoms. because of its impact prevalent in contemporary democratic politics.

Our goal in engaging a democratic strategy consultant was to see how other democratic nations around the world are dealing with the problem of Fake News and how Nigeria can either adopt or learn from their strategies in dealing with the problem. These were our findings:

SOME DEMOCRATIC COUNTRIES AND HOW THEY ARE TACKLING FAKE NEWS

1. TURKEY

Turkey ranks first on a list of countries where people complain about completely made up stories according to the 2019 Reuters Digital News report. It has not passed any specific laws to tackle fake news. Although the authorities have occasionally investigated suspects of such action.

However, two well-known 'Fact-checking' Initiatives have been launched: The first called 'Gunun Yalanlari' (Lies of the day) says on its website it verifies news, photos and textual content shared on social media, and comments by politicians, among others.

The second is called 'fact – checking Turkey' and has content in English and other languages. it says it monitors "factual accuracy" of news related to Turkey.

2. SWEDEN

Sweden has concentrated on informing and educating its citizens on methods used to spread and amplify disinformation, rather than passing legislation to counter it.

The government also distributed civil defense pamphlets to its citizens which included guidelines on dealing with 'false information'.

3. INDIA

The Spread of false rumors on WhatsApp and social media has become a major issue in the world's largest democracy.

Following an appeal by the authorities, WhatsApp which has more than 200m users in India, reduced the number of times a user can forward a message at a time to five. The world's largest messaging app has also begun a campaign of online, print, radio and Tv ads to increase awareness about the dangers of sharing false rumors.

A number of fact-checking outlets have been founded in recent years to verify controversial stories that go viral on social media and messaging apps.

4. UNITED KINGDOM

In order to stem the wide spread of false statements, false declarations, and harmful contents, the UK government set up a rapid response unit within the

cabinet office to work with social media firms to remove fake news and harmful contents from their platforms. The unit works to knock down misinformation and disinformation which undermines genuine information and expert information very quickly.

The government also re-launched a campaign called “don't Feed the Beast”, urging the public to think carefully about what they share online, so as to stop false rumors from spreading and taking hold.

From what these countries are doing, it can be seen that employing a democratic and civilized approach ensures that the fundamental Human Rights of citizens are safeguarded, and guaranteed.

Nigeria should learn and adopt these democratic and civilized approaches of fighting the problem of fake news rather than resorting to the anti-democratic approach to enact tyrannical and draconian laws that will further shrink our civic spaces.

DEMOCRATIC SOLUTIONS TO THE PROBLEM OF FAKE NEWS IN NIGERIA

1. PUBLIC AWARENESS CAMPAIGNS

It is crucial to inform the people about fake news and educate them to make judgments about reliability of news and information; which enables them to use services which give them short hand information on how to know what is reliable. The NCC and NOA will play a vital role in this regard.

2. REBUTTAL UNIT TO COUNTER FALSE PUBLICATIONS

The Government should form a Rapid Response Unit charged with the responsibility and duties of countering fake news. This unit will, among other things, be saddled with creating a website for rating news platforms and mediums of disseminating information; publishing rebuttals to inaccurate information, and proving beyond reasonable doubt the reliability and trustworthiness – or otherwise of any public information, so that the public may know what is true, verifiable and reliable.

3. WORKING ALONGSIDE SOCIAL MEDIA PLATFORMS TO HELP IN FLAGGING DOWN FALSE PUBLICATIONS

All digital platforms have rules and regulations. Individuals or organizations who breach the codes, rules, regulations or terms and conditions, often face the consequences of their actions through suspension or deregistration.

Social media companies also help in limiting internet falsehoods, false

declarations and misinformation, by fact checking and/or taking down harmful posts, harmful publications, and harmful content. These social media platforms have restrictions that apply to the usage of internet platforms and sites. Incidents of fake news, or incitements to hatred or violence may lead to the restriction of the social media accounts and pages of the users. The government can consolidate on this by collaborating with the social media platforms to ensure that this is continued regardless of whose ox is gored.

The government through its agencies or special units may work with the social media companies by providing verified, credible and authentic information against fake news and false publications and enable these companies to flag down false statements and fake news.

4. CIVIL SOCIETY GROUP ADVOCACY/CAMPAIGNS AGAINST FAKE NEWS

The government can partner Civil Society Organizations in coming up with media literacy initiatives that will help amplify awareness and equally educate the citizens on Fake News and how to be better communicators.

CONCLUSION

The proposed Social Media Bill, if passed, will cause greater harm to our democracy and civic spaces than it is trying to cure. It will cause the government to ride rough shod on the rights of citizens and especially Rightsholders such as people living with disability, age discriminated group (youth and elderly), indigenous ethnic minorities, women facing exploitation and abuse and violence, and the media.

However, the proposed democratic solutions are capable of combating the problem of fake news published on the internet from anywhere in the world. As a democratic country, Nigeria must practice and uphold the tenets of democracy in all its dealings and approaches.

We, therefore, hope that the highlighted solutions will be seriously considered by our legislators and the federal government, just as we pledge our unflinching resolve to support the government in adopting any or all of the measures highlighted above, in combating the problem of Internet Falsehoods or Online Fake News in Nigeria.

INTRODUCTION



Freedom of expression is an important human right in a democratic dispensation which is essential for society to be autonomous. It was guaranteed in Article 19 of the Universal Declaration of Human Rights 1948.

It empowers the free exchange of ideas, opinions and information and also allows members of society to form their own opinion from happenings in public sphere.

The common debate within and outside intellectual arenas have always been about the existence of freedom of expression and the level at which citizens are allowed to exercise it in line with the constitutional provision at hand.

Like many nations, Nigeria is practicing democracy joining other parts of the world in providing atmosphere for its citizenry to hold, form and express opinions to propel participation in good governance. It can be stated that significant improvements in freedom of expression and civil liberties were among the immediate gains of Nigeria's transition to civilian government. It is generally assumed that Nigerians should be able to express themselves freely in the context of Nigeria's political environment, despite the persistent corruption, violence and poverty.

It is worthy of note that as the rest of the world is bothered about the impact of fake news on elections and referendums in developed nations, emerging democracies are also facing the same threat.

We now live in a digital world, surrounded by a deluge of information. The internet has made the world more connected than ever, thus a threat anywhere is a threat everywhere.

The new information age has created a virtual surrounding with loads of information, a large part of which is reliable with the more significant chunk unverifiable.

Fake news has in recent times raised a lot of concerns because of its impact on contemporary democratic politics. In Nigeria, there are legislations governing the telecommunications sector and the internet.

One of the fundamental tenets of democracy is freedom of expression and freedom of speech. It is the right of individuals to hold opinions and express it without hindrance. Considering the instrumentality of information dissemination, democratic dispensations hold media as an enormous tool in building its institutions. To this end, democracy thrives better on the wheel of freedom for all citizens to express their views.

THE CONSTITUTION

The constitution of the Federal Republic of Nigeria 1999, as amended, is the ground norm, the basic Law, the Fundamental and foundational law of the country. It is the foundation upon which all other laws are enacted and all other enacted laws rest on.

By virtue of this foundation and according to the provisions of the constitution, all laws must be consistent with the provisions of the constitution to be constitutional.

Section (1) of the constitution states that the constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.

Sub Section (3) "If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall, to the extent of the inconsistency be void".

Being the foundational law in the country, other laws and policies have their legality and identity enshrined and entrenched in the constitution including the Fundamental Human Rights contained in part IV of the constitution and which provides for basic rights of all citizens including the right to life, freedom of movement, freedom of association, freedom of speech and expression and all other similar provisions that protect the rights and freedom of citizens.

Section 39 (1) CFRN (as amended) states that "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

BY VIRTUE OF SECTION 1 OF THE CONSTITUTION

All Acts and Laws enacted or to be enacted in Nigeria must be in consistency with the constitution of the Federal Republic of Nigeria, and any Act or Law that is contrary, inconsistent and in contravention with the provisions or any provision of the constitution shall be rendered null and void and of no effect whatsoever and declared unconstitutional to the extent of the inconsistency and contravention.

By reason of this foundational, fundamental, basic law, the proposed social media Bill, formally named "The Protection from Internet Falsehoods and Manipulation and Other Related Matters Bill, 2019" before the 9th Senate of the National Assembly of the Federal Republic of Nigeria, seeking to criminalize the rights to freedom of speech and expression, contravenes the provisions of the constitution of the Federal Republic of Nigeria (1999 as amended), same provisions being a universal law; agreed, adopted, ratified and domesticated from the Universal Declaration of Human and Peoples' Rights charter, article 19.

The Universal Declaration of Human Rights Article 19, 1948, states that "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The social media bill is therefore a complete breach and a total violation of the fundamental human rights of the citizens.

DEMOCRACY AND FREEDOM OF EXPRESSION



Freedom of expression is a precondition for democracy. It is instrumental and essential to the maintenance of diversity and plurality, which are key prerequisites of a democratic civilization and social order. The natural configuration of Nigeria is diverse in terms of ethnicity, religion, ideology and life style. Since contemporary democracy is governed by pluralism, the need to synergize multiple and conflicting, patterns of life, Ideas and ideologies is paramount, therefore freedom of expression is an important and effective mechanism of harnessing and maintaining orderliness and equal representation in a pluralistic society.

While freedom of expression remains essential in airing opinion, it is strongly believed to be an indispensable aspect of dialogue facilitation among individuals, and it creates a free public sphere in which everybody can freely participate by expressing their opinions. In addition, other scholars opine that free expression of ideas on certain policies craft the platform for citizen participation in policy making process and enacting of laws. Thus, freedom of expression is a political back bone and an asset to the operation of a self-governing system of administration. The right to express and also to be heard helps in the implementation of democratic philosophies of participation and equality before the law in a society.

This critical or constitutive rationalization of the freedom of expression is related to the moral responsibility of citizens, citizenries as ethnically upright agents must be unrestricted to obtain and express views.

DEMOCRACY AND DEMOCORATIC CIVILISATION

Democracy being a system of government by the whole population, the people have the authority to choose their governing legislation.

Who people are and how authority is shared among them are core issues for democratic theory, development and constitution. In democracy the supreme

power is vested in the people and exercised directly by them or through freely elected representative.

Democracy is political or social unit governed ultimately by all members. It is the practice or spirit of social equality, a social condition of classlessness and equality.

Democracy as a synthesis of three factors; society, policies, and ideals, succeeds where its accompanying political, social and economic Evolutions are spaced apart in time, exploring its evolutionary nature.

Nigeria being a Democratic nation should be seen to imbibe the tenets, principles and ideals of democracy, before the world. The Nigerian polity must demonstrate and uphold fair and equal treatment of everyone as a democratic and civilized country.

DIGITAL FREEDOM AND DIGITAL RIGHTS



Digital Freedom is a fundamental human right, not a privilege.

Digital freedom is a concept of freedom of expression which is the right of individuals and organizations to express their opinions in the preferred device or medium connected to internet.

Digital Rights is the concept that is particularly related to the protection and realization of existing rights, such as the right to privacy and freedom of expression, in the context of digital technologies, especially the internet. The laws of several countries recognize the right to internet access.

Digital rights are those human rights and legal rights that allow individuals to access, use, create, and publish digital media or to access and use computers, or other electric devices, and telecommunications networks.

The balance between promoting open speech and dissent is essential to a well-functioning Civil Democracy, and serious consequences for prejudicial speech may inhibit this good effect.

Some scholars opine that terminating an employee or expelling a student for prejudice violates the right to freedom of speech.

Free speech theorists have long argued that speech should not be merely considered as a means towards societal progress and collective well-being. It constitutes an intrinsic value indispensable to the individual alone, being an integral part of self – fulfilment and self-realization of the individual's free potential.

Applied in the context of big data and wearable tech, these theories document well how the major issue at stake is not the traditional concept of privacy but the concept of autonomy. Further reflecting on the user's ability to develop and exercise one's own rationality as to how and when to share one's data.

HOW DEMOCRATIC GOVERNMENTS ARE COMBATING FAKE NEWS



UK GOVERNMENT

The spread of falsehoods and rumors could lead to loss of lives. In order to stem the wide spread of false statements, false declarations, and harmful contents, the UK government set up a rapid response unit within the cabinet office to work with social media firms to remove fake news and harmful contents.

This specialist unit deals with many incidents everyday tackling issues such as fake "experts" issuing false medical information and criminals phishing scams. The unit work to knock down misinformation and disinformation which undermines genuine information and expert information very quickly.

The government also re-launched a campaign called "don't Feed the Beast", urging the public to think carefully about what they share online, so as to stop false rumors from spreading and taking hold.

Social media companies have also put measures in place to fight the spread of misinformation. For example, Twitter has said it will remove content that promotes unverified claims.

Facebook, Google, Microsoft and Reddit also said they would work with governments on the issue of fake news and hate speech.

THE INTERNATIONAL GRAND COMMITTEE ON DISINFORMATION AND FAKE NEWS

In recent times, the world is facing a series of events disrupting the information ecosystem, from disinformation campaigns to violent extreme events circulated online and now the Covid-19 infodemic.

George Washington University's Institute for Data, Democracy and Politics

(IDDP), tried to highlight the false, misleading and dangerous social media content regarding the Covid-19 Pandemic that harms the health and financial security of consumers in the United States and around the world.

CALLS FOR PLATFORM GOVERNANCE

Centre for International Governance Innovation (CIGI) being an independent non-partisan think tank on global governance, supports research, forms networks, advances policy debates and generates ideas for multilateral governance improvements. The CIGI has convened leading thinkers to explore new models for governing digital platforms.

On multimedia, Kate Klonick on Facebook's Oversight Board was the lone researcher invited in to observe Facebook's process for creating a content moderation oversight board.

CIGI Stated unequivocally that "it is an urgent and critical priority for legislatures and governments to ensure that the fundamental rights and safeguards of their citizens are not violated or undermined by the unchecked march of technology.

The International Grand Committee (IGC) is an ad hoc group of elected representatives from around the world to advance international collaboration on the regulation of social media to combat harmful content, hate speech and electoral interference online.

The IGC began in November 2018, when representatives from eight countries joined the United Kingdom's Digital, Culture, Media and Sport Committee to discuss the spread of disinformation, the threat of 'fake news, questions of privacy and projecting individuals' data and what all this means for democracies around the world.

IGC meetings have included parliamentarians from Argentina, Australia, Belgium, Canada, Costa Rica, Ecuador, Estonia, Finland, France, Germany, Ireland, Latvia, Mexico, Morocco, Singapore, St. Lucia, the United Kingdom and the United States.

COMBATTING FAKE NEWS

GMA (GREGORY MKALLEF ASSOCIATES) On Combating Fake News

The spread of misinformation/fake news by a variety of media including digital and printed stories and deep fake videos is a growing threat in what has been described as "post-truth era"; and many people, organizations and governments

are looking for effective ways to weed out fake news, and to help people to make informed judgements about what they hear and see.

The exposure of fake news and its part in recent election scandals, the common and frequent use of the term by prominent figures and publishers and the need for the use of fact – checking service have all contributed to an erosion of public trust in the news they consume. For example, YouGov research used to produce annual Digital News Report (2019) from the ROUTERS Institute for the study of Journalism at the University of Oxford showed that Public Concern about misinformation remains extremely high. Reaching A 55 per cent average across 38 countries with less than half (49 percent) of people trusting the news media they use themselves.

The spread of fake news online, particularly at election times, is of real concern and with the most recent UK election, the UK Brexit referendum, the 2017 UK general election, and the last U.S. Presidential election all being found to have suffered interference in the form of so called 'fake news' (and with the 59th US Presidential election scheduled for Tuesday, November 3 2020) the subject is high on the world agenda.

COMBATTING FAKE NEWS (other democratic climes)

What is being done online to meet these challenges and combat the fake news problem? Here are some examples of those organizations and services leading the fightback and what methods they are using:

BROWSER –BASED TOOLS

Recent YouGov research showed that 26% per cent of people say they have started relying on more 'reputable' sources of news. But as well as simply choosing what they regard to be trustworthy sources, people can now choose to use services which give them shorthand information on which to make judgements about the reliability of news and its sources.

Since people consume online news via a browser, browser extensions (an app-based services) have become more popular. These include:

Our News

This Service uses a combination of objective facts (about an article) with subjective views that incorporate user ratings to create labels (like nutrition labels on food) next to new articles that a reader can use to make a judgement. Our News Labels use publisher descriptions from Freedom Forum, bias ratings

from all sides, information about an article's sources author and editor. It also uses fact-checking information from sources including PolitiFact, Snopes and factcheck.org, and labels such as "clickbait" or "satire" along with user ratings and reviews. Our news browser extension is available for Firefox and chrome and there is an iOS app.

News Guard

This service, for personal use or for News Guard's library and school system partners offers a reliability rating score of 0-100 for each site based on its performance on nine key criteria, ratings Icons (green-red ratings) next to links on all of the top search engines, social media platforms, and news aggregation websites. Also, News Guard gives summaries showing who owns each site, its political leaning (if any) as well as warnings about hoaxes, political propaganda, conspiracy theories, theories, advertising influences and more.

PLATFORMS

Another approach to combatting fake news is to create a news platform that collects and publishes news that has been checked and given a clear visual rating for users of that platform.

One of such example is Credder, a news review platform which allows journalists and the public to review articles, and to create credibility ratings for every article, author, and outlet, Credder focuses on credibility not clicks, and uses a Gold cheese (yellow) symbol next to articles, authors, and outlets with a rating of 59% or less Readers can therefore, make a quick choice about what they choose to read based on these symbols and the trust value that they create.

Credder also displays a 'leaderboard' which is based on rankings determined by the credibility and quantity of reviewed articles. Currently, Credder ranks – national geographic.com, Gizmodo.com and cjv.org as top sources with 100% ratings.

AUTOMATION AND AI

Many people now consider automation and AI to be an approach and a technology that is intelligent, fast, and scalable enough to start to tackle the vast amount of fake news that is being produced and circulated. For example, Google and Microsoft have been using AI to automatically assess the truth of articles. Also, initiatives like the fake news challenge seeks to explore how AI technologies, particularly machine learning and natural language processing, can be employed to combat fake news and support the idea that AI technologies

hold promise for significantly automating parts of the procedure human fact-checkers use to determine if a story is real or a hoax.

However, the human-writing rules underpinning AI, and how AI is 'trained' can also lead to bias.

GOVERNMENT

Governments clearly have an important role to play in the combatting of fake news, especially since fake news/misinformation has been shown to have been spread via different channels e.g. social media to influence aspects of democracy and electoral decision making.

The UK government, for example, called for a shift in the balance of power between "platforms and people" and for tech companies to adhere to a code of conduct written into law by parliament and overseen by an independent regulator.

Also, in the U.S., Facebook's Mark Zuckerberg has been made to appear before the U.S. congress to discuss how Facebook tackles reports.

FINLAND – TACKLING FAKE NEWS EARLY

One example of a government taking a different approach to tackle fake news is that of Finland; a country that has recently been rated Europe's Most resistant nation to fake news. In Finland, evaluation of news and fact-checking behavior in the school curriculum was introduced in a government strategy after 2014, when Finland was targeted with fake news stories from its Russian neighbor. The changes to the school curriculum across core areas in all subjects are, therefore, designed to make Finish people, from a very young age able to detect and do their part in the fight against false information.

SOCIAL MEDIA

The use of Facebook to spread fake news that is likely to have influenced voters in the UK Brexit referendum, the 2017 UK general election and the last U.S. Presidential election put social media and its responsibilities very much in the spotlight. Also, the scandal of Cambridge Analytica involving 50 million Facebook profiles in early 2014 for apparent electoral profiling purposes damaged trust in the social media giant.

Since then Facebook has tried to be seen to be actively tackling the spread of fake news via its platform, its efforts include:

- Hiring the London-based, registered charity 'Full Fact'; who review stories, images and videos, in an attempt to tackle misinformation that could "damage people's health or safety or undermine democratic processes". Facebook is also reported to be working with fact checkers in more than 20 countries and to have had a working relationship with Full Fact since 2016.
- In October, 2018, Facebook also announced a new rule for the UK which means that anyone who wishes to place an advert relating to a political issue or promoting a U.K candidate, referencing political figures, political parties, elections, legislation before parliament and past referenda that are the subject of national debate, will need to prove their identity and prove that they are based in the UK. The adverts they post will also have to carry a "paid for by" disclaimer to enable Facebook users to see who they are engaging with when viewing the ad.
- In October 2019, Facebook launched its own 'News' tab on its mobile app which directs users to unbiased, curated articles from credible sources in a bid to publicly combat fake news and help restore trust in its own brand.
- In January this year Monika Bickert, vice president of Facebook announced that Facebook is banning deep fakes and "all types of manipulated media".

OTHER PLATFORMS AND POLITICAL ADVERTS

Political advertising has become mixed up with the spread of misinformation in the public perception in recent times. With this in mind, some of the big tech and social media players have been very public about making new rules for political advertising.

For example, in November 2019, Twitter Inc banned political ads, including ads referencing a political candidate, party, election or legislation.

Also, at the end of 2019, Google took a stand against political advertising by saying that it would limit audience targeting for election adverts to age, gender and the general location at a postal code level.

HOW UK ANTI-FAKE NEWS UNIT DEAL WITH UP TO 10 FALSE CORONAVIRUS ARTICLES A DAY

The rapid response unit targets misinformation as false articles continue to be

shared. The Anti-fake news unit is dealing with up to 10 cases of misinformation a day as it emerged some articles are getting more views than real information posted.

On Coronavirus, Oliver Dowden, UK's Culture and Digital Secretary, said the government's new rapid response unit was looking at removing "falsehood and rumor" about the illness that could cost lives and was trying to clamp down on phishing scams.

An article on the website WND.com that claims a U.S doctor cured hundreds of patients of coronavirus, despite the fact the information in the piece contradicts official guidance, received more than 160, 000 Facebook engagements by UK users in a 24-hours period. According to research carried out by News Guard, this was more than all of the NHS website engagements received from Facebook and Twitter in 30 days.

The article on the doctor, who claimed to cure people with an anti-malaria drug and zinc, was one of the top five most shared articles on covid-19 in the UK for that week.

The action against this development and incident was Dowden reiterating the need for people to follow expert medical advice and stay at home, protect the NHS and save lives. That it is vital that this message hits home and that misinformation and disinformation which undermines it is knocked down quickly. They got on to work with social media companies, and pressed them for further action to stem the spread of falsehoods and rumors which could cost lives.

When false narratives are identified online or on social media, the government's rapid response unit coordinates with relevant departments to find a way to tackle the content if it cannot be taken down. This can include a direct rebuttal on social media and ensuring public health campaigns are promoted through reliable sources.

The unit is one of the teams feeding into the wider "Counter Disinformation Cell" led by the department for Digital Culture, Media and Sport, and made up of experts from across government and the tech sector.

The government through the Culture and Digital Secretary, Oliver Dowden makes contact with the social media companies to discuss what other measures could be put in place to ensure accurate, honest information consistently

reaches users of their platforms.

The Government implores the public to help with the effort in tackling false declarations, false statements, misinformation and disinformation by taking some simple steps before sharing information online, such as; always reading, reading beyond the headline and scrutinizing the source.

FIGHTING FAKE NEWS IN THE UK

The Problem

Misinformation and the spread of 'fake news' is not a novel issue. As engagement with social media has grown exponentially, so has the ability to circulate unverified information quickly and extensively.

However, the harmful effects of the mass broadcast and sharing of false information have been felt acutely in recent times during the coronavirus pandemic. Users of social media have taken the opportunity to spread conspiracy theories, false medical advice and fabricated government guidance. This has undermined governments' efforts to contain the virus, and also heightened alarm and anxiety.

The UK Government's Response

The UK Government announced the formation of a 'rapid response unit' within the Cabinet Office which will work alongside social media companies to remove fake news and harmful online content. Oliver Dowden, the culture and Digital Secretary stated that the new unit aims to combat false information. The unit reportedly tackles up to 70 incidents a week by rebutting false claims and working with platforms to remove harmful content and ensuring promotion and campaigns of verified content through reliable sources.

THE ROLE OF SOCIAL MEDIA COMPANIES

Social media companies have said they will work to tackle fake news on their platforms, with Facebook, Google, Microsoft, Reddit and Twitter releasing a joint statement on the efforts against fraud and misinformation, just as Twitter has pledged to remove content promoting unverified claims or misinformation.

Some recent examples of social media companies stepping up to this new role include the move by WhatsApp to prevent users from forwarding a 'frequently' forwarded message to more than one chat at a time, as well as the commitment to develop further technical solutions and weekly report on misinformation

trends made by Facebook, Twitter and Google during virtual meetings held by Oliver Dowden in response to the circulation online of conspiracy theories linking coronavirus to 5G networks.

The UK government on the calls for tougher punishments for both individuals that knowingly share misinformation, and for platforms that fail to take down known 'fake news' once it has been reported to them, stated clearly that there are currently few legal levers available to combat fake news and that government will increasingly rely on the voluntary cooperation of social media platforms. However, making activities criminal offences, for instance, is unlikely to address the problem and harm caused by the sharing of fake news.

THE MEASURES GOVERNMENTS ARE TAKING TO COMBAT FAKE NEWS

Fake news is viewed by many as a global problem that challenges the way we share information and perceive the world around us.

The revelations about Russia's attempt to influence the 2016 US election caused alarm and concern among politicians and voters. There are fears that democratic institutions and national elections are under threat from misleading information shared on a huge scale online and on social media platforms.

Mob lynching and violence based on false rumors shared on messaging apps have turned fake news into an emergency in some parts of the world that has cost lives and caused irreparable damage to societies.

This has prompted a number of governments to adopt measures ranging from legislative to legal action to media literacy and public awareness campaigns in efforts to fight the spread of disinformation.

Rights groups have also highlighted multiple cases of unjustified arrests or repressive laws that primarily aim to silence political dissent and limit freedom of speech and expression, sometimes under the banner of fighting fake news.

HERE IS AN OUTLINE OF THE MEASURES ADOPTED BY GOVERNMENTS AROUND THE WORLD TO DEAL WITH FAKE NEWS HIGHLIGHTING THE RANGE OF APPROACHES BEING TAKEN.

SWEDEN

Sweden has concentrated on informing and educating its citizens on methods used to spread and amplify disinformation, rather than passing legislation to counter it.

In the lead-up to the general election repeated warnings were issued by Prime Minister Stefan Lofven and the security service about political interference and online disinformation which were said to have originated from Russia.

The Civil Contingency Agency (MSB), which was tasked with Spotting potential influence operations by foreign actors, devised an awareness campaign for journalists and the public about the spread of misleading information and propaganda; media organizations supported independent fact-checking and the government said it wanted primary school children to be taught how to spot fake news.

The government distributed civil defense pamphlets to its citizens which included guidelines on dealing with "false information".

FRANCE

President Emmanuel Macron in early 2018 announced plans for a new law to combat fake news during election campaigns.

It proposed to oblige social media giants to disclose the source and funding of sponsored campaign ads, enable France's media regulator to block foreign-controlled broadcasters which publish deliberate false stories, and allow election candidates to ask a judge to rule on taking down information published about them which they deem to be false.

The controversial double bill faced criticism from left and right with some saying it threatened freedom of speech and expression accusing Mr. Macron of creating "thought police". Despite being endorsed by the National Assembly, both bills were rejected by the senate over free speech concerns.

The proposals were amended and subsequently passed into law by parliament in November, in time for the European elections in May.

UNITED KINGDOM

The government announced the establishment of a new "Dedicated National Security Communications Unit" in January 2018 that would be charged with combating disinformation by state actors and others.

An interim parliamentary report published in July by the Digital, Culture, Media and Sports (DCMS) committee warned that UK faced a "Democratic Crisis" as voters could be targeted with "Pernicious views" and manipulated data. The report was particularly critical of Facebook following the Cambridge Analytica data scandal.

The committee made 42 recommendations to the government which include:

- Tech companies should be taxed to fund digital literacy education and regulation
- The rules on political campaigns should be made fit for digital age.
- Social media sites should be held responsible for "harmful" content on their services.
- Social network security should be audited.

However, in its published official response, the government only accepted three of the recommendations, rejecting outright the proposed levy on social media companies for digital education and tighter limit on political donations.

Downing street accepted the view that the term "disinformation" was preferable to 'fake news' which it described as a misleading term that had ceased to have any meaning.

TURKEY

Turkey ranks first on a list of countries where people complain about completely made up stories according to the 2019 Reuters Digital News report.

It has not passed any specific laws to tackle fake news. Although the authorities have occasionally investigated suspects of such action.

Two well-known "Fact-checking" initiatives have been launched by the Bosphorus Global think tank said to be run by pro-government columnists. According to the Poynter Institute for media studies, Bosphorus Global's projects

are "dedicated to refuting criticism against the Turkish government".

The first called "Gunun Yalanlari" (Lies of the day) says on its website it verifies news, photos and textual content shared on social media, and comments by politicians, among others. The second is called 'fact – checking Turkey' and has content in English and other languages. it says it monitors "factual accuracy" of news related to Turkey.

In practice, both websites appear to serve the government's agenda. Fact-checking Turkey often picks foreign press reports critical of Turkey and "Debunks" them without much evidence.

UNITED STATES

The first amendment of the United States Constitution States; "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

It is a right jealously guarded in the US and means that citizens are entitled to express their views publicly however unpalatable they may be. That means that any attempt to tackle fake news through legislation would likely be doomed, before it even reached congress.

The first amendment also means that president Donald Trump's occasional online musings that critical broadcasters should be stripped of their licenses because of what he terms "fake news" often without evidence is also covered by the constitutional freedom of speech.

However, this has not stopped an attempted push-back against the power of social media, with the bipartisan Honest Ads Act before congress which hopes to regulate political advertisement in social media.

While such advertisements in other media are required to disclose their sources of funding, this is not the case online. With Facebook now voluntarily declaring the source of political advertising, it is not yet clear how this bill will fare.

INDIA

The Government in 2018 announced controversial plans to suspend the accreditation of journalists found to have "Created and/or propagated" fake news in a move to tackle the spread of false stories.

According to the guidelines, any fake news complaint against a journalist would be reviewed by the country's press and broadcast media regulators and if found to be true, the journalist would permanently lose his/her accreditation.

However, the plans were shelved less than 24 hours after being announced following an outcry from journalists and press freedom organizations.

The Spread of false rumors on WhatsApp and social media has also become a major issue in India.

Following an appeal by the authorities, WhatsApp which has more than 200m users in India – reduced the number of forwarded messages to five at a time in India, compared to 20 in the rest of the world at the time. However, WhatsApp announced in January that it would extend the limit to all its users around the world.

The world's largest messaging app has also started a campaign of online, print, radio and TV ads to increase awareness about the dangers of sharing false rumors. A number of fact-checking outlets have been founded in recent years to verify controversial stories that go viral on social media and messaging apps.

PHILIPPINES

President Rodrigo Duterte calls opposition press organizations "Fake news" and "biased" against his administration.

But he has said that he has no new plans to support any laws against disinformation, saying additional legislation "would violate the right to freedom of expression". Like in the United States the right to free speech is enshrined in the country's constitution.

Duterte said in late 2017 he would support measures which would penalize individuals accused of publishing and spreading false news, including harsher punishments for slander and libel.

However, there are concerns that "fake news" is still insufficiently defined in the eyes of the law, since it was first mentioned in the country's 1930s penal code, and citizens cannot be punished for an offence that is insufficiently defined in the eyes of the law.

LESSONS AND STRATEGIES THAT NIGERIA CAN LEARN AND ADOPT FROM OTHER DEMOCRATIC COUNTRIES



From the above highlights of the measures and approaches of a range of countries combatting the problem of fake news, it can be seen that governments or countries make more progress in tackling the fake news problem by adopting and employing a democratic and civilized measure and approach in their various countries. The following are therefore in order:

- The fundamental Human Rights of the citizens are sacrosanct, safeguarded, and guaranteed. Every or any approach by the governments of the countries to combat the fake news problem is subject to the guaranteed fundamental rights of the citizens to freedom of expression, freedom of speech, freedom to form opinions and impart ideas.
Measures and responses are engaged in ways and manners that the human rights of citizens are not violated, hindered or tampered with.
- There is no use of brute force or punishments against free speech, instead, publication noticed, identified or verified to be false or potentially harmful, through fact-checking devices and apps are flagged down, taken down and blocked from spreading.
- Governments of countries created response units responsible for rebutting and countering false posts, false publications, falsehoods, rumors and harmful posts, by presenting and publishing the true accounts and counters to any falsehood.
- To create a Rapid Response Unit.
- To safeguard and protect the citizens' rights to freedom of expression and free speech in the fight against fake news.
- The Democratic Countries around the world promote, protect and uphold the tenets of democracy and democratic principles and ideals.

- Like the president of Philippines said that he will not do anything or support any law, method, approach or measure that will violate the citizen's rights to freedom of speech and expression, Nigeria can learn from the simple message that awareness is the best approach or solution. Most democratic countries focus on creating awareness through the media and media platforms. They also invest in: sharing pamphlets to citizens to keep them aware of fake news; educating citizens on the dangers of fake news and encouraging them to read, scrutinize, decipher and know when an information is false by identifying the publisher and assessing the publisher's credibility, among others.
- The term Fake News is being replaced with Disinformation because Fake News is now seen as a cliché.
- Academic Curriculum: Some countries also include news evaluation and fact-checking in their school curriculums as a strategy to combat fake news.

Nigeria can adopt any or all of the highlighted democratic measures in fighting the problem of fake news, rather than resorting to the anti-democratic approach that will further shrink our civic spaces and assault our democracy.

DEMOCRATIC SOLUTIONS TO FAKE NEWS IN NIGERIA



i. Terms of service of social media platforms:

All digital platforms have rules and regulations. Individuals or organizations who flout or breach the codes, rules, regulations, terms and conditions, often face the consequences of their actions through suspension or deregistration.

Social media companies also help in curbing internet falsehoods, manipulations, false declarations and misinformation, by fact-checking and/or taking down harmful posts, harmful publications, and harmful contents.

These social media platforms have restrictions that applies to the usage of internet platforms and sites. Incidents of fake news, hate speech, incitements to hatred or violence may lead to the restrictions of the social media accounts and pages of the users.

ii. Collaboration with Social Media Platforms:

The Government through its agencies, bodies and units may work with social media companies by providing verified, credible and authentic information against fake news and false publications and enable these companies to flag down false statements and fake news.

iii. Anti-Fake News Rapid Response Unit:

The Government should organize a rapid response unit charged with the responsibility and duties of countering fake news. This unit will, among other things, be saddled with creating a website for rating news platforms and mediums of disseminating information; publishing rebuttals to inaccurate information, and proving beyond reasonable doubt the reliability and trustworthiness – or otherwise of any public information, so that the public may know what is true, verifiable and reliable.

iv. Education:

- Public awareness campaigns to inform the people about fake news.
- Educating the people to be able to make sound judgments about reliability of news and information; which enables them to use services which give them short hand information on how to know what is reliable.
- A government strategy of creating a school curriculum on fake news that includes evaluations of news and fact-checking.

CONCLUSION



The proposed social media Bill, "Protection from internet falsehoods and manipulation and other related matters Bill, 2019"; is an anti-democratic bill, it is tyrannical and draconian, therefore cannot be a solution to the problem of fake news in Nigeria, as doing so would be outright illegality.

Highlighted above are various democratic approaches and measures of curbing the problem of fake news in a democratic state.

To pass the social media bill into law is to: -

- Criminalize freedom of expression
- Criminalize freedom of speech
- Criminalize digital freedom
- Limit, censor and regulate citizens' rights and freedom.

The proposed Social Media Bill, if passed, will cause greater harm to our democracy and civic spaces than it is trying to cure. It will cause the government to ride rough shod on the rights of citizens and especially Rightsholders such as people living with disability, age discriminated group (youth and elderly), indigenous ethnic minorities, women facing exploitation and abuse and violence, and the media.

However, the proposed democratic solutions are capable of combating the problem of fake news published on the internet from anywhere in the world. As a democratic country, Nigeria must practice and uphold the tenets of democracy in all its endeavors.

Fake News is a global problem which Nigeria shares with the rest of the world. Being a part of the world, Nigeria should explore innovative solutions in

accordance with democratic principles and ideals.

Nigeria can successfully tackle the problem of fake news without trampling on or violating the fundamental rights of her citizens.

Passing the proposed social media bill cannot curb the problem of fake news in Nigeria. The whole world is on the internet and agents can be created in various other countries to propagate fake news, falsehoods or misinformation about the government of Nigeria or individuals and the social media bill, if passed into law in Nigeria, will not apply to other countries outside Nigeria, therefore making the supposed purveyors of internet falsehoods and fake news not punishable under any Nigerian law. However, the proposed democratic solutions highlighted are capable of combating the problem of fake news published on the internet from anywhere in the world.



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DEMOCRATIC SOLUTIONS TO HATE SPEECH





MEMO ON HATE SPEECH

As you may know, our organization; the Centre for Advancement of Civil Liberties and Development, also known as the Centre for Liberty, with the support of Voice Nigeria, is presently implementing a Digital Freedom Advocacy (DFA), which is aimed at facilitating citizens' engagement on ensuring the withdrawal of bills that threaten digital freedom and freedom of expression. One of such bills is the "National Commission for the Prohibition of Hate Speeches (Est, etc) Bill, 2019 (SB 154)."

Taking into consideration the patriotic move by Senator Aliyu Sabi (Niger North) in sponsoring the said Bill, Centre for Liberty, whilst condemning the Bill as too harsh and highly undemocratic, equally saddled itself with the responsibility of going beyond criticizing the Bill to also proffering possible ways of addressing the problem of 'hate speech' which the distinguished senator rightly considers a problem. For a start, Centre for Liberty activated its network of thinkers and policy makers, and subsequently engaged a Democratic Strategy Consultant to develop an academic paper on Democratic Solution to Hate Speech. The consultant's work was mainly to develop a paper on how democratic and ethnically diverse countries around the world are dealing with the problem of 'Hate Speech,' and also to recommend lessons and strategies that Nigeria can learn and adopt from those countries as possible democratic solutions to the problem.

Centre for Liberty has subsequently reviewed and approved the paper alongside other stakeholders from the CSOs, the Media, and Rightsholders. The following summarizes our findings and recommendations.

The paper, which we have titled 'Democratic Solution to Hate Speech,' prepared by Mr. Abdul Mahmud, is both theoretical and philosophical in depth — and clear in practical recommendation; starts by noting that the idea that freedom isn't self-sustaining is as old as mankind. It presupposes freedom as a fragile flower which requires a continuing interaction between the will and power of humanity, as the source of strength and vigour to flourish. We further note that Freedom, therefore, 'cannot flourish... without humanity tending it.'

In the words of Ronald Reagan, our paper rings an alarm of eternal vigilance saying: "freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. The only way they can inherit the freedom we have known is if we fight for it, protect it, defend it and hand it to them with the well-taught lessons of how they in their lifetime must do the same. And if you and I don't do this, then you and I may well spend our sunset years telling our children and our children's children what it was once like in America when men were free".

To promote a better understanding of what constitutes rights and duties, and democratic freedoms, our paper explains how lawmakers can protect democratic freedoms whilst trying to solve problems arising in our country yet not peculiar to our democracy, and how the people can defend their democratic freedoms, by becoming grounded in the nuances of fundamental liberties and digital freedoms.

On the one hand, we make the argument that the cyberspace is a place which promotes value pluralism; where old ways of thinking are confronted by new ways; where misconceptions are challenged and beliefs are contested, and why it is not hard to see how constraints imposed by real-space sovereigns (in this case the lawmakers) interrogate digital freedoms. Our paper notes that the "biases, mythologies, misconceptions and unreflective habitual practices" which we transport to the cyberspace, according to Richard Ford, are the main drivers of the conflicts that have ensued between digital citizens and real space sovereigns. Summarily, our argument is that cyberspace is not a 'placeless space.' That 'it is rooted in the reality we transport from physical spaces to enhance and maintain relations, relationships, practices and experiences that are emblematic of physical spaces online.' Our view is that we legitimate our actions for freedoms and liberties in cyberspace.

On the other hand, we cursorily discuss freedom and liberty from the lenses of moralists, philosophers and theorists. Our argument is that the moral tenet of society lies in the very social contract that exists between citizens and sovereigns. We start by posing and answering the questions: do freedoms exist in absolute terms? Or should we tolerate unlimited freedom no matter how offensive it is expressed? Or Can freedom be interfered with?

In answering the questions, we look at Wesley Newcomb Hohfeld, who, in giving clarity to jurisprudence, not only argued that rights and duties should be accorded a certain preciseness of usage to eliminate ambiguity, but should also

be distinguished as claim rights and liberty rights. Hohfeld's distinction, we believe has a profound effect on our understanding of how rights and liberties can be protected against totalizing power, even in cyberspace. For Hohfeld, the right-holder who stakes his or her claim rights is expected to have corresponding duties, and obligations attached to those rights. A right-holder who stakes claim right to freedom of expression also has the duty to respect and protect rights imposed on other parties to whom claim right is staked. We cite two examples here. Firstly, one cannot go online and begin to label women as prostitutes, all in the name of exercising the right to free speech, and expects that the women owe one the duty and responsibility to be civil in their responses. Secondly, an accused person who asserts the right to dignity is expected not to be violated by the arresting and detaining authority - a duty imposed as a correlative to the right of claim right. In contrast, however, liberty rights confer only the power or freedom to exercise one's right. It does not impose corresponding duties, obligations, or responsibilities on other parties.

Further, we attempt to define freedom of expression by taking a look at Isaiah Berlin's argument that; a person has the free will to say or do something if the rational choice of saying and doing is not constrained by the self or by external force. That is, "freedom is construed as absence of interference." Freedom, as power, encompasses saying and doing something to include thoughts that go into saying and doing something. Freedom is, therefore, both cognitive and performative.

By virtue of the foregoing, we situate our next line of argument in the relationship between freedom of speech and hate speech. While section 39 of the CFRN as amended guarantees Freedom of Expression without limits, we admit that the contradiction in the proviso enshrined in section 45 creates more problem than not for freedom of expression. If, according to section 45 which legitimates interference in freedom of speech, the purpose of such interference is to prevent hate speeches; we argue that the possibility exists that the categories of hate speech can be extended beyond the ordinary meaning of hate to include political speeches that promote interests other than the interests of a political party in power. To this end, we conclude that in a democratic society, freedom of expression should be allowed to flourish, even if its protection would mean the protection of speeches that offend public morality.

However, we proceed to ask: does protection of freedom of expression mean the promotion of hate speech?

We are of the opinion that the protection of freedom of speech does not mean the promotion of hate speech. That if we consider freedom of expression as the cornerstone of democracy, our gaze should be directed at those speech acts that tend to grow democracy and not fuel tyranny. However, we equally believe that while the boundaries of free speech and hate speech are becoming blurred, as what used to pass as a mere speech act is now termed hate speech; the solution to online hate speech doesn't lie in the hammer of prohibition and criminalisation of speeches; it lies outside the cyberspace and in those conditions which allow hate speeches to flourish. Here, we refer to those conditions, which manifest as the structural imbalance of society, inequality, and the ethnical or racial framing power in a manner that keeps certain ethnic groups or races from accessing both political and economic powers of society, that allow hate speeches to flourish online. So, applying the hammer to the nail of hate speech does not and cannot address the problem of hate speech online.

RECOMMENDATIONS

How do we counter hate speech? Can we pretend that hate speeches do not exist; or that people don't hide under free speech and propagate hate speeches? How do we confront this trend?

Whilst we admit that there may exist different ways to confront the problem of hate speech, we list the following seven ways that we think are more befitting of a democratic country like Nigeria, to counter hate speech:

(1) IGNORE HATE SPEECH AND OR THE MAKER OF HATE SPEECH:

As the common saying goes; "silence is the best answer to a fool". There is wisdom in this saying. That you ignore the hate speech and or the maker of hate speech doesn't make you less human; in fact, it shows you are a better and cultured person. If you are online, or any of the social media platforms like twitter, Facebook and WhatsApp, for instance, you ignore hate speech by not responding to the maker of hate speech. The platforms allow you to apply the unfriend/unfollow buttons; or block the maker and his/her handle outright.

(2) FILE A COMPLAINT AGAINST THE MAKER OF HATE SPEECH:

If you cannot ignore the maker of hate speech or a specific hate speech, file a formal complaint against the maker to the operators or owners of the online platforms. Evidence is everything. Ensure you screenshot the hate speech and attach to your formal complaint. Note that every virtual platform has its complaint procedure; please, ensure you are familiar with the procedure.

Hate speech makers remain anonymous because many victims simply do nothing about abuses of the dignity of their persons; or live in denial that they are not victims of hate speech.

(3) TAKING ACTION:

Ensure that the virtual platform you are on has policies that guide against and or prohibit hate speeches. If there is no policy on prohibition of hate speeches, take action: (i) Write the platform operators and or owners to initiate policies that prohibit hate speeches and protect privacy and the dignity of the human person; (ii) If you are not comfortable with the absence of policy on prohibition of hate speeches, migrate to platforms that have policies that protect you.

(4) SEEK THE SUPPORT OF OTHERS:

Hate speech undermines humanity; and because hate speech doesn't specifically undermine the humanity of the individual that it is directed at, it is important you consider one hate speech directed at one individual as "an injury to all". It is imperative to enlist support of others and initiate campaigns against the makers of hate speeches.

(5) JOIN THE CAMPAIGN TO ADDRESS THE UNDERLYING CAUSES OF HATE SPEECH:

Hate speech makers export some of their stereotypical beliefs from the physical space to the virtual space. The causes of hate speeches lie outside the virtual space; and it is the responsibility of all to join the campaign to end stereotypes and beliefs that tend to hurt humanity. Campaign that highlights knowledge of and respect for diversity of cultures and people is essential.

(6) PROMOTING THE FREEDOM OF THE PRESS:

Respect for Press freedom enhances the media as partners in the fight against hate speech.

(7) PROMOTING DIALOGUES:

Finally, and perhaps more importantly, we must begin to encourage dialogues that promote collective understanding of our diversity and uniqueness as a multi-cultural and multi-lingual society. Encouraging national dialogues on what is acceptable to one and not acceptable to the other; or what is offensive to one and not offensive to the other, will go a long way to foster tolerance and more responsible speeches in our society.



INTRODUCTION

The idea that freedom isn't self-sustaining is as old as mankind. Through vigilance it has been advanced and defended in struggles sustained by the sacrifices of those who tie their destinies to the destiny of humanity as an expression of commitment and value. The power freedom mobilizes for sustenance exists outside itself. Consider freedom as a fragile flower and you will see that it is the interaction between the will and power of humanity that gives it the strength and vigor to flourish. So, freedom cannot flourish, or the power that lies outside of itself cannot draw humanity to challenge the tyranny of small men and women which threatens it, without humanity tending it. Freedom is a trumpet of wills calling on humanity to defend itself against the enemies of open society. Freedom is an eternal battle that goes on forever. As the conservative icon, Ronald Reagan famously described it, "freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. The only way they can inherit the freedom we have known is if we fight for it, protect it, defend it and hand it to them with the well-taught lessons of how they in their lifetime must do the same. And if you and I don't do this, then you and I may well spend our sunset years telling our children and our children's children what it was once like in America when men were free".

Only indolent citizens, as that old Irish politician, John Philpot Curran, once cautioned, go to sleep, while tyrants prey on freedoms. "The condition upon which God hath given liberty to man is eternal vigilance", he warned over two hundred years ago. He is right. Eternal vigilance is the price of freedom. Those who keep vigil over freedoms, push the frontiers of society to secure permanence for freedoms, travel the long road to freedom that starts from the gates of prisons, are driven by the desire to hand the lessons and victories snatched from the batons and truncheons of tyranny to generations after their own. It is this desire that shapes all struggles, defines all eras and ages, and helps to enthrone vigilance. For without it, humanity will remain eternally chained everywhere, as Rousseau warned in his 'The Social Contract', "man is born free, and yet he is universally enslaved", and bound to the prison that alienates him. In 'The Ballad of Reading Gaol', the poet, Oscar Wilde, was more poignant: "every

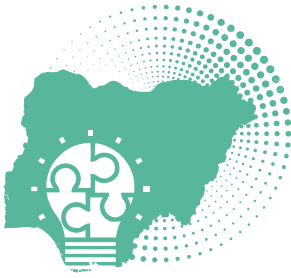
prison that men build is built with bricks of shame and bound with bars lest Christ should see how men their brothers maim". In the same work, he described the indolent "as one who lies and dreams in pleasant meadow-land, the watchers... could not understand how one could sleep so sweet a sleep with a hangman close at hand". Does he not speak to indolent citizens who watch as the earth of rights and liberties around them are excavated and they do nothing?

The past is with us. The flourish of rights, liberties and freedoms, respect for the rule of law and the return to the nation as grand narrative have not happened. What has happened, instead, is the constant narrowing of the public space and the destruction of constitutional safeguards that naturally force tyrants to submit themselves to citizens' enquiries and scrutinies. Democratisation has not happened too. The man in the mirror - the metaphor for the tyrant - has long inverted himself; that is, he now reflects as a ghoul, ugly and ubiquitous tyrant who believes he is not accountable to the people and the constitution. He is more than what the mirror reflects. He is an ogre, who makes a stab at the heart of freedom, who lays great store in his capacity to inflict cruelty to feel good. He is a roving bandit who deploys the repressive power of the state to assert and reassert himself, who corners state resources, and alters his appearance from ogreness to machismo, like the character, Rafael Trujillo, "the Goat", in Mario Vargas Llosa's novel, 'The Feast of the Goat'. Truly, he feasts on the state while the people survive on brown fields. He denies the people their basic right to sustainable livelihood. As it often happens, anybody who stands in the way of the tyrant either finds himself in prison or disappears from the face of the earth.

Even where disappearance doesn't happen, the political and legal order is arranged in a manner that threatens civil liberties, rights and freedoms of citizens everywhere. When the man in the mirror doesn't invert himself, he allows the law to invert him and he becomes the untouchable; the one citizens cannot scrutinize and or make to account for his deeds and misdeeds. The law becomes his sword and his shield. Firstly, he enacts obnoxious laws such as the Cybercrimes Act 2015 to protect himself (happily, the offensive provisions of Section 24 of the Cybercrimes Act have now been struck down by the ECOWAS Court sitting in Abuja for being inconsistent with the fundamental rights provisions of the Constitution 1999) and when the law does not provide him enough protection, he enacts nasty legislations directed at gagging the people and or shutting them out of cyberspace.

Only recently, Nigerians rose against the ***'Protection from Internet Falsehoods and Manipulation Bill'*** and ***'The Act to Provide for the Prohibition of Hate***

Speeches and Other Related Matters' re-christened by the sponsors as 'The Hate Speech Bill'. How well can the man in the mirror succeed in gagging the people, or shutting the people out of cyberspace? Do the people understand the cyberspace which has become the site for defending their rights since the physical civic spaces have been closed off to them? Do the people understand how the cyberspace is constituted as the space for promoting, defending and safeguarding their rights? Do the people understand their rights and the limits of their rights? Do rights impose duties on the people, the same they impose duty on the man in the mirror? What we have set out to do in this essay is give clarity to cyberspace as a virtual space that is connected to the physical, and or in fact rooted in the physical space, shed lights on rights, freedoms and liberties, the limits of rights generally and the many prohibitions that have interfered with freedoms. Our purpose is this: a grasp of what is constitutive of freedoms invariably helps to push the frontiers of democratic freedoms, including digital freedoms. Without a theoretical understanding of what constitutes rights and duties, the people usually enter the streets fighting for their rights poor with knowledge of their own power to act, and poorer in action itself! Unfortunately, physical and civic spaces have either been closed off or barracked in such way that promoting and defending freedoms on these spaces have become virtually impossible. The battle for the protection and defence of freedoms that Reagan flourishly spoke about has moved online. We can only hand freedoms won on the crucibles of battles to our children, if we dare to struggle. If we do, then, the scars of the battles become the lessons and legacies we would eventually hand to our children. As children who will grow into adulthood, they also have lessons to draw on as they defend the legacies generations before theirs hand to them. The man in the mirror wants none of this.



WHAT IS CYBERSPACE?

The cyberspace is often described as a country. Perhaps, this fitting description, which depicts some of the physical characteristics - territory, boundaries and population - of a country, is what leads many to describe the cyberspace as a country. Of the three characteristics, boundaries are the most problematic, at least viewed from the standpoint of the cyberspace. In the physical sense, boundaries are fixed and identifiable, though subject to delineation. The boundaries of cyberspace aren't physical; they exist in a virtual flux, changing constantly as old and new users enter and exit the virtual space, while connectivity and interaction become widespread. It is population that actually turns the cyberspace into a country, as without old and new users (read denizens) entering and existing it, the cyberspace becomes a vast virtual space of emptiness, though it exists in the real sense as a form of digital network of cyber activities that are interlinked in space. The cyberspace lends itself, first, as a social construct which gives meaning to our experience and reality. This social construction, as the theorist, Julie Cohen, rightly notes, embodies both human cognition and spatial practices that make human experience real. For Cohen, "cyberspace operates as both extension and evolution of everyday spatial practice... relative, mutable and constituted via the interactions among practice, conceptualization and representation". And, second, as a space in which physical things are mobilized, whether for commercial, marketing or educational ends, and they become abstract things in virtual space; and, second, as a spatial construct that gives meaning to experience and reality. On both points, here, imagine for a moment how goods, mobilized from the physical space into the virtual, become objects and photos on virtual walls. Here, cyberspace presents itself as a representational space for physical things turned into abstract things. We concede that abstract things don't occupy space; but our point is that they can also be recognized as occupying space, at least in the metaphorical sense.

What Cohen suggests is that through human cognition we transport, translocate and transpose ourselves and our physical practices into virtual spaces and conceive them as interactions within those spaces. We recognise the practices as real, but only to the extent in which we play and replay our experiences in the

virtual. The practice of transposition is cognitive; but the experiences we gain in the physical that we translocate to the virtual compliment those experiences we gain through interactions in the virtual. Cyberspace is representational because it is where we cognize as the place we are in at any given time, where our experiences, practices, beliefs, rights, freedoms and liberties are represented, and where we interact with non-physical spaces. The point we make here is that cyberspace is the space we recognize that we are in and we are at, without transporting or translocating physical ourselves the way we do on physical spaces, is the place in which the virtual body departs from the physical body and assumes the reality of its own that is undergird by real and virtual experiences and by real-space sovereigns, as Cohen asserts,

cyberspace is in and of the real-space world and is so
not only because real-space sovereigns decree it, or only
because real-space sovereigns can exert physical power
over real-space users but also more fundamentally
because cyberspace users are situated in real space

Cohen argues against the idea that cyberspace is separate from real physical space. For her, "cyberspace is connected to real space"; and as the space we transport "our biases, mythologies, misconceptions and unreflective habitual practices", according to Richard Ford, we argue that it is a space in which social relations that occur outside of itself (the physical space) are extended to be constituted, contested, altered and mediated, knowledge is produced and reproduced, and digital acts of users are mapped. Understanding some of the established and emerging cyberspace theories is important, but our purpose here is how digital citizens import both reflective and "unreflective habitual practices", biases, and freedoms online. The cyberspace isn't value-free, in actual fact it promotes value-pluralism. So, as a place which promotes value pluralism, and in which old ways of thinking are confronted by new ways, misconceptions are challenged and beliefs are contested, it is not hard to see how constraints imposed by real-space sovereigns interrogate digital freedoms. The biases, mythologies, misconceptions and unreflective habitual practices Ford rightly recognized are the main drivers of the conflicts that have ensued between digital citizens and real space sovereigns.

The conflicts stem on the one hand from the insistence that digital freedoms are total and free from interference (here, those who defend absolute digital freedoms and insist on the enjoyment of their liberty rights, distinct from claim rights, a distinction we owe to the late American theorist, Wesley Newcomb Hohfeld, without the corresponding duties they owe to other parties, come into

conflict with real-space sovereigns. We shall return to Hohfeld's distinction), and on the other hand, the attempts by lawmakers to regulate digital freedoms and online behaviors generally.

Finally, and in summary, cyberspace is not a placeless space. It is rooted in the reality we transport from physical spaces to enhance and maintain relations, relationships, practices and experiences that are emblematic of physical spaces online. This spatial reality is first expressed in the mental spaces we occupy, construct and later transport to cyberspace. Galik and Tolnaiova put it this way:

We believe we should think of cyberspace as of the traditionally understood physical space and not solely as something that we derive from social relationships; we should see it in a more contextual sense - in the sense of relations between objects. We borrow this term and use it to express the mental space in which we think and construct and then transfer our constructions into the technological world that could be properly seen as cyberspace.

Our view is that cyberspace, connected to the physical space, rooted our reality, is the space in which we legate our actions for freedoms and liberties.



FREEDOM AND LIBERTY

To understand freedoms and liberties, it is important we take a cursory look at how political philosophers, moralists and theorists have given clarity to freedom and liberty generally. The moral tenet of society lies in the very social contract that exists between citizens and sovereigns. We owe our first sense of the social contract to Plato, who, in his 'Republic', gave meaning to it:

When men have both done and suffered injustice and have had experience of both, not being able to avoid the one and obtain the other, they think they had better agree among themselves to have neither; hence there arise laws and mutual covenants; and that which is ordained by law is termed by them lawful and just.

For Plato, justice is the foundation of all mutual covenants. However, justice is impossible to achieve without surrendering individual freedoms and liberties, essentially to guarantee the survival of the collective. It is this surrendering, at once the condition for peace, Thomas Hobbes added,

A man should be willing, when others are so too, as far-forth as for and defense of himself, he shall think it necessary, to lay down thins right to all things, and be contented with so much liberty against other men, ads he would allow other men against himself.

The Hobbesian surrendering provides fundamental meaning to the purport: we give up our rights in order to secure peace. It is this surrendering that makes the enthronement of the condition in which "continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short", impossible. This predictive testament of Hobbes stems from his characterization of the State of Nature as dim, unsocial, bestial and violent. Contrast with John Rawls, who, in his book, 'A Theory of Justice', advanced a rational position founded on what he described as the original position. For Rawls, the original position was never torn

by war or strife, nor were men driven by the bestiality and irrationality that characterized the Hobbesian state of nature. In providing clarity to his original position, he enunciated the fundamental principle that underlines justice: the liberty of one individual is equal to the liberties of others; and that no one liberty of an individual should infringe on the liberty of another. This principle which undergirds equal rights is what the reggae artist, Peter Tosh, emphasized in his famous song, 'Equal Rights',

Everyone is crying out for peace, yes
none is crying out for justice.
I don't want no peace,
I need equal rights and justice,
I need equal rights and justice,
I need equal rights and justice.
Got to get it! Equal rights and justice.

But, this principle can only be rooted in reality if we all proceed from behind the veil of ignorance, in order not to confer undue and absolute right on oneself. Here is how Rawls posed it:

No one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the likes. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principle of justice are chosen behind a veil of ignorance.

He further underscored the foregoing, while positing that,

they are the principles that rational and free persons concerned to further their interests would accept in an initial position of equality as defining the fundamentals of the terms of their association.

If we accept Rawl's 'The Greatest Equal Liberty Principle' as rational and defining, it stands to reason that freedoms such as the Freedom of Expression, Freedom of Conscience and Thought and the Right to Human Dignity - all freedoms that should ordinarily be protected in cyberspace - cannot be traded. However,

defining Rawls's principle is, the question which needs to be posed and answered is: do freedoms exist in absolute terms? Let's pose the question another way: should we tolerate unlimited freedom no matter how offensive it is expressed? Can freedom be interfered with? Perhaps, to answer all three questions, we need to turn to Isaiah Berlin and Wesley Newcomb Hohfeld.

But, briefly, Wesley Newcomb Hohfeld, first, who, in giving clarity to jurisprudence, not only argued that rights and duties should be accorded a certain preciseness of usage to eliminate ambiguity, posed as correlatives that correspond to each other but should also be distinguished as claim rights and liberty rights. Hohfeld's distinction has a profound effect on our understanding of how rights and liberties can be protected against totalizing power, even in cyberspace. For Hohfeld, the right-holder who stakes his or her claim rights is expected to have corresponding duties, and obligations attached to those rights. Claim rights are not at large, they entail specific responsibilities and duties, in effect. A right-holder who stakes claim right to freedom of expression also has the duty to respect and protect rights imposed on other parties to whom claim right is staked. We cite two examples here. Firstly, one cannot go online and begin to label women as prostitutes, all in the name of exercising the right to free speech, and expects that the women owe one the duty and responsibility to be civil in their responses. Secondly, an accused person who asserts the right to dignity is expected not to be violated by the arresting and detaining authority - a duty imposed as a correlative to the right of claim right.

In contrast, liberty rights confer only the power or freedom to exercise one's right. It does not impose corresponding duties, obligations, or responsibilities on other parties.

Now, Berlin who answered yes to the questions.

In his 'Two Concepts of Liberty: An Inaugural Lecture delivered the University of Oxford on 31 October 1958', Berlin proposed that freedom exists in two basic forms - negative freedom and positive freedom. According to Berlin, negative freedom connotes the freedom one enjoys without interference or restraint. What he means here is that one has the power to enjoy the freedom that pertains to oneself without interference. Simply put, negative freedom means that one is the master or mistress of oneself. In the enjoyment of one's freedom, the rational choice that is open to one to enjoy one's freedom must not be restricted. Essentially, what Berlin proposed is that negative freedom is determined by the choices - or the metaphorical 'doors' - open to one:

The extent of a man's negative liberty is, as it were,
a function of what doors, and how many are opened
to him; upon what prospects they open; and how they are.

Freedom is a determinant of choices open to one and how one contemplates those choices and determines the particular choice to take from a set of choices. To make no choice is freedom itself; and to make a choice, based on the prospect it provides, is freedom as well. The quintessential American poet, Robert Frost, outlined the power of freedom and the freedom of choice in his poem, 'The Road Not Taken':

Two roads diverged in a yellow wood,
and sorry I could not travel both
and be one traveler, long I stood
and looked down one as far as I could
to where it bent in the undergrowth;
then took the other, as just as fair,
and having perhaps the better claim...

Having answered the questions we posed, Berlin further posed a question of his own: "what is the area within which the subject - a person or a group of persons - is or should be left to do or be left to do what he is able to do, without interference by other persons"? and proceed to answer the question:

The freedom of which I speak is opportunity for action rather than action itself. If, although I enjoy the right to walk through open doors, I prefer not to do so, but to sit still and vegetate, I am not thereby rendered less free. Freedom is the opportunity to act, not action itself.

"Freedom is the opportunity to act, not action itself". This phrase is clear if one understands freedom as empowering, to the extent that it makes one the master or mistress of oneself. That one chooses not to enjoy freedom of movement does not make one a prisoner of his choice. What makes one free, in the context of Berlin's powerful proposition, is that one contemplates his freedom of movement from a set of choices and makes that choice with a better claim to his freedom. If one only stays contemplative of his freedom of movement and chooses not to move, the mere contemplation of his freedom of movement alone, "is the opportunity to act", to borrow Berlin's phrase. For clarity, negative freedom means freedom from restraint, interference or control, though Berlin

conceded two grounds for control,

as in the case of words which everyone is in favor of, freedom has a very great many senses - some of the world's worst tyrannies have undertaken in the name of freedom. I should say that the word probably has two central senses... One is the familiar liberal sense in which freedom means every man has a life to live and should be given the fullest opportunity of doing so, and that there are only two adequate reasons for controlling men. The first is that there are other goods besides freedoms, such as, for example, security for peace or culture, or other things which human beings need, which must be given them, apart from the question of whether they want them or not. Secondly, if one man obtains too much, he will deprive other people of their freedom - freedom for the pike means death to the carp - and this is a perfectly adequate reason for curtailing freedom. Still, curtailing freedom isn't the same as freedom. The second sense of the word is not so much a matter of allowing people to do what they want as the idea that what I want to be governed by myself and not pushed around by other people; and this idea leads one to the supposition that to be free means to be self-governing. To be self-governing means that the source of authority must lie in me... Between these two views, I see no possibility of reconciliation.

Thus, the ground for curtailing freedoms must invariably be founded on peace or security. That one is manacled and locked inside his home following threat of suicide is a curtailment justified by the need to protect one's right to life. Curtailment isn't the same as freedom, Berlin argued.

To grasp Berlin's conception of freedom, negative freedom has to be inverted. While negative freedom means freedom from interference by others, positive freedom means freedom to control oneself, without interference. If we stay with Berlin's metaphorical doors, positive freedom becomes clearer. One may want to walk through the doors of opportunities and seize one opportunity on the basis of one's rational choice, only to discover that one's chances are hindered by the obstacles within oneself, not without:

the 'positive' sense of the word 'liberty' derives from the wish

on the part of the individual to be his own 'master'. I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not of other's acts of will. I wish to be a subject and not an object; to be moved by reason, by conscious purposes which are my own, not by causes which affect me, as it were, from outside. I wish to be somebody, not body; a doer - deciding, not being decided for, self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role - that is, of conceiving goals and policies of my own and realizing them. This is at least part of what I mean when I say that I am rational, and that it is my reason that distinguishes me as a human being from the rest of the world. I wish, above all, to be conscious of myself as a thinking, willing, active being, bearing responsibility for his choices and able to explain them by reference to his own ideas and purposes. I feel free to the degree that I believe this to be true, and enslaved to the degree that I am made to realize that it is not.

Discerning the foregoing, it is clear to us that positive freedom is a contest between the two selves- the lower self and the higher selves. One achieves one's purpose when the higher self is ascendant, dominant and rational.

While Berlin argued that liberty has two faces, Quentin Skinner, the Cambridge Professor of Modern History, adds a third; or what he calls 'A Third Concept of Liberty'. In his highly regarded essay, 'A third Concept of Liberty', he criticized the basis in which Berlin arrived at the two concepts of liberty:

Berlin's attempt to mark off this separate concept is admittedly dogged by several false starts. He begins by suggesting that, whereas negative freedom is freedom from constraint, positive liberty is freedom to follow a certain form of life. But this distinction cannot be used to disclose two different concepts of liberty, if only because all cases of negative liberty are at once cases in which I am free from constraint... Berlin next suggests that the positive sense of the word refers to the idea of being one's own master as opposed to being acted upon by external forces. But this too fails to isolate a separate concept of liberty... and I am following my classical and early modern authorities in claiming that the mere fact of living in such predicament has the effect of placing limits on liberty. If freedom is construed

as absence of interference, this is unquestionably to speak of an alternative theory of liberty, since it is to claim that freedom can be restricted and constrained in the absence of any element of interference or even any threat of it

and proceeds to propose two counterpoints to his third concept of liberty, first, as "the other way in which you will find yourself constrained by living under an accountable power is that you will lack the freedom to abstain from saying and doing certain things"; and secondly, "when confronted by an absolute ruler and required to offer counsel and advice, you will find yourself constrained to agree with whatever he says and to endorse whatever policies he already wishes to pursue". (Italics mine).

The above italicized aspect of Skinner's profound position is open to further analysis, so we shall return to explain how it explains our condition under General Buhari's rule and human rights regime; and how the third concept of liberty advanced by Skinner generally helps us to understand "the predicament of those who recognize that they are living in subjection to the will of others". For now, we would be right in our reading of Skinner to suggest that interference proceeds from the cloaks and daggers of those who force others to live in subjection to their will.

Nonetheless, if freedom, we are paraphrasing Skinner here, means the will to act and the ability to exercise that power in a certain way, it then means that the exercise of that power must correspond with one's own will. So, if we contextualize freedom as the power to act, without the interference of an external force (Hobbes) - or 'freedom as non-interference by force', or, too, as 'freedom as non-interference by coercion' (Berlin), appreciation of the significant addition that Skinner made to the conceptual mix of liberty won't be difficult.

What in effect does Skinner propose as the third concept of liberty?

He proposed "freedom as non-domination". By this, he means that non-interference of freedom isn't quite enough for us to understand freedom or when one is free. For a freedom-holder to be truly free, according to him, the freedom-holder must not be subject to the will of another individual - whether or not the other individual is a real-space sovereign, to borrow from Cohen. The question that invariably follows is how do we understand 'freedom as non-domination', or being subject to the will of another individual? Let's for a moment pause and imagine that we are citizens living under the rule of a benevolent dictator (a contradiction in term, or an oxymoron). Even if we as citizens were living without interference, the mere fact that we are constantly

beholden to the benevolent dictator, a condition imposed by dictatorship, we are ever subject to the will of the dictator. We ingratiate and gratify him in many "eye service" ways and become itinerant "Awada Kerikeri" and sing his praise. Though the benevolent dictator does not interfere or manipulate our will, we are just too glad to be subjected to his will. Further, and on the same point, the benevolent dictator does not have to be an unaccountable ruler, he could as well be an accountable ruler in a "democratic setting" that we are beholden to and through whose will we express ourselves and limit our will to objectivity. As Skinner posed it, "the other way in which you will find yourself constrained by living under an accountable power is that you will lack the freedom to abstain from saying and doing certain things. When confronted by an absolute ruler and required to offer counsel and advice, you will find yourself constrained to agree with whatever he says and to endorse whatever policies he already wishes to pursue".



'THE BUHARI EFFECT'

Now, we return to explain how Skinner's position interrogates our condition under General Buhari's rule; and how his position helps us to understand "the predicament of those who recognize that they are living in subjection to the will of others". Here, in our case, we identify and isolate what we term "The Buhari Effect" to explain our predicament. Think of Buharists - those followers of General Buhari loosely described as Buharists - and consider how they subject their collective will (and often times individual will) to the will of their hero, Buhari. If living in promotion of the will of their hero limits their will, they are always too glad to live in subjection to the will of this hero. In truth, they are not physically coerced or their will manipulated by their hero to act in certain ways; rather they are conditioned to believe that their hero exercises his will in their interests. Here, again, in our understanding, they are not free because their power to act is constrained by the will of their hero.

Here are a few examples of 'the Buhari effect':

- a. In 2015, Suleiman Hashimu walked seven hundred and fifty kilometers from Lagos to have a handshake and congratulate Buhari on his victory at the presidential poll. The problem is not that the young man walked cross-country distances to have a handshake with his hero, the problem is that in having his will subjected to the will of his hero, he exercised his power to act (to walk) upon the will of his hero. To underscore our point, Buhari, in congratulating Suleiman Hashimu, said, "Thank God you looked at me as a young man. You encourage me as well because when you make a promise you fulfill it". (*Italics mine*).
- b. The consistent calls by supporters of Buhari for the suspension of the Constitution, in order to fight the scourge of corruption. That the suspension of the Constitution invariably meant the suspension of fundamental rights preserved by the Constitution was of scant concern to them.
- c. In August 2017, the 'Resume of Resign' campaigner, Charly Boy, was attacked in Wuse Market, Abuja by supporters of Buhari who endorsed his decision to stay abroad on medical leave without transferring constitutional powers to the Vice

President as mandated by the Constitution.

d. Buhari famously quipped, "if anything goes wrong, I will take responsibility and I will fix it. That is what it means to lead". Whenever things go wrong and critics call on him to take responsibility and fix them, his supporters heckle the critics, screaming, "he is not aware".

e. Those who campaigned against the removal of oil subsidy by the previous government of Dr Jonathan are now happy to accept Buhari's removal of oil subsidy and pump price of oil fixed at a much higher rate. "There is no denying the immediate effect of oil subsidy removal on our pocket (sic) today, but the gain will eventually overtake the pains", they scream.

The more fundamental level in which 'The Buhari Effect' is most pronounced is in *groupthink*. The surrendering of wills of individual supporters, undermining capacities and the power to think and act freedom, which elicits subjection to the will of another, say the lead group thinker of what is now publicly known as the Buhari Media Centre (BMC), not only requires individual supporters to act without critical evaluation but demands that supporters shift their gazes from truth to falsehood.

Though *groupthink* is a construct of social psychology; but it can also be used to theorize rights and freedoms and to explain how the subjection of will of one to the will of another interrogates freedom. If **freedom as non-domination** means that every individual has the power to act and to exercise the power to act in a manner that is not conditional on the will of another individual, **The Buhari Effect** implicates freedom in a bad way; and at two levels. Firstly, the subjection of will of Buhari supporters to the will of their hero undermines the supporters' freedom itself. Whenever they exercise the power to act in a manner that is conditional on the will of the hero, they are invariably stripped of freedom. As Skinner rightly puts it, for one to be truly free, one must not be subject to the will of another. Secondly, groupthink creates a lower level of subjection of will and abuse of freedom (as non-domination). Think about the Buhari Media Centre (BMC) and imagine the subjection of will of individual members to the will of the lead group thinker.



FREEDOM OF EXPRESSION AND HATE SPEECH

In our analysis so far, we have not attempted to define freedom or place it within a definitional framework. The reason is not far-fetched. Freedom, like many concepts in political and philosophical discourses, open to definitional disputations, is construed as the exercise of free will, without interference and constraint or the domination of the will of another. Berlin argued that a person has the free will to say or do something if the rational choice of saying and doing is not constrained by the self or by external force: "freedom is construed as absence of interference".

So what is freedom? Freedom, as power, encompasses saying and doing something to include thoughts that go into saying and doing something. Freedom is at once both cognitive and performative. Berlin summarizes it:

The freedom of which I speak is opportunity for action, rather than action itself. If although I enjoy the right to walk through open doors, I prefer not to do so, but to sit still and vegetate, I am not rendered less free.

Freedom, to put it in Berlin's terms, is not only action-oriented since it includes the power to give shape and cohesion to one's thoughts on the power to act and not to exercise that power to act, it is also reflective. So construed in Berlin's terms, freedom can thus be taken as reflective of the thoughts that legitimate action. Let's explore Berlin's metaphor of the door further on this point. If the entrance, say of a cave, is flooded, whoever is trapped has the power or the rational agency to ponder over his fate - whether to cry for help or to stay put until the water recedes. Freedom, therefore, is choice. The trapped is not rendered less free if he or she chooses to stay put to brave the rising water inside the cave.

If freedom means power to exercise choice, independence, and the will to act, Freedom of Expression gives meaning to freedom itself in two ways. Firstly, through cognition or speech thought, a right-holder reflects and formulates his freedom in a soliloquizing way before transforming it into action. Berlin called

the reflection and formulation, the opportunity to act. Thus, the opportunity to act could mean thinking aloud and not necessarily taking steps to transform thoughts into sets of action.

Example:

Freedom of expression is my basic right

The right-holder, who we can conveniently describe as a thinker, merely establishes ground for action. That is, ground for expressing his or her right to freedom of expression. Secondly, it conveys speech acts that are at once performative. Imagine the right-holder transforming his thoughts into words and having them published in a medium; or imagine the right-holder choosing to walk naked in the streets carrying a banner with the inscription, "CBN, stop the fraudulent charges; the banks are stripping us to the bones". Obviously, the right-holder is not only reflecting his or her thoughts and reporting a state of affairs, he or she is performing the right to freedom of expression. Further, if we accept that there are reflective and performative dimensions to freedom, what then follows is that the performative dimension of freedom of expression, borrowing from John Austin's 'Theory of Speech Acts', can be separated out as locutionary, illocutionary and perlocutionary acts.

In the Austinian sense, locutionary act is the act of expressing something or an idea to achieve a certain meaning. Placed in the context of our argument, it means the act of expressing one's right to freedom of expression, using words that convey a certain meaning. Example:

- (a) "Our lives begin to end
the day we become silent
about the things that matter".
- (b) You have the right to remain silent
as anything you say will be held
against you in the court of law

Martin Luther King's assertion quoted above (a) not only describes a fact, it also performs an act. The performance which the speech act conveys is not to keep silence in the face of tyranny, for (a) and to keep silence, for (b) above. The point about the locutionary act is that party to whom a right-holder asserts his or her freedom of expression understands what the right-holder asserts. In contrast, illocutionary act is a way of communicating with intention. The performance is in the act of saying something, promising something, or offering to do an act. Example:

I promise to protect your freedom of speech,
including the right to a lawyer of your choice.

The word promise is performative, as the arresting agent intends the right-holder to understand the performatory effect of his or her promise.

According to the Cultural Reader, "while locutionary act is the action of making a meaningful utterance, [and] illocutionary act is performing an intentional utterance".

Finally, perlocutionary act, which corresponds with both locutionary and illocutionary acts, simply means the result of meaningful and intentional utterance. What it means in effect is that if a right-holder exercises the right to freedom of expression and utters words that are performed, the act performed can be described as the perlocutionary effect or consequence. One example of perlocutionary act we can readily cite is the infamous "dog and the baboon would all be soaked in blood" statement of General Buhari in 2012:

God willing, by 2015. something will happen. They either conduct a free and fair election or they go a very disgraceful way. If what happened in 2011 should happen again in 2015, by the grace of God, the dog and the baboon would all be soaked in blood.

The point here is that while General Buhari asserted his right to freedom of expression, he delivered perlocutionary words that could have been acted upon and were indeed acted upon in parts of Northern Nigeria during the 2015 General Elections.

Now, having given clarity to Freedom of Expression, the question that needs to be posed and answered is: can freedom of expression be constrained, or interfered with?

Our answer is yes and no.

Firstly, with the NO answer. If freedom of expression is a natural right which denotes the power to express oneself, it cannot be taken away.

Secondly, yes, if we look at Section 39 of the Constitution of the Federal Republic of Nigeria, 1999 (with alterations), which provides:

(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
However, while Section 39(1) can be described as "sunlight", the proviso in Section 39 (3) dims and clawbacks the right to freedom of expression granted under subsection (1):

- (3) Nothing in this section shall invalidate any law
that is reasonably justifiable in a democratic society

Further, Section 45 states:

- (1) Nothing in Section...39 ... of this Constitution shall
invalidate any law that is reasonably justifiable
in a democratic society-
- (a) In the interest of defense, public safety, public order,
public morality or public health; or
- (b) for the purpose of protecting the rights and freedom
of others.

Community reading of the proviso in Section 39 and the derogation provisions of Section 45 would show that the right to freedom of expression is not absolute, free from interference or constraint, as speeches that portend grave consequences for public safety, public order, public morality, public health, national defense and security, or dehumanizes other persons can be interfered with. If the purpose of such interference is to prevent hate speeches, the possibility exists that the categories of hate speech can be extended beyond the ordinary meaning of hate to include political speeches that promote interests other than the interests of a political party in power. In a democratic society, freedom of expression should be allowed to flourish, even if its protection would mean the protection of speeches that offend public morality. But, does protection of freedom of expression mean the promotion of hate speech? We shall answer the question in the concluding part of this section.

First, what is hate speech? According to the United Nations Strategy and Plan of Action on Hate Speech,

there is no international legal definition of hate speech,
and the characterization of what is hateful is controversial
and disputed. In the context of this document, the term hate
speech is understood as any kind of communication in speech,
writing or behavior, 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, color, descent, gender or other identity factor. This often rooted in, and generates intolerance and hatred and, in certain contexts, can be demeaning and divisive.

What is clear from the foregoing is that, for a speech to constitute hate it must be intended to incite, promote, justify or spread hatred, violence against a person or a group of persons. The problem here is not only of boundary, but it is also about delineating the boundaries of free speech and hate speech as it is about creating the balance between prohibiting hate speech and protecting freedom of speech. In the next section, we shall see how States prohibit hate speech to protect freedom of speech.

Meanwhile, we return to the question we posed in the preceding paragraph. Does protection of freedom of expression mean the promotion of hate speech? The protection of freedom of speech does not mean the promotion of hate speech. If we consider freedom of expression as the cornerstone of democracy, our gaze should be directed at those speech acts that tend to grow democracy and not fuel tyranny. The prohibition of speech acts that undermine democracy, in our view, only goes to protect the health and architecture of democracy and preserve the values which make democracy representative. The protection of freedom of expression does not mean the promotion of hate speech. Opinions and counter opinions, facts and counter facts, are accommodated, mediated and reconciled, because it is in the interest of classical liberalism to mediate and reconcile competing interests on the basis of equality in order not to undermine its own tradition. As Kim R. Holmes notes,

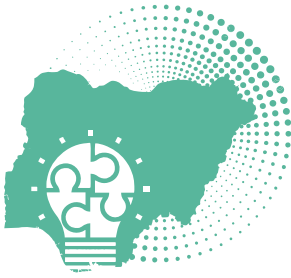
Liberalism has survived all these years because if it was flexible. It accepted implicitly the idea that people had different interests as individuals and that the only way to reconcile those differences was to assume the good faith of everyone equally as individuals.

If hate speech is intended to hurt and injure, its foundation can then be traced to perlocutionary acts that dehumanize and inflict psychological injury on a person or a group of persons. All of this, from the standpoint of Alexander Brown, is wholly indispensable, as "legal scholars working in the field of race theory" long established speech act as basis for understanding hate speech:

When legal scholars working in the field of critical race theory identified hate speech with various ways of subordinating, wounding, humiliating, or degrading historically oppressed or victimized racial groups, arguably they laid the groundwork for those philosophers who would later utilize speech act theory to understand hate speech.

Further, and lastly, a succinct answer is provided by John Stuart Mill's 'harm principle', which allows for the exclusion of harmful actions that "are prejudicial to the interests of others, [the individual is accountable, and may be subjected to social or legal punishments], if society is of opinion that the one or the other is requisite for its protection". For us, Mill's social authority principle suggests that the exclusion of actions that place society at the risk of harm enhances freedom of expression and not hate speech.

What then is the nature of hate speech? Those harmful and dangerous speeches that seek to inflict violence on society, abusive speeches that tend to humiliate and denigrate a person or a group of persons, and dehumanizing speeches that present "false facts, flawed argumentation, and dehumanizing metaphors" constitute the nature of hate speech. Since hate seeks to undermine the sanctity of society, many governments are determined to eliminate it - either through regulation of cyberspace or outright criminalization of speeches that don't fall within the realm of free speech. Unfortunately, there are growing voices pushing for the right to be stupid - the right to hate speech.



HATE SPEECH PROHIBITION

The boundaries of free speech and hate speech are becoming blurred, as what used to pass as a mere speech act is now termed hate speech. Perhaps, this is so because societies are becoming intolerant of counterviews, or that liberalism which has for many years moderated and mediated competing interests has turned on itself, ridding its age-long tradition of tolerance and respect of opposing views and hollowing out equality. Perhaps, too, in places where multiculturalism and diversity are expanding, the need for protecting minorities becomes more profound. To fight hate speech, the hammer becomes the choice tool of policy makers and law-makers. They suddenly become like the children's television character, Bob-the-Builder, who uses the hammer to fix any problem. The solutions to online hate speech don't lie in the hammer of prohibition and criminalization of speeches; it lies outside the cyberspace and in those conditions, which allow hate speeches to flourish. Here, we refer to those conditions, which manifest as the structural imbalance of society, inequality, and the ethnical or racial framing power in a manner that keeps certain ethnic groups or races from accessing both political and economic powers of society, that allow hate speeches to flourish online. So, applying the hammer to the nail of hate speech does not and cannot address the problem of hate speech online.

Nonetheless, nation-states persist in applying the hammer of prohibition and criminalization of hate speech, as the examples below show:

(A) NIGERIA

Though Chapter Four of the Constitution 1999 protects the fundamental rights of Nigerians, the claw back provisions of the Constitution do not make rights enshrined therein absolute. Added to this, are the rash of legislations that has emerged to either restrict free speech or prohibit hate speech. In 2015, the Cybercrime Act was enacted by the National Assembly ostensibly to address the problems of cybercrimes. Unfortunately, this piece of nasty legislation proceeded beyond what it was initially intended and strayed into the field of rights. For instance, Section 58, which defines cyber stalking as "a course of

conduct directed at a specific person that would cause a reasonable person to feel fear", and made punishable under Section 24 that establishes elements of offences that are directly in conflict with citizens' rights to freedom of expression. As we noted in an essay, 'On the Cyberstalker Near You: The Power of Arrest of the EFCC Examined', "there is the danger that it (the Cybercrime Act 2015) lends itself out as a tyrannical weapon that can be deployed against freedom of expression, including freedom to hold opinions, and to receive and impart ideas and information without interference".

Indeed, many critics of the government have been arrested and detained for publishing views not favorable to the government.

(B) THE UNITED KINGDOM

Article 10 of the Human Rights 1998 guarantees "the right to hold opinions and to express them freely without government interference". However, in recent years there have been reviews of legislations, bringing new legal prohibitions aboard old ones. For instance, Section 4 of the Public Order Act 1968 which prohibits provocation of violence through the use of "threatening, abusive or insulting words or behavior that causes, or is likely to cause, another person harassment, alarm or distress", was amended and new Sections 17 and 18 added in 2018 to include offences against racial hatred and prohibition of acts intended or likely to stir up racial hatred against persons on religious grounds or hatred on the grounds of sexual orientation.

Further, the new Section 20 of the Public Order Act 1968 also amended The Theatres Act 1968 and prohibits the performance of plays "which involves the use of threatening, abusive or insulting words or behavior". As Tracey Cormack observes, "these laws against hate speech can easily cross the line and become an infringement on freedom of speech rights". She is right.



PROPOSED SOLUTIONS TO HATE SPEECH IN NIGERIA

How do we counter hate speech? Can we pretend that hate speeches do not exist; or that people don't hide under free speech and propagate hate speeches? How do we confront this trend?

Whilst we admit that there may exist different ways to confront the problem of hate speech, we list the following seven ways that we think are more befitting of a democratic country like Nigeria, to counter hate speech:

(1) IGNORE HATE SPEECH AND OR THE MAKER OF HATE SPEECH:

As the common saying goes; "silence is the best answer to a fool". There is wisdom in this saying. That you ignore the hate speech and or the maker of hate speech doesn't make you less human; in fact, it shows you are a better and cultured person. If you are online, or any of the social media platforms like twitter, Facebook and WhatsApp, for instance, you ignore hate speech by not responding to the maker of hate speech. The platforms allow you to apply the unfriend/unfollow buttons; or block the maker and his/her handle outright.

(2) FILE A COMPLAINT AGAINST THE MAKER OF HATE SPEECH:

If you cannot ignore the maker of hate speech or a specific hate speech, file a formal complaint against the maker to the operators or owners of the online platforms. Evidence is everything. Ensure you screenshot the hate speech and attach to your formal complaint. Note that every virtual platform has its complaint procedure; please, ensure you are familiar with the procedure.

Hate speech makers remain anonymous because many victims simply do nothing about abuses of the dignity of their persons; or live in denial that they are not victims of hate speech.

(3) TAKING ACTION:

Ensure that the virtual platform you are on has policies that guide against and or prohibit hate speeches. If there is no policy on prohibition of hate speeches, take action: (i) Write the platform operators and or owners to initiate policies that prohibit hate speeches and protect privacy and the dignity of the human person; (ii) If you are not comfortable with the absence of policy on prohibition of hate speeches, migrate to platforms that have policies that protect you.

(4) SEEK THE SUPPORTS OF OTHERS:

Hate speech undermines humanity; and because hate speech doesn't specifically undermine the humanity of the individual that it is directed at, it is important you consider one hate speech directed at one individual as "an injury to all". It is imperative to enlist support of others and initiate campaigns against the makers of hate speeches.

(5) JOIN THE CAMPAIGN TO ADDRESS THE UNDERLYING CAUSES OF HATE SPEECH:

Hate speech makers export some of their stereotypical beliefs from the physical space to the virtual space. The causes of hate speeches lie outside the virtual space; and it is the responsibility of all to join the campaign to end stereotypes and beliefs that tend to hurt humanity. Campaign that highlights knowledge of and respect for diversity of cultures and people is essential.

(6) PROMOTING THE FREEDOM OF THE PRESS:

Respect for Press freedom enhances the media as partners in the fight against hate speech.

(7) PROMOTING DIALOGUES:

Finally, and perhaps more importantly, we must begin to encourage dialogues that promote collective understanding of our diversity and uniqueness as a multi-cultural and multi-lingual society. Encouraging national dialogues on what is acceptable to one and not acceptable to the other; or what is offensive to one and not offensive to the other, will go a long way to foster tolerance and more responsible speeches in our society.



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