

Addressing Online Hate Speech: Nigeria's National Framework and Regulations (2020-2023)

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Abstract

Sixty-three (63) years after independence, Nigeria has yet to recognize a national communication policy framework document that would serve as a foundation for both online and offline communication initiatives. This paper examines all four (4) drafts of the national communication policy framework in Nigeria to contextualise online hate speech within these documents. Drawing upon peace journalism theory, this qualitative content analysis reveals that there is a lack of robust legal frameworks for addressing online hate speech in all draft documents. Online hate speech is mentioned passively in the 3rd and 4th draft documents without any significant consideration for its implications on the potential escalation of national politics. Nigerian judicial system relies on global law reviews to adjudicate cases of online hate speech within the country. The study concludes that an effective framework for addressing online hate speech should be independently developed as part of the national communication policy and strategy documents established by the National Assembly, with the final draft recognized as a legally binding document in the country. The study also provides recommendations for strengthening the national communication policy and addressing the issue of online hate speech in Nigeria.

Keywords

National Communication Framework · Regulatory Agenda · Online Hate-speech

Introduction

The Nigerian legal system and the embodiment of laws, according to Ilori (2023), are supposed to define societal rules as well as use these rules to solve societal problems. First, it ought to define the formal and golden rules a society abides by. Second, it ought to actively solve that society's problems to justify its relevance (Barret & Gaus,

2020; Bicchieri, 2016). However, in the case of hate speech in Nigeria, there are constitutional, conventional and communication framework lapses.

Global practices in international jurisprudence and human rights law presuppose that the system of rules to which most sovereign states subscribe has established a consensus on prohibiting hate speech. Be it through emotional or physical violence, racial pronouncement, or discrimination online or offline, hate speech is clearly forbidden from all ramifications (United Nations, 2019; Brown, 2015; Fino, 2020). However, despite this stance, the use of hate speech has skyrocketed in Nigeria, especially in the political arena (Tontodimamma, Nissi, Sarra., & Fontanella, 2021; Futtner & Brusco, 2021; Jedicke, 2020). While the definitions of hate speech may vary in language or context, they often share a common purpose: to deter the use of any means of communication that may incite violence or discriminate against protected characteristics (Mendel, 2012).

With a focus on online hate speech, within the framework of the Nigerian National Communication Policy document, there are ineffective conventions and laws guiding online hate speech in Nigeria (Bakken, 2002; Fino, 2020). In spite of the governmental conventions put in place to criminalise hate speech, the trends persisted, with human rights angels supporting the perpetrators. The anti-hate speech conventions are viewed as an attempt to silence opposition voices in a democratic system.

Offline hate speech can result in immediate confrontation with the characters whose image and integrity are demeaning and ridiculed by the speaker. However, this study focuses on online hate speech within internet spaces, with the potential to travel faster and reach countless internet users. Digital media community guidelines and robotic communication policy frameworks in Western industrialised nations, coupled with ICCPR (International Covenant on Civil and Political Rights) conventions, have helped the developed world control both offline and online hate speech. But these national communication policy frameworks and legal conventions on the regulation of online hate speech are grossly inadequate in Nigeria, thus the need for this study to fill this academic gap.

Major Approaches to Online Hate Speech Regulation in Nigeria

According to Scheffler (2015), hate speech is prohibited by international law. Various international human rights law instruments exemplify this prohibition through provisions for states to prohibit hate speech through law (United Nations, 1948a, Art. 3(c); ICCPR, 1966, Art. 19-20; ICERD, 1969, Art. 4; United Nations, 1948b, Art. 19; African Union, 1986, Art. 9). In addition to the law, there have been various explanations that analysed hate speech and its regulations (Dworkin, 2009; Baker, 1989, 1997; Mill, 1859; Rawls, 1993). Both legal and scholarly approaches to hate speech regulation, especially within the African human rights system, offer perspectives on how hate speech can be regulated (African Commission on Human and Peoples' Rights, 2019). Practically, these perspectives should effectively use the law to actually prohibit hate speech.

The most pressing concern with hate speech interventions is how not to violate the right to freedom of expression (Elbahtimy, 2014). This question is one of the greatest challenges facing governments and other stakeholders, including social media companies and the telecommunications industry, in combating hate speech since social media companies have been said to have a horizontal obligation to protect the right to freedom of expression (Nowak, 2005; Callamard, 2019; United Nations, 2018; Kaye, 2019).

A closer look at articles 19 and 20 of the ICCPR offers a perspective on balancing the contending needs for freedom of speech and freedom from hate speech. Article 20 of the ICCPR provides for three instances when the right to freedom of expression provided for under Article 19 may be limited: (1) advocacy for discrimination; (2) hostility and violence based on protected characteristics; and (3) the incitement of imminent violence and propaganda for war. Combined with article 19(3), which allows for restrictions on free speech in order to protect others' rights, both articles form the fulcrum of international human rights law on limiting and regulating hate speech offline and online (Mendel, 2012, p. 420).

One major challenge for hate speech jurisprudence under international human rights law is how to balance articles 19 and 20 of the ICCPR. This tension is obvious, especially when Article 20 suggests that "any advocacy" – which can include the right to freedom

of expression as provided for under Article 19(2) – may be restricted as prohibited speech, reading as a direct limitation of the right as provided for under Article 19(2). However, the tension is more obvious even when applied narrowly to the prohibition of hate speech. What do human rights advocates mean when they demand that hate speech interventions comply with international human rights law? While specific principles govern what qualifies as hate speech, these principles require a contextually sensitive application to be effective.

Theoretical Principles

This study is situated within two major theoretical approaches, believing that the tenant of this theory will address how best to regulate hate speech with respect to the right to freedom of expression:

Absolutism and Pragmatism are principles. Absolutism, which is popular in the United States’ legal system, primarily argues against limitations of the right to freedom of expression (Dworkin, 2006, 2009; Baker, 1989, 1997). Its core argument is anchored on the claim that the freer the speech, the more open the society. Absolute hate speech intervention is further divided into two categories. First, self-ordering absolutism argues that a society will always “self-order” or “self-correct” in the course of debates and exchanges of ideas, whether popular or unpopular, and through a free press (Mill, 1859). Second, institutional absolutism contends that, so far, strong institutions are in place – such as the courts, law enforcement, and public service – and that higher guarantees protecting free speech are available by not using only the law (Rawls, 1993; Nickel, 1994).

Traditionally, pragmatism centers on the use of hate speech interventions – laws and other measures that prohibit hate speech. Such interventions may include traditional or non-traditional interventions. Traditional interventions are the use of laws to combat hate speech, while non-traditional interventions are the use of other social methods, such as education, training, and public awareness (Workneh, 2020; Nkrumah, 2018; Cassim, 2015). Non-traditional interventions may also be called alternative methods or alternative measures of hate speech interventions.

Often, while most states adopt traditional interventions to combat hate speech through laws, many international law instruments emphasize non-tra-

ditional interventions by advocating for the use of social methods in hate speech interventions. What sets non-traditional interventions apart from other approaches is their recognition of hate speech as socio-pathological, necessitating more than just criminalization and legislative measures to effectively address it (Cassim, 2015).

Absolutist arguments against limiting speech through hate speech interventions are unsubstantiated, as examples demonstrate that hate speech often leads to violence (Viljoen, 2005). Additionally, many societies struggle with “self-ordering” due to weak democratic institutions that are meant to facilitate effective governance and self-regulation.

Traditional interventions also present challenges in the regulation of hate speech. Often, when laws or provisions criminalizing hate speech are limited in scope regarding criminalization and punishments, and when they are used to restrict the right to freedom of expression, they tend to focus on corrective measures rather than preventive methods (Scheffler, 2015, p. 82). However, in recognizing hate speech as a social issue, non-traditional interventions necessitate the integration of law as a crucial tool alongside other social and alternative methods. Therefore, hate speech interventions can be adapted to various contexts while simultaneously safeguarding free speech and preventing prohibited speech.

The normative and theoretical approaches are similar in providing the basis for assessing hate speech interventions in various contexts. The normative approach provides the prescriptive basis for the balance between hate speech and the right to freedom of expression, while the theoretical approaches provide a more context-based and practical application of these laws. The normative principle aims to prohibit hate speech, and the theoretical approach provides divergent perspectives on applying legal goals. A fine blend of both approaches is usefully exemplified in the African human rights system’s reviewed *Declaration*.

Hate Speech within Nigeria’s National Communication Policy Framework

A holistic review of the table below shows that online hate speech was passively mentioned in the third and fourth Nigerian National Communication Policy Framework drafts.

Year	Policies	Major Objectives of the Review
2004	Review of mass communication policy	To revamp broadcasting by liberalization, accessibility and pluralism of broadcasting
2009	The media and communication thematic group	To establish comprehensive policy and legal reforms in all types of media and providing state of the art equipment in all media organizations
2011	Enactment of Freedom of Information Act (FOI)	Making public records and information more freely available and access
2013	National information policy	Put in place national information policy guided by to participatory, equity, freedom, pluralism as well as protection, promotion and integrated coherence system
2016	Towards a comprehensive national communication policy and strategy	To find policy solutions and strategies to the nation's communication problems

Table 1. Source: Adopted from Maggai, et al. (2022) and reorganized by author

Every nation struggles to meet the communication and information needs of its citizens and those of the global community. Communication plays significant roles in the realisation of national goals. To achieve these objectives, the country needs to put in place a comprehensive and robust communication policy and strategy that will guarantee free interaction between the communicators and the communicatee.

To date, Nigerian National Communication Policy Strategy has only been piecemeal documents that are usually referred to as drafts. Specifically, there is no up-to-date comprehensive communication policy and strategy document drawn up in cooperation against hate speech (Adeyanju, 2017, p. 6).

Efforts have been made for many years to develop a comprehensive and up-to-date national communication policy and strategy document that would be acceptable to all stakeholders, both online and offline. However, these efforts have not yielded the positive outcomes needed, leaving the field of communication, including hate speech, open to various interpretations and abuses. Communication policy, as explained by Maggai, Idyorough, and Adama (2022), provides the operational framework for understanding the operations, regulations, and general behavior of conventional and alternative

mass media systems, as well as their functions and related sectors.

Hate Speech

According to the United Nations Committee on the Elimination of Racial Discrimination (2013), hate speech is described as all dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means; incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin. Hate speech could be defined as threats or incitement to violence against persons or groups on the grounds outlined above; the expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds outlined above, when it clearly amounts to incitement to hatred or discrimination; participation in organisations and activities that promote and propagate ideas of racial or ethnic superiority, hatred or discrimination against individuals or groups based on their race, color, descent or national or ethnic origin.

Hate speech, as a concept, refers to any expression directed from one individual or entity towards another that is offensive and rooted in hatred, par-

ticularly evident in electoral contexts in Nigeria. C. Ezeibe posits that ‘hate speech is any form of speech, gesture, conduct, writing, or display that could incite people to violence or discriminatory action. Hate speeches undermine the dignity and integrity of others as they are entirely motivated by hate’ (Oshaba, 2021).

Hate speech, in all its forms, is profoundly harmful. Essentially, hate speech epitomizes the misuse of language. Words serve as instruments for communication and dialogue. However, when wielded offensively, words transform into weapons. This transformation is evident in hate speech, where words are weaponized – an aberration that constitutes an abuse of the inherent nobility of language. Various factors drive individuals to engage in hate speech.

This is made possible, as suggested by Habermas (1977, p. 259), because “language is... a medium of domination and social force. It serves to legitimise relations of organised power. In so far as the legitimations of power relations are not articulated, language is also ideological.” Online platforms have evolved into arenas for power struggles, leading to the legitimization of hate speech. Legitimation is a potent method of gaining acceptance and widespread recognition within society. Therefore, discursive legitimation strategies serve as mechanisms for activating specific discourses to establish a sense of legitimacy or illegitimacy (Fairclough, 2003).

Framework for online hate speech refers to the strategy or an agreed plan of action in the digital communication era. The framework could be a systematic timeline from conception to operation.

Hate Speech within Nigerian 1999 Constitution (as Amended)

Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) enshrines fundamental human rights. Section 39(2) places limitations on the rights to freedom of expression, opinion, and the dissemination of ideas through its proviso. The constitution grants the government the authority to impose such limitations through legislation enacted by the National Assembly, specifically to regulate the ownership, establishment, and operation of broadcasting stations.

Subsection 3 further stipulates that any restrictions on the right to freedom of expression must be ‘rea-

sonably justifiable in a democratic society,’ ensuring that the government’s authority to limit these rights is constrained by principles of reasonableness and justifiability within a democratic framework.

Sections 39 and 45(1) suggest two categories of limitations with respect to the protection of the right to freedom of expression under the 1999 Constitution. The first category is internal, contained in the provisions of sections 39(2) and (3), with (3) requiring that the limitation under (2) be reasonably justifiable. The second category is external, as contained in the provisions of Section 45.

The Nigerian Cybercrime Act

Section 26 of the Cybercrimes (Prohibition, Prevention, Etc.) Act of 2015 provides for racist, xenophobic, and genocidal offences online. Section 26(1) (a–b) criminalises the production and sharing of racist and xenophobic material with the public. Additionally, the offence includes threatening anyone based on their race, colour, descent, nationality, ethnicity, or religion. Section 26(1)(c), however, provides for the offence of insults based on these characteristics, while (d) criminalises genocide or crimes against humanity. Each of these offences carries various fines and imprisonment terms as punishments. But to what extent do these legal provisions include online hate speech? Due to the fact that this cybercrime act does not explicitly mention online digital platforms, the need to amend the Nigerian Cybercrime Act is necessary.

The provision of Section 26(1)(c) of the Cybercrime Act does not comply with international law in that “insults” are not covered under hate speech. For a speech to fall under the intention of Section 26 as labelled, it must fall under the strict prescription of international human rights law, as explained immediately above.

Nigerian Broadcasting Code (NBC)

Under the current Nigerian Broadcasting Code, paragraphs 3.0.2.1 and 3.0.2.2 provide that broadcasting incitement and hate speech is prohibited. The first paragraph states clearly that:

“No broadcast shall encourage or incite crime, lead to public disorder or hate, be repugnant to public feelings, contain offensive reference to any person or organisation, alive or dead, or generally be disre-

spectful to human dignity” (National Broadcasting Commission, 2016).

To the contrary, the code does not provide what constitutes hate speech and in fact online hate speeches was not mentioned at all. Now how can the country address hate speeches in digital radio or video streaming in Nigeria? Words such as public feelings, offensive reference, and disrespectful do not convey a sufficient or precise meaning.

National Commission for the Prohibition of Hate Speeches (2019)

The objective of the National Commission for the Prohibition of Hate Speeches (2019) is to “promote national cohesion and integration by outlawing unfair discrimination and hate speech.” It seeks to establish a national commission for the prohibition of hate speech. The bill provides for various categories of offences, including ethnic discrimination, hate speech, harassment on the basis of ethnicity, offences of ethnic or racial contempt, and discrimination through victimisation and offence by companies and firms.

Among all the offenses stipulated under the proposed law, only hate speech carries the penalty of life imprisonment. In cases where such speech leads to death, the punishment becomes death by hanging. Other offenses, such as harassment based on ethnicity and ethnic or racial contempt, carry punishments of a five-year jail sentence, a fine of 10,000,000 naira (approximately 26,000 US dollars), or both, if the accused is found guilty. Offenses committed by companies or firms carry a punishment of a one-year jail sentence, a fine of 2,000,000 naira (approximately 5,000 US dollars), or both, if the accused is found guilty. The bill, as an intervention, presents obvious irony since its hate speech provisions are not only excessive, non-compliant with international standards, and censorious (IPI, 2019; Media Rights Agenda, 2020) but also directly contravene its objectives to “promote national cohesion and integration” with its excessive punishments, including life imprisonment and death by hanging. Despite the provisions of the bill’s Section 19, which considers other less intrusive means of combating hate speech, it fails to provide adequate clarity as a law, is disproportionate, and does not demonstrate the necessity of its form of intervention.

Importantly, the Nigerian government bears the responsibility of demonstrating its compliance with international law requirements limiting the right to freedom of expression (Land, 2020). However, there are notable concerns with the proposed bill. Firstly, the bill employs vague terms such as ‘insulting’ or ‘abusive’ without providing a framework for contextual analysis of hate speech, as outlined in Principle 23(3). Additionally, it opts for the outright criminalization of speech as a last resort and recommends death by hanging as a punishment for those found guilty of violating hate speech laws, despite the Act not specifying online platforms as part of the environment for hate speech.

To limit the right to freedom of expression based on hate speech interventions, such interventions require a high threshold of compliance due to the right’s importance. Therefore, traditional and non-traditional approaches to hate speech prohibition should be combined. For example, a law on hate speech – even if it complies with the strict provisions of international human rights law – may be ineffective since hatred is reduced not only by imprisonment terms and fines but also through carefully chosen alternative methods that focus more on social dynamics than criminal elements. So, while a specific alternative method or a combination of alternative methods may genuinely teach about and prevent the dangers of hate speech, the law as a form of hate speech intervention should reinforce such alternative methods.

Conclusion

Through ongoing analysis of the Nigerian legal system and the National Communication Policy Framework, it becomes evident that Nigeria lacks elaborate provisions within its Criminal Code Act or Penal Code Act to address criminal offenses related to online hate speech, as prescribed under international law. Notably, Section 417 of the Penal Code Federal Provisions Act addresses the offense of endangering public peace by inciting hatred among social classes.

Currently, there are no policies offering guidance on addressing online hate speech in Nigeria. Most existing conventions fail to address online platforms in their documentation. Consequently, the Nigerian government faces at least three urgent needs: to review its hate speech interventions, to revise its national communication strategy and policy docu-

ment, and to address the regulation of online hate speech effectively.

Recommendations

1. **Alignment with Human Rights Principles:** It is imperative to review all laws and existing policies to ensure alignment with human rights principles. Nigeria must embrace more speech rather than less to foster growth, especially considering current constitutional challenges. This process entails aligning laws with international human rights provisions, fostering debates, and nurturing a tolerant and democratic system.
2. **Exploration of Alternative Methods:** To effectively reduce hate speech, the national communication strategy policy document should explore alternative methods beyond mere criminalization. The law can be leveraged for evidence-based policy-making on hate speech, offering normatively creative approaches to combatting this phenomenon.
3. **Transparency and Inclusivity:** All forms of communication, legal, and systemic interventions must prioritize transparency and inclusivity. These approaches should adapt to the complexities of combating hate speech in Nigeria, particularly in the digital age, by engaging diverse stakeholders and perspectives.
4. **Adoption of Human Rights Standards:** Social media platforms operating in Nigeria should adhere to international human rights standards while also complying with national laws and community guidelines. This dual commitment ensures that online platforms contribute positively to the discourse while upholding fundamental rights and values.

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Bio

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