

**Abstract**

*The advent of the internet has shifted humanity from the traditional mode of doing things to electronic platforms. There are various channels where information is disseminated on the net fondly called the 'social media' under the traditional mode news and views are subjected to censorship, and various editorials to sieve the offensive aspects. Regulatory bodies have been put in place to whip into line any media house that appear to be flouting the guidelines which draw red lines. However, the social media has defied the territorial boundaries of Nigeria as it is borderless in a globalized world. The characteristics of the internet which include accessibility, easy to use and above all anonymity has made everyone a journalist who by the click of the button publish materials which are more often than not fake, injurious and treasonable. Criminal elements have found the use of social media a ready tool to promote their crime without being caught. This paper therefore examines the legal issues involved in the use of social media to propagate fake news particularly now that Nigeria is facing insecurity in all its facets. This paper recommends that there should be a deliberate effort at legislating the use of social media.*

**Keywords:** Legal, Issues, Social Media, Fake News, Unsecured.

**1. Introduction**

Nigeria since the return of democracy has come under torrents of insecurity. It began with peaceful agitation for resource control which was snowballed into militant agitations, precipitating into kidnappings of alien staff of transnational oil companies operating in the Niger Delta and the quiz of youth movements particularly in Bayelsa and Rivers state. In no time, leaders of such militia group were pacified and compensated through the amnesty programme of the Federal Government. At the same time, a group known as *Jamaat Al as-Sunnahliid-Dawahwa'l-Jihad* meaning 'group of the people of Sunnah for Dawah and Jihad simply named Boko Haram' emerged in the North East of Nigeria domiciled particularly in Borno State. Not done, the South Eastern States started agitations for the realization of Biafra with violent aggression razing down government institutions and giving directives to citizens who must obey or pay the Supreme price, Sunday Igbohos' movement for Oduduwa republic became a pain in the security architecture, while criminal elements in the North West simply christened bandits became a pain in the neck of security handlers while the North Central boiled with herders/farmers clashes, unknown gun men have been on the prowl in Plateau and Taraba States. In all these security challenges, the social media was used to propagate the mission and vision of leaders of these groups. On the other side, citizens used their mobile phones with enabled internet facilities to post gory pictures on the net. Which is not in the best practices of journalistic ethics, alarms were raised where there is non-existence of actual threat making such news fake. It is in this wise that the paper recommends that there should be a deliberate attempt at legislative control of the social media.

**2. Conceptual Clarifications**

In any academic endeavor, it is pertinent to situate terms which are central to the theme of discourse into proper perspective for ease of understanding.

**Social Media**

According to Encyclopedia Britannica, social media is a form of mass media communication on the internet through which users share information, ideas, personal messages, and other content<sup>1</sup>. Social media are websites and programmes that help people talk to each other, get involved, share information and work together. People use social media to stay in touch with their friends, family and neighbours<sup>2</sup>. According to Manning, social media is the term used to refer to forms of media that involves interactive participation<sup>3</sup>. He said the development of media is divided into two different ages, the broadcast age and interactive age. In the broadcast age, media were almost exclusively centralized where one entity such as a radio or television station, newspaper company or a movie production studio distributed messages to many people. Feedback to media outlets was often, delayed indirect and impersonal. Mediated communication between individuals typically happened on a much smaller level, usually through personal letters, telephone calls or sometimes on a slightly larger scale through such means as photocopied family newsletter. With the advent of the new media, interactivity has been placed at the centre as one individual can speak with many people with an instant feedback enabled by digital technology. The new technology has opened opportunity for more accessibility as individuals now access information from multiple sources and dialogue with others via different fora. Some common forms of social media include Email, Texters, Blogs, Message boards, Connection sites, Special networking sites, games and Entertainment and other Apps (short form for mobile applications).

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<sup>1</sup> Editors of Encyclopaedia Britannica 'Social Media' available at [www.britanica.com/topic](http://www.britanica.com/topic) last accessed 25/01/24.

<sup>2</sup> The Economic Time 'What is Social Media' available at [www.economicstimes.com/definitions](http://www.economicstimes.com/definitions) last accessed 25/01/24.

<sup>3</sup> Jimmie Manning 'Definition and Classes of Social Media' Harvey (Ed.), *Encyclopaedia of Social Media and Politics* (pp.1158-1162) Choband Oaks, CA: Suge at <https://www.researchgate.net/publications> last accessed 25/01/24.

## **Fake News**

According to dictionary.com, fake news refers to false news stories, often of a sensational nature, created to be widely shared or distributed for the purpose of generating revenue, or promoting or discrediting a public figure, political movement, company etc<sup>4</sup>. The libraries of the university of Oregon says there is no generally agreed upon definition of fake news, some define it narrowly. It has been defined to be ‘Newspaper articles, television news, shows or other information disseminated through broadcast or social media that are intentionally based on falsehoods or that intentionally use misleading framing to offer a distorted narrative’<sup>5</sup>. According to Pate and Ibrahim, there is no standard definition of fake news, the term can however be defined as false, often sensational, information disseminated under the guise of news reporting’<sup>6</sup>. The social media has mounted an easy platform for fake news to blossom. Pate quoting National Democratic Institute (NDI) states that as internet penetration deepens across the country, millions of Nigerians now access and share information via smart phones, social media platforms such as Face-book, and Twitter (now X) and messaging platforms such as whatsapp<sup>7</sup>. This has posed a serious challenge to the government and indeed the general populace as it has promoted ethno-religious bigotry and general insecurity.

## **Security**

In ordinary parlance, security is the state of being or feeling secure, freedom from fears, anxiety, danger, doubt etc; state or sense of safety or certainty<sup>8</sup>. Olugbega says to be secure is to feel free from threats, anxiety or danger. Security is therefore a state of the mind in which an individual feels safe from harm by others<sup>9</sup>. Osinbajo quoting Kofi Anan defines security with a broader and more contemporary description when he said ‘human security can no longer be understood in purely military terms. Rather it must encompass economic development, social justice, environmental protection, democratisation, disarmament, and respect for human rights and the rule of law’<sup>10</sup>. Insecurity on the reverse side is the state of being subjected to danger or injury. The anxiety that is experienced when one feels vulnerable and insecure. Insecurity has been further defined as the state of being not secure, lack of confidence.<sup>11</sup> Unsecured Nigeria refers to the nation that is bedeviled with criminal acts of terrorism, kidnapping, banditry and separatist agitations and a democratic process that has lost confidence in the minds of Nigerians. This is propelled by fake news enhanced by the use of social media.

## **3. Laws Governing Social Media and Fake News in Nigeria**

Nigeria has a robust legislation governing social media activities, the governing laws include the Nigeria Broadcasting Commission, Act<sup>12</sup>, the Nigeria Communications Commission Act<sup>13</sup>, the National Information Technology Development Agency Act<sup>14</sup>, and the Guidelines made pursuant thereto. The Nigeria Broadcasting Commission (called NBC) is empowered under the Act to license persons who would want to operate communications services including radio station, television and satellite services<sup>15</sup>. The NBC Code for instance outlines the minimum requirement for broadcasting in Nigeria. It provides best practices required for broadcasting online and regulates the adoption of technological devices in broadcasting.<sup>16</sup> The Nigeria Communication Commission Act on the other hand regulates telecommunications generally in the country. The Act establishes the National Frequency Management Council and the universal Access Fund. Through the licensing instrument, it determines who enters and exits the telecommunication industry. The Act provides that: ‘No person shall operate a communications system or facility provide a communications services in Nigeria unless authorized to do so under a communication license by the commission under the Act.’<sup>17</sup> Pursuant to the power, granted the commission under the Act, to make regulations, the commission has made guidelines for the provision of internet services in Nigeria<sup>18</sup> with respect to inappropriate use of the internet, the guidelines is to the effect that Internet Service Providers (ISPs) must ensure that users are informed of any statements of cybercrime prevention or acceptable internet use

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<sup>4</sup> Fake News available at [www.dictionary.com](http://www.dictionary.com) accessed 26/01/2024.

<sup>5</sup>University of Oregon; UO Libraries ‘Fake News and Information Literacy’ available at [www.archguides.uoregon.edu](http://www.archguides.uoregon.edu) last accessed 26/01/2024.

<sup>6</sup> Umaru A. Pate and Adamkolo Mohammed Ibrahim; ‘Fake News Hate Speech and Nigeria’s Struggle for Democratic Consolidation’ A Conceptual Review available at [www.researgate.net](http://www.researgate.net) last accessed 27/01/2024.

<sup>7</sup> Ibid

<sup>8</sup> Security Definition and Meaning available at [www.colingdictionary.com](http://www.colingdictionary.com)>dictionary last accessed 27/01/2024.

<sup>9</sup> Oke-Samuel Olugbenga and Michael Ogwezy ‘Legal Challenges arising from Environmental Insecurity’ In Law; Security and National Development. Godwin Okeke et al (Eds.) Proceedings of the 50th conference of the National Association of Law.

<sup>10</sup> Yemi Osinbajo in his good will message to the conference of Nigeria Association of Law, Teachers NALT. Held on 11-16 June, 2017 at Nnamdi Azikiwe University, Awka, Nigeria.

<sup>11</sup> Udoh, Emmanuel Williams ‘Insecurity in Nigeria: Political, Religious, and Cultural Implications’ available at [core.ac.uk](http://core.ac.uk) accessed 27/01/2024.

<sup>12</sup> Cap. NII Laws of the Federation, 2004

<sup>13</sup> No. 19 of July, 2003.

<sup>14</sup> No. 28 of 2007.

<sup>15</sup> See Section 9 thereof

<sup>16</sup> See the NBC Code 6<sup>th</sup> Edition, 2020.

<sup>17</sup> Section NCC, Act, 2003.

<sup>18</sup> The Guidelines are made pursuant to Section 70(2) of the NCC, Act, 2003. Under the guidelines interest service providers must comply with the consumer code of practice, 2006, made by the commission.

published by the constitution or any other authority, and that failure to comply with these acceptable use requirements may lead to criminal prosecution, including with respect to: ‘Unlawful access or fraudulent use of a computer, any other use for unlawful purpose, including terrorism, promoting racial religious or other hatred unlawful sexual purposes’. The National Film and Video Censors Board Act among other things establish a Censors Board to regulate the censorship and public exhibition of films and video works<sup>19</sup>. In its guidelines made pursuant to the Act<sup>20</sup>, the Board empowers the censorship and classification committee to ensure that:

A film or video work has educational or entertainment value apart from promoting the Nigerian culture, unity and interest; and that such film or video work is not likely:

- To undermine national security
- To induce or enforce the corruption of private or public morality; or
- To encourage or glorify the use of violent; or
- To expose the people of African heritage to ridicule or contempt; or
- To encourage racial, religious or ethnic discrimination or conflict; or
- By its contents to be blasphemous or obscene, or
- To denigrate the dignity of womanhood.

The National Information Technology Development Agency, is the main regulator of the internet and to that extent the social media upon which criminal activities, obscurity and fake news abound. The main function of the agency is to:

Develop guidelines for electronic governance and monitor the use of electronic data interchange and other forms of electronic communication transactions as an alternation to paper based methods of government, commerce, education, the public and private sectors, labour and other fields, where the use of electronic communication may improve the exchange of data and information<sup>21</sup>.

In exercise of its powers, the agency made the code of practice for interactive computer service platforms, internet intermediaries<sup>22</sup>. The code has covered some of the issues witnessed on social media. The preamble to the code provides in part:

Recognizing that many public and private organisations are gradually moving their businesses and information services online; that the internet is transforming the way we conduct our daily activities; that the children have a significant presence online without the necessary supervision; that the information technology systems have thus become a critical infrastructure in our society that must be safeguarded, regulated, and protected against online harm.

The code of practice has set for itself the objective of bringing out the best practices that will make the digital ecosystem safer for Nigerians and non-Nigerians in Nigeria and to adopt a regulatory approach towards implementation and compliance.

#### **4. Social Media Insecurity and Fake News**

Though fondly called social media, the code of practice for interaction computer services, internet intermediaries<sup>23</sup> define social media as ‘interactive computer service platforms’ which means any electronic medium or site where services are provided by means of a computer resource and on demand and where users create, upload, share, disseminate, modify, or access information, including websites that provide review and gaming platforms. The code refers to ‘internet intermediaries’ to including but not limited to social media operators, websites, blogs, media sharing websites, online discussion forums, streaming platforms, and other similar oriented intermediaries where services are either enabled or provided and transactions are conducted and where users can create, read, engage, upload, share, disseminate, modify, or access information<sup>24</sup>. The advent of social media which is gradually replacing the traditional print and broadcast media has raised several security issues in Nigeria. A study by Kisugu, Abayoru and Babatunde has revealed that the social media in Nigeria is promoting insecurity<sup>25</sup>. Recognizing social media as a weapon to inflict psychological fear in its audience as Mustvairo said Boko Haram does not use its social media messaging to galvanize populist support for its ideology but rather to discredit the Nigerian state by demonstrating that it could not offer security to its citizens<sup>26</sup>. The group presents itself as a fearful and unconquerable force which cannot be stopped by the incompetent Nigerian state. In

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<sup>19</sup> National Film and Video Censors Board Act, 1993.

<sup>20</sup> Ibid Censorship and Classification Guidelines, 2006

<sup>21</sup> Section 6(c) NITDA, Act, 2004, the agency is empowered under Section 6(d) to make guidelines for the networking of public and private sector setting.

<sup>22</sup> The code came into being on 24<sup>th</sup> day of September, 2022.

<sup>23</sup> Op cit

<sup>24</sup> Code of practice for interactive computer service platforms, internet intermediaries, 2022.

<sup>25</sup> Obun-Andy, Maria Kisugu and Atuko Tollulope Abayomi, Abduqadir Babatunde ‘Assessing the Place of Social Media and Insecurity in Nigeria’ available at [www.eprints.federapolyllane.edu.ng](http://www.eprints.federapolyllane.edu.ng) last accessed 18/2/2024.

<sup>26</sup> Bruce Mustvairo ‘Terrorist and Social Media Messages; a critical Analysis of Boko Haram’s Messages and Messaging Techniques’ available at [www.ncbi.nih.gov/pmc/7121539](http://www.ncbi.nih.gov/pmc/7121539) last accessed 17/2/2024.

one of its numerous videos, the slain Boko Haram leader, Shekau displays Boko Haram's formidable stock of sophisticated weapons to demonstrate how well equipped the sect is<sup>27</sup>. Mustvairo captured it thus:

Shekau displays Boko Haram's formidable stock of sophisticated weapons as a way to persuade his followers to believe that the sect is militarily well equipped in fact so richly equipped that it is stonger that the Nigerian Government. In the video he states that Boko Haram began its insurgency with sticks and knives but has grown strong with its acquisition of armored personnel carriers, multipurpose vans, AK47 and pump action rifles, heavy machine guns (HMGs), mortars, artillery shells, anti-aircraft guns, heat seeking missiles, bombs, rocket propelled grenades, hundreds of motor bikes, pick up truck's and so on<sup>28</sup>.

Recognizing the potency of social media handles the Boko Haram insurgents have utilized this by sending hundreds of video footages and facebook post to unsuspecting members of the public to either recruit willing youths and or destroy the psyche of the Nigerian citizen and the government. In the South East, the Biafra separatist agitators have used social media as their channel of communication as they cannot be patronised by the conventional media. In a study by Onayinia et al, it was discovered that IPOB members take active role in seeking information relating to IPOB in social media and participants are eager to share or spread information within and outside their circle to show that they have not been wrong in their perception. Since they are not relaying on conventional news sources, their sources remain largely online sources sympathetic to IPOB cause and hence use the same online platforms to share their findings<sup>29</sup>. The leaders of the organisations have used the instrumentality of the social media in reaching out to members, would be members to broadcast to the public. The Youtube to broadcast and upload gory pictures of their activities and display of their weaponry<sup>30</sup>. In one of the channels, a voice is heard addressing the Nigerian Army for daring to start war with them, the broadcaster warns the Nigerian Government of dire consequences. In another broadcast the pictures of supposed military soldiers allegedly killed in clash with Biafra separatist fighters<sup>31</sup>. In another video titled 'Biafra has come to stay' there is a display of assorted weapons by gun trotting fighters<sup>32</sup>. Simon Ekpa, the self-acclaimed prime minister of Biafra uses Youtube to broadcast his engagements with foreign governments indicating the acceptability of the international community of the Biafra mission. Ekpa owns accounts in almost all social media platforms which he uses to communicate to his followers<sup>33</sup>.

The Niger Delta militants have also used social media as an effective channel of communication. The Niger Delta avengers as long as it lasted used Youtube to demonstrate their exploits against the government of Nigeria and its institutions. The group had its x handle (then twitter) closed down for violating rules. Its spokesperson Mudoch Agbiniboin a statement was quoted to have said 'we are officially saying that @aginiboND is our new official twitter account handle. Twitter can block or suspend our account but they cannot stop or block our struggle'<sup>34</sup>. Apart from using the social media to promote their agenda, the media aids criminal elements to get information on their target. Ayoade is of the view that information provided on social media could be exploited by kidnappers to get their targets. To him, Instagram, Facebook, WhatsApp and Emails have been used by kidnappers and other criminals to get information on their victims<sup>35</sup>.

As earlier defined in this study fake news is that information disseminated or broadcast most recently on social media that is founded on falsehood or that is intentionally misleading framing to offer a distorted narrative. Fake news has remained a challenge to national security and the social media is the vehicle through which it is carried and disseminated. In fact, the former minister of information Lai Mohammed said, fake news and misinformation endanger the peace, security and development of any nation. He said, the crisis of insecurity has unfortunately, been exacerbated by the twin evil of fake news and misinformation<sup>36</sup>. He cited the following examples of fake news<sup>37</sup>.

- i. On 10<sup>th</sup> August, the Kaduna State Government had to debunk an online report claiming that hundreds of bandits had laid a siege on Kaduna--Zaria road.  
The message advised travelers not to enter or leave Zaria due to the presence of bandits at Dumbi and Jaji along Zaria Road.

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Onayika .T. Segun and Asogwa .C. Euphemia and Ajijola .B. Amoda and Ige. A. Abidemi 'Influence of Biafra. Related Social Media Contents on the Acceptance of IPOB Agenda in South East' available at [www.researchgate.net/pub](http://www.researchgate.net/pub) last accessed 17/2/2024.

<sup>30</sup> [www.youtube.com](http://www.youtube.com).

<sup>31</sup> Ibid.

<sup>32</sup> Ibid

<sup>33</sup> Simon Ekpa has these accounts:@simo\_ekpa (X formally twitter), on Facebook, at Instagram; ripples Nigeria.

<sup>34</sup> Seu Opejobi 'Niger Delta Avengers announce new twitter account, insist attacks will continue' available at [www.dailypost.ng/2016/08/04](http://www.dailypost.ng/2016/08/04) last accessed 2/3/2024.

<sup>35</sup>KamarudeenOgundele 'Kidnappers getting victims through social media' available at [www.punch.com>kidnappers.getting.victims](http://www.punch.com>kidnappers.getting.victims) last accessed 2/3/2014.

<sup>36</sup> Ahmad Sahabi, 'Lai Fake news worsening insecurity in Nigeria' available at [www.thecable.ng/lai](http://www.thecable.ng/lai) last accessed 2/3/2024.

<sup>37</sup> Ibid.

- ii. In April 2022, a drone video went viral showing a group of five men wearing red clothes and cooking inside an unknown forest. Those circulating the video said it was somewhere in Nigeria. A fact check by the BBC revealed that it was not in Nigeria.
- iii. In June 2022, there was report of bandits using helicopters to attack residents in four communities in Kajuru Local Government Area of Kaduna. The Kaduna State Government had to debunk the story by clarifying that the chopper was actually an Airforce helicopter dispatched to repel an attack in the area.

A former president of Nigeria, MuhammaduBuhari said, misinformation is aggravating insecurity, he identified misinformation as exacerbating conflicts and insecurity in the country and were being used to fuel apprehension among the citizens and create distrust between the governments and their people<sup>38</sup>.

### **5. Legal Steps at Curbing Use of Social Media by Criminals and Fake News**

The issue of using interactive computer platforms /internet intermediaries fondly called social media by criminal gangs has worried government and other citizens alike. In the code of practice for interactive computer service platforms/internet intermediaries issued by NITDA<sup>39</sup> the social media platforms have been issued rules of engagement thus: All interactive Computer Service Platforms/Internet Intermediaries (platforms) are obliged to abide by Nigerian laws and not deploy or modify their platform in any way that will undermine or interfere with the application and/or enforcement of the law, and where applicable shall:

1. Act expeditiously upon receiving an Order from a Court of record directing a platform to provide any information under its domain or any assistance to any Authorised government agency for the purpose of carrying out an investigation, combating cybercrimes, or prosecuting an offence.
2. Act expeditiously upon receiving a notice from an Authorised Government Agency of the presence of unlawful content on its platform. A platform must acknowledge the receipt of the complaint and take down the content within 48hours.
3. Act expeditiously upon receiving a notice from a User of the presence of unlawful content on its platform. A platform must acknowledge the receipt of the complaint and take down the content as soon as reasonably practicable.
4. Act expeditiously upon receiving a complaint by a User or Non-User to remove, disable, or block access to non-consensual content that exposes a person's private areas, full or partial nudity, sexual act, deep fake, or revenge porn, where such content is targeted to harass, disrepute, or intimidate such User or Non-User. A platform must acknowledge the receipt of the complaint and take down the content within 48hours.
5. Not be held liable where it takes down unlawful content based on a substantiated notice. A notice shall be deemed substantiated where such notice from a User contains an identification of the unlawful content at issue by Uniform Resource Locators or a unique identifier. A substantiated notice from an Authorised Government Agency shall contain the following in addition to the proviso above:
  - a) Identification of the timestamp for the unlawful content at issue.
  - b) A clear statement of the basis of the legal claim and supporting rationale.
  - c) The title of the law violated detailing, the specific section and subsection where necessary.
6. Disclose the identity of the creator of information on its platform when directed to do so by an Order from a Court of record. Provided that an order of this nature shall apply but not limited to preventing, detecting, investigating, or prosecuting an offence concerning the sovereignty and integrity of Nigeria, public order, security, diplomatic relationships, felony, incitement of an offence relating to any of the above or in relation to rape, or child sexual abuse.
7. Exercise due diligence to ensure that unlawful content is not uploaded to their platform. No liability shall be incurred by a platform where such platform can demonstrate that due diligence and all reasonable steps have been taken to ensure that an unlawful content is not uploaded.
8. Provide a dedicated channel that is available all the time where an Authorised Government Agency can lodge or forward a request or complaint against contents that are unlawful or harmful.
9. Provide a complaint resolution mechanism for Users to lodge complaints.
10. Notwithstanding the Clauses above, make provision for a User to apply for a review or appeal of the removed content. A User shall state the reasons why the User believes that such a content was removed erroneously. Where such an application for review by a User is successful, a platform shall put back the removed content as soon as reasonably practicable.

The service providers are obliged not to create publish, promote, modify, transmit, store, or share any content information that is amongst other things that is false or misleading and or compromises the security or undermines the unity, or sovereignty of Nigeria or promotes the act of terrorism and instigates public disorder or interferes with an ongoing

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<sup>38</sup> Deji Elumonye, 'Buhari: Misinformation Aggravating insecurity, Distrust Between Government, Public' available at [www.thisdaylive.com](http://www.thisdaylive.com) last accessed 2/3/2024.

<sup>39</sup> Op cit Part I thereof.

investigation<sup>40</sup>. In order to exercise control over service platforms there are expected to be incorporated in Nigeria where their subscribers are deemed to be over one million. However, NITDA may require a platform whose registered users are less than one million to comply with obligations of a large service platforms where it appears necessary to preserve the sovereignty, security, public order foreign diplomatic relations and integrity of Nigeria<sup>41</sup>. The cybercrimes (prohibition, prevention, act has prohibited the use of a computer system or its network to distribute, approve or publish any material that constitutes acts of genocide or crimes against humanity which entitles him to a conviction<sup>42</sup>. Under the Act, crimes against humanity means<sup>43</sup>. For the purpose of subsection (1) of this section, the term ‘Crime against humanity’ includes any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murders, extermination, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity, persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds, enforced disappearance of persons, the crime of apartheid, other inhumane acts of similar character intentionally causing great suffering or serious bodily or mental injury. ‘Genocide’ means any of the following acts committed with intent to destroy in whole or in part, a national, ethnic, racial or religious group as such: killing members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group. ‘racist or xenophobic material’ means any written or printed material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual group of individuals, based on race, color, descent or national or ethnic origin, as well as religion if used as a pretext for of these factors.

### **6. Attempt at Curbing Fake News**

The criminal code has provided against publication of false news with intent to cause fear and alarm to the public<sup>44</sup>. It prohibits the publication or reproduction of any statement, rumours or report which is likely to cause fear and alarm to the public or to disturb public peace, knowing or having reason to believe that such statement is false. The offence when convicted the defendant is liable to 3years imprisonment. Not knowing or not having reasons to believe that the information is false is not a defence, unless the defendant proves that he looks reasonable measures to verify the accuracy of such statement or rumours or report. This implies that those who author or replicate fake news on social media are liable for conviction. The code of practice for interactive computer service platforms/internet intermediaries has made it an obligation for the social media platforms to publish guidelines against information that is false and misleading<sup>45</sup>. The platforms are encouraged to do the following:

1. Acquaint themselves with indigenous and contextual manifestations causing disinformation and/or misinformation and factors motivating its spread in Nigeria.
2. Collaborate and invest in continuous and consistent research with Stakeholders such as Data scientist, indigenous academics, researchers, media organisations, journalists, civil society organisations, and government agencies on the causes and implications of disinformation and misinformation in Nigeria and provide effective responses.
3. Provide Stakeholders such as Data scientist, indigenous academics, researchers, media organisations, journalists, civil society organisations, and government agencies, access to the necessary data, excluding proprietary data, to facilitate research in combatting disinformation and misinformation.
4. Independently organize and conduct media literacy programme that educates Users on critical thinking and informed decisions when they encounter false information online.
5. Collectively collaborate with indigenous media organisations, academics, journalists, civil society organisations, authorized government agencies, and other Stakeholders to organize and conduct a media literacy programme educating Users on critical thinking and informed decisions when they encounter false information online. Authorized Government Agencies and relevant Stakeholders are encouraged to participate and facilitate in the actualization of these programmes, ensure media coverage to the society, and in case of a collective programme, oversee and keep a register and report of the programme.
6. Provide Users with easily accessible tools to report disinformation and/or misinformation and improve access to National and International authoritative sources where applicable.
7. Engage the services of certified fact-checkers to identify information targeted to disinform or misinform Users in Nigeria. Where information is reported and confirmed to be false, adequate measures should be taken to provide a correct or factual version of events from National and International authoritative sources where applicable.
8. Where information that is reported by an Authorised Government Agency to a platform is confirmed to be false and is likely to cause violence, threatens the unity, peace and security of Nigeria, the platform shall caution the publisher and remove the content as soon as reasonably practicable.

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<sup>40</sup> Ibid Part II (2) (f), (g) and (h).

<sup>41</sup> Ibid Part III.

<sup>42</sup> Section 26 Cybercrimes, Prevention Act, 2015.

<sup>43</sup> Section 26(2) Ibid.

<sup>44</sup> Section 59 Criminal Code Act Cap.

<sup>45</sup> Part II (2) (f).

- a) A User not be liable, without intent, for merely redistributing through intermediaries, the content of which they are not the author and which they have not modified.
9. Take reasonable steps to ensure that disabled or removed content are not found in search, feeds, or other distribution channels.
10. Put in place measures to address and close accounts and sources that amplify disinformation and misinformation.

### **8. Gaps in the Law**

The governing law in the industry only criminalises persons who distributes materials that is considered offensive or prohibited by the law. In fact, the Cyber Crime Act provides for 5years imprisonment or a fine of Ten Million (₦10,000,000.00) on the convicted offender or both fine and imprisonment leaving out the platform through which these prohibited contents are distributed. In fact, the code of practice for interactive computer services platforms expressly exonerates individuals representing the platforms in the course of discharging their duties<sup>46</sup>. Unlike in the law of defamation, where the author and the carrier are liable, the platforms and their representatives are completely exculpated. The government now bears the burden to disprove the content of fake news and most at times, such platforms avail themselves to bandits and other terrorist organisations to broadcast the prohibited content to the masses of Nigeria. It is hereby suggested that the law should be reviewed to make carriers (social media platforms) liable for being used as channels through which offensive materials are distributed.

### **9. Conclusion**

This paper examines the legal issues involved in the distribution and or broadcast of prohibited materials by insurgents, bandits or kidnapers and the broadcast of fake news which has added to the insecurity challenges Nigeria is facing. It has been discovered that the law has not placed any liability on the social media platforms that allow criminal elements to use their channels to broadcast prohibited materials. Unlike the law of defamation that makes institutions through which defamatory materials are distributed liable for such acts. It has therefore been advocated that the law should be reviewed to make social platforms liable for acts prohibited by law.

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<sup>46</sup> Part VI (3) thereof.