

## HATE SPEECH AND CONSTITUTIONAL SAFEGUARDS TO FREEDOM OF EXPRESSION IN NIGERIA: A REVIEW\*

### Abstract

*The right to freedom of expression is one of the most essential fundamental rights in any given society founded on the rule of law. Most times it is the yardstick adopted to measure the compliance of a nation with its human rights obligations. However, the enjoyment of the right to freedom of expression is not absolute. There exists in most human rights regimes derogation clauses and justified restrictions to this right. The Constitution of Nigeria in Section 39(3) and Section 45 provides for some of these derogations. There are also Sedition and Defamation laws, Perjury and Contempt of Court etc. which also serve as restrictions to this right. Another major restriction to the right to freedom of expression is hate speech laws. Since a hate speech is any utterance, gesture, action, or conduct aimed at disparaging or demeaning a person based on their individual or group identities like race, ethnicity, religion, etc which is capable of leading to incitement to violence. The laws of most nations of the world made adequate provisions to restrict hate speech. In Nigeria, hate speech has existed for a very long time but has gained prominence as a societal menace recently with the emergence of the administration of President Muhammed Buhari which administration is making frantic efforts to halt the trend. Among these efforts is the emergence of the National Cohesion and Integration Bill 2018, popularly called the Hate Speech Bill in Nigeria. It is a bill aimed at curtailing the rising tide of hate speech in various parts of Nigeria. The Bill also seeks to establish an 'Independent National Commission for Hate Speeches' which shall enforce hate speech laws across the country; ensure the elimination of the menace and advice the Federal Government. It is the objective of this work to expose the concept of hate speech in Nigeria and examine the provisions of Nigerian law on hate speech and make recommendations towards adequate implementation of hate speech laws without encroaching on the right to freedom of expression. Findings reveal that there is already in existence in Nigeria legislations that criminalized certain forms of abusive speech and hate speech. For instance, hate speech is criminalized in the Cyber Crime (Prohibition, Prevention ETC) Act 2011 and the Electoral Act 2010. Despite the existence of these laws, there is not in existence in Nigeria any comprehensive legislation on hate speech. Also, prosecutions for hate speech in Nigeria are almost non-existent and the existing laws lack adequate implementation. Further, most hate speeches in Nigeria are targeted towards the political leadership in response to adverse governmental policies, and there are hate speeches that is tribal in nature; to disparage a particular tribe. This work recommends among other things that the existing hate speech laws in Nigeria be implemented while efforts should be made to pass a legislation directly targeted at hate speech. Secondly, the right to freedom of expression of the citizens should not be unjustifiably curtailed on the guise of enforcement of hate speech laws.*

**Keywords:** Hate Speech, Constitutional Safeguards, Freedom of Expression, Nigeria

### 1. Nature of Freedom of Expression

Observance of human rights is generally considered one of the essential attributes of any civilized society under the rule of law. Democracies are so called because of the existence of species of rights provided for in the laws of any nation that lays claim to being called a democratic society. Those species of rights are in different forms and serve various purposes and are so indispensable that the society cannot exist in orderliness in absence of them. Olomjobi<sup>1</sup> posited that human rights and civil liberties are primarily those rights or moral values that are assumed as an important decimal to the individual's freedom. They also impute fundamental rights that are owed by the state to the individual. Hegarty and Siobhan<sup>2</sup> noted that if there is one thing on which world leaders are agreed, it is that in principle, human rights should be respected. Of course, in practice many governments pay no more than lip service to their human right obligations, but it is significant that even those regimes which are often accused of being harsh, oppressive, and authoritarian routinely claim to respect the rights of their citizens. Among the species of human rights is what is known as fundamental rights. Commenting on the major distinction between human rights and fundamental rights, Mamman Nasir, JCA<sup>3</sup> (as he then was) asserted that human rights were derived from and out of the wider

\*By Felicia ANYOGU, PhD, BL, Professor of Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria.

\* Ifeanyi Tobeckukwu NWACHUKWU, LLB, LLM Candidate, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria.

<sup>1</sup>Y Olomjobi, *Human Rights and Civil Liberties in Nigeria*, (Lagos: Princeton Publishing Ltd, 2016) p1

<sup>2</sup>A Hegarty & L Siobhan, *Human Rights: An Agenda for the 21<sup>st</sup> Century*, (London: Cavendish Publishing Ltd, 1999) p1

<sup>3</sup>*Uzoukwu II v Ezeonu II* (1991) 6 NWLR (pt 20) 708

concept of natural rights. They are rights which every civilized society must accept as belonging to each person as a human being. Fundamental rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country, the Constitution. In the recent case of *Igwe v Ezeanochie*,<sup>4</sup> Ariwoola JCA held that fundamental right is dependent from natural or constitutional law. In other words, fundamental rights are those rights that are innate in any civilized society. Human rights form an integral part of the laws of Nigeria and other nations of the world. Hence, the Constitution of Nigeria<sup>5</sup> made copious fundamental rights provisions, also called Chapter IV rights. Among these basic rights is the right to freedom of expression.<sup>6</sup> The right to freedom of expression is one of the crucial underpinnings of a democratic society; it is also an essential political right of citizens in a democratic state.<sup>7</sup> Freedom of expression is an indispensable tool for human development and communication. It assists in the free flow of ideas on issues of public interest, tolerance and in discovering genuineness of information.

Freedom of expression is recognized as a human right in the Universal Declaration of Human Rights thus: 'Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'.<sup>8</sup> This hallowed right is also recognized by the International Covenant on Civil and Political Rights (ICCPR)<sup>9</sup> and the African Charter on Human and Peoples' Rights<sup>10</sup> among other major international human rights instruments. However, several impediments exist to the enjoyment of the right to freedom of expression and those impediments are as old as the right itself. One of such is the derogation clause in section 39 (3) of the Constitution of Nigeria.<sup>11</sup> Rhodes-Vivour JCA (as he then was) commenting on section 39(1) of the Constitution of Nigeria stated that the right disclosed in the said section did not confer an absolute right as is provided in section 39(3) same self-Constitution.<sup>12</sup> Other impediments to freedom of expression include such things as sedition laws, defamation, censorship, the laws of perjury and contempt of court etc. Recently, there has arisen in Nigeria a concept known as 'Hate Speech' which has gained prominence in the present democratic dispensation headed by former Nigeria military leader President Muhammed Buhari<sup>13</sup>

### **3. Meaning of Hate Speech**

Opejobi<sup>14</sup> defined hate speech as 'Any derogatory speech from one person or group of persons to another person or group of persons, based on their race, religion, ethnic background, sexual orientation, disability or gender'. Similarly, the Black's Law Dictionary defined hate speech as 'Speech that carries no meaning other than the expression of hatred for some group, such as a particular race especially in circumstances in which the communication is likely to provoke violence'.<sup>15</sup> The beleaguered administration of President Muhammed Buhari came under heavy criticism by concerned citizens, civil society groups, opposition political parties, the clergy etc. for various policies, actions and programs of government which are believed not to have improved the lot of average Nigerians, and the government keep making attempts to reduce this trend. Likewise, there is also in existence secessionist groups in Nigeria, terrorists and bandits, and regional agitators who have at various times made unwholesome statements on the person of the President, the Nigerian government and institutions of government and the nation generally. In urgent efforts to fight this trend, the government termed those speeches 'hate speech' and the government efforts has been geared towards labeling such speeches as very serious criminal offences amenable to severe punishment.<sup>16</sup> Presently there is the 'Hate Speech Bill' in the National Assembly of Nigeria that among other things seeks the death penalty in circumstances 'hate speech' leads to death of another person. This further buttresses the fact that the Federal Government of Nigeria is out to encroach on the fundamental right of Nigerians to freedom of expression. Secondly, derogation clauses should by no means be abused by government to

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<sup>4</sup> (2010) 7 NWLR (Pt 1192) 92

<sup>5</sup> Constitution of Federal Republic of Nigeria, 1999 (as amended) sections 33 - 44

<sup>6</sup> *Ibid*, section 39(1)

<sup>7</sup> Y Olomjobi, *ibid* p. 209

<sup>8</sup> Universal Declaration of Human Rights, Article 19

<sup>9</sup> International Covenant on Civil and Political Rights, Article 19

<sup>10</sup> African Charter on Human and Peoples' Rights, Article 19

<sup>11</sup> See also UDHR, *opcit* Article 19(3)

<sup>12</sup> *Ukaegbu v NBC* (2017) 14 NWLR (PT 1055) 551

<sup>13</sup> Most people believe this is the government's attempt to stifle criticisms mostly in the social media.

<sup>14</sup> A R Opejobi, 'Hate Speech Bill: The Law of Boomerang Respects no One', Daily Post Newspapers, March 11 2016, p.13

<sup>15</sup> B A Garner Ed, *Black's Law Dictionary* (9<sup>th</sup> edition, Minnesota: West Publishing Co, 2009) p.1529

<sup>16</sup> The Hate Speech Bill of 2018 presently in the Nigerian National Assembly criminalized hate speech as terrorism and has the capital punishment among its provisions.

encroach on genuine, inalienable rights of citizens<sup>17</sup>. Some rights basically are non-derogable.<sup>18</sup> Derogation is not equivalent to abrogation or abolition of a right. Although drafted to preserve governmental leeway, derogation clauses do not suspend the rule of law. They are rather an expression of it, for they regulate the relationship between the ruled and the exception<sup>19</sup>

Writing on the relationship existing between the freedom of expression and the concept of hate speech, Cortese<sup>20</sup> posited that in any well-established democratic society, people have the right to free speech as well as the right to equal treatment and protection under the law. But when one person's speech harms another person based on race, ethnicity, religion, gender or sexual orientation, it may qualify as hate speech and be subjected to restriction. This view recognizes also that the right to freedom of expression is an essential right under the law but is subject to derogation especially when it infringes on the right of other persons to coexist peacefully in the society in relation to others. Commenting on the need to strike a balance between the right to freedom of speech of citizens and derogation such as hate speech Weinstein<sup>21</sup> asserted that the goal of free speech doctrines can easily be stated; forbidding government from suppressing speech that must be permitted in a free and democratic society while allowing it to punish speech that causes harm that government may legitimately prevent. The author went further to condemn the practice of government classifying objective criticisms of government policy by private citizens as hate speech amenable to punishment. Dwight<sup>22</sup> took an entirely unique view in comparison with the authors above. He stated that the wide- spread prohibition in recent years of 'hate speech' and 'hate literature' is so fraught with ambiguities, intellectual shallowness, and double standards that it poses a serious impediment to scholarship and to the values of an open society. From the foregoing, it has remained an issue as to what extent hate speech legislation and law enforcement can place restriction on the right to freedom of expression guaranteed under the law. It is agreed by all scholars that the right to freedom of expression is not an absolute right. It can be derogated from in circumstances sanctioned by law for overall orderly co-existence of a people in a society. In the 1999 Constitution of Nigeria as amended<sup>23</sup> it is also the incontestable that there is no justification in using derogatory clauses to limit the free speed and press freedom of the citizens in a given society to suit the whims and caprices of the political class.<sup>24</sup> The line between protecting the rights of citizens to freedom of expression, and when the abuse of this basic human right may lead to hate speech and such other derogations may not be easily drawn. However, it is the duty all responsible citizens in a particular society to enjoy their fundamental rights in such a way that it will not unduly encroach on the right 'of other or slow down the smooth running of government, or lead to anarchy, for where one man's right stops, another man's begins.<sup>25</sup> For this reason Marsden<sup>26</sup> was minded to say 'I'm in support of people doing anything they want in a free and democratic society, until their action infringe on my freedom or anyone else's, at that point, the state ought to step in, if only to maintain personal liberty'.

The Nigerian National Cohesion and Integration Bill (NCIB) popularly known as the Hate Speech Bill captured succinctly the purport of hate speech in Nigeria by providing as follows:

A person who uses, publishes, presents, produces, plays, provides, distributes, and/or directs the performance of, any material, written and/or visual which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behavior commits an offence if such person thereby intends to stir up ethnic hatred, or having regard to all the circumstances ethnic hatred is likely to be stirred up against any person or person from such an ethnic group in Nigeria.<sup>27</sup>

<sup>17</sup>Y Olomjobi *opcit* p. 334

<sup>18</sup>Such rights as torture and degrading treatment are non-derogable and absolute rights.

<sup>19</sup>Y Olomjobi *opcit* at p.331

<sup>20</sup> A Cortese, *Opposing Hate Speech* (West Port Connecticut: Praeger, 2006) p.1

<sup>21</sup> J Weinstein, *Hate Speech, Pornography and the Radical Attack on Free Speech Doctrine* (Nevada: Co Publication 1999) p.11

<sup>22</sup> M D Dwight, 'Conceptual issues in Prohibiting Hate Speech', Volume 43, *Mankind Quarterly*, P.28

<sup>23</sup> CFRN *Ibid* Section 39 (3)

<sup>24</sup> J Weinstein, *opcit*

<sup>25</sup> B A Baileu, 'Your Right End Where the Rights of Others Begin' <<http://medium.com/bamartel/>> Accessed 3/3/2019

<sup>26</sup> R Marsden, 'You Rights Ends Where Mine Begin', available at<[www.rachelmarsden.com/columns/riRhts.htm](http://www.rachelmarsden.com/columns/riRhts.htm)> Accessed 30/20/2019

<sup>27</sup> National Cohesion and Integration Bill 2018, Section 4(1)

Basically, the elements of hate speech are: (1) It is a form of written or spoken speech, or conduct. (2) Aimed at demeaning a person or a group (3) It is capable of leading to incitement of a person against another, or a group against a person or another group.

#### **4. Legal Framework on Hate Speech in Nigeria**

There are no comprehensive hate speech laws in Nigeria. A major attempt at enacting hate speech legislation was done by the Military Government of General Muhammed Buhari through Decree No 4 of 1984 tagged 'The Protection against False Accusation Decree'. Section 1 of the law provides as follows:

Any person who publishes in any form, whether written or otherwise, any message, rumour, report, or statement which is false in any material particular or which brings or is calculated to bring the Federal Military Government or the Government of a State or Public officer to ridicule or disrepute, shall be qualify as an offender under this Decree<sup>28</sup>

It needs to be noted that Tunde Thompson and Nduka Irabor were among the Journalists who were tried under this law<sup>29</sup>. However, this Decree was seen by various scholars and human rights activists as a desperate attempt by a dictatorial government to stifle freedom of expression and press and annihilate political opposition.

#### **Criminal Code**

The Criminal Code made certain provision pertaining to offensive speeches and communications among its copious provisions. For example, the offence of publication of false news with intent to cause fear and alarm to public is a misdemeanor punishable by imprisonment for three years<sup>30</sup>. Also, defamation of persons exercising sovereign authority over a state without justification is a misdemeanor punishable by two years imprisonment.<sup>31</sup>

#### **Penal Code**

The Penal Code applicable in Northern Nigeria also made provisions for abusive, offensive and hate speeches and communications to wit: 'Whoever seeks to hate or contempt against any class of persons in such a way as to endanger the public peace shall be punished with imprisonment for a term which may extend to three years or with fine or both'<sup>32</sup> Further anyone who deals with circulation, publication or reproduction of statements, report or rumor which the publisher has reason to believe is false with intent to cause or which is likely to cause fear or alarm to the public whereby any person may be induced to commit an offence against the public peace is punishable with two years imprisonment or fine or both.<sup>33</sup>

#### **Cyber Crime (Prohibition, Prevention ETC) Act 2015**

The National Assembly of Nigeria took cognizance of the public concern over the use of social media to promote bigotry and hatred in the Nigerian society. This Act was aimed at stopping all kinds of hate, racist and xenophobic attacks by antisocial individuals in the social media in Nigeria<sup>34</sup>.

#### **Electoral Act 2010**

The Electoral Act also made provisions on offensive, hate or inciting speeches in Nigeria. Thus, no political campaign or slogan shall be tainted with abusive language directly or indirectly likely to injure religious ethnic, tribal or sectional feelings. Political parties found in contravention of this provision or any person in breach of this provision is guilty of an offence and is liable on conviction in case of an individual, to a maximum fine of 1,000,000, or imprisonment for a term of 12 months and in case of a political party, to a fine of 2,000,000 in the first instance, and 1,000,000 for subsequent offences<sup>35</sup>. Despite the existence of the above laws which is believed by most scholars as sufficient legislations on hate speech in Nigeria but in need of adequate enforcement there is an ongoing effort to pass the so-called 'Hate Speech Bill' in the National Assembly of Nigeria.

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<sup>28</sup> K Odey, 'Hate Speech Bill 2018: Is Decree 4 of 1984 Reincarnating?', Available at < [https:// leadership.ng/2018 /03/21/hate-speech-bill-2018- is decree -4-of-1984 – reincarnating>/](https://leadership.ng/2018/03/21/hate-speech-bill-2018-is-decree-4-of-1984-reincarnating/) Accessed 4/4/2018.

<sup>29</sup> I Sofunde, 'Prosecutor Admits Guilt over 1984 Decree 4 Trial', available at <[allafrica.com/stories/200109060041.html](http://allafrica.com/stories/200109060041.html) > Accessed 23/3/2018.

<sup>30</sup> Criminal Code, CAP C38 LFN 2004 Section 59

<sup>31</sup> *Ibid* at Section 60

<sup>32</sup> The Penal Code CAP P3 LFN 2004 Section 417

<sup>33</sup> *Ibid* at 418

<sup>34</sup> The Cyber Crime (Prohibition, Prevention (ETC) Act 2015, Section 24(1)

<sup>35</sup> The Electoral Act 2010 (as Amended) Section 95

### National Cohesion and Integration Bill

The growing spate of what the Nigerian Federal Government considered hate speech was giving the Federal Government of Nigeria serious concern and the government was determined to seek a remedy to it. Addressing the security summit organized by the National Economic Council in the Presidential Villa, on the 17<sup>th</sup> day of August 2017, the Vice President of Nigeria, Prof. Yemi Osinbajo described hate speech as a species of terrorism, which he said is in line with the Terrorism Prevention Act 2011<sup>36</sup>. Following this, a new Bill by the Nigerian Senate titled ‘A Bill for An Act To Provide For The Prohibition Of Hate Speeches And For Other Related Matters’ has proposed among other things that any person found guilty of hate speech shall be liable to life imprisonment. Further, where hate speech results in the death of another person, the purveyor of such speech shall die by hanging upon conviction<sup>37</sup>. The Bill, National Cohesion and Integration Bill, popularly called the ‘Hate Speech Bill’ was sponsored by the Senate’s Spokesman, Senator Aliyu Abdullahi, an All Progressives Congress (APC) Senator from Niger State, Nigeria<sup>38</sup>. The Bill also seeks the establishment of an ‘Independent National Commission for Hate Speeches’ which shall enforce hate speech laws across the country, ensure the elimination of the menace and advice the Federal Government.<sup>39</sup> Further, the commission has other duties including to promote tolerance, understanding and acceptance of diversity in all aspects of national life and encourage full participation by all ethnic communities in social, economic and cultural life of other communities and racial groups among other duties.<sup>40</sup> A cursory look at certain provisions of this bill shows that it does not differ substantially from the existing laws of Nigeria on hate speech. This fact can be glanced from various provisions of the Criminal Code<sup>41</sup>. The Penal Code<sup>42</sup> and The Cyber Crime (Prohibition, Prevention ETC) Act 2015<sup>43</sup>. It is for this reason that the learned Senior Advocate of Nigeria Femi Falana, asserted that is undoubtedly clear that Nigeria does not need to enact a new law against hate speeches. What is required is the political determination to deal with the crime, without fear or favour<sup>44</sup>. Finally, it is worthy to note that the so-called Nigerian Hate Speech Bill has attracted wild local and international condemnation, not only as an attempt to restrict the right to freedom of expression and press in Nigeria, but for providing for life imprisonment for purveyors of hate speech and shockingly providing for capital punishment for purveyors of hate speech when such leads to the death of another person.

### 5. Effects of Hate Speech in Nigeria

Hate speech is a threat to national cohesion and unity, especially in a multi-ethnic nation like Nigeria. Hate speeches may lead to incitement and ethnic tensions, and possibilities of wars, clashes, and conflict. Hate speech was instrumental to the Nigerian Civil War of 1967 – 1970<sup>45</sup> in which millions of lives were lost. Hate speech is also an anathema to development. Hate speech is a crime amenable to punishment and hate speech can lead to possibilities of hate crimes and genocide.

### 6. Relating Hate Crimes and Hate Speech

Hate itself is not a crime. A hate crime is a criminal offence against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity. Hate crimes which can also encompass color or national origin are overt acts that can include violence against persons or property, violation of civil rights, conspiracy or acts of intimidation<sup>46</sup>. Incidences of hate crimes may include physical assault, damage to property, bullying, harassment, verbal abuse or insults, offensive graffiti, or letters, etc. Thus, the major relationship between hate speech and hate crime is the fact that most hate crimes are preceded by hate speech. The hate speech may have grown to such an intensity to lead to incitements and uprising and consequently violence against a people or a group the hate

<sup>36</sup> A O Osinbajo, ‘FG Declares Hate Speech as Terrorism’, Punch Newspapers, August 17 2017, p 18

<sup>37</sup> NCIB Ibid

<sup>38</sup> A C Godwin, ‘Hate Speech Offenders to Die by Hanging – Nigeria Senate’s New Bill’ , , Daily Post News, March 1 2018 <dailypost-ng/2018/03/01/hate-speech-offenders-die-hanging-nigeria-Senates-new-bill> Accessed 4/4/2018

<sup>39</sup> NCIB *opcit* Section 19

<sup>40</sup> Ibid

<sup>41</sup> Criminal Code *opcit* Sections 59, 60, 373, 381

<sup>42</sup> Penal Code *opcit* sections 391 – 417, 418

<sup>43</sup> Cyber Crimes (Prohibition, Prevention Etc.) Act 2011 Sections 24, 26

<sup>44</sup> F Falana, ‘Nigeria Has Enough Laws o Curb Hate Speeches’, Sahara Reporters, August 26 2017 <Saharareporters.com/2017/08/26/Nigeria-has-enough-laws-curb-hate-speeches-fami-falana> Accessed 4/4/2018

<sup>45</sup> A Balarabe, ‘Online Hate Speech among Nigerians is Increasing – Report’, Daily Trust <https://www.dailytrust.com.ng/news/general/online-hate-speech-among-nigerians-increasing-report/200710/html> Accessed 5/4/2019

<sup>46</sup> ‘Hate Speech and Hate Crimes’, American Library Association < www.ala.org/advocacy/intfreedom/hate > Accessed 5/4/2019

speech was directed against. Certainly, most if not all hate crimes proceed from hate speech and incitement to violence.

## **7. Conclusion and Recommendations**

Human rights are inalienable because they attach to man because of his humanity. Without them there is automatic diminution of his humanity<sup>47</sup>. Human rights are basic moral guarantees that people in all countries and cultures allegedly have simply because they are people. These guaranteed 'rights' indicates that they attach to particular individuals who can invoke them. They are of high priority and compliance with them is mandatory rather than discretionary.<sup>48</sup> Freedom of expression is a fundamental right.<sup>49</sup> It is the matrix, the indispensable companion of nearly every other form of freedom.<sup>50</sup> Hate speech is a major restriction of freedom of expression in Nigeria and apparently all jurisdictions around the world. There is no comprehensive legislation on hate speech in Nigeria but there have been efforts to pass the so-called Hate Speech Bill in the National Assembly of Nigeria. This controversial Bill has been frowned upon in Nigeria and the international community.

In Nigeria, the National Assembly has over the years been at the forefront of making essential laws for order and good governance of the Nation. Most of these laws are in response to prevailing societal realities. For instance, the National Assembly of Nigeria debated on and passed the Terrorism (Prevention) Act<sup>51</sup> in response to the rising tide of Terrorism mostly in the Northeast of Nigeria, perpetrated by the Boko Haram sect, and the Cyber Crimes Act<sup>52</sup> was passed in response to an upsurge in internet related fraudulent crimes and scams by some unscrupulous individuals in the nation's cyberspace. Recently, the National Cohesion and Integration Bill popularly known in Nigeria as the 'Hate Speech Bill'<sup>53</sup> have been introduced in the National Assembly of Nigeria. Notwithstanding the criminalization of hate speech in certain laws in Nigeria like the Criminal Code, the Cyber Crime Act, the Electoral Act etc, the Nigerian National Cohesion and Integration Bill was a direct attempt to regulate what the Federal Government of Nigeria considered an astronomical rise in hate speech incidences especially as was directed to the person of the President of Nigeria, public officials and government institutions, since the coming into power of the Muhammed Buhari Administration in May 29, 2015. There is need to amend certain sections of the National Cohesion and Integration Bill before the National Assembly of Nigeria, especially by removing the sections of the Bill that prescribes life imprisonment and the penalty of death for hate speech purveyors. While making laws to regulate hate speech, it should be made in the interest of order, rule of law and good governance, not for satisfaction of partisan political interests. Our law makers should always be guided by the rule of law because the rule of law is so essential in the context of law making because it serves to protect the shared liberty interests of all members of the society. It does this by establishing a dynamic between the individuals and the law<sup>54</sup>. There is need to implement the laws that relate to hate speech in Nigeria as it stands presently. Though there is no direct legislation on hate speech in Nigeria, implementing the hate speech provisions in the Criminal Code, the Penal Code, the Cyber Crime Act, the Electoral Act etc. will go a long way in assisting to curtail hate speech in Nigeria. This is the cardinal function of the executive in Nigeria. The executive is the organ exercising authority in and holding responsibility for the governance of a state. The executives execute and enforce law. Human rights are dynamic; their scope and content expand according to the dictates of human experience. There is need for the judges to apply the law in line with recent innovations in the field of human rights, the advent of recent technologies, and uphold the rule of law without fear or favour from any individual or government institution, no matter how highly placed. Despite the enormous powers exerted on the instruments of the state and institutions by the executive, it is still widely believed that the judiciary is by far a more essential organ of government than the executives. Olanipekun<sup>55</sup> agreed with this assertion when he stated:

Events of the past few years have shown that amongst the three tiers of government, namely, the legislature, executive and judiciary, the judiciary remains the only one that can lay much claim to fidelity and in addition, say with all pride and enthusiasm that

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<sup>47</sup> C A Oputa, *Human Rights in the Political and Legal Culture of Nigeria*, (Nigerian Law Publications Ltd 1989) p.45

<sup>48</sup> K M Danladi, 'An Analysis of the Concept of Civil and Political Rights under International Law', Volume 2, *The Justice Journal* p.3

<sup>49</sup> Constitution of Federal Republic of Nigeria 1999 (as amended) section 39(1)

<sup>50</sup> O Okpara, *Human Rights Law and Practice in Nigeria* (Enugu: Chenglo Ltd, 2005) P. 249.

<sup>51</sup> Terrorism (Prevention) Act 2011

<sup>52</sup> Cyber Crime Act (Prohibition, Prevention, ETC) Act 2015

<sup>53</sup> Bill Sponsored by Senate's Spokesman, Senator Aliyu Abdullahi Sabi of APC Niger State

<sup>54</sup> V D Wiley, 'The Rule of Law', Vol. 1, *Nigerian Law and Practice Journal*, p. 115.

<sup>55</sup> W Olanipekun, 'Judiciary as the Last Hope of Nigeria', Volume 1, No. 1, *Brainfield Law journal*, June 1993, p.29

without the control of the armory or treasury, or without largesse to distribute here and there it has been able to unite and keep the nation together.

Human rights by their nature are inherent; human beings are born with it. They are Inalienable; they cannot be limited or taken away without legal justification<sup>56</sup>. For this reason, the Nigerian judiciary has been at the forefront of promotion of fundamental human rights in Nigeria. In the case law authority of *Din v African Newspapers Ltd*<sup>57</sup> Karibi Whyte JSC (as he then was) observed that ‘the right to comment freely on matters of public interest is one of the fundamental rights of free speech guaranteed to the individual in our Constitution. It is so dear to Nigerians and of vital importance and relevance to the rule of law which we so clearly treasure for our personal freedom’. In *AMORC v Awoniyi*<sup>58</sup>, the court believed ‘The right to free speech is one which it is for the public interest that individuals should possess, and indeed that they should exercise without impediment so long as no wrongful act is done’. Further, in *Arthur Nwankwo v State*<sup>59</sup>, the court considered the validity of the law of sedition vis-à-vis section 36 of the 1979 Constitution, which is now section 39 of the 1999 Constitution, dealing with freedom of expression. In the opinion of the court, sedition laws is contrary to the 1999 Constitution and should be struck down in the interest of freedom of expression. Unfortunately, there are little or no matters concerning hate speech that have come before the courts for interpretation. This it is submitted is not a fault on the part of the judiciary, but the failure of the executive arm of government charged with implementation of hate speech laws, and the ordinary citizens who has been shy of seeking redress on such issues through the instrumentality of the courts. The media is regarded as the fourth estate, an essential organ of government, charged with the responsibilities of informing, educating, and entertaining the general population. It is the responsibility of the media to spread information in line with the law, and not put out information to the public that can promote discrimination, hate speech, and incitement of the general population. The press should be the agents of the law responsible for upholding the rule of law and reporting on the rights of the citizens to freedom of expression and informing them on what constitutes hate speech. It is the responsibility of the media to sensitize the public on the negative effects of hate speech.

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<sup>56</sup> N J Udombana, ‘Human Rights Protection and Good Governance in Nigeria’, 2<sup>nd</sup> Edition, *The Justice Journal* 2011, p. 39

<sup>57</sup> (1990) 3 NWLR (Pt139) 392 at 408-409

<sup>58</sup> (1991) 3 NWLR (pt. 178) 245

<sup>59</sup> (1985) 6NCLR 228