

# SPACES FOR CHANGE | S4C

## PROTECTION FROM INTERNET FALSEHOODS, MANIPULATIONS AND OTHER RELATED MATTERS BILL, 2019



MARCH 5, 2020

### MEMORANDUM SUBMITTED TO:

- SENATOR AHMAD LAWAN, THE SENATE PRESIDENT
- SENATOR MICHAEL OYEYEMI BAMIDELE, CHAIRMAN SENATE COMMITTEE ON JUDICIARY, HUMAN RIGHTS AND LEGAL MATTERS
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# SPACES FOR CHANGE | S4C

## Introduction

**SPACES FOR CHANGE | S4C** is pleased to submit this memorandum in respect of the Protection from Internet Falsehood and Manipulations and Other Related Matters Bill, 2019 (SB 132) scheduled to be considered by the Senate Committee on Judiciary, Human Rights and Legal Matters on March 4, 2020.

**SPACES FOR CHANGE | S4C** is a non-profit organisation working to infuse human rights into social and economic governance processes in Nigeria. The organization works to increase the participation of Nigerian youth, women, and communities in the development of social and economic policy and also help public authorities and corporate entities to put a human rights approach at the heart of their decision making.

**SPACES FOR CHANGE | S4C** opposes this bill in its entirety. We make bold to state that this bill is not in the best interest of Nigerians because of the reasons highlighted below:

1. **The Bill contains too many vague provisions that criminalise free speech and legitimate media activities**
2. **It duplicates existing laws and agencies**
3. **We sense potential danger to free civic space for dissent and change**
4. **It criminalises popular tools of satiric and artistic expressions**
5. **It usurps the powers of existing law enforcement agents, including the judiciary**

### 1. Vague Provisions that Criminalise Free Speech and Legitimate Media Activities

Part 2, Sections 3 and 5 of the Social Media Bill criminalises statements “*likely to be prejudicial to the security of Nigeria, public safety, public health, public finances and friendly relations of Nigeria with other countries*”. It also prohibits expressions that constitute prejudice against the ‘health’ of Nigeria. It is difficult to determine the kind of statements that fall under these broad categories of violations stipulated in the bill. These overbroad offences not only lack clarity and specificity, but are also inconsistent with the constitutional protections—of privacy of citizens’ telephone and telegraphic conversations, freedom of speech, opinions and flow of information without interference, including, freedom for citizens to establish and operate any medium for the dissemination of information—jealously guarded by Sections 37, 38 (1-4) 39(1-3) of the Nigerian 1999 Constitution. Not only that, offenses framed in this manner leaves the responsibility of determining false information to law enforcement agents alone.

It is instructive to note that since 2015, the Nigerian government has seized every opportunity to announce zero tolerance on all forms of criminal activities in the country. As a result, different types of human behaviour are being criminalized and confined within mean regulatory precincts. The Social Media Bill is not only consistent with the famed government’s stance to appear “tough on crime”, but also forms part of a broader efforts to elevate the unrestrained and unprincipled use of criminalization as state policy. What the Bill has simply done is to enlarge governmental powers to set a net large enough to catch all possible offenders of serious and not-so-serious misdemeanours.

# SPACES FOR CHANGE | S4C

## 2. Duplication of Already Existing Laws and Agencies

Acknowledging that misinformation and fake news are plagues that need to be tackled strongly through deliberate policy formulations and regulations, the Bill is built on a false premise that the menace of cybercrimes and online information exists because of the absence of regulatory agencies and laws. On the contrary, the Cybercrimes Act 2015, Terrorism Act 2015, the Penal Code and other libel laws sufficiently address with adequate penalties, issues of internet misinformation, cybercrime and, other offenses contained in the bill.

Section 22 subsection 2,3 (a-d) and 4, Section 24, Section 26(1) a-d, and Section 40 of the Cybercrimes outlaws ***‘cyber-stalking, cyberbullying, cybersquatting by way of registering and using an internet domain name with bad faith, forbids transmission of inciteful expressions, racist, xenophobic materials and even allows, for the interception of electronic communication, by way of court order by a judge, where there are reasonable grounds to suspect and obtain the content of an electronic communication in a criminal investigation or proceeding’***. In addition, the Criminal Code Act 2004, Chapter 7, Section 51(1a-d) (2) and Section 52 already provides corresponding punishment for, “Any person who – (b) utters any seditious words; (c) prints, publishes, sells, offers for sale, distribute or reproduce any seditious publication’. Sedition, as defined by this law, refers to the intent or expressions that ***‘incite hatred, contempt, disaffection against the person of the President or of the Governor of a State or the Government of the Federation; raise discontent or disaffection amongst the citizens or other inhabitants of Nigeria; promote feelings of ill-will and hostility between different classes of the population of Nigeria’***. Section 50(2a-d)

Enacting another legislation to regulate issues already covered by existing laws will only lead to duplicity of tasks, wastage of scarce public resources and uncertainty on the desired outcomes.

## 3. Potential Danger to Free Civic Space for Dissent and Change

Some provisions of the Bill have the potential to undermine human rights, especially free expressions on the internet and social media platforms where citizens engage, collaborate and galvanize joint action for public benefit. For instance, Part 3 Clause 12(3) gives the Nigeria Police Force (NPF) absolute power ***“to direct the National Communication Commission (NCC) to order the internet access service provider to take reasonable steps to disable access to end-users in Nigeria based on their online location”*** This power is wide, discretionary, and without any checks and balances. We sense a dangerous prompting that not only gives security agencies the power to subjectively determine and declare what constitutes ‘fake news’ but also disrupt internet access of not only persons accused of spreading false statements but all persons operating within and around the online geography of a ‘suspicious’ location.

Seeing how in recent times, dissenting opinions of citizens and public protests have been matched with vicious clampdown by state authorities and security agencies, we fear that empowering security agencies to issue block orders at online locations may inadvertently facilitate manipulated internet blackouts that dismiss civic dissent on the internet.

Out of the 279 cases of clampdown of human freedoms in Nigeria documented on closing spaces database—[www.closingspaces.org](http://www.closingspaces.org)—75 incidents involve journalists arrested and



# SPACES FOR CHANGE | S4C

assaulted on account of their journalistic duties, 9 media houses (DailyTrust, Premium Times, AIT, Fresh105.9Fm Oyo State, Breeze 99.9fm Nassarawa State, etc.) attacked for publishing and airing content critical and exposing of government activities, 21 activists and 30 internet users arrested for expressing opinions critical of government's activities on their social media platforms. These incidents have engendered a climate of fear in the country with citizens resorting to social media as a safer platform to express critical opinions and organise for dissent. Granting over-reaching powers to security agencies to determine the legitimacy of online expressions and engagement would only worsen a very bad situation.

## 4. It Criminalises Popular Tools of Satiric and Artistic Expressions

Because of their characteristic **satirical** bent, parody accounts are popularly used to create humour, sarcasm, entertainment and inform and keep people engaged on a number of issues. The accounts *have their roots in online humor, including the merging of fiction and reality*. (Highfield: 2013). The social media bill criminalises the use of a parody account to transmit false statements that will affect national security or influence the outcome of an election. Yet again, the terms '*national security and influence the outcome of an election*' are confusing. There is a tendency to misconstrue expressions without understanding the broader context in (of) which the expression was made, especially where it was intended to be a satire or mere fiction.

Most parody accounts in Nigeria explore the use of satire, political cartooning and jokes for activism, to spur social commentary and citizens to engage on national issues. If law enforcement operatives run without understanding the context of expressions, there is a danger that the use of satirical art and cartooning may be misconstrued as crime and presented as evidence of a non-existent offense.

## 5. It usurps the powers of existing law enforcement agents, including the judiciary

The use of overly broad provisions in the proposed statutes inappropriately delegates legislative powers to the judicial branch. In such situations, judges are impelled by the circumstances to create meaning out of vague and overbroad legal rules, thereby inducing them to assume the responsibilities of another organ of government. This practice violates the principles of separation of powers, the pillar on which the tenets of our hard-worn democracy rests on.

Not only that, Nigeria has robust legal regimes prohibiting defamation, seditious publication, libel, slanderous comments, all of which involve the transmission of false statements about other person or institution. Instead of duplicating agencies to usurp statutory roles already being performed by existing law enforcement institutions, the provision of adequate human resources and infrastructure needed to both enhance their technical, investigative and intelligence-gathering skills and strengthen coordination among them, would be a more productive path to follow.

## CONCLUSION:

- **Strengthen the capacities of existing law enforcement agencies statutorily mandated to tackle cybercrime, by providing them with adequate human resources and infrastructure needed to both enhance their technical,**

# SPACES FOR CHANGE | S4C

investigative and intelligence-gathering skills and strengthen coordination among them.

- Accelerate the implementation of existing cybercrime laws and policies, especially the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, and the National Cyber Security Policy and Strategy, adopted on the 5th of February, 2015
- Ensure the conformity of Nigeria's cybercrime and cybersecurity laws and policies with regional and international human rights standards.
- Efficiently utilise the National Orientation Agency and the Ministries of Information across the various levels of government to deliver mass sensitization campaigns to counter fake news, hate speech and ethnic hatred.
- Innovate and strengthen community/ grassroots-based policing networks across the federation

For further inquiries, please contact:

## SPACES FOR CHANGE | S4C

Office: 35B Ajakaiye Street, Onipetesi Estate, Mangoro, Ikeja, Lagos

Email: [spacesforchange.s4c@gmail.com](mailto:spacesforchange.s4c@gmail.com) | [info@spacesforchange.org](mailto:info@spacesforchange.org)

Website: [www.spacesforchange.org](http://www.spacesforchange.org)

Telephone: +2347036202074 | +2349094539638