



Protection of the Right to Freedom of Expression in Nigeria

An Advisory Opinion to the Judiciary and Law Enforcement Agencies issued pursuant to section 5(l)(m)(o) of the National Human Rights Commission (Amendment) Act

1.0 Preamble

The National Human Rights Commission of the Federal Republic of Nigeria (hereinafter referred to as the Commission),

Conscious of its mandate to promote, monitor, protect and enforce human rights of everyone in Nigeria in line with the national, regional and international human rights instruments to which Nigeria has enacted and is a party,

Recognising the universality, indivisibility, interdependence, and interrelatedness of human rights, and the centrality of the freedom of expression to facilitating public discourse in pluralistic societies,

Further recognizing the importance of safeguarding the right to freedom of expression and opinion, including in cyber spaces, to allow citizens to hold opinions freely in accordance with democratic principles, voice concerns, and hold those in power accountable,

Acknowledging that the right to freedom of expression is fundamental to building democratic societies, enhancing national cohesions and creating an enabling environment for peace, accountable governance and sustainable development,

Further acknowledging that the obligation to respect the freedom of expression is binding on state actors, including law enforcement agencies the executive, legislature and the judiciary, and that the state must protect citizens from acts that impair their enjoyment of this right,

Aware of the challenges posed by the Cybercrime (Amendment) Act 2024, specifically Section 24, in its current form, which has led to arbitrary application of its provisions against individuals based on the publication or dissemination of contents in digital platforms,

Noting that these provisions, as currently interpreted and applied, have potentials for abuse, particularly with respect to arrests and prosecutions of activists, journalists, bloggers, and ordinary social media users,

Considering that freedom of expression includes political discourse, comments on public affairs, and the right to critique government policies and actions,

Hereby issues the following Advisory on the Protection of the Right to Freedom of Expression in Nigeria

2.0 Principles

This Advisory is issued pursuant to the legal and inherent powers of the National Human Rights Commission in section 5(l)(m)(o) of the National Human Rights Commission (Amendment) Act, 2010 under the following principles:

1. Indivisibility, inter-relatedness and Interdependence of all human rights: All human rights are inter-related and depend on one another for full realization and enjoyment.
2. Equality: Every Nigerian is equal before the law and so is the application and enjoyment of all human rights to every Nigerian.
3. Non-discrimination: Every Nigerian is able to enjoy human rights as enshrined in the Constitution and other legal and international human rights instruments without any discrimination as to birth, sex, religion, ethnicity, and political, cultural, economic and social orientations.
4. Neutrality and Independence: The National Human Rights Commission invokes its independence and neutrality under section 6(3) of the NHRC Act of 2010

3.0 Application

This Advisory shall be applicable to the interpretation and use of the provisions of section 24 of the Cyber Crimes (Amendment) Act 2024, in investigating, arresting and prosecuting of individuals alleged to be involved in cybercrimes.

This advisory is issued to:

- (a) All persons and authorities exercising powers of law enforcement, military and security in Nigeria.
- (b) All judicial and prosecutorial agencies involved in interpreting, applying, and enforcing the provisions of Section 24 of the Cybercrime (Amendment) Act 2024.
- (c) Civil society organizations, journalists, bloggers, social media users and influencers, and other actors in the digital space who exercises the right to freedom of expression in any form and who may be impacted by the application of the aforesaid Cybercrime (Amendment) Act 2024.

4.0 Legal and Normative Principles Relating to the Right to Freedom of Expression

4.1 The right to freedom of expression and opinion is a fundamental human right recognised internationally, regionally, and at national level. In Nigeria, this right is enshrined in the Constitution and further strengthened by international and regional human rights instruments.

4.2 Section 39 of the Nigerian Constitution guarantees the right to freedom of expression, stating that "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference."

4.3 Regional Instruments

4.3.1 African Charter on Human and Peoples' Rights (ACHPR) 1986¹

Article 9 of the ACHPR provides that "every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions

¹ Adopted by the Heads of State of the Organisation of African Unity at the 18th Ordinary Session in June 1981

within the law.” Nigeria has domesticated the ACHPR, as part of its national law and domestic human rights obligations under the African Charter on Human and People’s Rights (Ratification and Enforcement) Act, Chapter A9 LFN 2004.

4.3.2 African Commission on Human and Peoples' Rights (ACHPR) Declaration of principles of freedom of expression and access to information in Africa 2019

1. The African Commission on Human and Peoples' Rights has adopted the declaration which affirms the principles for anchoring the rights to freedom of expression and access to information in conformity with Article 9 of the African Charter which guarantees individuals the right to receive information as well as the right to express and disseminate information.
2. Non-discrimination: The declaration provides that everyone shall have the right to exercise freedom of expression and access to information without distinction of any kind, on one or more grounds, including race, ethnic group, colour, sex, language, religion, political or any other opinion, political association, national and social origin, birth, age, class, level of education, occupation, disability, sexual orientation, gender identity or any other status. (principle 3, page 10)
3. Non-interference with freedom of opinion: The declaration emphasizes that freedom of opinion, including the right to form and change all forms of opinion at any time and for whatever reason, is a fundamental and inalienable human right indispensable for the exercise of freedom of expression. This means that state authorities shall not interfere with anyone’s freedom of opinion. (principle 2, page 10)
4. Protection of the rights to freedom of expression and access to information online: The state has an obligation to protect individuals exercising their rights to freedom of expression and access to information from interference both online and offline This includes ensuring that investigations and prosecutions of allegations of cybercrimes must be done in a manner that does not interfere with the enjoyment of these rights. (principle 5, page 11))
5. Relevant Provisions on Freedom of Expression
 - a) Protecting reputations: No individual shall be held liable for making true statements, expressing opinions, or sharing statements that are reasonable under the circumstances. Public figures, due to their roles and public visibility, must tolerate a higher degree of criticism than private individuals. It is essential that any sanctions imposed for the exercise of the right to freedom of expression are never so severe that they hinder or suppress this fundamental right. The punishment should always be proportionate, ensuring that individuals can freely express themselves without fear of disproportionate consequences. (principle 21, page 17)
 - b) Privacy and Secrecy Laws: Privacy and secrecy laws should never be used to obstruct the dissemination of information that is of significant public interest. While individuals' right to privacy must be respected, the sharing of information that is crucial for public awareness, accountability, and the functioning of a democratic society must be protected. Any legal provisions that aim to maintain privacy should be carefully balanced with the need for transparency and the public’s right to know. (principle 21, page 17)
 - c) Criminal Measures: All criminal restrictions on content should undergo a thorough review to ensure they are justifiable and in agreement with international human rights law and standards. Restrictions on freedom of expression, particularly those justified on the grounds of public order or national security, must be applied with great caution. Such restrictions should only be imposed when there is a genuine and significant risk of harm to a legitimate interest, and there must be a direct and close causal link between the risk of harm and the expression in question. This ensures that any limitations on freedom of expression are both necessary and

proportionate, respecting the fundamental right to free speech while addressing real threats in a manner consistent with human rights principles (principle 22, page 17).

4.4 Global Instruments

4.4.1 Universal Declaration of Human Rights (UDHR) 1948²

Article 19 of the UDHR states that " Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Although not legally binding, this declaration serves as a foundational document for human rights globally and emphasises the importance of the freedom of expression as a critical component for the full realization of human rights.

4.4.2 International Covenant on Civil and Political Rights (ICCPR) 1966³

Article 19 of the International Covenant on Civil and Political Rights guarantees the right to freedom of expression, with restrictions only permissible when necessary and lawful in a democratic society to protect national security, public order, or the rights of others. Nigeria, as a State Party to the ICCPR, is obligated to uphold these standards.

4.4.3 General Comment No. 34 ⁴on Freedom of Expression (Article 19 of the ICCPR)

1. General Comment No. 34, issued by the United Nations Human Rights Committee, provides an authoritative interpretation of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of expression. This General Comment offers detailed guidance on the scope, application, and permissible limitations of this fundamental human right, and it clarifies the obligations of states to protect the right to freedom of expression.
2. Nature and Application of General Comment No. 34: General Comment No. 34 reaffirms that freedom of expression is a cornerstone of democracy and is indispensable for the full development of the human person. The right to freedom of expression applies to all forms of communication, including oral, written, or artistic expression, and extends to the right to seek, receive, and impart information. This right encompasses political discourse, discussions about public affairs, and expressions on matters of public interest. The General Comment highlights that the right to freedom of expression is not limited to ideas that are popular or inoffensive, but includes the protection of ideas that may shock, offend, or disturb (paragraphs 2-12).
3. State Obligations: The General Comment emphasizes that states have an obligation to respect and ensure freedom of expression for all individuals, without distinction. States must not impose disproportionate or arbitrary restrictions on freedom of expression. It also requires that states take proactive steps to ensure the enjoyment of this right, including enacting legislation that protects freedom of expression and holding authorities accountable for violations of this right. States must ensure that individuals are not subject to undue interference, including arbitrary censorship or surveillance, and should provide adequate protection against threats or attacks on journalists, human rights defenders, and others exercising this right (paragraphs 13-19).

² UDHR was adopted at the 3rd Session of the United Nations General Assembly on 10 December, 1948

³ Adopted at the 21st Session of the United Nations General Assembly on 16 December 1966

⁴ Adopted at the 102nd Session of the Human Rights Committee on 12 September 2011

4.5 Other Associated Rights Related to the Freedom of Expression

4.5.1 The right to freedom of expression do not necessarily stand on its own. The enjoyment of this important right is dependent on the facilitation of other associated human rights.

4.5.2 Right to Life: The protection of the right to life as guaranteed under section 33 of the Constitution of Nigeria is a major obligation by law enforcement and security agencies which is linked to the enjoyment of other human rights.

4.5.3 Right to dignity: Dignity is an all-encompassing human right whose guarantee will ensure that persons who use the cyber space are treated humanely and accorded all protection and assistance in the conduct of investigations relating to cybercrimes.

4.5.4 Right to personal liberty: This right protected by section 35 of the Constitution of Nigeria ensures that persons who use the cyber space are not subject to indiscriminate arrests and detention or any other forms of restriction that will interfere on their right to freely express themselves.

4.5.5 Right to fair hearing: Persons who use the cyber space should be accorded all assistance to ensure that they enjoy their rights to fair hearing before the courts and afforded with access to legal representatives for their protection at the earliest possible time as provided for in section 36 of the Constitution of Nigeria.

4.6 Case law

4.6.1 In *SERAP v. Federal Republic of Nigeria*, the Economic Community of West African States (ECOWAS) Court of Justice ruled that Section 24 of the Cybercrime (Prohibition, Prevention, etc.) Act was incompatible with Nigeria's obligations under both Article 9 of the African Charter on Human and Peoples' Rights (ACHPR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Nigeria is a state party.

4.6.2 This case dealt specifically with the criminalization of sending or causing to be sent messages deemed "offensive, insulting, or annoying" via a computer system, a provision which the court found overly broad and violating the principles of freedom of expression as guaranteed by both regional and international human rights instruments.

4.6.3 The court's ruling makes it clear that law enforcement agencies must respect the constitutional rights of individuals, including their right to freedom of expression, even in the context of digital communication. The court's rejection of the broad provisions of the Cybercrime Act that criminalized "annoying" or "offensive" messages aligns with the principle that states must not impose arbitrary or overly broad restrictions on freedom of expression. Law enforcement must balance the need to maintain public order with the obligation to respect citizens' fundamental rights as enshrined in both the Nigerian Constitution and international human rights law.

5.0 Importance of the Right to Freedom of Expression:

The right to freedom of expression plays a crucial role in the full enjoyment of human rights, as outlined in General Comment No. 34, and is integral to the promotion of democratic values and the protection of fundamental freedoms.

1. The right to freedom of expression allows individuals to participate fully in their societies by enabling them to voice their opinions, ideas, and grievances. This right

ensures that individuals can engage in discussions, and actions that shape public opinion, policies, and governance. Freedom of expression helps maintain the dynamic and inclusive nature of public discourses, allowing all voices to be heard and considered.

2. It guarantees that people can criticize their governments, engage in political discourse, and advocate for their rights. According to General Comment No. 34, the right to freedom of expression is indispensable for the realization of democracy, the rule of law, human rights, and pluralism. It provides the space for individuals and groups to contest the policies of the government and to influence decision-making processes that affect their lives.
3. Through the exercise of freedom of expression, citizens can demand greater transparency and accountability from their governments. It allows for the free exchange of ideas, information, and critiques, which are vital in holding public officials and institutions accountable.
4. Freedom of expression also empowers individuals to participate directly in the shaping of public policies. This is essential for a healthy democracy, as it allows people to engage in dialogues about laws, reforms, and political changes that impact them. By expressing their views and opinions, citizens can directly influence the direction of the nation's policies and governance

5.0 Policy Recommendations

5.1 In view of the foregoing, the National Human Rights Commission in exercise of its mandate in section 5, paragraphs (l), (m) and (o) of its enabling Act makes the following recommendations:

5.3 Obligations of the Nigerian Police and Other Law Enforcement Agencies

1. Law enforcement should recognize that the right to freedom of expression is a fundamental human right, and any limitations on this right must be in line with international standards of necessity, legality, and proportionality.
2. The Nigerian Police and other law enforcement agencies should exercise caution in interpreting Section 24 of the Cybercrime (Amendment) Act, ensuring that any arrest or prosecution is based on clear and specific evidence of an actual threat to public order, rather than vague or generalized interpretations of the law.
3. Law enforcement agencies must ensure that individuals are allowed to express their opinions freely without fear of harassment or intimidation. The Nigerian Police are obligated to respect citizens' rights to voice their opinions, regardless of whether these opinions are critical of the government or public institutions. Any attempt by law enforcement to suppress such expression without just cause is a violation of the right to freedom of expression.
4. The Nigerian Police and other law enforcement agencies are obligated to protect individuals from violence, intimidation, or harassment by other individuals or groups. This protection extends to journalists, human rights defenders, political dissidents, and other individuals engaged in public discourse. Law enforcement must take adequate measures to ensure that these individuals are not subject to violence or retaliation for exercising their freedom of expression.
5. In line with international human rights norms, law enforcement agencies must refrain from interfering with the right to freedom of expression unless necessary for the protection of public safety, order, or national security. Interference may only occur under circumstances that meet the criteria of legality, necessity and proportionality, ensuring that actions taken do not unduly restrict or curtail the right to freely express opinions and ideas. Arbitrary arrests, intimidation, or threats made

- against individuals expressing their views, especially journalists, activists, and human rights defenders, are prohibited.
6. Arrests and detention under the provision of the Cybercrimes Act must not be indefinite but accord to the constitutional limits.
 7. Prosecution under the Cybercrimes Act must afford accused persons all the constitutional guarantees of fair hearings both procedurally and substantially under section 36 of the Constitution.

5.4. Obligations of the Judiciary:

1. The judiciary must ensure that the constitutional right to freedom of expression is protected and upheld in all cases. This involves interpreting laws and regulations in a manner that promotes and guarantees this fundamental human right. Ensure that the protest remains peaceful and law-abiding. Violence and destruction of property will undermine the legitimacy of the protest.
2. Any limitations or restrictions placed on freedom of expression must be proportional and defined by law. The judiciary must carefully assess whether such restrictions meet the strict tests of necessity and proportionality.
3. The judiciary must be vigilant in protecting individuals from arbitrary restrictions on freedom of expression. Courts should be proactive in identifying and challenging unlawful censorship, surveillance, or other actions that undermine the free flow of information.

6.0 Conclusion

1. The NHRC calls for an end to any arbitrary censorship, harassment, or intimidation of individuals, journalists, activists, or human rights defenders. Any actions that threaten the enjoyment of this right—whether by state or non-state actors—should be addressed through appropriate legal channels.
2. The NHRC remains committed to monitoring and ensuring the protection of freedom of expression in all circumstances, and will continue to advocate for a legal and institutional environment that supports the freedom of expression.
3. The NHRC encourages citizens to exercise their right to freedom of expression responsibly while respecting the rights of others. The protection of free speech does not extend to actions that incite violence, hatred, or harm against others.

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Dr. Tony Ojukwu, OFR SAN fcmc
Executive Secretary/CEO
National Human Rights Commission