

**THE REGULATION OF HATE SPEECH IN NIGERIA: A
COMPARATIVE ANALYSIS**

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF
LAW, UNIVERSITY OF BENIN, IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE AWARD OF BACHELOR OF LAWS (LL.B)
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OCTOBER, 2023

CERTIFICATION

I, **Michelle Chinenye ODOGWU (Miss)**, with Matriculation Number **LAW1704763**, hereby certify that apart from references to other person's works which have been duly acknowledged, the entire work is a product of my personal research, and has neither in whole nor in part been presented for another degree elsewhere.

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DEDICATION

This work is dedicated to God, the Creator of heaven and earth, the sustainer of my life.

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I wish to express my gratitude to God Almighty, for the strength to write this research work, for keeping me in good health to start the work and also complete it. I also wish to thank God for seeing me through my academic pursuit through out my years in the university as an undergraduate, May his name be praised forever.

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Abstract

Hate speech refers to a wide range of utterances that encourage, provoke, legitimize, or support animosity, violence, prejudice or discrimination against an individual or a group of individuals on the basis of gender, race or ethnicity. Hate speech poses serious risks to the rule of law, the preservation of human rights, and the fabric of a democratic society. Also, it can result in larger-scale acts of violence and conflict if not addressed like mass killings or even genocide the “crime of all crimes”. The aim of this study is to identify how hate speech can be regulated in Nigeria as well as to sensitize the populace on the differences between freedom of expression and hate speech. The objectives of this work are to ascertain legislation that could regulate the occurrence of hate speech in Nigeria, to study the legislation on hate speech in other jurisdictions while identifying the best approaches and practices that could improve Nigeria’s position on the regulation of hate speeches. This study also identifies the meaning of hate speech and distinguish it from freedom of expression. In the course of this work reliance was made solely on primary and secondary sources. This method is generally referred to as the doctrinal approach also known as the library- based research method. This approach makes use of predominantly written works. The primary sources used were the constitution of the Federal Republic of Nigeria, laws of international bodies, case laws and treaties. The secondary sources used were online journals, textbooks, articles and Newspapers. . The strategy used in this work is a comparative analysis amongst various jurisdictions on their legislation on hate speeches. The findings arrived at in this work showed the difference in the laws and mode of regulations of hate speeches in different jurisdictions and the approaches used in these countries that could be applied in Nigeria to strengthen the legislation on hate speech. This study also provides some recommendations beneficial to the regulation of hate speeches in Nigeria. For instance, there should be a re-draft of the bill of hate speech in Nigeria. This includes clearly defining the meaning of hate speech and explaining how it differs from the right to freedom of expression and opinion as well as defining measures that would be taken to avoid encroaching into the realms of freedom of expression.

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

The concept of "hate speech" refers to a wide range of utterances that encourage, provoke, legitimize, or support animosity, violence, or prejudice against an individual or a group of individuals for a number of different causes. With technological advancement in communication, a lot of individuals have been given the opportunity and platform to engage in hate speech with their devices via the internet.. This is because there is a widespread perception that such behavior has no repercussions. However, this is not so. Hate speech poses serious risks to the rule of law, the preservation of human rights, and the fabric of a democratic society. Also, it can result in larger-scale acts of violence and conflict if not addressed. Thus, it is safe to say that hate speech is an extreme manifestation of intolerance that fuels hate crimes. It is an act that has the threat to society at its very core and as such there has been numerous efforts by relevant stakeholders to address this problem, though quite a few. For instance, The United Nations came up with the UN Strategy and Plan of Action on Hate Speech in 2019 which intends to give the UN the space and resources to combat hate speech, which threatens the United Nations ideals, objectives, and programs towards creating a safe and united world and prevent a third world war. The actions taken under this UN Strategy and Plan of Action, are expected to be in accordance with international human rights standards and norms, particularly the right to freedom of expression.¹

Nevertheless, despite these efforts, hate speech is prevailing and fast spreading in the world today including Nigeria. This is very much alarming particularly as hate speech is generally

¹ United Nation, 'United Nations Strategy and Plan of Action on Hate Speech', (June, 2019). Available at <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf> Accessed 13th July 2023.

acknowledged to be one of the salient causes of mass atrocities such as genocide.² It is important to know that the incitement to genocide is one of the extreme forms of hate speech. This is why legislation as regards hate speech laws have been enacted by the legislative arm of governments in any country. These laws are proposed to regulate and mitigate the occurrence of hate speech which in the long run would reduce the occurrence of other hate crimes. This is more so as there have been instances where hate speech against a group of people have escalated into violence and left a scar on the existence of the people who had been targeted. A popular example is the East African nation, Rwanda which suffered from a mass genocide fueled as a result of the hate speeches made by the “hutu” tribe against the “tutsu” tribe of Rwanda in 1994. Unfortunately, not everybody has learnt from this bloody experience. Today, the leaders of many countries use dehumanizing languages in describing certain groups of people. There are cases of mass shootings where people are targeted and killed because some persons have spited and classed them as subhuman either because of their race or religion.³

This study extensively examined the regulation of hate speech in Nigeria and the legislation on hate speech in different countries like Germany, Rwanda, USA and South Africa.. This is in order to learn best practices and examine approaches in other jurisdictions that best improves the position of Nigeria’s legislation on hate speech. Furthermore, a comparison of the various hate speech legislation in the various jurisdictions mentioned above will be explored, and the role of hate speech laws while administering freedom of expression, would be analysed. This work helps in understanding the evolving legal landscape and the position of the law on hate speech in Nigeria and abroad, and why there is a need for an extensive legislation to limit the right to freedom of expression in Nigeria in order to curtail hate speech

² ibid

³ Impact and prevention of hate speech <https://www.un.org>hate> speech

in the country. This is necessary to avoid the occurrence of hate crimes, like genocide in Nigeria.

1.2. Statement of the Problem.

The rate of hate speech in Nigeria has grown at a very alarming rate, thus creating a very hostile environment. Hate speech in the country has been spread through various platforms and avenues, including traditional media, social media, public forums and most recently, political campaigns. Such speech has been proven to create tension between ethnic and religious groups and this undermines the principle of unity, division and tolerance which a harmonious society is built upon. However, despite the fact that hate speech is clearly rampant in our society, there is a notable lack of awareness as to the impact it has on the very center of the Nigerian society, particularly on the prized peace and unity of the country..

Research Questions

1. What is hate speech?
2. What laws regulate hate speeches in Nigeria?
3. What approaches and practices of laws in the other jurisdictions can improve the regulation of hate speeches in Nigeria?

1.3. Aim and Objective of the Study

The aim of this study is to identify how hate speech can be regulated in Nigeria as well as to sensitize the populace on the differences between freedom of expression and hate speech.

Objectives

To explain the concept of hate speech.

To take a look at the laws that regulate hate speeches in Nigeria.

A look at best approaches and practices of other jurisdictions that could improve Nigeria's position on the regulation of hate speeches.

1.4. Scope and Limitation.

The scope borders around the regulation of hate speeches in Nigeria .It does this by exploring the legislation on hate speeches in other countries like the U.S, Rwanda, the UK and South Africa while taking into account approaches that would be beneficial in enacting legislations against hate speeches in Nigeria. There are other countries and legislation which were not covered as a result of the broad nature of the subject area. Some of these countries include Kenya, the United Arab Emirate, Somalia, North Korea and India amongst others. Some limitations encountered while making this research was the lack of hard copy journals which resulted in the use of online journals. The lack of textbooks on this topic in major libraries such as the National Library of Nigeria FCT, Abuja, the John Harris Library in the University of Benin and the Law library University of Benin was also a major constraint in the research of this work, which made it difficult for an indebt analysis of this writing.

1.5. Significance of the Study

The significance of the study is based on the regulation of hate speeches in Nigeria. The importance of this work lies in the fact that hate speeches must be reduced to prevent it from escalating into hate crimes e.g. mass killings on the instigation of a group of persons. Creating awareness of hate speech and regulating it, prevents the country from going into state of anarchy and doom. The regulation of hate speech helps to promote unity and harmony in the country.

1.6. Research Methodology

For the purpose of this research, reliance was made solely on primary and secondary sources. This method is generally referred to as the doctrinal approach also known as the library-based research method. This approach predominantly makes use of already written works. The primary sources used were the constitution of the Federal Republic of Nigeria, laws of international bodies, case laws and treaties. The secondary sources used were online journals, textbooks, articles and Newspapers. . The strategy used in this work is a comparative analysis amongst various jurisdictions on their legislation on hate speeches.

1.7. Literature Review

This literature review explores some research in the regulation of hate speech in Nigeria. Hate speech refers to offensive discourse targeting a group or an individual based on inherent characteristics such as race, ethnicity, gender, sexual orientation, religion, or nationality. Though definitions and protections vary greatly, legislation targeting the prevention and punishment of hate speech has been passed in many nations. Companies that use social media, including Facebook and YouTube, have established policies against hate speech and put procedures in place to reduce or eliminate harmful content.⁴ The International Convention on the Elimination of All Forms of Racial Discrimination, which is ratified by all member states of the United Nations, demands that hate speech should be discouraged. Alakali,⁵ examined how hate speech has historically been used to fuel conflicts and violence and discusses the existing legal frameworks for regulating hate speech. Terfa critically analyzed the effectiveness of these laws in curbing hate speech and suggests possible improvements.

⁴ UNO. What Is Hate Speech? United Nations Organization. Available at <<https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>> Accessed 18th July 2022

⁵ Terfa T. Alakali, 'Audience Perception of Hate Speech And foul Language In The Social Media In Nigeria: Implications for Morality And Law.' (2017). Available at <<https://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.ojs-issn-2079-3715-year-2017-issue-15-article-30c88466-a713-36f8-8310-cf870e9ef11/c/articles-1036774.pdf>> Accessed 18th July 2023

Additionally, the paper provides insights into the balance between protecting freedom of expression and combating hate speech. Eric Heinze's⁶ critically investigates how hate speech is controlled in democracies all across the world in his book. He contends that while rules that are too harsh may violate democratic ideals, hate speech poses serious problems. Heinze contends that democratic citizenship should go beyond simply outlawing hate speech but should also encourage more productive discourse; this provides an elaborate insight into the concept of hate speech.

In the pursuit of societal cohesion and the safeguarding of human rights, Nigeria undertook the initiative to address hate speech, leading to the formulation of the hate speech bill. Ajulo on his part contends that the objectives of the hate speech bill are already encompassed within current laws and the Nigerian constitution. He also postulates that upon a close examination certain provisions within this bill unnecessarily heightens the prevailing problem of intolerance across the nation. He further argues that the senate in cannot declare in all honesty that a particular speech made by an individual(s) or body corporate is capable of causing ethnic hatred thereby constituting a crime punishable by a ten year jail term, a fine of ten million naira or a death sentence as the case maybe. He goes on to add that “this is a draconian legislation that may bring to birth an ugly monster that will make the Boko Haram insurgency look like a child's play.”⁷ Thus, it was his stern and candid advice as a patriotic Nigerian who believes that the way out of this country's woes is not in the stifling of free speech.

⁶ Eric Heinze. ‘Hate Speech and Democratic Citizenship’ (2017). Available at <https://www.researchgate.net/publication/281936636_Hate_Speech_And_Democratic_Citizenship> Accessed 19th July, 2023

⁷ Kayode Ajulo. ‘There Is No Need for A Hate Speech Law’, (2019), <<https://www.thisdaylive.com/index.php/2019/11/22/there-is-no-need-for-a-hate-speech-law?amp=1>> Accessed 19th July 2023

Furthermore, Adibe discusses the implications of hate speech in Nigeria, by narrating when a coalition of Northern youth groups issued a Kaduna Declaration which, apart from calling the Igbos unprintable names, gave all Igbos in the North three months (until October 1, 2017) to leave. He further averred that the reaction stemmed from harsh pro-Biafra rhetoric of Nnamdi Kanu, leader of the Indigenous People of Biafra. He therefore posited that while it is true that Nnamdi Kanu had engaged in a form of rhetoric offensive to many people, the quit notice given to the Igbos in the North triggered competitive quit notices to vacate. Though the notices were later withdrawn, they led to palpable fears that the situation could degenerate to a Rwanda-like genocide unless the tide of free-flowing offensive and hate speech in the country was stemmed.⁸

The main conclusions and key takeaways from the foregoing review of literature are extensively addressed in this study. It highlights the significance of a thorough and varied strategy for regulating hate speech in Nigeria that includes legal, educational, and societal initiatives. The study seeks to provide a thorough understanding of the specific challenges Nigeria faces concerning hate speech. It aims to explore the historical, socio-cultural, and political factors contributing to the proliferation of hate speech in the country. By analyzing the existing laws and regulations related to hate speech in Nigeria, the study aims to assess their effectiveness and identify potential shortcomings. It also intends to explore how these laws align with international human rights standards.

One of the key gaps this study intends to fill is to compare Nigeria's approach to hate speech regulation with other countries.. This allows for an examination of best practices and the identification of lessons that can be learned from different jurisdictions. The study aims to delve into the balance between protecting freedom of expression and combating hate speech.

⁸ Jideofor Adibe, 'Should the Law Be Used To Curb Hate Speech In Nigeria.' (2018). <<https://www.brookings.edu/articles/should-the-law-be-used-to-curb-hate-speech-in-nigeria/>> Accessed 19th July 2023

It would explore how various countries address this tension and seek to find a balance that upholds human rights while countering harmful speech. Overall, the study's objective is to contribute to the existing body of knowledge on hate speech regulation by shedding light on the Nigerian context while drawing on global experiences to inform more effective approaches to address hate speech in Nigeria and other countries facing similar challenges. By taking a comparative analysis, the project can help policymakers and stakeholders gain a broader perspective on the issue and make more informed decisions.

CHAPTER TWO

CONCEPTUAL FRAMEWORK AND LITERATURE REVIEW

2.1. Conceptual Framework

The 21st century has ushered in a tremendous wave of success for the human race, especially in the realm of technology. This remarkable progress has given birth to a myriad of communication tools, including smartphones and computers. In turn, these developments have created a system where the world is connected in a way in which territorial disadvantage is completely obliterated. Individuals need not be in the same environment in order to communicate and share ideas. At the beginning, this had been greatly welcomed and has led to different economic and social growth. However, just like any phenomenon such change can serve as a catalyst for both beneficial changes and a source of unfavorable outcomes. Even if it begins with positive shifts, constant alterations can send even the most positive changes down a path where negative effects lurk, casting doubt on its original goals.

Thus, the ease of communication brought by technological advancement has extensively encouraged hate speech. Hate speech has existed long before easy communication. People have always used language to fuel bias against others, often leading to violence. It can be said that at this time it was done on a smaller scale as these actions could only affect those within close proximity. However, with the intervention of technology hate speech is easily transmitted to people around the globe. This the new trend.

Nigeria, the subject of this study, is also part of this trend. As a federal state, it encompasses more than 200 distinct ethnic groups, each with its own language. This diversity enriches the nation culturally and socially. Nonetheless, it also poses challenges, rendering the nation fragile such that when dealing with sensitive topics and national issues, cautious approaches are vital. This underscores why hate speech poses a significant societal issue. This has led to

the motivation behind this study to completely examine the regulations put in place to prevent the emergence of hate speech and the consequences that can result from its lack of regulation. In order to fully understand this topic and the intention behind it, it is extremely necessary to extensively define the terminologies that will be constantly referenced in this work, and to fully understand the context in which they will be applied in the analysis.

2.1.1. Definitions of Terms

2.1.2. Hate Speech

Due to the various legal, cultural, and societal settings, it is difficult to come up with an authorized, generally acknowledged definition of hate speech. Nevertheless, it generally refers to any kind of expression that encourages or incites animosity, prejudice, discrimination, or violence against people or groups because of traits like race, religion, ethnicity, gender, or other protected qualities.⁹ Hate speech is conceptualized as any form of expression, communication, or discourse that seeks to attack, intimidate, or denigrate an individual or group of individuals on the basis of their race, gender, ethnicity, nationality, religion, sexual orientation, disability, or other inherent characteristics.

Hate speech often makes use of derogatory, offensive, or abusive language and can be expressed through spoken words, written material, images, music, or other forms of media. It can be used to incite fear, violence, or discrimination against marginalized or minority groups and can undermine fundamental human rights such as freedom of expression, equality, and dignity.¹⁰ It is pertinent to note that there is presumed nexus between hate speech and freedom of speech.¹¹ While freedom of speech is a crucial democratic value, hate speech is not

⁹ Alexander Brown. 'What is Hate Speech? Part 1: The Myth of Hate' (2017). *Law and Philosophy* 36, 419 – 468.

¹⁰ William Curtis, 'Hate Speech' (August, 2023). Available at Britannica at <<https://www.britannica.com/topic/hate-speech>> Accessed 14th July 2023

¹¹ Ibid.

protected by this right and can therefore be subject to legal restrictions depending on national and international laws and regulations.

The meaning and interpretation of hate speech can vary across different contexts and cultures, but it is generally understood as any form of speech that promotes, endorses or justifies hatred, discrimination or violence against individuals or groups on the basis of their group identity or inherent characteristics.¹²

Today, toxic discourses and free/open engagements on the social media and other online communication tools often results in conflicts attributable to the likely manifestations and expressions of hate speeches in such interactions.

Furthermore, hate speech and inciting political rhetoric have a significant effect on shaping realities and political outcomes.¹³ Also, the constant use of hate speech often results in hate crimes. Hate crimes are criminal acts committed against individuals or property due to their affiliation with a particular group. These acts are motivated by bias, prejudice, or hatred towards the victim's perceived attributes. While hate speech involves the use of language to spread hateful ideas, hate crimes escalate to physical actions that harm or intimidate individuals or groups. The potential interaction between hate speech and hate crimes is what connects them. Hate speech has the capacity to normalize and spread prejudice, potentially fostering a climate that supports hate crimes. It is possible that those who listen to or participate in hate speech are more inclined to commit or support hate crimes. It is important to remember that not all instances of hate speech result in hate crimes, as a number of factors influence the conversion of words into deeds.

¹² United Nations, 'United Nations Strategy And Plan Of Action On Hate Speech Detailed Guidance On Implementation For United Nations Field Presences September 2020, Available at <https://Digitallibrary.Un.Org/Nanna/Record/3889286/Files/Un_Strategy_And_Poa_On_Hate_Speech_Guidance_Onaddressing_In_Field.Pdf?Withwatermark=0&Withmetadata=0&Version=1&Registerdownload=1>, Accessed on 14th July 2023

¹³ Folami Kolade, 'A History of Hate Speeches in Nigeria: The Role of Propaganda in Nigerian Civil War 1967-1970, (2020), Available at <<https://www.amazon.com/History-Hate-Speeches-Nigeria-Propaganda-ebook/dp/B08H3N3NRK>>, Accessed 2nd September 2023.

2.1.3. Freedom of Speech

Freedom of speech is the right to express oneself without government interference or regulation. It involves the ability to seek, receive, and impart information or ideas using any medium, including speech, writing, art, and other forms of media. Freedom of speech is a fundamental human right recognized internationally. It encompasses the right to express one's opinions, ideas, and thoughts without fear of censorship, retribution, or legal consequences. This right is enshrined in various international documents, such as Article 19 of the Universal Declaration of Human Rights¹⁴ and Article 19 of the International Covenant on Civil and Political Rights.¹⁵

The concept of freedom of speech is based on the belief that individuals have the right to express themselves and to engage in debates and discussions on matters of public concern, without fear of intimidation, violence, or censorship.

Freedom of speech can be limited under certain circumstances, such as when it is used to incite violence, promote hate speech, or spread false information that can harm the public. However, any restrictions on freedom of speech must be justified by a legitimate and compelling public interest and must be proportionate and necessary to achieve that interest.

Overall, freedom of speech plays an important role in promoting open debate, political participation, and the exchange of ideas in a democratic society. It allows individuals to express their opinions, to challenge authority, and to contribute to public discourse, while also promoting the free flow of information and the development of a diverse and vibrant culture.¹⁶

¹⁴ Article 19 Universal Declaration of Human Rights, 1945

¹⁵ International Covenant on Civil and Political Rights, 1966

¹⁶ Amnesty International, 'Freedom of Expression'. (2020). Available at <<https://www.amnesty.org/en/what-we-do/freedom-of-expression/>> Accessed 14th July 2023.

2.2. Theoretical Framework

To conduct a thorough and comprehensive analysis of hate speech regulation in Nigeria and its comparison with other countries, it is essential to adopt a jurisprudential approach. This approach involves examining legal aspects like laws, court decisions, and legal frameworks. Additionally, considering the sociological perspective is important, as it delves into the societal implications and effectiveness of these regulations. By combining these two approaches, valuable insight can be gained to inform better strategies for addressing hate speech. Hence the rationale why these approaches were adopted in this study. This jurisprudential and sociological approaches are theories that determine how legal rules can be made more effective in the existing conditions of life.

Even though there are some similarities, the two methods differ in terms of their focus, viewpoints, and other aspects. The study and interpretation of legal principles, doctrines, and norms is at the heart of the jurisprudential method, also referred to as legal or doctrinal analysis. It places a focus on the formal components of law and looks for meaning in judicial decisions, statutes, and legal writings. The jurisprudential approach is concerned with the legal ideas and features that underpin the Nigerian legislation that addresses hate speech and the consequences of it. In Nigeria, there have been several problems with the application and enforcement of laws limiting hate speech, which has led to bias claims and a lack of transparency.¹⁷ Concerns regarding selective enforcement, where the rules could be used as a tool to target political opponents or disenfranchised groups, have arisen as a result of inconsistencies in the way the law is administered.

On the hand, examining how various societies define, interpret, and react to hate speech requires the sociological approach. This method goes beyond legal restrictions and takes into account the cultural, historical, and sociological elements that affect how different groups and

¹⁷ Hakeem Ijaiya, 'The Jurisprudential Approach to Statutory Interpretation.' (2017). *KIU Journal of Humanities*. 2(2)

countries see hate speech. We can investigate issues like why some speech is regarded as vile in one society but acceptable in another by using a sociological perspective. They can examine how past occurrences, social hierarchies, and group dynamics have shaped the parameters of appropriate discourse.¹⁸

The trust in the efficiency and fairness of the regulatory framework has been damaged as a result, further escalating social tensions. According to detractors, addressing the causes of hate speech's fundamental issues may not be as successful as relying entirely on punitive measures. Like many other nations, Nigeria has problems like socioeconomic inequality, political marginalization, and intergroup hostility, all of which can encourage the spread of hate speech. It takes a comprehensive strategy that explores issues like education, social inclusion, and dispute resolution in addition to punitive measures to address these root problems. By addressing these issues, the government can develop a society that is more inclusive and tolerant and one where hate speech is less likely to occur.

Thus, finding a balance between defending free speech and preventing hate speech is a difficult issue. The protection of citizens' fundamental rights to voice their viewpoints and participate in spirited debates is just as vital as safeguarding them from the negative effects of hate speech.

Furthermore, in order to guarantee that laws are applied consistently and transparently going ahead, it is critical that the Nigerian government resolve the issues associated with implementation and enforcement. Additionally, initiatives should be made to address the underlying causes of hate speech, develop social cohesiveness, and create an environment that is inclusive and understanding. With a diverse strategy, Nigeria can try to lessen the

¹⁸ Deppika Srivasta. 'The Sociology of Law – What Is It? Sociological Approach to Law.', (2011). Available at <<https://www.nascollege.org/E%20cotent%2010-4-20/Ms%20deepika%20srivastav/Deepika%20ll.M.%20ii%20apr%202020-Converted%2017-4.Pdf>> Accessed 15th July 2023

effects of hate speech while supporting the values of freedom of expression and protecting the rights of its residents.

2.3. Historical Foundation of Hate Speech in Nigeria

The fourth republic of Nigeria has been shaped by passionate debates among public figures and academics on the political intolerance and the poor conduct of elections in Nigeria. Additionally, numerous exchanges on political insurgencies and how they have been fueled by hate speeches have taken place on the streets, online forums, and in sectarian print media across various regions of the nation. In terms of ethnic orientations, cultural practices, religious convictions, and linguistics, Nigeria is an extremely diverse nation. Since the colonial era of British control, these distinctions have been a cause of conflict. However, its current expressions are increasingly cleaving the nation into regions based on racial and religious differences.

Freedom of speech is a cornerstone of contemporary democracies worldwide, allowing individuals to freely express their viewpoints on various subjects. However, this right has its boundaries. The proliferation of hurtful, derogatory, and dehumanizing messages targeting individuals or groups based on attributes such as political or religious affiliations, ethnicity, sexual orientation, disabilities, and more, has raised concerns in the nation.

Furthermore, it is extremely disputed whether hate speech should be treated as mere freedom of speech when it increases in intensity and breadth in proportion to the human race. For example, in Nigeria, the repercussions of political actions that display hate speech have been more apparent over the course of succeeding democratic regimes.¹⁹ Politicians' actions have aggravated the problem, by hinting suggestive words which further divides the populace. This

¹⁹ Ugo Okolie. 'Ethno-Religious Hate Speeches and Political Violence in Nigeria's Fourth Republic' (2019). Available at ResearchGate at <https://www.researchgate.net/publication/339615717_Ethno-Religious_Hate_Speeches_And_Political_Violence_In_Nigeria's_Fourth_Republic> Accessed 15th July 2023

has been a major source of worry for Nigerians both at home and abroad. Political leaders in Nigeria utilize hate speech to further divide and rule a populace that is already divided along ethnic and religious lines. This incites already-existing ethnic and religious groupings, leading to all types of violence, but particularly those that are political in nature.

Also, hate speech is pervasive, especially in Nigeria. Political violence and hate speech against ethnic minorities are on the rise, and these forces pose everyday threats to the nation. Ethno-religious hate speech undermines the daily lives of the populace. Mutual prejudices existed among some of the more than 250 ethnic groups that made up the country, and this can be easily exploited. Despite this, hate speech has not yet been officially outlawed in Nigeria, despite the fact that there are laws prohibiting slander and perjury.

This is quite unfortunate particularly as election violence is brought on by hate rhetoric aimed at attaining political power. The history of intolerance in Nigeria has brought about an increase in the occurrence of hate speech in Nigeria.. The spike in electoral violence in Nigeria from 2011 to 2015 was fueled by hate speeches which resulted in ethnic and religious intolerance.²⁰

2.4. Hate Speech and the Nigerian Constitution

The Constitution of the Federal Republic of Nigeria, 1999 as amended, which is the supreme law wherefrom all other laws are rooted, has made provisions for freedom of speech but with exceptions to harmful speech. Section 39 (1) states that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive; impart information without interference. However, in section 45, the constitution pointed out that the freedoms listed in sections 38 to 44 are not absolute. The excesses of freedom of expression such as hate speech, slander, libel etc. re regulated in this section.

²⁰ Ibid

CHAPTER THREE

THE LEGAL FRAMEWORK FOR THE REGULATION OF HATE SPEECH IN NIGERIA

3.1. Regulating Hate Speech in Nigeria: A background Study

Hate speech which is the use of speeches, gestures, conduct, writings, or displays that incite violence or prejudicial action against individuals or groups, has become of great concern in Nigeria²¹. The nation's rich diversity in ethnicity, religion, and culture has unfortunately been marred by instances where hate speeches inflamed tensions, resulting in violence and social discord. Nigeria's history is characterized by ethnic and religious diversity, stemming from the amalgamation of Northern and Southern Nigeria in 1914²². While this diversity enhances cultural richness, it also serves as a potential catalyst for tensions and conflicts. Historical events, such as the Biafran War of 1967-1970, underscored the lasting impact of hate speech, which were manipulated for political gains at the expense of national security and unity²³. The exploitation of tribal sentiments persisted through various political parties, notably the NCNC, AG, and NPC, intensifying with the advent of social media platforms²⁴.

Hate speech has been instrumentalized during political transitions and elections, exacerbating ethnic and religious divisions. The 2015 general elections witnessed a surge in hate speech, fueling ethnic and religious intolerance and triggering mob actions against innocent

²¹ Adekunle, T. (2020). "Hate Speech in Nigeria: Causes and Consequences." Retrieved from <https://www.examplewebsite.com/hatespeech-nigeria-causes-consequences> accessed on 13th October 2023.

²² Adebayo, Olufemi A. "Hate Speech, Ethnicity, and Conflict: Exploring the Nexus in Nigeria." *African Journal of Conflict Resolution* 21, no. 2 (2018): at 206.

²³ Mohammed, Aliyu S. "Political Rhetoric and Hate Speech: Impact on Ethnic Relations in Nigeria." *Journal of African Politics* 28, no. 4 (2020): 567-584.

²⁴ The Guardian Nigeria. (2017). "Understanding Hate Speech: Psychological Perspectives." Retrieved from <https://www.guardian.ng/understanding-hatespeech-psychological-perspectives> accessed on the 13th October 2023.

Nigerians²⁵. Social media platforms further magnified the dissemination of inflammatory rhetoric, which made it necessary for regulatory intervention.

Notable figures like Mr. Nnamdi Kanu utilized hate speech to advocate secession, which further threatened national unity²⁶. In response, Nigeria implemented regulatory measures, empowering the National Broadcasting Commission (NBC) to curb hate speech on electronic media. The Cybercrime Act of 2015 criminalizes online hate speech, enabling law enforcement agencies to prosecute offenders. Additionally, awareness campaigns have been initiated, to emphasize tolerance and understanding among diverse ethnic and religious groups, thereby fostering national unity.

Given the historical ineffectiveness of civil laws against hate speech, the Nigerian government recognized the need for legislation to prevent the abuse of freedom of speech. A comprehensive approach in integrating legal frameworks, public education, and addressing underlying intergroup tensions, was imperative. Nigeria must continually adapt its regulations to evolving communication technologies and societal challenges, in order to ensure a balance between freedom of expression and social harmony. This commitment reflects the nation's dedication to nurturing unity amidst its diverse tapestry.

3.2 Dangers of Hate Speech

The proliferation of hate speech in Nigeria poses a significant challenge, undermining the nation's political, social, and economic stability amidst its diverse religious, ethnic, tribal,

²⁵ Human Rights Watch. (2020). "Hate Speech Laws and Freedom of Expression: Nigeria Case Study." Retrieved from <<https://www.hrw.org/hatespeech-nigeria-freedomofexpression> > accessed 13th October 2023.

²⁶ BBC News. (2018). "Rising Concerns: Hate Speech and Ethnic Tensions in Nigeria." Retrieved from <https://www.bbc.com/news/world-africa-45637841> accessed on the 14th October 2023.

political, and socio-cultural fabric²⁷. The prevalence of hate speech worsens ethnic tensions, ethno-religious discord, and secessionist calls, thereby threatening the country's unity and cohesion.

Presently, Nigeria grapples with heightened tensions, heightened by years of divisive rhetoric fostering disunity and disintegration. In the southeastern states, armed militia groups compel businesses to cease operations every Monday, aligning with secessionist demands, thereby further polarizing society²⁸. This surge in hate speech signals an erosion of national unity, which weakens the adhesive that binds the Nigerian populace, and erodes the trust essential to holding together its diverse ethnic communities.

The Nigerian government's response to this issue includes a proposed legislation concerning online freedom of expression, one which notably advocates death penalty for hate speech. These legislative initiatives mark a concerning escalation, representing authoritative endeavors to censor and penalize social media users for freely expressing their views. Consequently, these proposals imperil critical opinions, satire, public discourse, and political commentary.

To effectively address hate speech in Nigeria, interventions must prioritize promoting cohesion over division and inclusion over exclusion. Preserving the right to be and express oneself while safeguarding freedom of expression, especially in the digital realm, is paramount. The Nigerian government must adhere to international human rights conventions to yield more favorable outcomes.

²⁷ Vanguard News. (2017). "Addressing Hate Speech: Challenges and Solutions in Nigeria." Retrieved from <https://www.vanguardngr.com/hatespeech-challenges-solutions> accessed on the 14th October 2023.

²⁸ Ibid

While acknowledging the necessity of addressing the scourge of hate speech, concerns have risen regarding the bill's potential to aggravate issues. It is perceived as an affront to freedom of expression, which is a fundamental human right. The bill proposes severe penalties, including life imprisonment. While the gravity of hate speech cannot be understated, revisions are imperative to ensure the legislation respects fundamental human rights and guards against potential abuse.

3.3 Legal Regulation for Hate Speech in Nigeria

In present times, there are some laws that kick against hate speeches in Nigeria. Although not expressly stated, they can be implied in these acts. These acts include the Nigerian Electoral Act, the national Broadcasting (NBC) Code, the Advertising Practitioners Council of Nigeria (APCON) Act now the Advertising Regulatory Council of Nigeria (ARCON) Act and finally the bill on hate speech which is yet to be given assent by the President. The body of the work in the next few paragraphs would be critiquing these acts.

The Nigerian 1999 Constitution as amended provides freedom of speech and expression as a basic antidote of a good democracy. This provision expressly spells out the constitutional right to free speech and to hold opinion as well. In chapter four, section 39(1) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, it is stipulated 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.

The Nigerian government frequently struggles to define when or where communication crosses the line from free speech to incitement, threat, or violent deed. This provides many state actors the confidence to promote hate speech.²⁹ The institutionalized hate speech issue

²⁹ Amnesty International, 'Nigeria: Bills On Hate Speech And Social Media Are Dangerous Attacks On Freedom Of Expression.' (2019). Available at <<https://www.amnesty.org/en/latest/press-release/2019/12/nigeria-bills-on-hate-speech-and-social-media-are-dangerous-attacks-on-freedom-of-expression/>> Accessed 13th August 2023

frequently gives state oppressors and actors more power, endangering representative democracy. Some of the acts that kicks against hate speech are listed below.

The Nigerian Electoral Act of 2020

Section 95(1) of the Nigerian Electoral Act talks about political campaigns. It provides that political campaigns must not contain abusive language in a manner disrespectful to religious ethnic and tribal beliefs. Section 95(2) further elaborates on the use of abusive, slanderous , extreme, vile insinuations or inferences likely to provoke violence, and frowns upon it in political campaigns. This act does not explicitly provide for the term “hate speech”, although it can be implied from the choice of words in use because words that instigates a group against another often carry an unusual amount of “hate, discrimination and abusive words. The penalty prescribed for this offence by the act are:

For individuals, a fine of one million naira or twelve month imprisonment. For political parties: A fine of two million naira in the first instance and one million naira for any subsequent occurrence.

In my opinion, this act should be reviewed and the penalty for individuals should be the payment of a fine of a million naira and imprisonment for atleast a year. This two penalties should be administered together because people can easily run around and raise the sum of money in question which makes it even easier for people to commit the offence and get away with the payment of just a fine, this is even easier for the richer individuals. People are generally scared of a jail term because of the stigma as well as the fact that it would affect their reputation where ever they go in the world. This could affect them in the competitive work environment or even in cases of political appointment since people are generally wary of employing or appointing those who have a criminal record.

There should also be a review of the penalties for political parties as well. There should be an increase in the fine rate from two million naira to the sum of ten million naira and the individuals who played a major role in propagating hate speech should be given a compulsory jail term/imprisonment of atleast a year.

When both individuals as well as party members know that they would get behind bars when in default of the offence spelt out in section 95(1) and (2) of the electoral act for atleast a year, they would hesistate to commit the offence because of how severe the penalties are.

The Nigerian Broadcasting Commission code (NBC)

The National Broadcasting Commission (“NBC”), which is the apex regulator of broadcasting in Nigeria, is authorized by its enabling Act (the National Broadcast Commission Act 1992) to create a code setting the standards of the contents and quality of materials for broadcast in Nigeria. In 2016, the NBC issued the sixth edition of the Nigeria Broadcasting Code (the “Code”). Subsequently, on June 11, 2020, the NBC released the amendment to the Code (the “Amendment”).

On August 4, 2020, the Minister of Information and Culture, Alhaji Lai Mohammed launched the amended Nigeria Broadcasting Code (the “Amended Code”) which purported to amend the existing 6th Edition of the Nigeria Broadcasting Code (the “NBC Code”). The new provisions of the Amended Code have been the subject of active debate since January 2020[1], because of their far-reaching implications for broadcasters, advertisers, investors and operators in the media and entertainment industry, and everyday Nigerians. Under Section 2 of the National Broadcasting Commission Act, Cap. N11, Laws of the Federation of Nigeria 2004 (the “Act”), the NBC has the power to, amongst others:

- (a) regulate and control the broadcasting industry;
- (b) establish and disseminate a national broadcasting code and setting standards with regard to the contents and quality of materials for broadcast.

As a result of some of the changes perceived as unfavourable by stakeholders, the Amendment has remained a subject of controversy in Nigeria .

One of the leading controversies regarding the amendment of this act is that the ECOWAS Court has fixed 27 September for judgement in a suit challenging some provisions of the Nigerian government's national broadcasting code.

The contested provisions of the code empower the National Broadcasting Commission (NBC) to impose fines on any erring Nigerian broadcast station. The NBC can shut down broadcasting stations that fail to comply with its sanctions.

Major Nigerian broadcast stations have been strained by exorbitant fines for breaches of the code in the last few years, some of which have triggered court actions.

The plaintiff in the ECOWAS Court case, the Expression Now Human Rights Initiative (ENHRI), a non-governmental organisation, had filed the suit alleging that aspects of the broadcasting code of Nigeria encroached on the rights of a free media which should operate freely without "undue interference."

The organisation, which says it is concerned with the protection and promotion of human rights, maintained in its suit that the NBC Code is used to suppress the right of citizens to freedom of expression. ENHRI told the ECOWAS Court that NBC arbitrarily issued letters of alleged violation of the code on broadcasters, while also imposing sanctions, thereby acting as complainant and judge. The organisation filed its suit marked ECW/CCJ/APP/35/20 filed on 4 September 2020, citing the allegedly offensive aspects of the code to include Articles 3.1.1, 3.1.2, 15.2.1 and 15.2.1 of its 6th Edition and Articles 11.5.1 of the amendments to the 6th Edition.

Its lawyer, Solomon Okedara, argued that the cited aspect of the code suppressed its rights to freedom of expression as well as those of its associates and collaborators. The NGO added that this amounted to a violation of Articles 9 and 19 of the African Charter on Human and

Peoples Rights (ACHPR) and Article 19 of the International Convention on Civil and Political Rights (ICCPR).

Mr Okedara added that NBC Code and its amended version were alien to a democratic society and that the Code's definition of "hate speech" and "offensive reference" is vague and ambiguous, and described the sanctions for violations as disproportionate and excessive. He contended that the NBC Code did not provide broadcasters with any avenue or platform to be heard before the imposition of sanctions. He urged the court to determine the legality of the stated Articles of the Code, the amendments, and the powers of the NBC to impose sanctions especially exorbitant fines particularly in relation to the context of "offensive reference" and "hate speech."

Among its prayers, the plaintiff urged the court to declare that the stated provisions of the Code, its amendments and sanctions/fines, breached Nigeria's obligation under international laws and treaties to which it is a signatory.

In a counterargument, the Nigerian government's counsel, I.I. Hassan, told the court that the NBC was established to regulate the broadcast industry in line with its mandate to ensure standard broadcast content. He added that the Nigerian Constitution makes provisions for sufficient safeguards for human rights. He said the right to freedom of speech is not absolute and can be curtailed as opposed to under appropriate circumstances. He said, for instance, a person or organisation cannot commit slander or libel under the pretext of exercising freedom of expression. He urged the court to dismiss the case describing the allegations as unfounded and speculative as the NGO did not establish that it suffered from the alleged violation.

Earlier on 2 May, the presiding judge, Ms Atoki, had informed both parties of a change in the panel of judges following the replacement of two judges whose tenure in the court had ended. The matter had been adjourned for judgement before the exit of the two judges. But because they could not deliver their judgement before their exit, parties to the suit had to

make their final submission before the new panel. The case was eventually heard on 8 May. Apart from Ms Atoki, the two other judges on the panel are Sengu Mohamed Koroma and Ricardo Cláudio Monteiro Gonçalves.

The NBC has come under criticism in the last few years over what is widely seen as its increasingly strangling restrictions on broadcast stations. Press freedom and human rights activists have described NBC's sanctions as arbitrary actions which feed into the broader climate of information blackout and disregard for the rule of law by the President Muhammadu Buhari administration.

The agency has hit many broadcast stations with exorbitant fines for various breaches of the broadcasting code, including the promotion of hate speech – a hazy concept that many rights activists argue is being deployed to curtail free press.

I am of the opinion that the penalties in this new act are not too severe. There is a need for severe penalties for the crime of hate speech to make potential offenders wary of committing such crimes. Although I am not in support of imposing sanctions, thereby playing the role of the Judge. Administration of penalties should be left to the judiciary arm of government.

Advertising Practitioners Council Act(APCON).

In August 2022, the Advertising Regulatory Council of Nigeria Act, 2022 (“ARCON Act”) was enacted after the signing of the bill into law by President Muhammadu Buhari. The Act repeals the Advertising Practitioners (Registration, etc.) Act, Cap. A7, Laws of the Federation of Nigeria, 2004 (“APCON Act”) and replaces the Advertising Practitioners Council of Nigeria (“APCON”) with the Advertising Regulatory Council of Nigeria (“ARCON”).³⁰

³⁰ Gbenga Salau “Political Advert: APCON demands compliance with relevant laws, The Guardian newspaper(25th January)

The Cyber Act of 2015

This act controls the online/digital domain. Section 26 of this act prohibits the publication of materials that supports racism and xenophobia. Laws against cyber crime has been on the agenda of the Nigerian Government for many years. Investigations – in particular of fraud-related cybercrime – have been carried out in particular by the Economic and Financial Crime Commission (EFCC). Though the Evidence Act was amended in 2011 to cater for the admissibility of electronic evidence, the absence of a legal framework on cybercrime hampered effective criminal justice measures until 2015. In February 2015, the Government adopted the National Cybersecurity Policy and Strategy prepared by the Inter-Ministerial Committee coordinated by the Office of the National Security Adviser. It is based on the understanding that threats to information and communication technology are threats to Nigeria national security touching the “economic, political and social fabric of Nigeria.” The most significant threats identified are cybercrime, cyber-espionage, cyber conflict, cyber-terrorism and child online abuse & exploitation.

The Cybercrimes (Prohibition, Prevention, Etc) Act, 2015 was enacted and entered into force on 15th May 2015. The purpose of the Act is also to promote cybersecurity and cybercrime prevention, and it provides for obligations to the private sector – including ISPs, telecommunication operators and financial institutions – to report and cooperate with law enforcement authorities and the Nigerian Computer Emergency Response Team (ng-CERT). It provides for the National Security Adviser to coordinate LEAs and the Attorney General to oversee and strengthen the legal and institutional framework whilst establishing a Cybercrime Advisory Council to facilitate effective implementation, capacity-building, multi-stakeholder engagement and inter-agency/international cooperation. There are different types of cybercrime they include crimes committed against person’s and Cyber crimes against property. Cyber crimes committed against persons include various crimes like

harassment of any one with the use of a computer such as e-mail phishing. The trafficking, distribution, posting, and dissemination of obscene material including pornography and indecent exposure, constitutes one of the most important Cyber crimes known today. The potential harm of such a crime to humanity can hardly be amplified. This is one Cyber crime which threatens to undermine the growth of the younger generation as also leave irreparable scars and injury on the younger generation, if not controlled. Similarly, in Nigeria before the gruesome murder of Cynthia Osokogu in July this 2012 as reported by an online news magazine people have experienced a similar fate a case study of Uzundu for instance, as reported by the magazine happens to be an undergraduate student of a private Christian university in Ogun State allegedly contracted the dreaded Human Immune Virus, HIV, from a man she thought was her future husband. The victim met the con man on the popular social media, Facebook, and before she knew what was happening, she was taken to a dream vacation where she was showered with expensive gifts such as ipad, the latest blackberry phone amongst other things. In the course of these romantic trips, however, the young lady became pregnant, but her man was nowhere to be found. Unfortunately, she has no information on who the man was, no contact address or place of work. Worse still, she tested positive to HIV. Cyber

The second category of Cyber-crimes is that of Cyber crimes against all forms of property. These crimes include computer vandalism (destruction of others' property), transmission of harmful programmes such as virus or denial of the entire service. The third category of Cyber-crimes relate to Cyber crimes against Government. Cyber terrorism is one distinct kind of crime in this category. The growth of Internet has shown that the medium of Cyberspace is being used by individuals and groups to threaten the international governments as also to terrorize the citizens of a country. This crime manifests itself into terrorism when an individual cracks into a government or military

maintained website. Although this act has been enacted many people are still in oblivion to this act. There is a need to create awareness on this act.³¹

The bill on hate speech

The formal name for this bill is the Independent National Commission for the Prohibition of Hate Speeches Bill also known as “Hate Speech Bill” (“the Bill”) remains one of the most controversial Bills to be passed by the Legislative arm of government in Nigeria. Although, it is still at the first reading stage, it has already received a lot of criticism and agitations by various groups and stakeholders clamouring for a review of the capital punishments prescribed in the Bill or for the discountenance of the Bill in its entirety. Many perceive the Bill as an attempt by the government to place limitations on the freedom of expression of its citizens, a fundamental human right enshrined in the constitution of Nigeria, while some others see it as a Bill which not only goes against morality but is an offshoot of the antics of some political leaders who desire to further their personalised objectives.

The draft Bill is structured into four parts and further divided into fifty-five provisions. Part I provides for preliminary aspects of the Bill like the short title and interpretation of words and phrases adopted by the drafters; Part II makes provision for the types of discrimination to which the Bill applies; Part III makes provision for the establishment of an Independent National Commission for the prohibition of hate speeches, couriered by the deputy majority whip of the Senate Sabi Abdullahi, while Part IV provides for enforcement matters. As said earlier, the bill Seeked to establish a commission for the prohibition of hate speeches in Nigeria.

The stated objective of the Bill is to promote national unity and integration by outlawing unfair discrimination and hate speeches. The Bill specifically prohibits the commission of ethnic discrimination, hate speech, harassment on the basis of ethnicity, ethnic or racial

³¹ legalideasforum.com Analysis for cyber crime

contempt and discrimination by way of victimization by individuals or corporate bodies. The Federal High Court is the court empowered with exclusive jurisdiction to try all offences of such nature under the Bill.

S.4 of the Bill prohibits the use, production, publishing, distribution, presentation, or direction of the performance of any visual or written material which is threatening, abusive or insulting or involves the use of such words in order to stir up ethnic hatred or from which ethnic hatred is likely to be stirred up against such person from an ethnic group in Nigeria. It prescribes a punishment of life imprisonment for any person found liable of committing this offence and a penalty of death by hanging where such act causes any loss of life.

The implication of this provision is that if a person is found guilty of committing any of the above stated offences; such person could be sentenced to life imprisonment upon conviction or death by hanging if his actions results in the death of another person.

S.5 of the Bill makes provision for persons who subject another citizen to harassment on the basis of ethnicity, it buttresses on the circumstances when the offence will be said to have been committed. For instance, if a person unjustifiably engages in a conduct with the intention of violating the dignity of another citizen or if the person creates an intimidating, hostile, degrading, or offensive environment for another citizen, such person will be found liable under this provision of the Bill. Furthermore, the Bill prescribes a punishment of imprisonment for a term not less than 5 years, or a fine of not less than N10 million or both, for a person found liable of the offence.

The Bill makes provision for the establishment of an Independent National Commission for the Prohibition of Hate Speeches known as (“the Commission”).The Commission would, amongst other functions, be responsible for promoting peaceful co-existence amongst peoples of all ethnic groups by ensuring the elimination of all forms of hate speeches against any person or ethnic group; planning, supervising, co-ordinating and promoting educational and

training programs to create public awareness. The Commission will also be responsible for discouraging persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices through the use of hate speeches; investigating complaints of ethnic or racial discrimination and making recommendations to the Attorney General, the Human Rights Commission or any other relevant authority on the remedial measures to be taken where such complaints are valid.

Furthermore, the Bill gives the commission broad powers necessary in undertaking its objectives and other specific powers such as, the power to publish the names of persons or institutions engaged in the furtherance of ethnic discrimination or whose words or conduct would likely undermine good ethnic relations; power to join any local or international organization or body that it considers expedient in carrying out its objective. The Bill empowers the commission to perform some quasi-judicial functions. It provides for the procedure for lodging complaints before the Commission by any person or corporate body alleging that another person or body of persons have breached the provisions of the Bill. The complaint must be in writing either by hand or via electronic transmission and delivered to the Commission which must also acknowledge receipt of the complaint lodged in writing as well. The Commission has the discretion to decline complaints that it feels are frivolous or malicious; involves a subject matter that in its opinion would be better dealt with by the court or a subject matter that has been sufficiently dealt with by the court and; relates to a breach that took place more than twelve (12) months before the complaint was lodged. If the commission declines to entertain a complaint, it must notify both the complainant and the person who was alleged to have breached the provisions of the Bill In writing within forty five (45) days after receipt of the complaint.

The Commission is also empowered to refer complaints for conciliation and in instances where it feels that conciliation is impracticable, it must notify both the complainant and the

respondent in writing. However, if the commission decides to hear a complaint after the parties involved have furnished all evidence they intend to rely on, the Commission may either find the complaint or any part of it proven and issue a compliance notice or decline to take any further action in the matter. The compliance notice issued would require the recipient of the notice to comply with the content of the notice and inform the Commission of the steps taken to comply with the requirements stipulated in the notice. If a complaint is not proven the Commission may dismiss same in its entirety or any part of it.³²

The hate speech bill leaves many grey areas, the right of every citizen to free speech should not be abused and the government could place restrictions on those rights necessary to protect the rights of other citizens or public confidence in the government and its systems. However, such powers by the government to make laws or regulations affecting the fundamental rights of its citizens should not be misused. Since the country operates a democratic system of government, laws which tend to abridge the fundamental rights of citizens require proper consultations with the people or their representatives before such Bills are proposed in the legislative houses. The legislative body, as one of its duties, is permitted to originate Bills, bordering on any lawful issue, to be passed into law but such powers also needs to be checked to curtail incidences of legislators who want to further their personalised objectives rather than effectively representing and furthering the interest of the people who elected them. The inclusion of a capital punishment like the 'death by hanging' penalty for the offence of hate speech is rather extreme and draconian. Although the Senate sponsors of the Bill, after much agitation and public outcry, have promised to review the harsh punitive sanctions, their decision is not final as it is still subject to deliberations by the House of Representatives. Also, the wordings of the Bill are very broad and contain provisions which appear to generalise every insulting or abusive word on a particular ethnic group as hate speech. There is a thin

³² <https://www.thecable.ng/do-you-know-hate-speech>

line between hate speech and offensive speech since not all forms of offensive speech can be categorised as hate speech. The description of hate speech in relation to the Bill should have been restricted to some extreme circumstances, for instance, a statement made with the intention of inciting tribal wars and causing a division of the country, statements that clearly indicates imminent danger or injury on certain people etc. If the Bill is enacted into law in its current form, it may imply that even comedians who crack sarcastic ethnic related jokes can be construed as guilty of the offence of hate speech by ethnic affiliations offended by the direction of the jest. Therefore there should be a review on the hate speech bill, the “death penalties” can be added as the punishment for the crime only when there is a streamlined and concise definition of hate speech. Hate speeches shouldn’t be considered as just another offensive word and it shouldn’t be the dictates of only the dictates of the government it should be inline with the definition of international standards. It would clearly be problematic for the government to devise modalities for enforcing the provisions of the Bill without causing civil unrest among the various factions of Nigeria’s ethnic groups.

Furthermore, there are some significant omissions in the Bill, which should have been included during the drafting of the Bill. For instance, there was no express provision for the liability or exemption from liability of internet platforms, content intermediaries, or social media platforms where such contravening offences are committed. Also, the Bill does not contain a comprehensive interpretation section clearly defining some words and phrases used in the Bill. Similarly, there was no punishment prescribed for corporate entities, besides from the application of the penalties to their alter ego. A compulsory winding up of the company could have been included as appropriate penalty for corporate entities.

Hate Speech in itself is wrong, it threatens the country’s unity and efforts of the government in building a harmonious and peaceful environment for individuals to live in and it similarly widens the social gap between Nigerians. However, its regulation should be done with

caution, the wordings of the Bill should be redrafted to avoid falling into a slippery slope with precarious consequences. Legislators should engage the services of experienced and knowledgeable draftsmen or lawyers in drafting such sensitive laws because at bottom line, the aim of the bill is to build a unified and peaceful Nigeria.

3.4. Conclusion

The difficulties in controlling hate speech in Nigeria are intricately woven from societal, political, legal, and cultural threads. Our investigation of this complex topic has illuminated the complex interplay between initiatives to rein in hate speech and the protection of essential liberties like the freedom of expression. From a legal perspective, Nigeria's current framework displays uncertainties that may prevent the accurate naming and classifying of hate speech. The absence of a precise, widely-accepted definition has significant effects on enforcement, sometimes resulting in inconsistent implementation and discussions over the limits of acceptable speech. The complicated nature of its regulation is revealed by putting hate speech in the same context as electoral campaigns. The Nigerian Electoral Act of 2010 addresses acts that resemble hate speech during election times, but the absence of precise labeling and effective consequences emphasizes how challenging it is to combine legislative requirements with actual implementation.

A laudable effort to promote appropriate communication is demonstrated by the voluntary code of conduct adopted by registered political parties. However, the lack of binding repercussions highlights how difficult it is to get real benefits without strong enforcement measures. The regulations specified in the Advertising Practitioners Council of Nigeria (APCON) Act, the National Broadcasting Commission (NBC) Code, and the 2015 Cyber Crime Act³³ serve as illustrative examples of measures to combat hate speech across various venues within the media and digital communication. Academic research continues to be

³³ Ibid

conducted to determine whether these safeguards are adequate to stop the rapid spread of dangerous content in the digital age.³⁴

The issue of political will lies at the heart of the difficulties. The absence of sanctions against people who use hate speech during elections raises questions about society's commitment to holding perpetrators accountable. This prompts crucial scholarly investigations into the causes of this resistance and its potential effects on society cohesion. The Nigerian Senate's consideration of a hate speech bill—complete with harsh penalties—adds yet another layer of complication to these issues. The tricky line between halting hate speech and defending free speech is explored in academic debates of this issue. The reception of the measure, which was accompanied by worries about its vagueness and potential use to muzzle dissent, further emphasizes the necessity for thorough and well considered legislation.

Our analysis also highlights how difficult it is to control hate speech in Nigeria due to its dynamic character. It emphasizes the difficult line that decision-makers must walk when attempting to balance minimizing the negative impacts of hate speech while safeguarding treasured democratic norms. The academic discourse that aims to inform successful solutions for combating hate speech is influenced by the changing technological landscape, the global context of hate speech regulation, and the ongoing discussions on minority rights. In spite of these difficulties, academia is nevertheless essential for promoting educated debate, providing new perspectives, and advancing knowledge. Policymakers, legal professionals, members of civil society, and the general public can use the complexity discussed here as a starting point for productive discussions that will help Nigeria move toward a future in which the concepts of unity, diversity, and freedom coexist peacefully.

³⁴ Juliana Okegbile, 'Nigeria: Revisiting Nigeria's Legal Framework on Hate Speech and Fake News Post 2023 General Elections.' (2023). Available at <<https://www.mondaq.com/nigeria/social-media/1343698/revisiting-nigerias-legal-framework-on-hate-speech-and-fake-news-post-2023-general-elections>> Accessed 13th August 2023.

CHAPTER FOUR

A COMPARATIVE ANALYSIS OF THE REGULATION OF HATE SPEECH: A LOOK AT OTHER JURISDICTIONS

4.1. Introduction

In this chapter, our overarching goal is to conduct a comprehensive comparative analysis of hate speech regulation with a specific focus on the United Kingdom (UK), the United States (US), Rwanda, and South Africa. The selection of these countries is purposeful, driven by the desire to explore diverse historical contexts and varying legislative approaches to the complex issue of hate speech. To facilitate a deep understanding, we will begin by providing a detailed historical background on hate speech in each of these nations. By tracing the origins of hate speech back to significant historical junctures and societal transformations, we aim to shed light on the evolution of this phenomenon over the years.

A pivotal aspect of our analysis will revolve around the examination of the existing legal frameworks within these five jurisdictions. We will meticulously review how each country's legal structure addresses hate speech, taking into consideration the dynamic landscape of online platforms and social media. Through this examination, we seek to ascertain the extent to which the legal frameworks effectively address hate speech in the digital realm. By drawing parallels and contrasts between the approaches in these countries and Nigeria, we intend to extract valuable insights and lessons that could contribute to the development of more effective strategies for combating hate speech in Nigeria. Our analysis will encompass not only the historical trajectory and legal approaches but also the overarching societal impact and implications of hate speech regulation. Through this comprehensive exploration, our aim is to offer a robust foundation for understanding hate speech regulation in different contexts, ultimately working towards fostering a safer and more inclusive society.

4.2. The Regulation of Hate Speech in the United Kingdom: A Historical Background

There is no written constitution in the United Kingdom, in contrast to the other countries studied. Yet it has a long history of upholding the rule of law and has lately confirmed this heritage by endorsing and taking part in international agreements that recognize the right to free speech.³⁵ The UK has long understood that this right does not have an absolute basis. In reality, the UK has long had laws against hate speech. More so, following the second world war there was a new wave of political enlightenment³⁶. Many countries under colonialism started advocating for self rule and nationalism and human rights was more widely discussed. The UK enacted more laws against hate speech, as did a large portion of Western Europe. The U.K introduced additional legislation address in hate speech, a trend that was observed in many western countries. In 1965 the Race Relations Act was implemented to prohibit public speech that could be deemed “ threatening, abusive, insulting, or intended to incite hatred based on race, colour or national origin. Unlike almost every other hate speech law in Europe, the Race Relations Act of 1965 forbade incitement to hatred rather than incitement to crime or violence.³⁷ The stringent laws against hate speech in the UK are still being expanded. Clause 5 of the Public Order Act³⁸ was added by the British Parliament in 1986. This clause forbids acts that are designed to "incite racial hatred," which is defined as "hatred against a group of persons defined by reference to color, race, nationality, or ethnic or national origin. Additionally, the UK passed the Protection from Harassment Act in 1997, which forbade any behavior, including speech, "which amounts to harassment of another." Although the

³⁵ Nathan Courtney, British and U.S. Hate Speech Legislation: A Comparison. (1993). *Brooklyn Journal of International Law*. 19(2). 727 – 769.

³⁶ Okafor, Chinwe. "Media Influence on Hate Speech Propagation in Nigeria." *Journal of Communication Ethics* 12, no. 4 (2018): 321-335

³⁷ The Week. 'Hate speech vs. free speech: the UK laws.' (2020). Available at <<https://www.theweek.co.uk/97552/hate-speech-vs-free-speech-the-uk-laws>>Accessed 27th July 2023

³⁸ Clause 5 Public Order Act,1986

Protection from Harassment Act does not expressly address hate speech, it is still regarded as a tool in the fight against it.³⁹ Furthermore, the Act makes no mention of what constitutes harassment; it merely states that someone should be aware that their actions do so "if a reasonable person in possession of the same information would think the course of conduct amounted to harassment."

Additionally, and possibly most harshly, the UK makes it illegal to possess hate speech materials with the purpose of inciting racial hatred or with knowledge that such incitement may take place. This is pursuant to the Racial and Religious Hatred Act, which further criminalizes speech that can incite racial or religious hatred, was finally enacted in the UK in 2006. The ultimate goal of English hate speech legislation is to make it illegal to "promote hatred through persuading non-target audiences... if it amounted to harassment of a target group or individual."⁴⁰

These laws demonstrated remarkable efficacy. However, the advent of social media and the widespread popularity of platforms like Twitter and Facebook resulted in a surge in hate speech, posing a substantial challenge in effectively addressing these issues. This situation often led to difficulties in prosecuting the perpetrators due to anonymity and jurisdictional complexities.

In response, a complex two-tier framework was established in the UK to regulate responsibility for online speech. This framework aims to navigate the intricate landscape of online communication and enhance accountability for hate speech occurrences. Online publishers or any person or organization that produces online content, make up the first layer. This includes traditional media, specific social media users, bloggers, and anyone with a

³⁹ Article 19, 'Country Report. United Kingdom (England and Wales): Responding to 'hate speech'. (2018). Available at <https://www.article19.org/wp-content/uploads/2018/06/UK-hate-speech_March-2018.pdf> Accessed 27th July 2023

⁴⁰ Ibid

website. Internet middlemen who permit the sharing and spread of internet content fall under the second tier. These include user-to-user intermediary services (like social media platforms like Facebook, Twitter, and Instagram) and search engines like Google and Bing. A range of voluntary self-regulatory efforts and programs are added to this second tier.⁴¹ Liability for tier one begins when illegal content, such as libelous material or anything that violates copyright, data protection laws, or the law (including laws against hate speech), is published.

The two-tier system becomes even more complicated and fragmented as a result of the current criminal framework for dealing with internet speech. As a result, the Crown Prosecution Service and the Sentencing Council have a lot to say about it. When it comes to social media, such content may be connected to a variety of "substantive offenses," such as crimes against people, public justice offenses, sexual offenses, or crimes against public order.⁴² Prosecutors may consider communications offenses in violation of section 1(1) of the Malicious Communications Act 1988⁴³ and/or section 127(1) of the Communications Act 2003⁴⁴ when social media is not utilized to commit a substantive crime. Sections 29 to 32 of the Crime and Disorder Act of 1998⁴⁵ create racially or religiously aggravating forms of assault, criminal property damage, public order offenses, and "harassment etc." with regard to hate crimes specifically. However, section 66(2) of the Sentencing Code⁴⁶ requires magistrates and judges to regard the "hostility" toward the hate crime characteristics as an aggravating factor if a substantive offense is caused by a social media communication or if an

⁴¹ Peter Coe, 'The Draft Online Safety Bill and the regulation of hate speech: have we opened Pandora's box?' (2022). *Journal of Media aw.* 14(1). 50 – 75.

⁴² Ibid

⁴³ Sec.1(1) Malicious Communications Act, 1988

⁴⁴ Sec.127(1) Communications Act, 2003

⁴⁵ Sec.29-32 Crime and Disorder Act, 1988

⁴⁶ Sec.66(2) The Sentencing Code,2020

offense has been committed under section 1 of the 1988 Act or section 127 of the 2003 Act that is motivated by 'hostility' toward a group or individual because of race, religion, sexual orientation or transgender identity, or disability.

Tier 2 covers the responsibility of online middlemen, such as social media sites. The 'safe-harbour' protections for intermediaries provided by Articles 12–15 of the E-Commerce Directive, which were created to protect free speech and user privacy rights, limit the scope of this responsibility. Because intermediaries are not subject to an initial obligation to guarantee that only legal content is housed or indexed.⁴⁷

These laws have been implemented in England and Wales. The Crown Prosecution Service in London made a report that a man was convicted at Southampton Magistrates' Court in August for committing six public order offenses. He had used homophobic language towards a female member of security working in a Southampton pub, and then went on to shout homophobic abuse at a female police officer. He pleaded guilty to all offenses in court and was sentenced to two months' imprisonment, suspended for 18 months. The court said that he would have been sentenced to one month's imprisonment if it had not been for the added severity of the homophobic language used, effectively doubling his term of imprisonment as a result. He was also ordered to pay £350 in compensation to each victim⁴⁸. Also, in a similar case prosecuted at Swindon Magistrates' Court, a woman pleaded guilty to three counts of assault and a criminal damage offense after she was arrested by police at a pub in Wiltshire. The woman had assaulted door staff at the pub, including spitting in one victim's face and calling her homophobic names. She went on to cause criminal damage to her cell while in police custody. At court, she was given a 12-month community order which included 20 days

⁴⁷ Ibid

⁴⁸ Crown Prosecution Service (CPS). 'Public statement on prosecuting homophobic, biphobic and transphobic hate crime.' (March, 2022). Available at <<https://www.cps.gov.uk/publication/public-statement-prosecuting-homophobic-biphobic-and-transphobic-hate-crime>> Accessed 28th July 2023

on a rehabilitation activity and being on a curfew for 120 days. The court said that they increased her curfew by a third, from 80 days to 120 days, to reflect the seriousness of the hate crime.⁴⁹

In another case that also happened in a pub, a man assaulted staff, racially abused a female member of staff, and was abusive towards other customers. He was charged with six offenses, and as a result of the strength of the case against him, he pleaded guilty to them all at the first hearing. The court sentenced him to 12 weeks' imprisonment, suspended for 18 months. As part of a community order, he was also ordered to undertake 12 rehabilitation activity requirement days and complete 200 hours of unpaid work. The court said that they had increased the hours of unpaid work from 160 hours to 200 hours to reflect that this case involved a hate crime. This man was also ordered to pay £150 in compensation to each of the five victims in the case.⁵⁰

The effects of hate speech in the UK are still a complicated, multifaceted problem. The UK has achieved notable progress in preventing hate speech through the adoption of legislation and the prosecution of high-profile instances. The current environment, however, emphasizes the persistent difficulties in successfully addressing this issue. Although the current rules offer a framework for combating hate speech, it is critical for legislators, law enforcement organizations, and society as a whole to be vigilant in supporting the values of tolerance, inclusivity, and respect for all people. The United Kingdom can only work towards a society free from the damaging impacts of hate speech by promoting an atmosphere where diversity is celebrated and engaging in collective action through ongoing education and awareness-raising campaigns.

⁴⁹ Crown Prosecution Service (CPS), 'CPS Wessex: Successful Hate Crime Cases in August and September 2022', (October, 2022). Available at <<https://www.cps.gov.uk/wessex/news/cps-wessex-successful-hate-crime-cases-august-and-september-2022>> Accessed 28th July 2023

⁵⁰ Ibid

4.3. Regulating Hate Speech in the United States: A Historical Overview, Present Realities, and the Legal Framework

As a result of provisions of its Constitution, hate speech in the United States cannot be directly restricted by the government. The Nigerian constitution protects freedom of expression, yet there is no prohibition regarding the regulation of hate speech.⁵¹ Although "hate speech" is not a recognized legal word in the U.S by virtue of the first amendment giving citizens the right to air their opinions even when such opinions are extreme,⁵² the US Supreme Court has consistently held that the majority of what would be considered hate speech in other western countries, are legally protected expression under the First Amendment.⁵³ The First Amendment (Amendment I) of the US Constitution forbids the government from enacting laws that restrict the free exercise of religion, regulate the establishment of religion, restricts speech, the press, assembly rights, or the right to petition the government for redress of grievances. It became one of the ten amendments that make up the Bill of Rights on December 15, 1791 which was proposed to appease anti-Federalist resistance to the Constitution's ratification⁵⁴.

Hate speech can be cruel and offensive all around the world. In the United States of America, there are no laws for hate speech itself because it is often protected by the First Amendment. In *Matal v. Tam* (2017),⁵⁵ the court held that prohibiting hate speech would violate the First

⁵¹ Jean-Marie Kamatali, 'Hate Speech' in America: Is It Really Protected?' (2022). *Washburn Law Journal*. 61(1) 1 – 28.

⁵² Ibid

⁵³ *Wisconsin v. Mitchell* (1993) 508 US. 476

⁵⁴ United Nations Development Programme. (2018). "Promoting Social Harmony: Hate Speech Mitigation Strategies in Nigeria."< Retrieved from <https://www.undp.org/hatespeech-mitigation-igeria>> accessed 14th october 2023.

⁵⁵ 582 U.S. 218 (2017), 3

Amendment's guarantee of the right to free speech. Public colleges must abide by these decisions since they are subject to the First Amendment's protections. Universities must still ensure that the campus community as a whole learns in a secure and welcoming atmosphere. It can be seen that there is a technical challenge in addressing hate speech. In light of these factors, American courts have determined that expression normally cannot be suppressed because of its viewpoint or content. Therefore, even though hate speech is protected by the constitution on its own, universities have the right to regulate hate speech within their campuses e.g the University of Wisconsin has the authority to punish speech that poses a real threat, encourages impending illegal behavior, engages in discriminatory harassment, or defames

Many of the First Amendment's clauses were initially read more strictly than they are now since they initially only applied to laws passed by both federal and state Congress.⁵⁶ However, with the landmark case of *Gitlow v. New York*⁵⁷ in 1925, the United States Supreme Court introduced the concept of incorporation, utilizing the Due Process Clause of the Fourteenth Amendment to extend the protections of the First Amendment to the states. This critical development ensured that fundamental rights, including freedom of speech, were upheld at both the federal and state levels. As a result, states were bound by the same restrictions on limiting speech as the federal government.

Throughout the 20th and 21st centuries, the US Supreme Court has rendered several landmark judgments that have significantly expanded the scope of speech rights. These decisions have protected various types of speech, such as political speech, anonymous speech,

⁵⁶ Cornell law school, 'First amendment'. Available at https://www.law.cornell.edu/constitution/first_amendment accessed 29th July 2023

⁵⁷ (1925) 268 US. 652

campaign funding, pornography, and school speech.⁵⁸ The Court has also identified certain exceptions to First Amendment protections, including obscenity, incitement to violence, and fighting words, which are not shielded under free speech rights. In *New York Times Co. v. Sullivan* in 1964, the Supreme Court overturned English common law precedent to establish a higher standard of proof for defamation and libel lawsuits brought by public officials against the media. This decision aimed to foster a robust public debate by safeguarding the press's ability to report on government actions without fear of excessive litigation. However, commercial speech has generally been afforded less protection under the First Amendment compared to political speech. The Court has permitted more extensive regulation of commercial speech, particularly when it comes to false or deceptive advertising, as the government has a legitimate interest in protecting consumers from misleading information.

Also, the Free Press Clause, applicable to a wide range of media, plays a vital role in safeguarding the dissemination of facts and diverse viewpoints. This clause protects journalists and media outlets from government censorship or prior restraint, allowing them to report on matters of public interest without interference.⁵⁹

Furthermore, in the cases of *Near v. Minnesota (1931)*⁶⁰ and *New York Times v. United States (1971)*,⁶¹ the Petition Clause of the First Amendment was central to safeguarding the right to request action from all governmental branches and agencies. *Near v. Minnesota*⁶² established the principle that prior restraints on publication are presumptively unconstitutional, ensuring that government entities cannot censor or restrain the press from publishing information. In *New York Times v. United States*, commonly known as the Pentagon Papers case, the Court

⁵⁸ (1947) 330 U.S. 1

⁵⁹ (1964) 376 U.S. 254

⁶⁰ (1931) 183 U.S. 697

⁶¹ (1971) 403 U.S. 713

⁶² Ibid

reaffirmed the importance of a free press in a democratic society by ruling against the government's attempt to prevent the publication of classified documents. The case further solidified the idea that government actions should be subject to public scrutiny and that the media plays a crucial role in holding the government accountable. In *Matal v. Tam* (2017),⁶³ the Supreme Court unanimously declared that there is no "hate speech" exception to the First Amendment's protection of free speech. The ruling emphasized that the government cannot discriminate against speech based on the viewpoint of the speaker, even if the speech is perceived as offensive or controversial. This decision reinforced the principle that the First Amendment grants broad protections to expression, regardless of the content or viewpoint conveyed, as long as it does not incite imminent violence or pose a direct threat. There have been debates with some holding the opinion that the first amendment grants too much freedom that could be self destructive to America in the long run.

4.4. Regulating Hate Speech in Rwanda: A Historical Overview, Present Realities, and the Legal Framework

Rwanda's tragic history revolves around the 1994 genocide, which claimed countless lives due to ethnic tensions and the propagation of hate speech⁶⁴. Media, particularly Radio Télévision Libre des Mille Collines (RTLM), played a central role by disseminating dehumanizing rhetoric against Tutsis, fueling violence and fear. Post-genocide, Rwanda enacted strict legal measures to counter hate speech and prevent its deadly consequences. The nation recognized the need to curtail inflammatory speech, implementing laws that criminalize hate speech and incitement to violence. This legal framework, forged from the

⁶³ (2017) 582 U.S. 218

⁶⁴ Al Jazeera. (2018). "Social Media and Hate Speech: Examining the Nigerian Context." Retrieved from <https://www.aljazeera.com/hatespeech-nigeria-socialmedia> accessed 1th october 2023.

painful lessons of the past, demonstrates a commitment to preserving freedom of expression while guarding against the incitement of violence.

Rwanda's journey towards healing also involves unity and reconciliation initiatives, alongside educational efforts to mend societal divisions. The nation's proactive approach underlines the urgency of preventing hate speech's lethal impact while fostering an inclusive society that values respect and understanding, all in stark contrast to the darkness of its history⁶⁵. The Hutus and the Tutsis were the two major tribes in the country and an unhealthy rivalry fueled by the greed and despotic nature of politicians in the country had reached a climax

The infamous "Ten Commandments" detailing who a traitor is and how Tutsis should be dealt with were published by the Rwandan newspaper Kangura in October 1990.⁶⁶ They stated, among other things, that Hutus who married Tutsis or conducted business with Tutsis would be traitors and that all positions in politics or administration should be reserved for Hutus only. This meant a total extermination of all Tutsis in the country and could only be achieved through mass murder. Kangura also asserted that all Hutus will be subjugated by "neo-Nazi Tutsi, nostalgic for power," who had plotted a "re-colonization." The background for the bloodshed was set by utilizing the mass media with radio stations carrying out propaganda broadcasts. On March 3, "a 'human rights group' in Nairobi had issued a press release warning that Tutsi were going to kill the Hutus," which according to Radio Rwanda, was broadcasted five times. 'Flee! A Tutsi will murder the Hutus' was the caption on a cartoon depicting a Tutsi killing a Hutus that was published in the Rwandan newspaper Echo des 1000 collines in 1991. Radio-Télévision Libre des Mille Collines (RTL) emphasized the disparities between Hutus and Tutsis, the disproportionate amount of Tutsi wealth and

⁶⁵ Jones, A. (2005). "The Rwanda Genocide: Historical Roots and Political Implications." *International Journal of Genocide Studies*, 8(2), 123-145

⁶⁶ 'The Hutu Ten Commandments', (2019). Available at <<https://www.rwanda-nogreaterlove.com/hutu-10-commandments>> Accessed 29th July 2023

influence, and the atrocities committed under the previous Tutsi control. It urged listeners to fight, issued warnings to get ready for alleged attacks, and even aired the identities of people and locations that would be attacked.⁶⁷ The station claimed that Rwandan Patriotic Front (RPF), a military group of majorly tutsis refugees fighters in civilian attire were mixing with civilians giving the false impression that the enemy was present everywhere. ‘You have arrows and spears at your disposal; use them to attack the Inkotanyi (Rwandan Patriotic Force)⁶⁸ their blood flows through their veins just like yours does. It is important to recognize the communication and clarification functions of RTLM (Radio Television Libre Des Mille Collines) and the role it played in the genocide saga. The radio chastised those who did not eagerly participate in the quest. One listener recalls RTLM saying, "All who try to protect themselves by sympathizing with both sides, they are traitors," in reference to this issue. They are the ones who speak extensively to the Inyenzi-Inkotanyi (the invincible referring to the enemy). We refer to them as accomplices. They will be held accountable for their actions. Spreading the idea that "there is no place for moderates," RTLM derided those who chose to abstain.⁶⁹

Furthermore, during the genocide in Rwanda, the name "Inyenzi" (cockroach), a kind of dehumanizing term used to address the “Tutsi” tribe. Calls for preemptive violence that was required for "self-defense" were frequently used in conjunction with this tactic. In addition, several of the statements mentioned current or previous injustices. The three main offenders,

⁶⁷ n. 31

⁶⁸ Kagame, P. (2003). "From Tragedy to Recovery: Rwanda's Journey after the Genocide." *Journal of African Politics*, 15(4), 567-589.

⁶⁹ Angela Hefti and Laura Jona, ‘From Hate Speech To Incitement To Genocide: The Role Of The Media In The Rwandan Genocide.’ (2020) *Boston University International Law Journal*. 38(1). 1 – 37.

RTLM, Radio Rwanda, and Kangura, must be remembered⁷⁰. Also, Eliézer Niyitegeka, a former Minister of Information, ordered a Tutsi attack inside of a church in May 1994 and hailed a mob of over 5,000 people for their "good work" thereafter. "You refuse to give your blood to your country, and the dogs drink it for free", said Jean Kambanda, the Prime Minister during the genocide. Former Mayor of Taba commune Jean-Paul Akayesu gave a speech in front of around 100 Hutus in April 1994, after the genocide had already started in other parts of Rwanda, urging them to band together to exterminate the 'sole enemy', while observing a young Hutu's corpse from close by. Additionally, he gave out names of alleged RPF collaborators, and in the days that followed his address, hundreds of Tutsis were murdered in the township.⁷¹ As a result, the Rwandan government's support in inciting the genocide led by the Hutu ethnic majority, played a significant role in promoting anti-Tutsi sentiment and inciting violence against the Tutsi minority population. This involved using state media to spread hate propaganda.

In hindsight, contrasting perspectives have emerged concerning the role of media professionals in the Rwandan genocide. While politicians tend to diminish their culpability, journalists have demonstrated a more critical awareness of their own involvement. The Rwandan Patriotic Front (RPF), for instance, has highlighted the Radio Télévision Libre des Mille Collines (RTLM) as a poignant illustration of the perilous influence of private media during this period. This acknowledgment extends beyond the confines of Rwanda, resonating with broader implications across Africa. Many governments on the continent have capitalized on the perception that the violence in Rwanda was stoked by media platforms, using this pretext to justify imposing legal constraints on the press within their respective countries.

⁷⁰ Amnesty International. (2006). "Rwanda Genocide: Human Rights Violations and International Response." Retrieved from < <https://www.amnesty.org/rwandagenocide-humanrights> > accessed on 15th october 2023.

⁷¹ Ibid

“Although alternative media existed in the form of print media, they scarcely had any relevance because of their low circulation and high illiteracy rates. The dominant media outlets served as political propaganda organs.”⁷²

It is evident that hate speech had played a vital role in the events that happened in Rwanda the effects of hate speech in Rwanda serve as a somber reminder of the terrible effects that divided discourse may have on a country. A result of hate-filled propaganda, the 1994 genocide claimed hundreds of thousands of lives and left a mark on the nation's history that is still felt today. The progress Rwanda has made toward healing and reconciliation illustrates the vital necessity for societies to effectively fight hate speech.

Following the genocide that happened in Rwanda, stringent laws concerning the regulation of hate speech were put in place to prevent the recurrence of another war. These laws were very rigid, they impose criminal and civil penalties most times with high fines and maximum sentences.

Hate speech, a destructive force that fuels ethnic tensions and violence, has tragically left its mark on Rwanda's history. The Rwandan Genocide of 1994, one of the most brutal atrocities in recent memory, was perpetuated by hate speech and propaganda. This essay delves into the origins, consequences, and subsequent efforts to combat hate speech in Rwanda, highlighting the transformative journey from a society torn apart by division to one striving for reconciliation. Rwanda's history was marred by colonial divisions, particularly by the Belgians, who exacerbated ethnic differences between the majority Hutu and minority Tutsi populations. The divisive colonial policies sowed the seeds of hate speech, leading to dehumanization and discrimination.

⁷² Scott Straus, ‘Rwanda and RTLM Radio Media Effects.’ (2007). Available at <<https://www.ushmm.org/m/pdfs/20100423-rwanda-rtlm-radio-effects-strauss.pdf>> Accessed 29th July 2023

In the buildup to the genocide, hate speech played a central role in propagating ethnic animosity. Radio stations and print media were weaponized to spread vitriolic messages, dehumanizing the Tutsi population and encouraging violence. This hate speech contributed significantly to the rapid escalation of tensions and the eventual genocide in 1994, resulting in the loss of nearly a million lives.

In the aftermath of the genocide, Rwanda embarked on a remarkable journey of reconciliation and healing. Recognizing the destructive power of hate speech, the government implemented strict laws criminalizing its use. The Gacaca (meaning short grass) courts were established, promoting truth-telling and accountability while fostering community dialogue to address the root causes of the genocide.

Education emerged as a powerful tool in the fight against hate speech. Rwanda's education system underwent significant reforms, emphasizing unity, tolerance, and understanding among different ethnic groups. Initiatives promoting media literacy and responsible journalism were introduced, fostering critical thinking and discernment among citizens.

Despite significant progress, challenges persist in Rwanda's battle against hate speech. Socioeconomic disparities and historical grievances continue to strain intergroup relations. Efforts to bridge these divides involve community-building initiatives, economic development projects, and continued education programs.

Rwanda's experience with hate speech serves as a cautionary tale, highlighting the devastating consequences of divisive rhetoric. The nation's remarkable transformation from a fractured society to one focused on unity and reconciliation offers hope and inspiration to the world. By addressing the root causes of hate speech, fostering education, and promoting dialogue, Rwanda exemplifies the resilience of humanity in the face of adversity, reminding us of the importance of embracing tolerance, understanding, and empathy to build a harmonious society.

4.5. Regulating Hate Speech in South Africa: A Historical Overview, Present Realities, and the Legal Framework

Hate speech creates a perilous link between the soft reality of words and the brutal reality of hate crimes because it has the power to foster prejudice, hostility, and division. This alarming connection becomes apparent because hate speech, which is distinguished by its targeting of particular groups based on characteristics like race, religion, gender, or ethnicity, is crucial in inciting the hostile sentiments that might result in hate-motivated criminal acts. Hate speech fosters an environment that encourages the emergence of hate crimes by normalizing discrimination, demeaning the communities it targets, and even by blatantly advocating violence. For the purpose of developing successful measures to stop hate speech as well as the destructive effects it can have in the form of hate crimes, it is essential to recognize and comprehend this link.

The repercussions of hate crimes are much more severe than those of offenses committed without a bias-based motivation. The perpetrator's attack on the victim's identity or another unchangeable attribute is what causes the strong emotional and psychological effects seen in hate victims. The history of prejudice and persecution in South Africa demonstrates these effects. Majorly, the potential repercussions of hate victimization in this setting go beyond mere emotional harm.

Hate crimes can be distinguished from other victimization instances by the increased harm they cause to the victim. Thus, the effects of hate crimes go beyond the obviously evident and also encompass deeper psychological and/or emotional injuries. The *in terrorem* effect and psychic injury are two connected categories into which these lesions can be subdivided. The term "psychic injury" refers to the psychological and emotional effects of victimization, whereas the term "*in terrorem* effect" refers to messages of hatred directed at the victim and their community. The fact that perpetrators assault the victim's identity (self) and that these

acts are typically motivated by an attribute that is often immutable is perhaps the biggest factor contributing to the severe psychological impacts seen in victims of hate.⁷³ Such underlying signals of intolerance, mistrust, resentment, and discrimination may cause trauma and weaken social cohesion, which may breed antagonism, anxiety, and suspicion among various communities.

The majority of hate crimes are committed by people the victims know, which makes the psychological suffering worse. Hate crimes also feed into harmful assumptions that exacerbate tensions between groups. This assertion is supported by studies that show how hate crimes influence not only the victim but also the larger group they are a part of, possibly instilling fear or rage. The backdrop for understanding hate victimization is South Africa's history of institutionalized discrimination under colonialism and apartheid. Black Africans were in a very precarious position during apartheid; thus, it is important to comprehend their experiences.⁷⁴

The Republic of South Africa pursuant to section 16(2) of the Constitution permits freedom of expression subject to a few restrictions, one of which forbids "advocating hatred that is based on race, ethnicity, gender, or religion and that constitutes incitement to cause harm."⁷⁵ In the case of *Qwelane v. South African Human Rights Commission*,⁷⁶ the Supreme Court of Appeal (SCA) in South Africa held that a law prohibiting speech that is hurtful was an unjustifiable limitation of the right to freedom of expression. It thus, questions the constitutionality of certain hate speech verdicts by arguing that section 10(1) of the PEPUDA Act was unconstitutional since it restricted speech covered by section 16(1) of the

⁷³ Amori Marais, Juan A Nel, and Rajen Govender, 'Emotional consequences of hate incidents: experiences of a South African cohort', (2021). *South African Journal of Psychology*. 52(1). Available at <<https://doi.org/10.1177/0081246320985343>> Accessed 29th July 2023

⁷⁴ Ibid

⁷⁵ Sec. 16(2) the Republic of South African Constitution

⁷⁶ [2021] ZACC 22

constitution of the republic of South Africa. It is therefore a relief that the Constitutional Court finally provided answers in its recent ruling in *Qwelane v. South African Human Rights Commission and Another*,⁷⁷ and that it did so in a way that addressed the effect of structural inequality on the severity and nature of harm caused by particular types of speech.

Interestingly, the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA),⁷⁸ is a legislative framework in South Africa that aims to promote equality and prevent unfair discrimination. Enacted in 2000, the act seeks to address historical imbalances and disparities resulting from the country's apartheid era., Section 10(1) of the PEPUDA Act prohibits anyone from publishing, spreading, advocating, or communicating words that are based on prohibited grounds against anyone else, including race, sex, gender, and sexual orientation, religion, belief, and disability, if the words could "reasonably be construed to demonstrate a clear intention (a) to be hurtful; (b) be harmful or to incite harm, (c) promote or propagate hatred."⁷⁹ Interpreting this provision, the Supreme Court of Appeal (SCA) found that section 10 established three distinct grounds on which hate speech could be based by applying the same disjunctive interpretation to the underlined words above (as if there were an "or" rather than an "and" between each subsection) as some lower courts had previously done. Thus, regardless of whether the speech was reasonably intended to be harmful or inciting harm, or promote hatred against that group, Section 10(1) forbade speech that targeted a person based on their race, sex, gender, or sexual orientation and that could be merely "hurtful" to that person. The SCA subsequently ruled that Section 10 was unlawful inasmuch as it outlawed communication that was merely intended to be "hurtful" and because it included speech that targeted demographics other than those based on race, ethnicity,

⁷⁷ Supra

⁷⁸ The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000

⁷⁹ Sec. 10(1) Pepuda Act

gender, religion, or sexual orientation. The Constitutional Court upheld the SCA's conclusion that Section 10 was illegal because it used the word "hurtful" to define hate speech, but it had a very different general stance on the issue than the SCA. The Constitutional Court accordingly granted Parliament 24 months to address this unconstitutionality. This prompted new legislations such as the Promotion of Equity and Prevention of Unfair Discrimination Act⁸⁰

A bill called the Prevention and Combating of Hate Crimes and Hate Speech Bill seeks to reduce hate speech and stop hate crimes. The South African National Assembly is now considering the Bill, which was introduced in 2016. The law's stated goals include "providing for the prevention of hate crimes and hate speech" as well as "providing for effective enforcement measures" against those who "express their prejudice or intolerance towards the victim." The law has generated a lot of discussion, with some groups raising objections to the potential effects of limiting free expression. Others have argued that given the severity of prejudice in South Africa, the measure is essential.⁸¹

South Africa's history is marred by racial discrimination and segregation under the apartheid regime. The deep-seated prejudices cultivated during this period laid the foundation for hate speech, perpetuating stereotypes and animosities between racial groups. Although apartheid officially ended in 1994, the scars of the past continue to influence social interactions and attitudes. In the contemporary context, hate speech in South Africa manifests itself through various mediums, including social media, political rhetoric, and public discourse. Racial, ethnic, and xenophobic tensions often escalate due to inflammatory language, exacerbating

⁸⁰ Pierre De Vos, 'Hate speech and the right to freedom of expression. Hate speech and the right to freedom of expression', (2021). Available at <<https://www.news.uct.ac.za/article/-2021-08-04-hate-speech-and-the-right-to-freedom-of-expression>> Accessed 29th July 2023

⁸¹ 'Prevention and Combating of Hate Crimes and Hate Speech Bill', (2019). Available at <https://en.m.wikipedia.org/wiki/Prevention_and_Combating_of_Hate_Crimes_and_Hate_Speech_Bill>. Accessed 29th July 2023

divisions among different communities. Hate speech not only perpetuates prejudice but also hampers efforts to build a harmonious society.

South Africa has implemented legislation, including the Promotion of Equality and Prevention of Unfair Discrimination Act and the Prevention and Combating of Hate Crimes and Hate Speech Bill, to address hate speech. These laws aim to curb expressions that incite violence, discrimination, or hostility. Additionally, civil society organizations, educational institutions, and media outlets play crucial roles in raising awareness and promoting tolerance. Education has emerged as a powerful tool in South Africa's battle against hate speech. Schools and universities promote inclusivity, diversity, and understanding among different racial and ethnic groups. Social integration initiatives encourage interactions between communities, fostering empathy and breaking down stereotypes.

Challenges persist in South Africa's fight against hate speech. Economic disparities, unequal access to resources, and political polarization contribute to social tensions. Addressing these challenges requires not only legal measures but also comprehensive social and economic reforms. Empowering marginalized communities, promoting economic opportunities, and fostering genuine dialogue can bridge divides and promote unity.

South Africa's struggle against hate speech reflects the broader global challenge of promoting tolerance and understanding in diverse societies. By addressing the historical roots of prejudice, implementing effective legislation, and investing in education and social integration, South Africa can continue its journey toward reconciliation and unity. The nation's commitment to combating hate speech stands as a testament to its resilience, offering hope for a future where all citizens can coexist harmoniously, irrespective of their race, ethnicity, or background.

4.6. Hate Speech: A Comparative Study Across Nations

The examination of hate speech across these countries has been an important academic journey. It can be seen that only a Rwanda among the countries discussed above has taken necessary action in the matter of hate speech, as well as the United Kingdom which provided a process of regulating online hate speech which is the most rampant form of hate speech in recent times. It is very disappointing that the United States of America has taken a stance to not alter free speech given in the first amendment despite the fact that free speech could also be hate speech. The underlying commitment to defending individual rights and fostering an open and diverse society underlies the United States of America's support for free speech above hate speech. The First Amendment of the United States Constitution guarantees that the government may not restrict people's freedoms of speech, expression, religion, or the press. Advocates contend that enabling free speech, especially when it contains ideas that are deemed unpleasant or hateful, promotes a vibrant market for ideas. This market place supports spirited discussions, the refutation of conventional wisdom, and the expansion of knowledge. Diversity of thought makes society more able to tackle societal problems and come up with creative solutions. This study rides on the belief that once provisions are made for hate speech then the country takes a step closer in complete control of every individual.

Nigeria is yet to take a solid stance on the issue although the hate speech bill is awaiting presidential assent, there are still doubts if it would become law. There is a fear of abuse by members of society, this is a valid concern as most government agencies are used for self-serving purposes by people in power. It is my stance that the punishment prescribed for hate speech being the life sentence is capable of leading the country on a journey of self destruction. The positive can be seen in South African's commitment to acknowledge the existence of hate speech and not rely on the abolishment of freedom of speech like it did in the past. This is in contrast to America's stance on freedom of speech while ignoring the fact

that freedom of speech could be utilized in the wrong hands to preach hate and destruction. However, it must be said that South Africa's commitment to judicial independence is commendable, as it directed the legislative body to review existing laws regarding freedom of speech in contrast to hate speech and this was implemented in the bill addressed above. A decision to take a look at the existing laws set the ball in motion for legislative review.

The complexity of this problematic subject is revealed by examining the history and legal frameworks governing hate speech in the UK, the US, Rwanda, and South Africa. Each nation's strategy is molded by the particular historical, cultural, and social circumstances present there. While Rwanda and the UK have adopted a harsher legislation to deal with the fallout from hate-fueled conflicts, the United States stress free speech and rely on legal remedies for hate speech. For governments around the world, finding a fine balance between defending free speech and suppressing hate speech continues to be a difficult task. In order to protect human dignity and sustain the fundamentals of democratic governance, it is crucial to develop a worldwide debate that encourages inclusivity, tolerance, and respect for everyone. We can work toward a future where hate speech has no place and societies thrive on the foundation of variety and understanding through international cooperation and continual attempts to learn from peoples experiences.

CHAPTER FIVE

CONCLUSION

5.1 Introduction

The purpose of this chapter is to conclude what has been a research geared towards analysing the regulation of hate speech in Nigeria vis a vis regulation of other jurisdictions in the world on hate speech. This chapter provides summary of findings in the study. Recommendations and arriving at a perfect conclusion.

5.2 Summary of Findings

This research study was made up of five chapters that was geared towards achieving the objectives of this research.

In the course of this study we examined the legal framework on addressing hate speech in Nigeria, several significant findings have emerged, shedding light on the existing legislation, its effectiveness, challenges, and potential areas for improvement. The study delved into various aspects of hate speech laws, considering both their impact on social harmony and their alignment with international human rights standards.

1. Our research confirmed the existence of some legal provisions in Nigeria aimed at curbing hate speech. Some key legislation includes the Cybercrime Act of 2015 and the National Broadcasting Commission (NBC) Act, which empower authorities to address hate speech in both online and traditional media platforms.
2. We found that one of the challenges in combating hate speech lies in the lack of a universally accepted definition, leading to ambiguity in identifying and prosecuting offenders. While current laws touch upon incitement to violence, there is a need for a comprehensive and precise definition of hate speech to guide law enforcement and legal proceedings effectively.

3. The enforcement of hate speech laws faces hurdles, including limited resources, inadequate training of law enforcement agencies, and a lack of public awareness. Additionally, there is a need for efficient coordination between law enforcement bodies and regulatory authorities to ensure swift and appropriate actions against hate speech offenders.
4. Our study highlighted the delicate balance required between curbing hate speech and protecting freedom of expression, a fundamental human right. Striking this balance is crucial to avoid unintended censorship and ensure democratic principles are upheld.
5. While Nigeria's efforts to combat hate speech are commendable, our findings indicate a need for continuous alignment with international human rights instruments. Adhering to global standards ensures that legal measures against hate speech are effective, proportionate, and respectful of individuals' rights.
6. Promoting public awareness and education emerged as a vital component in the fight against hate speech. Initiatives aimed at educating the public about the consequences of hate speech, promoting tolerance, and fostering understanding among diverse communities can contribute significantly to mitigating its impact.

The study underscores the importance of a robust, comprehensive, and well-defined legal framework to address hate speech in Nigeria. Efforts to enforce existing laws should be complemented by public awareness campaigns and education initiatives. Additionally, continuous dialogue with international human rights organizations can aid in aligning Nigerian laws with global standards, fostering a more inclusive and harmonious society.

5.3 Recommendations

After an overview of the vulnerability of Nigeria due to the rampant growth of hate speech in the country and a detailed comparative analysis of the legal regime obtainable in Nigeria as regards hate speech vis a vis other highlighted jurisdiction, this study recommends the following:

1. All efforts should not be spared in terms of legislation and its enforcement to ensure that hate speech is prohibited in Nigeria because it incites others to hatred therefore leading to hate crimes like genocide, civil wars, arson and even homicide.
2. Though Section 39(1) of the constitution of Nigeria provides for freedom of expression, Nigeria like many countries should have laws in place that limit or censor any type of expression that suggests violence, hatred, prejudice, or discrimination on the grounds of race, colour or ethnicity. This should be so because, as much as it helps to facilitates a democratic state and help exchange diverse opinions on civil and political rights, it is eminent to remember that freedom of expression is not unlimited. When our right to freedom of expression encroaches on someone else right to freedom from fear and degrading treatment, it is bound to be regulated especially in any nation that wishes to create a safe and respectful abode for its citizens. Nigeria, in a bid to create a safe, conducive and respectful abode for its citizens, must regulate the right of freedom of expression in order to curtail the furtherance of hate speech.
3. Hate speech should be interpreted as a denial of the values of tolerance, diversity, the basic of human rights norms and principles and the spirit of inclusion/unity. It exposes the targeted victims to discrimination, abuse and violence. It also results in social and economic exclusion/expulsion of the victims. As such it should not be sugar coated or left unchecked in the Nigerian society.

4. A holistic approach of sensitizing and educating citizens on the ills of hate speech in the society, the damage it causes and why there is a need to draw back from participating in such an atrocious act is very pertinent. The government, the private sector, media, internet corporations, religious leaders, the educational sector, youth and civil societies should not be left out.
5. There should be a re-draft of the bill of hate speech in Nigeria. A new law should also be enacted in Nigeria against hate speech, whereby hate speech is clearly defined and measures should be taken to avoid encroaching into the realms of freedom of expression provided for in the constitution.
6. Measures should be taken to encourage victims and witnesses to report hate speech related crimes.
7. Initiatives to promote greater media and information literacy among online users must not be overlooked while ensuring the right to freedom of expression.
8. Conflict sensitive multicultural awareness campaigns should be emphasized to enhance knowledge about and respect for the diversity of cultures and traditions.
9. Measures should be taken in regulating the internet service providers by shutting down and disciplining websites that communicate and help transfer hate. This also includes media channels and apps such as twitter and Instagram. Actions should be put in place to track down/ trace any user who posts any information containing hate to a particular group, race, colour or ethnicity and punish such offenders.

5.4 Conclusion

The regulation of hate speech in Nigeria is pertinent to the growth and development of the state because it is a multi-ethnic and religious society consisting of different tribes and religions. This leads to an unwavering problem of ethnic bias, tribalism and hatred. Hate speech must be curtailed especially in a society like Nigeria because of its diversity. Therefore, a look at the laws for hate speech in different jurisdictions have been made and though some countries like America in The First Amendment do not provide for hate speech, countries like the UK and throughout Europe like Germany, have taken preventive measures against hate speech.

The comparisons on hate speech regulation gotten from the different jurisdiction can help highlight areas where the Nigerian government need to work on. Though freedom of expression and opinions must be regulated it is important to not infringe on this right of expression as it is paramount to a democratic state.

Furthermore, the study concluded that when there is diversity in a group on the grounds of language, religion and ethnicity there is bound to be a huge wave length of intolerance and bias which could build up hate leading to hate speech against others. In the long run this may lead to hate crimes such as civil wars, genocide and mass killings, some of which are already very much prevalent in Nigeria. Some of this includes the mass killing of southerners and Christians in the north by Muslims and the rampage of Fulani herdsmen. As such, if no laws are put in place to regulate hate speech and check the excesses of freedom of expression, a state of affairs even greater than that of the Rwanda genocide and that which would surpass the Ebola/COVID19 epidemic would befall Nigeria. The outcome of which would be bloody.

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