



EXECUTIVE SUMMARY – NIGERIA

***/The intersection of the right to freedom of expression and protection of personal information.**

This report considers the intersection of freedom of expression online and the protection of personal information in Nigeria. It is divided into four major sections. The first section examines the right to freedom of expression under the 1999 Constitution, various international human rights instruments Nigeria is a party to, and major incidents that impact Nigeria's law. The second part focuses on the constitutional guarantees of protecting personal information, other laws, and major incidents that impact the right in Nigeria.

Section 39 of the 1999 Constitution and other international human rights standards provide for the right to freedom of expression, particularly within the online space in Nigeria. However, many laws continue to violate the right to express oneself in Nigeria freely. For example, the provisions of sections 391-395 of the Penal Code Act, which is applicable to Northern States of Nigeria and sections 373 to 376 of the Criminal Code Act which applies to Southern States of Nigeria provide for the offences criminal defamation.

Applied to online communications, sections 24 and 26 of the Cybercrimes Act provides for offensive communications online, false information, and online hate speech. However, due to the loosely worded provisions, these laws have been used to harass, arrest and jail journalists, political opposition figures, human rights defenders and other activists. Recently, the Nigerian government suspended the operations of Twitter in Nigeria claiming that the social media platform's activities threatens its 'corporate existence' without relying on any extant law. The various provisions of the *Nigerian Broadcasting Commission (Amendment) Act of 1999*, the *Protection from Internet Falsehood and Manipulations Bill*, the *National Commission for the Prohibition of Hate Speeches bill* and a number of other laws and policies have also been found to be non-compliant with both the Constitution and international human rights instruments like Article 19 of the ICCPR.

However, in 2019, the Court of Appeal has held that the provisions of Section 24 of the Cybercrimes Act are unconstitutional. Following this, in July 2020, the Court of Justice of

the Economic Community of West African States (the ECOWAS Court) has also ruled that the same provisions violates Articles 9 (2) of the African Charter on Human and Peoples' Rights and 19 (3) of the ICCPR.

With respect to protection of personal information, section 37 of the 1999 is the most proximate constitutional guarantee in Nigeria. In addition to this provision, the laws impacting on the protection of personal information in Nigeria include the *National Data Protection Regulation of 2019*, *Freedom of Information Act of 2013*, *Credit Reporting Act of 2017*, *National Health Act of 2014*, *National Identity Management Commission Act of 2007*, and the *Child Rights Act of 2013*. Additionally, the Nigeria Communication Commission (NCC), Central Bank of Nigeria (CBN), NITDA, Nigeria Insurance Commission (NAICOM) have all issued guidelines, regulations, or Framework on the protection of personal data.

The report identifies in its third section three major areas of intersections of the right to freedom of expression and the protection of personal information in Nigeria. First, is journalistic exemption which finds expression in the provision of section 39 of the Nigerian Constitution which can also be regarded as an extension of the right to freedom of expression. The second is the right to erasure provided for under section 3.1(9) of the NDPR which vests data subjects with the power to delete links, copies or replication of their data by a data controller. The third is encryption and anonymity. Under the Lawful Interception of Communications Regulations, law enforcement agencies can access encrypted communications without the Court's intervention upon request. In addition, 45(2)(f) of the *Cybercrimes Act* empowers law enforcement agencies to 'use any technology to decode or decrypt any coded or encrypted data contained in a computer into readable text or comprehensible format.' However, the *Digital Rights and Freedom Bill* stipulates that individuals can access the Internet using instruments or technical systems to protect their identity if they wish to be anonymous.

In conclusion, the report demonstrates that beyond the responsibility of the Nigerian government to protect of the right to freedom of expression and personal information, there is also important need to consider the aspects of how both rights intersect. In doing so, there is need for extensive reform of laws that impact on the protection of both rights and bring them in line with both constitutional and international human rights standards.