

**DIGITAL RIGHTS IN NIGERIA: A REVIEW OF
ALTERNATIVE PATHWAY FOR THE
ENFORCEMENT**

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ABSTRACT

As at today, Nigeria has no principal legislation that specifically guarantees and protects digital rights. The first attempt bill that seeks to guarantee and protect digital rights in Nigeria is the Digital Rights and Freedom Bill, 2019 which was rejected by the President Muhammadu Buhari. In the absence of the principal legislation that guarantees and protects digital rights in Nigeria. This paper seeks to review alternative pathways to enforce digital rights in Nigeria. The paper explores sections 37 and 39 of the Nigerian Constitution and other instruments which Nigeria has subscribed to, that guarantees and protects freedom of expression. The paper adopts doctrinal research methodology whereby descriptive approach is employed. The paper reveals some of the infringements on digital rights in Nigeria by the authorities and argues that any infringement on digital rights violates the fundamental right to privacy and freedom of expression by critically reviewing decisions of courts from various jurisdictions. The paper therefore recommends that: Digital Rights and Freedom Bill should be signed into law; and authorities should shun all sorts of infringements on digital rights.

Keywords: Digital rights, Pathway, Enforcement, Nigeria.

1. INTRODUCTION

Globalization has made world to move into digital age where several activities are done on digital platforms. Nigerians on their part have also found social media platform as one of the most powerful communication tools for engaging the public, marketing, sales and friendship. As a result of this, fundamental right to freedom of expression is exercisable online. This online expression and privacy are digital rights in internet era.¹ The Freedom of expression is one of the basic fundamental human rights guaranteed in the section 39 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 37 of the same Constitution also guarantees right to privacy as the fundamental right which must be protected. The United Nation which Nigeria is a State Member also affirms that the same fundamental rights that people have offline must also be protected and enjoyed online.² To this end, it can be argued that, right to privacy and freedom of expression are exercisable online and they are two side of the same coin which must be protected and enjoyed together. Because, if there is effective application of the right to privacy online, people will express their feelings and opinions freely without fear of interception or interference by any authority. The purpose of this paper is to examine digital rights in Nigeria and review alternative pathways for the enforcement of digital rights with

¹Airat Oyiwonola Shitta and others, 'An Overview of Online Expression as a Digital Right' (2020) <<https://digitalrightslawyers.org/publications/>> accessed 12 September 2022.

²Adeboye Adegoke, Digital Rights and Privacy in Nigeria, (Paradigm Initiative Publication, 2020); 4.

a view to expose minds of Nigerians to their digital rights and how it can be enforceable.

2. MEANING OF DIGITAL RIGHTS

Digital rights are those fundamental rights that allow individuals to access, use, create and publish digital media or to access and use computers, other electronic devices and telecommunication.³ The right to access internet and use social media platforms is the digital rights in internet era. This right includes right to data protection, right to online privacy and freedom of online expression.⁴

For the purpose of clarity, not everything digital is connected to the internet. This is because biometric data, such as facial recognition and fingerprint checking also form part of digital technologies and they are non-internet related.⁵ Digital right is particularly related to the protection and realization of existing rights, such as the rights to privacy and freedom of expression, in the context of digital technologies.⁶

Digital rights are rights to know, seek information, blog, and share, access the internet, right to online privacy and right to online security. It is also the fundamental rights to access online information and all form of digital technologies.⁷

³ Wikipedia <https://en.m.wikipedia.org/wiki/Digital_rights> accessed 12 September 2022.

⁴Airat Oyinwonuola Shitta (n. 1)

⁵ Fatimah O. Kasali and others, Unraveling the Concept of Digital Rights Law in Nigeria (2020)<<https://digitalrightslawyers.org/publications/>> accessed 12 September 2022.

⁶Ibid.

⁷ Ibid.

3. INADEQUACY OF DIGITAL RIGHTS LAWS IN NIGERIA

In reality, there is no principal legislation that guarantees and protects digital rights in Nigeria. However, there are some laws and regulatory bodies that are partly guarantee and regulate digital rights in Nigeria, such as The Constitution of the Federal Republic of Nigeria, 1999 (as amended); the Cyber Crime Act, 2015; the National Information Technology Development Agency Act, 2007; and the Nigeria Data Protection Regulations, 2019, among others.

In practical sense, these laws are not comprehensive enough to cover this present situation of infringements on digital rights by the authorities in Nigeria, and the only comprehensive bill that meant to guarantee and protect digital rights in Nigeria is the Digital Rights and Freedom Bill, 2019 which President Muhammadu Buhari refused assent.⁸ In fact, the 2018 report that is co-authored by Privacy International and paradigm Initiative reveals that Nigeria lack protection for data privacy.⁹ Even though, some of the provisions of the existing laws are still infringing digital rights that are meant to be guaranteed and protected. Based on this, the subsequent part will give some of the instances of infringements on digital rights in Nigeria.

4. BRIEF OVERVIEW OF THE INFRINGEMENTSON DIGITAL RIGHTS IN NIGERIA

It has been established from the foregoing that, digital rights are fundamental rights to online privacy and online expression. On this premise, some of the infringements on digital rights will be examined

⁸Adeboye Adegoke, (n. 2) 21.

⁹ Ibid, 6.

here to show undue restriction and interference on online privacy and freedom of online expression by authorities in Nigeria.

Firstly, the Cybercrime Act, 2005 expressly limits the freedom of expression of the online users by virtue of its section 24(1) (a) which provides thus:

Any person who knowingly or intentionally sends a message or other matter by means of a computer system or network that is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be so sent has committed an offence under the Act and shall be liable for punishment.

The implication of above section is that, it limits the freedom of expression by criminalizing some expression and it has been used to violate freedom of online expression by authorities.¹⁰ In *Solomon Okedara v A.G Federation*,¹¹ where Appellant claims that section 24(1) of the Cybercrime Act violates his freedom of expression in section 39 of the Nigerian Constitution. Nigerian court however refused to hold in his favour. While ECOWAS Court of justice has ruled that the section is inconsistent with the freedom of expression and should be amended.¹²

Secondly, in 2018 the Nigerian Presidential Task Force published the passport information of 100 travelers as the punishment for failing to

¹⁰ Ibid, 19.

¹¹ (2019) LCN 12768 (CA).

¹² SERAP v Federal Republic of Nigeria ECW/CCJ/APP/09/19.

take a repeated covid-19 test upon entry into the country.¹³ Also, the GPS tracking and phone call listening of those who participated actively in the ENDSARS protest in October 2020¹⁴ infringe right to data protection and privacy respectively.

Thirdly, on 4 June 2021, the Nigerian government indefinitely suspended access to Twitter in the country, claimed that Twitter was being used to undermine the corporate existence of Nigeria,¹⁵ that is, Twitter account was being used to promote the disintegration of the federation. However, this claim is untenable because there is no law that authorizes the suspension of access to internet or social media in Nigeria.

It is submitted here that, any restriction on online expression and interference with online privacy has the implication of violating digital rights and due to the absence of principal legislation that protects digital rights in Nigeria, the subsequent subheadings review alternative pathways for the enforcement of digital rights in Nigeria.

5. PATHWAY TO ENFORCE DIGITAL RIGHTS UNDER THE NIGERIAN CONSTITUTION

Digital rights can be enforced under the Nigerian Constitution by establishing that fundamental rights to privacy and freedom of expression that is guaranteed in the Nigerian Constitution has

¹³The Guardian' News Paper, Addressing loopholes in digital and data rights <<https://guardain.ng/opinion/addressing-loopholes-in-digital-and-data-rights/>> accessed 14 September 2022.

¹⁴ Ibid.

¹⁵ International Commission of Jurist, 'Regulation of Communications Surveillance and Access to Internet in Selected African States (Report 2021) <<https://www.kas.de-Report-PDF>> accessed 16 September 2022.

extended to digital rights due to emergence of digital technologies. This view will be premised on the fact that there is nothing in the Nigerian Constitution that limits the application of existing rights to emerging circumstances.¹⁶ In fact, Constitution is a living tree that could be interpreted in the light of emerging realities that are not inconsistent with it.¹⁷

Section 39 of the Nigerian Constitution provides thus:

(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, established any medium for the disseminating of information ideas and opinions.

The section reproduced above shows that, Nigerian Constitution guarantees freedom of expression through any medium of communication without interference. It can be argued that, section 39 of the Nigerian Constitution that provides for the freedom of expression is not limited to offline expression, but it also extends to online expression in Nigeria. Due to the fact that, the word ‘medium’ as it used in subsection (2) of the section 39 of the Nigerian Constitution has been interpreted to include digital media in the case

¹⁶Abdulkadir Bolaji Abdulkadir, ‘The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria’ (2014) 3 (1) *AfeBabalola University Journal of Sustainable Development Law and Policy*; 122.

¹⁷ Ibid.

of *Anthony Olubumi Okogie v Lagos State Government*,¹⁸ under the section 36 of the CFRN, 1976 that has similar provision with the section 39 of the CFRN, 1999 (as amended). Also, it has been argued by Okedara that the word ‘medium’ that is used in section 39(2) of the Nigerian Constitution includes social media platforms, like Facebook, LinkedIn, Twitter and any other digital technology.¹⁹

Having established that, section 39 of the Nigerian Constitution guarantees and protects any medium of expression and it has been interpreted to include all digital technologies that capable of disseminating information. The question that may arise now is; whether restriction on online expression or internet access could amount to violation of freedom of expression under the Nigerian Constitution? Answers to this question is in affirmative, this is because courts from various jurisdictions have held that restriction on internet access violates freedom of expression. For instance, In European case of *Kalda v Estonia*,²⁰ court held that fundamental right of expression of the Applicant was violated through the refusal to grant him access to the internet.

Also, in *Valdelomar and Sibaja v Costa Rican Superintendence of Telecommunication*,²¹ the Supreme Court of Costa Rica stated that ‘a restriction on internet access could infringe the right to freedom of expression.’ Similar decision was reached in the case of *Shreya*

¹⁸ (1981) 2 NCLR.

¹⁹ Solomon Okedara, ‘Digital right’ (Interview 8 July 2021) <<https://www.mediadefence.org/news/interview-with-solomon-okadara-from-digital-rights-lawyers-initiative-drli/>> accessed 14 September 2022.

²⁰ (2016) ECHR 92.

²¹ Costa Rica-Exp.,17-000191-0007-CO

Singhal v Union of India,²² where India's Supreme Court ruled in favour of freedom of expression on internet as a fundamental right.

Flowing from the above judicial decisions and statutory provisions, it is submitted here that, any infringement on digital rights violate the fundamental right to freedom of expression guaranteed under the Nigerian Constitution. Therefore, it is enforceable in the Nigerian courts as the fundamental right to freedom of expression in the Nigerian Constitution.

6. PATHWAY TO ENFORCE DIGITAL RIGHTS UNDER THE INTERNATIONAL INSTRUMENTS

Another pathway to enforce digital rights is under the regional and international instruments because Nigeria has subscribed to several instruments that guarantee freedom of expression without interference, such as the International Covenant on Civil and Political Rights, 1966;²³ the Universal Declaration of Human Rights, 1948;²⁴ and the African Charter on Human and peoples' Right 1981²⁵ among other.

The aforementioned instruments guarantee right to privacy and freedom of expression without interference and due to the advent of digital technology, these rights have been exercised on digital platforms which make them to become digital rights. These digital rights are enforceable in the ECOWAS Court against any authority in Nigeria. The reason is that, Nigeria is a member of ECOWAS and

²² (2013) 12 S.C. 73.

²³ ICCPR, Articles 17 and 19.

²⁴ UDHR, 1946 Article 12 and 19.

²⁵ ACHPR, 1981 Article 9(2)

Article 10 of the Supplementary Protocol of the ECOWAS Court provides that individuals, corporate bodies and governmental organization shall have access to the court for the enforcement of human rights. Also, Article 9(4) of the ECOWAS Revised Treaty states that: ‘the court has jurisdiction to determine cases of human rights violation that occur in any Member States.’

In *SERAP v. Federal Republic of Nigeria and Universal Basic Education*,²⁶ ECOWAS Court confirmed that the rights guaranteed by the African Charter on Human and Peoples’ Rights and International Covenant on Civil and Political Rights are justiciable before the court because Nigeria is a signatory to these international instruments as well as the Protocol on the Community Court of Justice.

Recently, in *SERAP and 176 Ors v Federal Republic of Nigeria*,²⁷ Court held that the act of suspending the operation of Twitter by the Nigerian government is unlawful and inconsistent with the provisions of Article 9 of the African Charter on Human and Peoples’ Rights and Article 19 of the International Covenant on Civil and Political Rights both of which Nigeria is a State Party. The court further held that any interference with access to internet constitutes interference with freedom of expression.

In view of the above judicial decisions and statutory provisions, it is submitted that any infringement on digital right is the violation of freedom of expression guaranteed under the regional and international laws which Nigeria is a signatory to. However, digital

²⁶ ECW/CCJ/APP/0808 (ECOWAS, Oct., 27,2009).

²⁷ ECW/CCJ/APP23/21

rights are enforceable and justiciable before the ECOWAS Court and decision of ECOWAS Court will become binding in Nigeria because Article 15(4) of the ECOWAS Revised Treaty states that judgments of the court shall be binding on Member States.

7. CONCLUSION

Digital rights are the extension of fundamental right to privacy and freedom of expression in digital world. These rights are indispensable fundamental human rights that need to be protected and enjoyed without restriction, unless with lawful justification. This paper has argued that violation of Constitutional provisions for the right to privacy and freedom of expression of online users is violation of digital rights. This paper therefore recommends that: Digital Rights and Freedom Bill should be signed into law; section 24 of the Cybercrime Act should be amended; there should be public enlightenment on digital rights; and authorities should shun all sorts of infringements on digital rights.