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## THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION IN THE ENFORCEMENT OF THE RIGHTS TO FREEDOM OF EXPRESSION IN NIGERIA

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### Abstract

This paper examines the role of the National Human Rights Commission (NHRC) in safeguarding freedom of expression in Nigeria, a right enshrined in Section 39 of the Nigerian Constitution and upheld by international frameworks like the African Charter on Human and Peoples' Rights (ACHPR). It traces the evolution of this right from the colonial era to the digital age, highlighting persistent violations such as unlawful detentions, press suppression, and court order disobedience. The NHRC's interventions, including advocacy during the End SARS protests and condemnation of the 2021 Twitter ban, are evaluated. Despite its efforts, the NHRC faces challenges like political interference, inadequate funding, and limited enforcement powers. The paper also examines defamation laws' impact on free expression and offers recommendations for legislative reform, judicial training, and public education. Strengthening NHRC autonomy and fostering civil society partnerships are essential for advancing human rights and protecting democratic principles in Nigeria.

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**Keywords:** Human Rights, Freedom of Expression, Defamation, National Human Rights Commission (NHRC).

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## 1.1 Introduction

Freedom of expression is a cornerstone of democratic societies, serving as a conduit for public discourse, political engagement, and individual autonomy. The right encompasses the freedom to seek, receive, and impart information and ideas, a necessity for informed decision-making and governmental accountability. The Constitution of the Federal Republic of Nigeria, 1999 (as amended)<sup>1</sup>, guarantees this right under Section 39, affirming the country's commitment to fostering an environment where diverse perspectives can flourish. Despite constitutional guarantees, Nigeria's realization of freedom of expression has faced persistent challenges. Historically, the nation has witnessed oscillations between periods of repression and gradual liberalization. These challenges have been exacerbated by military rule, restrictive press laws, and digital censorship. For instance, the 2021 Twitter ban, instated after the platform deleted a controversial tweet by President Muhammadu Buhari, highlighted tensions between the government and advocates for digital expression.<sup>2</sup>

The National Human Rights Commission (NHRC) is critical to guaranteeing the enforcement and protection of human rights, particularly freedom of expression. The National Human Rights Commission Act establishes the NHRC as a monitor for human rights breaches, providing channels for recourse and raising awareness<sup>3</sup>. However, its effectiveness is frequently hampered by political meddling and resource constraints.

Judicial interventions have had a profound impact on the landscape of free expression in Nigeria. The Supreme Court's decision in *Olafisoye v Federal Republic of Nigeria*<sup>4</sup> reinforced the idea that restrictions on free expression must

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<sup>1</sup> Cap C23 LFN 2024.

<sup>2</sup> Amnesty International, 'Nigeria: Crackdown on Journalists and Activists' (2022) <<https://www.amnesty.org>> accessed 28 December 2024.

<sup>3</sup> Chidi Odinkalu, 'Challenges to the NHRC's Mandate in Nigeria' [2020] (18) *African Human Rights Law Journal*, 3-27.

<sup>4</sup> (2004) (2004) 4 NWLR (Pt. 864) 580 (SC)

be reasonable and proportionate. Similarly, in *Arthur Nwankwo v State*<sup>5</sup>, the court overturned a political commentator's conviction, upholding constitutional protection against sedition laws that limit public speech.

Statistics from Amnesty International reveal that between 2015 and 2022, over 150 journalists and activists were arbitrarily detained for exercising their right to free speech.<sup>6</sup> In 2020, the End SARS protests underscored the role of digital platforms in amplifying dissent, as well as the government's inclination toward repression.<sup>7</sup> The NHRC played a critical role in documenting human rights abuses during the protests, though it faced criticism for its inability to secure swift justice for victims.

Prominent human rights advocate Chidi Odinkalu has emphasized the NHRC's "indispensable role as a mediator between state power and individual freedoms."<sup>8</sup> However, he notes that its mandate is frequently compromised by inadequate political will. Similarly, Clement Nwankwo, Executive Director of the Policy and Legal Advocacy Centre, has highlighted the need for greater public awareness of the NHRC's mechanisms to ensure broader access to justice.<sup>9</sup>

As Nigeria progresses through its democratic process, defending this fundamental right will continue to be essential to creating an inclusive and equitable society. The interaction of constitutional protections, judicial activism, and the NHRC's supervision has set the foundation for protecting freedom of expression in Nigeria; however, real progress necessitates addressing systemic obstacles and encouraging cooperation between governmental and civil society actors.

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<sup>5</sup> (1985) 6 NCLR 228.

<sup>6</sup> Amnesty International, 'Statistics on Freedom of Expression Violations in Nigeria' (2023) <<https://www.amnesty.org>> accessed 28 December 2024.

<sup>7</sup> Clement Nwankwo, 'Strengthening Human Rights Mechanisms in Nigeria' [2023] (15) (4) *Policy and Legal Advocacy Centre*, 102-117.

<sup>8</sup> Odinkalu (n 3).

<sup>9</sup> Nwankwo (n 7).

## 1.2 Conceptual Discourse

Freedom of expression is a human right.<sup>10</sup> It refers to the rights of citizens in a country to freely express themselves, give information, and impart ideas and opinions without hindrance.<sup>11</sup> The right to freedom of expression equally extends to the principle of expression and communication through the media.<sup>12</sup> No doubt, the exercise of this right is essential for democracy and the rule of law.<sup>13</sup> In essence, freedom of expression connotes the liberty of every person to openly discuss issues, hold opinions, and impart ideas without restrictions, restraints, or fear of punishment.<sup>14</sup>

It is undoubtedly, a right to be enjoyed by every person who is not under any bondage or disability.<sup>15</sup> In every human society, Nigeria not being an exception, the desire and freedom of an individual to hold an opinion and share the same with a listener of his choice is a fundamental one. This is because a person has the right to have a perspective of the world, the circumstances around him and the people he interacts with.<sup>16</sup> Indeed, true freedom of a person or persons would be elusive if it is not possible to ventilate ones viewpoint or share ones opinions with others in the society.<sup>17</sup> Therefore, freedom of expression is one of the essential ingredients of every democratic society.

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<sup>10</sup>D. Olorunyomi and Others, *Legal Framework Regulating Freedom Of Expression And Press In Nigeria And Pathways To Neutralizing Threats*, Centre for Journalism Innovation and Development – CJID, 2022), 2

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> I.J. Udofa, 'Right To Freedom Of Expression And The Law Of Defamation In Nigeria', [2011] (2) (1) *International Journal of Advanced Legal Studies and Governance*, 76

<sup>15</sup> Ibid

<sup>16</sup> E. Odike, 'Right to Freedom of Expression and the Press', in Okpara Okpara, *Human Right Law and Practice* (Enugu: Chenglo Ltd, 2005), 249.

<sup>17</sup> Udofa, (n24)

Accordingly, Nwabueze<sup>18</sup> maintains that free speech and a free press are instruments of self-government by the people because they enable the people to be informed and educated about affairs of government, thereby enabling them to form and express intelligent opinions on such matters. He therefore concludes that free dissemination and discussion of ideas and opinions is indispensable to democratic government. Freedom of expression is also regarded as a basic condition for the progress of the society and the development of mankind. The European Court on Human Rights in *Handyside Case*<sup>19</sup>, confirmed this position when it held that the right to freedom of expression is one of the essential foundations of a democratic society and the basic condition for its progress and development.

In the same vein, Osita Eze<sup>20</sup> asserts that freedom of expression is of great importance to human race, as free exchange of ideas tends to promote harmony and societal development; while suppression of the freedom of expression often leads to conflict and instability. The freedom of expression guaranteed in the Nigerian Constitution and the various International Instruments on human rights and fundamental freedom, has three constituent elements; namely, the freedom to (1) hold opinions (2) receive ideas and information (3) impart ideas and information? The freedom to hold opinions can only be manifested when the opinions are communicated without adverse consequences.<sup>21</sup> This is therefore inseparable from freedom of speech. It can be said that it incorporates the right to hold and express dissenting views, and the right to comment on matters of public interest.

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<sup>18</sup> B.O. Nwabueze, *The Presidential Constitution of Nigeria*, (London/Enugu: C. Hurst & Co. (Publishers Ltd) in association with Nwamife Publishers Ltd 1982), 456

<sup>19</sup> Ibid

<sup>20</sup> O. Eze, 'Dissent in a Democratic Polity: Options in a Presidential System', in Y. Osinbajo and A. Kalu, ed. *Democracy and the Law*, (Lagos: Federal Ministry of Justice, 1999), 134.

<sup>21</sup> Udofa, (n24)

Any law or Act that tends to deny people of the right to express their opinion would be regarded as undemocratic and tyrannical and would portray the government of the day in bad light. Thus, the attitude of some government owned media, which, in spite of clear non-discrimination clauses, refuse to air or carry the views of an opposition party is reprehensible as it amounts to a contravention of the right to freedom of expression.<sup>22</sup>

In construing the scope of freedom of expression under section 36 of the 1979 Constitution, which is *impari materia* with section 39 of the 1999 Constitution, the Supreme Court, in *Okogie v A.G*<sup>23</sup>. Lagos State, held that the section confers untrammelled right on any individual to establish and run any educational institution as a medium for the dissemination of ideas. The court stated clearly that the word "medium" used in the said section of the Constitution is not limited only to the orthodox mass communication media but could reasonably include schools. Thus, any statutory abolition of private primary schools would constitute a violation of the right of proprietors of these schools to freedom of expression.

Whether the right to impart information involves the right of non-disclosure of the source of information is an issue of unresolved controversy. In *Tony Momoh v The Senate*<sup>24</sup>, the Senate Committee of Inquiry summoned Mr. Momoh, then Editor of Daily Times, to disclose the source of his information, which formed the basis of an article published about the senators. A Lagos High Court upheld the contention of Mr. Momoh that disclosure could violate his right to freedom of expression guaranteed under section 36(1) of the 1979 Constitution.

On appeal, the Court of Appeal overturned the verdict, ruling that "the press or any other medium of information cannot claim any right to the confidentiality of the source of their information in a proper investigation by a House of the National

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<sup>22</sup> Ibid

<sup>23</sup> (1999) 3 NWLR (pt. 603) 140.

<sup>24</sup> (1982) FHCLR 307..

Assembly or the Police". The Court of Appeal's ruling in this case can be questioned since it is inconsistent with constitutional standards regarding the restriction of the right to free expression.

However, the claim to freedom of expression is not without complications. While it is a fundamental human right, it is not unconditional. Societies frequently find themselves managing a delicate balance between unrestrained transmission of ideas and the need to safeguard others' rights or public interests. This delicate equilibrium is manifest in legal frameworks that impose limitations on freedom of expression when it conflicts with concerns such as national security, public order, or individual privacy.

Thus, Gunatilleke<sup>25</sup> argues that freedom of expression is a complex and contested concept that requires a nuanced analysis of its legal, ethical, and societal aspects. He acknowledges that freedom of expression is a fundamental human right, but not an absolute one. He explains that there is a delicate balance between allowing the free flow of ideas and protecting other rights or public interests, such as national security, public order, or individual privacy. He notes that this balance is reflected in the legal frameworks that regulate the scope and limits of freedom of expression. He also raises ethical issues related to the responsible use of this freedom, especially in relation to harmful forms of expression, such as hate speech or misinformation. Furthermore, he highlights the societal factors that influence the understanding and practice of freedom of expression, such as media, education, and digital platforms. He points out that technology has both expanded the opportunities for expression and introduced new challenges related to the quality and credibility of information and the manipulation of public opinion.

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<sup>25</sup> G. Gunatilleke, 'Justifying Limitations on the Freedom of Expression' (2020) (21) *Human Rights Review*, 1

### **1.3 Legal Framework**

The term "legal framework" refers to the entire legal system for a given jurisdiction that is established by any combination of the following: a constitution; primary legislation passed by a legislative body that has jurisdiction over the jurisdiction; and subsidiary legislation passed by authorities authorized by the primary legislation, respectively. This paper examines the resulting legal structure.

#### **1.3.1 The Constitution of the Federal Republic of Nigeria 1999**

One of the most respected rights in Nigeria and the rest of the globe is the freedom of expression and information. Nigeria's freedom of information is protected by a number of constitutional provisions that are located in different parts of the document<sup>26</sup>.

Section 39 of the Constitution, which states that "Every person shall be entitled to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference," is a crucial clause that safeguards those who create content online. Every individual has the right to own, create, and run any media for the spread of knowledge, concepts, and viewpoints, without limiting the applicability of the aforementioned clauses.

The freedom of expression is protected under this section. This includes the freedom to have beliefs and the unhindered ability to receive and share knowledge and concepts. Since it enables them to produce content without worrying about retaliation, this clause is essential to ensuring freedom of information. The right of the press, television, and other mass media to support the basic goals and defend the government's accountability to the people is guaranteed by Section 22, another significant clause in the Constitution that protects freedom of expression. This covers both the right to ask for and obtain information from public authorities, as

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<sup>26</sup> The 1999 Constitution of the Federal Republic of Nigeria as amended, Cap C23 LFN



well as the right to access and share information that is kept by public bodies. This clause is crucial since it permits information access and exchange.

All things considered; the Federal Republic of Nigeria's Constitution offers a legislative framework for safeguarding information freedom. It provides the framework for laws and regulations that uphold people's freedom to express themselves without fear in relation to the creation of content.

### **1.3.2 The Freedom of Information Act 2011**

The Freedom of Information Act 2011 (FOIA)<sup>27</sup> is a significant legal framework for the protection of information in Nigeria. It is designed to promote transparency and accountability in government and public institutions by providing a mechanism for individuals to access and request information from public bodies.

One of the key provisions of the FOIA is Section 3, which provides for the right of any person to request and receive information from public bodies. This includes information that is relevant to exposing wrongdoing or corruption. The FOIA also requires public bodies to proactively disclose certain types of information, such as contracts, budgets, and policies, without needing a specific request.<sup>28</sup>

Section 1 of the Act<sup>29</sup> However, provides that every citizen, whether adult or minor, is entitled to have access to any records under the control of the government or any public institution. The application for the information can either be in written or oral form, and the applicant does not have to demonstrate and/or indicate any specific interest in the information applied for. This is perfectly in consonance with the liberal attitude which our courts have given to the doctrine of *locus standi* in recent times regarding such matters.<sup>30</sup> Unlike in the past, an applicant can now initiate a public-interest litigation or request for public

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<sup>27</sup> Freedom of Information Act 2011, No 24 LFN

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Dada v. Sikuade [2014] 17 NWLR (Pt. 1435) p. 72.

information without the fear of confronting an objection based on standing. It should be noted that Section 3(3) of the Act also allows an illiterate or disabled applicant to request for information through a third party.<sup>31</sup>

It can be argued that Section 1 of the Act is restrictive in the sense that it only protects access to information kept by public institutions. Information kept by private institutions which is meant for the public (e.g. bank statements of government agencies, reports of medical research in the custody of private firms) is not protected. A good way to cure this defect is to borrow a leaf from the South African Constitution which allows citizens to have access to not only information held by the State, but also access to any information held by another person, once the information is required for the exercise or protection of the citizen's rights.<sup>32</sup> This particular right is further expounded under South Africa's Promotion of Access to Information Act.<sup>33</sup>

Section 7 of the Act provides that when a public institution refuses to give access to information applied for, the public institution shall by a written notice state the reasons/grounds for refusing the application. The Applicant has a right to challenge the grounds for refusal or to have it reviewed by the Court. Under Section 7(5) of the Act, where a case of wrongful denial of access to information is established, the defaulting officer or institution will be liable on conviction to a fine of N500, 000.00. It should be noted that the FIA is silent on who will receive the fine. Section 10 of the Act also makes it a criminal offence, punishable with a minimum of one year imprisonment with no option of fine, for any public officer or head of a public institution to wilfully destroy any records kept in his custody or attempt to doctor or otherwise alter same before they are released to any person,

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<sup>31</sup> SPA AJibade and Co, An overview of the Freedom of Information Act (an appraisal from a lawyer's perspective)

< <https://www.lexology.com/> > Accessed 3 January 2023

<sup>32</sup> Ibid

<sup>33</sup> Act No. 2 of 2000.

entity or community applying for it. Section 8 describes the fees to be paid for document duplication and transcription where necessary.

Whilst it is undisputed that the essence of the FIA is to guarantee the right of access to information held by public institutions, it is important to note that there are limitations and restrictions to these rights. The FIA recognizes that not all information is for public knowledge. As a result, public institutions are allowed to deny or refuse any application for access to certain restricted information. The following sections deal with the exemptions/restrictions:

(i) Section 11<sup>34</sup>: This section prevents a public institution from disclosing information that may be injurious to the conduct of international affairs and the defence of the Federal Republic of Nigeria. However, it should be noted that an application for information under this section shall not be refused where the public interest in disclosing the information outweighs whatever injury that disclosure would cause.

(ii) Section 12:<sup>35</sup> An application for information relating to records of public institutions relating to administrative, investigative and enforcement proceedings may be denied if it will affect pending proceedings or may jeopardise ongoing investigation/security of such public institutions or areas touching on personal privacy. This section is quite wide as it allows a public institution to deny the citizens access to information on the basis that it may affect pending administrative/investigative/enforcement proceedings of the public institution. However, it is pertinent to note that just like Section 11 above, where the interest of the public overrides whatever injury that disclosure would cause, an application under this section shall not be denied.

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<sup>34</sup> Op cit. note 59

<sup>35</sup> Ibid

(iii) Section 14<sup>36</sup>: This section prevents the public from having access to information relating to personal information and matters touching on personal privacy.

(iv) Section 15:<sup>37</sup> This section relates to trade secrets and commercial or financial information that are confidential and privileged or where disclosures of such information may cause harm to the interest of third parties.

(v) Section 16:<sup>38</sup> Information relating to professional privileges (such as lawyer-client privilege, doctor-patient privilege) or other privileges conferred by law are exempted.

(vi) Section 17:<sup>39</sup> A public institution would be allowed to deny an application for information which contains course or research materials prepared by Faculty members.

(vii) Section 19:<sup>40</sup> This section allows the public institution to refuse an application for information pertaining to library circulation and records, test questions, scoring keys, examination data relating to public institutions; architects' and engineering plans of public institution buildings or buildings built with public funds.

Section 20 provides for a judicial review of a denial of an information request made on the grounds that the information is exempted from public awareness. According to this section, a person who has had their information request rejected may request a judicial review from the court within 30 days of the public institution rejecting or assuming that the application has been rejected, or within any additional time that the court permits. Since it gives the Court the authority to

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<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Ibid

interpret any provision of the Act authoritatively, certain authors and the majority of legal professionals believe that this is the most significant part of the Act. Such an application is permitted under Section 21 to be heard and determined summarily. The FOIA remains a crucial legal framework for the protection of whistleblowers in Nigeria, despite these limitations. Section 22 gives the Court access to the information that is sought to be denied in order to determine whether the information falls within the Act's exemptions and whether the harm of disclosure outweighs the public interest disclosure. The Act also encourages accountability and transparency in public institutions and government by giving people a way to access and request information from public bodies.

### **1.3.3 Data Protection Act 2023**

The Data Protection Act, 2023<sup>41</sup> (DPA) is a Nigerian law that provides a legal framework for the protection of personal data. The law was signed by President Bola Ahmed Tinubu on June 12, 2023, with the aim of promoting innovation and protecting the privacy rights of individuals. The law also establishes the Nigeria Data Protection Commission (NDPC) as the regulatory body for the processing and transfer of personal data.<sup>42</sup>

Personal data is defined by the DPA as any information relating to an identified or identifiable natural person, such as name, address, phone number, email, health status, biometric data, etc.<sup>43</sup> The DPA applies to any person or entity that processes personal data by automated means or not, within or outside Nigeria, as

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<sup>41</sup> Data Protection Act, 2023, LFN, 2023 < <https://ndpc.gov.ng/dpa2023.pdf>> accessed 31 December 2024.

<sup>42</sup> M.B. Adisa and R. Bashir, 'An Overview Of The Nigeria Data Protection Act, 2023', (2023) *Mondaq* < <https://www.mondaq.com/nigeria/privacy-protection/1346676/an-overview-of-the-nigeria-data-protection-act-2023>> accessed 31 December 2024..

<sup>43</sup> Data Protection Act, 2023, Section 2(1)

long as the data subject is in Nigeria or the data controller or processor is domiciled in, resident in, or operating in Nigeria.<sup>44</sup>

The DPA imposes certain obligations on data controllers and processors, such as obtaining the consent of data subjects before collecting or processing their personal data, ensuring that the personal data is accurate, relevant, and not excessive, implementing appropriate security measures to protect the personal data from unauthorized access, disclosure, or destruction, notifying the NDPC and the data subjects of any data breach, and complying with the data protection principles and guidelines issued by the NDPC.<sup>45</sup>

The DPA also grants certain rights to data subjects, such as the right to access, rectify, erase, restrict, or object to the processing of their personal data, the right to data portability, the right to withdraw consent at any time, the right to lodge a complaint with the NDPC or a court of competent jurisdiction, and the right to compensation for any damage suffered as a result of unlawful processing of their personal data.<sup>46</sup>

The NDPC is the supervisory authority for the enforcement of the DPA and the protection of the rights and interests of data subjects. The NDPC has the power to issue regulations, guidelines, codes of conduct, and standards for the implementation of the DPA, to monitor and investigate compliance with the DPA, to impose administrative fines and sanctions for violations of the DPA, and to cooperate with other data protection authorities within and outside Nigeria.<sup>47</sup>

#### **1.4 The Role of the National Human Rights Commission (NHRC)**

The National Human Rights Commission (NHRC) was established by the National Human Rights Commission Act of 1995 (as amended in 2010) to

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<sup>44</sup> Data Protection Act, 2023, Section 3(1)

<sup>45</sup> Protection Act, 2023, Sections 4-12

<sup>46</sup> Data Protection Act, 2023, Sections 13-20

<sup>47</sup> Data Protection Act, 2023, Sections 21-28

promote and protect human rights in Nigeria.<sup>48</sup> The NHRC operates as an independent body tasked with investigating and addressing human rights violations, including infringements on freedom of expression. Under Section 6 of the Act, the Commission has the authority to mediate, conciliate, and recommend actions to public authorities regarding human rights infringements.<sup>49</sup>

Freedom of expression is fundamental to democratic governance and societal progress. The NHRC's role in fostering this right involves advocacy, public education, and direct intervention. One notable example is the NHRC's condemnation of the 2021 Twitter ban, where it emphasized the importance of social media as a tool for freedom of expression and political engagement.<sup>50</sup> The Commission also organized stakeholder dialogues on balancing digital freedom with cybersecurity concerns, reflecting its proactive stance in addressing contemporary issues.

The NHRC has undertaken significant actions to address violations of freedom of expression. For instance, during the End SARS protests of 2020, the Commission documented several cases of police brutality and government intimidation against protesters, journalists, and activists.<sup>51</sup> It facilitated dialogue between affected citizens and law enforcement agencies, pushing for systemic reforms and accountability. More so, NHRC collaborates with local and international organizations to strengthen its capacity to uphold freedom of expression. Partnerships with Amnesty International and the Media Rights Agenda (MRA) have bolstered its efforts to monitor violations and advocate for media freedom.<sup>52</sup>

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<sup>48</sup> National Human Rights Commission Act 1995 (as amended 2010), s 6.

<sup>49</sup> NHRC Act 1995, s 6(b).

<sup>50</sup> National Human Rights Commission, 'Statement on the Twitter Ban' (2021) <<https://nigeriarights.gov.ng>> accessed 29 December 2024.

<sup>51</sup> Amnesty International, *End SARS Protests: Human Rights Violations in Nigeria* (2020) <<https://www.amnesty.org>> accessed 29 December 2024.

<sup>52</sup> Media Rights Agenda, 'Collaborative Advocacy with NHRC' [2022] (15) (4) *MRA Journal*, 120-135.

These collaborations have also enabled the NHRC to develop comprehensive frameworks for addressing digital rights violations.

However, the above commissions have not been able to effectively tackle cases of violation and torture for some reasons- Inadequate funds by the Commission often frustrate its desire to effectively carry out investigations, wider campaigns, advocacy programmes and provide legal aid for victims as well as other activities. More so, the NHRC is faced with the challenge of inadequate support by national authorities, civil society organizations, and international organizations.<sup>53</sup> For effective discharge of their duties, the Commission needs the support of international bodies and other national agencies. Lastly, the issue of personnel autonomy takes center stage among the major challenges of the Commission.

The Human Rights Implementation Centre of the University of Bristol Policy Paper asserted that autonomy is believed to encompass the ability of the NHRI to operate without influence from not only government but also other stakeholders and other political forces.<sup>54</sup> No doubt, several cases of human right violation have been reported to the appropriate authorities by these agencies, yet, none has been prosecuted, it usually ends with media propaganda that the perpetrator has been dismissed from service and the authenticity of this report about his/her dismissal cannot be verified in the long run; once the perpetrator eventually leaves the country and travels abroad, the case is closed and sealed.

### **1.5 Freedom of Expression and the Law of Defamation**

Freedom of expression, enshrined under Section 39 of the 1999 Constitution of Nigeria, guarantees the right to hold and disseminate opinions without interference. However, this right is not absolute; it is subject to limitations such

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<sup>53</sup> Juliet Jenebu Obajobi, 'The Role of The National Human Rights Commission Against Human Rights Violation In Nigeria' [2022] (3) (II) *Zamfara Journal of Politics and Development*, 3.

<sup>54</sup> Human Rights Implementation Centre of the University of Bristol Policy Paper: In Amalu, Nneka Sophie, 'The Role of the National Human Rights Commission (NHRC) in Post Conflict Situations in Nigeria' [2019] (8) (1) *International Journal of Arts and Humanities (IJAH)*, 135.



as laws protecting reputation and public order. The law of defamation, a tort-based mechanism, balances free expression with the need to protect individuals from reputational harm.<sup>55</sup>

Defamation in Nigeria is governed by common law principles and codified statutes like the Criminal Code and Penal Code. Defamation may be classified into two forms:

1. **Libel:** Written or published defamatory statements.
2. **Slander:** Spoken defamatory words.<sup>56</sup>

Under the Criminal Code Act, Section 373 defines defamation as any imputation concerning a person, intending to harm their reputation. Criminal defamation, codified in Sections 391 and 393, criminalizes the publication of defamatory content, imposing imprisonment upon conviction. Critics argue that criminal defamation laws pose a threat to freedom of expression by creating a chilling effect on journalism and public commentary.<sup>57</sup> The interplay between defamation laws and freedom of expression is contentious. On one hand, defamation laws aim to prevent malicious and false statements that could harm reputations. On the other hand, overly restrictive defamation laws can suppress legitimate criticism and stifle public discourse. The balance lies in ensuring that defamation laws are not weaponized to silence dissent or investigative journalism.<sup>58</sup>

The Nigerian judiciary has played a pivotal role in interpreting defamation laws vis-à-vis freedom of expression. In *Arthur Nwankwo v State*<sup>59</sup>, the court held that public officeholders must tolerate criticism, reinforcing that sedition laws should

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<sup>55</sup> ABM Bolade, 'Re-Examining the Challenges of the Law of Defamation in Nigeria' [2024] (15) (4) *African Journal of Law, Ethics and Education*, 45-60.

<sup>56</sup> Criminal Code Act, s 373.

<sup>57</sup> S Dyvik, 'Addressing the Rise in Global Hatred and Defamation' [2023] (18) (2) *Sussex Human Rights Reports*, 130-145.

<sup>58</sup> Edith Ohaja, 'Legal Pitfalls in Political Reporting in Nigeria' (2023) *ResearchGate Articles*, 34-56.

<sup>59</sup> *Supra*

not restrict legitimate expression.<sup>60</sup> Similarly, in *Musa v Coker*<sup>61</sup>, the Supreme Court emphasized that defamation laws must not override constitutional freedoms.

Nigeria is a signatory to international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, which advocate proportionality in restricting free expression.<sup>62</sup> The African Commission on Human and Peoples' Rights in *Media Rights Agenda v Nigeria*<sup>63</sup> highlighted the need to decriminalize defamation to align with international best practices.

## **1.6 Recent Case Studies**

### **1.6.1 *David Hundeyin Case (2022)***

The case of David Hundeyin exemplifies the increasing tension between investigative journalism and defamation laws in Nigeria. As an investigative journalist, Hundeyin published reports exposing corruption involving high-ranking officials. These publications led to defamation threats, with political and business entities initiating legal actions to intimidate and silence him.<sup>64</sup> The National Human Rights Commission (NHRC) intervened, recognizing the chilling effect such lawsuits could have on journalistic integrity and public discourse. It issued a statement advocating for the protection of journalists and a review of Nigeria's defamation laws to ensure that they do not undermine constitutional rights to freedom of expression. This case highlighted the critical role of the NHRC in defending freedom of the press and the broader implications of defamation laws as tools for suppressing dissent.

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<sup>60</sup> (1975) 4 SC 155

<sup>61</sup> *Supra*

<sup>62</sup> International Covenant on Civil and Political Rights (ICCPR), art 19.

<sup>63</sup> (2000) AHRLR 200 (ACHPR 1998)

<sup>64</sup> Clement Nwankwo, 'Journalism and Defamation in Nigeria' [2022] (12) *MRA Annual Review*, 67-78.

### **1.6.2 Digital Defamation**

The advent of social media platforms like Twitter, Facebook, and Instagram has significantly complicated the landscape of defamation laws in Nigeria. Unlike traditional media, social media allows instantaneous publication to a global audience, amplifying the potential reach and impact of defamatory content. For instance, in cases involving viral falsehoods, the reputational damage is immediate and widespread.<sup>65</sup> However, the regulatory response to digital defamation has raised concerns about curbing freedom of expression. Government efforts to address online defamation often verge on digital censorship, threatening the rights of users to engage in public discourse. The need for nuanced laws that balance the protection of individuals' reputations with the preservation of free expression has become increasingly urgent.

### **1.7 The Rule of Law as a Foundation for Human Rights**

The rule of law is an indispensable cornerstone of any democratic society, ensuring that all individuals and institutions, including the government, are held accountable to the same set of legal standards. It embodies principles such as equality before the law, accountability, and fairness, serving as a critical safeguard against abuses of power. In the context of human rights, the rule of law provides the legal and institutional framework to protect fundamental freedoms, including freedom of expression, liberty, and fair trial.<sup>66</sup>

Unfortunately, in Nigeria, persistent violations of the rule of law undermine its role as a foundation for human rights. Cases of unlawful detentions, extrajudicial killings, suppression of dissent, and blatant disobedience of court orders highlight

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<sup>65</sup> SMH Kosemani, 'Defamation and Skit Making in Nigeria: Navigating Legal Boundaries' [2024] (22) *Fountain Journal of Law and Society*, 89-102.

<sup>66</sup> Amnesty International, *Nigeria: Human Rights Violations Persist* (2020) <<https://www.amnesty.org>> accessed 29 December 2024.

systemic failures to uphold constitutional principles and international obligations.<sup>67</sup>

## **1.8 Instances of Violations of the Rule of Law in Nigeria**

Freedom of expression in Nigeria, though constitutionally guaranteed under Section 39 of the 1999 Constitution, continues to face systemic violations. These infringements have persisted across various political regimes, including democratic administrations. Common violations include censorship of the press, harassment of journalists, suppression of protests, and the misuse of defamation laws. The End SARS protests of 2020 exemplified widespread suppression of freedom of expression, with journalists and activists arrested or intimidated for documenting police brutality.<sup>68</sup> The underlying are instances of the violation of freedom of expression.

### **1.81 Agba Jalingo (2019)**

The case of journalist Agba Jalingo underscores the misuse of state power to silence investigative reporting. Jalingo was arrested and detained for over 170 days without trial after exposing corruption allegations involving the governor of Cross River State.<sup>69</sup> His detention, compounded by excessive bail conditions, demonstrated an alarming disregard for the right to a fair trial, as guaranteed under Section 36 of the Nigerian Constitution and Article 9 of the African Charter on Human and Peoples' Rights (ACHPR).

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<sup>67</sup> Media Rights Agenda, 'Freedom of Expression in Nigeria' [2021] (18) *Journal of Legal Studies*, 45–60.

<sup>68</sup> AR Uwazuruike, 'EndSARS: The Movement Against Police Brutality in Nigeria' [2020] (34) (1) *Harvard Human Rights Journal*,

<sup>69</sup> Committee to Protect Journalists, *Arrests of Journalists in Nigeria* (2019) <<https://www.cpj.org>> accessed 29 December 2024.

### **1.8.2 Sambo Dasuki v Federal Government of Nigeria (2015)<sup>70</sup>**

Sambo Dasuki's prolonged detention despite multiple court orders granting him bail highlights the executive's disregard for judicial authority. Dasuki, a former National Security Adviser, faced charges of corruption and was detained for several years in violation of his constitutional rights to liberty and due process.<sup>71</sup> This case exemplifies the systemic erosion of judicial independence in Nigeria.

### **1.8.3 El-Zakzaky v Kaduna State Government (2016)<sup>72</sup>**

In a landmark ruling, the Federal High Court in Abuja ordered the release of Sheikh Ibrahim El-Zakzaky and his wife on medical grounds, alongside compensation for their unlawful detention. However, the Kaduna State Government ignored these orders for years, exposing the challenges in enforcing judicial decisions against powerful state actors. Such flagrant violations weaken public trust in the judiciary and erode the rule of law.

### **1.8.4 Omoyele Sowore v Federal Government of Nigeria (2019)**

Activist Omoyele Sowore<sup>73</sup> was detained for several months despite court orders for his release. Charged with treason for organizing protests against government policies, Sowore's case reflected a growing trend of executive non-compliance with judicial rulings, further undermining the judiciary's credibility and independence.<sup>74</sup>

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<sup>70</sup> Dasuki v Federal Government of Nigeria Suit No: FHC/ABJ/CS/589/2015.

<sup>71</sup> Clement Nwankwo, 'Judicial Independence in Nigeria' [2022] (14) (2) *African Human Rights Law Review*, 123–145.

<sup>72</sup> *El-Zakzaky v Kaduna State Government* (2016) FHC/ABJ/CS/281/2016.

<sup>73</sup> *Sowore v Federal Government of Nigeria* (2019) FHC/ABJ/CS/1409/2019

<sup>74</sup> Amnesty International, *State Repression in Nigeria* (2019) <<https://www.amnesty.org>> accessed 29 December 2024.

### **1.8.5 Jones Abiri (2016)**

Journalist Jones Abiri was detained for over two years without trial for publishing articles on corruption and environmental degradation in the Niger Delta. His prolonged incarceration violated his constitutional rights to liberty, freedom of expression, and a fair trial.<sup>75</sup> This case illustrates the misuse of national security laws to suppress dissent and press freedom.

### **1.8.6 Kofi Bartels (2021)**

The detention of Kofi Bartels for reporting allegations involving a former governor underscores the increasing use of cybercrime and national security laws to stifle journalistic freedom.<sup>76</sup> Bartels was held for several days without charge, reflecting the broader trend of targeting journalists for exposing corruption.

### **1.8.7 Alex Badeh (2018)**

The murder of Alex Badeh, a former Chief of Defence Staff, though not directly linked to press suppression, symbolizes the extreme risks faced by those challenging corruption and impunity in Nigeria.<sup>77</sup> Badeh's assassination underscored the government's failure to protect citizens from reprisals, fostering a climate of fear and silence.

These cases reflect a disturbing pattern of state institutions being used to intimidate, detain, and harass those who challenge corruption or demand accountability. They expose a governance system that prioritizes suppression over justice, undermining Nigeria's constitutional and international obligations to

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<sup>75</sup> International Covenant on Civil and Political Rights (ICCPR), art 19.

<sup>76</sup> Premium Times, 'The Arrest of Kofi Bartels' (2021) <<https://www.premiumtimesng.com>> accessed 29 December 2024.

<sup>77</sup> Editorial, 'The Murder of Alex Badeh: Implications for Accountability' (Sahara Reporters, 2018) <<https://www.saharareporters.com>> accessed 29 December 2024.

uphold human rights.<sup>78</sup> The intimidation of journalists, activists, and citizens is a direct assault on the principles of democracy and accountability.

The National Human Rights Commission (NHRC) is mandated to monitor human rights violations, investigate complaints, and recommend actions to redress abuses.<sup>79</sup> However, its impact is hindered by inadequate funding, political interference, and the absence of enforcement powers. Strengthening the NHRC's capacity and autonomy is critical to addressing these violations and ensuring accountability.

The rule of law remains a fundamental pillar for the protection and sustainability of human rights in Nigeria. However, persistent violations such as unlawful detentions, executive disobedience of court orders, and suppression of free expression undermine its effectiveness. To reverse this trend, systemic reforms, including strengthening judicial independence, empowering oversight bodies like the NHRC, and fostering a culture of accountability, are essential. These efforts will restore public confidence in Nigeria's legal and institutional framework, reinforcing the rule of law as the bedrock of democracy and human rights.

### 1.9 Mechanisms for Redress and Accountability

The Nigerian Constitution provides the foundational framework for redress. Under Chapter IV, citizens can seek judicial enforcement of their rights<sup>80</sup>, including freedom of expression. The Fundamental Rights (Enforcement Procedure) Rules, 2009, simplify the process for filing human rights cases. Again, the judiciary has played a pivotal role in safeguarding freedom of expression. In *Arthur Nwankwo v State*<sup>81</sup>, the Supreme Court invalidated sedition laws, asserting the importance of free speech in democracy. Similarly, in *Gani Fawehinmi v*

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<sup>78</sup> National Human Rights Commission, *Annual Report 2023* <<https://nigeriarights.gov.ng>> accessed 29 December 2024.

<sup>79</sup> NHRC Act 1995 (as amended 2010), s 6.

<sup>80</sup> CFRN 1999, s. 46

<sup>81</sup> *Supra*

*Akilu*<sup>82</sup>, the court emphasized judicial protection of fundamental rights.<sup>9</sup> However, judicial delays and corruption often undermine the efficacy of these remedies.

Additionally, the NHRC investigates complaints of rights violations, including cases of suppressed expression. During the End SARS protests, the NHRC documented numerous abuses and provided mediation between victims and law enforcement agencies.<sup>83</sup> More so, organizations like the Media Rights Agenda and the Committee to Protect Journalists advocate for victims and raise awareness about freedom of expression violations.<sup>84</sup> By and large, Nigeria's commitment to the African Charter on Human and Peoples' Rights provides an additional layer of accountability. The African Court on Human and Peoples' Rights has jurisdiction to hear cases of violations against Nigerian citizens.<sup>85</sup>

### **1.10. Challenges to Effective Enforcement of Freedom of Expression**

There are tons of tractions on the wheels that drives the effective enforcement of freedom of expression. They include: Political interference which remains one of the primary obstacles to the enforcement of freedom of expression in Nigeria. The executive branch, at times, wields undue influence over law enforcement agencies and the judiciary, hindering impartial enforcement of constitutional guarantees.<sup>86</sup> For example, during the 2021 Twitter ban, government agencies actively restricted digital expression, showcasing how state authority can override fundamental rights.<sup>87</sup>

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<sup>82</sup> *Supra*

<sup>83</sup> National Human Rights Commission, 'Annual Report on Human Rights Violations in Nigeria' (2020) <<https://nigeriariights.gov.ng>> accessed 29 December 2024.

<sup>84</sup> Media Rights Agenda, 'Freedom of Expression Advocacy in Nigeria' (2022) vol 18, 12-25.

<sup>85</sup> African Charter on Human and Peoples' Rights (ACHPR), art 9.

<sup>86</sup> Media Rights Agenda, 'Political Influence on Judicial Independence in Nigeria' (2021) vol 16, 45-60.

<sup>87</sup> Amnesty International, 'The Twitter Ban and Freedom of Expression in Nigeria' (2021) <<https://www.amnesty.org>> accessed 29 December 2024.



Again, the judiciary, while pivotal in safeguarding freedom of expression, is often plagued by delays and corruption.<sup>88</sup> Prolonged litigation processes discourage individuals and organizations from pursuing justice, effectively weakening enforcement mechanisms. Furthermore, inconsistent judicial interpretations of defamation and sedition laws create a climate of legal uncertainty, making it challenging to define the boundaries of lawful expression.<sup>89</sup> Although Nigeria's Constitution guarantees freedom of expression, its legal framework lacks clarity and comprehensiveness to address modern challenges such as digital expression and hate speech. Ambiguities in existing laws, including the Criminal Code and Cybercrimes Act 2015, have allowed for selective enforcement and misuse, particularly against journalists and activists.<sup>90</sup>

Cultural norms and societal attitudes toward criticism further complicate enforcement. In many cases, dissenting opinions are perceived as unpatriotic or disrespectful, leading to public support for government crackdowns.<sup>91</sup> This societal dynamic exacerbates the risks faced by individuals exercising their right to free speech.

Challenges to the enforcement of freedom of expression in Nigeria are deeply rooted in political, legal, and societal structures. However, the proactive role of civil society offers a pathway to greater accountability and reform. To this end, addressing systemic barriers and fostering collaborative efforts, Nigeria can build a more inclusive and rights-respecting society.

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<sup>88</sup> Clement Nwankwo, 'Judicial Delays and Human Rights Violations' [2020] (14) (3) *Public Policy Review*, 102–117.

<sup>89</sup> S Oladimeji, 'Interpreting Defamation Laws in Nigeria' [2019] (18) *African Journal of Legal Studies*, 89–110.

<sup>90</sup> Cybercrimes Act 2015, s 24.

<sup>91</sup> P Ukase and B Audu, 'Cultural Norms and Free Speech in Nigeria' [2015] (11) (4) *European Scientific Journal*, 98–115.

### **1.11 Conclusion**

This paper has examined the constitutional, legal, and institutional mechanisms for enforcing the right to freedom of expression in Nigeria, focusing on the role of the National Human Rights Commission (NHRC). While the Nigerian Constitution and international human rights instruments provide robust legal guarantees, persistent violations such as unlawful detentions, censorship, judicial manipulation, and misuse of defamation laws continue to undermine this right. The NHRC has made notable interventions including advocacy during the End SARS protests and condemnation of the Twitter ban but faces serious challenges such as inadequate funding, political interference, and limited enforcement powers. Judicial delays, inconsistent rulings, and societal attitudes toward dissent further weaken protection. To safeguard democratic governance, Nigeria must address these systemic barriers through legislative reform, institutional strengthening, and sustained public education. Only by empowering the NHRC and fostering a culture of accountability can the country ensure the meaningful realization of freedom of expression. This paper made the underlying Findings:

1. Despite constitutional guarantees, freedom of expression in Nigeria is regularly curtailed through press censorship, harassment of journalists, and suppression of protests.
2. The NHRC plays a critical role in monitoring and advocating for free expression but lacks adequate funding, political independence, and enforcement powers.
3. Delays, corruption, and inconsistent interpretations of defamation and sedition laws undermine judicial protection of free expression.
4. Criminal defamation provisions create a chilling effect on journalism and are often misused by public officials to silence criticism.

5. Government restrictions on social media platforms and vague cybercrime provisions threaten online free speech.
6. Many citizens lack knowledge of their rights and the mechanisms available to enforce them.

The future of freedom of expression in Nigeria depends on a certain approach that combines legal reforms, institutional strengthening, public engagement, and international cooperation. Thus, addressing systemic barriers and embracing proactive strategies, Nigeria can build a robust framework that safeguards free expression, fosters democratic governance, and ensures accountability. On this premises therefore, the following recommendations are proffered:

1. There is the need to strengthen enforcement mechanisms by granting the NHRC prosecutorial powers or a legally binding mandate to ensure compliance with its decisions.
2. There should be an increase in the NHRC's budgetary allocation, establish statutory safeguards for its independence, and create specialized units for digital rights and media freedoms.
3. There is the need to implement judicial reforms including case management systems, mandatory human rights training for judges, and strict penalties for wilful disregard of court orders.
4. There is the need to repeal criminal defamation provisions and adopt civil remedies with clear definitions to prevent misuse against legitimate public interest reporting.

5. The parliament should enact a Digital Rights and Online Freedom of Expression Act that sets transparent limits on government regulation of online platforms and ensures judicial oversight.
6. There is the need to launch nationwide “Know Your Rights” campaigns in partnership with CSOs, integrating human rights education into school curricula.

Foster a culture of open debate by supporting community dialogues, media literacy programs, and public forums that encourage diverse viewpoints