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Ilori, Tomiwa

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Abstract: Effective and rights-respecting hate speech interventions should encourage cohesion more than hate and inclusion more than division. Importantly, they should also guarantee the right to be and to express. Unfortunately, most countries, including Nigeria, lack effective hate speech interventions. This chapter considers specific ways to make hate speech interventions in Nigeria more effective while guaranteeing the protection of the right to freedom of expression, especially in the digital age. Thus, this chapter considers international human rights law and ideas on hate speech interventions, various hate speech interventions in Nigeria, and Nigeria's obligation to comply with international human rights instruments to achieve better results. It concludes that one of the best ways to ensure these interventions' effectiveness is combining alternative methods, such as strategic training, education, public awareness, and a multistakeholder approach.

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Tomiwa Ilori

Beyond the Law

Towards alternative methods of hate speech interventions in Nigeria

1 Introduction

The law ought to not only define societal rules but also use these rules to solve societal problems. First, it ought to define the formal and golden rules a society abides by. Second, it ought to actively solve that society's problems to justify its relevance (Barret & Gaus, 2020; Biccheri, 2016). International human rights law, the system of rules that most sovereign states subscribe to, has established a consensus on prohibiting hate speech. Whether through emotional or physical violence, racial slurs or discrimination online or offline, hate speech is clearly forbidden by international human rights law through its various interpretations, justifying international human rights law's relevance (ICCPR, 1966, Art. 19–20; United Nations, 2019; Brown, 2015; Fino, 2020). However, despite this position, the use of violence through hate speech has risen (Tontodimamma et al., 2021; Futtner & Brusco, 2021; Deutsche Welle, 2020). While the definitions of *hate* or *prohibited speech* may vary in a language or context, they often share a purpose: to deter the use of any means of communication that may incite violence or discriminate against a set of protected characteristics (Mendel, 2012). Hence,

beyond a formal system of hate speech interventions, the law must devise effective ways to combat hate speech. However, in national contexts, the laws on hate speech—unlike international law—are ineffective and as such do not justify their relevance (Bakken, 2002; Fino, 2020).

Considering the law and its limited use yet central role in regulating hate speech, this chapter examines the viability of hate speech interventions in Nigeria. It considers the Nigerian context, the country's approach to hate speech regulation through laws, and how this approach has fared so far. It finds that major laws on hate speech interventions in Nigeria are ineffective due to their vague and excessive provisions that do not consider alternative intervention measures and, consequently, violate international human rights law.

In arriving at these findings, this chapter is divided into six broad parts. Part I introduces the chapter, while Part II considers various hate-speech intervention positions, including normative and theoretical approaches. Part III focuses on the *Declaration of Principles on Freedom of Expression and Access to Information* (ACHPR, 2019) in Africa as an opportunity to combat hate speech more effectively. It analyses the common principles of the various positions under Part II and how the *Declaration* offers a promising perspective on ensuring effective hate speech interventions. Part IV then applies these principles to the Nigerian context. As a result, Part V proffers possible solutions as rights-respecting and democratically viable hate speech interventions in digital-age Nigeria. Part VI concludes that for Nigeria to combat hate speech, its interventions must not be limited to mere criminalization of hate speech but must also include other alternative measures such as *strategic training*, *education*, *public awareness*, and *a multistakeholder approach*.

2 Major approaches to hate speech regulation in Africa

Primarily, hate speech is prohibited by international law (Scheffler, 2015). Various international human rights law instruments exemplify this prohibition through provisions for states to prohibit hate speech through law (United Nations, 1948a, Art. 3(c); ICCPR, 1966, Art. 19–20; ICERD, 1969, Art. 4; United Nations, 1948b, Art. 19; African Union, 1986, Art. 9). In addition to the law, there have been various explanations that analyzed hate speech and its regulations (Dworkin, 2009; Baker, 1989, 1997; Mill, 1859; Rawls, 1993). Both legal and scholarly approaches to hate

speech regulation, especially within the African human rights system, offer perspectives on how hate speech can be regulated (ACHPR, 2019). Practically, these perspectives should effectively use the law to actually prohibit hate speech.

For a working definition, Parekh's (2012) description of *hate speech* and its most obvious challenge—regulation—offer some clarity for this chapter. He states:

> Hate speech expresses, encourages, stirs up, or incites hatred against a group of individuals distinguished by a particular feature or set of features such as race, ethnicity, gender, religion, nationality, and sexual orientation. Hatred is not the same as lack of respect or even positive disrespect, dislike, disapproval, or a demeaning view of others... The difficult and much-debated question is whether it should be not merely discouraged by moral and social pressure but prohibited by law. Although law must be our last resort, its intervention cannot be ruled out for several important reasons (p. 55).

Parekh's view suggests that moral and social pressure are "alternative methods" of regulating hate speech and that legal intervention should only be the last resort. This position further suggests that, while the law plays its own roles, moral and social pressure are equally pertinent (Workneh, 2020; Benesch, 2014; Esimokha et al., 2019; Nkrumah, 2018; Breen & Nel, 2011; Asogwa & Ezeibe, 2020; Cassim, 2015). Consequently, a strong connection between the law's rhetoric and other alternative methods as forms of interventions on hate speech seems apparent. Therefore, considering the various perspectives on hate speech interventions in Africa is important.

2.1 *Key standards of the normative approach to hate speech interventions*

Various international human rights and humanitarian law instruments proscribe hate speech. Using different words yet a common purpose of prohibiting hate speech, and all their various mechanisms prohibit hate speech. Though all of these instruments prohibit hate speech, only the ICCPR and the ICERD explicitly mandate the traditional approach: the use of law to prohibit hate speech.

The most pressing concern of hate speech interventions is how not to violate the right to freedom of expression (Elbahtimy, 2014). This question is one of the greatest challenges facing governments and other stakeholders, including social media companies, in combating hate speech since social media companies have

been said to have a horizontal obligation to protect the right to freedom of expression (Nowak, 2005; Callamard, 2019; United Nations, 2018; Kaye, 2019).

A closer look at articles 19 and 20 of the ICCPR offers a perspective on balancing the contending needs for freedom of speech and freedom from hate speech. Article 20 of the ICCPR provides for three instances when the right to freedom of expression provided for under article 19 may be limited: (1) advocacy for discrimination, (2) hostility and violence based on protected characteristics, and (3) the incitement of imminent violence and propaganda for war. Combined with article 19(3), which allows for restrictions to free speech in order to protect others' rights, both articles form the fulcrum of international human rights law on limiting and regulating hate speech offline and online (Mendel, 2012, p. 420).

The relationship between these two articles can be understood in two major ways. First, the cumulative and conjunctive three-part test under article 19(3) (legality, proportionality, and necessity) provides a framework for the application of the limitations under Article 20. For example, a law on hate speech must not only be formulated with sufficient, precise meaning but it must also not provide a government with unfettered discretion, and it must be directed toward combating hate speech specifically as defined under international law (to protect the rights of others and public interests and use the least restrictive means for a specific aim) (United Nations, 2019). Article 19(3) presents the direct formula for solving the provisions of Article 20 or any claim for restricting the right to freedom of expression. The second relationship between these two articles is that, when they are combined, they ensure a high threshold of regulating the right to freedom of expression based on hate speech (United Nations, 2013).

One major challenge for hate speech jurisprudence under international human rights law is how to balance articles 19 and 20 of the ICCPR. This tension is obvious, especially when Article 20 suggests that "any advocacy"—which can include the right to freedom of expression as provided for under article 19(2)—may be restricted as prohibited speech, reading as a direct limitation of the right as provided for under article 19(2). However, the tension is more obvious even when applied narrowly to the prohibition of hate speech. What do human rights advocates mean when they demand that hate speech interventions must comply with international human rights law? While specific principles govern what qualifies as *hate speech*, these principles require a contextually sensitive application to be effective.

Considering the various international law texts above, what are the possibilities for effective and rights-respecting hate speech interventions in Africa?

2.2 Theories of hate speech interventions

Two major theoretical approaches address how best to regulate hate speech with respect to the right to freedom of expression: *absolutism* and *pragmatism*. Absolutism, which is popular in the United States' legal system, primarily argues against limitations of the right to freedom of expression (Dworkin, 2006, 2009; Baker, 1989, 1997). Its core argument is anchored on the claim that the freer the speech, the more open the society. Absolute hate speech intervention is further divided into two categories. First, *self-ordering absolutism* argues that a society will always "self-order" or "self-correct" in the course of debates and exchanges of ideas, whether popular or unpopular and through a free press (Mill, 1859). Second, *institutional absolutism* contends that, so far strong institutions are in place—such as the courts, law enforcement, and public service—higher guarantees protecting free speech are available by not using only the law (Rawls, 1993; Nickel, 1994).

Traditionally, pragmatism centers the use of hate speech interventions—laws and other measures that prohibit hate speech. Such interventions may include *traditional* or *non-traditional interventions*. Traditional interventions are the use of laws to combat hate speech, while non-traditional interventions are the use of other social methods, such as education, training, and public awareness (Workneh, 2020; Nkrumah, 2018; Cassim, 2015). Non-traditional interventions may also be called *alternative methods* or *alternative measures* of hate speech interventions.

Oftentimes, on one hand, most states adopt traditional interventions as they seek to combat hate speech through laws; on the other hand, most international law instruments use non-traditional interventions by referring to the use of other social methods in hate speech interventions. What distinguishes non-traditional interventions from other approaches is that it considers hate speech as socio-pathological and for this reason, requires more than criminalization and the legislative impulse to combat hate speech (Cassim, 2015).

Absolutist arguments against limiting speech through hate speech interventions are unsubstantiated since examples show that hate speech precipitates violence (Viljoen, 2005). Additionally, many societies are unable to "self-order" as

a result of weak democratic institutions that are meant to effectively lead such "self-ordering."

Traditional interventions equally pose a problem for the regulation of hate speech. Often, when the law or provisions that criminalize hate speech are not far-reaching in criminalization and punishments and are used to restrict the right to freedom of expression, they focus on corrective measures, rather than preventive methods (Scheffler, 2015, p. 82). However, in understanding hate speech as a social problem, the non-traditional intervention requires the law as a necessary tool to be combined with other social and alternative methods. Thus, hate speech interventions can be adjusted to various contexts while also protecting free speech and guarding against prohibited speech.

The normative and theoretical approaches are similar in providing the basis for assessing hate speech interventions in various contexts. The normative approach provides the prescriptive basis for balance between hate speech and the right to freedom of expression, while the theoretical approaches provide a more context-based and practical application of these laws. The normative framework convergently aims to prohibit hate speech, and the theoretical approach provides divergent perspectives on applying legal goals. A fine blend of both approaches is usefully exemplified in the African human rights system's reviewed *Declaration*.

3 The Declaration of Principles on Freedom of Expression and Access to Information in Africa and hate speech interventions

The African Commission on Human and Peoples' Rights (ACHPR) adopted the *Declaration* under its promotional mandate. The *Declaration* was made pursuant to Article 45(1) of the *African Charter on Human Rights* (African Union, 1986), which requires the African Commission to "promote human and peoples' rights, among others, by formulating and laying down principles and rules to solve legal problems relating to human and peoples' rights and fundamental freedoms upon which African States may base their legislation" (ACHPR, 2019).

In fulfilling this obligation, the *Declaration* was adopted to provide policy guidance for states' protecting the right to freedom of expression and access to information in the digital age under Article 9 of the *African Charter*.

Within the African human rights system, the *Declaration* benefited in its drafting from extensive consultations between April 2018 and October 2019, including perspectives from both the normative and theoretical approaches (ACHPR, 2019). As a result, it provides a prime example of a non-traditional intervention on hate speech in Africa. It is the only regional instrument that combines both forms of pragmatism described above. Principle 23 provides for the nature and extent of enforcing a human rights-focused hate speech intervention:

1. States shall *prohibit* any speech that advocates for national, racial, religious or other forms of discriminatory hatred which constitutes incitement to discrimination, hostility or violence.

2. States shall *criminalise prohibited speech as a last resort* and only for the most severe cases. In determining the threshold of severity that may warrant criminal sanctions, States shall take into account the:

    - prevailing social and political context;
    - status of the speaker in relation to the audience;
    - existence of a clear intent to incite;
    - content and form of the speech;
    - extent of the speech, including its public nature, size of audience and means of dissemination;
    - real likelihood and imminence of harm.

3. *States shall not prohibit speech that merely lacks civility or which offends or disturbs.*[1]

In demonstrating an example of non-traditional intervention, the principle addresses the specific nature of speech that is prohibited and considers at what point criminalization of this speech should occur—thus, criminalization is not the first step of intervening against hate speech. For example, 23(1) provides that states "shall prohibit" various categories of speech but does not refer to any specific method of regulation. This provision is presented before 23(3), on the criminalization of speech as a "last resort" because laws are not the only means of prohibiting speech and where such means arise, they would be suitable for only the *most severe cases*. The use of criminalization as a "last resort" readily suggests other

1 The italics here are added for emphasis by the current chapter's author.

methods than criminalization, including non-traditional methods should exist. Moreover, criminalization should be proportional since the narrow limitations of the right to freedom of expression matter. Thus, the *Declaration* applies both non-traditional and traditional approaches to hate speech interventions.

Further considering what a "last resort" criminalization of prohibited speech might look like, the *Declaration* considers six factors to assess whether certain speech is prohibited under 23(2): social and political context, the speaker-audience relationship, intention or motive, speech content, reach and likelihood, and proximity of harm. In concluding that prohibited speech has been used and should be criminalized, stakeholders should consider all six factors in enforcement (United Nations, 2013, p. 11). Hence, in regulating prohibited speech in African countries, non-traditional means must be considered before criminalization, which should only be used as a last resort, and such a last resort should be reserved for the "most severe cases."

To limit the right to freedom of expression based on hate speech interventions, such interventions require a high threshold of compliance due to the right's importance. Therefore, traditional and non-traditional approaches to hate speech prohibition should be combined. For example, a law on hate speech—even if it complies with the strict provisions of international human rights law—may be ineffective since hatred is reduced not only by imprisonment terms and fines but also through carefully chosen alternative methods that focus more on social dynamics than criminal elements. So, while a specific alternative method or a combination of alternative methods may genuinely teach about and prevent the dangers of hate speech, the law as a form of hate speech intervention should reinforce such alternative methods. Therefore, hate speech interventions in most severe cases should not be limited to imposing criminal sanctions but, also be used as a tool to mainstream alternative methods of hate speech interventions (Scheffler, 2015, pp. 96–98).

Perhaps closely related to traditional pragmatism on hate speech interventions is the proposition for a narrower application of hate speech, called *dangerous speech* (Benesch et al., 2018). In considering effective interventions for dangerous speech, Benesch (2014) notes:

> Most policies to counter inflammatory speech are punitive or censorious such as prosecuting, imprisoning, or even killing inflammatory speakers . . . these methods may curb freedom of expression, which must be protected, not only as a fundamental

> human right but also because denying it can increase the risk of mass violence, by closing off non-violent avenues for the resolution of grievances (p. 5).

This argument implies that mere the criminalization of dangerous speech, like all other forms of hate speech, is not only ineffective as an intervention but also often violates the right to freedom of expression and prevents opportunities to address hate speech through other measures.

The relationship between the international human rights instruments referred to above and the *Declaration* can be considered in two major ways. First, Article 9 of the *African Charter* can be used to strengthen international human rights law prescriptions on hate speech interventions, and to ensure this, the *Declaration* provided for specific obligations for African states on how to carry out such interventions under Principle 23 (United Nations, 2013, p. 11). Second, as a regional human rights instrument, the *Declaration* complements other international human rights systems. This second point is further reinforced by the window of complementarity permanently opened by virtue of Article 60 of the *African Charter*, which allows the African Commission to "draw inspiration from international law on human and peoples' rights."

These do not only tie the *Declaration* to the international human rights system, reinforcing its authoritative nature of issues with respect to the right to freedom of expression, but also grounds the *Declaration*'s provisions on prohibited speech in international human rights norms. This tie shows that any member state to the *African Charter*, including Nigeria, is free to consider either or both the international human rights system and the *Declaration* and still comply with international human rights law on hate speech interventions. This compliance is necessary because the "state bears the burden of demonstrating the consistency of such restrictions with international law with such restriction including those on the right to freedom of expression like hate speech" (ECOWAS, 2018, para 65).

4 Effectiveness of hate speech interventions in Nigeria

Since Nigeria gained independence in 1960, various interventions on hate speech have been implemented, mainly laws and rarely alternative methods. Recent interventions have arisen directly or indirectly through the 1999 constitution

(as amended), electoral laws, broadcasting laws, and proposed laws as hate speech interventions.

4.1 The 1999 Constitution (as amended)

Chapter 4 of the 1999 *Constitution of the Federal Republic of Nigeria* (as amended) provides for fundamental human rights. Section 39(2) limits the rights to freedom of expression, opinion, and the dissemination of ideas in its proviso. The proviso vests the power to limit the rights provided for under this section in the government. It empowers the government to carry out such limitations through an Act of the National Assembly in order to determine the ownership, establishment, and operation of any broadcasting station. Under Subsection 3, it provides that the basis for restricting the right to freedom of expression through laws must be "reasonably justifiable in a democratic society," requiring that government's powers to restrict the right be limited by reason and justifiability in a democratic system.

Section 45(1) provides for two other bases that apply to some rights contained under the chapter, including Section 39:

> (1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society
>
> (a) in the interest of defence, public safety, public order, public morality or public health; or
>
> (b) for the purpose of protecting the rights and freedom or other persons

Sections 39 and 45(1) suggest two categories of limitations with respect to the protection of the right to freedom of expression under the 1999 constitution. The first category is internal, contained in the provisions of sections 39(2) and (3), with (3) requiring that the limitation under (2) be reasonably justifiable. The second category is external, as contained in the provisions of Section 45.

Given the effects of both provisions' possible limitations to the right to freedom of expression through hate speech, such limitations must be provided for by law, be reasonably justifiable in a democratic society, and be proportionate toward protecting specific forms of public interests and the rights of others. These requirements demonstrate that, for example, in using law to limit the right to

freedom of expression through a hate speech law, under the Nigerian constitution, it must not only be specific toward such an aim but also be used reasonably in a democratic society. The ideals of a democratic society are respect for the rule of law, including finer practices such as respect for fundamental rights, limited government, periodic free and fair elections, the independence of the judiciary, and other crucial aspects of political power relations (Ihonvbere, 2000, p. 343).

4.2 Electoral Act

Section 95(1) of the *Electoral Act* of 2010 provides for the offenses of "abusive language directly or indirectly likely to injure religious, ethnic, tribal or sectional feelings." Subsection (2) further criminalizes "abusive, intemperate, slanderous or base or insinuations or innuendoes designed to likely provoke violent reactions or emotions." Subsection (7) further provides for various punishments, including imprisonment terms and fines.

Additionally, paragraph 7 of the *Code of Conduct for Political Parties* of 2013 provides that political parties and candidates shall refrain from "the use of inflammatory language, provocative actions, images or manifestation that incite violence, hatred, contempt or intimidation against another party or candidate or any person or group of persons on grounds of ethnicity or gender or for any other reason" (INEC, 2018).

The above provisions and language of the *Electoral Act* do not fall under the express limitations of *hate speech* under international human rights law. "Abusive language" may not be considered hate speech. It may be classified as a form of harm, but not hate speech, which does not include offensive or unpopular speech. The *Code of Conduct* provision may be further streamlined to cover the incitement of violence and advocacy for war and discrimination, based on the above-mentioned characteristics, while applying the various factors to be considered in determining whether hate speech has occurred.

4.3 Cybercrime Act

Section 26 of the *Cybercrimes (Prohibition, Prevention, Etc.) Act* of 2015 provides for racist, xenophobic, and genocidal offenses online. Section 26(1)(a–b)

criminalizes the production and sharing of racist and xenophobic material to the public. Additionally, the offense includes threatening anyone based on their race, color, descent, nationality, ethnicity, or religion. Section 26(1)(c), however, provides for the offense of insults based on these characteristics, while (d) criminalizes genocide or crimes against humanity. Each of these offenses carries various fines and imprisonment terms as punishments.

The provision of Section 26(1)(c) of the *Cybercrime Act* does not comply with international law in that "insults" are not covered under hate speech. For a speech to fall under the intendment of Section 26 as labeled, it must fall under the strict prescription of international human rights law, as explained immediately above.

4.4 Nigerian Broadcasting Code

Under the current *Nigerian Broadcasting Code*, paragraphs 3.0.2.1 and 3.0.2.2 provide that broadcasting incitement and hate speech is prohibited. It first paragraph states:

> No broadcast shall encourage or incite to crime, lead to public disorder or hate, be repugnant to public feelings or contain offensive reference to any person or organization, alive or dead or generally be disrespectful to human dignity (National Broadcasting Commission, 2016).

To the contrary, the code does not provide what constitutes *hate speech*. Words such as *public feelings*, *offensive reference*, and *disrespectful* do not convey a sufficient or precise meaning. For example, public feelings cannot be determined or contextualized, public feelings are not grounds for limiting the right to freedom of expression, and no international law instrument includes public feelings as bases for prohibiting hate speech.

4.5 National Commission for the Prohibition of Hate Speeches (2019)

The objective of the *National Commission for the Prohibition of Hate Speeches Bill* is to "promote national cohesion and integration by outlawing unfair discrimination, and hate speech." It seeks to establish a national commission for the prohibition of

hate speeches. The bill provides for various categories of offenses, including ethnic discrimination, hate speech, harassment on the basis of ethnicity, offense of ethnic or racial contempt, and discrimination through victimization and offense by companies and firms. It describes the offense of *hate speech* as the act of anyone who

> publishes, presents, produces, plays, provides, distributes and/or directs the performance of, any material, written and/or visual which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up against any person or person from such an ethnic group in Nigeria (National Commission for the Prohibition of Hate Speeches, 2019).

Of all the offenses provided for under the proposed law, only hate speech carries the punishment of life imprisonment, and where such speech results in death, it becomes punishable by death by hanging. Other offenses such as harassment on the basis of ethnicity and ethnic or racial contempt carry punishments of a five-year jail sentence or a fine of 10,000,000 nairas (26,000 US dollars) or both punishments if the accused is found guilty. Offenses by companies or firms carry the punishment of a one-year jail sentence or 2,000,000 nairas (5,000 US dollars) or both punishments if the accused is found guilty.

The bill, as an intervention, presents obvious irony since its hate speech provisions are not only excessive, non-compliant with international standards, and censorious (IPI, 2019; Media Rights Agenda, 2020; Tijani, 2019; Adibe, 2018) but also directly contravene its objectives to "promote national cohesion and integration" with its excessive punishments, including life imprisonment and death by hanging. Despite the provisions of the bill's Section 19 which considers other less intrusive means of combating hate speech, it fails to provide adequate clarity as a law, it is disproportionate and it does not demonstrate the necessity of its form of interventions.

Importantly, the Nigerian government is responsible for demonstrating its compliance with international law requirements limiting the right to freedom of expression (Land, 2020). This responsibility is that, aside from the use of such vague words as *insulting* or *abusive*, the bill did not provide for the contextual analysis of hate speech as under Principle 23(3). Additionally, it prescribes the outright criminalization of speech not as a last resort, while it also recommends death by hanging as

punishment when hate speech results in death. Therefore, its framing of *hate speech* and the necessary interventions do not demonstrate the consideration of other less intrusive means as one of the major tests for compliance with international law.

Currently, Nigeria lacks any elaborate provision in its Criminal Code Act or Penal Code Act—both laws that provide for criminal offenses of hate speech in Southern and Northern Nigeria, especially as prescribed under international law. Related to the prohibition of hate speech are the provisions of Section 417 of the Penal Code (Northern States) Federal Provisions Act. It provides for an offense of endangering public peace by exciting hatred among classes. Moreover, currently, no policies offer guidance on online hate speech in Nigeria. Therefore, the Nigerian government faces at least three urgent needs to review its hate speech interventions.

First, it must review all laws and existing policies to align them with human rights principles because for Nigeria to thrive, given its current constitution, it must allow for more speech and not less. This process involves aligning various laws with international human rights provisions, such as those provided for in the *Declaration* to ensure more debates and a tolerant system.

Second, since the laws have been in use for the most time and have not effectively reduced hate speech, more alternative methods should be considered (Scheffler, 2015; Bakken, 2002), such as the use of the law to achieve evidence-based policy-making on hate speech interventions. Rather than using the law simply as a criminalization tool, it could be used to devise normatively creative ways to combat hate speech.

Third, all forms of intervention must be truly transparent and inclusive to accommodate the realities of combating hate speech, especially in the digital age. This goal can be accomplished by considering the various recommendations in the subsequent parts of this chapter. They would assist in solving the twin challenge of ensuring more speech while protecting against harmful speech.

As this chapter has explained above, especially under the international human rights law, any form of hate speech intervention should aim to stop the spread and impact of hate speech. Any other aim could endanger human rights protections and democratic development. Hate speech interventions should not focus on using vague words to criminalize hate speech (United Nations, 2012). Rather, they should adopt creative means beyond the law, accommodating diverse perspectives to form various systems of rules that can both prevent hate speech and, simultaneously, protect free speech.

5 Beyond the law: Hate speech and alternative methods of intervention in Nigeria

Without the right policy to justify the use of criminalization for serious hate speech offenses, governments lack legitimacy and legality in their use of most hate speech legislation (Egbunike, 2019; Nkanga, 2016; Busari, 2020; Nyathi, 2018). One requirement of the three-part test in limiting speech is that such laws must be formulated with sufficient precision so that everyone affected by those laws can understand them. The rise in hate speech in Africa offline and online does not necessarily suggest that perpetrators of hate speech fully understand its impacts.

In suggesting various alternative approaches to curbing hate speech, using Rwanda and Kenya as case studies, Scheffler proposed five ways to divide responsibilities across stakeholders (Scheffler, 2015, pp. 89–94). These stakeholders include government and state officials, the public, media, monitoring institutions, and the international community. This chapter takes a slightly different approach but includes some of these methods as other means of conducting hate speech interventions in Nigeria.

Using various ways to resolve the three issues highlighted above, after policy review, more stakeholders should be included to devise alternative methods for hate speech interventions in Nigeria (Ibrahim, 2021, p. 200). These methods will not only allow for the legitimacy of such interventions but also practically combat hate speech and increase the prospects of tolerance. Some such alternatives include *strategic training*, *education*, *public awareness*, and *a multistakeholder approach*.

5.1 Strategic training

Various stakeholders should be prioritized for training, especially in the public sector, to advance an incisive public-facing understanding of hate speech in Nigeria. While ensuring this understanding is primarily the responsibility of governments and their institutions, other stakeholders such as social media platforms, academia, and civil society should be willing to collaborate in this regard. Considering the strategic role played by some sub-sectors, such as the administration of justice, education, and internal affairs, designing targeted training programs fit for the purpose of each of these sub-sectors is salient.

These programs can be accomplished by identifying and provisioning specific resources that focus on hate speech's social dynamics. Since hate speech seeds violence, these proximate stakeholders who are most likely to make decisions on the public's behalf should have their training manuals updated occasionally, and ensure mandatory, continuous education including understanding the various dynamics of hate speech and its interventions in Nigeria. For example, various judicial institutions involved in the continuous education of magistrates, judges, and other judicial officers should incorporate the various dynamics of how hate speech plays out in today's society like contexts where such speech was used, the spread and impacts of such speech and others.

5.2 Education

States should mainstream academic modules—such as literary studies, civic studies, and history into academic curricula, making them stand-alone, compulsory subjects at the primary, secondary, and post-secondary levels. This measure would afford a fuller understanding of the various contexts that might influence hate speech in society through more objective formal education. It should focus on how the humanities preserve the society through social methods and correct hate speech through carefully planned educational systems that encourage thinking, beyond merely remembering. Additionally, as a public policy, governments should consider various promotional materials that can assist in contextualizing hate speech in various communities.

5.3 Public awareness

To stem hate speech through alternative methods, stakeholders such as the government, social media platforms, academia, and civil society in Nigeria should consider raising more awareness about the dangers of hate speech and the various contexts in which it might occur. Such awareness should be informed by comparative and contextual examples of hate speech. Clarifying the legal and social impacts of hate speech is vital, especially with respect to international law. In communicating these impacts, various institutions such as government

ministries and institutions should collaborate with other stakeholders. For example, the National Orientation Agency (NOA) and the National Human Rights Commission (NHRC) could coordinate stakeholders' activities to develop and implement a nationwide campaign on hate speech, according to its mandate (National Orientation Agency, 1993). This campaign may serve as a precursor to designing a hate speech policy for Nigeria. This campaign should draw on various stakeholders to design communicative, community-friendly, and easy-to-read facts about hate speech. For example, providing public educational materials in more minority languages that are designed for such a campaign in Nigeria would greatly complement a focus on the country's major languages.

5.4 A multistakeholder approach

A democratic, inclusive, and participatory system is central to balancing harmful speech and free expression in Nigeria. Such a system should accommodate as many stakeholders as possible to update policies on hate speech in Nigeria. Government officials, government institutions, the private sector (including telecommunication companies and social media platforms), civil society, academia, linguists, journalists, and traditional rulers at various levels should together determine the course of a nationwide policy on hate speech.

6 Conclusion

In order to lead with more effective interventions, key stakeholders including the Nigerian government, social media platforms, academia, and civil society should pay more attention to a combination of the methods presented above. For example, in regulating hate speech in Nigeria and other African countries, social media platforms can adopt internationally set human rights standards while also paying close attention to varying contexts. Such approaches would include encouraging education over permanent sanctions. Social media companies seeking to comply with national laws and their community guidelines is insufficient, given the overarching need to apply international human rights laws and social methods to regulate hate speech (Global Network Initiative, 2020). This application provides

a more objective basis for social media companies to push back against censorious practices and effectively help combat hate speech. Now, with increased reliance on technologies, social media companies must actively mainstream international human rights law into their algorithms while setting finer policy mandates through strategic training, education, public awareness, and a multistakeholder approach to collaborate on social methods that systematically combat hate speech.

The essence of clear and narrow restrictions on the right to freedom of expression—especially under international human rights law not only protects against harms such as hate speech, but also ensures that such protections do not render the right nugatory. In striking a careful balance between these two seemingly contrasting needs, the requirement to determine whether speech must be restricted must consider the least intrusive means. As Mendel (2010) states, "measures to protect the right must be rationally connected to the objective of protecting the interest, in the sense that they are carefully designed so as to be the least intrusive measures which would effectively protect it" (p. 18).

This agrees with the provisions of Principle 23 of the *Declaration*, which not only regards criminalization as necessary in serious cases but also considers its use only as a last resort. These provisions emphasize alternative approaches to criminalization or the law in combating hate speech in Nigeria.

Hate speech is a multifaceted social phenomenon, and it has been studied as a socio-pathological trait. Therefore, it has become even more amplified, given the rise of technologies. As a result, more normatively creative interventions on hate speech that do not only prevent it fundamentally but also arrest its harm to the society are needed. This chapter has shown that preventing and arresting such harm is possible but stakeholders must seek solutions beyond the law. "Beyond the law" here does is not mean *outside the law* but rather, *a creative use of the law as a tool to protect speech while combating its harmful aspects*. More definitive ideas on such creative normative interventions that combat hate speech effectively will be needed, so this chapter looks to spark more conversations about these ideas.

Thus, to ensure effective interventions against hate speech, Nigeria should consider alternative measures. These approaches consider not just education but the type that informs about the histories and dangers of hate speech, not just training but also a focus on proximate stakeholders in hate speech interventions and their implementation, and not just the obvious and easy approach of criminalization but also approaches treating hate speech as a social phenomenon.

Tomiwa Ilori is a researcher at the Centre for Human Rights, University of Pretoria, South Africa, and at the Expression, Information and Digital Rights Unit of the Centre. https://orcid.org/0000-0002-2765-3103

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