

**ACTION GROUP ON FREE
CIVIC SPACE**

**PROTECTION FROM
INTERNET
FALSEHOODS,
MANIPULATIONS
AND OTHER
RELATED MATTERS
BILL, 2019**

MEMORANDUM SUBMITTED TO THE
SENATE COMMITTEE ON JUDICIARY,
HUMAN RIGHTS AND LEGAL MATTERS

ACTION GROUP ON FREE CIVIC SPACE

The Action Group on Free Civic Space represents a loose network of organizations, student unions, social movements and active citizens working on different thematic issues, but committed to ensuring that government regulation in the name of national security does not shrink the civic space in Nigeria.

Introduction:

In 2016, Senator Mohammed Sani Musa introduced the “*Protection from Internet Falsehoods and Manipulations and Other Related Matters Bill 2019*”, popularly known as the Social Media Bill (SMB). Among other things, the bill is promising to prevent the transmission of false statements/declaration of facts in Nigeria and enable measures to be taken to counter the effects of such transmission. Having scaled through the first and second reading on November 5, 2019 and November 20, 2019 respectively, the **Action Group on Free Civic Space (AGFCS)** submits this memorandum to the Senate Committee on Judiciary, Human Rights and Legal Matters, in order to inform its deliberations and consideration of the Bill.

This memorandum outlines FOUR (4) major observations:

1. **The SMB contains numerous provisions that run contrary to constitutional guarantees of free speech and fair comment protected under national laws.**
 2. **The SMB reproduces new rules and regulations already covered by existing legislations.**
 3. **Numerous law enforcement mechanisms for curbing cybercrimes exist. There is no need to replicate this function**
 4. **The language used in framing offences is overly broad with the potential to criminalize vast swaths of honest expressions, services and conduct.**
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1. **The Social Media Bill contains numerous provisions that run contrary to constitutional guarantees of free speech and fair comment protected under national laws**

As has been upheld in a long line of cases by Nigeria’s Supreme Court, particularly in **Joseph Din Vs. African Newspapers of Nigeria Ltd. (Suit No 44/1986, delivered 25th day of May, 1990)** JSC Obaseki held as follows:

‘the right to comment freely on matters of public interest is one of the fundamental rights of free speech guaranteed to the individual in our Constitution. It is so dear to the Nigerian

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and of vital importance and relevance to the rule of law which we so dearly treasure for our personal freedom.'

Citizens are generally entitled to fair comment in public and private discourses on matters of national importance and public interest. The right to fair comment is concomitant to the right to free speech guaranteed under Section 39 of the Nigerian Constitution. Those who comment fairly, in good faith and without malice, are protected from civil liability even where such comments are found to be defamatory, exaggerate or inexact. It is only when the comment was not made honestly, or that it was actuated by malice that the defence of fair comment will be defeated.

It is conceded that the right to discuss matters of public concern, does not confer liberty to make defamatory or false statements. It is for this reason Nigeria already enacted various legislations such as Section 373 of the Criminal Code, the Defamation Act, 1961 among others, prohibiting the making of false statements that hurt the reputation of another. In light of the above, the SMB's blanket criminalization of various forms of declaration of facts presumed to be false, runs afoul of constitutional guarantees of free speech and fair comment protected under the constitution and several national laws cited above.

2. The SMB reproduces new rules and regulations already covered by existing law

The SMB reproduced certain sections of the Cybercrimes Act verbatim, with only minimal modifications here and there. The reproduced sections include Section 22 subsection 2, 3 (a-d) and 4 of the Cybercrimes Act, *Section 24, Section 26 (1) a-d*, Section 40 and so forth. The above provisions of the Cybercrimes Act are far-reaching, covering issues pertaining to the transmission of false statements, use of parody accounts to transmit false communication, soliciting and receiving any service to facilitate the transmission of false statements and the obstruction of justice. It went further to impose stiffer penalties for any breach of these provisions. Sections 1, 3, 4 and 5 of the Social Media Bill merely regurgitated these provisions of the Cybercrimes Act, with minimal modifications.

Apart from the Cybercrimes Act of 2015, other national laws proscribing the transmission of false statements include Sections 114, 392, 399 and 416 of Penal Code Act, Chapter (CAP) 53 of the Laws of the Federation of Nigeria (LFN) 1990, Sections 51, 373, and 375 of Criminal Code Act, Cap 77, LFN 1990; Defamation Act 1961, among several laws.

The SMB also aims to criminalize and punish comments capable of inciting enmity or hatred towards a person or group of persons, or cause ill will between different groups of persons. Along this line, the constitutional protection against non-discrimination is broad, encompassing discrimination on several grounds including ethnic origin, place of origin, sex, religion or political opinion. Not only that, S. 50 (2) of the Criminal Code creates the offense of sedition. A "seditious

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intention” has been defined to include various statements that incite hatred or contempt or excite disaffection against the person of the President or of the Governor of a State or the Government of the Federation; or to raise discontent or disaffection amongst the citizens or other inhabitants of Nigeria. As the above provisions demonstrate, there is no need to enact a new law to regulate issues already addressed by numerous existing legislations.

3. Numerous law enforcement mechanisms for curbing cybercrimes exist. There is no need to replicate this function

A number of law enforcement agencies are statutorily mandated to tackle cybercrime. They include the Cybercrime Advisory Council, the National Computer Forensic Laboratory, the National Computer Emergency Response Team (CERT) Coordination Center and the National Human Rights Commission (NHRC). More specifically, Nigeria constituted the 31-person Cybercrime Advisory Council to tackle rising criminal activities and to protect the nation's cyberspace.

Offences relating to ethnic hatred or statements causing ill-will between persons and groups infringe Nigeria's constitutional protections for the rights to life, privacy and non-discrimination, bringing any violations against such rights within the purview of judicial and quasi-judicial bodies such as the various state high courts, Federal High Court, National Human Rights Commission(NHRC) and so forth.

4. The language used in framing offences is overly broad with the potential to criminalize vast swaths of honest expressions, services and conduct

The bill is replete with vague phrases framed around the protection of national security, public health, public safety, public finances, bilateral relations with other countries or influencing the outcome of elections to any office and so forth. Further aggravating the situation, the interpretation section of the bill is silent on the definition of these (underlined) terms. The language equally used in framing offences in the bill is overly broad that any legitimate, honest expression during a social discourse can be easily stretched to come under the ambit of the stipulated offences.

Where the benchmarks for measuring compliance or violation are missing, legal provisions could be prone to abuse, especially by interpreting or applying them beyond the original intentment of the law in order to justify crackdowns on civil society, including targeted attacks on activists, journalists, bloggers, and civil society organizations. The closing spaces database—www.closingspaces.org—documents a number of cases where overly broad statutory provisions were invoked to justify the arrest and prosecution of bloggers on account of their online expressions on social media. This antecedent fuels fears that the Social Media Bill might be misused to pursue and achieve similar objectives.

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Not only that, the use of overly broad provisions in statutes inappropriately delegates legislative powers to the judicial branch. In such situations, judges are impelled by the circumstances to create meaning out of vague and overbroad legal rules, thereby inducing them to assume the responsibilities of another organ of government. This practice violates the principles of separation of powers, the pillar on which the tenets of our hard-worn democracy rests on.

For the above reasons, we oppose this bill in its entirety and recommend as follows:

Conclusion:

- **Strengthen the capacities of existing law enforcement agencies statutorily mandated to tackle cybercrime, by providing them with adequate human resources and infrastructure needed to both enhance their technical, investigative and intelligence-gathering skills and strengthen coordination among them.**
- **Accelerate the implementation of existing cybercrime laws and policies, especially the Cybercrimes (Prohibition, Prevention, etc) Act 2015, and the National Cyber Security Policy and Strategy, adopted on the 5th of February, 2015**
- **Ensure the conformity of Nigeria's cybercrime and cybersecurity laws and policies with regional and international human rights standards.**

For further enquiries, please contact:

1. ANEEJ: Africa Network for Environment and Economic Justice
2. ADAI: Ambassadors for Development Initiative
3. CARA: Cara Development Foundation
4. CEEHOPE: Centre for Children's Health Education, Orientation and Protection
5. CCIDESOR: Citizens Centre for Integrated Development and Social Rights
6. CODAF: Community Development Advocacy Foundation
7. CDHR: The Committee for Defense of Human Rights
8. CLICE: Comfort Literacy Intervention and Capacity Enhancement Foundation
9. CAD: Communities Alliance against Displacement
10. CPEYD: Centre for Peace, Environment and Youth Development
11. CCG: Centre for Constitutional Governance
12. CHRIFACAF: Christian Fellowship and Care Foundation
13. ERA/FoEN: Environmental Rights Action/Friends of the Earth Nigeria
14. EVA: Education as a Vaccine
15. ERM: Environmental and Rural Medication Centre (ENVIRUMEDIC)
16. EECA: Edo Electricity Consumers Association
17. ERA: Environmental Rights Action
18. FCS: Foundation for Civilised Society
19. FARDEM: Family Resources Development Motivators
20. FLAD: Foundation for Livelihood Advancement
21. GWA: Good Women Association

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22. GPBN:	Guild of Professional Bloggers of Nigeria
23. GR:	Global Rights
24. GWA:	Good Women Association
25. GPBN:	Guild of Professional Bloggers of Nigeria
26. HCI:	Habitat Care Initiative
27. IYO:	Indomitable Youths Organisation
28. IPS:	Initiative for Peace and Stability
29. KIF:	KoyenumImmalah Foundation
30. NGG:	Network for Good Governance
31. NAOS:	National Association of Okpe Students
32. NNF:	New Nigeria Foundation
33. N-COGEF-D:	Concerned for Environment Population and Development in Nigeria
34. NAKSS:	National Association of Kano State Students
35. OAISD:	Open Arms Initiative for Sustainable Development
36. OSNE:	Organisation for the Sustenance of the Nigerian Environment
37. OSH:	Open Spaces Hub
38. PCEI:	Peace and community Empowerment Initiative
39. PWAN:	Partners West Africa Nigeria
40. PWYP:	Publish What you Pay, Nigeria
41. PJ:	Partners for Justice
42. RIC:	Rural Initiative for Change
43. RUCEi:	Rural Community Empowerment Initiative
44. RYPC:	Rural Youth Peace and Care Foundation
45. RULAAC:	Rule of Law and Accountability Advocacy Center
46. SERAP:	Social and Economic Rights Accountability Project
47. STER:	Stand to End Rape
48. S4C:	SPACES FOR CHANGE
49. SGIF:	Saint Gregory Initiative Foundation
50. SYDF:	Students and Youths Dedicative Forum
51. TCB:	Town Crier Blog
52. ULPDI:	Unique Love for Persons with Disabilities Initiatives
53. VRC:	Value Rebirth and Empowerment Initiative (Value Rebirth Centre)
54. VHF:	Virgin Heart Foundation
55. VSI:	Vision Springs Initiatives
56. WIDEF:	World Impact Development Foundation
57. WLDI:	Women Liberty and Development Initiative
58. WANGONeT:	West African NGO Network
59. WILSIA:	Women Initiative for Leadership Strategy and Innovation in Africa
60. YEAC:	Youths and Environmental Advocacy Centre
61. ACSGBV:	Association against Child Sexual and Gender Based Violence
62. A-CODE:	Agents of Communication and Development
63. CPDI:	Community Peace Development Initiative
64. CT:	Centre for Transparency
65. CPEJ:	Centre for Peace and Environmental Justice
66. DOI:	Development Outreach International
67. DICl:	Development Initiative for Community Impact
68. ENSNET:	Enugu State Network of Civil Society Organizations
69. HWE:	Health Wealth Empowerment
70. IGWE:	Initiative for Girls and Women Enlightenment
71. LMN:	LOVE MATTERS NAIJA
72. NELCCI:	New Life Community Care Initiative
73. NYP:	The Nigerian Youth Parliament.
74. OLCD:	One Love Community Development
75. PCIC:	Parent-Child Intervention Centre
76. PIN:	Probity in Nigeria

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- 77. PEF: Peaceworld Educational Foundation
- 78. PACE: Partnership for Civic Engagement
- 79. RYF: Rural Youth Foundation
- 80. REED CENTRE: Rights Empowerments Education and Development Centre
- 81. RADI: Rescue Ambassadors Development Initiative
- 82. UNRS: United Noble Rescue Services
- 83. VSO: National Youth Engagement Network
- 84. YVAN: Young Visioneers Association of Nigeria
- 85. YFSC: Youth Forum for Social Change
- 86. CLP: Community Life Project, Lagos
- 87. RN: Reclaim Naija

