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## **UNDERMINING THE FREEDOM OF EXPRESSION: THE CASE OF FAKE NEWS IN NIGERIA**

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## CHAPTER SEVEN

# UNDERMINING THE FREEDOM OF EXPRESSION: THE CASE OF FAKE NEWS IN NIGERIA

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### Introduction

Contemporary news industry globally is replete with such terms as alternative facts, fake news, and post-truth. Today, social media platforms allow sensational news to “go viral,” crowd sourced news from ordinary people to compete with professional reporting, and public figures in offices as high as the US presidency to bypass established media outlets when sharing news. Headlines such as “24 million fraudulent voters voted for Hillary Clinton”; “Saudi Arabia funded French President Emmanuel Macron's election campaign”; “CIA planned to stop the Trump inauguration”; “Buhari Is Dead”; “This is Jubrin Sudan, not Buhari”; “2019: Amaechi under fire over 'leaked video’” among others were later found to be fake. In January 2017, the U.S. intelligence community publicly released its assessment that Russian state and non-state actors led an influence campaign to impact the 2016 U.S. presidential election and undermine public faith in the democratic process. Since that time, new findings, including recent indictments issued by Special Counsel Robert Mueller, continue to shed light on past and ongoing manipulations of public perception and behaviour, particularly through the spread of false and inflammatory content on social media.

Various governmental, quasi-governmental, and non-governmental actors have weaponised the “attention economy” - the marketing and monetization of online users' time and attention - by shifting public opinions and behaviour through disinformation, hate speech, harassment, propaganda, and other harmful content spread at a scale and efficiency not possible before the rise of social media. From trolls harassing journalists in Hungary, to officials and ultranationalists inciting ethnic violence through Facebook in Burma, and desperate political gladiators' exploitation of planting and spreading malicious stories for electoral gains in the 2019 general elections in Nigeria, the proliferation of harmful speech online is a global, multifaceted threat to both democracy and security.

Indeed, fake news has not only become a much-used and much-hyped term nowadays, it is also much-maligned: it is often blamed for having a disruptive impact on the outcomes of elections

and referenda and for skewing democratic public debate, with the 2016 U.S. Presidential elections and Brexit referendum often cited as examples (Tarlach McGonagle, 2017). Fake news has also been flagged for fuelling propaganda, hate speech, violence, and even killing, especially in multi-cultural, multi-religious settings such as Nigeria. In June 2018, herders-farmers' conflict in Plateau, a state in the North-central zone of Nigeria became an infamous example of exceptional circumstance in which a false news story had a central role in the mayhem in which 100 people were killed (The Guardian, 2018). The popular media platform that carried the “false report on Miyetti Allah” sacked the journalist who anchored the news story which was later verified to be false while apology was tendered publicly to the news source implicated in the report (The Guardian, 2018).

The example of 'Pizzagate' in the US in December 2016 is also relevant. A man in Washington D.C. took it upon himself to “self-investigate” a story (a completely unfounded conspiracy theory) that the Hillary Clinton campaign team was running a paedophile ring from the premises of a pizzeria. Shots were fired and he was arrested and charged with assault and related offences (Alan Yuhas, 2017). On September 11, 2018, one of the popular news items on major news outlets was the arrest, in Kano, north-west of Nigeria, of administrator and members of a WhatsApp group for sharing fake news. The arrest was predicated on a complaint from a married woman and a civil servant that her picture was being shared on “WhatsApp group with the intent to malign and incite the public against her.” The pervasiveness of fake news in our daily lives has turned into a dangerous tool that threatens human rights, information objectivity and even democracy has been greeted with an array of alarmed statements, temporary remedies and clumsy solutions which Marda and Milan (2018) posit, lacks the capacity to solve the conundrum. This trend has provoked different measures from different stakeholders to tackle the menace. However, many governments across the world including Nigeria have tended towards enacting new legislation with draconian effect on the culprits. This paper interrogates how the regulatory mechanism for checking fake news can be structured without infringing on the freedom of expression using relevant literatures and experiences.

### **Conceptual Discourse**

The phrase 'fake news' has attracted diverse interpretations depending on the contexts in which it is used. According to Marda and Milan (2018), it also stands in for a variety of different phenomena, from propaganda to audacious politicking. While various definitions have emerged, Marda and Milan argue that fake news as a concept consistently overlaps with false or misleading information (misinformation), and also with false information purposely spread to deceive people (disinformation). What dispels opacity in the definition of fake news, Olorunyomi (2018) posits, is the duality of the misinformation/disinformation discourse. He defines misinformation as narratives in which the principal messenger is herself/himself ignorant of the false content of his message. He argues further that while misinformation is widespread in media and popular discourse, the question of intent, as a factor of creating injury, is absent. According to Olorunyomi, the more extreme, more pernicious forms of narrative are the genre of discourses that fall in the categorisation of disinformation, which always have the object of controlling minds and shaping public behaviour towards particular orthodoxy or belief system. He notes that it is the state that has practised this (disinformation) the most in human history (Olorunyomi, 2018).

Citing Lazer et al, Marda and Milan (2018), argue that fake news is “fabricated information that mimics news media content in form but not in organizational process or intent. According to the Ethical Journalism Network, fake news consists of “information deliberately fabricated and

published with the intention to deceive and mislead others into believing falsehoods or doubting verifiable facts.” Perily (2017), distinguishes four types of fake news according to whether they are exploited as satire, as a profit mechanism, as propaganda, or as reckless reporting. However, the belief of Marda and Milan (2018) is that fake news is better understood as a battle of and over narratives. They argue that it is a clash of narratives as it contrasts “information about geopolitical viewpoints that are not conformant with the perceived interests of the security apparatus in the state where the alleged fake news is spread.” They cite as example the way the notion of fake news is regularly evoked by U.S. President Donald Trump, and the many citizen efforts at debunking distorted information mobilized for political purposes. According to Marda and Milan, fake news is also a battle over narratives because it constitutes a semantic locus where distinct visions of the world, competing understandings of citizen agency, and divergent definitions of what constitutes truth are confronted.

As a result, the fake news controversy, they posit, has put under strain some of the central tenets of liberal democracies: the nature of its “rule of the majority” based on the healthy exchange of distinct views and preferences; the notions of political freedom of citizens seen as autonomous thinkers able to freely exercise their judgement without state interference and empowered to actively participate in civic life, and the idea that (fair, objective and independent) information is a key ingredient of democratic participation.

### **Fake News: Between Social Disorder and Technical Challenge**

Views are divergent as to whether the phenomenon is a social or technical problem. For most experts (Marda and Milan, 2018), fake news is not a technical issue: rather, it is a social problem exacerbated by technology. It is “driven by people but made worse by technology” (2018: 10) and as such it combines both social and technical aspects. Really, the two are deeply entwined: “without the tech the social problem would be small. Without the social problem, the tech wouldn't be problematic”. The “effects of technology have made it more pronounced. But ultimately, it's a problem that we can't lay at the feet of the technology because how we use technology is largely within our control”. It is “a matter of education (as enabling qualified ICT literacy), law (as a means to protect fundamental rights of internet users), and technology (as a way of assuring the transparency of algorithms and development of systems that protect privacy by design and default.”

Its causes, Marda and Milan posit, are to be found largely in the social realm, and have to do with people's attitudes towards information, their relation to sources and platforms, and their digital literacy (or the lack thereof), but also the way trust and belief systems are fashioned in a digital environment. The problem of fake news, they submit, involves a key economic dimension, as it is fuelled by the “click economy” driven by advertisement-based business models which monetize users' attention. In this perspective, they contend, fake news is merely a way to gain people's attention and increase the sharing and spread of content. Consequently, propositions that seek to “solve” the problem of fake news, they insist, should holistically address these three aspects. Technical fixes alone, they argue can only contain the way in which fake news travels, while regulatory fixes tend to merely assign blame and penalize those deemed responsible.

According to Marda and Milan, neither of these responses comprehensively deals with the complicated ways in which information is consumed and shared in digital spaces from economic, social, technical, and political perspectives. It is against this backdrop that Marda and Milan recommend consultation with and engagement of an interdisciplinary range of experts in addressing a multitude of phenomena related to how fake news is spread and consumed.

While many of the digital rights advocates from North America commonly echoed the belief that the “fake news problem” does not exist, but that the only real problem is the collective hysteria around the issue, spreading from government officials to the media to their audiences, experts in Nigeria are of the view that the socio-political and cultural environment prevailing at a particular period is crucial in the understanding and contextualisation of what is considered as fake news (Oso, 2018). According to Oso (2018), fake news does not exist in a vacuum. They are socially situated, articulated and designed for some purposes. He, therefore, submits that the structure of the Nigerian society, the character of its politics and politicians and other elite groups, the structure of the media, the mediatization of politics with all its sensationalism and cantankerousness; easy accessibility to technologies of production and consumption, citizen alienation from the political and economic system have made the propagation of fake news and their consumption and interpretation quite easy and widespread.

### **Theoretical Explanation**

This paper is anchored on Gate-keeping theory and Social Responsibility Media theory.

### **Gate-Keeping Theory**

As one of the earliest theories in the field of communication research, Gate-keeping was first used by Kurt Lewin who was identified as one of the four founders of the field. But the application of the theory in 1959 by David Manning White in his study on news production process launched the tradition of gate-keeping research in mass communication (Oso (2014). Ironically, social media has dramatically altered the creation, distribution, and consumption of information, weakening the grip of traditional information gatekeepers and providing users with an unprecedented surplus of information. As a messaging strategy, fake news, Olorunyomi (2018) posits, achieves impact and effectiveness only because the traditions of accountability in the news production and distribution cycle themselves have transformed into a new elevation of social norms where our received protocols of **gate-keeping** have themselves become hollow as ethical categories.

McQuail (2005), describes the term 'gate-keeping' as a metaphor to describe the process by which selections are made in media work, especially decisions regarding whether or not to allow a particular news report to pass through the 'gates' of a news medium into the news channels. He posits further that the idea of gate-keeping has a much wider potential application as it can apply to the work of literary agents and publishers, and to many kinds of editorial and production work in print and television with emphasis on the decisions about distribution and marketing of existing media products. In a wider sense, McQuail argues that it refers to the power to give or withhold access to different voices in the society and is often a locus of conflict. According to McQuail, one common tension in democratic societies is between governments (and politicians) and the media over the amount and kind of attention they receive in mass media. The kind of representation and amount of access given to minorities is another example (McQuail, 2005).

The relevance of the gate keeping theory to this paper cannot be over-emphasised. The key assumption of the theory is that as human information filters (Barzilai-Nahon 2009), gate keepers must not only adhere to codes of conduct in the discharge of their duties, but they must also identify with the aspirations of people in their operating environment. And the aspiration in the context of this paper is the production of balanced, factual, objective, fair and truthful editorial content. Certainly, fake news will not find a place where these cardinal principles of professional journalism are observed religiously.

### **Social Responsibility Media Theory**

Social Responsibility Media theory (SRMT) propounded by Siebert, Peterson and Schramm in 1963 provides a basis for understanding societal influences on media content and activities. The major premise of the theory is that freedom carries concomitant obligations (Sanda, 2017). Citing Anaeto, Onabajo and Osifeso (2009), Sanda (2017) argues that the privileged position the media enjoy under the government presupposes that they should be responsible to society for carrying out certain essential functions of mass communication. Essentially, the social responsibility media theory postulates five specific functions for the media. They are:

1. To serve the political system by making information, discussion and consideration of public affairs generally accessible;
2. To inform the public to enable it take self-determined action;
3. To protect the rights of the individuals by action as watchdog over the government;
4. To serve the economic system, for instance by bringing together buyers and sellers through the medium of advertising; and
5. To preserve financial autonomy in order not to become dependent on special interest and influences (Sanda, 2017, p.104).

McQuail (2005) sums up the main principles of the theory, thus: “the media should accept and fulfill certain obligations to be met by setting high and professional standards of information, truth, accuracy, objectivity and balance. Media should be self-regulating within the framework of law and established institutions and should avoid whatever might lead to crime, violence, civil disorder or give offence to minority groups.” (p. 172).

The theory is relevant to this paper because it underscores the fulfillment of certain obligations that are germane to the maintenance of high professional standards. It also challenges media professionals' ingenuity not only to develop new ways of serving their communities, but that they must also ensure that whatever editorial content they push out should satisfy the cannon of sound and professional journalism, which are truth, accuracy, objectivity, and balance (McQuail, 2005). Olorunyomi (2018) supports the argument on the truthfulness of editorial materials meant for public consumption positing that what *being digital* brought to the table of disinformation practices is **volume and velocity** but what it failed to present at that same table is **veracity**. It is simple logic therefore that if you want to resolve the enigma of disinformation at a structural level, you need to find a way to inject the imperative of veracity to the messaging mechanism.

### **Fake news and distortion of political discourse**

The assumption that fake news significantly undermines democracy is not a matter of agreement (Marda and Milan, 2018). Economists Hunt and Gentzkow (2017), who studied the possible impact of fake news on voting patterns in the 2016 US Presidential election, concluded that fake news on social media was not as influential as we are led to believe, with television remaining the dominant source of political news and information: “for fake news to have changed the outcome of the election, a single fake article would need to have had the same persuasive effect as 36 television campaign ads.” Nonetheless, the spread of misinformation and disinformation can have dramatic consequences. According to Sorouch Vosoughi, Deb Roy and Sinan Aral (2018), studies have shown that on Twitter false information, especially when political, is retweeted more rapidly and widely than true information. During the 2014 Indonesian presidential election, Muslim moderate President Joko Widodo was subject to smear campaigns on social media, portraying him to be a Chinese- Christian Communist - a dangerous proposition given the fact that precedent points to grave violence in the context of religious affiliation. Widodo was

eventually forced to produce his marriage certificate on Facebook to contain the spread of these allegations (Yenni Kwok, 2017).

Francis Chan (2017) writes that in Indonesia, Widodo's close aide, Basuki Tjahaja Purnama or “Ahok” was the target of an organized online political campaign run by “fake news factories”, accusing him of blasphemy against Islam, effective enough to pressure authorities to put him on trial. In November 2017, false information spread on WhatsApp about a salt shortage caused widespread panic and stampedes in grocery shops in at least four Indian states, leading to the death of a woman (Oliver Smith, 2017). In June 2018, herders-farmers' conflict in Plateau, a state in the North-central zone of Nigeria became an infamous example of exceptional circumstance in which a false news story had a central role in the mayhem in which 100 people were killed (NAN, 2018).

However, one major impact of fake news in Nigeria is the distortion of political discourse (Mohammed, 2017). In the recent time, fake news has become potent tool in the hand of political actors to manipulate the public. As a victim, Mohammed (2017), lists some personal experiences which include the reportage of the post-Federal Executive Council (FEC) meeting's media briefing of April 26, 2017 by the State House Correspondents. “I said, among others, that President Muhammadu Buhari did not preside over the day's meeting because he decided to work from home that day. In reporting my briefing, one of the correspondents quoted me as saying the President would work from home henceforth, rather than on that day only. The report generated a lot of uproar, until I issued a rebuttal. This is a clear case of disinformation which is defined as false information deliberately spread to deceive the people.”

He further explained, “The following month, after I had briefed State House Correspondents on the proceedings of another Council meeting, one newspaper's headline went thus: 'We do not know who will sign the 2017 budget Lai Mohammed.' This is at variance with what I said. When I was asked a question relating to the signing of the 2017 budget, my exact words were: 'When it is transmitted to the Presidency, a decision will be taken.' The reporting is another clear case of disinformation.

“Also in May 2017, I travelled to China on official assignment. I had just arrived in that country, after a long flight, when I started receiving calls from Nigeria, seeking my reaction to a story making the rounds in the Social Media, quoting me as saying that though President Muhammadu Buhari is in a London hospital, he is using Made-in-Nigeria drugs. I purportedly made the comment in an interview with Channels Television, after the Federal Government's launch of the Made-in-Nigeria campaign in Abuja a few days earlier.

“At first, I chose to ignore the story, saying Nigerians would easily see the folly of it. But the phone calls from Nigeria became more frequent and more intense, to such an extent that they could no longer be ignored. I had to put a call through to Mr. John Momoh, and Channels Television promptly issued a rebuttal, saying it neither interviewed me nor carried any such story. This is a clear case of fake news.”

Another instance, according to him, is when he visited the Copyright Society of Nigeria (COSON) House in Lagos in July 2017 and he had said that any programme tagged Nigerian or local content programme, which was meant for the consumption of Nigerians, must be produced in Nigeria, rather than in foreign countries. “The disinformation and fake news campaigners quickly distorted what I said and went ahead to report that the Federal Government has decided to

ban the production of music videos and films outside the countries. Gullible and malleable commentators, many of them recruited by the campaigners, went to town abusing me and the federal government, without even trying to know the truth. Such is the tragedy of our time.”

Another example is the 'news' of the death of President Muhammadu Buhari while recuperating in a hospital in the United Kingdom early 2017. Mohammed (2017) recalls, “the President had hardly left Nigeria for his vacation in London on 19 January 2017, during which he said he would have routine medical check-up, when these fake news campaigners circulated the news that he has died.” Unfortunately, the fake news of his death later metamorphosed to become 'clone' Buhari which was sustained in the media landscape till early December 2018. The President had to address a press briefing during one of his international trips where he denied being a clone.

The fake news campaign, according to Mohammed (2017) is a multi-million naira project and the people behind it would not stop unless collective action is taken that involves all stakeholders. He said, “In fact, they will become more vicious in the days, weeks and months ahead. And what is the purpose of their campaign? Simply to discredit the government, destabilize the polity and make the country ungovernable. There is no doubt that the resurgent push for separatism as well as rising cases of ethnic and religious disharmony are all traceable to the growing phenomenon of hate speech, as well as the disinformation and fake news campaign.”

Mohammed (2017), states the goal of spreading disinformation and fake news to include destabilizing the system, inciting people to violence and weakening the people's confidence in their government. He buttressed the argument quoting a German newspaper: “For a society in which people are informed mainly through the media and form their political opinions through it this process is threatened when lies spread through the media. When it is no longer clear what is false and what is correct, people lose their confidence in the state.” Osinbajo (2019) echoes the same line of thought decrying the capacity of fake news to deplete believability of public information. Essentially, Osinbajo said peddling of fake news posed great danger for the society, in addition to causing physical harm. He expressed regret that a lot of misinformation from the social media also finds their ways into the traditional media. He, therefore, stressed the need to carry out investigations, cross check facts and do more interrogations before publication.

Osinbajo spoke at a conference on “Nigeria 2019: Countering fake news” organized by the British Broadcasting Corporation (BBC) and held in Abuja on January 9, 2019. Onyedika-Ugoeze (2019), reporting the event for *The Guardian*, quotes Osinbajo, saying: “Practically everyday, I see some news that affect me or affect my work in one way or the other. The mass publication of deliberate falsehood has been with us for ages, manipulating words in a way that will resemble the reality.

“Fake news is now news because of the greater dimension in content or harm that it can do and the scope, especially with the advancement in technology in the past two decades.

“Aside from the damage done to the integrity of public information, the capacity of fake news to cause harm and even fatal violence has been demonstrated time and again.

“But what is worrisome should be for us, what harm is done to public information. I think that a time would come, if nothing is done, that nothing would be believed and nothing would be believable. “This is because as technology improves in its capacity to manipulate, after a while, there would be perfect videos, using artificial intelligence and all other tools of digital journalism, that would bring a perfect video of a person reading a speech that he never read, at an



event that never happened; then it would become more and more difficult to distinguish what is true and what is not.

“I think that if we discredit public information, it is a massive danger for society itself. Aside from the capacity of fake news to cause physical harm, I think once we destroy the believability of public information then really, the means of communicating with each other has been soiled forever.”

Osinbajo further highlighted the major issues of concerns in curtailing fake news to include the extent to which local media players and owners can be held to account and how to regulate fake news without infringing on freedom of information and freedom of the press. He said, “To what extent can we hold local players, especially local media owners to account. What we have at the moment, usually a lot of the disinformation we find on the social media, the traditional press is much more responsible. And the simple reason is because there is consequence.

“It is easier to sue the traditional media, they are bound by local laws and it is much easier to hold them to account. The second point for me is how to deal with the consequence, without of course, infringing on the freedom of information and also freedom of the press. This freedom means my freedom to own a blog and freedom to disseminate information. The question therefore now is how do we regulate that without infringing on these fundamental freedoms?”

For solutions to address the issue of fake news, Osinbajo advocates increased collaboration among countries and a situation where countries would draw up conventions or enter into agreements that would help regulate the social media much more effectively. He also canvasses the need for the media to invest and engage in news and fact checking to help them present what the real facts are. This responsibility, he argues, shouldn't be left in the hands of the government or legislature, otherwise, an over-bearing government or legislature would be created.

### **Freedom of Expression and Social Media Content Regulation**

While the exact contours of the impact of fake news are still little understood, the move towards regulation has been far swifter. The most debated of such moves is probably the German regulation intended to control the spread of hate speech and fake news online. The NetzDG, which stands for “The Act to improve the Enforcement of Law in Social Networks” came into full force on 1 January 2018. It seeks to regulate the spread of content on social media platforms in Germany. Under the Act, platforms are required to maintain effective and transparent procedures for handling complaints about unlawful content through which users can flag problematic content. If such content is deemed to be unlawful, it is to be subsequently removed by the platform within 24 hours to a maximum of seven days, with some extended flexibility for more complex cases. The Act is confined to social networks only, i.e. those platforms where content of any kind can be shared freely and made public, and not to media platforms such as LinkedIn and WhatsApp which instead permit interpersonal communication and dissemination of specific types of content. Despite concerns around the chilling effect of such a law on freedom of expression, the German government has repeatedly contended that while freedom of expression is an important facet of German democracy, it ends where criminal law begins (Ivana Kottasova and Nadine Schmidt, 2017).

In India, the platform WhatsApp, which counts 160 million Indians as part of its customer base (Deepal Moray, 2016), has been identified by policymakers as the primary vehicle responsible for the spread of (mis) information (Pranav Dixit, 2017). The most bizarre instance of

WhatsApp-spread fake news occurred shortly after the government announced the demonetization of existing notes in November 2016. A rumour that India's new banknotes were equipped with a GPS-chip to combat the country's black economy caused panic across the country, and the story had to finally be clarified by the Reserve Bank of India (Marda and Milan, 2018). The Indian government has historically cracked down on WhatsApp groups and content exchanged on chats in the context of national security, particularly in the northernmost region of Kashmir, the sovereignty over which is still under dispute (Pranesh Prakash and Vidushi Marda, 2016). According to Marda and Milan (2018), measures to maintain public order, and contain “rumours” have included shutting down mobile Internet in some parts of India. In addition to having groups mandatorily register with the government, previous notices from the Indian government have also sought to hold administrators of groups liable for content shared on these platforms.

Marda and Milan recall how in April 2018, India's Union Ministry of Information and Broadcasting announced, through a press release, the amendment of the Guidelines for Accreditation of Journalists, a move to ensure that journalists accused of reporting fake news would lose press credentials until all complaints against them were verified. Following severe backlash across the nation, the Prime Minister ordered a withdrawal of this press release. The Ministry has since stated that it is in the process of working with journalists to “fight the menace of 'fake news' and uphold ethical journalism” (Marda and Milan, 2018).

In December 2017, the Brazilian government established the “Consultative Council on Internet and Elections” under the Superior Electoral Court to monitor and/or block “false news” stories on social media ahead of the presidential elections scheduled for October 2018. The Council is composed of representatives of the judiciary, the army, the ministries of justice and of science and technology, the national intelligence agency and the federal police, the non-governmental organization SaferNet devoted to fight online crime and researchers from the private university Getúlio Vargas (Taisa Sganzeria, 2017)

Marda and Milan's account indicates that one of the experts interviewed said the Council “operated for a couple of months and produced a messy set of regulations for political communication online” operating “under very heavy pressure to produce silver bullets that could solve the issue of fake news instantly. Part of that was external pressure from society and the media.” This external pressure is easy to discern a BBC World Service survey of 18 countries in 2017 showed that Brazilians were most worried about fake news (Rory Cellan-Jones, 2017). While the Council's stated role is to monitor content on social media, there is little clarity on social media platforms' responsibilities and compliance requirements. “Automated and human solutions provided by platforms to remove content online” is one of the solutions envisaged by the Council. Another solution suggested is to enable fact-checking agencies and also the traditional media to contribute to individual decisions on fake news and false information.

In early 2018, French President Emmanuel Macron also promised to impose transparency obligations regarding sponsored content on social media and to give the media watchdog, *Conseil Supérieur de l'Audiotvisuel* the power to impose heavy fines on outlets spreading lies or rumors (Joanna Plucinska, 2018). In March 2017, in the run-up to the general election, the government of Malaysia rushed an “Anti-Fake News Bill” into Parliament, allegedly aimed at curtailing political speech. If passed, it would punish perpetrators of “fake news” with up to ten years in prison and the equivalent of USD \$128,000 fine; publishers would be required to immediately remove the item “after knowing or having reasonable grounds to believe that such

publication contains fake news” (Jeremy Malcolm, 2018). In China, authorities have been aggressively regulating content on social media platforms for many years, making publishers responsible for ensuring that a wide range of content is proactively deleted, failing which those responsible could be handed jail terms up to three years (Jonathan Kaiman, 2013).

However, seemingly in response to the global rise of fake news and regulatory solutions proposed in democratic countries, the Chinese military recently set up an online portal where citizens can report instances of “misinformation” and “fake news” about the military. This same strategy is mirrored across the world in Italy, where the Postal Police recently launched a portal to report hoaxes and fake news (Funke, 2018), just a few months after the proposal of a draft law criminalizing fake news (Edwards, 2017).

In Nigeria, attempts have been made to draft legislation criminalizing fake news and hate speech. The draft bill to “Prohibit Frivolous Petitions and Other Matters Connected Therewith” which was introduced in December 2015 and passed its second reading at the upper chamber of the National Assembly was withdrawn in May 2016. Its withdrawal was sequel to public outcry coordinated by civil society groups and free speech advocates. Their contention then was that if passed into law, it would restrict freedom of expression and a free press, which are protected by Section 39 of Nigeria's constitution. Another bill prescribing death by hanging for any person found guilty of any form of hate speech that results in the death of another person was also introduced in March 2018. It received the first reading at the Senate, while freedom of expression experts have also condemned it. Also, in August 2018, the Nigerian Press Council Amendment Bill was debated at the public hearing stage at the National Assembly. The bill seeks to regulate journalism practice by creating a statutory body to arbitrate between the media and the public. According to its promoters, the legislation will tackle the proliferation of fake news and hate speech that have dominated public spheres and posed national security problems. They argue that on a daily basis, social media platforms are replete with false stories, recycled information and outright falsehood that could trigger violence, enmity and hatred among the people.

Earlier in July 2018, the federal government through the Ministry of Information and Culture launched national campaign against fake news with emphasis on sensitizing Nigerians to the dangers posed by fake news to the peace, security and corporate existence of the country. As a precursor to the launch of the campaign, Mohammed, at the National Council on Information meeting held in Jos in July 2017 had declared: “We all must say NO to hate speech, either on our radio and television stations, newspapers, the Social Media, on our phones or in the public space. We must be resolute in tackling the canker-worm of hate speech, disinformation and fake news. We as government information managers must embark on a relentless campaign against these evil tendencies at our various levels, whether federal or state. We must boycott any medium that engages in hate speech, incitement to violence, disinformation and fake news. The regulators must also be alive to their responsibilities by promptly sanctioning the purveyors of hate speech, disinformation and fake news. Yes, our constitution allows freedom of speech and this government believes in it, but freedom of speech must not be allowed to become freedom of irresponsibility.”

But the indication that the campaign might have not achieved much emerged mid-December 2018 when the spread of fake news was fingered as the “biggest threat to 2019 polls.” (Mohammed, 2018). Coincidentally, the declaration was made in Kaduna during the 47th Meeting of the National Council on Information, with the theme, “*Fighting Fake News and Hate Speech to Enhance National Unity.*” The reports of the meeting captured by the News Agency of

Nigeria (NAN) quoted Information and Culture Minister, Alhaji Lai Mohammed, saying, “fake news and hate speech, if left unchecked, constitute the biggest threat to the 2019 general elections.” He was reported to have said that, to the 2019 general election, which was a little over 60 days away then (the time-table released by the Independent National Electoral Commission, INEC, put the commencement of the elections at February 16, 2019), no issue was more relevant than the issue of fake news and hate speech.

His explanation was that fake news had the capacity to alter the course of election, trigger legitimacy problem for the winner and the menace transcended political party lines, religion, ethnicity, and even nationality. He went further to allege that the opposition was using fake news to discredit the President Muhammadu Buhari's Administration and deploying it as propaganda rather than engaging in issue-based campaign. He, therefore, likened the development in Nigeria to that of 2016 US Presidential elections and a recent violence in India where a dozen of people lost their lives. “A recent study by researchers at the Ohio State University in the United States concluded that Russian interference and the fake news it promoted probably played a significant role in depressing Hilary Clinton's support on the day of the country's 2016 presidential elections. “Among the fake news circulated ahead of the election were: 'that Clinton is in poor health due to a serious disease; Pope Francis endorsed candidate Trump, and Clinton approved weapons sales to Islamic Jihadists.' Even the winner of that election, President Donald Trump, is still reeling from the impact of the alleged Russian intervention.”

He added that: “In India, about a dozen people lost their lives earlier this year because of fake news or hoax messages. The victims were lynched after they were falsely accused of child abduction based on fake messages circulated via the social media platform, WhatsApp! Right here in Nigeria, you are all aware of a recent report by the BBC, that fake news circulating in the social media is fueling the farmers-herders crisis in Nigeria. Disturbing pictures from other lands are circulated freely via Facebook, WhatsApp and Twitter, purportedly being from the killings in Jos or Benue.”

He went down hard on the opposition, saying, they would go any length at fabricating “ludicrous and fake stories”, to discredit the government ahead of 2019 elections. He expressed concerns that the opposition had engaged consultants whose main job was to turn out fake news at interval to discredit President Muhammadu Buhari and the Administration. He cited the examples of “idiotic story of cloning of the President”, alleged frozen of the PDP Vice Presidential candidate, Peter Obi and arrest of the son of Alhaji Atiku Abubakar, the opposition's Presidential candidate. According to Mohammed, the story and allegations were not only fake, they were parts of opposition's strategies to discredit the government and the President to win sympathy of voters ahead of the 2019 election.

He said the opposition resulted into fake news because they were intimidated by the achievements of the Buhari administration and could not engage them on issue based debate. He listed some of the achievements in the areas of improving the economy, fighting corruption and insecurity and building infrastructure.

It was in the light of this that the Kaduna State Governor, Nasir El-Rufai as the chief host of the meeting advocated broader jurisdiction for states' legislatures and judiciary to legislate and adjudicate on strict laws to tackle the menace of fake news and hate speech.

According to el-Rufai, Kaduna had bore the brunt of fake news more than any other state in the federation. He noted that fake news and hate speech could tear the nation apart and therefore required strict and vigorous law enforcement actions. El-Rufai, however said that Kaduna, like other states, was constrained to using the outdated penal code in fighting hate speech and fake news. Specifically, the governor said the jurisdiction of state high courts should be widened to enable them have Cyber Crime Act that provides framework to pursuing people that use social media to proliferate fake news. He noted that the states could not effectively prosecute those that are involved in the crime because they are relying on the penal code. He gave the instance of a fake report circulated in the social media by one Aminu Maikori which claimed that five students of the College of Education, Gidan Waya, were ambushed and killed by Fulani herdsmen in southern Kaduna. He said the report which turned out to be false almost triggered reprisal killings, “yet the mastermind of the fake news was still walking the street freely because of absence of firm law. Audu Maikori who sat in the comfort of his home in Lagos and posted a story that five students of Journalism of College of Education, Gidan Waya, had been killed which was totally false.

“We are prosecuting Audu Maikori and when he realised that he was misled, he posted a retraction and thought that was all. “We said No, we are going to have him convicted first. But this was since 2016, we are in 2018 he is still on bail.

“We have fundamental problems. We need to give state governments and state High Courts jurisdiction to try these people because the federal government cannot do it alone. What we are thinking of doing in Kaduna state is to enact our own legislation to tackle the menace. We need a stronger framework that will compel the technologies and processes that are used now more than ever.”

He explained further that the recent crisis in Kaduna metropolis and Kasuwan Magani was largely as a result of fake news. “Rumours started circulating that the abducted Chief of Agara had been killed and within an hour, 22 people were killed in reprisal attacks. The story circulated was that I invited the chief to a meeting and told him that his chieftdom would become an emirate and when he disagreed with me, I said I would deal with him. So, when he was abducted on his way back from Kachia, it was implied that I had arranged the abduction. This was what started the crises and it is totally false. I have never invited any chief to the government house except when they write to me and say they want to meet me for one reason or the other. Why should I have argument with a Chief or abduct him, when in fact, if he flouts the law, I have legitimate and constitutional power to abolish his chieftdom or emirate? Unfortunately, that was the fake story that was circulated. It raised tension and till today, parts of that chieftdom are still under partial curfew.” El-Rufai also said the fake news about the cloning of the President was not peculiar to Buhari. He said someone also went to his Wikipedia page and changed his birthplace to Bamako, Mali (NAN).

Generally, free speech advocates fear the consequences of increasingly zealous content regulation by private companies, entities with no legal obligation to protect users' right to free expression or to enforce policies fairly and transparently. Laws imposing liability on information intermediaries for third party content, as in Germany, are of particular concern. Critics argue that these policies incentivize overbroad enforcement by inherently risk-averse companies, and enable governments to outsource content regulation that sometimes includes censorship -- to private entities. According to Oso (2018), the issue of legal regulation is contentious. He argues that any attempt to regulate or control fake news directly challenges the idea of freedom of

expression; a foundational requirement for democracy. He posits further that such an attempt readily offers an opportunity for illiberal regimes and forces of law and order to silence critical oppositional voices and counter discourses. Citing the case of the U.S. President Donald Trump, Oso contends that powerful political actors may attempt to mislead the public by labelling any story they disagree with as hate speech or fake news.

### **Conclusion**

The challenge that fabrication of information poses to democracy and society at large can't be overemphasized. This paper has established that in various jurisdictions including Nigeria, preference, especially by governments, is given to legislative framework to counter the use of social media to spread fake news. In most cases, the fear is germane that such legislation is always an anathema to the age-long freedom of expression. Therefore, what is required is an advocacy campaign whose planning and implementation strategies involve all stakeholders - actors in government, media owners and professionals, civil society groups as well as corporate and private sector players rooting for immediate and long-term action that mitigate consequences of fake news while protecting fundamental freedoms. The anti-fake news campaign, will be better appreciated if it is resituated into the broad innards of the struggle of reconstructing Nigerian, nay African community lives around the organising ethos of equity, of access, accountability, political, cultural and economic inclusion, but above all of democracy (Olorunyomi, 2018).

### **Recommendations**

In the light of the foregoing conclusions, the following recommendations are made;

1. There is a need for government and relevant stakeholders to encourage the setting up of fact-checking mechanism to authenticate editorial materials meant for public consumption.
2. There is a need to make it mandatory for media owners and professionals to subscribe to the use of the available fact checking mechanism as a way of adhering to journalistic codes of conduct that promotes production of editorial content that is factual, truthful, balanced and accurate.
3. There is a need for sustained capacity building for media professionals in order for them to take advantage of innovations which are constantly defining the contemporary media landscape.
4. The institution of self-regulatory mechanism that encourages multiple gate-keepers in the newsroom. That way, fake news items can be spotted from the editorial content meant for public consumption.
5. The individual media organization should revitalize the mechanism of ombudsman whereby editorial content review is undertaken regularly.

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