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SCAN ARTICLE

Human Rights in Nigeria's Cyberspace: An Overview

Akeuseph Oyepho*

Abstract

Human Rights in cyberspace deals with the applicability of human rights and basic freedoms in cyberspace. Individuals are entitled to exercise and enjoy human rights and fundamental freedoms in cyberspace, just as they do in the physical or real space. The aim of this paper is to give an overview of human rights in cyberspace, with a particular touch on the applicability of the human rights in Nigeria's cyberspace. The paper's fundamental objectives are to ascertain whether the human rights provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983, the Child Rights' Act 2003, and so on apply in Nigeria's cyberspace; examine whether regional and international human rights treaties or instruments ratified by Nigeria apply in cyberspace, to ascertain human rights being implicated in cyber-operations in Nigeria. The doctrinal research methodology was adopted. The paper finds that the human rights provisions of the Nigerian Constitution, particularly sections 37-43apply in Nigeria's cyberspace. It also finds that other national human rights law such as Child Rights' Act 2003,African Charter on Human and Peoples' Rights (Ratificationand Enforcement) Act 1983 as well as regional, international and customary international human rights norms apply in Nigeria's cyberspace. Itfurther finds that the right to privacy, right to freedom of expression, right to peaceful assembly and association, right to freedom from discrimination and right to freedom of thought, conscience and religion are mostly implicated in cyberoperations in Nigeria. The paper concludes that national, regional (African Union Human Rights Laws) and international human rights Laws apply in Nigeria's cyberspace and that Nigeria has obligation to respect, protect and fulfill the human rights of persons within its territory in cyberspace. It is recommended that Nigeria's law enforcement agencies be trained and re-trained in the areas of respect and protection of human rights in Nigeria's cyberspace via the adoption and deployment of the best technological equipments and practices to ensure cyberspace security in Nigeria.

Keywords: Human, Human Rights, Cyber Human Rights, Cyberspace, Nigeria

Introduction

Cyber human rights are basic set of fundamental rights and basic freedoms that individuals are entitled to enjoy and exercise online, just as they do offline. These rights are essential for ensuring human beings fully participate in the cyber world while being protected from violations and abuses. This writer has hitherto defined human rights 'as those rights endowed upon human beings by nature or by their creator by reason of their humanity, which are equally provided for all, no matter the continent they live, disrespect or repression of which degrade the dignity inherent in human beings to the duration of the repression as they are inextinguishable, inalienable and immutable and therefore not creation of the state or society.[1] These rights include but not constraint to the right to life, right to dignity of human person, right to personal liberty, right to privacy, right to fair trial, right to freedom of

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[1]O Akeuseph "Apprasing respect for Human Rights in Nigeria and Iceland: An Exercise en fulfillment and De par? (2024) (4) (1) *Lagos Bar Journal,* 62.

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thought, conscience and religion, right to freedom of expression and opinion, right to freedom of association and assembly, right to freedom of movement, right to freedom from discrimination, right to property, rights to education and work, right to development, right to benefit from the common heritage of mankind and self-determination and so on. These rights are principally codified in the United Nation Bill of Rights – the Universal Declaration of Human Rights,[2] International Covenant on Civil and Political Rights,[3] and the International Covenant on Economic, Social and Cultural Rights.[4]

Cyberspace is devoid of a universally accepted definition. That is to say, a single/common definition for cyberspace has not been established; however there have been attempts in defining the term 'cyberspace'. Otti and Lorentzhas proposed a definition acknowledging the importance of human users in cyberspace; they described cyberspace as 'a time-dependent set of interconnected information systems and the human users that interact with these systems'.[5] Their description portrayed cyberspace as an artificial space created by humans for human purposes and in this way acknowledged its implicit human dimension.[6] It has been expressed that the term 'cyberspace' is 'a world-wide virtual space, with many sub-communities, evenly distributed, using a technical environment – first the internet – in which citizens and organizations utilize information and communication technologies for their social, political and commercial interactions.[7]Cyberspace consists of four components, namely: the physical components (computers and computer related devices, routers, cables, telecommunication towers, servers etc.) software components (logical networks), information and data components (information and data that systems collect, store, generate and rely upon to function), and the cyber-human component (the human beings and their interactions with hardware, software, data and information).[8]

On the applicability of International Human Rights Law in cyberspace, the United Nations Human Rights Council has affirmed that international human right law applies in cyberspace;

[2]Universal Declaration of Human Rights 1948, arts 1-29.
[3]International Covenant on Civil and Political rights 1966 art 1-27.
[4]International Covenant on Economic, Social and Cultural Right 1966, arts 1-15.
[5]R Otti and P Lorents "Cyberspace Definition and Implications: 5th European Conference on Information Management and Evaluation' <https://dumitrudumbrava.files.wordpress.com//2012/01/cyberspace-definition-and-implications> accessed 27th July 2024.
[6]P Pavlova, "Human Rights- Based Approach to Cyber Security: Addressing the Security Risks of Targeted Groups (2020) (4)(3) *Peace Human Rights Governance* 395.
[7]UNESCO: 'Internet Governance Glossary <https:llen.unesco.org/glossaries/igg/groups/i.% 20Internet% 20 governance % 20general >accessed 27th July, 2024.
[8]N Tsagourias, 'The Legal Status of Syberspacein Nicholas K Tsagourias and Russel Buchan (eds), *Researchhandbook on International Law and Cyberspace* (Edward Elger 2015) 15.

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individuals enjoy the same human rights online as they enjoy offline.[9] This position has been re-affirmed by the African Union, and many States such as Australia, Canada, Czech Republic, Estonia, Finland, New Zealand, Norway United Kingdom, United States[10] and so on. Statesaretherefore bound by their human rights obligations to respect, protect and fulfill human rights in cyberspace.[11] The source of these obligations is primary Treaty law. Because Nigeria has signed and ratified international human rights treaties such as the International Covenant on Civil and Political Rights and the International Covenant onEconomic, Social and Cultural Rights and so on, it is bound by its human rights obligations to respect, protect and fulfill human rights in cyberspace.

Codified human rights, fundamental rights or natural rights in Nigeria, are majorly found in the Constitution of the Federal Republic of Nigeria 1999 (as amended) particularly in Sections 33-44,[12] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983, particularly Articles 1-29,[13]and the Child Rights Act 2003;[14] Nigeria is under an obligation to respect, protect and fulfill human rights as codified in International and domestic laws online as well as offline.

This work will appraise human rights in cyberspace in particularly, the operationability of the right to privacy, right to freedom expression and opinion and the rights to freedom of assembly and association and so on and their violations in Nigeria's cyberspace. It will also proffer solution to the problems and challenges bothering on the protection andfulfillment of these rights in Nigeria's cyberspace.

Application of International Human Rights Law in Cyberspace

International Human Rights Law applies in cyberspace; individuals enjoy the same human rights online as they do offline.[15] States are responsible for their human rights obligations to respect, protect and fulfill human rights in cyberspace. States also bear international

[9]United Nations General Assembly 'Reports of Group of Governmental Experts on Advancing Responsible State Behaviour in Cyber space in the context of International Security'14 July, 2021, A/76/135 Para 36; United Nations Human Rights Council, 'The Promotion, Protection and Enjoyment of Human Rights on the Internet' Resolution A/HRC/RES/32/13; NATO, Warsaw Summit Communiqué (July 9, 2016), para7a; G8 summit of Deavile,Declaration: Renewed Commitment for Freedom and Democracy (27 May 2011) para 11/II; United Nations General Assembly, 'Reports of the Group of Government Experts on Developments in the Field of Information and Telecommunication on the context of International Security (22 July, 2015) A/70/174,Paras 13 (e)and 28 (b)..

[10]NATO Cooperative Cyber Defence Centre of Excellence (ccdcoe.org) International Human Rights <https://cyberlaw.ccdcoe.org>accessed 27 July 2024.

[11]*Ibid*.

[12]Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 33-43.

[13]African Charter on Human and Peoples Right (Ratification and Enforcement) Act 1983, art 1-29.

[14]Child Rights Act 2003.

[15]United Nations General Assembly (n9); United Nations Human Rights Council (n9); G8 Summit Deavelle (n9); NATO Warsaw Summit (n9).

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responsibility for the violation of human rights obligations that are attributable to them as was expressed in the case of *Basnia and Herzegovina v Serbia and Montenegro*[16] regarding application of the Convention on the Prevention and Punishment of the Crime of Genocide. These obligations are derived from primary treaty laws such as the International Covenant on Civil and Political Rights 1966, International Covenant on Economic, social and Cultural Rights 1966; some of the provisions of these treaties as well as the provisions of the Universal Declaration of Human Rights, are regarded as reflective of customary international human rights law, even though there is no universally accepted codification. Aside the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), there are vital regional human rights treaty systems, particularly for Europe - European Convention on Human Rights and Fundamental Freedoms (ECHR),[17] the European Union Charter of the Fundamental Rights of the European Union (EUCFR),[18] America - American Convention on Human Rights (ACHR)[19] and Africa – African Charter on Human and Peoples' Rights (ACHPR),[20] which establish adjudicatory institutional structure where individuals, can seek for redress for contravention of their human rights against the state which has created a lot of case-law as a result of it.

African Union Position on the Applicability of International Human Rights in Cyberspace

The African Union affirms that International Human Rights Law (IHRL), whether codified in the universal or regional Conventions to which states are party or embodied in customaryinternational law, applies in cyberspace and also affirms the universality, indivisibility, interdependence and interrelation of human rights and fundamental freedoms, including the right to development.[21] Consequently, states are obligated to respect, protect and ensure the human rights of individuals and peoples' on their territory or under their jurisdiction that relate to the peaceful use of ICTs in cyberspace, including protecting such individual and collective rights against infringements by third parties and non-state actors.[22]

[16](2007) ICJ Rep u3 et 170.
[17]Convention for the Protection of Human Right and Fundamental Freedoms 1950.
[18] Charter of Fundamental Rights of the European Union 2000.
[19]American Convention on Human Rights1968.
[20]African Charter on Human and Peoples' Rights 1981.
[21]African Union Peace and Security Council; Common African Position on Application (of) International Law to the use of Information and Communication Technologies in Cyber Space (29 January2024), 9-10.
[22]*Ibid*.

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The African Union further affirms that IHRL requires states to protect the freedom of expression online, including the right to seek,receive and impart information and ideas and to disseminate opinions through ICTs. Any restriction imposed by states on these rights must be provided by law and must be limited to what is strictly necessary in a democratic society to respect and protect the rights or reputation of others and to protect national security, public order, public health or morals; the African Union also reaffirms that states shall ensure ICTs are not misused for the purposes of inciting violence, hate crimes, terrorism, violent extremism, organized crimes and trafficking in persons or discrimination on any grounds, including race, ethnicity, color, sex, language, religions, political or any other opinion, national and social origin, fortune, birth or other status.[23] In this regards, the African Union recalls that special regard should be paid to persons in vulnerable situations.

The African Union is of the view that responsible state behaviour in relation to ICTs in cyberspace requires states to ensure that their conduct do not infringe on the human rights of individuals or peoples in other states; in particular, certain activities undertaken by states.Suchpractices as the transnational interception of communications, indiscriminate surveillance and data misuse may constitute a violation of the right to privacy of individuals who are subjected to such conduct, in addition to potentially violating the territorial sovereignty of states of the territory of which such interception occurs.[24] Despite the existence of international and regional legal frameworks, the African Union expresses concern about the misuse of private data by malicious or criminal actors as well as its misappropriation and commodification by private actors.

The African Union affirms that states shall protect individuals and peoples' within their territory or in areas under their jurisdiction against violations of human rights that are committed by third parties, especially business enterprises operating in the ICT Sector.[25]

Moreover, business enterprises that operate in the ICT Sector have a responsibility to respect and protect human rights, especially the right to privacy and freedom of expression, including exercising due diligence to identify, prevent, mitigate, and account for any adverse human rights impact of their activities. It also emphasizes the pertinence of keeping cyberspace open, secure, stable, accessible and peaceful, which is an important element of promoting economic growth,attracting investment opportunities, and advancing sustainable development, especially in developing and least developing states; in this regard, it

[23]African Union Peace and Security Council; Common African Position on Application (of) International Law to the use of Information and Communication Technologies in Cyber Space (29 January2024), 9-10.
[24]*Ibid*.
[25]*Ibid*.

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underscores that, pursuance to the right to development under international law, states are duty bound to cooperate in good faith on capacity building and international cooperation, to support developing countries including in the area of ICTs, in order to accelerate the realization of economic, social and cultural rights of the peoples' of those countries.[26]

Similarly, it highlights the importanceof bridging the digital divide to ensuring the full enjoyment of human rights, in consonance with the foregoing therefore, states shall contribute to further empowering women and girls. States shall also promote the full enjoyment of the benefits of ICTs by persons with disabilities by ensuring that the design, development and production of ICTsincorporates assistive and adaptive technologies that are adaptable to persons with disabilities.[27]

Also, the African Union calls for the responsible development and management of digital identitysystems in a manner that will respect human rights of all individuals.[28]It encourages states to consider the conclusion of agreements on mutual assistance in the area of combating all forms of cyber-crime, which will further contribute to the protection and full realization of individual human rights.[29]

Human Rights Implicated in Cyberspace Operations in Nigeria

The human rights that are often implicated in cyberspace operations and indeed in Nigeria's cyberspace include the right to privacy,[30] and the right to freedom of opinion and expression.[31] Other rights such as right to freedom of assembly and association,[32] right to prohibition of discrimination,[33] the right to life,[34] right to education,[35] right to work[36] and other economic and social rights may also be affected by cyber operations or cyber related measures.[37] If the right in question is absolute – such as the right to be free from torture or

[26]African Union Peace and Security Council; Common African Position on Application (of) International Law to the use of Information and Communication Technologies in Cyber Space (29 January2024), 9-10.
[27]*Ibid*.
[28]*Ibid*.
[29]*Ibid*.
[30]Constitution (n12), s37; African Charter (n13), art 11; Child Rights Acts 2003, s8; International Covenant (n3), art 17.
[31]*Ibid* s39; *Ibid* art 13; *Ibid* s3; *Ibid*; art 19,
[32]*Ibid* s40; *Ibid*, arts 10; *Ibid* s6; *Ibid* arts 21-22,
[33]*Ibid* s42; *Ibid* arts,2,28; *Ibid*, s10; *Ibid* , arts 2, 25,26,27.
[34]*Ibid*, s33; *Ibid*, 4; *Ibid* s3; *Ibid,* art 6.
[35]*Ibid,* s18; *Ibid,* art 17; *Ibid,* s. 15; International Covenant on Economics (n4), art 13.
[36]*Ibid,*s16(3)(a) (b) & (e); *Ibid,* art 15; International Covenant on Economics (n4), art 6.
[37] H McDermott, 'Application of the International Human Rights Law Framework in Cyberspace' in DapoAkande and Others (eds), *Human Rights and 21st Century Challenges, Poverty, Conflict and the Environment* (Oxford University press 2020) 195 – 197.

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slavery, then, no interference with it is allowed.[38] This work will however, focus on the rights to privacy and freedom of expression in cyberspace.

a. The Plight to Privacy: In Nigeria, the right to privacy is principally guaranteed under Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),[39] and the Child Rights Act 2003 in its Section 8.[40] Also, Nigeria has international obligation to respect, protect and fulfill the right to privacy of its citizens as contained in international human rights treaties it has ratified such as in art 17 of the ICCPR.[41] The Concept of Individual Privacy has been prevalent since the inception of civilization.[42] The concept of privacy is mentioned in the Code of Hammurabi in its Article 21 which states thus: 'If a man makes a breach into a house, one shall kill him in front of the breach and bury him in it',[43] the Bible,[44] the Qur'an,[45] Jewish Law,[46] and was present in classical Greece and ancient China.[47]
The right to privacy was defined by Brande in 1890, as 'the right to be let alone',[48]and described it as the most comprehensive of rights and the right most valued by civilized men.[49]
Section 37 of the Constitution of Nigeria states as follows: 'The privacy of citizens, their homes, correspondence, telephone conversations is hereby guaranteed and protected.[50] This Section of the Constitution explicitly convers privacy rights online as telephone conversation is clearly named and protected.
The African Charter on Human and Peoples' Right 1981 does not have direct provision on the right to privacy, however, the African Charter on the Rights and Welfare of the Child 1990 provides the Child with privacy right in Article 10 as follows:

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[38]*Soering v the United Kingdom,* App No. 14038/88 (ECtHR, 07 July 1989)88; *Ireland v the United Kingdom* App No. 5310/71 (ECtHR 8 January 1978)163; *Hurri Laws v Nigeria,* Communication No. 225/98 (AComHPR, 6 November 2000)41; UNHRC, 'General Comment 20, Article 7 (Prohibition of Torture or other Cruel, Inhuman or Degrading Treatment or Punishment (10 March 1992) para 3; CAT, General Comment 2 on the implementation of Article 2 by States parties (24 January 2008) CAT/C/GC/2 para 1 and 5).
[39]Constitution (n12), s37.
[40] Child Right Act (n30), s8.
[41]International Covenant (n3) art 17.
[42] A Rengel, 'Privacy as an International Human Right and the Right to Obscurity in Cyberspace' (2014)(2)(2) *Groningen Journal of International Law* 37.
[43] Code of Hammurabi 1750 – 1700 BC, art 21; NB Lasson, '*The History of the Development of the Fourth Amendment to the United States Constitution* (Baltimore: John Hopkins Press 1937)14 – 15.
[44] R Hixson, *Privacy in Public Society: Human Rights Conflicts* (New York: Oxford University Press 1989)3; B Moore, *Privacy studies in Social and Cultural History* (New York: Random House 1984).
[45]SahihBukhari, Volume 1, Book 10, Number 509; Sahih Muslim, Book 020, Number 4727; Sunan Abu Dawud, Book 31, Number 4003.
[46] J Rosen, *The Unwanted Gaze: The Destruction of Privacy in America* (New York: Random House 2000)16.
[47]Moore (n[45]).
[48] L D Brandeis, 'The Right to Privacy' (1890)(4)(5) *Havard Law Review* 193.
[49] S S Al-Fedaghe, 'The Right to be Let Alone and Private Information', in CS Fillipe and others (eds) Enterprise Information Systems VII. Spinger, Dordrecht <https://doi.org/10.1007/978-1-4020-5347-4_18> accessed 2 September 2024.
[50]Constitution (n12), s37.

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> No child shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to the attack upon his honour or reputation provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attack.[51]

At the international level, the Universal Declaration of Human Rights in its Article 12 on the right to privacy states that: 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. Everyone has right to the protection of the law against such interference or attacks.[52] In similar tone, the International Covenant on Civil and Political Rights 1966 affirms in Article 17 that:

> 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks to his honour and reputation.
> 2. Everyone has the right to the protection of the law against such interference or attack.[53]

In the same vein, in Nigeria, the Nigeria Data Protection Act 2023 provides a legal framework for the protection of personal data and information. The fundamental objectives of the Act include to safeguard the fundamental rights and freedoms, and the interest of data subjects as guaranteed under the Constitution of the Federal Republic of Nigeria 1999; provides for the regulation of processing of personal data; promote data processing practices that safeguard the security of personal data and privacy of data subjects[54] and so on. The Cybercrimes Crimes Act 2015 of Nigeria is one of the legal frameworks which provides normative structure in the protection of personal data as it criminalizes acts that violate privacy of persons in Nigeria. The criminalized acts include: unlawful access to computer,[55] intercepting electronic messages, E-mails, Electronic money transfer,[56] willful misdirection of Electronic Messages,[57] unlawful interception,[58] and so on. Other laws in Nigeria having provisions concerning the right to privacy are: the Child Rights Act 2003 in its Section 8, 142(9), 112(9) and 205(2);[59] Evidence Act 2011 in its sections 183, 184, 186, 187, 191 and

[51]African Charter on the Rights and Welfare of the Child 1990, art 10.
[52]Universal Declaration (n2), art 12.
[53]International Covenant (n3) art 17.
[54] Nigeria Data Protection Act 2023, s.1(1)(a) – (c).
[55]Cybercrimes (Prohibition, Prevention) Act 2015, s6.
[56]*Ibid,* s9.
[57]*Ibid,* s11.
[58]*Ibid,* s12.
[59] Child Rights (n14), ss8, 112(9), 142(9) and 205(2).

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192;[60] Freedom of Information Act 2011 in its Sections 14 and 15;[61] National Health Act,[62] Credit Reporting Act 2017,[63] National Identity Management Act,[64] Federal Competition and Consumer Protection Act,[65] HIV and AIDs (Anti-Discriminatory) Act[66] Consumer Code of Practice Regulation,[67] Consumer Protection Framework,[68] Nigerian Communications Commission (Registration of Telephone Subscribers) Regulation,[69] Guidelines for the Management of Personal Data by public institutions in Nigeria,[70] and NCC Lawful Interception of Communications Regulations 2019.[71]

The digital era gave way to the introduction and use of the internet, social media applications, mobile phone services and other technologies which are used to store and process information of individuals and artificial persons; this has increased the awareness and concern about the fundamental right to privacy.[72] In specific, the digital era or the cyber world has generated opportunities and advanced the right to privacy in Nigeria.

In the cyberworld, privacy rights are being protected via the use of technologies such as Privacy Enhancing Technologies (PETs),[73] the most important one being encryption. This is the tool which ensures that messages can only be read by the intended audience by converting such messages into cipher texts units until it reaches the intended recipient or audience which in turn are decrypted back to a readable text when being accessed by the intended audience. However, encryption can be attacked by *ransomware*, yet can be prevented and still be used to achieve its main purpose which is data protection and security.[74] Encryption is used for e-mails, instant messages, and Virtual Private Network (VPN).[75] Other Privacy Enhancing Technologies Anonymous, proxies used to create a barrier between a computer and the web making it impossible for anyone to access the computer's IP address: remailers, such are used

[60] Evidence Act 2011, ss 183, 184, 185, 187, 191 and 192.
[61]Freedom of Information Act 2011, ss 14 and 15.
[62] National Health Act 2011, s26.
[63] Credit Reporting Act 2017, ss 6 and 9.
[64] National Identity Management Act 2007, s26.
[65] Federal Competition and Consumer Protection Act 2019 s34(6).
[66] HIV and AIDs (Anti-Discriminating) Act 2014, s13(1)
[67] Consumer Code of Practice Regulation 2007, ss 34 – 38.
[68]Consumer Protection Framework 2016 para 2.6 – 2.6.2 and 3.1.
[69]NCC Registration of Telephone Subscribers Regulation 2011, s9.
[70]Guidelines for the Management of Personal Data by public Institutions in Nigeria 2020.
[71]NCC Lawful Interception of Communications Regulations 2019.
[72] United Nations, 'The Right to privacy in the Digital Age (United nations 1st November 2013) <https://www.ohchr.org/en/stores/2013/right-privacy-digital-age> accessed 27th August, 2024.
[73] Tech-FAQ, 'Technologies that can help Protectyour Privacy' (Tech-FAQ) <https://www.tech.faq.com/technologies-you-can-use-to-protect-your-privacy-html> accessed 27th August, 2024.
[74] D Rafter, 'What is Encryption and How Does it Protect your Data? (Norton, 15thMarch 2022) <https://US.norton.com/blog/privacy/what-is-encryption#> accessed 27th August, 2024.
[75]Tech-FAQ (n73).

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to hide main e-mail address; the Onion Router (Tor) used for online anonymity using volunteer servers.[76] The cyberworld has also enhanced and created awareness of the right to privacy in Nigeria via the internet and various social media platforms.[77] In this regard, individuals and organizations can effectively monitor the safety of their homes, and offices respectively via the use of closed circuit cameras/televisions (CCTV) and associated technologies. Similarly, the cyberworld has created privacy-enabled businesses such as online schools, vendors, medicals or other online services which have enhanced privacy anonymity, which makes it possible for people to learn privately, gain sensitive information such as illnesses, ailments and other problems privately and buy products and access services privately.[78] Flutter wave, piggy vest, paystick, ulesson and my paddi are a few examples of such online-based businesses and services owned by Nigerians and used in Nigeria.

Conversely the right to be let alone – the right to privacy is the major right that suffers infraction in cyberspace, principally occasioned by the activities of cyber criminals who exploit the vulnerabilities of certain cyber components to invade into data privacy of netizens or cyber citizens. In cyberspace, the internet, Apps, Social Media platforms, and so on, retain personal data even when the person has ceased using the Apps or social media platforms and the data retained can always be retrieved and shared years later with the public without consent.[79] Similarly, there is the issue of privacy intrusion through unsolicited messages from telecommunication companies, service providers, marketers, loan Apps and so on. Nigerian Security Agencies often violate privacy right in cyberspace, via unlawful search of the phones of individuals on the roads and in their houses.[80]

The cyberspace has enabled new criminal activities and promoted existing crimes such as hacking, phishing and espionage, cyber bullying and manipulation, child pornography, piracy, identity theft, credit card theft, spamming, crypto currency scamsand and other online fraudulent activities in Nigeria.[81]

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[76]Tech-FAQ (n73).

[77] F Olobu, 'Nigeria: Data privacy and protection under Nigerian Law (Mondaq, 19 February 2020) para 15.3 <https://www.mondaq.com/nigeria/privacy-protection-under-the-nigeria-law#ftnrsf30> accessed 28 September 2022.

[78]J Bleiberg and D M West, 'Little Discussed Ways that Technology Enhanced privacy (TechTank 26th May 2015) <https://www.brookings.edu/blog/techtank/2015/05/26/little-discussed-ways-that-technolo-enhancees-privacy/> accessed 27th August 2024.

[79]L Lessing, Code: Version 2.0 (Basic Books 2006) 203.

[80] B Ikwuegbu, 'Privacy Rights in Nigeria: Prospects and Challenges in the Digital Eta', <https://www.researchgate.net/publication/365613162> accessed 27th August 2024.

[81] B A Omodunbi and Others, 'Cyber-crimes in Nigeria: Analysis, Detection and prevention (2016)(1) *FUOYE Journal of Engineering and Technology* 37 – 38.

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Another problem to the right to privacy in the cyberworld is the issue of cyber surveillance; and the extraction of personal data and information lawfully authorized to retain personal data of citizens such as NIMC, Financial Institutions and Telecommunications Companies by Agencies of government without authorization or consent of owners of such data or information. This, of course, is a clear case of invasion or violation of the right to privacy. Often times, they obtain the personal data of citizens and use it to suppress and control government critics, journalism and democracy.[82]

b. Right to Freedom of Expression: In Nigeria, the right to freedom of expression is basically guaranteed under Section 39 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 9 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 1983.

Section 39(1) of the Constitution states that: 'Every person is entitled to the freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference;[83] subsection 2 of Section 39 says that:

> … every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions; provided that no person, other than the government of the federation or of a state or any other person or body authorized by the president on the fulfillment of conditions laid down by an Act of the National Assembly shall own, establish or operate a television or wireless broadcasting station for any purpose or whatsoever.[84]

It is instructive to note that the right to freedom of expression could be exercised via spoken words, use of social media platforms and online apps, newspaper articles and other publications, radio and television broadcasts and so on.The right to own, establish and operate television or wireless station for dissemination of opinions can only be exercised by any person or body upon authorization obtained from the president on the fulfillment of the conditions or requirement set out by an Act of the National Assembly.[85]

The African Charter on Human and Peoples' Rights is domesticated in Nigeria in consonance with Section 12 of the Constitution dealing with domestication of Treaties. By virtue of its domestication, it forms part of Nigerian Laws. Article 9 of the Charter states that: 'Every individual shall have the right to receive information. Every individual shall have the right to

[82]J Odalubu, 'Digital Authorization in Nigeria (The Legal Nuggests Limited 30 November, 2011) <https://www.legalnuggests.com/digital-authoritarision-in-Nigeria-by-julliet-odalubu/> accessed 27th August, 2024.
[83] Constitution (n12), s 39(1).
[84]*Ibid,* s39(2).
[85]*Ibid.*

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express and disseminate his opinions within the law'.[86] At the United Nations level, the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966 have provisions guaranteeing the right to freedom of expression. Article 19 of the Universal Declaration of Human Rights has it that: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.[87]

On its part, the International Covenant on Civil and Political Rights guarantees the right to freedom of opinion and expression in its Article 19 as follows:

> 1. Everyone shall have the right to hold opinion without interference.
> 2. Everyone shall have the right to freedom of expression; the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

The right to freedom of expression and opinion applies online as it applies offline. This is *intandem* with the United Nations Human Rights Council Resolution which affirmed that International Human Rights Laws apply in cyberspace.[88] Section 39, Article 9 and Article 19(1) and (2) and Article 19 of the Constitution of the Federal Republic of Nigeria, African Charter on Human and Peoples' Rights, International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights respectively, were drafted in a technologically-neutral manner. However, for the Universal Declaration of Human Rights to the International Covenant on Civil and Political rights, through their statements that the right and freedom of expression applies, 'regardless of frontiers', it is believed that the medium through which the speech is communicated does not affect the ambit of the protection that the right covers. The United Nations Human Rights Committee General Comment No. 34 further explains that Article 19(2) includes internet-based modes of communication;[89] it goes further to call on states parties to take all necessary steps to foster the independence of new forms of media that have arisen through Information and Communication Technologies (ITC);[90] and to take into account both the differences and points of convergence in print and broadcast media on the one hand, and the internet in the other hand.[91]

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[86] African Charter (n13), art 9.
[87] Universal Declaration (n2), art 9.
[88] United Nation Human Rights Council (n9).
[89] United Nations Human Rights Committee General Comment No. 34, para 12.
[90] *Ibid,* para 15.
[91] *Ibid,* para 19.

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Online expression or expression in the digital or cyber world basically refers to sharing information, opinions or ideas through the internet or cyber components. This includes using social media platforms like Facebook, WhatsApp, X, Instagram, TikTok and so on. It is the right of Nigerians to exercise their right to freedom of expression online without interference except in the manner provided for under the proviso to Section 39(2) &Section 45(a) &Section 45(1)(a) &(b) of the Constitution has it that: 'Nothing in Section 37, 38, 39 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 of others.

In *ShreyaSinghal v Union of India*,[92] the Indian Supreme Court ruled in favour of freedom of expression on the internet when ShreyaSinghal, a 21-year-old Law student challenged the issue of online free speech and intermediary liability under India's Information and Technology Act 2000. To this end, it has been firmly established in their jurisdiction that the freedom of expression online is implicit in the freedom of information guaranteed under the Indian Constitution. Similarly in Va*ldelomarSibaya v Costa Rican Superintendence of Telecommunication*,[93] regarding the right to freedom of expression online, the Costa Rican Supreme Court stated that:

> Without fear of equivocation, it can be said that these technologies (Information Communication Technologies) have impacted the way humans communicate, facilitating the connection between people and institutions worldwide and eliminating barriers of space and time. At this time, access to these technologies becomes a basic tool to facilitate the existence of fundamental rights and democratic participation (e-democracy) and citizen control, education, freedom of thought and expression, excess to information and public services online, the right to communicate with the government electronically and administrative transparency amongst others. This includes fundamental right to access to these technologies in particular, the right to access to internet or worldwide web.[94]

Access to internet or worldwide web facilitates the exercise of the right to freedom of expression, including right to hold opinion, and to receive and impart information and ideas. The exercise of this right via online ought not be interfered save in the case of limitations imposed by law and are justifiable in a democratic society. The European Court of Human Rights has held in *Kalda v Estonia*[95] that the right of the applicant – a prisoner-to freedom of

[92](2013) 12 S.C. 73.
[93]Costa-Rica-Exp, 17-000191-0007-Co.
[94]*Ibid.*
[95]Application No. 17429/10.

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expression had been violated through the refusal to grant him access to the internet to visit websites containing legal information, as this had breached his right to receive information.

In Kenya, a High Court in *Geoffrey Andare v Attorney General*[96]found a provision criminalizing 'grossly offensive' statements and false statements that are annoying, inconvenient, or causing needless anxiety, to be unconstitutional because it was vague and unjustifiably limited freedom of expression. The case originated out of GeofferyAndares post in a community Facebook group accusing Titus Kuria, a representative of a scholarship trust, of using his position of authority to sleep with young girls seeking scholarships. Kuria brought criminal complaint against Andare under Section 29 of Kenya's Information and Communication Act that broadly criminalises indecent or false information. While the case was pending in criminal court Andare brought a petition to challenge the constitutionality of Section 29. The High Court held that" 'Section 29 was unconstitutional because it unjustifiably limited freedom of expression and because it was worded in vague term'.

The court noted that the Act did not define the operative words: 'grossly offensive", "indecent", "obscene", menacing character", "annoyance" inconvenience", 'anxiety". The court stated that:

> The words are so wide and vague that their meaning will depend on the subjective interpretation of each judicial officer seized of a matter. Referencing the European Court of Human Rights Judgment in *Sunday Times v the United Kingdom*, the court held that this left an unconstitutionally wide margin of interpretation and failed to provide certainty about the conduct that the Act sought to criminalize[97]

In Nigeria, the Court of Appeal in *Solomon Okedara v Attorney General*[98] dismissed a matter that challenged the Constitutionality of Section 24(1) of the Cybercrimes (Prohibition, Prevention Etc.) Act 2015, on the ground that it lacks merit. Affirming the judgment of Baba J of the Federal High Court, the court disagreed with the Appellant that the provision was vague, overbroad, and ambiguous and threatened his rights to freedom of expression under Section 39 of the Constitution and was not within the possible restrictions under Section 45 of the Constitution instead the court of Appeal found Section 24(1) of the Cybercrimes Act to be clear and explicit and not in conflict with the provisions of Sections 36(12), 39, and 45 of the 1999 Constitution. However, by the way side, the court stated that under the constitution

[96] Petition No. 149/2015.
[97] *Ibid,*para 77.
[98] CA/L/174/18

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it was clear that liberty of thought and freedom of expression was paramount.[99]The case of *The Incorporated Trustees of Paradigm Initiative for Information Technology Development v The Attorney General of the Federation*,[100] the court of Appeal in Lagos also dismissed an appeal which challenged the constitutionality of Section 24(1) of the Cybercrimes Act 2015 for lacking in merit. However, in *Incorporated Trustees of Laws and Rights Awareness Initiatives v Nigeria*,[101] the ECOWAS court held that Section 24 of the Nigerian Cybercrimes Act, 2015 violated the right to freedom of expression.

c. Other Rights Implicated in Cyberspace

i. The right to Peaceful Assembly and Association.

The right to freedom of Assembly and Association is guaranteed in Nigeria under Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),[102] Articles 10 & 11 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act 1983;[103] it is also protected under Articles 21 & 22 of the International Covenant on Civil and Political Rights 1966[104] and Article 20 of the Universal Declaration of Human Rights[105] and so on. Though, the Constitution,the African Charter, the International Covenant on Civil and Political Rights and the Universal Declaration on Human Rights, did not make reference to the internet or cyberspace, they provide a proper framework which guarantee the right to freedom of assembly and association for everyone.[106] There is now a broad understanding and well-established international position that the right to freedom of peaceful assembly and association applies equally online as offline.[107] The special rapporteur MainaKial, called upon states in 2012 report (A/HRC/20/27) 'to recognize that the rights to freedom of peaceful assembly and of association can be exercised through technologies including through the internet.

Resolutions 21/16[108] and 24/5[109] of the Human Rights Council on the rights to freedom of peaceful assembly and of association reinterate the important role of new information and

[99] Digital Rights Lawyers Initiative, 'An Overview of Online Expression as a Digital Right' (Digital Rights Initiative 2020)16.
[100] CA/L/556/2017.
[101] ECW/CCJ/JUD/31/18.
[102] Constitution (n12), s40.
[103] African Charter (n13), arts 10 & 11.
[104] International Covenant (n3), art 21 & 22.
[105] Universal Declaration (n2), art 20.
[106] Council of Europe 'Draft Report on the Freedom of Assembly and Association: MSI – INT (2010)08 rev 2(11 May 2015) <https://rm.coe.in/draft-report-on-freedom-of-assmbly-and-association> accessed 29th August 2024.
[107] Special Rapporteur on the Right to Freedom of Peaceful Assembly and of Association 2012 - Report (A/HRC)20/27.
[108] Resolution A/HRC/RES/21/16.

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communications technologies in enabling the facilitating the enjoyment of the rights to freedom of peaceful assembly and association.[110] The cyberspace as well as the internet is a tool and a space in which one may exercise the right to freedom of peace assembly and association.[111]

The cybserspace can be envisage as a space for protests. An example is the Protest One against the Stop Online Piracy Act (SOPA) and the PROTECT IP ACT (PIPA), on January 18, 2012. That day 115,000 websites (including Reedit, English Wikipedia, Google, Mozilla and Fliekr) changed their main image to black explaining their disagreement with the proposed bills, three million people e-mailed congress to voice their opposition to the bills and there were more than 24 million SOPA-related tweets in 16 hours.[112]

In Nigeria, the cyberspace particularly the social media space has been used by citizens to freely assembleand associate,protest against police brutality ad harassment through the harshtag #EndSAARS Protest and recently '#EndBadGovernanceProtest'. The organizers through the harshtag #Endbadgovernance in Nigeria, digitally assembled, particularly the youths to protest bad governance, which according to them has brought untold hardship in the country. The end bad governance protect was done online and offline. However, the rights to freedom of expression, life, security of persons, freedom of assembly and association, prohibition of torture were severely brutalized by the Nigerian state both in the Endbadgovernance and End SAARS protects.[113] The ECOWAS Court held that the Federal Government of Nigeria violated the human rights of Obianuju Catherine Udeh and two others; the court found Nigeria in breach of Article 1, 4, 6, 9, 10, and 11 of the African Charter on Human and Peoples' Rights specifically pertaining to the rights to life, security of person, freedoms of expression, assembly and association, prohibition of torture, the duty of state to investigate and the right to an effective remedy.[114]

ii. The Right to Freedom of Religion

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[109] Resolution A/HRC/RES/24/S.

[110] Council of Europe (n106)2.

[111] *Ibid,* 5.

[112] Public Outcry Over Antiparcy Bills Began as Groot-Roots Grumblings <https://www.mytimes.com/2012/01/20/technology/public-outcry-over-antiparcy-bills-began-as-grass-roots-grumbling.html?pagewated=18ref=technology8r=0> accessed 29th August, 2024.

[113] S. Odeniyi, 'Federal Government Violated End SAARS protests' Rights – ECOWAS Court (Punch Newspaper 10th July 2024) <punchng.com> accessed 29th August, 2024.

[114] *Ibid.*

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This right is protected in Nigeria under Section 38 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),[115] Article 8 of the African Charter on Human Peoples' Rights (Ratification and Enforcement) Act,[116] and Section 7 of the Child Rights Act.[117]

Section 38 of the Constitution of Nigeria states as follows:

> Every person shall be entitled to freedom of thought, conscience and Religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance[118]

On its part, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act guarantees the right to freedom of religion in Article 8 as follows: 'Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms'.[119] Similarly, the Child Rights Act guarantees the right to freedom of thought, conscience and religion for the Nigerian Child in Section 7 as follows:

> 1) Every child has the right to freedom of thought, conscience and religion.
> 2) Parents and, where applicable, legal guardians shall provide direction in the exercise of these rights having regard to the evolving capacities and best interest of the child.
> 3) The duty of parents and, where applicable, legal guardians to provide guidance and direction in the enjoyment of the right in subsection(1) of this section by their child or ward shall be respected by all persons bodies, institution and authorities
> 4) Whenever the fostering, custody, guardianship or adoption of a Child is in issue, the right of the Child to be brought up in and to practice his religion shall be a paramount consideration[120]

By the combined effects of Resolution A/HRC/RES/32/13 of the United Nations Human Rights Council, and the Common African position on the application of International law to the use of Information and Communication Technologies in cyberspace by African Union Peace and Security Council made on the 29th of January 2024, and similar position taken by the United Nations General Assembly via the Report of the Group Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the context of International Security taken on the 14 day of July 2021 with reference number A/76/135 para 36, make the

[115]Constitution (n12), s28.
[116]African Charter (n13), art 8.
[117]Child Right Act (n30), s7.
[118]Constitution (n12), s38.
[119]African Charter (n13), art 8.
[120]Child Rights' Act (n13), s7.

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provisions of municipal and International Human Rights Laws applicable in cyberspace, including Nigerian human rights laws. Accordingly, the provisions of Section 38, Article 8 and Section 7 of the Constitution, the African Charter on Human and Peoples' Rights and the Child's Rights Act apply in the Nigeria's cyberspace as well as the physical space. It is instructive to note that Nigeria has ratified the International Government on Civil and Political Rights 1966, accordingly, it has obligation under International Law to respect, protect and fulfill the provisions of the covenant. Article 18 of the covenant guarantees to everyone the right to freedom of thought, conscience and religion;[121] it further states that this right includes the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.[122] No one shall be subjected to coercion which will impair his freedom to have or to adopted a religion or belief of his choice.[123]The freedom to manifest one's religion or beliefs maybe subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.[124]

The right to freedom of religion is also exercise or enjoyed online via social medial platforms such as Facebook, X, Instagram, WhatsApp, YouTube and so on. Religious gatherings or church services in Nigeria are usually conducted online. Churches such asDeeper Life Bible Church, Living Faith Church, Dunamis Church and Assemblies of God Church and so, conduct live services via the cyberspace. The exercise of this right in cyberspace is expected to be protected by the state from violations. Access to internet and Information Communication Technologies facilitate the exercise and enjoyment of this right. Government should ensure that internet services are available and accessible to the citizensunavailability of ICTs and the internet impede on the exercise and enjoyment of fundamental rights and basic freedoms such as the right to freedom of religion.

Human rights guaranteed under International law that are also relevant for the protection of the practice of religion in cyberspace include: the right to freedom of thought, conscience and religion;[125] right to freedom of opinion and expression in Articles 19 of the Universal Declaration of Human Rights 1948 and International Covenant on Civil and Political Rights

[121]International Covenant (n3), art 18(1).
[122]*Ibid.*
[123]*Ibid,* art 18(2).
[124]*Ibid,* art 18(3).
[125]Universal Declaration (n2), art 18; International Covenant (n3), art 18.

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1966;[126] prohibition of Advocacy of National, Racial or religious hatred that constitutes incitement to discrimination, hostility or violence in Art 20 of International Covenant on Civil and Political Rights,[127] right to privacy in Articles 12 of UDHR and 17 ICCPR;[128] and the right to freedom of assembly and association in Articles 20 of UDHR and 21, 22 of ICCPR[129]

The UN Special Rapporteur on freedom of religion or belief has raised concerns regarding the wide dissemination of hate speech online targeting religious groups, including anti-Muslim and anti-Semitic hatred and conspiracy theories.[130]

iii. Right to Freedom against Discrimination

The internet has no borders, and discrimination in cyberspace is a global issue that calls to be addressed at the national, regional and international levels. Discrimination in cyberspace is understood as denigrating or excluding individuals or groups on the basis of race, gender, sexual orientation, age, disability, religion and belief though the use of symbols, voice, video, images, text, and graphic representation or the combination thereof, on the internet.

Discrimination in cyberspace can be direct – such in the case of algorithm bias or discrimination by design. Algorithmic discrimination includes biases incorporated into algorithms and codes that power machine learning and artificial intelligence systems resulting in systematic disadvantage of certain groups or people.[131] Discrimination by Design means that the way the website is made, enables discrimination. An example of discrimination by design is the site Roomates.com which requires subscribers to express preference in dropdown manu that list gender, sexual orientation, and family status as potential options. A participant has to share such a preference to find a match. In the United States, the Fair Housing Act[132] prohibits discrimination concerning the sale, rental, and financing of housing base on race, religion, national origin, sex (as amended) handicap and family status. In *Fair Housing Council v Roommates.com* LLC,[133] the United States Court of Appeals for the North Circuit held *interalia* that Roommate.com was protected by the Communication Decency Act for publishing the additional comments' section, but not for posting questionnaires that

[126]Universal Declaration (n2), art 19; International Covenant (n3), art 19.
[127]International Covenant (n3), art 20.
[128]Universal Declaration (n2), art 12; International Covenant (n3), art 17.
[129]*Ibid*, art 20; *Ibid*, art 21 & 22.
[130]United States Commission on International Religious Freedom, 'Fact – sheet protecting religious freedom online' <https://www.uscirf.gov/files/2021-12/> accessed 30th October 2024.
[131]P Lopez, 'Bias Does not Equal Bias: A Socio-Technical Typology of Bias in Data – Based Algorithm Systems' (2021) (10)(4) *Internet Policy Review.*
[132]United States Fair Housing Act 1968, ss. 800 – 808.
[133]521 F.3d 1157 (9th Cir 2008); 666F.3d 1216.

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required disclosure of sex, sexual orientation and family status; limiting the scope of searches by users' preference on roommate's sex, sexual orientation and family status, and a matching system that paired users based on those preferences'.[134] However, the appellate court turned the lower court's decision and found that it will be a serious invasion to privacy, autonomy and security to prevent people from choosing roommates with compatible lifestyle.

Apart from the discrimination by the platforms themselves, discrimination can be indirect, when internet users discriminate other internet users using intermediaries such as platforms. It can occur in social networking sites, chat rooms, discussion boards, through text message, webpages, online videos, music and online games. This issue opens difficult question on the scope of private authority and public regulation. Should the responsibility of private tech companies derive from human rights, terms of service, contracts or something else?[135]

Whilst algorithmic discrimination poses a challenge as it is often 'hidden' – meaning that the users are often not aware they are being discriminated against – the discrimination users post online platforms is more prominent and visible. As platforms such as Facebook, Instagram, and YouTube are not traditional media publishers with editorial control, there is uncertainty about whether they should bear liability for the discriminatory conduct and comments their users post online. It is however, uncontested that they do have great power to control the information available to the online users.[136] Online discrimination just like any other discrimination is often motivated by hate or prejudice and it is sometimes not possible to distinguish online discrimination and online hate speech. Hate speech covers many forms of expressions which advocate, incite, promote, or justify hatred, violence and discrimination against a person or group of persons for a variety of reasons. The internet has no borders, and discrimination online is a global issue that needs to be handled at the national regional and international levels.

The provisions of national, regional and international human rights law on the right to freedom from discrimination apply in cyberspace as they apply in the physical space. This position is supported by the UN Human Rights Council Resolution A/HRC/RES/13 on the promotion and enjoyment of human rights on the internet. Accordingly in Nigeria, Section 42

[134]*Fair Housing Council v Roommates.com* LLC (n133)

[135]UN Human Right Council, 'Report of the Special Rapporteur on the protection and promotion of the freedom of opinion 2016, p.3

[136]L K Barocas, 'Designing Against Discrimination in Online Market' (2017)(32) *Berkeley Technology Law Journal 1183*

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of the Constitution,[137] Article 2 of the African Charter,[138] Section 10 of the Child's Rights Act[139] and so on guarantee from discrimination. Section 42 of the Constitution provides that:

> 1. A citizen of Nigeria of a particular community, ethnic group, place, origin, sex, religion or political opinion shall not, by reason only that he is such a person –
>   a) be subjected either expressly by, in practical application of any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizen of Nigeria communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or
>   b) be accorded either expressly by or in the practication of, any law enforce in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places or origin, sex, religion or political opinion.[140]
> 2. No citizen of Nigeria shall be subjected to any disability or deprivation merely on reason of the circumstances of his birth.[141]

It is instructive to note that the right to freedom from discrimination guaranteed under section 42 of the Constitution of the Federal Republic of Nigeria appears to be absolute as it is not subject to Section 45 of the Constitution which created limitations to some of the fundamental rights provided under chapter four of the Constitution.

iv. The rights to life, right to dignity of human person, right to freedom of movement and right to work and so on, may also be implicated in cyberspace.

Conclusion and Recommendation

Human rights are those rights endowed upon human beings by nature or by their creator by reason of their humanity, in equal dimension, no matter the continent they live, disrespect or violation of which degrade the dignity inherent in human beings to theduration of the violation as they are innate, inextinguishable, inalienableand immutable, and not creation of the state or society. These rights include the right to life, right to dignity of the human person, right to liberty, right to fair trial and fair hearing, right to privacy, right to freedom of thought, conscience and religion, right to freedom of expression, right to freedom of assembly and association, right to freedom of movement, right to freedom from discrimination, right to property and so on.Cyberspace is that virtual space created by computers and their interconnectivity, computer related devices and information communication technologies and

[137]Constitution (n12), s 42
[138]African Charter (n13), art 2
[139]Child Rights' Act (n30), s. 10
[140]Constitution (n12), s 42(1)(a) & (b)
[141]*Ibid,* s 42(2)

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the internet where individuals and organizations carryout their civil, political, economic and cultural operations.

Cyber human rights are a set of fundamental rights and basic freedoms that individuals are entitled to exercise and enjoy online in cyberspace as they do in the physical space or offline. The human rights mostly enjoyed or violated in Nigeria's cyberspace in specific and the global cyberspace are: the right to privacy, the right to freedom of expression, the right to freedom of thought, conscience and religion, the right to peaceful assembly and association, the right to freedom from discrimination. Other rights which may be implicated in Nigeria's cyberspace include but not limited to the right to life, right to dignity of the human person, right to work and right to property.

In Nigeria, the human rights provisions of the Constitution, the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, the Child Rights Act, and Regional and International Human Rights instruments that Nigeria has ratified as well as customary international human rights norms apply in Nigerians' cyberspace. Nigeria has an obligation to respect, protect and fulfill human rights in cyberspace. It bears also international responsibility for egregious violation of human rights of its nationals and non-nationals in cyberspace.

It is recommended that Nigeria's Law Enforcement Agencies be trained and re-trained in the areas of respect and protection of human rights in Nigeria's cyberspace and to adopt and deplore the best technological equipments and practices to ensure cyber security in the Nigeria's cyberspace.

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