

## **ANALYSIS OF THE PROTECTION FROM INTERNET FALSEHOODS AND MANIPULATION AND OTHER RELATED MATTERS BILL 2019**

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The bill was sponsored by Senator Muhammad Sani Musa (APC Niger-East)

### **PART 1 CONTAINS THE AIMS AND OBJECTIVES OF THE BILL**

Which are:

- Preventing the transmission of false statements/declaration of facts in Nigeria
- Suppressing the financing, promotion and other support of online locations that repeatedly transmit false statements/declaration of facts in Nigeria
- Enable countermeasures to detect, control and safeguard against coordinated inauthentic behaviour and other misuses of online accounts and bots
- Enable measures to be taken to enhance disclosure of information concerning paid content directed towards political end
- Sanction offenders

### **PART 2 DEALS WITH THE PROHIBITION OF TRANSMISSION OF FALSE DECLARATIONS OF FACT WHICH WILL BE CONSIDERED AS AN OFFENCE.**

This covers acts done within and outside Nigeria by a person in relation to

- False statements of fact
  - Transmission of statements in Nigeria which is likely to
    - be prejudicial to the security of Nigeria or any part thereof, public health, public safety, public tranquillity, public finances, friendly relations of Nigeria with other countries
    - influence the outcome of an election to any office in general election or referendum
    - incite feelings of enmity, hatred, ill-will to a person or groups of persons
    - diminish public confidence in the performance of any duty or function of or in the exercise of any power by the Government.
- Punishment: on conviction – individual – fine not exceeding =N= 300,000 imprisonment – term not exceeding 3 years or both on conviction – any other case – a fine not exceeding =N= 10 Million Naira

In relation to an inauthentic online account or bot which is used to transmit false statements of fact for the purpose of accelerating such transmission; a person found guilty shall be liable on conviction to:

=N= 300,000 fine or imprisonment for a term not exceeding 3 years or both.  
In any other case to a fine not exceeding =N= 10 Million

Exception –

Provision of:

- An internet intermediary service
- A tele-transmission service
- A service of giving public access to the internet
- A computing resource service

Where a person (within or outside Nigeria) transmits a false statement of fact by means of bot or enables any person to transmit such a statement, he will be guilty of this offence and liable to a fine not exceeding =N= 200,000 or a term of imprisonment not exceeding 3 years or both. And in any other case, a fine not exceeding =N= 5 Million.

Furthermore, if such transmission is likely to be prejudicial to the security of Nigeria or any part thereof, public health, public safety, public tranquillity, public finances, friendly relations of Nigeria with other countries, influence the outcome of an election to the office of President, general election of members of parliament, by-election of a member of parliament or a referendum, incite feelings of enmity, hatred, ill-will to a person or groups of persons; diminish public confidence in the performance of any duty or function of or in the exercise of any power by the Government, organ of state, statutory board, part of the government, organ of state or statutory board. A person who is guilty shall be liable to a fine not exceeding =N= 300,000 or imprisonment not exceeding 3 years or both.

- In relation to persons who provide services for transmission of declaration of facts in Nigeria. (whether in Nigeria or outside Nigeria). Includes soliciting, receiving or agreeing to receive any financial or other material benefit or reward, knowing that the service will be used in the transmission of false statements shall be guilty of an offence. An individual will be liable to a fine of =N= 150,000 or 2 years imprisonment or both and a fine not exceeding =N= 500,000 for any other case.
- Where the statement is likely to be prejudicial to the security of Nigeria or any part thereof, public health, public safety, public tranquillity, public finances, friendly relations of Nigeria with other countries, influence the outcome of any election to any office in a general election, incite feelings of enmity, hatred, ill-will to a person or groups of persons; diminish public confidence in the performance of any duty or function of or in the exercise of any power by the Government, organ of state, statutory board, part of the government, organ of state or statutory board.  
A person who is guilty shall be liable to a fine not exceeding =N= 300,000 or imprisonment not exceeding 3 years or both. And in any other case a fine not exceeding =N= 10 Million Naira.

The exception-

Provision of:

An internet intermediary service

A tele transmission service

A service of giving public access to the internet

A computing resource service

### **PART 3 DEALS WITH REGULATIONS DEALING WITH TRANSMISSION OF FALSE DECLARATION OF FACTS IN NIGERIA.**

It empowers law enforcement department (L.E.D) to issue a Part 3 Regulation in the event following a false declaration which has been or is being transmitted; or where the law enforcement department is of the opinion that it is in the public interest to issue the regulation. This regulation may be issued even where the declaration has been amended or ceases to be transmitted in Nigeria.

It also deals with a correction regulation which is said to be one issued to a person who transmitted the subject declaration in Nigeria requiring the person to transmit in a specified form, manner, to a specified person or description of persons and for a specified time. It also covers transmission of the declaration or publishing the correction notice. The correction regulation may be issued to a person “even if the person does not know or has no reason to believe that the declaration is false”. The same exception applies.

It also deals with stop transmission regulation which is stated to be issued to a person who transmitted a subject declaration, requiring such a person to stop transmitting the declaration by a specified time.

The part 3 regulation may be issued to a person within or outside Nigeria and may require the person to whom it is issued to do an act within or outside Nigeria. It goes further to detail what the part 3 regulation must contain and its validity.

Section 10 – deals with the service of the part 3 regulation which includes via electronic means.

Section 11 – deals with non-compliance with the part 3 regulation. The offender will be liable to a fine not exceeding =N= 200,000 for an individual or imprisonment not exceeding 12 months or both; and in any other case a fine not exceeding =N= 5 million.

Subsection 2 states circumstances which will not result in a defence to the charge. They include persons being subject to a duty under any written law, any rule of law, any contract or rule of professional conduct which prevent them from complying with the part 3 regulation; Or the person has applied to vary or cancel the regulation or applied to the high court against the regulation.

This section also prescribes no civil or criminal liability for a person or officer, employee or agent who does or omits to do any act if the act done or omitted to be done with reasonable care and in good faith for the purpose of complying with or giving effect to the part 3 regulation.

Section 13 states that A person may appeal to the high court where a part 3 regulation is issued but only after the person applies to the LED to vary or cancel it and the application is refused in whole or part.

The grounds on which the high court may set aside a part 3 regulation are:

- The person did not transmit the subject declaration in Nigeria
- The subject declaration is not a declaration of fact
- It is technically impossible to comply with the regulation

Furthermore, the part 3 regulation remains effective despite the appeal and only ceases to have effect if set aside by a court (High Court or Court of appeal) or if it expires or is cancelled by the LED.

Section 12 deals with an access blocking order. This is applied where a person fails to comply with a part 3 regulation, where the subject declaration is being transmitted in Nigeria by a person on an online location, the law enforcement department is satisfied that one or more end-users in Nigeria have used or are using the service of an internet access service provider to access that online location.

The LED may direct NCC TO

- Order the internet access provider to take reasonable steps to disable access by end-users in Nigeria to the online location (ie an access blocking order) and NCC must give the internet access service provider an access blocking order.
- Failure by an internet service provider will lead to a fine not exceeding ₦= 10 million for each day of noncompliance up to a total of ₦= 5 million.
- No civil or criminal liability for the internet access service provider or officer, employee or agent of such provider, for anything done or omitted to be done with reasonable care and in good faith for the purpose of complying with the access blocking order.

Section 15 provides for the variation or cancellation of a part 3 regulation by the LED.

#### **PART 4 COVERS REGULATION FOR INTERNET INTERMEDIARIES AND PROVIDERS OF MASS MEDIA SERVICES.**

Section 16 states the conditions for issuance of part 4 regulations. It stated that any LED may issue a part 4 regulation where:

- The subject material contains or consists of a false declaration of fact which has been or is being transmitted in Nigeria
- The LED is of the opinion that it is in the public interest to issue the regulation.
- This regulation may be issued even when it has been amended or ceases to be transmitted in Nigeria.

Section 17 provides for targeted correction regulation. This is a regulation issued to the internet intermediary that provided the internet intermediary service by means of which the subject material has been or is being transmitted in Nigeria to end-users.

The targeted correction regulation may require the intermediary to:

- Transmit the correction notice to all end-users
- Transmit the correction notice by any means and by a specified time to all end-users
- Transmit the correction notice by means of the internet intermediary service to a specified description of end-users in Nigeria

Section 18 provides for disabling regulation. This is a regulation issued to the internet intermediary that provided the internet intermediary service by means of which the subject material has been or is being transmitted in Nigeria, requiring it to disable access by end-users in Nigeria to the subject

material provided on or through the service that consists of or contains the subject declaration by a specified time.

The disabling regulation may require the internet intermediary to do one or both of the following:

- Disable access by the end-user of the service in Nigeria
- Transmit a correction notice by any means to a specified description of end-users in Nigeria

Once a disabling regulation is issued, the LED may publish the notice of issue of the disabling regulation in the gazette and this does not invalidate the regulation

Section 19 provides for general correctional regulation. This is one issued to a prescribed internet intermediary or such other person as may be prescribed to carry out a specified act. This act may be to transmit a correction notice in Nigeria by means of the internet intermediary service to all end-users or specified persons by specified means at a specified time.

A person to whom a general correction regulation is issued may bring civil proceedings in the high court against a person who is the author of the subject declaration and who transmitted the subject material in Nigeria to recover costs reasonably incurred by the person to whom the regulation is issued in order to comply with the regulation. These costs will be determined by the court on a balance of probabilities.

Section 21 provides for the service of part 4 regulation and remedial orders. A part 4 regulation may be served by such means, including electronic means on:

- The person whom it is issued
- The person appointed by the person whom it is issued to accept service on the person's behalf

Section 22 deals with the noncompliance with a part 4 regulation or remedial order offence. Failure to comply will result in a fine not exceeding =N= 300,000 or imprisonment not exceeding 12 months or both for an individual; and a fine not exceeding =N= 5 million in any other case. Where the offence continues, a further fine not exceeding =N= 10 million for every day or part of a day in which the offence continues.

The defences mentioned above also apply to this. So also does the civil and criminal liability.

Section 23 provides for an access locking order. This is issued where an internet intermediary fails to comply with a part 4 regulation or remedial order; the subject matter is being transmitted in Nigeria via an online location and the LED is satisfied that one or more end users have used or are using its services.

The body that issues the order is the NCC subject to the direction of the LED.

Failure to comply will lead to a fine not exceeding =N= 1 million for each day or part-day of non-compliance up to a total of =N= 10 million. Also, the same no civil and criminal liability applies.

There shall be a right to appeal to the high court against part 4 regulations subject to an application first being made to the LED to vary or cancel.

Section 26 provides for the variation or cancellation of a part 4 regulation or remedial order. This power is given to the LED and is enforced by serving a written notice on the person the regulation is issued against.

This may be done:

- On the LED's own initiative
- On application by the person to whom it is issued or a person to whom transmitted the subject matter in Nigeria

## **PART 5 PROVIDES FOR DECLARATION OF ONLINE LOCATIONS.**

Section 27 states that the LED may state that an online location is a declared online location where 3 or more different declarations that are subject of one or more part 3 or 4 regulations or both have been or are being transmitted in Nigeria on the online location and at least 3 of those declarations had first been transmitted in Nigeria on the online location within 6 months before the date the declaration is made. Failure to comply will result to a fine of =N= 500,000 or imprisonment not exceeding 3 years or both for an individual and a fine not exceeding =N= 5 million in any other case.

It states the contents of the declaration in subsection 3. This includes the universal resource location, domain name or other unique identifier, must reproduce the relevant regulation, the date the declaration comes into effect etc. it also provides for the expiration of the declaration and that it will be published by the LED.

An access blocking order may be issued section 28), an order to the internet intermediary to disable access to declared online locations (section 29) - – failure to comply will result in a fine of =N= 1 million for each day up till a total of =N= 10 million. Appeals lie to the high court subject to an application to the led for cancellation or variation.

Section 31 deals with deriving benefit from operating declared online location and states that such a person will be liable to a fine not exceeding =N= 300,000 or imprisonment not exceeding 3 years or both for an individual and a fine not exceeding 5 million in any other case.

Section 32 provides for certain persons not transmitting in Nigeria paid content on declared online locations and so on.

Section 33 prohibits providing financial support to declared online locations

Section 34 empowers the led to make any regulation necessary for carrying out or giving effect to the Bill.

Section 35 is the general interpretation section.

## **KEY ISSUES OF CONCERN**

This bill seeks to prevent the spread of false information or news through the internet by individuals and organizations domiciled in Nigeria and outside Nigeria. Various offences are listed in the bill with punishments for erring offenders.

The bill also prevents a person wrongly found to be guilty of the offence from enforcing his or her fundamental rights to seek redress by instituting both civil and criminal actions against the erring party.

This is contrary to section 36(1) of the 1999 constitution(as amended) which provides for a right to fair hearing of individuals by a court or tribunal as well as Section 39 of the 1999 constitution (as amended) which provides that “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.” and liable to be discountenanced.

The bill is a threat to the fundamental human rights and principles of democracy as it seeks to infringe on the rights of citizens to freedom of speech as enshrined in the 1999 Constitution (as amended). Citizens Freedom of expression is being curtailed and/or restricted under this Bill because it attempts to prevent or restrict any statement that may be construed as a criticism against the government; and prescribes various punishments for perceived offenders. In a democratic environment, citizens should be able to freely express themselves without fear of being persecuted or repressed. In a situation where malicious or false statements are made against another government, its representatives or any other person, the aggrieved party has a right to take out a libel suit against the erring party.

The bill also prohibits any statements that are likely to influence the outcome of elections in Nigeria. This raises the issue of accountability and good governance. It is vital in every democracy for a citizen to be able to air their views on elections and those views, whether influencing the outcome of an election, should be allowed to be expressed. Furthermore, who is to determine whether a view expressed influences the outcome of an election? Going by the provisions of this bill, it will seem to be the L.E.D.

One of the challenges of the Bill is that it does not state how the false information will be determined and who bears the burden of proving whether a statement is false. It also places a lot of power on the LED to subjectively decide whether to issue regulations in response to any content or material considered to be false. This makes the test subjective and creates an opportunity for the Bill if passed to be used as a witch-hunting tool.

It is also pertinent to note that most of the offences sought to be introduced by this bill have already been covered by the Cybercrimes (Prohibition, Prevention Etc.) Act 2015. For instance, section 24(1) which provides for cyberstalking states that “a person who knowingly sends a message or other matter by means of computer systems or network that ... (b) he knows to be false, for the purpose of causing annoyance, inconvenience danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent: commits an offence under this Act and shall be liable on conviction to a fine of not more than N7,000,000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment.” This is similar to part 2 of this bill. The only difference being influencing the outcome of a general election and diminishing the confidence of the public in the performance of any duty by the government.

It is also significant to note that there are no studies that have been conducted to show that the issues surrounding this bill are so notorious that it needs to be legislated on.

In conclusion, if this bill is passed and interpreted by the courts, most of the provisions are likely to be deemed as being unconstitutional and therefore, inapplicable.