

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE: OL
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Dear Mr. Minister,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Government information we have received **concerning the draft Bill “An Act to Prohibit Frivolous Petitions; and Other Matters Connected Therewith”, which allegedly contains a number of provisions that unduly restrict the right to freedom of expression in Nigeria.**

According to the information received:

In December 2015, a Senator from the ruling All Progressives Congress party proposed the draft Bill “An Act to Prohibit Frivolous Petitions; and Other Matters Connected Therewith” (hereafter the Bill) and submitted it to the National Assembly for approval. The Bill has received two readings and is currently before a parliamentary committee. A third reading is required before the Bill can be passed and signed into law.

It is reported that a petition had been filed on 6 December 2015 before the High Court in Abuja to order an injunction preventing the Senate from passing the Bill on ground related to the potential adverse impact of the Bill on the exercise of the right to freedom of expression and the use of social media in the country.

According to **Section 1** of the draft law, it is unlawful to submit petitions or statements alleging wrongdoing by others, “for the purpose of an investigation, inquiry or inquest”, without providing a sworn affidavit from a High Court affirming truth of the allegations. Pursuant to **Section 2**, petitions and complaints not accompanied by an affidavit are invalid and cannot be used. Anyone found

guilty of the offences listed under **Sections 3(1) and 3(2)** can be punished with a prison term of up to two years and, in some cases, a fine of N2000.000.

Section 3(3) of the Bill prohibits anyone from making allegations and publishing statements or petitions “in any paper, radio, or any medium of whatever description, with malicious intent to discredit or set the public against” any person, group or government institution. The penalty, for a person found guilty of this offence, carries a prison term of two years or a fine of N 4,000,000.

Section 3(4) criminalizes anyone who, via “text message, tweets, Whatsapp, or through any social media”, makes an “abusive statement” that is known to be false with the “intent to set the public against” any person, group, government institution or other body established by law. Such acts constitute an offence and, upon conviction, can be punished with two years’ imprisonment and/ or a fine of N2,000,000.

Grave concern is expressed at the above-mentioned provisions of the Bill in their current form. If approved, the Bill would impose undue restrictions on the legitimate exercise of the right to freedom of expression, as provided under article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Nigeria in 1993. We are seriously concerned at the implications that these provisions would have on the work of human rights defenders, journalists and whistle-blowers, who could be prosecuted for expressing and publishing legitimate criticism of the Government or report possible State officials’ misconduct, including cases of corruption. The possibility of such a prosecution could prevent critical reporting and increase media self-censorship, thus restricting the right to freedom of expression, which includes the right to impart information and ideas of all kinds, as well as the right to seek and receive such information.

In particular, we are concerned at the procedure for submitting petitions or statements aiming at the initiation of an investigation, inquiry or inquest pursuant to Sections 1-3(2), which requires providing a sworn affidavit from a High Court asserting the truth of the allegations. We first express concern at the lack of clarity and predictability of this procedure which may prevent the effective, prompt and impartial investigation on possible claims and allegations, as the High Court would be required to deliberate on the veracity of the claims before an investigation is even considered. In addition to requiring time, legal skills and financial resources, this procedure would impose undue burden and additional obstacles to the claimants, who would be required to go through two instances, in order to present a claim on a broad variety of matters, including on wrongdoings from State officials.

We are also particularly concerned at the provisions in Section 3(3) that could lead to the criminalization and imposition of high prison sentence, and/or prohibitive fines, for the publication of information or statements, with “malicious intent to discredit or set the public against” any person, group or government institution. In particular, the wording of these provisions, such as the terms “malicious intent” and “set the public against”, are too vague and could be open to overly broad interpretation and discretion

which could lead to the criminalization of legitimate speech. Similarly, in section 3(4) the terms “abusive”, “false” and “set the public against” are overly broad and fail to include adequate safeguards for the protection of the right to freedom of expression.

In this regard, we wish to recall to your Government that any restrictions to the right to freedom of expression must comply with the provisions of the ICCPR, can only be imposed on legitimate grounds as set out in article 19(3), and must conform to the strict tests of necessity and proportionality. The UN Human Rights Committee established that to be characterized as a “law”, the norm, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. The Committee added that a law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution and laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not (See CCPR/C/GC/34).

The UN Human Rights Committee also expressed concern regarding laws on such matters as *desacato*, disrespect for authority, defamation of the head of state and the protection of the honour of public officials, and indicated that States should not prohibit criticism of public institutions. These, like defamation laws, must be crafted with care to ensure that they comply with the requirements set forth in article 19(3) and that they do not serve, in practice, to stifle freedom of expression. The Committee stressed that all such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. The Committee concludes that care should be taken by States to avoid excessively punitive measures and penalties and should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty (See CCPR/C/GC/34).

Finally, we would like to refer your Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. In that context, we bring to the attention of your Excellency’s Government article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; and article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

In view of these concerns, we would like to call on your Government to take all steps necessary to conduct a comprehensive review of the Bill ensuring its compliance with international human rights standards, in particular with the right to freedom of expression.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on measures taken to ensure the “Act to Prohibit Frivolous Petitions and Other Matters Connected Therewith” is consistent with Nigeria’s obligations under international human rights law and standards, particularly with the right to freedom of expression.
3. Please provide detailed information on the legislative process and calendar for the discussion of the Bill, and how this process is consistent with Nigeria’s obligations under international human rights law and standards..
4. Please provide information on any measures that are being taken to include civil society, and other relevant actors, in genuine consultations on the Bill prior to its adoption in the National Assembly.

We would like to kindly request your Government to share the content of this communication with the relevant legislative body in charge of the revision of this Bill for its consideration.

Your Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Minister, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders