**RE: SUBMISSION TO STUDY ON SOCIAL MEDIA SEARCH AND FREEDOM OF EXPRESSION**

Social media may be defined as any web or mobile based platform that enables an individual or agency to communicate interactively. Social media comprises primarily internet and mobile phone based tools for sharing and discussing information. It blends technology, telecommunications, and social interaction and provides a platform to communicate through words, pictures, films, and music. Social media includes web- based and mobile technologies used for communication. The Internet and Social Media has become a vital communications tool through which individuals can exercise their right of freedom of expression and exchange information and ideas. Social media come with potential problems, as well as gains. This new phenomenon presents us with a range of fresh challenges. One important issue is how to ensure that Internet regulations do not strangle freedom of expression.

Freedom of speech and expression is broadly understood as the notion that every person has the natural right to freely express themselves through any media and frontier without outside interference, such as censorship, and without fear of reprisal, such as threats and persecutions. Freedom of expression is a complex right. This is because freedom of expression is not absolute and carries with it special duties and responsibilities therefore it may be subject to certain restrictions provided by law.

In relation to the right to freedom of expression ; various International Human Rights Instruments provide as follows :

* “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.” [Article 19, Universal Declaration of Human Rights, 1948 (UDHR)]
* “Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this 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.” [Article 19 (2), International Covenant on Civil and Political Rights, 1966 (ICCPR)]

The term ‘freedom of speech and expression’ includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used. Freedom of speech is understood as a multi- faceted right including not only the right to express or disseminate information and ideas but also including the right to seek, receive and impart information and ideas.

The notion of freedom of speech and expression is intimately linked to the concept of democracy. Democracy means self-government by the people and for the proper functioning of which, an informed electorate is indispensable which, in turn, requires that there be no constraints on the free flow of information and ideas. Democracy will not be true to its essential ideal if those in power are able to manipulate the electorate by withholding information and stifling criticism.

 The value of freedom of speech and expression lies within social interactions.

The 2011 Report of the UN Special Rapporteur on Freedom of Opinion and Expression is a strong statement of the importance of freedom of expression on the Internet. The Rapporteur emphasises the need for clear rules, in contrast with the arbitrariness he observes today, which allows for increasing surveillance and monitoring of communications

However, the freedom of speech and expression does not confer on the citizens the right to speak or publish without responsibility and the legislature may enact laws to impose restrictions on the right to speech and expression on the several grounds. Social media is open to misuse as well, as several cybercrimes can be easily committed through social media (This gives the State a justification to regulate online content in the interests of the public at large, the necessity of which cannot be denied.

Article 19(3) of the ICCPR for instance, imposes restrictions on the following grounds:

(a) For respect of the rights of reputations of others

(b) For protection of national security, or public order, or public health or morals.

Nigeria’s constitutional framework on freedom of opinion and expression and other associated rights to freedom of conscience and thought as well as the freedom of the press is in compliance with international standards

S 39 of the 1999 Constitution, Federal Republic of Nigeria provides inter alia that “every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart information without interference …”. Notably, the enactment of the Freedom of Information Act (2011) in Nigeria has enhanced the enjoyment of rights to freedom of information thereby strengthening people’s right to opinion and expression.

However, a global fundamental challenge in need of urgent resolution in the digital age is how to protect human rights and freedom on the internet and Nigeria is no exception. Access to the internet is increasing rapidly all over Nigeria with millions of people getting online and engaging on a wide range of issues on social media and other digital platforms including political matters, social and economic development among others.

With the development and popularity of social networking sites, Cybercrimes have immensely increased. It has become necessary to prioritize the issues and make strict laws with the developing technology.

The need to comply with human rights standards while curbing anti-terrorism operations needs no emphasis. Counter Terrorism measures ought to be sensitive to human rights imperatives.

Some states have adopted Internet blocking, filtering or takedown procedures or Internet surveillance (including compulsory data retention), or even shut down national networks, in attempts to restrain users’ freedoms. And in many otherwise democratic countries, the use of measures such as blocking and monitoring still leaves much to be desired in terms of human rights .

Social media come with potential problems, as well as gains. This new phenomenon presents us with a range of fresh challenges. One important issue is how to ensure that Internet regulations do not strangle freedom of expression. “Blocking”, for example, is nowadays frequently used to prevent specific content from reaching a final user. However, the indications are that this method is not efficient in preventing, for example, human rights violations on the Internet. Furthermore, who should decide what is to be blocked, and what processes and remedies should this be subject to?

In this connection, the report from the UN Special Rapporteur provides guidance, that, on the important issue of the censorship of alleged support for terrorism, restrictions on the right to expression can only be justified if the government can demonstrate that the expression is intended to incite imminent violence, and that there is a direct and immediate connection between this expression and the likelihood or occurrence of such violence. The 2011 Report of the UN Special Rapporteur on Freedom of Opinion and Expression is a strong statement of the importance of freedom of expression on the Internet. The Rapporteur emphasises the need for clear rules, in contrast with the arbitrariness.

Like other parts of the world, there are ongoing efforts in Nigeria to adopt policies, regulations or laws to regulate and control the social media .There is legitimate desire by government to curb criminal activities online, particularly financial crimes and terrorist activities. However, there is sustained advocacy to ensure that this does not result in curtailment of meaningful/constructive criticisms of government or institutions. Limitation on access to online media content may constitute serious restriction on freedom of expression except it is justified by strictly complying with national, regional, and international human rights standards

Remarkably, in an attempt to regulate the content of the social media, the 8th Senate of the Federal Republic of Nigeria undertook preliminary consideration of a bill that sought to stifle social media activities - **“The Frivolous Petition (Prohibition, etc.) Bill 2015”.** The bill was passed for first reading November 24, 2015 and passed for second reading on December 2, 2015. However, it did not enjoy broad support of the members of the public So , Media and Civil Society Organizations protested against the bill tagging it as *“Anti-Social Media Bill*” and thus the senate was forced to withdraw it in 2017”.

There are however existing legislations in Nigeria aimed at regulating online content to some extent. These include:

* The **Cybercrime Act**: This was enacted in 2015 to enhance national cyber security and for the prevention, detection, response and prosecution of cybercrimes and other related matters. Among others, It criminalizes several illegal activities including hacking, system interference, unlawful interception, computer related forgery, fake electronic or verbal messages by staff or agents of financial institutions, identity theft or fraud, electronic theft, etc.
* The **Terrorism Prevention Act (TPA)** 2011 as amended: Similar to Cybercrime Act, the Terrorism Prevention Act 2011 inter alia provides for intelligence gathering through the lawful interception of communications.
* **NGO Regulation Bill :**  A private member bill was also introduced in the Nigeria’s House of Representatives tagged *“**NGO Regulation Bill”*. Even though not directly targeted at social media regulation, The Civil Society condemned the bill by opposing it vehemently during the public hearing of 13 December, 2017. Part of the grounds for opposing the bill was that it sought to stifle civil activism.

While acknowledging the importance of regulating the Social Media against crime and to protect users of the social media; there is an overwhelming need to pursue the discussion about how to ensure protection of individual integrity (data protection) in the social media without underling the right to freedom of expression in Nigeria, and indeed globally because human rights standards are of universal application.