

EMERGING CONCERNS ON LAWFUL INTERCEPTION IN NIGERIA

The Orwellian Similitude

In the wake of efforts to further the discussions on Internet Rights and Freedom in Nigeria, there have been new developments to suggest that these efforts are deliberately being undermined by regulatory powers with administrative might. In July 2015, the Nigerian Communications Commission (NCC) hosted a public inquiry for stakeholders on the draft for Lawful Interception of Communications in Nigeria.

The reality of the Commission's actions raises critical questions on the preservation of human rights in Nigeria. The futurology of the George Orwell's 1949 fictive "Nineteen Eighty-Four" work gains traction as it becomes instructive in its major themes of censorship and illicit government surveillance of its citizens.

A detailed assessment of the regulations released by the Commission clearly shows that it is either the body is not aware of its human rights implications or that they have finally assumed the status of the Big Brother in Nigeria. Whatever the case may be, the flagrant disregard for preservation of citizens' rights and freedom is coloured in ominous neon signs on the draft released by the Commission and this is a source of great concern for civil rights organisations.

NCC as Big Brother in Nigeria

In a letter dated March 12, 2015, Paradigm Initiative Nigeria wrote the Nigerian Communications Commission on its proposed regulations on Lawful Interception (LI) in Nigeria. The letter raised concerns on the content of the draft regulation as being against the intendment of the provisions of Sections 37, 45 and 318 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Also, the letter argued that the Nigerian Communications Act (2003) does not have the requisite authority to override the provisions of the Constitution being the organic law in Nigeria.

On July 13, 2015, Paradigm Initiative Nigeria made submissions at the Public Inquiry on the draft of Lawful Interception of Communications Regulations as made available by the Nigerian Communications Commission. The organisation strongly opposed the repressive and tyrannical approach of the regulations as it touches on human rights and the constitutional protection of every Nigerians' freedom.

Also, on the 4th of August, 2015, Paradigm Initiative Nigeria in a letter to the President of the Federal Republic of Nigeria, Mr. Muhammadu Buhari, brought to his attention the activities on the threat to citizens' rights and the paramount need to defend the Constitution which he has sworn to protect. The letter made reference to a PremiumTimes Newspaper report in its content on the activities of some Nigerians in their capacities as public officials who have acquired special devices to help monitor other citizens' privacy and intercept their communications. Also, the letter suggested for a review the surveillance contract which seeks to monitor the activities of citizens in Nigeria which was initiated by the President Goodluck Jonathan government to an Israeli firm Elbit, which totalled a sum of \$40million.

These efforts, among many others, chronicles activities of Paradigm Initiative Nigeria in order to help entrench world standard practices in the respect of human rights, Internet freedom and civil liberty in Nigeria.

An assessment of the Lawful Interception Communications Regulations

It is imperative to weigh the implications of the content of the Lawful Interception Communications Regulations against the socio-legal, human rights and moral conscience of the Nigerian society. Regulation 1 (e) of the Lawful Interception Communications Regulations appears to be a cosmetic addition to its content as it clearly offends the very conscience of the source of all Laws which is the Nigerian Constitution with particular reference to Sections 37 and 45 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Also, the provisions of Regulation 4(1)(a)(b) is vague and suggests administrative incompetence. What does it mean by "one of the parties?" Does it mean so far any of the party at each end of the conversation consents, the other party need not to? Logic requires that in such an instance where communication between two persons is to be shared or used, both parties must consent to such disclosure.

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In making provision for the grounds upon which a warrant may be issued for Lawful Interception, Regulation 5 (3) fails to define in definitive terms what will amount to a situation of national security. This has been the major fortress of repressive institutions who seek to whip logic for a "one for all" principle of political preservation against "all for one" that helps to preserve socio-political cohesion. The term national security is too loose not to accommodate unethical deployment of administrative will.

A look into Regulation 8(2) readily suggests a flagrant disregard for the provisions of Sections 37 and 45 of the Constitution of the Federal Republic of Nigeria by authorising the Commission to enter into premises of private individuals based on their administrative intuition. This is highly condemned!. A closer look into the provision allows for wanton disregard for respect of human dignity, worth and freedom. A shade of this provision is also stated in Regulation 15 (2) where the Commission seeks to mandate the employees of Licensees to give such communication as required by the Commission to them. This raises a lot of questions from Labour Law, Fundamental Human Rights and Due Process perspectives.

Considering the provisions of Regulation 18, it is stated that the intercepted communication may be stored for a period of three years. Who and what protects these communications within this period? Who has access to this information? These questions were avoided by the Lawful Interception Communications Regulations. This is unacceptable.

Regulation 19 of the said regulations states that upon final use of the communications intercepted, they will be destroyed. What are the assurances that this will be done and not be used at some later dates to haunt a victim of the Commission's high-handedness?

Regulation 22 confirms the ambitious concerns of the Commission in seeking to rein in all sorts of freedom and rights every Nigerian citizen is afforded by the relevant provisions of the Nigerian Constitution.

The need rights-inclusive regulations of Lawful Interception in Nigeria.

In the United Kingdom, Regulations of Investigatory Powers Act of 2000 is the legal document which regulates and oversees the administration of Lawful Interception .

In the United States of America, Lawful Interception is regulated by the provisions of Communications Assistance for Law Enforcement Act (CALEA) of 1994 and the relevant sections of the Patriot Act. In Canada, Lawful Interception is regulated by Part IV of the Criminal Code of Canada (Invasion of Privacy) .

It will be noticed that in all of these countries, the laws that regulate Lawful Interception are primary legislations and not secondary or subsidiary legislations like the Nigerian Communications Commission's Lawful Interception Communications Regulations. This confirms the seriousness of Lawful Interception as it majorly borders on human rights.

The Lawful Interception Communications Regulations by the Nigerian Communications Commission is not only an anomaly in its bid to take on itself functions reserved for primary legislations that must have gone through the basic requirement of passing rights-inclusive bills into Law to help with the Commission's aspirations but that it also raises serious concerns on the oppressive tendencies of the Commission by seeking to sidestep fundamental human rights and not recognise the potent provisions of the relevant sections of the Constitution with regards to Lawful Interception.

Who and what guards the guardians?

This brings again into sharp focus the nagging question of who and what guides the guardians? In this scenario, what is adjudged by every right thinking member of every society is that the highest Law of the land which is the Constitution of such society must guard every one alike. In Nigeria, the relevant provisions of Sections 37, 45 and 318 of the 1999 Constitution of the Federal Republic of Nigeria has provided for the template of dealing with privacy of every Nigerian citizen and any effort to subvert this intendment will be.

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