

AMNESTY INTERNATIONAL NIGERIA

MEMORANDUM SUBMITTED TO THE NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY (NITDA) ON THE CODE OF PRACTICE FOR INTERACTIVE COMPUTER SERVICE PLATFORMS/INTERNET INTERMEDIARIES

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NITDA Code of Practice must comply with International Human Rights Law

Amnesty International Nigeria (AIN) welcomes the opportunity to provide comments on the draft Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries which seeks to among other things, defining guidelines for digital interaction in line with international best practices, and set out measures to combat online harms such as disinformation and misinformation.

While Amnesty International Nigeria acknowledges that the draft Code of Practice is aimed at protection, we are concerned about some of its provisions which pose a threat to privacy, freedom of expression and non-discrimination as guaranteed by the Nigerian Constitution and International Human Rights law. In the sections below, Amnesty International sets out its concerns as it relates to the following areas:

- Lack of distinction between misinformation and disinformation
- 24-Hour take downs of online content
- Incentivizing surveillance and data retention
- Description of Harmful content
- Definition of Child

1. Lack of distinction between misinformation and disinformation

In Part V of the draft Code, the use of Misinformation/Disinformation appears to be a vague distinction. While we admit that everyone does not use the terms the same way, it is clear from the draft code that they intend to cover both disinformation and misinformation. However, criminalizing misinformation that is merely false, regardless of intent could be problematic. Prohibitions on the expression of factually incorrect opinions is clearly incompatible with human rights law and can be used to criminalize a wide range of protected expression.

2. 24-Hour take downs of online content

Numerous provisions in the draft code require hosts to remove various types of content within 24 hours. Such requirements are harmful to free expression as they incentivize overbroad censorship by punishing a failure to remove content but offer no contrary incentive to retain protected expression. They do so within a window in which companies will struggle to make informed analysis of such decisions. Moreover, the draft code in several sections requires such takedowns based on mere complaints, rather than court orders, effectively handing the adjudication of expression rights to private companies, rather than courts, and depriving people of remedies in courts or elsewhere when their content is removed. This could be abused by state actors (especially in light of clause 1.7's requirement for a dedicated channel for government complaints) or individuals to remove content critical of government actions, or which protects minority rights, amongst other examples.

3. Incentivizing surveillance and data retention

While the draft code is silent as to what in practice would be required, several provisions raise concerns for privacy. Of particular concern are clause V.10, which requires hosts to “trace, expose, penalize, and close” accounts spreading mis or disinformation. While the modalities of this tracing are unclear, Amnesty International opposes any requirement for host platforms to pro-actively scan user content in violation of privacy rights. Additionally, clause II.6, requiring hosts to maintain information of former users for an unspecified amount of time offends data protection standards. Prolonged or indefinite data retention can undermine the right to privacy and facilitate unlawful surveillance.

4. Description of harmful content

The draft code speaks of a range of content that is deemed harmful, but which is not illegal. Generally, this seems problematically vague. International Human Rights law requires that restrictions on expression rights be crafted with adequate clarity to enable people to regulate their conduct accordingly (see UN Human Rights Committee General Comment 34). Vague prohibitions are open to abuse. This vagueness is especially problematic when read into provisions requiring prohibition, or quick take downs – as discussed in paragraph 2 above. Here, not only would platforms be required to make an impossibly quick ruling on the legality of content without a court order, but also its “harmfulness”, which is not adequately defined, and may be the subject of a dedicated government request, for example.

5. Definition of Child

The draft code should reflect definition of a child as agreed under international law which is also specifically provided for in Nigeria’s Child Rights Act 2003 which is that a child is any person under the age of 18 years.

For further information, please contact

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