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STRIKING A BALANCE BETWEEN FREEDOM OF EXPRESSION AND POLITICAL VIOLENCE: RIGHTS AND RESTRICTIONS UNDER INTERNATIONAL AND DOMESTIC INSTRUMENTS

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ABSTRACT

Freedom of expression is globally recognized as an important metric enjoyed by citizens to limit government power and demand for free, transparent, fair and good governance in a democratic society. However, there has been evidence of dramatic use of sensitive but violent driven language by politicians as tool for pursuing political agenda under the pretext of freedom of expression. The paper explores the relationship between sensitive politically violent driven language and freedom of expression, the problems concerning their conceptualization and further understanding. Its main argument is that a stronger dialogue exists between what are known as unsavory, sensitive and instigative language and political violence, thus the absence of regulatory mechanisms to restrict such language on the basis of freedom of expression may affect peace and stability of Nigeria which all governance tools are designed to achieve. In this context, the paper argues in favour of placing some restrictions on sensitive violent driven political language without undermining the freedom of expression.

Key words: Human Right, Freedom of expression, Restriction, Political Language

1.1 INTRODUCTION

Nigerians who have lived in and witnessed Military system of government are forever critical of the country nascent democracy. Despite the criticism against democracy and its shortcomings there seem to be agreement that, of the Military system government experienced in the country, democracy is the best of the imperfect lot. Thus, it is not coincidence that many of the human rights enshrined in the Nigeria Constitution and international conventions and treaties for the protection of human

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rights are intricately related to democratic governance. It is instructive to note that among the most important of these rights is the right of freedom of expression.

Freedom of expression is an important requirement for the promotion and protection of all other forms of human rights. It occupies an important position in the hierarchy of liberty just as suppressing freedom of expression is essential to prevention of tyranny and prevention of violence. Because of its significance it is widely and universally accepted¹ as the essence of a free society which must be safeguarded. However, like any other guaranteed right, freedom of expression is not an absolute right, and every democracy has developed some measure to limit it. Historically, most limitations or restrictions deal with the expression of sentiments contrary to prevailing institutions or political and cultural belief.²

The freedom of expression, imparting and dissemination of information including political ideology, is not an absolute right and this justifies the restriction placed on same by the international instruments and the provision of a general test for assessing the restrictions. This test has been elucidated upon in numerous judgments by international courts tasked with oversight of international human rights treaties. National courts, often interpreting constitutional guarantees³ which are based on or are similar to international guarantees, have also helped to elaborate on the precise meaning of the test for restrictions on freedom of expression. Examining restrictions on freedom of expression, imparting and dissemination of information however, is a herculean task.⁴ This paper therefore examines freedom of expression, imparting and dissemination of information within the context of political language which is a key issue relating to restrictions on freedom of expression in politicking process.

The paper examines the national (domestic) and international instruments recognizing the fundamental right of protecting and restricting freedom of expression, imparting and dissemination of information. It also highlights some problem areas or issues on the effect and impact of sensitive political violent language on a nation's peace and security to justify its restriction. The paper does, on the other hand, elaborate on need for specific restrictions of unsavory, instigative and simulative political language capable of causing violence and impeding peace and security and need for striking a balance.

1.2 Laws Guaranteeing Freedom of Expression in a Democratic Society

It is an undisputable fact as earlier stated that freedom of expression is a right which is significant in any democratic society particularly in relation to freedom to participate in an electioneering processes which involves the guaranteed right to canvass for supports, votes and dissemination of political ideology. The rationale

¹ UDHR, ECHR, ACHPR, ICCPR

² Restriction during the period of war, in the interest of national security, order, health or morality

³ In *Bailey v President of Nigeria* (1982) 3 N.C.L.R. 658, it was held that the scope of violation extend to rights already violated or would be violated, see also *Umaru Abba Tukur v Government of Gongola State* (1989) 4 N.W.L.R. (Pt 117) 617

⁴ Law of Defamation (Slander or Libel), Sedition.

behind this can be inferred from the United Nations General Assembly declaration in its first session in 1946 that: *Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.*⁵ The European Convention on Human Rights (ECHR) makes provision on freedom of expression and freedom of information. The Convention provides:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.⁶

This protective right enables all citizens to understand political issues and participate effectively in the smooth working of democracy.⁷ In recognition of this fact the Universal Declaration on Human Rights (UDHR) as well as the International Covenant on Civil and Political Rights (ICCPR) state:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.⁸

The importance of this freedom cannot be overemphasized as many other international instruments equally subscribe to the freedom, for instance, the Inter-American Court of Human Rights like the above convention provides that: *"Freedom of expression is a cornerstone upon which the very existence of a democratic society rests"*.⁹ In its paradigm the European Court of Human Rights also noted: *"Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every*

⁵ Resolution 59(1), 14 December 1946. The term freedom of information as used here was meant in its broadest sense as the overall free flow of information and ideas in society, or freedom of expression.

⁶ European Convention on Human Rights Article 10, the convention was signed into law on 4 November 1950, entered into force on 3 September 1953 and has been ratified by all 46 member states of the Council of Europe.

⁷ *INEC v Musa* (1999) 7 SC 106, in the case the supreme Court of Nigeria held that a civil servant is constitutionally guaranteed the right to be a member of a political party of his choice but cannot contest for an elective position unless he resigns his appointment.

⁸ Article 19, Universal Declaration on Human Rights (UDHR); similar provision is contained in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 10 of the European Convention on Human Rights (ECHR), at Article 13 of the American Convention on Human Rights and at Article 9 of the African Charter on Human and Peoples' Rights.

⁹ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, and Series A, No. 5, para 70 Cited from Toby Mendel; *Restricting Freedom of Expression: Standards and Principles*; Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression, Centre for Law and Democracy tobyv@law-democracy.org (undated) assessed on 18 October 2012. pp 012, 1-23 at p 3

man".¹⁰ There is a similar provision guaranteeing freedom of expression under the African Charter on Human and Peoples' Rights.¹¹

Instructively, virtually all constitutions of democratic countries do contain provision guaranteeing freedom of expression.¹² However, within the context of this paper it is posited that assessing whether a sensitive political violent language breaches the guaranteed right to freedom of expression is to assess the threshold question of whether such statement is capable of generating violence or can be interpreted and acted upon by the listeners (supporters) as a call by the maker for violence to justify restriction. If it has, then one proceeds to test whether it interferes with others right (violent free society), in their participation in electioneering process, impede peace, order and security and its restriction is reasonably justifiable in a democratic society. It must however be noted that the scope of what constitutes sensitive political violent language is subjective and wide.

1.3 Restriction on the right to freedom of expression, dissemination of information in a democratic society

It is unthinkable for anyone to assume that because a citizen has a right to freedom of expression then he/she is free to disseminate information capable of instigating political violence and such language should not be restricted.¹³ Though the language is a statement, sign, or mark capable of ascription of being instigative or simulative of violence, yet such judgment is subjective in nature. Be that as it may, it is just and equitable for public order and safety that expression of sensitive political violent language be restricted for maintenance of peace and security in a volatile country like Nigeria. Thus, freedom of expression has been hedged by a number of restriction often more extensively than the other class of rights.

Under international, regional conventions and national instruments states' obligations in relation to freedom of expression is not absolute. The instruments recognize that states may interfere with the freedom of expression and dissemination of information (like any other fundamental rights) on certain circumstances (irrespective

¹⁰ *Handy side v United Kingdom*, 7 December 1976, Application No 5493/72, 1 EHRR 737 para 49 T. Mendel; Restricting Freedom of Expression: Standards and Principles; Centre for Law and Democracy, toby@law-democracy.org 12, 1-23 at p 3

¹¹ Article 9 ACHPR. See *Media Rights Agenda and Others v. Nigeria*, 31 October 1998, Communication Nos. 105/93, 130/94, 128/94 and 152/96; para 52 where the court held that This Article reflects the fact that freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the conduct of the public affairs of his country". Mendel (n 10 above)

¹² Section 39 of the Nigerian Constitution 1999, Article 33 Constitution of the Republic of Rwanda, 2003, Article 33(1) of Kenya revised edition of its Constitution 2010, it provides (1) Every person has the right to freedom of expression, which includes (a) freedom to seek, receive or impart information or ideas; (b) freedom of artistic creativity; and (c) academic freedom and freedom of scientific research. Section 16(1) of South African Constitution, 1996, Article 19(1) of Indian Constitution, 1949 etc

¹³ Most expressions are completely harmless and protected under the law from undue interference by the State. However seeking, receiving, and imparting information or ideas include expression which few societies cannot tolerate such as inciting violence or hatred, instigating ethno-religious of political violence. As a result freedom of expression is not absolute.

of the medium or forum through which opinions, information and ideas are expressed). For instance, under the ECHR restriction on freedom of expression is permissible. However, the restriction on freedom of expression must pursue one of the aims recognised as legitimate for national security, territorial integrity or public safety, protection of health or morals, prevention of disorder or crime, protection of the reputation or rights of others, prevention of the disclosure of information received in confidence or maintenance of the authority and impartiality of the judiciary.¹⁴

It is worthy to note therefore that the existence of a legitimate public interest and protection of same can ordinarily provide sufficient grounds for an interference or restriction on political violent language especially where it may lead to the infringement of others rights. However, it may be argued that any restriction to be placed on the freedom must also be prescribed by law and not arbitrary. The International Convention on Civil and Political Rights (ICCPR) lays down the conditions upon which any restriction on freedom of expression must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public), or of public health or morals.¹⁵

It is contended that the restriction on freedom of expression based on political violent language especially in Nigerian context with its complex political, religious, ethnic and regional setting is adjudged to be necessary, in view of the special interests it is supposed to protect.¹⁶ However, it is this paper's view that any interference in the exercise of the rights and freedom of expression as guaranteed by the constitution must be convincingly established and strictly scrutinized to be justified because of the significance of the rights in question as a corner stone of democracy. This is premised on the grounds that Article 10 and 19 of ECHR or any domestic law. For example the International Covenant on Civil and Political Rights placed prohibition on war propaganda and on hate speech thus: "*Any propaganda for war shall be prohibited by law*" and "*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*"¹⁷

Though political violent language is not included or specifically mentioned therein it is submitted that it is qualified for restriction when such language is capable of advocating national, regional, religious or political hatred that constitutes instigating or inciting violence hatred, hostility and discrimination along international, regional,

¹⁴ Article 10 (2) of ECHR, section 39 of the Nigerian Constitution, 1999

¹⁵ Article 19(3) ICCPR. A similar formulation can be found in the ACHR and ECHR. However it is vague enough to leave much discretion at the hands of states as to how they should restrict freedom of expression to protect the rights of others, national security, and particularly in the matters of personal morals, such as religion.

¹⁶ See Article 19 ICCPR and Article 29 ECHR

¹⁷ Article 20 UN Convention on Civil and Political Rights (UNCCPR)

religious and political plane and divides thus, placing a duty on States to abide by, as far as restricting freedom of expression is concerned.¹⁸ International Convention on the Elimination of Racial Discrimination (ICERD) has established essential criteria before any restriction could be placed on freedom of expression. The most far-reaching of which includes, the protections against unsavory, violent prone and instigative political violent language like hate speech which has the purpose or effect of nullifying or impairing the enjoyment, on an equal footing, of any human right and/or fundamental freedom. The ICERD places a specific obligation on States Parties to declare as offences punishable by law six categories of activity:

- i. dissemination of ideas based on racial superiority;
- ii. dissemination of ideas based on racial hatred;
- iii. incitement to racial discrimination;
- iv. acts of racially motivated violence;
- v. incitement to acts of racially motivated violence; and
- vi. The provision of assistance, including of a financial nature, to racist activities.¹⁹

A passionate examination of the above reveals that item it may be employed in support of any restriction to be placed on political violent language notwithstanding any inference the can be made out of the other items. This is because language forms an essential process for seeking and dissemination of political ideology, seek for supports and campaign in election etc.²⁰ It may be argued that restrictions to be imposed on political parties or politicians in exercise of their legitimate right to freedom of expression should be language which in any manner negatively affects due electioneering process causing disorder through unsavory, instigative and simulative political language.

It is pertinent to note that the freedom to impart political ideology or campaign for support by political parties can be inferred as the right to freedom of expression guaranteed by the Constitution and under International Conventions on Human Rights.²¹ This right does not cover a general and unfettered right for any political elite

¹⁸ This is particularly expedient in country like Nigeria where there is socio-political, ethno-religious problems coupled with high level of corruption, poverty and unemployment that have bedeviled the polity. The Boko Haram crisis with act of bombing and killing innocent citizens (particularly Christians and their Churches are now the target).

¹⁹ Article 4(a) ICERD, see section 45 of the Nigeria Constitution 1999, Article 19(2) of Indian Constitution, 1949 provides that freedom of expression may be restricted; for the purposes of imposing reasonable restrictions in the interest of the sovereignty and integrity of the country, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. See also Article 33(2) of Kenya Constitution and section 16(2) of South African Constitution. See also Article 29(1) & (2) of UDHR and Article 21(4) of the Ghana republican Constitution 1992

²⁰ It is posited that during the process of politicking, political language can be susceptible to dissemination of racial hatred or superiority (North (Hausa/Fulani), West (Yoruba) and South (Ibo) in Nigeria, or incitement to racial and religious discrimination; acts of racially motivated violence (like the experience in Western Nigeria 1966 between Awolowo and Akintola, the Ondo political violence in 1983 NPN and UPN, the 2011 political violence in the North on declaration of President Jomathan as winner of the election.

²¹ ECHR, ICCPR, ICED, ACHR ACHPR etc Article 22(1) of Ghana Republican Constitution

1992

to engage in abusive, unsavory, instigative and violent statement in order to express their political ideology or seek for vote and support.

Violence and crisis might arise, at any stage of election; before, during and post elections periods²² thus, unguarded expression can impede peace and security at any of the stages. It is important to stress that language capable of causing violence may be difficult to determine but in a heterogeneous country like Nigeria, it is very easy to predict especially when it is being made by highly respectable member of society or it is an expression tainted with religious, regional or ethnic bias. Less often, violence driven expression takes a more explicit form, with more vivid descriptions of metaphorical violence. Consider for instance the statement made by a political leader that, *"by Gods grace something will happen in 2015, if what happened in 2011 should happen in 2015, dogs and Baboon would soak in blood."*²³ Incidentally this type of political expression is not peculiar to Nigeria for instance President Barack Obama during his 2008 electioneering campaign threaten that, *"if Republicans bring a knife to the fight, we bring a gun"* this statement can be juxtaposed with former president Obasanjo's statement prior to 2007 election that the election is going to be do or die.²⁴

The interpretation which can be given to the statement varies yet, it can instigate violence. When particularly experience has shown how the supporters of the political parties have caused serious violence in many parts of Nigeria when their candidate(s) lost in an election. It may be argued though that it is difficult to predict in advance what will be the perceptions of the electorates to election result in 2015 and particularly whether the difficult life conditions will spawn violence and when such violence might be likely to erupt especially when politician are not mindful of sentimental languages. This is worthy of note particularly when the country is still facing the problems of unemployment, poverty, corruption, lack of transparency and accountability in electioneering process.²⁵

1.4 Freedom of expressing Political ideology and the imperative of its restriction

Over the last 14 years of Nigeria's democratic experience²⁶, the country has witnessed an increased reliance on freedom of expression to disseminate and propagate political ideology, because it is an important requirement for the promotion and

²² J Fischer, Electoral Conflict and Violence: A Strategy for Study and Prevention, IFES White Paper A survey of 57 electoral events from 2001 (2002)

²³ The Vanguard, September 15th, 2012. Statement by General Muhammadu Buhari (CPC Presidential candidate in 2011 election)

²⁴ Nathan P. K., Fueling the Fire: Violent Rhetoric, Trait Agression and Support for Political Violence, http://www.kalmoe_fueling_the_fire undated

²⁵ I Imam, D A Aryoosu, A Imam, Peace and Security in Nigeria: the Impact of Electioneering Process and Sensitive Political Violence Language, (Unpublished) a paper presented at the International Conference on Peace and Security in Africa, held at the Faculty of Law, University of Ilorin, 15th – 18th October, (2012)

²⁶ After several years of Military rule in Nigeria and the termination of civilian government 1966 and 1984, another opportunity came in 1999 when the General Abdulsalam Abubakar led government transfer the political powers of the country to democratically elected government, it is thus 14 years of the experience.

protection of all other forms of human rights. It occupies an important position in the hierarchy of liberty just as suppressing freedom of expression is essential to tyranny and prevention of violence. Because of its significance it is widely and universally accepted²⁷ as essence of free society which must be safeguarded.

Incidentally, the use of language technique to advance political ideology in electioneering processes and its linkage to violence is not a new phenomenon in Nigeria. However, freedom of expression encompasses a variety of processes the common feature of it is that it is a tool being employed by political parties to canvass for support or vote. Therefore, independent of whether or not freedom of expression provides the right to disseminate political ideology, the intractable problems of achieving this political objective using violent driven language may have implications on peace and security in the current democratic setting. This is the very basis of the paper's argument for a significant restriction in its typology and use in electioneering processes domains. This does not put to the fore the limitations on traditional meaning and use of freedom of expression but, it explains the development of new conceptions of legality for considering censorship for the use of unsavory sensitive political language capable of instigating violence.

However, the importance of the freedom of expression guaranteed under the domestic constitutions around the world and in international instruments on human rights alone do not make freedom of expression an absolute freedom.²⁸ Thus, notwithstanding the fundamental importance of freedom of expression, statements which tend to advocate hatred, instigate ethnic, religious or political violence under guise of freedom of expression is particularly harmful to the very object of achieving free and stable democratic society underlying the freedom of speech and reasonably justify being restricted.²⁹

In the paradigm of political language it is a recognized narrow class of peremptory norms of expression for seeking support irrespective of the likely adverse interpretation³⁰ which may be given thereto and the reactionary effect it may have on the political situation by the supporter. The preceding section of the paper intends to examine the nexus between sensitive political language and violence in Nigeria which hitherto may potentially undermine the peace and security of a nation. Instructively, even political language that enjoys the most extensive protection under international human rights instruments or constitution may be restricted on the basis of its content if the restriction passes "strict scrutiny" (i.e., if the government shows that the restriction serves "to promote a compelling interest" and is "the least restrictive means to further the articulated interest i.e. peace and security").

²⁷ UDHR, ECHR, ACHPR, ICCPR

²⁸ Article 29 UDHR

²⁹ Duggal, K. and Sridhar, S., *Reconciling Freedom of Expression and Flag Desecration: a Comparative Study* (2005) *Hanse Law Review (HanseLR)* 147, 140 – 158

³⁰ Freedom of religion and dissemination of religious belief has accounted for serious of crisis witnessed in Nigeria particularly North-Eastern Nigeria, 1982, 1984, 1985, 1991, 1994, 1996 Matatsine uprising claiming thousands of lives and now Boko Hara.

It is posited at the root of any violence at all be it political, religious, regional or ethnic base violence, a set of instigative language is usually involved. This may also be inferred from the misuse or misunderstanding of the language used in the dissemination of a particular idea arising from absolute nature of freedom of expression guaranteed to citizens under the constitution and international instruments on human rights which most countries in the world, like Nigeria are signatories.³¹ Freedom of expression or dissemination of ideology may sometimes be manipulated by some group of people not to promote religion or politic but to pursue ethno-political grievance with people being manipulated because of their ignorance on the rationale behind such manipulation.³² Thus lack of discipline by political elites and the advantage they have on the pitiable conditions of the perpetrators³³ of violence may work in favour of the user of unsavory, instigative and simulative violent driven language in electioneering process.³⁴

The above explanation revealed bewildering varieties of reasonable grounds for restricting violent prone political language such as dissemination of ethno-religious based political ideology, instigating hatred idea for a political party or a candidate or expressing a regional based political ideology. Though these issues may somewhat be arbitrary and reflect tiny line which requires investigation for the purpose of placing restriction on freedom of speech. For instance under Kenya Constitution³⁵ the right to freedom of expression may be restricted where it is ideal based on propagation for war; incitement to violence; hate speech or advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm.

It is observed therefore that threat to peace and security through the use of unsavory political statement, violent religious indoctrination³⁶ or instigation of ethnic violence may be reasonably justified when considered along with the implications that may arise from guaranteeing absolute freedom in a volatile, heterogeneous country like Nigeria. Political language linked to the electioneering process, is a mechanism employed by political elite seeking political office in transmitting messages that will effectively motivate others to support his aspiration. It may thus involve dissemination of information to discredit or instigate hatred for the opposing political party and or

³¹ The Nigerian experience of serious violence which that accounted for destruction to lives and properties in the Northern part of the Country following the declaration of President Goodluck Jonathan as winner of the 2011 presidential election cannot be overemphasized.

³² See generally, Y Imam, Y.O., *Religious Crises and Social Disruption in the North-Eastern Nigeria*, 1 (Loud Book Publishers, 2004)

³³ Such condition may include poverty, unemployment, religious or political bigotry, lack of equal opportunity to achieve basic amenities like health, education etc, corruption and bad governance.

³⁴ The formation of political parties and the political arrangement of Nigeria have since independence been on religion, ethic or regional based. 1979-1983: NPN (North), UPN (West) and NPP (South), 1992 SDP (North) (South & West), 1999 to date PDP & ANPP (North), AD, CAN (West) APGA South (these are the only prominent political parties) Thus any political languages which promote religion, ethnic or regional political ideology, instigate hatred and invite violence.

³⁵ Section 33(2) Kenya Constitution, 2010

³⁶ Maitatsine religious crisis October 1982, Feb-March 1985, See Yahya (n 27 above) and recently Boko Haram religious crisis all are instigated through religious indoctrination (right or wrong)

candidate(s).³⁷ This may take the form of disseminating ethnic, religious or regional hatred and political language in this context is a significant material situation in electioneering process that provides a meeting point compatible with an audience ideology.³⁸

However, the pursuit of political objectives in a democracy via transmission of political ideology by politicians to their supporters through inflammatory, instigative, unsavory political language under the guise of protected right to freedom of expression is susceptible directly or indirectly to threatened peace and security in the country. It is widely presumed that unsavory, instigative and sentimental language can be used to channel hatred and discontent in fomenting political violence and in this sense deserve restriction.³⁹ In other words political parties' actions are governed to an extent by external demands associated with certain tactics that are socially unsavory to arouse or instigate public sentiment which hitherto can impede public safety, public moral and security of nation cause violence is antithetical to the spirit and rationale freedom of expression envisaged for virile democracy.⁴⁰ It is undisputable that the Nigerian political parties' arrangement and formation historically has a reflection of the ethnic, religion, tribal and geographical ideology of the country.⁴¹ This undermines, negates and threatens peace and security, law and order and more importantly work against consolidation of democracy in Nigeria.⁴²

It is pertinent to assume therefore that political language which evokes a belief that particular political party, candidate(s) or groups are evil or harmful or that a particular region/ethnic is dominating the other in political position or that an election is or will be marred with malpractices is suggestive of instigating his supporters or listener to take alternative means to reject the process which of course may result into violence. Though such accounts are vulnerable to criticism in view of the guaranteed freedom of speech, however they succeed repeatedly in confirming the preposition that freedom of speech should be restrained notwithstanding the right to seek and retain political support.⁴³ Thus within this paradigm, guaranteeing freedom of expression absolutely when the expression tends to be sensitive, unsavory and instigative of crisis or political violent crisis or articulated as a mere mechanism to arouse public sentiment

³⁷ Chirot D., *Modern Tyrants: the Power and Prevalence of Evil in Our Age*, 55 (New York: Free Press 1994)

³⁸ *ibid*

³⁹ This it can argued is *in tandem* with rationale behind the ground restrictions contained in the international conventions on Human Rights

⁴⁰ Orwell, G., *Politics and the English Language*. Journal Horizon Publication, 1946, pp, 175-6

⁴¹ S William 'Violence as Power Factor in Latin American Politics' (1995) 5(3) *The Western Political Quarterly*, University of Utah, 445-468

⁴² Electoral violence extends to acts of assault, arson, ballot box snatching and stuffing to murder and assassination. Just of recent the secretary to Edo State Governor Adam Oshiomole was slain in a political related circumstance. He won the governorship election conducted on Saturday 15th, July 2012

⁴³ It may be difficult for any reasonable Nigeria to jettison the very impact of General Muhammadu Buhari of CPC method of and inflammatory statement during the 2007 election campaign and the violence that preceded the declaration of President Goodluck E. Jonathan of PDP as winner of the year election in the Northern part of the country. The reaction which was highly devastating account for destruction of life and properties in the North and almost truncate the Nigerian hard earn democracy.

against opponent, government, political party or not, are not capable of enjoying protecting under any heading of fundamental right.⁴⁴

1.5 Striking a balance between freedom of expression and restriction

It is the contention of this paper that the consequences of political violent language need not be foreseeable with absolute certainty because experience has shown that this is unattainable. While certainty of political language that can lead to violence or threat of violence is highly subjective, it is reasonable that a measure of control should be placed for the maintenance of peace and security in any society. Accordingly, any restriction to be placed on political violent language must be inevitably construed in terms which, to a greater extent would not breach the right to freedom of expression and its interpretation.

The suggestive justification for restricting freedom of expression in this paradigm must therefore be those that are clearly stated and meant to instigate hatred, sectionalism or regional political hatred, prevent harm or violence.⁴⁵ It is argued that government must pursue the achievement of this restriction without stripping off freedom; however, there must be explicit balance between the two (freedom of expression and restriction). It is however difficult to determine how and where the balance lies. It is contended that the singular mechanism to strike the balance is to restrict the law to criminalize only those aspects of expressions or speeches that are clearly intended to cause harm, instigate or incite violence either political, religious or ethnic base.

The evidence for the justification of the negative effect of any type of political expression must be the possibility of such expression resulting to incidence of violent protest, destruction of lives and properties. In this context it may be necessary to refer to the principles as contained in some international and domestic instruments on human rights from which this preposition can be inferred. For example, Article 10(2) ECHR limits freedom of expression for public safety, prevention of disorder or crime, Article 19(3) ICCPR for the protection of national security or of public order, Article 20(2) UNCCPR incitement to discrimination, hostility or violence, Article 4(a) ICERD prohibits dissemination of ideas based on racial hatred, acts of racially motivated violence and section 45 of Nigerian Constitution 1999.⁴⁶ Thus, for any act of expression to be contrary to the protected right to speech it must directly or indirectly violate the principles enunciated in the above human right instruments and it must

⁴⁴ M Edelman, Political Language and Political Reality 16, 1-19 (PS, Winter, 1985)

⁴⁵ See Article 19(3) ICCPR, Article 20 UNCHR or section 45 of Nigerian Constitution 1999

⁴⁶ See also Article 19(2) of Indian Constitution, 1949 provides that freedom of expression may be restricted; for the purposes of imposing reasonable restrictions in the interest of the sovereignty and integrity of the country, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. See also Article 33(2) of Kenya Constitution and section 16(2) of South African Constitution. See also Article 29(1) & (2) of UDHR and Article 21(4) of the Ghana republican Constitution 1992

invite for and/or intended harm against individuals or state, or target a specific location.⁴⁷

A distinction between the act of expression which supports the notion of violence or harm is that violence is the alternative way for something (i.e. achieving election victory) or it involves verbally endorsing physical violence with the intention of furthering the expression. The first preposition may simply be supporting ideology calling for violence or harmful action. Consider the statement by a politician⁴⁸ before 2007 Nigerian election that the election will be "Do or die". This statement in the ordinary dictionary meaning of the word means doggedly, determined to reach one's objective indomitable, presenting self as the only alternative to complete success or complete ruin.⁴⁹ It also means supreme effort to avoid desire consequences of failure. Something that you say in a situation which you must take a risk in order to avoid failure.⁵⁰ This expression of course can have intended violent consequences but that is immaterial because it may be interpreted to be supporting political ideology, more importantly every influential ideology has harmful effects on every citizen.

It is the view of this paper that there is possible overlap between expression in support of ideology and expression in support of action this is relevant in understanding the distinction between dissemination of ideas and intent to instigate or incite violence or harm. For instance it is perfect and permissible to discuss the advantages (or disadvantages) of corruption, bad governance, election manipulation, lack of transparent free and fair election in a democratic society. But if the expression or discussion depicts intent to cause, instigate or incite violent by supporting specific action that should not fall within the protected expression. In this paradigm, the paper's preposition is that intention is explicitly the marginal line that separate ideology which does not include intention for action-based expression. Thus intention to instigate or incite violence is the dividing element between the two. It is argued that any restriction being applied should for all purposes have a basis in the Constitution for its justification.⁵¹

Instructively, restriction on freedom of expression even within paradigm of political violent language can also be justified when construing the term public order in Article 19(3) ICCPR, Article 10(2) ECHR, and Article 4(a) ICERD. The Articles do not refer simply to the maintenance of physical order, but also includes the organization of society in a manner that strengthens the functioning of democratic institutions and preserves and promotes the full realization of the rights of the individual. In United States of America the law protecting freedom of speech is the

⁴⁷ Imam, Ariyoosu and Imam (n 23 above)

⁴⁸ The Nation, March, 17th and 18th, 2007 see www.nigerianplus.com/stories/2007 accessed 11th July, 2012

⁴⁹ Mariam Webster, Dictionary, 2012

⁵⁰ www.freedictionary/dic/html

⁵¹ Right to life, property, movement, personal liberty most of which are usually threaten following the outbreak violence resulting from sensitive political violent language. There were violence in Nigeria, 1966 Western Nigeria, 1983, Ondo between UPN and NPN, Kwara Ilorin in 2002/2003 ANPP and PDP, the several parts Northern Nigeria after the 2011 presidential election.

First Amendment to the US Constitution under the Bill of Rights, it provides; that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble, and to petition Government for a redress of grievances".

Despite the broad freedom of speech guaranteed in the First Amendment, there are some historically rooted exceptions as for instance the Supreme Court of America in the case of *Brandenburg v Ohio* (1969) held that government may forbid "incitement" speech "directed at inciting or producing imminent lawlessness actions" and "likely to incite or produce such action" (such as a speech to mob urging it to attack a nearby building).⁵² Though there is no specific provision on restriction of freedom of speech, the United States Supreme Court has used stringent standard when evaluating statute that imposes restraint speech.⁵³ The test that is most frequently employed is whether there is a clear present danger or threaten national security, because government interest in the maintenance of security and preventing dissemination outweigh interest in free speech and to this extent the US Supreme Court even further has held in the case of *Dennis v United States*⁵⁴ that the government does not need to prove that the threat is imminent or a plot would probably be successful.

It is sufficient to conclude that from the international conventions and other countries' Constitution referred to, freedom of speech is and should not be absolute. Therefore if the consequences of your speech are detrimental to another person or to the society as a whole or undermine peace and security, your right to speech does not abrogate your responsibility for the result of your speech. This preposition inadvertently applies to political violent language capable of instigating violence and constituting threat to public peace and order in a democratic society. Thus, inciting rebellion or speaking with callous disregard for the result of one's word like the recent statement made by a leader of political party in Nigeria⁵⁵ is and cannot be protected by freedom of speech, the speaker must be held responsible for any resultant consequences of such statement whatever his intent may have been.⁵⁶

⁵² Encyclopedia Britannica see www.britannica.com/EBchecked/topic accessed on 20/10/2012

⁵³ See the case of *Virginia v Black* 538, US 343, 123, S Ct. 1536, 155, L. Ed. 535 (2003) the case involve a cross burning aimed at intimidating an African-American Family. A Virginia criminal statute had outlaw cross burning on the property of another, a highway or other public places with the intention of intimidating any person or group. In 6-3 decision, the Court upheld the statute. It emphasized that, the First Amendment would protect some types of cross burning such as held in political rally, however, when the cross burning was targeted at individual for the purpose of criminal intimidation, freedom of speech would not protect the cross burning.

⁵⁴ 341, US 494, 71 S Ct. 857, 95, L. Ed. 1137 (1951)

⁵⁵ Muhammadu Buhari of Presidential candidate of CPC in 2011 election was reported to have said: "God willing by 2015 something will happen. They either conduct free and fair election or they go a very disgraceful way. If what happened in 2011 should happen in 2015, by the grace of God the dog baboon would all soaked in blood." See; *The Vanguard*, September 15th, 2012

⁵⁶ It is possible for a speaker who incites violence or criminal act to be responsible for the consequence of an act committed by another person if it is reasonably likely consequence of the speaker's statement.

1.6 CONCLUSION

The very basis of this paper's contention is that peace and security in a nation cannot be compromised on any ground of political interest, thus both legitimate interests of politicians as well as protection of the society against violence must be sufficiently protected. Though the real issue may be on the appropriate balance between freedom of expression and the competing right to pursue political interest and express political ideology. In practice, the Nigerian Courts has not established any sort of test or approach nor is there any legislation for determining this and its implication when considering or requiring restrictions on fundamental human right to freedom of expression and violent political language.

It may be right to propose that any political violent language restriction should be strictly examined in connection with freedom of expression and adequate mechanism be designed to promote equality and balance protection without discrimination. It is posited that any restriction on political violent language should comply with the conditions set out for instance in Article 19 of the ICCPR, accordingly interference with freedom of expression is only justifiable when: it is provided by law; it pursues a legitimate aim; and it is necessary in a democratic society.

It is thus suggested that any restriction on freedom of expression on the basis of political language or dissemination of political ideology should be clearly and narrowly defined. It should be applied by a body which is independent of political, or other unwarranted influences, and in a manner which is neither arbitrary nor discriminatory, and should be subjected to adequate safeguards against abuse, including the right of access to an independent court or tribunal while no citizen should be penalised for statements which are substantially true. In summary any restriction on political language must be designed in a manner that its sole purpose is to prevent propagation of war, incitement of violence or hostility, advocacy of ethnicity or religious sentiment or generally inciting or provocative speech.⁵⁷ The target of which achieves peace, security and violent free society.

⁵⁷ See, Article 24(4) (C) Republic of Ghana Constitutions 1992, Article 33(2) of Kenya Constitution 2010, Article 16(2) of South Africa Constitution and Article 19(1) (a) Of Indian Constitution 1949.