

**THE TEST NIGERIA ALREADY HAS:
PROPORTIONALITY, JUDICIAL DISCIPLINE AND THE
FREE SPEECH/HATE SPEECH LINE IN NIGERIAN LAW**

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Abstract

In 2026, a Nigerian publisher stood trial for calling the President a criminal online, prosecuted under a cyberstalking provision rewritten two years earlier to narrow its scope. That irony is this article's starting point. Nigerian commentary on the free speech/hate speech boundary usually concludes that Nigeria lacks a workable legal test and must borrow one: the American imminent lawless action standard, the Canadian intent-and-effect model, or the European Convention's proportionality formula. This article argues that diagnosis is wrong, though the underlying problem is real. Nigeria has, in section 45 of its Constitution and in the African Charter as given binding force by the Supreme Court, a standard functionally equivalent to other jurisdictions' proportionality tests. What Nigeria lacks is not the test but the practice of applying it. Tracing six decades of case law culminating in the 2025-2026 prosecution of publisher Omoyele Sowore, the article shows courts consistently accepting a legitimate aim without independently testing necessity and proportionality. The 2024 amendment narrowing the cybercrime speech offence, though a genuine improvement, could not by itself correct that pattern, and did not. The article closes with proposals to

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*the judiciary, prosecutors and the National Assembly
premised on using, not replacing, the existing framework.*

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1. INTRODUCTION

In August 2025, the publisher Omoyele Sowore described President Bola Tinubu, in a series of social media posts, as a criminal. By 2026, that description had become the subject of a criminal trial before the Federal High Court in Abuja on charges of cyberstalking and criminal defamation. In May 2026, the trial judge found that the prosecution had made out a prima facie case. In June 2026, after a missed hearing, Sowore's bail was revoked; the judge dismissed his application to recuse himself, and he was remanded at Kuje Correctional Centre pending resumption of the trial¹. The charge rested on section 24 of the Cybercrimes Act, the same provision that, barely two years earlier, the National Assembly had substantially rewritten for the specific purpose of narrowing its scope² after years of criticism that its old wording, criminalising messages that caused mere "annoyance" or "insult", was being used to prosecute government critics. The amendment had removed exactly that language. The prosecution went ahead regardless.

That is why it makes sense to begin with this irony, since it challenges the mainstream view in Nigerian legal discussions of free speech and hate speech. The typical explanation is that Nigerian law lacks a clear

1 'Sowore Remanded in Kuje Prison Over Defamation of Tinubu' *Punch* (Lagos, 22 June 2026).

<<https://punchng.com/cybercrime-trial-court-remands-sowore-in-kuje-prison/>>
accessed 25 July 2026.

2 Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024, s 2, amending Cybercrimes (Prohibition, Prevention, etc.) Act 2015, s 24.

doctrinal criterion for distinguishing between protected expression and speech that is punishable, and that the courts should therefore create such a criterion by drawing on the imminent lawless action standard from the United States, the intent-and-effect model from Canada, the dignity-based approach from South Africa, or the necessity and proportionality formula from the European Convention. This article contends that the diagnosis misidentifies the problem. Nigeria is not lacking a test; Section 45 of the 1999 Constitution already requires that any restriction on expression be "reasonably justifiable in a democratic society", and the African Charter on Human and Peoples' Rights, which has been incorporated into domestic law and which the Supreme Court has held to have the force of law even in relation to decrees that claim to remove judicial review, provides precisely the kind of structured, three-part necessity and proportionality inquiry that other jurisdictions are commended for having.³ What Nigeria has been missing, the article argues, is not the doctrine but the discipline in applying it, and the Sowore prosecution demonstrates that even a legislative amendment to the text of a single provision, something that was welcome, cannot, on its own, provide that discipline.

The article is divided into six further sections. Section 2 describes the constitutional and treaty basis that Nigeria already has. Section 3 outlines the basis on which the current regulatory environment, including the sedition law, the Cybercrimes Act, the Broadcasting Code, and the still-born Hate Speech Bill, stands. Section 4 examines four decades of Nigerian case law to show how consistently courts have accepted the legitimate aim of a restriction without examining its necessity or proportionality, and it cites the single case from 1985 in which a Nigerian court took the opposite approach. Section 5 returns

3 Action from the Human Rights Action Network - Derechos Human Rights.
<https://derechos.org/human-rights/actions/sos/nig2.html> accessed 13 September 2026.

to the 2024 amendment and the Sowore prosecution to show the limits of reform through statute alone. Section 6 considers the leading comparative authorities not as examples to be copied but as evidence that Nigeria's own framework, if properly applied, would achieve the same result. Section 7 sets out the proposals, and Section 8 provides the conclusion.

2. THE FRAMEWORK WHICH NIGERIA ALREADY HAS

Section 39(1) of the Constitution guarantees "freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference"⁴. Section 45(1) qualifies this, and the other rights in sections 37 to 41, by providing that nothing in those sections invalidates a law that is "reasonably justifiable in a democratic society" in the interest of defence, public safety, public order, public morality, public health, or the protection of the rights of others⁵. On its face, this is already a proportionality clause of the kind found in most modern bills of rights: it does not simply ask whether a restriction serves one of the listed aims, but whether the restriction is reasonably justifiable, a formula that has been read in comparable constitutional texts elsewhere in the Commonwealth as importing an inquiry into necessity and proportionality, not merely legitimate purpose.

⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 39(1).

See also B.N. Umar, *Relationship between Media Freedom and Development in the Nigerian Society*. New

Media and Mass Communication. <https://doi.org/10.7176/nmmc.vol1710-19> accessed 13 September 2026.

⁵ *ibid*, s 45(1). See also B. Ugochukwu, *Balancing, Proportionality, and Human Rights Adjudication in*

Comparative Context: Lessons for Nigeria.
<https://core.ac.uk/download/232621807.pdf> accessed 13 September 2026.

In Nigeria, the importance of the African Charter on Human and Peoples' Rights is underscored by the country's incorporation of the Charter into its statute in 1983⁶, and by the Supreme Court's ruling in a case involving the detention of the human rights lawyer Gani Fawehinmi during military rule that, having been incorporated by statute, the Charter is directly enforceable by Nigerian courts and takes precedence over conflicting domestic law, including a decree that had attempted to remove the courts' jurisdiction completely⁷. The African Commission on Human and Peoples' Rights has itself developed the meaning of the Charter's right to expression through its 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa⁸. Principle 23 of that Declaration states that any restriction on expression must be provided for by law, must serve a legitimate aim, and must be necessary and proportionate in a democratic society a three-part test that, in material terms, is the same as the one Nigerian legal commentary normally looks to when considering foreign examples. This is not just a matter of aspiration: the Commission has previously found Nigeria in breach of the Charter's expression guarantee in relation to the banning of newspapers and magazines under a military decree⁹, thus confirming

6 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004 (originally enacted as No 2 of 1983).

7 *Fawehinmi v Abacha* (2000) 6 NWLR (Pt 660) 228 (SC).

8 African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa (adopted 10 November 2019), principle 23. See also L. Eko, 'Globalization and the Diffusion of Media Policy in Africa: The Case of Defamation of Public Officials' (2016) 12(6), *Africa Policy Journal*, 17-44, 6.; S. Solmone., & S. Solmone, 'The Respect for Freedom of Expression and the Exercise of State Jurisdiction Online in International Human Rights Law' <https://doi.org/10.15123/ucl.88zy3> accessed on 13 September 2026.

9 *Media Rights Agenda and Others v Nigeria*, Communication 224/98, [2000] ACHPR 24.

that Nigeria is held to this standard not only in theory but in practice as well.

The conclusion is that when a Nigerian court is considering whether a particular restriction on free speech is constitutionally valid, it does not need to turn to foreign legal principles. Instead, by referring to section 45 in conjunction with the domestic version of the Charter and the Commission's own interpretive guidance, it has developed a standard which asks the same thing as the tests examined later in this article from the United States, Canada, South Africa and Europe, that is, not only whether the government is pursuing a legitimate objective, but also whether this specific restriction, as applied to this kind of speech, is a necessary and proportionate means of achieving that objective. Parts 3 to 5 show how infrequently that second, harder question is actually asked.

3. WHAT THE REGULATORY LANDSCAPE ACTUALLY RESTS ON

Nigeria has no single law against hate speech; instead, restrictions on speech come from several separate measures. The oldest of these is the sedition clause in the Criminal Code, which makes it a crime to publish or utter words that cause the government to be hated or disrespected. This provision originated in the colonial era and remains officially in effect¹⁰. In recent years, the most frequently challenged provision has been section 24 of the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, which originally made it a criminal offence to send, via a computer system, any message that was "grossly offensive, pornographic or of an indecent, obscene or menacing character", or one that the sender knew was false and sent to cause "annoyance, inconvenience, danger, obstruction, insult, injury,

¹⁰ Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, ss 50-51.

criminal intimidation, enmity, hatred, ill will or needless anxiety" to another person.¹¹ This list of harms¹², several of which (such as annoyance and insult) are personal and trivial rather than serious, is exactly the kind of wording that leads to the prosecution of criticism rather than incitement, and it was criticised for this reason for many years. On 28 February 2024, President Bola Ahmed Tinubu gave his approval to an amendment that substantially reformed the provision: section 24(1) now covers messages that are pornographic, or those that the sender knows to be false and sends with the intention of causing a breakdown of law and order or posing a threat to life,¹³ removing the earlier mention of merely causing annoyance, insult or anxiety¹⁴. A third method is regulatory rather than criminal: the Nigerian Broadcasting Commission's Code bans broadcast content that promotes hatred or ethnic discrimination, and enforcement involves imposing fines and suspending or closing down stations, without regular judicial review of these actions¹⁵. A fourth measure was never actually enacted. The National Commission for the Prohibition of Hate Speeches (Establishment, etc.) Bill 2019, which would have

11 Internet Safety for Women: Combatting Revenge Porn - Free Essay Example - Edubirdie.

<https://hub.edubirdie.com/examples/revenge-pornography-the-need-to-make-the-internet-safe-for-women-in-a-digital-age/> accessed 13 September 2026

12 Cybercrimes (Prohibition, Prevention, etc.) Act 2015, s 24(1), as originally enacted.

13 Nigerian Journalist's Detention Threatens Press Freedom | Human Rights Watch.

<https://www.hrw.org/news/2024/05/09/nigerian-journalists-detention-threatens-press-freedom> accessed 13 September 2026.

14 Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024 (n 2), s 2, substituting a new s 24(1). President Bola Ahmed Tinubu assented to the amendment on 28 February 2024.

15 National Broadcasting Commission, Nigeria Broadcasting Code (6th edn, 2020), prohibiting broadcast content that promotes hatred or ethnic discrimination.

introduced a specific hate speech offence punishable in the most severe cases, up to death if hate speech had led to someone's death, was only given its first reading in the Senate in November 2019 before facing public opposition and being put aside.¹⁶ No subsequent bill has been presented to or progressed in the National Assembly since the one convened in 2023. In practice, hate speech regulation in Nigeria is carried out almost entirely through the general-purpose tools of sedition law and the amended Cybercrimes Act, both of which must be assessed in light of section 45 and the Charter framework explained in Part 2.

4. THE MISSING PROPORTIONALITY ANALYSIS: FOUR CASES, FOUR PATTERNS

In 1961, the Supreme Court was requested to decide if the sedition clauses of the Criminal Code were compatible with the guarantee of free expression in the Independence Constitution, and it concluded that they were, stating that the restriction could be considered reasonably justified in a democratic society¹⁷. The judgment neither asked¹⁸ nor, according to the record available, did it ask whether prosecuting this speaker for that statement constituted a necessary and proportionate means of protecting public order, rather than merely inquiring whether the sedition law as a general matter pursued a legitimate aim. This distinction between examining the category of restriction and

¹⁶ E. Aghedo, 'Interpreting 'Reasonably justifiable in a democratic Society': A protective standard for free speech in Nigeria. <https://core.ac.uk/download/551549158.pdf> accessed 13 September 2026.

¹⁷ M.T. Stevenson, 'Censorship, Academic Freedom and Legal Regulation: A Bahamian Case Study'. <https://doi.org/10.15362/ijbs.v14i0.100> accessed 13 September 2026.

¹⁸ *Director of Public Prosecutions v Chike Obi* (1961) All NLR 194 (FSC). This pagination corrects the citation given in some secondary literature, and in the Table of Cases above, as 186.

examining its application is a feature that reappears in subsequent case law.

Twenty-four years later, another panel dealt with the same legal issue, but in the opposite way. Arthur Nwankwo was found guilty and sentenced to one year's imprisonment under section 51 of the Criminal Code for publishing a pamphlet critical of the then Governor of Anambra State. The Court of Appeal in Enugu quashed the conviction. Olatawura JCA stated that keeping the sedition clause in place amounted to leaving 'a deadly weapon' available for use at the pleasure of a corrupt government or a tyrant, and regarded the clause, at least in the case of criticism directed at a public officeholder, as inconsistent with the constitutional right to free expression. This is the clearest example in Nigerian case law of a court carrying out the necessity inquiry required by section 45, and it shows that such an inquiry has always been available in Nigerian law; it was not introduced from outside the country and did not require a new statute. All it required was a court willing to ask the second question rather than merely considering the first.

Another example is often mentioned in discussions of free expression in Nigeria, but on closer examination, it does not actually fit that context. In 1999, the Supreme Court ruled that the State Security Service had improperly seized the passport of the human rights lawyer Olisa Agbakoba¹⁹. When the case is examined closely, it is seen to be about freedom of movement, not freedom of expression: the Court stated that it was only the Minister of Internal Affairs who could lawfully take away a passport and that this could only be done based on specific statutory grounds, with written notice and publication in

¹⁹ *Director, State Security Service and Anor v Agbakoba* (1999) 3 NWLR (Pt 595) 314 (SC).

the Gazette. It is worth quoting this case here for a more limited and more relevant point than the one typically associated with it, namely that when the executive interferes with a constitutional right, Nigerian courts, at least in the case of freedom of movement, have insisted on having specific statutory authority and on procedural regularity rather than accepting the interference simply because of general executive discretion. Parts 4 and 5 examine why this same rigour has not been applied to speech.

The best modern example is the 2019 challenge to section 24 of the Cybercrimes Act. Solomon Okedara contended that the original version of the provision, as it was, was unconstitutionally vague. The Court of Appeal rejected this argument, stating that the language of the provision was "explicit" and therefore met the fair-hearing requirement under section 36(12) of the Constitution²⁰, and that the purposes of the Act were within the kind of restrictions permitted by section 45²¹. However, on the evidence available, the judgment did not examine whether the specific and broad list of triggering harms—such as annoyance and insult, as well as needless anxiety—was in fact a necessary and proportionate means of protecting the interests listed in section 45, rather than merely being clear enough to inform the defendant of the prohibited conduct. Since definiteness and proportionality are separate issues, the Court of Appeal addressed the first and regarded that as also settling the second.

²⁰ *Okedara v Attorney-General of the Federation* (2019) LCN/12768(CA).

²¹ Court of Appeal holds that the duty to defend is an ongoing obligation to be applied on a “rolling” basis and

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[duty-to-defend-is-an-ongoing-obligation-to-be-applied-on-a-rolling-basis-and-](https://www.commerciallitigationblog.com/court-of-appeal-holds-that-the-duty-to-defend-is-an-ongoing-obligation-to-be-applied-on-a-rolling-basis-and-insurers-cannot-contract-out-of-the-limitations-act-where-policy-holders-a/)

[insurers-cannot-contract-out-](https://www.commerciallitigationblog.com/court-of-appeal-holds-that-the-duty-to-defend-is-an-ongoing-obligation-to-be-applied-on-a-rolling-basis-and-insurers-cannot-contract-out-of-the-limitations-act-where-policy-holders-a/)

[of-the-limitations-act-where-policy-holders-a/](https://www.commerciallitigationblog.com/court-of-appeal-holds-that-the-duty-to-defend-is-an-ongoing-obligation-to-be-applied-on-a-rolling-basis-and-insurers-cannot-contract-out-of-the-limitations-act-where-policy-holders-a/) accessed 13 September 2026.

A similar pattern is seen in the area of national security. In 2007, when it refused to grant bail to Mujahid Dokubo-Asari, the leader of the Niger Delta militants, the Supreme Court stated that the right to personal liberty provided for in section 35 of the Constitution is "not absolute" and that national security considerations might, in an appropriate case, take priority over it²². The Court's own inflammatory public statements were regarded as relevant to the bail decision. However, the judgment did not examine, on a case-by-case basis, whether continued detention specifically, as against some milder form of restriction, was necessary to deal with the security risk posed by the statements it was said he had made; national security was treated as a category which, once raised, settled the balance, rather than as one element of a proportionality assessment that still had to be carried out. Taken together, these four cases cover a period of sixty years and show a consistent practice: Nigerian courts have generally been prepared to consider whether a restriction serves a legitimate purpose, but have generally been unwilling—except in the case of Nwankwo to go on and consider whether the restriction, when applied to this kind of speech, was necessary to achieve that purpose.

5. 2024 AND ITS LIMITS: THE AMENDED SECTION 24 AND THE SOWORE PROSECUTION

The 2024 amendment to section 24 was, in itself, a real improvement since it got rid of language, annoyance, insult, and unnecessary anxiety which had no reasonable link to any of the interests covered by section 45 and which had therefore made the provision an easy tool for countering unwanted criticism; the thing that now replaces it, namely, messages that are known to be false and which are sent with the intention of causing a breakdown of law and order or threatening life

²² *Dokubo-Asari v Federal Republic of Nigeria*, SC.208/2006, [2007] NGSC 98.

is more specific and more clearly connected to a legitimate objective.²³

The case brought against Sowore shows that more narrowly worded legislation is not enough. Referring to a currently serving President as a criminal on social media is a typical example of political speech, an opinion about the character and behaviour of a public office-holder and this sort of expression has been repeatedly recognised and protected by Nigerian and comparable case law. For the prosecution to justify its statement under the amended provision, which requires that there be a threat to law and order or to life, it had to treat ordinary, if sharp, political criticism as constituting a threat of that nature. There is nothing in the public record of the proceedings by mid-2026, including the finding of a *prima facie* case in May, the revocation of bail in June, and the dismissal of the application for recusal, to show that the trial court examined that characterisation in the light of the necessity and proportionality review set out in Part 2, rather than simply asking whether the words used could, on one interpretation, be covered by the language of the amended section. The pattern seen in Part 4 is the same: a question about a legitimate aim is raised and answered; the more difficult, case-by-case question of necessity is not shown to have been asked at all.

The case of journalist Agba Jalingo provides another instructive example. Accused in January 2023 of cybercrimes²⁴ in connection with a report that named a relative of a state governor, Jalingo was

²³ Nigerian Journalist's Detention Threatens Press Freedom | Human Rights Watch.
<https://www.hrw.org/news/2024/05/09/nigerian-journalists-detention-threatens-press-freedom> accessed 13 September 2026.

²⁴ Committee to Protect Journalists, 'Nigerian Journalist Agba Jalingo Charged with Cybercrime over Report on Governor's Relative' (CPJ, 27 January 2023).

finally acquitted about eighteen months later²⁵. His eventual acquittal could be seen as proof that the system is self-correcting. It is, however, more accurate to view it as evidence of the contrary: the correction only occurred after eighteen months of prosecution, by which time the practical difficulties, detention, legal expenses, and damage to his reputation and professional standing had already been suffered. The reason for including necessity and proportionality as part of the constitutional standard from the outset is to ensure that a proportionality review takes place at the time of charging, rather than only appearing—should it at all—when the eventual acquittal is reached. Legislation may define what a charge must allege; it does not by itself alter either when or whether a court examines the allegation.

6. COMPARATIVE LAW AS CONFIRMATION, NOT AS A DONOR

It is worth taking a moment to look at the legal authorities that Nigerian commentators typically cite, since on close examination they support the case made in this article rather than the usual recommendation to introduce a foreign test. The Supreme Court of the United States has stated that advocacy can only be restricted in cases where it is aimed at inciting imminent lawless action and is likely to cause it; this criterion is strict²⁶ but, in terms of structure, involves a necessity inquiry, since a legitimate aim (namely the prevention of lawless action) is not sufficient unless there is both imminence and likelihood. When upholding a hate propaganda offence in the face of a Charter challenge, the Supreme Court of Canada applied the two-stage structure generally required for limitations on Charter rights: first, a determination of a pressing objective, followed by a proportionality review that considers rational connection, minimal impairment, and

²⁵ Committee to Protect Journalists, 'Nigerian Court Acquits Publisher Agba Jalingo of Cybercrime Charges' (CPJ, 2 July 2024).

²⁶ *Brandenburg v Ohio* 395 US 444, 447 (1969).

the overall balance.²⁷ In South Africa's Constitutional Court case considering the nation's statutory definition of hate speech, it was insisted that speech should be considered only where there is a clear intention to be hurtful or harmful, or to incite harm. The definition was therefore struck down because it did not specify that requirement with adequate precision²⁸. The English courts, when applying the Human Rights Act, have only confirmed convictions in respect of extreme and targeted speech after having examined the restriction against the specific proportionality requirement in article 10(2) of the European Convention, while at the same time, within the same judicial tradition, maintaining that free speech protects "the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative²⁹" right up to the point where it begins to provoke violence³⁰. None of these four legal systems poses a fundamentally different question from the one that section 45 and the domesticated African Charter have already presented to a Nigerian court. What they demonstrate is not that Nigeria needs a different test; rather, they show that all such working systems in fact carry out the second part of the test—the necessity and proportionality part—as an active, fact-based inquiry rather than treating it as a formality once a legitimate aim has been identified. This is the part that Part 4 shows Nigerian courts have generally overlooked.

7. TOWARD A WORKABLE STANDARD

²⁷ *R v Keegstra* [1990] 3 SCR 697; applying the proportionality framework set out in *R v Oakes* [1986] 1 SCR 103.

²⁸ *Qwelane v South African Human Rights Commission and another* [2021] ZACC 22.

²⁹ D.Lowe, 'Christchurch Terrorist Attack, The Far-Right and social media: What can we learn?

<https://core.ac.uk/download/199210112.pdf> accessed 13 September 2026

³⁰ *R v Norwood* [2003] EWHC 1564 (Admin); *Redmond-Bate v Director of Public Prosecutions* [1999] EWHC Admin 733 (Sedley LJ).

Because the deficit identified in this article is one of application rather than doctrine, the proposals that follow address primarily how the existing framework is used, not how to replace it.

In an appropriate case, the Supreme Court or the Court of Appeal ought to clearly state that the standard in section 45 of being 'reasonably justifiable in a democratic society' is to be read in conjunction with and shaped by the necessity and proportionality requirement of the African Charter as it has been incorporated and given the force of binding law in *Fawehinmi v Abacha*³¹, thereby requiring a state actor justifying a restriction on expression to specifically allege and prove both necessity and proportionality, and not merely to identify a legitimate aim from the list in section 45.

Second, when bringing a charge under the amended section 24, it should be necessary to give a specific statement explaining how the particular communication that is in question is alleged to threaten a breakdown of law and order or a threat to life, rather than simply drawing the charge from the statutory wording; in this way the issue of necessity should be brought to the surface at the earliest possible stage, rather than waiting until after a lengthy pre-trial detention of the sort described in Part 5 to have it examined.

Third, the National Assembly ought to oppose reviving the omnibus approach embodied in the 2019 Hate Speech Bill, which was extremely punitive³². The amendment to section 24 in 2024 is a more appropriate model since it is specific to the harm caused and modifies

³¹ *Fawehinmi v Abacha* (n 7).

³² National Commission for the Prohibition of Hate Speeches Bill 2019.

an existing provision, rather than being a standalone law that introduces new broad categories of criminal speech.

Fourth, the National Human Rights Commission or some equivalent organisation should be obliged to publish, at least once a year, the charges and outcome data relating to cases prosecuted under section 24 and the sedition clauses, showing the difference between convictions and discontinuances and acquittals and noting the status of the defendant, whether they were a journalist, an activist, a regular citizen or a critic of a public official. In this way, the pattern, which has so far been observed only anecdotally in cases such as Sowore's and Jalingo's, could be checked against real figures rather than debated on a case-by-case basis.

Fifth, continuing judicial education on freedom of expression should take *Nwankwo v The State*³³ as its central domestic teaching case, precisely because it demonstrates that rigorous necessity and proportionality analysis under Nigerian constitutional law is not an import waiting to be adopted; it is a domestic precedent waiting to be followed more often than it has been.

8. CONCLUSION

In February 2024, the National Assembly did exactly what commentators had long called for, narrowing the broad offence of speech to one linked to actual and specific harm. Just eighteen months later, this more narrowly defined offence was used to bring a publisher to trial for referring to the President as a criminal, an act of political criticism as old as constitutional government itself. The point is not that the 2024 amendment failed; the point is that no amount of rewriting the statute can replace a court that, in each case, is willing to

³³ *Nwankwo v The State* (n 15).

consider whether this restriction on speech was really necessary. Nigeria has had the legal tools to raise that question since at least 1985, when the Court of Appeal in Enugu posed it and answered it in favour of a pamphleteer against a sitting Governor. What Nigerian courts owe the next Arthur Nwankwo and the next Omoyele Sowore is not a new test; it is the commitment to applying the one they already have.